

**WSR 20-14-015**  
**PROPOSED RULES**  
**CONSERVATION COMMISSION**

[Filed June 22, 2020, 10:25 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR [20-10-009].

Title of Rule and Other Identifying Information: Chapter 135-110 WAC, Election and replacement of conservation district supervisors.

Hearing Location(s): On (1) August 6, 2020, at 3 p.m.; (2) August 11, 2020, at 3 p.m., at (1) Spokane Conservation District Conference Room, 210 North Havana, Spokane, WA 98202; (2) Pierce Conservation District Conference Room, 308 West Stewart Avenue, Puyallup, WA 98371.

Date of Intended Adoption: September 17, 2020.

Submit Written Comments to: Lori Gonzalez, P.O. Box 47721, Olympia, WA 98504-7721, email [commission@scc.wa.gov](mailto:commission@scc.wa.gov), fax 360-407-6215, by September 1, 2020.

Assistance for Persons with Disabilities: Lori Gonzalez, phone 360-407-7417, fax 360-407-6215, TTY 1-800-833-6388, email [commission@scc.wa.gov](mailto:commission@scc.wa.gov), by September 1, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposal modifies existing and establishes new procedures and requirements for entering and exiting the office of conservation district supervisor, including, but not limited to, election and appointment of conservation district supervisors, for the purpose of populating and maintain[ing] conservation district governing boards.

Reasons Supporting Proposal: The Washington state conservation commission is required by statute to adopt procedures for conservation district elections. The proposed rules are intended to modify existing and establish new procedures for how individuals enter and exit the office of conservation district supervisor, for the conduct of elections by conservation districts, to clarify statutory language, and to provide statewide consistency in the election and replacement of conservation district supervisors.

Statutory Authority for Adoption: RCW 89.08.040, 89.08.160, 89.08.190, 89.08.200.

Statute Being Implemented: RCW 89.08.190, 89.08.200.

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

Name of Proponent: Ron Shultz, director of policy and intergovernmental relationships, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Bill Eller, P.O. Box 47721, Olympia, WA 98504-7721, phone 509-385-7512.

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. A cost-benefit analysis is not required because the propose[d] rule relates only to internal governmental operations that are not subject to violation by a nongovernmental party. RCW 34.05.328 (5)(b)(ii).

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.

June 22, 2020

Ron Shultz

Director of Policy and  
Intergovernmental Relations

AMENDATORY SECTION (Amending WSR 10-21-084, filed 10/19/10, effective 11/19/10)

**WAC 135-110-110 Definitions.** (~~"Absentee ballot" or "mail-in ballot" means a ballot issued to a voter before election day that can be delivered to the conservation district or designated election supervisor on or before the day of the election.~~)

"Ballot" or "official ballot" means the final, preprinted ballot containing the name of each declared, nominated candidate found eligible, and at least one line where a voter may enter the name of a write-in candidate.

"Ballot box" means a container secured against tampering into which paper ballots are placed.

"Candidate" means a person seeking the office of elected conservation district supervisor who has provided the required candidate information to the conservation district by the filing deadline and whose eligibility to run and to serve has been verified by the conservation district.

"Candidate optional information" means information provided by the candidate about their candidacy.

"Candidate required information" means the factual information included on the candidate information form.

"Canvass" and "canvassing" means to examine carefully or scrutinize the election returns for authenticity and proper count.

"Certify" and "certification" means the canvassing of returns and the verification of substantial compliance with these procedures by the conservation commission.

"Conservation commission" means the Washington state conservation commission governing board and all deputies and representatives authorized to act on its behalf.

"Conservation commission board" and "conservation commission governing board" means the governing board of the Washington state conservation commission.

"Conservation district" means a governmental subdivision of the state of Washington organized under the provisions of chapter 89.08 RCW Conservation districts.

"Conservation district supervisors" and "district supervisors" means the governing board of a conservation district, composed of elected and appointed supervisors.

~~("Declared nominated candidate" and "nominated candidate" means an individual found to be a qualified district elector who is eligible and who has submitted the candidate information required, including a qualified nominating petition, to the conservation district by the filing deadline, and the conservation district has verified the eligibility of the candidate.)~~

"Declared vacant" means a declaration by the conservation commission that a conservation district supervisor position is vacant.

~~("Declared write-in candidate" means a person seeking the office of elected supervisor who has provided the required candidate information to the conservation district by the filing deadline, and the conservation district has found the person eligible.)~~

"Double envelope balloting" means a paper balloting system consisting of an inner and an outer envelope, where a ballot is placed in an inner envelope with no personally identifying marks on it, and then the inner envelope with ballot is placed in the outer envelope upon which the voter has provided sufficient information to allow polling officers to verify the eligibility of the voter.

"Due notice" or "notice" means a notice published at least twice, with at least six days between publications, in a publication of general circulation within the affected area. If there is no such publication, a notice may be posted at a reasonable number of public places within the area where it is customary to post notices concerning county and municipal affairs. There is no requirement for publication of a legal advertisement in a newspaper of record. However, if a legal advertisement is published, a copy of the announcement as published, showing the date of publication, is sufficient proof of publication.

"Elected supervisor" means a qualified district elector:

(a) Who received more valid votes than any other candidate; and

(b) Whose election has been certified and announced by the conservation commission.

"Election supervisor" means an individual or entity appointed by conservation district supervisors to organize, coordinate, and manage tasks related to the election of conservation district supervisors. Only the conservation district board of supervisors may set election dates and appoint the election supervisor.

"Electioneering" means the act of soliciting or advocating votes for a specific candidate, or speaking for or against a specific candidate within three hundred feet of a ballot box or voting place.

"Farm and agricultural land" is defined in RCW 89.08.-020 as follows: "Farm and agricultural land" means either:

(a) Land in any contiguous ownership of twenty or more acres devoted primarily to agricultural uses;

(b) Any parcel of land five acres or more, but less than twenty acres devoted primarily to agricultural uses, which has produced a gross income from agricultural uses equivalent to one hundred dollars or more per acre per year for three of the five calendar years preceding the date of application for classification under this chapter; or

(c) Any parcel of land of less than five acres devoted primarily to agricultural uses which has produced a gross income of one thousand dollars or more per year for three of the five calendar years preceding the date of application for classification under this chapter.

(d) Agricultural lands shall also include farm woodlots of less than twenty and more than five acres and the land on which appurtenances necessary to production, preparation or sale of the agricultural products exist in conjunction with the lands producing such products.

(e) Agricultural lands shall also include any parcel of land of one to five acres, which is not contiguous, but which

otherwise constitutes an integral part of farming operations being conducted on land qualifying under this section as "farm and agricultural lands."

"Farm operator" or "operator of a farm" means a person who operates farm and agricultural land.

"Filing deadline" means four weeks before election day in the current election cycle, or, if a local filing deadline that is more than four weeks before election day is adopted by formal action of the conservation district supervisors, that adopted filing deadline.

"Full term," "regular term," and "full term of office" means a three-year term of office.

"Incumbent" means the person in present possession of the office of conservation district supervisor.

"Landowner" means a person with legal title of record to real property in the conservation district at the time of filing for election or applying for appointment.

"Mail-in election" means an election in which mail-in ballots are provided before election day to qualified voters. Voters return completed ballots to a receiving location or address authorized by the conservation district board of supervisors.

"Malfeasance" means wrongful conduct that affects, interrupts, or interferes with the performance of a supervisor's official duty.

"Mid-term" and "mid-term vacancy" means a vacancy in the office of conservation district supervisor, when such vacancy occurs before the full term of office has been fulfilled.

"Municipal officer" means all elected and appointed officers of a conservation district, together with all deputies and assistants of such an officer, and all persons exercising or undertaking to exercise any of the powers or functions of a municipal officer.

"Neglect of duty" means failure by a supervisor or supervisors to perform mandatory duties. Such duties include, but are not limited to:

(a) Compliance with laws and rules imposed by local, state, and federal government entities;

(b) Attendance at a sufficient number of board meetings so as to not impede the work of the conservation district;

(c) Maintaining a full and accurate record of district business;

(d) Securing of surety bonds for board officers and employees;

(e) Carrying out an annual financial audit;

(f) Providing for keeping current a comprehensive long-range program;

(g) Providing for preparation of an annual work plan;

(h) Providing for informing the general public, agencies, and occupiers of lands within the conservation district of conservation district plans and programs;

(i) Providing for including affected community members in regard to current and proposed plans and programs; and

(j) Providing for the submission of the conservation district's proposed long-range program and annual work plan to the conservation commission.

~~("Nominating petition" means a list of signatures of nominators who desire a candidate's name be placed on the official ballot for a conservation district election.~~

"Nominator" means a qualified district elector who signs a petition nominating an individual seeking the office of elected supervisor.)

"Poll list" or "polling list" means a list of voters who voted in an election.

"Polling officer" means a person appointed by the election supervisor to verify voter eligibility, assure compliance with this rule in and around the polling place, issue ballots, count ballots, and verify the unofficial ballot count in writing to conservation district supervisors.

"Poll site" and "polling site" means a location where votes are collected in a ballot box.

"Poll-site election" and "walk-in election" means an election in which a voter signs in on a poll list, receives a ballot from a polling officer, enters a vote for a candidate on the ballot, and places the ballot in a ballot box at a polling place supervised or monitored by polling officers.

"Provisional ballot" or "contested ballot" means a paper ballot issued to a voter whose qualifications as a qualified district elector cannot be determined at the time the paper ballot is issued. A provisional ballot consists of two envelopes and a paper ballot.

"Qualified district elector" means a registered voter in the county where the district is located and who resides within the conservation district boundary. Qualified district elector means an individual residing within the boundary of the conservation district and registered to vote in a county where the conservation district is located.

~~("Qualified nominating petition" means a nominating petition which contains at least twenty-five signatures of nominators.)~~

"Remote election" means an election in which ballots are returned by some means other than for a poll-site election. A mail-in election is a type of remote election.

"Short term" or "short term of office" means a term of office less than three years in duration.

"Significant noncompliance" means the failure to follow the requirements in this rule that may affect the outcome of an election or deny voters their right of privacy in voting.

"Supervisor" means an elected or appointed board member of a local conservation district governing board, in which the governing board is referred to as the board of supervisors.

"Supervisor-elect" means a supervisor who received more valid votes than any of the other candidates running for the same position in a conservation district election, but the election has not yet been certified by the conservation commission.

"Tie" or "election tie" means an election where no candidate has received a simple majority of votes cast by qualified district electors, and two or more candidates have received the same number of votes cast by qualified district electors.

"Undeclared write-in candidate" means an individual who has not submitted required candidate information to the conservation district and who has not submitted a qualified nominating petition by the filing deadline.

"Voter" means a person who submits a ballot in a conservation district election.

"Withdrawal of candidacy" and "to withdraw" means a written notice, signed and dated by the candidate, and delivered to the conservation district, stating the person's desire to

be removed from consideration for the office of conservation district supervisor.

AMENDATORY SECTION (Amending WSR 10-21-084, filed 10/19/10, effective 11/19/10)

**WAC 135-110-130 Documents provided to conservation commission to be copies.** (1) All election forms and documents submitted to the conservation commission ~~((must))~~ shall be copies. Original documents ~~((must))~~ shall remain in the care and custody of the conservation district.

(2) The conservation commission ~~((may))~~ shall inspect original documents upon request.

AMENDATORY SECTION (Amending WSR 10-21-084, filed 10/19/10, effective 11/19/10)

**WAC 135-110-140 Records retention.** (1) Unissued or undeliverable ballots ~~((must))~~ shall be retained for ten days after the election is certified and the official results announced, and then may be destroyed.

(2) All ballots submitted by voters, and all candidate filing records (including candidate information, ~~((nominating petitions,))~~ verification of eligibility, and withdrawals of candidacy), ~~((must))~~ shall be retained for ~~((six))~~ twelve months after the election is certified and the official results announced, and then may be destroyed.

(3) The conservation commission shall abide by the records retention schedule as set out for conservation district elections in the local government common records retention schedule (CORE), as established by the office of the secretary of state, Washington state archives, and its own records retention policy.

AMENDATORY SECTION (Amending WSR 10-21-084, filed 10/19/10, effective 11/19/10)

**WAC 135-110-150 Conservation district must remain impartial.** No conservation district supervisors, municipal officers or employees ~~((may))~~ shall adopt or state an official position about any candidate that promotes, or is prejudicial to, a candidate.

AMENDATORY SECTION (Amending WSR 10-21-084, filed 10/19/10, effective 11/19/10)

**WAC 135-110-160 Legal boundaries of conservation district to be available.** The election supervisor and polling officer(s) ~~((must))~~ shall be able to produce the legal boundary of the conservation district to any person at a physical poll site or at the conservation district office.

AMENDATORY SECTION (Amending WSR 10-21-084, filed 10/19/10, effective 11/19/10)

**WAC 135-110-170 Only one ballot per voter may be counted.** In the event more than one ballot is submitted by a voter, the first ballot tallied is the only vote counted. Any subsequent ballots from the same voter will be disqualified and ~~((must))~~ shall not be counted.

AMENDATORY SECTION (Amending WSR 10-21-084, filed 10/19/10, effective 11/19/10)

**WAC 135-110-180 Disruptive acts prohibited.** (1) Behavior at the physical polling site that disrupts or interferes with the election of conservation district supervisors is prohibited.

(2) A conservation district supervisor, polling officer, or election supervisor may require disruptive persons to leave a physical poll-site election. Such disruptive persons ~~((must))~~ shall remain at least three hundred feet away from the polling place or facility where official election functions are being performed.

(3) A conservation district supervisor, polling officer, or election supervisor may enlist the aid of law enforcement personnel to assist in identifying disruptive persons and preventing such persons from disrupting or interfering with any election processes at the physical polling site.

AMENDATORY SECTION (Amending WSR 10-21-084, filed 10/19/10, effective 11/19/10)

**WAC 135-110-200 Conservation district ~~((must))~~ shall hold election.** A conservation district ~~((must))~~ shall hold an election during January, February, or March in the year a three-year term of an elected supervisor ~~((will))~~ expires.

AMENDATORY SECTION (Amending WSR 10-21-084, filed 10/19/10, effective 11/19/10)

**WAC 135-110-210 Conservation district ~~((must))~~ shall adopt election resolution.** (1) Each year the conservation district ~~((supervisors must))~~ board shall adopt a resolution establishing the election.

(2) The election resolution adopted by the conservation district supervisors ~~((must))~~ shall include the following information:

- (a) The name of the conservation district;
- (b) For a poll site election, the date(s), the physical location(s), and the times polls will open and close for each polling place;
- (c) The election methods selected for the election;
- (d) A list showing the name of each elected and appointed conservation district supervisor with a term expiring in the election and appointment cycle covered by the resolution;
- (e) The filing deadline for candidates as set out in WAC 135-110-330;
- (f) Identification of an individual appointed by the conservation district to fulfill the duties of election supervisor; ~~((and))~~
- (g) The dated signature of at least one conservation district supervisor attesting to this information; and
- (h) A reasonable deadline for voters to request a ballot.

(3) This information ~~((must))~~ shall be provided to the conservation commission by the candidate filing deadline.

AMENDATORY SECTION (Amending WSR 10-21-084, filed 10/19/10, effective 11/19/10)

**WAC 135-110-220 Due notice required before and after election resolution.** (1) ~~((Due notice of the intent to adopt a resolution establishing the election must be provided by the conservation district to potential qualified district electors of the conservation district prior to adopting the resolution.~~

~~((2)))~~ Not later than seven days following the conservation district's adoption of the election resolution, due notice containing all election information in the resolution ~~((must))~~ shall be published, using the filing deadline as the date for determining compliance with due notice requirements.

~~((3)))~~ (2) If a conservation district adopts a standing resolution establishing a repeating annual election schedule, due notice of expiring terms and the filing deadline must be provided to constituents, using the filing deadline as the date for determining compliance with due notice requirements.

AMENDATORY SECTION (Amending WSR 10-21-084, filed 10/19/10, effective 11/19/10)

**WAC 135-110-230 Conservation district appoints election supervisor.** (1) The conservation district supervisors ~~((must))~~ shall appoint a person or firm as the election supervisor.

- (2) The election supervisor:
  - (a) Serves as the primary point of contact between the conservation district and the conservation commission for the conservation district election;
  - (b) Organizes, coordinates, and facilitates election-related activities of the conservation district;
  - (c) Assures that required election procedures are properly conducted; ~~((and))~~
  - (d) Assures that required information is properly transmitted to the conservation commission; and
  - (e) Shall be trained in election policy and procedure as per conservation commission requirements.
- (3) Conservation district supervisors remain responsible for conducting an election in compliance with this section.

AMENDATORY SECTION (Amending WSR 10-21-084, filed 10/19/10, effective 11/19/10)

**WAC 135-110-240 Election may be on-site, remote, or both.** (1) The conservation district supervisors ~~((must))~~ shall choose the method of the election using physical poll sites, or by remote methods, or by any combination of these methods that assures fair treatment of candidates and voters, provides privacy in voting, and complies with all other parts of this rule.

(2) Every physical poll site ~~((must))~~ shall be open for at least four consecutive hours at a time convenient for voters, and every physical poll site ~~((must))~~ shall have at least two polling officers present during the hours the polls are open.

(3) Ballots submitted by mail ~~((must))~~ shall be post-marked no later than the day of the election, or the last day if multiple election days. Ballots submitted by physical delivery ~~((must))~~ shall be received at the district office by the announced final polling time of the day of election, or the last

day if multiple election days. Remote ballots transmitted by any other means (~~(must)~~) shall be transmitted by the last day of election.

AMENDATORY SECTION (Amending WSR 10-21-084, filed 10/19/10, effective 11/19/10)

**WAC 135-110-250 Voting (~~(must)~~) shall be accessible.** Disabled voters (~~(must)~~) shall be offered a voting method accessible to them.

AMENDATORY SECTION (Amending WSR 10-21-084, filed 10/19/10, effective 11/19/10)

**WAC 135-110-300 Every candidate (~~(must)~~) shall be a qualified district elector.** A candidate for election to the office of conservation district supervisor (~~(must)~~) shall be a qualified district elector at the time of filing.

AMENDATORY SECTION (Amending WSR 10-21-084, filed 10/19/10, effective 11/19/10)

**WAC 135-110-320 Submission of candidate information required to be elected.** (1) (~~Only persons who file candidate information with the conservation district by the filing deadline and who are found by the conservation district to be eligible to be elected may be elected, unless no person has filed for the office by the filing deadline.~~)

(2) ~~The name of a person who files candidate information by the filing deadline but does not file a qualified nominating petition must not be printed on the official ballot, but may be elected as a declared write-in candidate.~~

(3) Information to be submitted to the conservation district by a person seeking to be a candidate for election (~~(must)~~) shall include:

- (a) The name of the conservation district;
- (b) The person's name, residential address, mailing address (if different), and phone number;
- (c) Whether the person is a registered voter in the county where the conservation district is located;
- (d) Whether the person resides inside the conservation district boundary;
- (e) Whether the person is a landowner or an operator of a farm; and
- (f) The dated signature of the person attesting to the accuracy of the information so provided.

(2) For purposes of this section, an electronic signature contained in an electronic submittal of the candidate information is acceptable.

AMENDATORY SECTION (Amending WSR 10-21-084, filed 10/19/10, effective 11/19/10)

**WAC 135-110-330 Filing deadline.** (~~((+))~~) The filing deadline for candidates is set by the district board and shall be, at a minimum, not less than four weeks before election day.

(~~((2))~~) ~~By formal action the conservation district supervisors may make the filing deadline on a day more than four weeks before the election.~~)

AMENDATORY SECTION (Amending WSR 10-21-084, filed 10/19/10, effective 11/19/10)

**WAC 135-110-350 Types of candidacy.** (1) A declared candidate is a qualified district elector who has submitted candidate required information to the conservation district by the filing deadline.

(2) A (~~declared nominated candidate is a declared candidate who has submitted a qualified nominating petition to the conservation district by the filing deadline.~~)

(3) ~~An undeclared~~) write-in candidate is a person who has not submitted candidate required information to the conservation district by the filing deadline (~~, and who has not submitted a qualified nominating petition by the filing deadline~~)).

AMENDATORY SECTION (Amending WSR 10-21-084, filed 10/19/10, effective 11/19/10)

**WAC 135-110-355 Election supervisor (~~(must)~~) shall verify candidate eligibility.** (1) The election supervisor (~~(must)~~) shall verify the eligibility of each person who submits candidate information required by WAC 135-110-320. The election supervisor may call upon the county auditor or the conservation commission for assistance in verifying eligibility.

(2) For a candidate to be eligible, the election supervisor (~~(must)~~) shall make a determination that:

- (a) The name of the person who filed candidate information is the correct legal name of the individual;
- (b) That the person submitted candidate information by the filing deadline;
- (c) (~~That the person submitted a valid nominating petition by the filing deadline;~~)
- (~~(d)~~) That the person was a qualified district elector on the day of filing; and
- (~~((e))~~) (d) That at least two of the three elected conservation district supervisors on the conservation district board of supervisors will be landowners or operators of farms if the person is elected.

(~~((3))~~) ~~For a nominated candidate, the conservation district must also verify that at least twenty-five eligible nominators signed the nominating petition.~~)

AMENDATORY SECTION (Amending WSR 10-21-084, filed 10/19/10, effective 11/19/10)

**WAC 135-110-360 (~~(Undeclared)~~) A write-in candidate may be elected if no eligible person files.** (1) If (~~no person has filed by the filing deadline, or if~~) the election supervisor finds ineligible all persons who filed, then only (~~(undeclared)~~) write-in candidates may be elected.

(2) The (~~(undeclared)~~) write-in candidate, deemed the unofficial winner, (~~(must)~~) shall submit required candidate information to the conservation district (~~, and~~) within (~~(four weeks)~~) twenty-eight calendar days (~~(3))~~) following the first date of election, and the election supervisor (~~(must)~~) shall verify the eligibility of the unofficial winner to be elected and to serve.

(3) If the conservation district is unable to verify eligibility of the unofficial winner within (~~(four weeks)~~) twenty-

eight calendar days of the election, the unofficial winner is disqualified. The person receiving the next highest vote count ~~((must))~~ shall then submit required candidate information and the conservation district ~~((must))~~ shall verify his or her eligibility as described above.

(4) If the ~~((undeclared))~~ write-in candidate who is the unofficial winner is found ineligible and no other persons received votes, ~~((the conservation commission will officially announce another full term of office for the incumbent on the third Thursday in May, but only upon verification by the conservation district of the eligibility of the incumbent to serve in the office of elected conservation district supervisor))~~ the provisions of WAC 135-110-740 shall apply.

AMENDATORY SECTION (Amending WSR 10-21-084, filed 10/19/10, effective 11/19/10)

**WAC 135-110-370 ~~((Incumbent))~~ Single candidate automatically ~~((reelected))~~ elected if no other person files.**

(1) ~~((The incumbent))~~ A single candidate is automatically ~~((reelected to another))~~ elected to a three-year term if:

(a) Due notice of the adopted election resolution and the ~~((election have))~~ information in that resolution has been duly published by the conservation district;

(b) ~~((The))~~ Only one person ~~((filing))~~ filed by the candidate filing deadline ~~((is the incumbent)); and~~

(c) The conservation district verifies the ~~((continued))~~ eligibility of the ~~((incumbent))~~ single candidate to serve ~~((another))~~ a term of office~~((; and~~

~~((d) The incumbent has not resigned on or before the last date of election)).~~

(2) When ~~((an incumbent is automatically reelected))~~ a single candidate election occurs, no other election activities at physical poll sites or through remote election processes ~~((may))~~ shall be performed.

(3) Before election day, the conservation district ~~((must))~~ shall inform the voting public that the ~~((incumbent))~~ single candidate has been ~~((reelected))~~ elected by reason of being the only person filing for the position, and that no poll site, mail, or absentee balloting will be performed, and on election day, signs containing this information ~~((must))~~ shall be posted at poll sites.

(4) ~~((Within four weeks of the first date of election as scheduled in the election resolution))~~ Not later than fourteen business days after the candidate filing deadline, the conservation district ~~((must))~~ shall inform the conservation commission of the automatic ~~((reelection))~~ election of the ~~((incumbent))~~ single candidate.

AMENDATORY SECTION (Amending WSR 10-21-084, filed 10/19/10, effective 11/19/10)

**WAC 135-110-380 Candidate may withdraw candidacy in writing.** (1) Before election day, a candidate may withdraw his or her candidacy by submitting a written request to the conservation district.

(2) A person who withdraws his or her candidacy is not eligible to be elected in the current election.

(3) If a person withdraws his or her candidacy, the conservation district is not required to revise official ballots.

(4) In the event that some, but not all candidates withdraw, the unofficial winner of the election will be the remaining eligible candidate receiving the highest vote count after all the votes are tallied for each candidate, including those candidates who have withdrawn but remain on the ballot as per subsection (3) of this section.

#### NEW SECTION

**WAC 135-110-385 Effect of votes cast for withdrawn, deceased, or ineligible candidate.** (1) If the name of a deceased, withdrawn, or ineligible candidate appears on the ballot under this chapter, the votes cast for the candidate shall be counted and entered on the official election returns in the same manner as for the other candidates.

(2) If the deceased, withdrawn, or ineligible candidate receives the vote required for election, the resulting vacancy shall be filled in the regular manner.

(3) If the deceased, withdrawn, or ineligible candidate and another candidate tie for the most votes in an election in which a plurality vote is sufficient for election, the other candidate is considered to be elected. If more than one other candidate is tied with the deceased, withdrawn, or ineligible candidate, the winner of the election shall be determined by resolving the tie between the other candidates in the regular manner for resolving a tie vote in the election as set out in WAC 135-110-730.

AMENDATORY SECTION (Amending WSR 10-21-084, filed 10/19/10, effective 11/19/10)

**WAC 135-110-400 Conservation district to obtain list of registered voters.** By the first election day, the conservation district ~~((must))~~ shall obtain a current list of registered voters from the county auditor for all territory within the conservation district boundary.

AMENDATORY SECTION (Amending WSR 10-21-084, filed 10/19/10, effective 11/19/10)

**WAC 135-110-410 Conservation district ~~((must))~~ shall set deadline for requesting ~~((absentee and mail-in))~~ ballots be mailed or sent.** To provide sufficient time for voters to obtain and return ballots to the conservation district, the conservation district ~~((must))~~ shall set a reasonable deadline for voters to request ~~((an absentee or mail-in))~~ a ballot be sent or mailed to them.

AMENDATORY SECTION (Amending WSR 10-21-084, filed 10/19/10, effective 11/19/10)

**WAC 135-110-420 Conservation district ~~((must))~~ shall not use certain lists.** If a conservation district provides unrequested ballots to a population that is less than all the eligible voters within the conservation district boundary, the conservation district ~~((must))~~ shall not use lists obtained from an individual conservation district supervisor or employee, nor from any candidate, nor from any trade, company, church, union, fraternal or other organization.

AMENDATORY SECTION (Amending WSR 10-21-084, filed 10/19/10, effective 11/19/10)

**WAC 135-110-430 Conservation district may publish candidate-provided optional information.** (1) To assist voters in the selection of a candidate during voting, a conservation district may publish candidate optional information provided by ~~((nominated and declared write-in))~~ candidates.

(2) If a conservation district chooses to publish information about candidates, it ~~((must))~~ shall provide equal opportunity for publication and equivalent space to each ~~((nominated and declared write-in))~~ candidate.

(3) Candidate information provided by candidates and published by the conservation district may be mailed or delivered to voters before election day, but ~~((may))~~ shall not be provided to voters at poll sites on election day.

AMENDATORY SECTION (Amending WSR 10-21-084, filed 10/19/10, effective 11/19/10)

**WAC 135-110-440 Employees and municipal officers of district ((must)) shall not be polling officers.** A conservation district supervisor, employee, intern or municipal officer ~~((may))~~ shall not serve as a polling officer in the conservation district election, unless the person is the election supervisor appointed by the conservation district supervisors. Conservation commission employees cannot serve as polling officers.

AMENDATORY SECTION (Amending WSR 10-21-084, filed 10/19/10, effective 11/19/10)

**WAC 135-110-450 Polling officers monitor poll-site activities.** (1) During a poll-site election, polling officers ~~((must))~~ shall monitor the voting place for compliance with this section, and also serve as guardians of all issued and unissued ballots, under the supervision and direction of the election supervisor.

(2) If the election supervisor is present, the election supervisor may also perform these functions as described in WAC 135-110-470.

AMENDATORY SECTION (Amending WSR 10-21-084, filed 10/19/10, effective 11/19/10)

**WAC 135-110-460 Polling officers verify voters, issue ballots and count votes.** (1) A polling officer ~~((must))~~ shall verify a voter is a qualified district elector before issuing a ballot to the voter. If a polling officer cannot verify a voter is a qualified district elector before a ballot is issued, a provisional ballot shall be issued to the voter.

(2) At a poll-site election, at least two polling officers ~~((must))~~ shall be present and in control of the ballot box(es) at all times while the polls are open.

(3) At a poll-site election, a provisional ballot ~~((must))~~ shall be issued if the voter's eligibility to vote cannot be determined during polling. A voter whose eligibility cannot be determined ~~((may))~~ shall only vote on a provisional ballot.

(4) Polling officers count votes cast by voters.

AMENDATORY SECTION (Amending WSR 10-21-084, filed 10/19/10, effective 11/19/10)

**WAC 135-110-500 Conservation district ((must)) shall create official ballot.** (1) A conservation district ~~((must))~~ shall create a ballot and provide a ballot to each person who ~~((wishes))~~ requests a ballot to vote in the conservation district election.

(2) The official ballot ~~((must))~~ shall:

(a) List the name of each candidate the conservation district has verified as eligible ~~((and who has submitted a qualified nominating petition))~~;

(b) List names on the ballot in alphabetical order by last name, from top to bottom, with an empty checkbox or blank space next to each candidate's name; and

(c) Contain at least one blank line where a voter can enter the name of a ~~((declared write in candidate, or if there are no declared candidates, the name of an undeclared))~~ write-in candidate.

AMENDATORY SECTION (Amending WSR 10-21-084, filed 10/19/10, effective 11/19/10)

**WAC 135-110-520 ((Absentee)) Ballots ((must)) shall be provided on request.** (1) ~~((Absentee ballots must))~~ Ballots shall be provided to eligible voters upon request, and voters need not provide proof of any special condition to obtain an absentee ballot.

(2) ~~((Absentee))~~ Ballots may be returned to the conservation district by mail, by personal delivery, or by electronic means previously approved by the election supervisor.

(3) Ballot may be provided electronically if a suitable means of determining voter eligibility and preventing voter fraud are utilized.

(4) At a poll-site election, a provisional ballot shall be provided to any individual wishing to vote when the individual cannot be verified as eligible to vote prior to the issuance of a ballot.

AMENDATORY SECTION (Amending WSR 10-21-084, filed 10/19/10, effective 11/19/10)

**WAC 135-110-550 Poll lists ((must)) shall be used.** (1) In every conservation district election, the conservation district ~~((must))~~ shall create a record of who has submitted a ballot and whether the person was found eligible or ineligible to vote.

(2) Each poll list ~~((must))~~ shall contain:

(a) The name of the conservation district;

(b) Whether the poll list is for a poll-site or mail-in election, and if a poll-site election, the location of the poll site and the date of polling ~~((must))~~ shall be specified;

(3) For poll lists at poll sites, each voter ~~((must))~~ shall provide:

(a) His or her name, sufficient to allow identification in the voter registration list;

(b) An address sufficient to allow identification in the voter registration list; and

(c) The signature of the voter.

(4) For poll lists in mail-in elections, the name and address of the voter ~~((must))~~ shall be recorded.

AMENDATORY SECTION (Amending WSR 10-21-084, filed 10/19/10, effective 11/19/10)

**WAC 135-110-560** (~~(Mail in, absentee, and provisional ballots must be double envelope balloting)~~) **Ballot security.** Ballots cast (~~(in a mail in election, or as a paper absentee ballot, or as a paper provisional ballot, must)~~) shall use a double-envelope paper balloting system, in which:

(1) The voter places the completed ballot inside the inner envelope;

(2) The inner envelope is sealed to prevent tampering(~~(; and)~~);

(3) ~~No~~ personally identifying marks are to be placed on the inner envelope;

~~((3))~~ (4) The inner envelope containing the completed ballot is placed in the outer envelope; (~~and~~

(4)) (5) The voter provides sufficient identifying information on, or inserted into, the outer envelope to allow polling officers to verify the eligibility of the voter;

(6) For electronic voting, the functional equivalent of a paper ballot shall be used to assure security; and

(7) The provisions listed above shall not apply to a ballot cast during a poll-site election by an individual that has been verified to be eligible to vote in the election.

AMENDATORY SECTION (Amending WSR 10-21-084, filed 10/19/10, effective 11/19/10)

**WAC 135-110-570 Election supervisor safeguards ballots** (~~(except in a poll site election)~~). Ballots cast (~~(by mail in or absentee methods)~~) are to be received and safeguarded by the election supervisor.

AMENDATORY SECTION (Amending WSR 10-21-084, filed 10/19/10, effective 11/19/10)

**WAC 135-110-580 Poll sites must be accessible.** (~~(No)~~) Every poll site (~~(selected by the conservation district may appear on the county auditor's list of inaccessible polling sites)~~) shall be accessible, as described in RCW (~~(29A.16-140)~~) 29A.40.160(5).

AMENDATORY SECTION (Amending WSR 10-21-084, filed 10/19/10, effective 11/19/10)

**WAC 135-110-600 Electioneering prohibited at poll sites.** (1) On election day, information provided by candidates (~~(may)~~) shall not be provided to voters within three hundred feet of the poll site.

(2) (~~(Names of nominated and declared write in candidates must)~~) Candidate required information shall not be publicly posted at the poll(s) site or poll sites.

(3) Candidate optional information shall not be publicly posted at the poll site or poll sites.

AMENDATORY SECTION (Amending WSR 10-21-084, filed 10/19/10, effective 11/19/10)

**WAC 135-110-610** (~~(Every voter must be verified as eligible.)~~) **Voter eligibility shall be verified before a ballot is counted.** (~~((1) Every individual requesting a)~~) Every ballot

(~~(for any conservation district election must)~~) shall be verified as being cast by or returned by a qualified district elector before (~~(his or her)~~) the ballot is counted.

(~~((2) At a poll site election, a provisional ballot must be issued if the voter's eligibility to vote cannot be determined during polling and the individual wishes to vote.)~~)

AMENDATORY SECTION (Amending WSR 10-21-084, filed 10/19/10, effective 11/19/10)

**WAC 135-110-620 Conservation district** (~~(must)~~) **shall provide polling officers at each poll site.** The conservation district (~~(must)~~) shall provide at least two polling officers at each poll site, except the election supervisor or their designee may substitute for one polling officer at one poll site.

AMENDATORY SECTION (Amending WSR 10-21-084, filed 10/19/10, effective 11/19/10)

**WAC 135-110-630 Each poll site** (~~(must)~~) **shall have ballot box and signage.** (1) Each poll site (~~(must)~~) shall have at least one ballot box.

(2) Each poll site (~~(must)~~) shall be conspicuously identified to voters as the place to vote.

AMENDATORY SECTION (Amending WSR 10-21-084, filed 10/19/10, effective 11/19/10)

**WAC 135-110-640 Conservation district** (~~(must)~~) **shall assure privacy in voting.** (1) The ballot choice made by a voter (~~(must)~~) shall not be seen by any other person during the act of voting or the placing of the ballot in the ballot box, except in circumstances necessary to allow a disabled voter to cast their ballot, as set out in WAC 135-110-250.

(2) Paper ballots (~~(must)~~) shall be placed into ballot boxes. Electronic ballots (~~(must)~~) shall assure at least the same level of security and privacy as provided by paper balloting.

AMENDATORY SECTION (Amending WSR 10-21-084, filed 10/19/10, effective 11/19/10)

**WAC 135-110-650 Polls to close at published time but may be extended.** (1) (~~(Polling officers are to close the polls)~~) The polls shall be closed at the published time, unless the (~~(polls are extended by the election supervisor.~~

(2) ~~The~~) election supervisor (~~(may)~~) extends the time polls are open, if needed, to accommodate voters.

(~~((3))~~) (2) Persons waiting in line at a poll site when the polls are scheduled to be closed (~~(must)~~) shall be allowed to check in and vote.

(~~((4))~~) (3) Poll times (~~(may)~~) shall not be less than advertised unless the (~~(incumbent)~~) candidate was automatically reelected as allowed under WAC 135-110-370.



AMENDATORY SECTION (Amending WSR 10-21-084, filed 10/19/10, effective 11/19/10)

**WAC 135-110-700 Opening ballots.** (1) Only polling officers and the election supervisor may open and count ballots.

(2) ~~((Mail-in and provisional))~~ Ballots ~~((must))~~ shall be verified as having been submitted by a qualified district elector before the outer envelope is opened, and upon verification, the outer envelope ~~((must))~~ shall be opened and set aside, and the inner envelope placed into the ballot box.

AMENDATORY SECTION (Amending WSR 10-21-084, filed 10/19/10, effective 11/19/10)

**WAC 135-110-710 Polling officers to retain custody of ballots until counted.** Ballots cast in a poll-site election ~~((are to))~~ shall remain in the custody and control of polling officers until all ballots have been counted and properly tallied.

AMENDATORY SECTION (Amending WSR 10-21-084, filed 10/19/10, effective 11/19/10)

**WAC 135-110-720 Polling officers may announce unofficial results.** (1) Polling officers may announce the unofficial results of the election, subject to certification and official announcement by the conservation commission.

(2) The unofficial winner is known as the supervisor-elect and ~~((may))~~ shall not be seated until after the conservation commission certifies the election and announces the official winner.

AMENDATORY SECTION (Amending WSR 10-21-084, filed 10/19/10, effective 11/19/10)

**WAC 135-110-730 Tie in unofficial election results.** (1) In the case of two or more candidates receiving the most votes, and each receives an equal number of votes, polling officers ~~((must))~~ shall recount the ballots, as directed by the election supervisor.

(2) If a tie is verified by the recount, the winner of the election ~~((must))~~ shall be determined by drawing of names as provided under RCW 29A.60.221 to ensure the drawing is equitable to all affected candidates.

(a) If no more than two candidates are tied, a coin toss may be used in lieu of drawing names to determine the unofficial winner.

~~(b) ((If more than two candidates are tied, only a drawing of names may be used to determine the unofficial winner.~~

~~((e))~~ A representative of the conservation commission ~~((must))~~ shall be present for any drawing of names or coin toss.

~~((d))~~ (c) The candidate whose name is drawn (or who wins the coin toss) becomes the supervisor-elect.

AMENDATORY SECTION (Amending WSR 10-21-084, filed 10/19/10, effective 11/19/10)

**WAC 135-110-740 When no eligible candidate is elected.** ~~((+))~~ When no eligible candidate is elected, ~~((the~~

~~conservation commission will officially announce another full term of office for the incumbent on the third Thursday in May, but only upon verification by the conservation district of the eligibility of the incumbent to serve in the office of elected conservation district supervisor.~~

~~(2) If the conservation district determines the incumbent conservation district supervisor is no longer eligible to serve in the office of elected conservation district supervisor, or if the incumbent has resigned,) the position is deemed vacant and the conservation district may appoint an eligible successor following the official announcement by the conservation commission.~~

AMENDATORY SECTION (Amending WSR 10-21-084, filed 10/19/10, effective 11/19/10)

**WAC 135-110-750 Ballot results ~~((must))~~ shall be reported.** (1) The results of balloting ~~((must))~~ shall be reported to the conservation commission within ~~((twenty-eight))~~ fourteen days of the election, unless, after consultation with the conservation commission, the election supervisor determines more time is needed.

(2) Ballot results ~~((must))~~ shall be reported separately for each poll site, for each mail-in or remote election, and for all ~~((absentee))~~ ballots. If the same poll site is open on more than one day, separate reports for each day are required.

(3) Information provided about the election ~~((must))~~ shall include:

(a) The name of the conservation district; and

(b) Whether the report is for a specific poll site or for a mail-in election, and if for a poll site, the location of the poll site and the date of polling ~~((must))~~ shall be specified.

(4) Information provided about candidates ~~((must))~~ shall include:

(a) The name of each candidate; and

(b) For each candidate, the number of eligible votes counted and the total number of votes cast for the person.

(5) The total number of ballots invalidated ~~((must))~~ shall be reported.

(6) The conservation district ~~((must))~~ shall identify the unofficial winner ~~((and whether the unofficial winner is a nominated candidate, a declared write-in candidate, or an undeclared write-in candidate)).~~

(7) The ballot results report ~~((must))~~ shall be signed and dated by the polling officers who counted the ballots. If the election supervisor participated in counting ballots, the election supervisor ~~((must))~~ shall also sign the report.

AMENDATORY SECTION (Amending WSR 10-21-084, filed 10/19/10, effective 11/19/10)

**WAC 135-110-760 Conservation commission canvasses returns, determines compliance, announces winners.** (1) The conservation commission ~~((must))~~ shall canvass the returns of conservation district elections to verify election results and to determine if the election was properly conducted according to the requirements in these procedures.

(2) The conservation commission ~~((must))~~ shall announce the official election results for each conservation district election the conservation commission has certified as being substantially in compliance with this rule. The conser-

vation commission may decline to announce the official results of elections found not to be substantially in compliance with this rule.

(3) ~~((The conservation commission must act on elections for full-term positions annually at its regular meeting on the third Thursday in May.~~

(4)) Action at any other time will be for short terms of office or for any other reason that the conservation commission deems such later action to be necessary.

AMENDATORY SECTION (Amending WSR 10-21-084, filed 10/19/10, effective 11/19/10)

**WAC 135-110-770 Elections are final when certified and announced.** (1) Elections are final when certified by the conservation commission and the official results are announced by the conservation commission in May of each year or later as deemed necessary.

(2) A candidate ~~((may))~~ shall not perform the duties of a conservation district supervisor before the third Thursday in May and until the conservation commission has announced that person as the official winner of a conservation district election, unless the person is an incumbent conservation district supervisor.

NEW SECTION

**WAC 135-110-780 Declaration voiding an election.** The office held by a conservation district supervisor is vacant upon the decision of a court of competent jurisdiction declaring his or her election to be void.

NEW SECTION

**WAC 135-110-790 Procedure for contesting elections.** (1) Written complaints regarding conservation district elections shall be received by the commission using an online form no later than April 30th.

(2) Complaints will be forwarded to the executive director of the conservation commission.

(3) The executive director will notify the chair and vice chair of the conservation commission, the chair of the affected conservation district, the election supervisor of the affected conservation district, conservation commission staff assigned to that conservation district, and the commission's elections officer that a complaint has been filed with the conservation commission.

(4) The executive director will inform the chair and vice chair of the conservation commission of the estimated length of the investigation, and will provide updates on the status of the investigation, as needed.

(a) The conservation commission's elections officer will investigate the complaint. The investigation shall include personal interviews with the person filing the complaint, the conservation district board, appropriate conservation district staff, polling officer, and members of the public, as appropriate and necessary.

(b) When the investigation is completed, the conservation commission's elections officer shall make a written report to the executive director of the results of the investigation.

(5) The executive director shall review the report of the investigation and make a determination that:

(a) The complaint does not rise to the level of significant noncompliance with election procedure sufficient to warrant the noncertification of the election, as per WAC 135-110-790; or

(b) The complaint does rise to the level of significant noncompliance with election procedure sufficient to warrant the noncertification of the election, as per WAC 135-110-790.

(6) If the executive director determines that:

(a) The complaint does not rise to the level of significant noncompliance with election procedure sufficient to warrant the noncertification of the election, the executive director may recommend that the election be certified and announced by the conservation commission.

(b) The complaint does rise to the level of significant noncompliance with election procedure sufficient to warrant the noncertification of the election, the executive director may recommend that the election not be certified and announced, and request that the conservation district hold another election as per the procedure in WAC 135-110-950.

NEW SECTION

**WAC 135-110-795 Compliance.** (1) The conservation commission shall make a determination of significant noncompliance when parties act in variance of this section.

(2) The conservation commission may decline to certify an election found in significant noncompliance. If the conservation commission certifies an election found to be in significant noncompliance, the conservation commission shall provide written rationale.

AMENDATORY SECTION (Amending WSR 10-21-084, filed 10/19/10, effective 11/19/10)

**WAC 135-110-800 Emergency relocation or rescheduling of election.** (1) A conservation district may change the date(s) or location(s) or times for poll sites only in an emergency.

(2) The election supervisor may declare an emergency when adverse conditions may negatively affect the health or safety of voters or the timely return of absentee ballots. Such conditions may include, but are not limited to:

(a) Weather conditions;

(b) Damage to roads, buildings, or other infrastructure;

(c) Chemical spills;

(d) Fire and smoke;

(e) Volcanic eruption, earthquake, landslides, mudflows, and floods; or

(f) Disruptions in information network infrastructure.

(3) When an emergency is so declared, the election supervisor should make reasonable efforts to inform all conservation district supervisors ~~((and))~~ candidates listed on the ballot, and the conservation commission.

AMENDATORY SECTION (Amending WSR 10-21-084, filed 10/19/10, effective 11/19/10)

**WAC 135-110-810 Signage and notice required.** (1) When a polling site is changed in response to an emergency, signage sufficient to notify potential voters (~~((must))~~ shall) be provided to redirect voters to the new polling site(s). Poll times should be extended to allow for additional travel time to the relocated polls.

(2) When the election date or location is changed in response to an emergency, due notice should be given to the public of the change. If due notice is not possible, the conservation district (~~((must))~~ shall) take reasonable measures to inform the public of the change. Such measures may include, but are not limited to: Announcements on local radio or television; posting on web pages; announcements in newspapers; and posting of handbills or flyers.

AMENDATORY SECTION (Amending WSR 10-21-084, filed 10/19/10, effective 11/19/10)

**WAC 135-110-900 Only vacant offices (~~((may))~~ shall be filled.** The office of conservation district supervisor (~~((may))~~ shall) not be filled by election or appointment unless the term of office has expired, or the position has been immediately vacated as described in this section, or the conservation commission has declared the position vacant.

AMENDATORY SECTION (Amending WSR 10-21-084, filed 10/19/10, effective 11/19/10)

**WAC 135-110-910 Supervisors (~~((must))~~ shall be eligible to serve.** (1) A conservation district supervisor (~~((must))~~ shall) be eligible to serve in the office of conservation district supervisor throughout the term of office.

(2) If an incumbent no longer meets the minimum eligibility requirements to serve as a conservation district supervisor, the office is deemed vacant.

AMENDATORY SECTION (Amending WSR 10-21-084, filed 10/19/10, effective 11/19/10)

**WAC 135-110-920 Resignation from office.** (1) A conservation district supervisor may resign from public office at any time, and for any reason.

(2) Resignations (~~((must))~~ shall) be made in writing to the conservation commission or to the conservation district.

(3) Resignations are effective on the earliest date received, unless the incumbent has specified a future date for the resignation to become effective.

AMENDATORY SECTION (Amending WSR 10-21-084, filed 10/19/10, effective 11/19/10)

**WAC 135-110-960 Removal from office.** (1) As provided in RCW 89.08.200, a conservation district supervisor may be removed from office by the conservation commission governing board upon notice and hearing for neglect of duty or malfeasance.

(2) The conservation commission (~~((must))~~ shall) provide notice to the supervisor detailing the specific elements of the

neglect of duty or malfeasance for which removal is sought. The supervisor shall be given the opportunity to respond in writing to the elements contained in the notice within thirty days of the notice to the supervisor from the conservation commission. Notice to the supervisor from the conservation commission shall be by certified mailing to the address of record for that supervisor.

(3) The conservation commission (~~((must))~~ shall) hold at least one public hearing no earlier than sixty days from the date of certified mailing to the supervisor in the area served by the conservation district supervisor before acting to remove the incumbent from office.

(4) Following the public hearing, the conservation commission shall vote on the removal of the supervisor based on official findings of fact detailing the cause or causes of removal.

AMENDATORY SECTION (Amending WSR 10-21-084, filed 10/19/10, effective 11/19/10)

**WAC 135-110-970 Replacement of elected supervisors.** A vacancy in the office of elected conservation district supervisor is filled by the conservation district board of supervisors after consultation with the conservation commission, for the remainder of the unexpired term, subject to the verification of supervisor qualifications by the conservation district and notification to the conservation commission. (~~((While))~~ Due notice to the affected community (~~((is strongly recommended, it is not))~~ shall) be required.

(1) The application process shall require, at a minimum, that the board of supervisors pass a resolution:

(a) Acknowledging that the office is vacant;

(b) The dates of the four-week period for applicants to apply; and

(c) Describing the minimum requirements of applicants.

(2) The resolution shall then be advertised to the public at least one week prior to the commencing of the four-week period, and in the same manner as the due notice of an election resolution.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 135-110-120 Compliance.

WAC 135-110-340 Only nominated candidates may appear on official ballot.

WAC 135-110-470 Election supervisor may perform polling officer duties.

WAC 135-110-515 Conservation district must make ballots available.

WAC 135-110-530 Provisional ballots must be provided when voter eligibility is in question.

WAC 135-110-540 Functional equivalent of paper ballot required.

WAC 135-110-820 Conservation commission to be informed.

WAC 135-110-950 Declaration voiding an election.

**WSR 20-14-022**  
**PROPOSED RULES**  
**BOARD OF ACCOUNTANCY**

[Filed June 23, 2020, 9:43 a.m.]

Continuance of WSR 20-10-106.

Preproposal statement of inquiry was filed as WSR [20-06-031].

Title of Rule and Other Identifying Information: WAC 4-30-100 What are the rules governing reciprocity for accountants from foreign countries?, and 4-30-102 How do I apply for an initial Washington state license through foreign reciprocity?

Hearing Location(s): On July 31, 2020, at 9:00 a.m.

Microsoft Teams meeting. The link to join the meeting is available on the board's website at <https://acb.wa.gov/next-board-meeting>; or join by phone at 1-360-726-3322.

The hearing location was changed from a physical location to a virtual meeting.

Any questions on how to attend can be directed to Kirsten Donovan, board clerk, by email at [Kirsten.donovan@acb.wa.gov](mailto:Kirsten.donovan@acb.wa.gov) [Kirsten.donovan@acb.wa.gov] or by phone at 360-664-9191.

Date of Intended Adoption: July 31, 2020.

Submit Written Comments to: Kirsten Donovan, Rules Coordinator, P.O. Box 9131, Olympia, WA 98507, email [Kirsten.donovan@acb.wa.gov](mailto:Kirsten.donovan@acb.wa.gov), fax 360-664-9190, by July 29, 2020.

Assistance for Persons with Disabilities: Kirsten Donovan, Rules Coordinator, phone 360-664-9191, fax 360-664-9190, TTY 771 [711], email [Kirsten.donovan@acb.wa.gov](mailto:Kirsten.donovan@acb.wa.gov), by July 29, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The board of accountancy proposes amending:

WAC 4-30-100 to: (1) Rename the rule; (2) add requirements from board policy into the rule; and (3) specify the requirements for foreign reciprocity licensure.

WAC 4-30-102 to: (1) Rename the rule; (2) add requirements from board policy into the rule; and (3) specify the requirements for foreign reciprocity licensure.

Reasons Supporting Proposal: See purposes above.

Statutory Authority for Adoption: RCW 18.04.055.

Statute Being Implemented: RCW 18.04.055.

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

Name of Proponent: Board of accountancy, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Charles E. Satterlund, CPA, 711 Capitol Way South, Suite 400, Olympia, WA 98501, 360-586-0785.

A cost-benefit analysis is not required under RCW 34.05.328. The board of accountancy is not a listed agency in RCW 34.05.328 (5)(a)(i).

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. No additional costs are imposed on CPA license applicants from the changes to the rules.

June 23, 2020

Charles E. Satterlund, CPA  
Executive Director

**WSR 20-14-023**  
**PROPOSED RULES**  
**BOARD OF ACCOUNTANCY**

[Filed June 23, 2020, 9:44 a.m.]

Continuance of WSR 20-10-104.

Preproposal statement of inquiry was filed as WSR [20-04-089].

Title of Rule and Other Identifying Information: WAC 4-30-080 How do I apply for an initial individual CPA license?

Hearing Location(s): On July 31, 2020, at 9:00 a.m.

Microsoft Teams meeting. The link to join the meeting is available on the board's website at <https://acb.wa.gov/next-board-meeting>; or join by phone at 1-360-726-3322.

The hearing location was changed from a physical location to a virtual meeting.

Any questions on how to attend can be directed to Kirsten Donovan, board clerk, by email at [Kirsten.donovan@acb.wa.gov](mailto:Kirsten.donovan@acb.wa.gov) [Kirsten.donovan@acb.wa.gov] or by phone at 360-664-9191.

Date of Intended Adoption: July 31, 2020.

Submit Written Comments to: Kirsten Donovan, Rules Coordinator, P.O. Box 9131, Olympia, WA 98507, email [Kirsten.donovan@acb.wa.gov](mailto:Kirsten.donovan@acb.wa.gov), fax 360-664-9190, by July 29, 2020.

Assistance for Persons with Disabilities: Kirsten Donovan, rules coordinator, phone 360-664-9191, fax 360-664-9190, TTY 771 [711], email [Kirsten.donovan@acb.wa.gov](mailto:Kirsten.donovan@acb.wa.gov), by July 29, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The board of accountancy proposes amending WAC 4-30-080 to: (1) Eliminate the initial licensing requirement to achieve and document a passing grade of ninety percent or better on a board-approved initial course covering the Washington State Public Accountancy Act, related board rules, and board policies; (2) rename the rule section.

Reasons Supporting Proposal: See purposes above.

Statutory Authority for Adoption: RCW 18.04.055.

Statute Being Implemented: RCW 18.04.055.

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

Name of Proponent: Board of accountancy, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Charles E. Satterlund, CPA, 711 Capitol Way South Suite 400, Olympia, WA 98501, 360-586-0785.

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 board of accountancy is not a listed agency in RCW 34.05.328 (5)(a)(i).

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. No additional costs are imposed on CPA license applicants from the removal of this requirement.

June 23, 2020  
Charles E. Satterlund, CPA  
Executive Director

**WSR 20-14-032**  
**PROPOSED RULES**  
**LIQUOR AND CANNABIS**  
**BOARD**

[Filed June 24, 2020, 11:34 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-22-054.

Title of Rule and Other Identifying Information: WAC 314-55-035 What persons or entities have to qualify for a marijuana license? The Washington state liquor and cannabis board (board/WSLCB) proposes amendments to existing rule and new sections of rule regarding qualifications for a marijuana license, and to implement the directives of ESHB 1794 (chapter 380, Laws of 2019) regarding agreements by licensed marijuana businesses, intellectual property, now codified in RCW 69.50.395.

Hearing Location(s): On August 5, 2020, at 10:00 a.m., at 1025 Union Avenue S.E., Olympia, WA 98501.

Date of Intended Adoption: September 2, 2020.

Submit Written Comments to: Katherine Hoffman, 1025 Union Avenue S.E., Olympia, WA 98501, email rules@lcb.wa.gov, fax 360-664-9689, by August 5, 2020.

Assistance for Persons with Disabilities: Claris Nhanabu, ADA coordinator, human resources, phone 360-664-1642, fax 360-664-9689, TTY 711 or 1-800-833-6388, email Claris.Nhanabu@lcb.wa.gov, by July 29, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules significantly modernize, reorganize, and clarify the existing regulatory framework regarding qualifying for a marijuana license in the following ways: Clearly identifies business entity type and which entity or entities within that business type are considered true parties of interest; reaffirms residency and background investigation requirements; removes the spousal vetting requirement; creates a definition section, specifically defining, among other things, "control"; provides an updated description of persons not considered to be true parties of interest; updates and modernizes notification requirements; provides that licensed marijuana businesses may enter into agreements consistent with RCW 69.50.395; and establishes a new subsection distinguishing financiers from true parties of interest.

Reasons Supporting Proposal: Originally, revisions to WAC 314-55-035 were part of a larger, rule project designed to implement 2017 marijuana legislation. During public hearing on the proposal in October of 2018, many stakeholders objected to the proposed revisions to this specific section. Subsequently, WAC 314-55-035 was pulled from that rule proposal, and new CR-101 was approved and filed to allow additional stakeholder engagement and rule development on this specific rule section. During the 2019 legislative session, ESHB 1794 regarding agreements by licensed marijuana businesses, intellectual property was introduced and subsequently enacted, influencing the developmental path of this project. This rule proposal was developed with and in response to industry and stakeholder feedback regarding what constitutes a true party of interest, and is designed to assure [ensure] and protect the integrity of marijuana businesses licensed in Washington state.

Statutory Authority for Adoption: RCW 69.50.325, 69.50.342, and 69.50.345.

Statute Being Implemented: RCW 69.40.395.

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

Name of Proponent: WSLCB, governmental.

Name of Agency Personnel Responsible for Drafting: Katherine Hoffman, Rule Coordinator, 1025 Union Avenue S.E., Olympia, WA 98501, 360-664-1622; Implementation: Becky Smith, Licensing Director, 1025 Union Avenue S.E., Olympia, WA 98501, 360-664-1615; and Enforcement: Justin Nordhorn, Enforcement Chief, 1025 Union Avenue S.E., Olympia, WA 98501, 360-664-1726.

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 Katherine Hoffman, 1025 Union Avenue S.E., Olympia, WA 98501, phone 360-664-1622, email katherine.hoffman@lcb.wa.gov.

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

Is exempt under RCW 19.85.025(3) as the rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule.

Is exempt under RCW: WAC 314-55-035(5) is exempt under RCW 34.05.310.

Explanation of exemptions: WAC 314-55-035(5) adopts and incorporates by reference the directives of ESHB 1794 (chapter 380, Laws of 2019) regarding agreements by licensed marijuana businesses, intellectual property, now codified in RCW 69.50.395, without material change.

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. There are no costs associated with these rules. The WSLCB applied a default cost of compliance (\$100) when analyzing whether the rules would have a disproportionate impact on small businesses as defined in RCW 19.85.020(3). Below are calculations for minor cost thresholds across all license types based on the best analogous NAICS types. Although it is unlikely these rules would result in even the full default cost of compliance, the minor cost does not exceed any of the thresholds for any of the license types. Therefore, implementation of these rules will not result in any administrative, intrinsic or

actual costs to the regulated community. The amendments and new rules offer increased public benefit by assuring [ensuring] that money invested in licensed marijuana businesses are fully vetted, supports robust foundations of local participants in Washington state businesses, and assures [ensures] that funds entering the Washington state regulated market through Washington state residents are not related to or derived from criminal enterprise. For these reasons, the proposed rules do not impose more than minor costs on businesses as defined by RCW 19.85.020(2).

2017 Industry NAICS Code	Estimated Cost of Compliance	Industry Description	NAICS Code Title	Minor Cost Estimate - Max of 1% Pay, 0.3% Rev, and \$100	1% of Avg Annual Payroll (0.01*AvgPay)	0.3% of Avg Annual Gross Business Income (0.003*AvgGBI)
31199	\$100.00	Marijuana processors	All other food manufacturing	\$22,986.58	\$9,214.26 2018 Dataset pulled from USBLS	\$22,986.58 2018 Dataset pulled from DOR
111	\$100.00	Marijuana producers	Crop production	\$4,010.47	\$4,010.47 2018 Dataset pulled from USBLS	\$2,399.33 2018 Dataset pulled from DOR
453	\$100.00	Marijuana retailers	Miscellaneous store retailers	\$2,503.84	\$2,365.88 2018 Dataset pulled from USBLS	\$2,503.84 2018 Dataset pulled from DOR

June 24, 2020  
Jane Rushford  
Chair

AMENDATORY SECTION (Amending WSR 16-11-110, filed 5/18/16, effective 6/18/16)

**WAC 314-55-035** (~~What persons or entities have to qualify for a marijuana license?~~) **Qualifying for a marijuana license.** A marijuana license must be issued in the name(s) of the true party(ies) of interest. The board may conduct an investigation of any true party of interest who exercises control over the applicant's business operations. This may include financial and criminal background investigations.

(1) **True parties of interest** ((-)), True parties of interest must qualify to be listed on the license, and meet residency requirements consistent with this chapter. For purposes of this title, "true party of interest" means:

<del>((True party of interest</del>	<b>Persons to be qualified</b>
<del>Sole proprietorship</del>	Sole proprietor and spouse.
<del>General partnership</del>	All partners and spouses.
<del>Limited partnership, limited liability partnership, or limited liability limited partnership</del>	<ul style="list-style-type: none"> <li>• All general partners and their spouses.</li> <li>• All limited partners and spouses.</li> </ul>

<del>((True party of interest</del>	<b>Persons to be qualified</b>
<del>Limited liability company</del>	<ul style="list-style-type: none"> <li>• All members and their spouses.</li> <li>• All managers and their spouses.</li> </ul>
<del>Privately held corporation</del>	<ul style="list-style-type: none"> <li>• All corporate officers (or persons with equivalent title) and their spouses.</li> <li>• All stockholders and their spouses.</li> </ul>
<del>Publicly held corporation</del>	All corporate officers (or persons with equivalent title) and their spouses. All stockholders and their spouses.
<del>Multilevel ownership structures</del>	All persons and entities that make up the ownership structure (and their spouses).

<del>((True party of interest</del>	<del>Persons to be qualified</del>
<del>Any entity or person (inclusive of financiers) that are expecting a percentage of the profits in exchange for a monetary loan or expertise. Financial institutions are not considered true parties of interest.</del>	<del>Any entity or person who is in receipt of, or has the right to receive, a percentage of the gross or net profit from the licensed business during any full or partial calendar or fiscal year.  Any entity or person who exercises control over the licensed business in exchange for money or expertise.  For the purposes of this chapter:  <ul style="list-style-type: none"> <li>• "Gross profit" includes the entire gross receipts from all sales and services made in, upon, or from the licensed business.</li> <li>• "Net profit" means gross sales minus cost of goods sold.</li> </ul> </del>
<del>Nonprofit corporations</del>	<del>All individuals and spouses, and entities having membership rights in accordance with the provisions of the articles of incorporation or the bylaws.</del>

(2) For purposes of this section, "true party of interest" does not mean:

(a) A person or entity receiving reasonable payment for rent on a fixed basis under a bona fide lease or rental obligation, unless the lessor or property manager exercises control over or participates in the management of the business.

(b) A person who receives a bonus as an employee, if: The employee is on a fixed wage or salary and the bonus is not more than twenty-five percent of the employee's prebonus annual compensation; or the bonus is based on a written incentive/bonus program that is not out of the ordinary for the services rendered.

(c) A person or entity contracting with the applicant(s) to sell the property, unless the contract holder exercises control over or participates in the management of the licensed business.

(3) ~~Financiers~~ — The WSLCB will conduct a financial investigation as well as a criminal background of financiers.

(4) ~~Persons who exercise control of business~~ — The WSLCB will conduct an investigation of any person or entity who exercises any control over the applicant's business operations. This may include both a financial investigation and/or a criminal history background.

(5) After licensure, a true party of interest, including financiers, must continue to disclose the source of funds for all moneys invested in the licensed business. The WSLCB

must approve these funds prior to investing them into the business.))

<u>Entity</u>	<u>True party(ies) of interest</u>
<u>Sole proprietorship</u>	<u>Sole proprietor</u>
<u>General partnership</u>	<u>All partners</u>
<u>Limited partnership, limited liability partnership, or limited liability limited partnership</u>	<u>All general partners</u> <u>All limited partners</u>
<u>Limited liability company (LLC)</u>	<u>All LLC members</u> <u>All LLC managers</u>
<u>Privately held corporation</u>	<u>All corporate officers and directors (or persons with equivalent title)</u> <u>All stockholders</u>
<u>Multilevel ownership structures</u>	<u>All persons and entities that make up the ownership structure</u>
<u>Any entity(ies) or person(s) with a right to receive revenue, gross profit, or net profit, or exercising control over a licensed business</u>	<u>Any entity(ies) or person(s) with a right to receive some or all of the revenue, gross profit, or net profit from the licensed business during any full or partial calendar or fiscal year</u>  <u>Any entity(ies) or person(s) who exercise(s) control over the licensed business</u>
<u>Nonprofit corporations</u>	<u>All individuals and entities having membership rights in accordance with the provisions of the articles of incorporation or bylaws</u>

(2) A married couple may not be a true party of interest in more than five retail marijuana licenses, more than three producer licenses, or more than three processor licenses. A married couple may not be a true party of interest in a marijuana retailer license and a marijuana producer license or a marijuana retailer license and a marijuana processor license.

(3) The following definitions apply to this chapter unless the context clearly indicates otherwise:

(a) "Control" means the power to independently order, or direct the management, managers, or policies of a licensed business.

(b) "Financial institution" means any bank, mutual savings bank, consumer loan company, credit union, savings and loan association, trust company, or other lending institution under the jurisdiction of the department of financial institutions.

(c) "Gross profit" means sales minus the cost of goods sold.

(d) "Net profit" means profits minus all other expenses of the business.

(e) "Revenue" means the income generated from the sale of goods and services associated with the main operations of business before any costs or expenses are deducted.

(4) For purposes of this chapter, "true party of interest" does not include (this is a nonexclusive list):

(a) A person or entity receiving payment for rent on a fixed basis under a lease or rental agreement. Notwithstanding, if there is a common ownership interest between the applicant or licensee, and the entity that owns the real property, the board may investigate all funds associated with the landlord to determine if a financier relationship exists. The board may also investigate a landlord in situations where a rental payment has been waived or deferred.

(b) A person who receives a bonus or commission based on their sales, so long as the commission does not exceed ten percent of their sales in any given bonus or commission period. Commission-based compensation agreements must be in writing.

(c) A person or entity contracting with the licensee(s) to receive a commission for the sale of the business or real property.

(d) A consultant receiving a flat or hourly rate compensation under a written contractual agreement.

(e) A person with an option to purchase the applied for or licensed business, so long as no money has been paid to the licensee under an option contract or agreement for the purchase or sale of the licensed business, or a business that is applying for a license.

(f) Any business or individual with a contract or agreement for services with a licensed business, such as a branding or staffing company, will not be considered a true party of interest, as long as the licensee retains the right to and controls the business.

(g) A financial institution.

**(5) Notification.**

(a) Except as provided in this subsection (4)(a)(i), (ii), and (iii), after licensure the licensee must continue to disclose the source of all funds to be invested in the licensed business, including all funds obtained from financiers, prior to investing the funds into the licensed business.

(i) Revenues of the licensed marijuana business that are reinvested in the business do not require notification or vetting by the board.

(ii) Proceeds of a revolving loan where such loan has been approved by the board within the three previous years do not need to be vetted by the board, unless the source of the funds has changed or the approved loan amount has increased.

(iii) If the source of funds is an identified true party of interest on the license, or a previously approved financier associated with the license, or a previously approved revolving loan, the board will allow these funds to be used upon receipt of an application to use such funds. The board will then investigate the source of funds. If the board cannot verify the source of funds after reasonable inquiry, or the board determines that the funds were obtained in a manner in violation of the law, the board may take actions consistent with the provisions of this chapter.

(b) Licensees must receive board approval before making any ownership changes consistent with WAC 314-55-120.

(c) Noncompliance with the requirements of this section may result in action consistent with this chapter.

**(6) Disclosure agreements and intellectual property.**

(a) Licensed marijuana businesses may enter into agreements consistent with the provisions of RCW 69.50.395.

(b) Notwithstanding the foregoing, no producer or processors may enter into an intellectual property agreement with a retailer.

**(7) Financiers.**

(a) Consistent with WAC 314-55-010(11), a financier is any person or entity, other than a financial institution or a government entity, that provides money as a gift, a grant, or loans money to an applicant, business, or both, and expects to be paid back the amount of the loan, with or without reasonable interest.

(b) A financier may not receive an ownership interest, control of the business, a share of revenue, gross profits or net profits, a profit sharing interest, or a percentage of the profits in exchange for a loan or gift of funds, unless the financier, if directly involved in the loaning of funds, receives board approval and has qualified on the license as a true party of interest.

(c) Washington state residency requirements do not apply to financiers who are not also a true party of interest, but all financiers must reside within the United States.

(d) The board will conduct a financial and criminal background investigation on all financiers.

**WSR 20-14-048**

**PROPOSED RULES**

**DEPARTMENT OF HEALTH**

(Washington Medical Commission)

[Filed June 25, 2020, 3:43 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-02-079.

Title of Rule and Other Identifying Information: WAC 246-919-010 through 246-919-770, relating to allopathic physicians. The Washington medical commission (commission) is proposing amendments to update and modernize the rules to align with current law and practice.

Hearing Location(s): On August 19, 2020, at 2:30 p.m.

In response to the coronavirus disease 2019 (COVID-19) public health emergency, the Washington medical commission will not provide a physical location for this hearing to promote social distancing and the safety of the citizens of Washington state. A virtual public hearing, without a physical meeting space, will be held instead.

To access the meeting: GoToMeeting via computer, tablet or smartphone: <https://global.gotomeeting.com/join/599575461>.

Via phone: United States: +1 (872) 240-3311. Access Code: 599-575-461.

Date of Intended Adoption: August 19, 2020.



Submit Written Comments to: Amelia Boyd, P.O. Box 47866, Olympia, WA 98504-7866, email <https://fortress.wa.gov/doh/policyreview>, by August 12, 2020.

Assistance for Persons with Disabilities: Contact Amelia Boyd, phone 800-525-0127, TTY 711, email [medical.rules@wmc.wa.gov](mailto:medical.rules@wmc.wa.gov), by August 12, 2020.

**Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules:** The purpose of this proposal is to more closely align the chapter with current industry standards and provide clearer rule language for licensed allopathic physicians (MDs). Proposed revisions include changing the name of the commission pursuant to SB 5764; updating definitions to reference new terminology or clarify their meaning; rescinding sections which are no longer relevant, utilized, or are referenced in other chapters; updating references to periodicals; updating physician licensing requirements to align with current standards; updating section titles to more clearly state the purpose of the section; incorporating language from commission interpretive statements; adding a new section on how a military spouse may obtain a temporary practice permit pursuant to RCW 18.340.020; adding a new section on the administration of deep sedation and general anesthesia by a physician in a dental office; and updating the timelines required for cooperating with an investigation.

**Reasons Supporting Proposal:** The proposed rules respond to SB 5764. This legislation changes the commission's name from medical quality assurance commission to Washington medical commission.

The proposed rules also respond to RCW 43.70.041. This legislation requires some state agencies to review existing rules to determine where processes can be simplified, licensing barriers removed, and administrative burdens reduced.

RCW 18.340.020 directs disciplinary authorities to establish a temporary permit for military spouses. RCW 1.12.080 requires that the interpretation of the term "spouse" be applied equally to state-registered domestic partners. Military spouses and state-registered domestic partners moving to Washington who hold a license in another state may receive a temporary practice permit while completing any specific additional license application requirements in Washington that are not related to training or practice standards of the profession. In response, the commission proposes adding a new section to chapter 246-919 WAC to meet the requirements of RCW 18.340.020. The proposed rule is necessary to establish a process and criteria in order to expedite the licensing process for an applicant to receive a temporary practice permit. The temporary practice permit will allow applicants to practice in the full scope of their profession pending issuance of a permanent license.

The proposed rules will benefit public health by ensuring MDs are informed and regulated by current national industry and best practice standards.

**Statutory Authority for Adoption:** RCW 18.71.017 and 18.130.050.

**Statute Being Implemented:** RCW 18.71.002, 43.70.041, 18.340.020; and SB 5764 (chapter 66, Laws of 2019).

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

**Name of Proponent:** Washington medical commission, governmental.

**Name of Agency Personnel Responsible for Drafting:** Amelia Boyd, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-2727; **Implementation and Enforcement:** Melanie de Leon, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-2755.

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 Amelia Boyd, P.O. Box 47866, Olympia, WA 98504-7866, phone 360-236-2727, TTY 711, email [amelia.boyd@wmc.wa.gov](mailto:amelia.boyd@wmc.wa.gov).

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

Is exempt under RCW 19.85.025(3) as the rules 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.

**Explanation of exemptions:** Proposed changes throughout this package that only update the commission name per SB 5764 and WAC 246-919-397 relating to temporary practice permits for military spouses per RCW 18.340.020 are exempted by 34.05.310 (4)(e), dictated by statute. Other changes throughout the package correct typographical errors or clarify language.

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. Proposed rule amendments that do not meet the exemptions under RCW 34.05.310 do not impose costs on businesses. The proposed rules apply to a health care provider's license.

June 25, 2020  
Melanie de Leon  
Executive Director

## Chapter 246-919 WAC

### WASHINGTON MEDICAL ((QUALITY ASSURANCE)) COMMISSION

AMENDATORY SECTION (Amending WSR 11-05-025, filed 2/7/11, effective 3/10/11)

**WAC 246-919-010 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Applicant" is an individual who has completed the application form and has paid the application fee.

(2) "Commission" means the Washington ((state)) medical ((quality assurance)) commission.

(3) "Emergent" means a circumstance calling for immediate action.

(4) "Hospital" means any health care institution licensed ((pursuant to)) under chapter 70.41 RCW.

(5) "Intermittent" means providing services on a part-time or full-time nonpermanent basis.

~~(6) ("Mentally or physically disabled physician" means a physician who has either been determined by a court to be mentally incompetent or mentally ill or who is unable to practice medicine with reasonable skill and safety by reason of any mental or physical condition.~~

~~(7) "Nursing home" means any health care institution which comes under chapter 18.51 RCW.~~

~~(8)) "Physician" means a ((physician)) person licensed ((pursuant to)) under chapter 18.71 RCW.~~

~~((9)) (7) "Unprofessional conduct" ((as used in these regulations shall)) means the conduct described ((in RCW 18.71.0193 for conduct occurring before June 11, 1986, and the conduct described)) in RCW 18.130.180 ((for conduct occurring on or after June 11, 1986)).~~

AMENDATORY SECTION (Amending WSR 96-03-073, filed 1/17/96, effective 2/17/96)

**WAC 246-919-020 Commission address.** The commission's official mailing address is:

Washington Medical ((Quality Assurance)) Commission  
Department of Health  
P.O. Box 47866  
Olympia, WA 98504-7866

AMENDATORY SECTION (Amending WSR 96-03-073, filed 1/17/96, effective 2/17/96)

**WAC 246-919-300 Application withdrawals.** An application for a license may not be withdrawn after the commission ((or the reviewing commission member)) determines that grounds exist for denial of the license or for the issuance of a conditional license. Applications ((which)) that are subject to investigation for unprofessional conduct or impaired practice may not be withdrawn.

AMENDATORY SECTION (Amending WSR 04-04-067, filed 2/2/04, effective 3/4/04)

**WAC 246-919-320 Approved United States and Canadian medical schools.** For the purposes of ((the Medical Practice Act)) RCW 18.71.055, the commission approves ((those)) medical schools accredited by the Liaison Committee on Medical Education.

AMENDATORY SECTION (Amending WSR 05-07-024, filed 3/7/05, effective 4/7/05)

**WAC 246-919-330 Postgraduate medical training ((defined)).** (1) ((For the purposes of this chapter,)) Postgraduate medical training means clinical training approved by the commission in general medicine or surgery, or a specialty or subspecialty in the field of medicine or surgery as recognized by the American Board of Medical Specialties ((and listed in the 2004 *Official ABMS Annual Report and Reference Handbook*, published March 18, 2004)) listed in the 2017-2018 ABMS Board Certification Report and new specialties or subspecialties approved by the commission.

(2) The commission approves only the following postgraduate clinical training courses:

(a) Programs accredited by the Accreditation Council for Graduate Medical Education (ACGME) ((which are listed in the 1984-85 directory of residency programs, or programs approved by the Accreditation Council)) at the time of residency.

(b) Programs accredited by the Royal College of Physicians and Surgeons of Canada (RCPSC) or the College of Family Physicians of Canada (CFPC), or programs accredited by the RCPSC or CFPC at the time of residency.

(3) Postgraduate medical training includes, but is not limited to, internships, residencies and medical or surgical fellowships.

(4) A physician must complete two consecutive years of postgraduate medical training in no more than two programs. The physician must acquire this training after completion of a formal course of undergraduate medical instruction outlined in RCW 18.71.055. The commission will accept only satisfactory clinical performance evaluations.

AMENDATORY SECTION (Amending WSR 01-18-086, filed 9/5/01, effective 10/6/01)

**WAC 246-919-340 Additional requirements for international medical school graduates.** All graduates of medical schools outside the United States, Canada, or Puerto Rico must ((have either)) satisfy one of the following requirements:

(1) ((Been licensed)) Held a full and unrestricted license to practice medicine in another state prior to 1958;

(2) Obtained a certificate with an indefinite status granted by the Educational Commission for Foreign Medical Graduates (ECFMG); or

(3) Successfully completed one year of supervised academic clinical training in the United States, commonly referred to as a Fifth Pathway program.

AMENDATORY SECTION (Amending WSR 96-03-073, filed 1/17/96, effective 2/17/96)

**WAC 246-919-355 Examination ((scores)) accepted by the commission.** ((Examinations accepted by the Washington state medical quality assurance commission:))

(1) The commission ((adopts)) accepts the United States Medical Licensing Examination (USMLE) as the examination ((accepted by the commission)) for licensure.

(2) The minimal passing scores for each component of any approved examination combination shall be a score of seventy-five as defined by the examining authority.

(3) ((Applicants who do not pass Step 3 of the USMLE examination after three sittings within seven years after passing the first examination, either Step 1 or Step 2, or acceptable combination, shall demonstrate evidence satisfactory to the commission of having completed a remedial or refresher medical course approved by the commission prior to being permitted to sit for the examination again. Applicants who do not pass after the fourth sitting may not sit for another examination without completing an additional year of postgraduate training or satisfying any other conditions specified by the commission.

(4) To be eligible for USMLE Step 3, the applicant must:  
(a) Have obtained the M.D. degree;

(b) Have successfully completed the Federation Licensure Examination (FLEX) Component 1 or both National Boards Examination (NBE) Parts I and II or USMLE Steps 1 and 2 or NBE Part I and USMLE Step 2 or Step 1 and NBE Part II; and

(c) Be certified by the ECFMG if a graduate of an international medical school, or have successfully completed a fifth pathway program; and postgraduate training year in a program of graduate medical education accredited by the Accreditation Council for Graduate Medical Education.) Applicants must have passed all components of the USMLE within seven years after passing the first examination. The commission recognizes that an applicant with a combined degree may require an exception to the seven-year requirement. The commission will review exception requests on a case-by-case basis.

AMENDATORY SECTION (Amending WSR 06-18-042, filed 8/30/06, effective 9/30/06)

**WAC 246-919-360 Examinations accepted for ((reciprocity or waiver)) licensure.** (1) The commission may accept certain examinations as a basis for licensure. These examinations include USMLE, ((FLEX, NBE)) Federation Licensure Examination (FLEX), National Boards Examination (NBE), or those given by the other states, or territories of the United States. Those who have taken the Licentiate of the Medical Council of Canada ((L.M.C.C.)) (LMCC) and holds a valid LMCC certification obtained after 1969, may be granted a license without examination.

(2) Examination combination acceptable. Any applicant who has successfully completed Part I (NBE) or Step 1 (USMLE) plus Part II or Step 2 plus Part III or Step 3; or FLEX Component 1 plus Step 3; or Part I or Step 1, plus Part II or Step 2, plus FLEX Component 2 shall be deemed to have successfully completed a medical licensure examination as required by RCW 18.71.070. (For clarification, see Table 1.)

Table 1

Accepted Examinations taken in Sequence	Other Acceptable Combinations
NBME Part I <i>plus</i> NBME Part II <i>plus</i> NBME Part III	NBME Part I or USMLE Step 1 <i>plus</i> NBME Part II or USMLE Step 2 <i>plus</i> NBME Part III or USMLE Step 3

Accepted Examinations taken in Sequence	Other Acceptable Combinations
FLEX Component 1 <i>plus</i> FLEX Component 2	FLEX Component 1 <i>plus</i> USMLE Step 3  or NBME Part I or USMLE Step 1 <i>plus</i> NBME Part II or USMLE Step 2 <i>plus</i> FLEX Component 2
USMLE Step 1 <i>plus</i> USMLE Step 2 <i>plus</i> USMLE Step 3	

AMENDATORY SECTION (Amending WSR 96-03-073, filed 1/17/96, effective 2/17/96)

**WAC 246-919-365 FLEX examination standards.** ((Reciprocity applicants who were licensed in another state by passing the FLEX examination will be eligible for a waiver of examination if the applicant received a FLEX weighted average score of at least 75. The score may be obtained in a single setting of the three-day examination or by averaging the individual day scores from different examinations. The individual day scores will be averaged according to the following formula:

- Day 1 equals 1/6.
- Day 2 equals 2/6.
- Day 3 equals 3/6.

The overall average score shall be truncated to the nearest whole number (i.e., an average of 74.9 equals 74). Single subject averaging is not permitted.) The commission will accept the Federation Licensing Examination (FLEX) weighted average of 75 reported from the Federation of State Medical Boards. All FLEX scores must be submitted directly from the Federation of State Medical Boards. FLEX scores reported by other states will not be accepted.

AMENDATORY SECTION (Amending WSR 96-03-073, filed 1/17/96, effective 2/17/96)

**WAC 246-919-370 Special purpose examination.** (1) The commission may require an applicant ((or licensee)) to pass the Special Purpose Examination (SPEX) or any other examination deemed appropriate. An applicant ((or licensee)) may be required to take an examination when the commission has concerns with the applicant's ((or licensee's)) ability to practice competently for reasons which may include, but are not limited to, the following:

- (a) Resolved or pending malpractice suits;
- (b) Pending action by another state licensing authority;

(c) Actions pertaining to privileges at any institution; or

(d) Not having practiced for ~~((an interval of time))~~ the immediate two years prior to the application.

(2) The minimum passing score on the SPEX examination shall be seventy-five. The passing score for any other examination under this rule shall be determined by the commission.

AMENDATORY SECTION (Amending WSR 17-18-098, filed 9/6/17, effective 10/7/17)

**WAC 246-919-395 Substantially equivalent licensing standards—Temporary practice permit.** (1) An applicant who holds an unrestricted, active license in another state with licensing standards substantially equivalent to those in Washington may apply for a temporary practice permit authorizing the applicant to practice as a physician in Washington.

(2) The commission will issue the physician a temporary practice permit if the following requirements are met:

(a) The applicant submits a completed application for a physician and surgeon license on a form provided by the commission on which the applicant indicates that he or she wishes to receive a temporary practice permit;

(b) The applicant submits payment of the application fee and temporary practice permit fee ~~((pursuant to))~~ under WAC 246-919-990;

(c) The commission receives the American Medical Association's physicians' data profile verifying states in which the applicant is or was licensed;

(d) The commission receives the practitioner profile from the Federation of State Medical Boards;

(e) The applicant requests and the commission receives written verification attesting that the applicant has a license in good standing and is not subject to charges or disciplinary action for unprofessional conduct or impairment from all states which the applicant is or was licensed;

(f) The applicant is not subject to denial of a license or issuance of a conditional license under chapter 18.130 RCW; and

(g) The applicant is licensed in a state that has licensing standards substantially equivalent to Washington.

(3) The temporary practice permit allows the applicant to work in the state of Washington as a physician without restriction until the permit expires. The temporary practice permit is a license to practice medicine.

(4) The temporary practice permit shall expire upon the issuance of a license by the commission; initiation of an investigation by the commission of the applicant; or ninety days after the temporary practice permit is issued, whichever occurs first. The temporary permit will not be renewed, reissued, or extended.

(5) An applicant who receives a temporary practice permit and who does not complete the application process may not receive additional temporary practice permits even upon submission of a new application in the future.

AMENDATORY SECTION (Amending WSR 10-05-029, filed 2/9/10, effective 2/11/10)

**WAC 246-919-396 Background check—Temporary practice permit.** The ~~((medical quality assurance commis-~~

~~ion (MQAC)))~~ commission conducts background checks on applicants to assure safe patient care. Completion of a national criminal background check may require additional time. The ~~((MQAC))~~ commission may issue a temporary practice permit when the applicant has met all other licensure requirements, except the national criminal background check requirement. The applicant must not be subject to denial of a license or issuance of a conditional license under this chapter.

(1) If there are no violations identified in the Washington criminal background check and the applicant meets all other licensure conditions, including receipt by the department of health of a completed Federal Bureau of Investigation (FBI) fingerprint card, the ~~((MQAC))~~ commission may issue a temporary practice permit allowing time to complete the national criminal background check requirements.

The ~~((MQAC))~~ commission will issue a temporary practice permit that is valid for six months. A ~~((one-time))~~ one-time extension of six months will be granted if the national background check report has not been received by the ~~((MQAC))~~ commission.

(2) The temporary practice permit allows the applicant to work in the state of Washington as a physician during the time period specified on the permit. The temporary practice permit is a license to practice medicine.

(3) The ~~((MQAC))~~ commission issues a license after it receives the national background check report if the report is negative and the applicant otherwise meets the requirements for a license.

(4) The temporary practice permit is no longer valid after the license is issued or action is taken on the application because of the background check.

#### NEW SECTION

**WAC 246-919-397 How to obtain a temporary practice permit—Military spouse.** A military spouse or state registered domestic partner of a military person may receive a temporary practice permit while completing any specific additional requirements that are not related to training or practice standards for physicians.

(1) A temporary practice permit may be issued to an applicant who is a military spouse or state registered domestic partner of a military person and:

(a) Is moving to Washington as a result of the military person's transfer to Washington;

(b) Left employment in another state to accompany the military person to Washington;

(c) Holds an unrestricted, active license in another state that has substantially equivalent licensing standards for a physician to those in Washington; and

(d) Is not subject to any pending investigation, charges, or disciplinary action by the regulatory body of the other state or states.

(2) A temporary practice permit grants the individual the full scope of practice for the physician.

(3) A temporary practice permit expires when any one of the following occurs:

(a) The license is granted;

(b) A notice of decision on the application is mailed to the applicant, unless the notice of decision on the application

specifically extends the duration of the temporary practice permit; or

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

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

(a) Submit to the commission the necessary application, fee(s), fingerprint card if required, and documentation for the license;

(b) Attest on the application that the applicant left employment in another state to accompany the military person;

(c) Meet all requirements and qualifications for the license that are specific to the training, education, and practice standards for physicians;

(d) Provide verification of having an active unrestricted license in the same profession from another state that has substantially equivalent licensing standards for physicians in Washington;

(e) Submit a copy of the military person's orders and a copy of:

(i) The military-issued identification card showing the military person's information and the applicant's relationship to the military person;

(ii) A marriage license; or

(iii) Documentation of a state registered domestic partnership.

(f) Submit a written request for a temporary practice permit.

(5) For the purposes of this section:

(a) "Military spouse" means the husband, wife, or registered domestic partner of a military person.

(b) "Military person" means a person serving in the United States Armed Forces, the United States Public Health Service Commissioned Corps, or the Merchant Marine of the United States.

AMENDATORY SECTION (Amending WSR 16-16-028, filed 7/22/16, effective 8/22/16)

**WAC 246-919-422 Transition from post-graduate limited license to full license.** In order to obtain full license status, ~~((individuals))~~ a physician with a post-graduate limited Washington license will pay the fee difference between the limited license application and the full license application. This license will expire on their second birth date after issuance and every two years thereafter.

AMENDATORY SECTION (Amending WSR 17-07-043, filed 3/8/17, effective 4/8/17)

**WAC 246-919-435 Training in suicide assessment, treatment, and management.** (1) A licensed physician, other than a resident holding a limited license issued under RCW 18.71.095(3), must complete a one-time training in suicide assessment, treatment, and management. The training must be at least six hours in length and may be completed in one or more sessions.

(2) The training must be completed by the end of the first full continuing education reporting period after January 1, 2016, or during the first full continuing education period after

initial licensure, whichever occurs later, or during the first full continuing education reporting period after the exemption in subsection (6) of this section no longer applies. The commission accepts training completed between June 12, 2014, and January 1, 2016, that meets the requirements of RCW 43.70.442 as meeting the one-time training requirement.

~~((3))~~ ~~((Until July 1, 2017, the commission must approve the training. The commission will approve an empirically supported training in suicide assessment, suicide treatment, and suicide management that meets the requirements of RCW 43.70.442.~~

~~((4))~~ ~~((Beginning July 1, 2017,))~~ The training must be on the model list developed by the department of health under RCW 43.70.442. The establishment of the model list does not affect the validity of training completed prior to July 1, 2017.

~~((5))~~ (4) The hours spent completing training in suicide assessment, treatment, and management count toward meeting applicable continuing education requirements in the same category specified in WAC 246-919-460.

~~((6))~~ (5) The commission exempts any licensed physician from the training requirements of this section if the physician has only brief or limited patient contact, or no patient contact.

AMENDATORY SECTION (Amending WSR 01-03-115, filed 1/22/01, effective 2/22/01)

**WAC 246-919-475 Expired license.** (1) If the license has been expired for three years or less, the ~~((practitioner))~~ physician must meet the requirements of chapter 246-12 WAC, Part 2.

(2) If the license has been expired for over three years, the ~~((practitioner))~~ physician must:

(a) Reapply for ~~((licensing))~~ licensing under current requirements as stipulated in RCW 18.71.050 (1)(b) and WAC 246-919-330; and

(b) Meet the requirements of chapter 246-12 WAC, Part 2.

AMENDATORY SECTION (Amending WSR 11-05-025, filed 2/7/11, effective 3/10/11)

**WAC 246-919-480 Retired active license.** (1) To obtain a retired active license a physician must comply with chapter 246-12 WAC, Part 5, excluding WAC 246-12-120 (2)(c) and (d).

(2) A physician with a retired active license may not receive compensation for health care services;

(3) A physician with a retired active license may practice only in emergent or intermittent circumstances; and

(4) A physician ~~((s))~~ with a retired active license must renew every two years and must report one hundred hours of continuing medical education at every renewal. The commission will accept a maximum of forty hours of continuing medical education in Categories II through V, as defined in WAC 246-919-460, during each renewal period. There is no limit to the number of hours that may be accepted in Category I.

AMENDATORY SECTION (Amending WSR 97-21-053, filed 10/13/97, effective 11/13/97)

**WAC 246-919-520 Revocation of a physician's license.** ~~((This section sets forth the procedure by which a respondent))~~ A physician may request a review by the ~~((medical quality assurance))~~ commission of its decision to revoke the ~~((respondent's))~~ physician's license under RCW 18.71-019:

(1) If the commission issues a final order revoking a ~~((respondent's))~~ physician's license following an adjudicative proceeding, the ~~((respondent))~~ physician may request a review of the decision by a review panel of the commission.

(2) The ~~((respondent))~~ physician shall file a written request with the commission within twenty days of the effective date of the final order. The ~~((respondent))~~ physician may not request an extension of the twenty-day period to file a request for review.

(3) The ~~((respondent's))~~ physician's request for review of the final order does not change the effective date of the final order.

(4) A review panel shall review the final order. The review panel is composed of the members of the commission who did not:

(a) Review the initial investigation and make the decision to issue a statement of charges against the ~~((respondent))~~ physician in this matter; or

(b) Hear the evidence at the adjudicative proceeding and issue the final order revoking the ~~((respondent's))~~ physician's license.

(5) Within seven days of receipt of the request for review of the final order, a scheduling order is issued setting a date for the review hearing, and a date for the filing of written argument by the parties. The review hearing must take place within sixty days of the ~~((respondent's))~~ physician's request for review of the final order.

(6) The review panel shall convene in person for the review hearing on the date set in the scheduling order. If a commission member is unavailable to meet on the scheduled date, a pro tempore member shall take that person's place on the review panel. At the review hearing, the review panel:

(a) Shall review the final order;

(b) Shall review written argument presented by the parties; and

(c) May hear oral argument by the parties.

(7) If the review panel determines that revocation of the ~~((respondent's))~~ physician's license is not the appropriate sanction, it shall issue an amended order setting the appropriate sanction(s) necessary to protect the public.

(8) If the review panel determines that revocation of the ~~((respondent's))~~ physician's license is appropriate, it shall issue an order confirming that decision.

AMENDATORY SECTION (Amending WSR 17-18-032, filed 8/28/17, effective 9/28/17)

**WAC 246-919-601 Safe and effective analgesia and anesthesia administration in office-based surgical settings.** (1) Purpose. The purpose of this rule is to promote and establish consistent standards, continuing competency, and to promote patient safety. The ~~((medical quality assurance))~~

commission establishes the following rule for physicians licensed under this chapter who perform surgical procedures and use anesthesia, analgesia or sedation in office-based settings.

(2) Definitions. The following terms used in this subsection apply throughout this ~~((rule))~~ section unless the context clearly indicates otherwise:

~~((a))~~ ~~(("Commission" means the medical quality assurance commission.~~

~~((b))~~ "Deep sedation" or "analgesia" means a drug-induced depression of consciousness during which patients cannot be easily aroused but respond purposefully following repeated or painful stimulation. The ability to independently maintain ventilatory function may be impaired. Patients may require assistance in maintaining a patent airway, and spontaneous ventilation may be inadequate. Cardiovascular function is usually maintained.

~~((c))~~ ~~((b))~~ "General anesthesia" means a state of unconsciousness intentionally produced by anesthetic agents, with absence of pain sensation over the entire body, in which the patient is without protective reflexes and is unable to maintain an airway, and cardiovascular function may be impaired. Sedation that unintentionally progresses to the point at which the patient is without protective reflexes and is unable to maintain an airway is not considered general anesthesia.

~~((d))~~ ~~((c))~~ "Local infiltration" means the process of infusing a local anesthetic agent into the skin and other tissues to allow painless wound irrigation, exploration and repair, and other procedures, including procedures such as retrobulbar or periorbital ocular blocks only when performed by a board eligible or board certified ophthalmologist. It does not include procedures in which local anesthesia is injected into areas of the body other than skin or muscle where significant cardiovascular or respiratory complications may result.

~~((e))~~ ~~((d))~~ "Major conduction anesthesia" means the administration of a drug or combination of drugs to interrupt nerve impulses without loss of consciousness, such as epidural, caudal, or spinal anesthesia, lumbar or brachial plexus blocks, and intravenous regional anesthesia. Major conduction anesthesia does not include isolated blockade of small peripheral nerves, such as digital nerves.

~~((f))~~ ~~((e))~~ "Minimal sedation" means a drug-induced state during which patients respond normally to verbal commands. Although cognitive function and coordination may be impaired, ventilatory and cardiovascular functions are unaffected. Minimal sedation is limited to oral, intranasal, or intramuscular medications~~((, or both))~~.

~~((g))~~ ~~((f))~~ "Moderate sedation" or "analgesia" means a drug-induced depression of consciousness during which patients respond purposefully to verbal commands, either alone or accompanied by tactile stimulation. No interventions are required to maintain a patent airway, and spontaneous ventilation is adequate. Cardiovascular function is usually maintained.

~~((h))~~ ~~((g))~~ "Office-based surgery" means any surgery or invasive medical procedure requiring analgesia or sedation, including, but not limited to, local infiltration for tumescent liposuction, performed in a location other than a hospital or hospital-associated surgical center licensed under chapter

70.41 RCW, or an ambulatory surgical facility licensed under chapter 70.230 RCW.

~~((i) "Physician" means an individual licensed under chapter 18.71 RCW.)~~

(3) Exemptions. This rule does not apply to physicians when:

(a) Performing surgery and medical procedures that require only minimal sedation (anxiolysis), or infiltration of local anesthetic around peripheral nerves. Infiltration around peripheral nerves does not include infiltration of local anesthetic agents in an amount that exceeds the manufacturer's published recommendations.

(b) Performing surgery in a hospital or hospital-associated surgical center licensed under chapter 70.41 RCW, or an ambulatory surgical facility licensed under chapter 70.230 RCW.

(c) Performing surgery utilizing or administering general anesthesia. Facilities in which physicians administer general anesthesia or perform procedures in which general anesthesia is a planned event are regulated by rules related to hospital or hospital-associated surgical center licensed under chapter 70.41 RCW, ~~((or))~~ an ambulatory surgical facility licensed under chapter 70.230 RCW, or a dental office under WAC 246-919-602.

(d) Administering deep sedation or general anesthesia to a patient in a dental office under WAC 246-919-602.

(e) Performing oral and maxillofacial surgery, and the physician:

(i) Is licensed both as a physician under chapter 18.71 RCW and as a dentist under chapter 18.32 RCW;

(ii) Complies with dental quality assurance commission regulations;

(iii) Holds a valid:

(A) Moderate sedation permit; or

(B) Moderate sedation with parenteral agents permit; or

(C) General anesthesia and deep sedation permit; and

(iv) Practices within the scope of ~~((his or her))~~ their specialty.

(4) Application of rule.

This rule applies to physicians practicing independently or in a group setting who perform office-based surgery employing one or more of the following levels of sedation or anesthesia:

(a) Moderate sedation or analgesia; or

(b) Deep sedation or analgesia; or

(c) Major conduction anesthesia.

(5) Accreditation or certification.

(a) A physician who performs a procedure under this rule must ensure that the procedure is performed in a facility that is appropriately equipped and maintained to ensure patient safety through accreditation or certification and in good standing from an accrediting entity approved by the commission.

(b) The commission may approve an accrediting entity that demonstrates to the satisfaction of the commission that it has all of the following:

(i) Standards pertaining to patient care, recordkeeping, equipment, personnel, facilities and other related matters that are in accordance with acceptable and prevailing standards of care as determined by the commission;

(ii) Processes that assure a fair and timely review and decision on any applications for accreditation or renewals thereof;

(iii) Processes that assure a fair and timely review and resolution of any complaints received concerning accredited or certified facilities; and

(iv) Resources sufficient to allow the accrediting entity to fulfill its duties in a timely manner.

(c) A physician may perform procedures under this rule in a facility that is not accredited or certified, provided that the facility has submitted an application for accreditation by a commission-approved accrediting entity, and that the facility is appropriately equipped and maintained to ensure patient safety such that the facility meets the accreditation standards. If the facility is not accredited or certified within one year of the physician's performance of the first procedure under this rule, the physician must cease performing procedures under this rule until the facility is accredited or certified.

(d) If a facility loses its accreditation or certification and is no longer accredited or certified by at least one commission-approved entity, the physician shall immediately cease performing procedures under this rule in that facility.

(6) Competency. When an anesthesiologist or certified registered nurse anesthetist is not present, the physician performing office-based surgery and using a form of sedation defined in subsection (4) of this section must be competent and qualified both to perform the operative procedure and to oversee the administration of intravenous sedation and analgesia.

(7) Qualifications for administration of sedation and analgesia may include:

(a) Completion of a continuing medical education course in conscious sedation;

(b) Relevant training in a residency training program; or

(c) Having privileges for conscious sedation granted by a hospital medical staff.

(8) At least one licensed health care practitioner currently certified in advanced resuscitative techniques appropriate for the patient age group ~~((e.g., ACLS, PALS or APLS))~~ must be present or immediately available with age-size-appropriate resuscitative equipment throughout the procedure and until the patient has met the criteria for discharge from the facility. Certification in advanced resuscitative techniques includes, but is not limited to, advanced cardiac life support (ACLS), pediatric advanced life support (PALS), or advanced pediatric life support (APLS).

(9) Sedation assessment and management.

~~((a))~~ Sedation is a continuum. Depending on the patient's response to drugs, the drugs administered, and the dose and timing of drug administration, it is possible that a deeper level of sedation will be produced than initially intended.

~~((b))~~ (a) If an anesthesiologist or certified registered nurse anesthetist is not present, a physician intending to produce a given level of sedation should be able to "rescue" a patient who enters a deeper level of sedation than intended.

~~((c))~~ (b) If a patient enters into a deeper level of sedation than planned, the physician must return the patient to the lighter level of sedation as quickly as possible, while closely monitoring the patient to ensure the airway is patent, the

patient is breathing, and that oxygenation, heart rate and blood pressure are within acceptable values. A physician who returns a patient to a lighter level of sedation in accordance with this subsection (c) does not violate subsection (10) of this section.

(10) Separation of surgical and monitoring functions.

(a) The physician performing the surgical procedure must not administer the intravenous sedation, or monitor the patient.

(b) The licensed health care practitioner, designated by the physician to administer intravenous medications and monitor the patient who is under moderate sedation, may assist the operating physician with minor, interruptible tasks of short duration once the patient's level of sedation and vital signs have been stabilized, provided that adequate monitoring of the patient's condition is maintained. The licensed health care practitioner who administers intravenous medications and monitors a patient under deep sedation or analgesia must not perform or assist in the surgical procedure.

(11) Emergency care and transfer protocols. A physician performing office-based surgery must ensure that in the event of a complication or emergency:

(a) All office personnel are familiar with a written and documented plan to timely and safely transfer patients to an appropriate hospital.

(b) The plan must include arrangements for emergency medical services and appropriate escort of the patient to the hospital.

(12) Medical record. The physician performing office-based surgery must maintain a legible, complete, comprehensive, and accurate medical record for each patient.

(a) The medical record must include all of the following:

- (i) Identity of the patient;
- (ii) History and physical, diagnosis and plan;
- (iii) Appropriate lab, X-ray or other diagnostic reports;
- (iv) Appropriate preanesthesia evaluation;
- (v) Narrative description of procedure;
- (vi) Pathology reports, if relevant;
- (vii) Documentation of which, if any, tissues and other specimens have been submitted for histopathologic diagnosis;
- (viii) Provision for continuity of postoperative care; and
- (ix) Documentation of the outcome and the follow-up plan.

(b) When moderate or deep sedation, or major conduction anesthesia is used, the patient medical record must include a separate anesthesia record that documents:

- (i) The type of sedation or anesthesia used;
- (ii) ~~((Drugs (name and dose)))~~ Name, dose, and time of administration of drugs;
- (iii) Documentation at regular intervals of information obtained from the intraoperative and postoperative monitoring;
- (iv) Fluids administered during the procedure;
- (v) Patient weight;
- (vi) Level of consciousness;
- (vii) Estimated blood loss;
- (viii) Duration of procedure; and
- (ix) Any complication or unusual events related to the procedure or sedation/anesthesia.

## NEW SECTION

### **WAC 246-919-602 Administration of deep sedation and general anesthesia by physicians in dental offices.** (1)

Purpose. The purpose of this section is to govern the administration of deep sedation and general anesthesia by physicians in dental offices. The commission establishes these standards to promote effective perioperative communication and appropriately timed interventions, and mitigate adverse events and outcomes.

(2) Definitions. The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Administering physician" means an individual licensed under chapter 18.71 RCW who administers deep sedation or general anesthesia to a patient in a dental office.

(b) "Deep sedation" has the same meaning as in WAC 246-919-601.

(c) "Dental office" means any facility where dentistry is practiced, as defined in chapter 18.32 RCW, except a hospital licensed under chapter 70.41 RCW or ambulatory surgical facility licensed under chapter 70.230 RCW.

(d) "General anesthesia" has the same meaning as in WAC 246-919-601.

(e) "Perioperative" includes the three phases of surgery: Preoperative, intraoperative, and postoperative.

(3) An administering physician is responsible for the perioperative anesthetic management and monitoring of a patient and must ensure patient care, recordkeeping, equipment, personnel, facilities, and other related matters are in accordance with acceptable and prevailing standards of care including, but not limited to, the following:

(a) Preoperative requirements. An administering physician shall ensure the patient has undergone a preoperative health evaluation and document review of the evaluation. The physician shall also conduct and document a risk assessment to determine whether a patient is an appropriate candidate for deep sedation or general anesthesia and discussion of the risks of deep sedation or general anesthesia with the patient. For a pediatric patient, this assessment must include:

(i) Whether the patient has specific risk factors that may warrant additional consultation before administration of deep sedation or general anesthesia, and how each patient meets criteria for deep sedation or general anesthesia in an outpatient environment. This must include a specific inquiry into whether the patient has signs and symptoms of sleep-disordered breathing or obstructive sleep apnea;

(ii) A discussion with a parent or guardian of a pediatric patient of the particular risks of deep sedation or general anesthesia for a patient who: (A) Is younger than six years old; (B) has special needs; (C) has airway abnormalities; or (D) has a chronic condition. This discussion must include reasoning why the pediatric patient can safely receive deep sedation or general anesthesia in an outpatient environment and any alternatives.

(b) Medical record. The anesthesia record must be complete, comprehensive, and accurate for each patient, including documentation at regular intervals of information from intraoperative and postoperative monitoring. The record-keeping requirements under WAC 246-919-601 and 246-817-770 apply to an administering physician, including the



elements of a separate anesthesia record. The anesthesia record must also include temperature measurement and a heart rate and rhythm measured by electrocardiogram. For a pediatric patient, the administering physician shall ensure vital signs are postoperatively recorded at least at five-minute intervals until the patient begins to awaken, then recording intervals may be increased to ten to fifteen minutes.

(c) Equipment. An administering physician shall ensure the requirements for equipment and emergency medications under WAC 246-817-724 and 246-817-770 are met, regardless of any delineated responsibility for furnishing of the equipment or medications in a contract between the physician and dental office. Additionally, for a pediatric patient, an administering physician shall ensure there is a complete selection of equipment for clinical application to the pediatric patient. The physician shall also ensure equipment is available in the recovery area to meet the requirements in this section for monitoring during the recovery period. The physician shall ensure all equipment and medications are checked and maintained on a scheduled basis.

(d) Recovery and discharge requirements. An administering physician shall ensure that:

(i) A physician licensed under chapter 18.71 RCW capable of managing complications, providing cardiopulmonary resuscitation, and currently certified in advanced cardiac life support measures appropriate for the patient age group is immediately available for a patient recovering from anesthesia. For a pediatric patient, the physician shall also be trained and experienced in pediatric perioperative care;

(ii) At least one licensed health care practitioner experienced in postanesthetic recovery care and currently certified in advanced cardiac life support measures appropriate for the patient age group visually monitors the patient, at all times, until the patient has met the criteria for discharge from the facility. Consideration for prolonged observation must be given to a pediatric patient with an anatomic airway abnormality, such as significant obstructive sleep apnea. A practitioner may not monitor more than two patients simultaneously, and any such simultaneous monitoring must take place in a single recovery room. If a practitioner is qualified to administer deep sedation or general anesthesia, the practitioner may not simultaneously administer deep sedation or general anesthesia and perform recovery period monitoring functions. The practitioner shall provide: (A) Continuous respiratory monitoring via pulse oximetry and cardiovascular monitoring via electrocardiography during the recovery period; and (B) monitoring, at regular intervals, during the recovery period of the patient for color of mucosa, skin, or blood, oxygen saturation, blood pressure, and level of consciousness; and (C) measurement of temperature at least once during the recovery period. If a patient's condition or other factor for the patient's health or safety preclude the frequency of monitoring during the recovery period required by this section, the practitioner must document the reason why such a departure from these requirements is medically necessary;

(iii) Emergency equipment, supplies, medications, and services comply with the provisions of WAC 246-817-770 and are immediately available in all areas where anesthesia is used and for a patient recovering from anesthesia. Resuscitative equipment and medications must be age and size-appro-

priate, including for care of a pediatric patient, pediatric defibrillator paddles, and vasoactive resuscitative medications and a muscle relaxant such as dantrolene sodium, which must be immediately available in appropriate pediatric concentrations, as well as a written pediatric dose schedule for these medications. The administering physician shall ensure that support personnel have knowledge of the emergency care inventory. All equipment and medications must be checked and maintained on a scheduled basis; and

(iv) Before discharge, the patient is awake, alert, and behaving appropriately for age and developmental status, normal patient vital signs, and if applicable, a capable parent or guardian present to assume care of the patient.

(e) Emergency care and transfer protocol. An administering physician shall monitor for, and be prepared to treat, complications involving compromise of the airway and depressed respiration, particularly with a pediatric patient. The physician shall ensure that in the event of a complication or emergency, his or her assistive personnel and all dental office clinical staff are well-versed in emergency recognition, rescue, and emergency protocols, and familiar with a written and documented plan to timely and safely transfer a patient to an appropriate hospital.

(4)(a) An administering physician shall submit to the commission a report of any patient death or serious perioperative complication, which is or may be the result of anesthesia administered by the physician.

(b) The physician shall notify the commission or the department of health, by telephone, email, or fax within seventy-two hours of discovery and shall submit a complete written report to the commission within thirty days of the incident. The written report must include the following:

- (i) Name, age, and address of the patient;
- (ii) Name of the dentist and other personnel present during the incident;
- (iii) Address of the facility or office where the incident took place;
- (iv) Description of the type of anesthetic being utilized at the time of the incident;
- (v) Dosages, if any, of any other drugs administered to the patient;
- (vi) A narrative description of the incident including approximate times and evolution of symptoms;
- (vii) Additional information which the commission may require or request.

AMENDATORY SECTION (Amending WSR 07-03-177, filed 1/24/07, effective 3/1/07)

**WAC 246-919-605 Use of laser, light, radiofrequency, and plasma devices as applied to the skin.** (1) For the purposes of this rule, laser, light, radiofrequency, and plasma devices (hereafter LLRP devices) are medical devices that:

- (a) Use a laser, noncoherent light, intense pulsed light, radiofrequency, or plasma to topically penetrate skin and alter human tissue; and
- (b) Are classified by the federal Food and Drug Administration as prescription devices.

(2) Because an LLRP device penetrates and alters human tissue, the use of an LLRP device is the practice of medicine under RCW 18.71.011. The use of an LLRP device can result in complications such as visual impairment, blindness, inflammation, burns, scarring, hypopigmentation and hyperpigmentation.

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

#### PHYSICIAN RESPONSIBILITIES

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

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

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

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

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

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

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

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

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

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

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

#### PHYSICIAN DELEGATION OF LLRP TREATMENT

(10) A physician who meets the above requirements may delegate an LLRP device procedure to a properly trained and licensed professional, whose licensure and scope of practice allow the use of an LLRP device, provided all the following conditions are met:

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

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

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

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

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

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

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

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

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

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

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

(e) The supervised professional has appropriate training in, at a minimum, application techniques of each LLRP device, cutaneous medicine, indications and contraindications for such procedures, preprocedural and postprocedural care, potential complications and infectious disease control involved with each treatment;

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

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

(h) Existing patients with an established treatment plan may continue to receive care during temporary absences of the delegating physician provided that there is a local back-up physician who satisfies the requirements of subsection (4) of this section. The local back-up physician must agree in writing to treat complications, provide consultation or resolve problems if medically indicated. The local back-up physician shall be reachable by phone and able to see the patient within sixty minutes. The delegating physician's absence from the site where the treatment occurs must be for brief and intermittent periods of time. The delegating physician's absence from the site where the treatment occurs cannot be an ongoing arrangement.

(11) The use of, or the delegation of the use of, an LLRP device by a physician assistant is covered by WAC 246-918-125.

AMENDATORY SECTION (Amending WSR 10-11-001, filed 5/5/10, effective 6/5/10)

**WAC 246-919-606 Nonsurgical medical cosmetic procedures.** (1) The purpose of this rule is to establish the duties and responsibilities of a physician who delegates the injection of medication or substances for cosmetic purposes or the use of prescription devices for cosmetic purposes. These procedures can result in complications such as visual impairment, blindness, inflammation, burns, scarring, disfiguration, hypopigmentation and hyperpigmentation. The performance of these procedures is the practice of medicine under RCW 18.71.011(3).

(2) This rule does not apply to:

(a) Surgery;  
 (b) The use of prescription lasers, noncoherent light, intense pulsed light, radiofrequency, or plasma as applied to the skin; this is covered in WAC 246-919-605 and 246-918-125;

(c) The practice of a profession by a licensed health care professional under methods or means within the scope of practice permitted by such license;

(d) The use of nonprescription devices; and

(e) Intravenous therapy.

(3) Definitions. ~~((These))~~ The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Nonsurgical medical cosmetic procedure" means a procedure or treatment that involves the injection of a medication or substance for cosmetic purposes, or the use of a prescription device for cosmetic purposes. Laser, light, radiofrequency and plasma devices that are used to topically penetrate the skin are devices used for cosmetic purposes, but are excluded under subsection (2)(b) of this section, and are covered by WAC 246-919-605 and 246-918-125.

(b) ~~("Physician" means an individual licensed under chapter 18.71 RCW.~~

~~(c))~~ "Prescription device" means a device that the federal Food and Drug Administration has designated as a prescription device, and can be sold only to persons with prescriptive authority in the state in which they reside.

#### PHYSICIAN RESPONSIBILITIES

(4) A physician must be fully and appropriately trained in a nonsurgical medical cosmetic procedure prior to performing the procedure or delegating the procedure. The physician must keep a record of his or her training in the office and available for review upon request by a patient or a representative of the commission.

(5) Prior to authorizing a nonsurgical medical cosmetic procedure, a physician must:

- (a) Take a history;
- (b) Perform an appropriate physical examination;
- (c) Make an appropriate diagnosis;
- (d) Recommend appropriate treatment;
- (e) Obtain the patient's informed consent;
- (f) Provide instructions for emergency and follow-up care; and
- (g) Prepare an appropriate medical record.

(6) Regardless of who performs the nonsurgical medical cosmetic procedure, the physician is ultimately responsible for the safety of the patient.

(7) Regardless of who performs the nonsurgical medical cosmetic procedure, the physician is responsible for ensuring that each treatment is documented in the patient's medical record.

(8) The physician must ensure that there is a quality assurance program for the facility at which nonsurgical medical cosmetic procedures are performed regarding the selection and treatment of patients. An appropriate quality assurance program must include the following:

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

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

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

(d) A mechanism by which the findings of the quality assurance program are reviewed and incorporated into future protocols required by subsection ~~((40))~~ (11)(d) of this section and physician supervising practices; and

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

(9) A physician may not sell or give a prescription device to an individual who does not possess prescriptive authority in the state in which the individual resides or practices.

(10) The physician must ensure that all equipment used for procedures covered by this section is inspected, calibrated, and certified as safe according to the manufacturer's specifications.

#### PHYSICIAN DELEGATION

(11) A physician who meets the above requirements may delegate a nonsurgical medical cosmetic procedure to a properly trained physician assistant, registered nurse or licensed practical nurse, provided all the following conditions are met:

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

(b) The physician delegates procedures that are within the delegate's lawful scope of practice;

(c) The delegate has appropriate training in, at a minimum:

(i) Techniques for each procedure;

(ii) Cutaneous medicine;

(iii) Indications and contraindications for each procedure;

(iv) Preprocedural and postprocedural care;

(v) Recognition and acute management of potential complications that may result from the procedure; and

(vi) Infectious disease control involved with each treatment.

(d) The physician has a written office protocol for the delegate to follow in performing the nonsurgical medical cosmetic procedure. A written office protocol must include, at a minimum, the following:

(i) The identity of the physician responsible for the delegation of the procedure;

(ii) Selection criteria to screen patients for the appropriateness of treatment;

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

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

(e) The physician ensures that the delegate performs each procedure in accordance with the written office protocol;

(f) Each patient signs a consent form prior to treatment that lists foreseeable side effects and complications, and the identity and license of the delegate or delegates who will perform the procedure; and

(g) Each delegate performing a procedure covered by this section must be readily identified by a name tag or similar means so that the patient understands the identity and license of the treating delegate.

(12) If a physician delegates the performance of a procedure that uses a medication or substance that the federal Food and Drug Administration has not approved, or that the federal Food and Drug Administration has not approved for the particular purpose for which it is used, the physician must be on-site during the entire duration of the procedure.

(13) If a physician delegates the performance of a procedure that uses a medication or substance that is approved by the federal Food and Drug Administration for the particular purpose for which it is used, the physician need not be on-site during the procedure, but must be reachable by phone and able to respond within thirty minutes to treat complications.

(14) If the physician is unavailable to supervise a delegate as required by this section, the physician must make arrangements for an alternate physician to provide the necessary supervision. The alternate supervisor must be familiar with the protocols in use at the site, will be accountable for adequately supervising the treatment under the protocols, and must have comparable training as the primary supervising physician.

(15) A physician performing or delegating nonsurgical cosmetic procedures may not sponsor more than three physician assistants at any one time.

(16) A physician may not permit a delegate to further delegate the performance of a nonsurgical medical cosmetic procedure to another individual.

**AMENDATORY SECTION** (Amending WSR 96-03-073, filed 1/17/96, effective 2/17/96)

**WAC 246-919-610 Use of drugs or autotransfusion to enhance athletic ability.** (1) A physician shall not prescribe, administer or dispense anabolic steroids, growth hormones, testosterone or its analogs, human chorionic gonadotropin (HCG), other hormones, or any form of autotransfusion for the purpose of enhancing athletic ability.

(2) A physician shall complete and maintain patient medical records which accurately reflect the prescribing, administering or dispensing of any substance or drug described in this rule or any form of autotransfusion. Patient medical records ~~((shall))~~ **must** indicate the diagnosis and purpose for which the substance, drug, or autotransfusion is pre-

scribed, administered or dispensed and any additional information upon which the diagnosis is based.

(3) A violation of any provision of this rule ~~((shall))~~ constitutes grounds for disciplinary action under RCW 18.130.180(7). A violation of subsection (1) of this section ~~((shall also))~~ constitutes grounds for disciplinary action under RCW 18.130.180(6).

**AMENDATORY SECTION** (Amending WSR 96-03-073, filed 1/17/96, effective 2/17/96)

**WAC 246-919-620 Cooperation with investigation.**

(1) A ~~((licensee))~~ **physician** must comply with a request, under RCW 70.02.050, for health care records or documents from an investigator who is acting on behalf of the disciplining authority ~~((pursuant to))~~ **under** RCW 18.130.050(2) ~~((by submitting)).~~

~~((a))~~ **(a)** The physician shall submit the requested items within ~~((fourteen))~~ **twenty-one** calendar days of receipt of the request by the ~~((licensee or the licensee's))~~ **physician or the physician's** attorney, whichever is first. If the ~~((licensee))~~ **physician** fails to comply with the request within ~~((fourteen))~~ **twenty-one** calendar days, the investigator shall contact the ~~((licensee or the licensee's))~~ **physician or the physician's** attorney by letter as a reminder.

~~((b))~~ **(b)** Investigators may extend the time for response if the ~~((licensee))~~ **physician** requests an extension for **good cause** for a period not to exceed ~~((seven))~~ **thirty** calendar days. Other requests for extension may be granted by the commission chair or the commission's ~~((designee))~~ **executive director**.

~~((b))~~ **(c)** If the ~~((licensee))~~ **physician** fails to comply with the request within three business days after the receipt of the written reminder, a statement of charges ~~((shall))~~ **may** be issued ~~((pursuant to))~~ **under** RCW 18.130.180(8) and, if there is sufficient evidence to support additional charges, those charges may be included in the statement of charges.

**(d)** In negotiating a settlement on a statement of charges based on RCW 18.130.180(8), the commission may take into consideration whether the physician has complied with the request after the statement of charges has been issued.

(2) A ~~((licensee must))~~ **physician shall** comply with a request ~~((for))~~ **from an investigator who is acting on behalf of the disciplining authority under RCW 18.130.050(2) for information, which may include, but is not limited to:**

~~((a))~~ **(a)** Nonhealth care records or documents ~~((from an investigator who is acting on behalf of the commission pursuant to RCW 18.130.050(2) by submitting))~~ **including, but not limited to:**

**(i)** An explanation of the matter under investigation;

**(ii)** Curriculum vitae;

**(iii)** Continuing medical education credits;

**(iv)** Malpractice action summaries; or

**(v)** Hospital affiliations.

**(b)** The physician shall submit the requested items within ~~((fourteen))~~ **twenty-one** calendar days of receipt of the request by the ~~((licensee or the licensee's))~~ **physician or the physician's** attorney, whichever is first. If the ~~((licensee))~~ **physician** fails to comply with the request within ~~((fourteen))~~ **twenty-one** calendar days, the investigator shall contact the

~~((licensee))~~ physician or the licensee's attorney by letter as a reminder.

~~((a))~~ (c) Investigators may extend the time for response if the ~~((licensee))~~ physician requests an extension for good cause for a period not to exceed ~~((seven))~~ thirty calendar days. Other requests for extension may be granted by the commission chair or the commission's ~~((designee))~~ executive director.

~~((b))~~ (d) If the ~~((licensee))~~ physician fails to comply with the request within three business days after the receipt of the written reminder, then a subpoena shall be served upon the ~~((licensee))~~ physician to obtain the requested items.

~~((e))~~ (e) If the ~~((licensee))~~ physician fails to comply with the subpoena, a statement of charges ~~((shall))~~ may be issued ~~((pursuant to))~~ under RCW 18.130.180(8) and, if there is sufficient evidence to support additional charges, then those charges may be included in the statement of charges.

~~((3))~~ A licensee must comply with a request for information from an investigator who is acting on behalf of the commission pursuant to RCW 18.130.050(2). This information may include, but is not limited to, an explanation of the matter under investigation, curriculum vitae, continuing medical education credits, malpractice action summaries, or hospital affiliations. The licensee will submit the requested information within fourteen calendar days of receipt of the request by the licensee or the licensee's attorney, whichever is first. If the licensee fails to comply with the request within fourteen calendar days, the investigator shall contact the licensee or the licensee's attorney by letter as a reminder.

~~(a)~~ Investigators may extend the time for response if the licensee requests an extension for a period not to exceed seven calendar days. Other requests for extension may be granted by the commission chair or the commission's designee.

~~(b)~~ If the licensee fails to comply with the written reminder within three business days after the receipt of the reminder, a statement of charges shall be issued pursuant to RCW 18.130.180(8) and, if there is sufficient evidence to support additional charges, then those charges may be included in the statement of charges.

~~(4)~~ In negotiating a settlement on a statement of charges based on RCW 18.130.180(8), the reviewing commission member may take into consideration whether the licensee has complied with the request after the statement of charges has been issued. Any settlement proposal shall be presented to the commission or a duly constituted panel of the commission for a decision on ratification and until ratified, the settlement is not final.)

(f) In negotiating a settlement on a statement of charges based on RCW 18.130.180(8), the commission may take into consideration whether the physician has complied with the request after the statement of charges has been issued.

AMENDATORY SECTION (Amending WSR 16-06-010, filed 2/18/16, effective 3/20/16)

**WAC 246-919-630 Sexual misconduct.** (1) The ~~((following))~~ definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Patient" means a person who is receiving health care or treatment, or has received health care or treatment without a termination of the physician-patient relationship. The determination of when a person is a patient is made on a case-by-case basis with consideration given to a number of factors, including the nature, extent and context of the professional relationship between the physician and the person. The fact that a person is not actively receiving treatment or professional services is not the sole determining factor.

~~(b) ("Physician" means a person licensed to practice medicine and surgery under chapter 18.71 RCW.~~

~~(c))~~ "Key third party" means a person in a close personal relationship with the patient and includes, but is not limited to, spouses, partners, parents, siblings, children, and guardians ~~((and))~~ or proxies.

(2) A physician shall not engage in sexual misconduct with a current patient or a key third party. A physician engages in sexual misconduct when he or she engages in any of the following behaviors with a patient or key third party:

(a) Sexual intercourse or genital to genital contact;

(b) Oral to genital contact;

(c) Genital to anal contact or oral to anal contact;

(d) Kissing in a romantic or sexual manner;

(e) Touching breasts, genitals, or any sexualized body part for any purpose other than appropriate examination or treatment;

(f) Examination or touching of genitals without using gloves, except for examinations of an infant or prepubescent child when clinically appropriate;

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

(h) Encouraging the patient to masturbate in the presence of the physician or masturbation by the physician while the patient is present;

(i) Offering to provide practice-related services, such as medications, in exchange for sexual favors;

(j) Soliciting a date; or

~~((Engaging in a conversation))~~ Communicating regarding the sexual history, preferences, or fantasies of the physician.

(3) A physician shall not engage in any of the conduct described in subsection (2) of this section with a former patient or key third party if the physician:

(a) Uses or exploits the trust, knowledge, influence, or emotions derived from the professional relationship; or

(b) Uses or exploits privileged information or access to privileged information to meet the physician's personal or sexual needs.

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

(5) To determine whether a patient is a current patient or a former patient, the commission will analyze each case individually, and will consider a number of factors~~((s))~~ including, but not limited to, the following:

(a) Documentation of formal termination;

(b) Transfer of the patient's care to another health care provider;

(c) The length of time that has passed since the last health care services to the patient;

(d) The length of time of the professional relationship;

(e) The extent to which the patient has confided personal or private information to the physician;

(f) The nature of the patient's health problem; and

(g) The degree of emotional dependence and vulnerability of the patient.

(6) This section does not prohibit conduct that is required for medically recognized diagnostic or treatment purposes if the conduct meets the standard of care appropriate to the diagnostic or treatment situation.

(7) It is not a defense that the patient, former patient, or key third party initiated or consented to the conduct, or that the conduct occurred outside the professional setting.

(8) A violation of any provision of this rule (~~shall~~) constitutes grounds for disciplinary action.

AMENDATORY SECTION (Amending WSR 96-03-073, filed 1/17/96, effective 2/17/96)

**WAC 246-919-700 Mandatory reporting.** ~~(((1) All reports required by these regulations shall be submitted to the commission as soon as possible, but not later than sixty days after a determination is made.~~

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

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

~~(b) The name, address and telephone numbers of the physician being reported;~~

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

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

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

~~(f) Any further information which would aid the evaluation of the report.~~

~~(3) The mandatory reporting shall not act as a waiver of confidentiality of medical records and committee reports. The information reported or disclosed shall be kept for the confidential use of the commission as provided in the Uniform Disciplinary Act and shall not be subject to subpoena or discovery proceedings in any civil action as provided in RCW 4.24.250, and shall be exempt from public disclosure pursuant to chapter 42.17 RCW except for review as provided in RCW 18.71.0195.) The commission adopts the rules for mandatory reporting in chapter 246-16 WAC.~~

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 246-919-310 Credentialing of physicians and surgeons.

WAC 246-919-710 Mandatory reporting requirement satisfied.

WAC 246-919-730 Medical associations or societies.

WAC 246-919-740 Health care service contractors and disability insurance carriers.

WAC 246-919-750 Courts.

WAC 246-919-760 State and federal agencies.

WAC 246-919-770 Professional standards review organizations.

#### **WSR 20-14-091**

#### **PROPOSED RULES**

#### **BATES TECHNICAL COLLEGE**

[Filed June 30, 2020, 10:28 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-04-042.

Title of Rule and Other Identifying Information: New chapter 495A-105 WAC to add college seal to Bates Technical College's Title 495A WAC series.

Hearing Location(s): On August 11, 2020, at 2:00 - 3:00 p.m.

Zoom, virtual public hearing. See <https://batestech.zoom.us/j/92325259011> Zoom address under comment.

Date of Intended Adoption: October 1, 2020.

Submit Written Comments to: Dr. Jean Hernandez, 1101 South Yakima Avenue, Room A332, Tacoma, WA 98405-4895 AND to email below due to COVID-19 working remotely, email [jehernandez@batestech.edu](mailto:jehernandez@batestech.edu), by July 31, 2020.

Assistance for Persons with Disabilities: Dr. Jean Hernandez, email [jehernandez@batestech.edu](mailto:jehernandez@batestech.edu), by July 31, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: New chapter 495A-105 WAC, college seal, is used for official business of Bates Technical College. In particular, it is placed on all students' college transcripts.

Reasons Supporting Proposal: See purpose above.

Statutory Authority for Adoption: RCW 28B.50.100, 28B.50.130.

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

Name of Proponent: Bates Technical College, governmental.

Name of Agency Personnel Responsible for Drafting: Dr. Jean Hernandez, Bates Technical College, [jehernandez@batestech.edu](mailto:jehernandez@batestech.edu); Implementation and Enforcement: Office of the President, Bates Technical College, [kbryson@batestech.edu](mailto:kbryson@batestech.edu).

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; rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of state-wide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rule content is explicitly and specifically dictated by statute.

June 30, 2020

Dr. Jean Hernandez

Special Assistant to the President

#### Chapter 495A-105 WAC

#### BATES TECHNICAL COLLEGE SEAL

##### NEW SECTION

**WAC 495A-105-010 Design.** The seal of Bates Technical College, District 28, shall be the following design:



##### NEW SECTION

**WAC 495A-105-020 Use.** The seal shall be used only in connection with the transaction of official business at Bates Technical College, District 28, or for promotional purposes.

The college president or designee will preapprove the manner in which the seal may be used.

#### WSR 20-14-095

#### PROPOSED RULES

#### BATES TECHNICAL COLLEGE

[Filed June 30, 2020, 10:58 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-04-041.

Title of Rule and Other Identifying Information: Amending chapter 495A-121 WAC to align with model student code of conduct.

Hearing Location(s): On August 11, 2020, at 3:30 - 4:30 p.m.

Zoom, virtual public hearing. See <https://batestech.zoom.us/j/91690198612> Zoom address under comment.

Date of Intended Adoption: October 1, 2020.

Submit Written Comments to: Dr. Jean Hernandez, 1101 South Yakima Avenue, Room A332, Tacoma, WA 98405-4895 AND to email below due to COVID-19 working remotely, email [jehernandez@batestech.edu](mailto:jehernandez@batestech.edu), by July 31, 2020.

Assistance for Persons with Disabilities: Contact Dr. Jean Hernandez, email [jehernandez@batestech.edu](mailto:jehernandez@batestech.edu), by July 31, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amending to align with model student code of conduct.

Reasons Supporting Proposal: See purpose above.

Statutory Authority for Adoption: Chapter 34.05 RCW; RCW 28B.50.140.

Statute Being Implemented: RCW 34.05.250, 28B.50-140(13).

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

Name of Proponent: Bates Technical College, governmental.

Name of Agency Personnel Responsible for Drafting: Dr. Jean Hernandez, Bates Technical College, [jehernandez@batestech.edu](mailto:jehernandez@batestech.edu); Implementation and Enforcement: Office of the President, Bates Technical College, [kbryson@batestech.edu](mailto:kbryson@batestech.edu).

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; rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of state-

wide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rule content is explicitly and specifically dictated by statute.

June 30, 2020  
Dr. Jean Hernandez  
Special Assistant to the President

**AMENDATORY SECTION** (Amending WSR 19-14-073, filed 6/30/19, effective 7/31/19)

**WAC 495A-121-011 Definitions.** The definitions set forth in this section shall apply throughout this chapter. The following words and phrases shall mean:

(1) "Assembly" means any activity engaged in by two or more persons, and the object of which is to gain publicity, advocate a view, petition for a cause, or disseminate information to any persons or group of persons.

(2) "Board of trustees" shall mean the five-member governance board appointed by the governor of the state of Washington for Bates Technical College, District ((No.)) 28.

(3) "Calendar day" means days will be counted by excluding the first day and including the last day of timelines. When the last day falls on a Saturday, Sunday, or holiday, the timeline runs until the next date on which the college is open for business.

(4) "College" shall mean Bates Technical College, District ((No.)) 28.

(5) "College community" means students, employees, trustees, and volunteers.

(6) "College facilities" and "college facility" mean and include any real and personal property owned, rented, leased, or operated by the college, all buildings and appurtenances attached thereto, and all parking lots and other grounds. College facilities extend to distance education classroom environments and agencies or institutions that have educational agreements with the college.

(7) "College official" includes any person employed by the college performing assigned duties.

(8) "College premises" includes all campuses of the college where located and includes all land, buildings, facilities, vehicles, equipment, and other property owned, used, or controlled by the college.

(9) "College president" shall mean the chief executive officer of the college appointed by the board of trustees.

(10) "Complainant" is any person who submits a complaint alleging that a student violated the student conduct code, or in matters of sexual misconduct, a complainant is an alleged victim of sexual misconduct.

(11) "Conduct review officer" is the college administrator designated by the president to be responsible for receiving and for reviewing or referring appeals of student disciplinary actions in accordance with the procedures of this code.

(12) "Consent" means a person gives knowing, voluntary, and clear permission by word or action to engage in

mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the sexual activity. For consent to be valid there must be at the time of the act of sexual intercourse or sexual contact actual words or action indicating freely given agreement to have sexual intercourse or sexual contact.

A person may be incapable of giving consent by reason of age, threat, intimidation, lack of opportunity to object, disability, drug or alcohol consumption, or other cause. A person cannot consent if they are unable to understand what is happening, are disoriented, helpless, asleep, or unconscious for any reason including due to alcohol or other drugs.

Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual activity. An individual has engaged in nonconsensual sexual activity when the individual knows, or should know, that the other person is physically, emotionally, or mentally incapacitated.

(13) "Controlled substance" means and includes any drug or substance as defined in chapter 69.50 RCW as now law or hereafter amended.

(14) "Day" means a weekday, excluding weekends, college holidays, and college closures unless otherwise specified.

(15) "Disciplinary action" is the process by which the student conduct officer imposes discipline against a student for a violation of the student conduct code. Disciplinary action does not include instructional decisions and actions that are under the authority of faculty members and instructional administrators, such as determination of academic credit and grading. These determinations and any review or appeal of these are outside the scope of this chapter.

(16) "Disciplinary appeal" is the process by which an aggrieved student can appeal the discipline imposed by the student conduct officer. Disciplinary appeals from a suspension in excess of ten days or a dismissal are heard by the student/faculty disciplinary committee. Appeals of all other disciplinary action that can be appealed is reviewed through brief adjudicative proceedings.

(17) "Employee" means any classified, faculty, administrator, exempt, student worker or volunteer person.

(18) "Family Educational Rights and Privacy Act" and "FERPA" mean the law and regulations known by those names (20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99).

(19) "Filing" is the process by which a document is officially delivered to a college official responsible for facilitating a disciplinary review. Unless otherwise provided, filing shall be accomplished by:

(a) Hand delivery of the document to the specified college official or college official's assistant; or

(b) By sending the document by email to the specified college official's email address.

Paper required to be filed is deemed filed upon actual receipt during office hours at the office of the specified college official.

(20) "Instructor" and "faculty" mean any employee of Bates Technical College, District ((No.)) 28 who is employed on a full-time or part-time basis as a teacher, instructor, counselor, faculty advisor, or librarian.

(21) "RCW" means Revised Code of Washington and can be accessed at <http://apps.leg.wa.gov/rcw/>.



(22) "Respondent" is the student against whom disciplinary action is initiated.

(23) "Service" is the process by which a document is officially delivered to a party. Unless otherwise provided, service upon a party is accomplished by:

(a) Hand delivery of the document to the party; or

(b) By sending the document by email to the party's last known address.

Service is deemed complete upon hand delivery of the document or upon the date the document is emailed.

(24) "Sexual misconduct" is the definition ascribed to this term in WAC 495A-121-041(14).

(25) "Student" includes all persons taking courses at or through the college whether on a full-time or part-time basis and whether such courses are credit courses, noncredit courses, online courses, continuing education, or contract courses. Persons meeting the following criteria are considered students:

(a) Who withdraw after allegedly violating the code;

(b) Who are not officially enrolled for a particular term but have a continuing relationship with the college; or

(c) Who have been notified of their acceptance for admission.

(26) "Student conduct officer" is a college administrator designated by the president to be responsible for investigating allegations of student misconduct and taking disciplinary action based on the prohibited conduct listed in WAC 495A-121-041. The president may reassign any of the student conduct officer's responsibilities under this chapter as deemed appropriate.

(27) "Student organization" means any number of students who meet the college's formal requirements to form a club or organization.

(28) "Visitors" means guests, applicants, contractors, vendors, advisory board members, foundation board members, and members of the public on college premises.

(29) "WAC" means the Washington Administrative Code and can be accessed at <http://app.leg.wa.gov/wac/>.

**AMENDATORY SECTION** (Amending WSR 19-14-073, filed 6/30/19, effective 7/31/19)

**WAC 495A-121-043 Classroom conduct.** (1) Faculty members have the authority to take appropriate action to maintain order and proper conduct in their classroom and maintain the effective cooperation of students in fulfilling the objectives of the course.

(2) Bringing any person, thing, or object to a teaching and learning environment that may disrupt the environment or cause a safety or health hazard without the expressed approval of the faculty member is prohibited.

(3) Faculty members have the right to temporarily suspend any student(s) ~~((from a single class or related activity for the remainder of that day))~~ for up to three days if the student's misconduct creates disruption to the point that it is difficult or impossible to maintain the decorum of the class, related activity, or the learning and teaching environment. The faculty member shall report this temporary suspension to the student conduct officer or designee on the same day. In consultation with the faculty member, the student conduct

officer may set conditions for the student that must be followed upon returning to the class or activity.

(4) The suspension of up to one day discussed in subsection (3) of this section shall not be subject to any further appeal or review. However, any further discipline imposed by the student conduct officer or designee shall be processed in accordance with this chapter.

(5) Any suspension initiated by a faculty member or instructional administrator under this section will not affect any student grading that is based directly on attendance.

**AMENDATORY SECTION** (Amending WSR 19-14-073, filed 6/30/19, effective 7/31/19)

**WAC 495A-121-091 Student ((complaints)) grievances.** ~~((Complaints))~~ Grievances should be filed as soon as possible and no more than thirty days after the incident occurs.

(1) Step one. The student shall first schedule an informal meeting with the instructor or staff member to resolve the concern(s).

If an informal meeting does not resolve the concern(s), within ten working days from the time of the informal meeting, the student may present the grievance in writing to the instructor or staff member involved with a copy sent to the area administrator of student services. Within ten working days after receiving the grievance, the instructor or staff member shall respond to the grievance in writing.

(2) Step two. If the grievance is not resolved at step one, the student may within ten working days of the receipt of the written response, appeal to the area administrator by submitting the appropriate copy of the grievance form and all documents from step one to the area administrator.

(a) The area administrator shall hear the grievance within ten working days after receipt of the grievance form and shall render a decision in writing within ten working days after such hearing.

(b) The student will be afforded an adequate and fair opportunity to fully present their position and the relevant facts as they relate to the issues raised by the grievance.

(3) Step three. If the grievance is not resolved at step two, the student may within ten working days of receipt of the written response, provide the appropriate copy of the student grievance form and a written appeal, accompanied by documents and correspondence, to the senior administrator of student services.

(a) The senior administrator of student services shall hear the grievance within ten working days after receipt of the written appeal and shall render a decision in writing within ten working days after such hearing concludes.

(b) The student will be afforded an adequate and fair opportunity to fully present their position and the relevant facts and issues to be addressed in the grievance.

(c) The decision of the senior administrator of student services shall be final and binding on all parties involved in the grievance.

(d) Any settlement of the grievance shall be applicable to that grievance only and shall not be a precedent or have binding effect or disposition on any other grievances of similar nature.

AMENDATORY SECTION (Amending WSR 19-14-073, filed 6/30/19, effective 7/31/19)

**WAC 495A-121-093 Time limits on filing a ((~~complaint~~)) grievance.** The student must file a ((~~complaint~~)) grievance within one quarter of the event, which caused the grievance to be filed. The senior administrator of student services may suspend this rule under exceptional circumstances such as extended illness((~~g~~)) or a leave of absence. No complaints will be considered after two quarters of the occurrence of the source of the grievance. When either party to the ((~~complaint~~)) grievance is no longer present at the college and does not expect to return, the senior administrator of student services will give the absent party reasonable opportunity to reply to the ((~~complaint~~)) grievance before making a decision.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 495A-121-024 Campus speakers.
- WAC 495A-121-046 Groups and organizations.
- WAC 495A-121-047 Refunds and access.
- WAC 495A-121-048 Readmission after suspension or expulsion.
- WAC 495A-121-049 Reestablishment of performance standing.
- WAC 495A-121-090 Student grievance procedure.

**WSR 20-14-096**  
**PROPOSED RULES**  
**BATES TECHNICAL COLLEGE**

[Filed June 30, 2020, 11:14 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-04-043.

Title of Rule and Other Identifying Information: Amending chapter 495A-280 WAC to align with current policies and practices for Bates Technical College.

Hearing Location(s): On August 14, 2020, at 9:30 - 10:30 a.m.

Zoom, virtual public hearing. See <https://batestech.zoom.us/j/91639906215> Zoom address under comment.

Date of Intended Adoption: October 1, 2020.

Submit Written Comments to: Dr. Jean Hernandez, 1101 South Yakima Avenue, Room A332, Tacoma, WA 98405-4895 AND to email below due to COVID-19 working remotely, email [jehernandez@batestech.edu](mailto:jehernandez@batestech.edu), by July 31, 2020.

Assistance for Persons with Disabilities: Contact Dr. Jean Hernandez, email [jehernandez@batestech.edu](mailto:jehernandez@batestech.edu), by July 31, 2020.

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

with current policies and practices for Bates Technical College.

Reasons Supporting Proposal: See purpose above.

Statutory Authority for Adoption: Chapters 34.05, 42.56 RCW; RCW 28B.50.140.

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

Name of Proponent: Bates Technical College, governmental.

Name of Agency Personnel Responsible for Drafting: Dr. Jean Hernandez, Bates Technical College, [jehernandez@batestech.edu](mailto:jehernandez@batestech.edu); Implementation and Enforcement: Office of the President, Bates Technical College, [kbryson@batestech.edu](mailto:kbryson@batestech.edu).

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

June 30, 2020

Dr. Jean Hernandez

Special Assistant to the President

AMENDATORY SECTION (Amending WSR 92-12-017, filed 5/26/92, effective 6/26/92)

**WAC 495A-280-010 General policy.** Bates Technical College, District 28, implements the policy contained in this chapter in compliance with the Family Educational Rights and Privacy Act (FERPA)(20 U.S.C. §1232g) and its implementing regulation (34 C.F.R. §99). ((~~Briefly~~)) Bates Technical College, District 28, is required to provide students with access to their own education records, to permit students to challenge their records on the grounds that they are inaccurate, misleading, or otherwise in violation of the student's privacy or other right, to obtain written consent before releasing certain information and to notify students of these rights.

AMENDATORY SECTION (Amending WSR 92-12-017, filed 5/26/92, effective 6/26/92)

**WAC 495A-280-015 Definitions.** For the purposes of this policy, the following definitions of terms apply:

~~(1) "Student" ((means any individual who is or has been in attendance at Bates Technical College and for whom the college maintains education records:~~

(2)) is someone who is currently or previously enrolled in a course offering at Bates Technical College, District 28. A student includes all persons taking courses at or through the college whether on a full-time or part-time basis and whether such courses are credit courses, noncredit courses, online courses, continuing education, or contract courses.

(2) "Family Educational Rights and Privacy Act" and "FERPA" mean the law and regulations known by those names (20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99).

(3) "Education records" are defined as those records, files and documents (in handwriting, print, tapes, film, microfiche or other medium) maintained by Bates Technical College which contain information directly related to the individual student. Education records include only the following:

(a) Records pertaining to admission, advisement, registration, grading, and progress toward a degree or certificate that are maintained by the registrar.

(b) Testing information used for advisement purposes by the counseling center.

(c) Information concerning payment of fees as maintained by the registrar.

(d) Financial aid information as collected by the financial aid office.

(e) Information regarding students participating in student government that is maintained by the student programs office.

~~((3))~~ (4) "Directory information" means:

~~(a) The student's name(, address, telephone number, date and place of birth,);~~

~~(b) Major field of study((, eligibility for and participation in officially recognized activities, organizations, and sports, weight and height of members of athletic teams, dates of attendance, honor roll, degrees and awards received, and the most recent previous educational agency or institution attended by the student));~~

(c) Enrollment status;

(d) Dates of attendance;

(e) Participation in recognized activities;

(f) Credentials (i.e., degrees, certificates, etc.); and

(g) Honors.

Directory information may be disclosed at the discretion of the college and without the consent of the student unless ~~((he or she))~~ they elect~~(s))~~ to prevent disclosure as provided for ~~((in WAC 495A-280-070))~~ as outlined in college policy.

~~((4))~~ (5) "Written consent" means a written authorization for disclosure of student education records which is:

(a) Signed;

(b) Dated;

(c) Which specifies the records to be disclosed; and

(d) Which specifies to whom disclosure is authorized.

~~((5))~~ (6) "Personally identifiable" means data or information which includes: The name of the student, the student's parent(s), or other family members; a personal identifier such

as the student's Social Security number or student number; or a list of personal characteristics which would make the student's identity easily traceable.

(7) "College registrar" is a college administrator designated by the vice president for student services to be responsible for overseeing FERPA unless the vice president for student services assigns a different administrator as the designee.

(8) "RCW" means Revised Code of Washington and can be accessed at <http://apps.leg.wa.gov/rcw/>.

(9) "WAC" means the Washington Administrative Code and can be accessed at <http://app.leg.wa.gov/wac/>.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 495A-280-020 Annual notification of rights.

WAC 495A-280-030 Procedure to inspect education records.

WAC 495A-280-040 Disclosure of education records.

WAC 495A-280-050 Limits on rights to review and inspect and obtain copies of education records.

WAC 495A-280-060 Record of request and disclosures.

WAC 495A-280-070 Disclosure of directory information.

WAC 495A-280-080 Requests for corrections, hearings, adding statements to education records.

WAC 495A-280-090 Fees for copies.

WAC 495A-280-100 Waiver.

WAC 495A-280-110 Type and location of education records.

#### **WSR 20-14-097 PROPOSED RULES DEPARTMENT OF RETIREMENT SYSTEMS**

[Filed June 30, 2020, 11:26 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-07-123.

Title of Rule and Other Identifying Information: WAC 415-111-310 Defined contribution account distribution (withdrawal), 415-501-485 How do I obtain a distribution?, 415-501-487 If my beneficiary dies while receiving my accumulated deferrals, who will get the remainder of the account?, 415-501-488 How will the account be distributed if my beneficiary is my spouse?, 415-501-491 How will the account be distributed if my beneficiary is not my spouse?, 415-501-495 Will the department honor domestic relations orders?, 415-501-494 How will the account be distributed if my beneficiary is a minor?, and 415-501-510 May I withdraw

some or all of my accumulated deferrals in the event of an unforeseeable emergency?

Hearing Location(s): On August 4, 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: 27478928.

Date of Intended Adoption: August 5, 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 August 4, 2020.

Assistance for Persons with Disabilities: Contact Jilene Siegel, phone 360-664-7291, TTY 711, email drs.rules@drs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These revisions incorporate federal SECURE Act changes regarding required minimum distributions, and describe upcoming changes made possible by the transition to a different record keeper.

Statutory Authority for Adoption: RCW 41.50.050.

Statute Being Implemented: RCW 41.50.770, deferred compensation program; chapter 2.14 RCW, judicial retirement accounts; chapter 41.34 RCW, Plan 3 retirement system contributions.

Rule is necessary because of federal law, 116th CONGRESS 1st Session H.R. 1994, Short Title, "Setting Every Community Up for Retirement Enhancement Act of 2019" (SECURE Act).

Name of Proponent: Department of retirement systems, governmental.

Name of Agency Personnel Responsible for Implementation: Seth Miller, Department of Retirement Systems, 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.

June 30, 2020  
Jilene Siegel  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-19-027, filed 9/8/15, effective 10/9/15)

**WAC 415-111-310 Defined contribution account distribution (withdrawal).** (1) ~~((How do I))~~ **What are the requirements to request a distribution (withdrawal) of funds from my defined contribution account?**

(a) You must separate from all eligible employment;

(b) The department must receive the notice of separation from your employer(s); and

(c) The department's designated recordkeeper must receive a completed request for a defined contribution distribution from your account. See WAC 415-111-110.

**(2) Can I receive a special exception distribution?**

(a) If you are terminally ill and eligible, the department's designated recordkeeper will arrange for payment to you within ten workdays. To be eligible for a special exception payment:

(i) You must separate from all eligible employment;

(ii) The department must receive the notice of separation from your employer(s);

(iii) The department's designated recordkeeper must receive documentation verifying your terminal illness; and

(iv) The department's designated recordkeeper must receive a completed request for a defined contribution distribution from your account (see WAC 415-111-110).

(b) If you have an unforeseeable emergency, the department's designated recordkeeper will consider your request for a special exception payment and arrange for payment to you whenever possible. To be eligible for consideration:

(i) You must separate from all eligible employment;

(ii) The department must receive the notice of separation from your employer(s);

(iii) The department's designated recordkeeper must receive documentation verifying and explaining your unforeseeable emergency. The recordkeeper will consider only unforeseeable emergencies. An unforeseeable emergency is defined as a severe financial hardship resulting from:

(A) An accident or serious illness of you or an immediate family member;

(B) The need to pay for medical expenses for you or a dependent;

(C) Imminent foreclosure or eviction from your primary residence;

(D) The need to pay for funeral expenses of a spouse or immediate family member; or

(E) Loss of property due to casualty.

(iv) The department's designated recordkeeper must receive a completed request for a defined contribution distribution from your account (see WAC 415-111-110).

(c) Depending on which program you are invested in, self-directed or WSIB Total Allocation Portfolio (TAP), the recordkeeper will distribute your special exception payment as specified in the table below, less any applicable tax withholding.

	<b>Terminal Illness</b>	<b>Unforeseeable Emergency</b>
<b>Self-Directed</b>	Up to 100% of the balance in the account within 10 days after approvals are completed.	Up to 100% of the balance in the account within 10 days after approvals are completed.

	<b>Terminal Illness</b>	<b>Unforeseeable Emergency</b>
<b>WSIB Total Allocation Portfolio (TAP)</b>	Up to 100% of the balance in the account based on the most recent valuation within 10 days after approvals are completed.	Up to 80% of the balance in the account distributed as a lump sum payment through the normal month-end distribution process. If 100% liquidation is requested, the remaining balance in the account will be disbursed after the final valuation has been made.

(3) **Can I still receive my defined contribution distribution if I have returned to work before receiving my funds?** If you return to work in an eligible position after all the criteria in subsection (1) of this section are met, you may receive distribution from your defined contribution account.

(4) **What are my options for distributing my defined contribution funds?** You have the following options for distributions from your Plan 3 defined contribution account. Options for both the WSIB and the self-directed investment programs are combined where applicable.

(a) **Lump sum cash distribution. In either program,** you may request the entire amount of your funds in a single lump-sum payment.

(b) **Direct rollover. In either program,** you may have some or all of your funds rolled over to an eligible retirement plan or individual retirement account (IRA). If you choose a partial rollover, the remaining funds that were not rolled over will be distributed to you as a lump sum, unless you create a personal payment schedule under (d) of this subsection.

(c) **Scheduled payments. In either program,** subject to the distribution requirements of IRC section 401 (a)(9), you may request that your funds be distributed in equal payments over a specified period of time, or that a specific dollar amount be paid on a monthly basis until the account is exhausted. You may also request equal payments over your lifetime or the lifetimes of you and your beneficiary. Scheduled payments for the WSIB program are made monthly only. Scheduled payments for the self-directed program may be made monthly, quarterly, semiannually or annually. ~~((Both programs have a minimum payment requirement of one hundred dollars per month.))~~

(d) **Personalized payment plan. In either program,** you may create a personalized payment plan using any part of one or more of the distribution options provided in (a), (b), and (c) of this subsection (see examples below).

(e) **Annuity purchase. In either program,** you may ~~((request to have your funds used to))~~ purchase an annuity that pays a benefit for your lifetime or the lifetimes of you and your joint annuitant. See WAC 415-111-320 for informa-

tion about purchasing an annuity and descriptions of the various annuity contracts.

(5) **Market fluctuations.** Your defined contribution account is subject to actual investment earnings (both gains and losses). These gains or losses ~~((will be used to adjust))~~ impact the value of your account. The defined contribution payment plans are subject to the same market fluctuations. As a result, the funding of your selected payment plan may last longer than anticipated due to market gains, or end earlier than anticipated due to market losses.

**EXAMPLE (WSIB - Partial rollover with payments until account exhausted):**

Pat has \$10,000 in the WSIB investment program. Pat wants to rollover \$2,000 of the total to an IRA, but does not want to receive the remainder of the account in a lump sum payment as provided by the partial direct rollover option. Pat selects the personalized payment schedule option and requests to do a partial rollover of \$2,000 and receive the remaining \$8,000 in equal monthly payments of \$125 until the account is exhausted (approximately 64 months).

**EXAMPLE (Self - Partial rollover with payments for fixed period):**

Chris has \$10,000 in the self-directed investment program. Chris wants to rollover \$3,000 of the total to an IRA, but does not want to receive the remainder of the account in a lump sum payment as provided by the partial direct rollover option. Chris selects the personalized payment schedule option and requests to do a partial rollover of \$3,000 and receive the remaining \$7,000 in quarterly payments of \$250 over the next 7 years (28 quarters).

<b>Summary of Distribution Options</b>	
<b>SELF</b>	<b>WSIB</b>
<b>Lump Sum Cash Distribution or Direct Rollover</b>	<b>Lump Sum Cash Distribution or Direct Rollover</b>
- Entire account - Partial amount - Remaining funds can be distributed in a lump-sum payment or by a personalized payment schedule (see below).	- Entire account - Partial amount - Remaining funds can be distributed in a lump-sum payment or by a personalized payment schedule (see below).
<b>Scheduled Payments</b>	<b>Scheduled Payments</b>
- Equal payments - Monthly, quarterly, semi-annual or annual - Specified period of time, <b>or</b> - Until the account is exhausted - Payments can be combined life expectancy of you and a beneficiary.	- Equal payments - Monthly payments only - Specified period of time, <b>or</b> - Until the account is exhausted - Payments can be combined life expectancy of you and a beneficiary.

Summary of Distribution Options	
SELF	WSIB
<b>Annuity Purchase</b>	<b>Annuity Purchase</b>
- Purchase an annuity from an insurance company	- Purchase an annuity, administered by the state of Washington
- Set up to pay benefits for	- Set up to pay benefits for
- Your lifetime, or	- Your lifetime, <b>or</b>
- Lifetimes of you and your joint annuitant.	- Lifetimes of you and your joint annuitant.
<b>In addition to the above, you may set up:</b>	<b>In addition to the above, you may set up:</b>
<b>Personalized Payment Plan</b>	<b>Personalized Payment Plan</b>
- Customized for your needs	- Customized for your needs
- Available for options above.	- Available for options above.

(6) **Minimum required distribution.** (~~Beginning on~~) No later than April 1st of the calendar year following the year in which you turn age ((70-1/2)) ~~seventy-two~~, you are required to withdraw a minimum amount from your defined contributions annually. (Prior to January 2020, required minimum distributions began at age seventy and one-half.) Subsequent withdrawals must be taken by December 31st of each year. If you are still working at age ((70-1/2)) ~~seventy-two~~, distribution is required to begin ((immediately upon retirement)) by April 1st the year following separation.

(7) See RCW 41.34.070 for additional information.

AMENDATORY SECTION (Amending WSR 14-10-045, filed 4/30/14, effective 6/1/14)

**WAC 415-501-485 How do I obtain a distribution?** Distribution from the plan is governed by Internal Revenue Code Sections 401 (a)(9) and 457(d); the treasury regulations interpreting these sections; and these rules to the extent they are not inconsistent with the Internal Revenue Code. The options for distribution are (~~set forth in the instructions which will be provided by the department~~) available from the department's designated record keeper.

(1) **Date of distribution.** You may choose the date on which to begin distribution from your deferred compensation account, subject to the requirements in (a) through (c) of this subsection.

(a) **Earliest date.** You may not begin distribution prior to your termination of employment, with the following exceptions:

(i) A distribution for an unforeseeable emergency under WAC 415-501-510;

(ii) A voluntary in-service distribution under subsection (4) of this section;

(iii) A distribution from funds that were rolled into the deferred compensation account (may be subject to tax penalties); or

(iv) An in-service distribution in any calendar year in which you will reach age seventy and one-half or more.

(b) **Latest date.** You must begin distribution on or before April 1st of the calendar year following the latter of:

(i) The calendar year in which you reach age (~~seventy and one-half~~) seventy-two; or

(ii) The calendar year in which you retire.

(c) If you do not choose a distribution date, the department will begin distribution according to the minimum distribution requirements in IRC Section 401 (a)(9).

(2) **Method of distribution.** Payment options include a lump sum payment, partial lump sum payment, periodic payments, or an annuity purchase.

~~((a) Periodic payments must total at least six hundred dollars per year.~~

~~(b)) Beginning at age ((seventy and one-half)) ~~seventy-two~~ or when you terminate employment, whichever comes later, payment must be in an amount to satisfy minimum distribution requirements in IRC Section 401 (a)(9).~~

(3) **Voluntary in-service distribution at any age.** You may choose to withdraw the total amount payable to you under the plan while you are employed if the following three requirements are met:

(a) Your entire account value does not exceed five thousand dollars;

(b) You have not previously received an in-service distribution; and

(c) You have made no (~~annual deferral~~) deferrals during the two-year period ending on the date of the in-service distribution.

(4) **Unforeseeable emergencies.** See WAC 415-501-510.

(5) **Rehire.** If you begin to receive distributions and then return to employment with a DCP employer, distributions from your DCP account will cease. You may request distribution when you are again eligible consistent with these rules.

AMENDATORY SECTION (Amending WSR 04-22-053, filed 10/29/04, effective 11/29/04)

**WAC 415-501-487 If my beneficiary dies while receiving my accumulated deferrals, who will get the remainder of the account?** If your beneficiary dies while receiving distributions, any remaining balance will be paid (~~to your beneficiary's estate. Distribution will take place in the second month following the notification of the beneficiary's death, unless benefits are being paid under an annuity you purchased. If benefits were being paid under an annuity~~) according to the beneficiary election on file (see WAC 415-501-480).

(1) If there is no beneficiary election on file, the remaining balance will be paid to your beneficiary's estate.

(2) If your beneficiary is being paid under an annuity you purchased, distribution will be governed by the terms of the annuity contract.

AMENDATORY SECTION (Amending WSR 14-10-045, filed 4/30/14, effective 6/1/14)

**WAC 415-501-488 How will the account be distributed if my beneficiary is my spouse?** If you die with money

in your account and your beneficiary is your spouse, ~~((your account will be distributed in accordance with this rule.))~~ an account will be established in ~~((the name of))~~ your spouse's name.

(1) The distribution options will be ~~((mailed))~~ provided to your spouse when DCP is notified of your death. Your spouse may choose any method of distribution (annuity, periodic payments, or lump sum) that provides at least the required minimum distribution each calendar year until your account is exhausted.

(a) The department must receive your spouse's election ~~((form))~~ at least thirty days before distribution is to begin.

~~(b) ((Periodic distributions must total at least six hundred dollars per year.~~

~~(c))~~ Receiving more than the required minimum distribution during one calendar year does not excuse your spouse from taking the required minimum in any calendar year to which the required minimum applies.

(2) Required minimum distribution.

(a) First required distribution if you die *before* your "required beginning date" (see WAC 415-501-485 (1)(b)). Beginning in the later of:

(i) The calendar year following the calendar year of your death; or

(ii) The calendar year you would have attained age ~~((seventy and one-half))~~ seventy-two, your spouse must receive the required minimum distribution. This distribution must be taken by December 31st of the applicable calendar year. (Prior to January 2020, the age for required minimum distributions was seventy and one-half.)

(b) First required distribution if you die *after* your "required beginning date" (see WAC 415-501-485 (1)(b)), your spouse must receive the required minimum distribution during the calendar year following the year of your death. The distribution must be taken by December 31st of the applicable calendar year.

(c) Your spouse must receive the required minimum distribution during each subsequent calendar year until the account is exhausted.

(d) The required minimum distribution in each of the relevant calendar years is based on life expectancies set forth in the treasury regulations.

(3) If your spouse dies before ~~((his or her))~~ the entire account is exhausted, the remainder of the account will be paid according to the beneficiary election(s) on file (see WAC 415-501-480). If there is no beneficiary election on file, the remaining balance will be paid to ((his or her)) their estate.

AMENDATORY SECTION (Amending WSR 14-10-045, filed 4/30/14, effective 6/1/14)

**WAC 415-501-491 How will the account be distributed if my beneficiary is not my spouse?** If you die with money in your account and your beneficiary is an individual other than your spouse, ~~((your account will be distributed in accordance with this rule.))~~ an account will be established in ~~((the name of))~~ your ~~((beneficiary))~~ beneficiary's name.

(1) For rules governing distribution to an entity other than an individual (e.g., a trust, estate, or organization), see WAC 415-501-493.

(2) The distribution options will be ~~((mailed))~~ provided to your beneficiary when DCP is notified of your death. Your beneficiary may choose any method of distribution (annuity, periodic payments, or lump sum) that provides at least the required minimum distribution each calendar year until your account is exhausted.

(a) The department must receive your beneficiary's election ~~((form))~~ at least thirty days before distribution is to begin.

~~(b) ((Periodic distributions must total at least six hundred dollars per year.~~

~~(c))~~ Receiving more than the required minimum distribution during one calendar year does not excuse your beneficiary from taking the required minimum in any calendar year to which the required minimum applies.

(3) Required minimum distribution.

(a) First required distribution if you die *before* your "required beginning date" (see WAC 415-501-485 (1)(b)), your beneficiary may ~~((choose))~~ choose to receive the required minimum distribution under either the "life expectancy rule" or the "five year rule." Your beneficiary must elect one of the two rules at least thirty days before distribution would be required to begin under the life expectancy rule. If a timely election is not received, your beneficiary will be required to receive the required minimum distribution under the "five year rule."

(i) Life expectancy rule. Distribution under this rule allows your beneficiary to spread distribution over ~~((his or her))~~ their life expectancy. Beginning in the calendar year following the calendar year of your death, your beneficiary must receive a required minimum distribution. This distribution must be taken by December 31st of the calendar year.

(ii) Five year rule. Under this rule, the first mandatory distribution is later than under the life expectancy rule. However, the beneficiary's entire account must be distributed on or before December 31st of the fifth calendar year following the calendar year of your death.

(b) First required distribution if you die *after* your "required beginning date" (see WAC 415-501-485 (1)(b)), your beneficiary must receive a required minimum distribution during the calendar year following the year of your death. The distribution must be taken by December 31st of the applicable calendar year.

(c) Your beneficiary must receive a required minimum distribution during each subsequent calendar year until the account is exhausted.

(d) The required minimum distribution in each of the relevant calendar years is based on life expectancies set forth in the treasury regulations.

(4) If your beneficiary dies before ~~((his or her))~~ the entire account is exhausted, the remainder of the account will be paid according to the beneficiary election(s) on file (see WAC 415-501-480). If there is no beneficiary election on file, the remaining balance will be paid to ((his or her)) their estate.

AMENDATORY SECTION (Amending WSR 14-10-045, filed 4/30/14, effective 6/1/14)

**WAC 415-501-495 Will the department honor domestic relations orders?** (1) The department will honor a domestic relations order (DRO) only if the order:

(a) Was entered by a court of competent jurisdiction pursuant to the domestic relations law of any state;

(b) Establishes a right of a spouse or former spouse to a portion of your deferred compensation account pursuant to a division of property;

(c) Clearly states either the dollar amount or a percentage of the account to be transferred to the account of the spouse or former spouse from your account; and

(d) Provides your name and date of birth, and the name and date of birth of your spouse or former spouse.

(2) You must provide the address and Social Security number of both you and your spouse or former spouse to the department. ~~((This information may be submitted in a cover letter, in another document, or by other means arranged with the department.))~~

(3) To implement a DRO, the department will establish a separate account for the spouse or former spouse in the amount specified in subsection (1)(c) of this section. The transfer(s) will be prorated across all funds and money sources based on the amount awarded to the spouse or former spouse. Thereafter, the spouse or former spouse may provide investment instructions under WAC 415-501-475.

(4) Your spouse or former spouse may choose a method of distribution, including an eligible direct rollover.

(5) If a DRO filed with the department prior to January 1, 2002, provides that distribution to the spouse or former spouse is not available until you separate from service, the department will comply with the express terms of the order unless it is subsequently amended.

(6) If the spouse or former spouse has not elected another method of distribution before the original account holder reaches age ~~((seventy and one-half))~~ seventy-two, the department will begin distribution in accordance with the minimum distribution requirements in IRC 401 (a)(9) and the treasury regulations thereunder.

(7) If the spouse or former spouse dies before the account is fully distributed, the remaining balance will be paid according to the beneficiary election(s) on file (see WAC 415-501-480). If there is no beneficiary election on file, the remaining balance will be paid to ((his or her)) their estate.

AMENDATORY SECTION (Amending WSR 09-09-044, filed 4/9/09, effective 5/10/09)

**WAC 415-501-494 How will the account be distributed if my beneficiary is a minor?** If you die before your entire account has been distributed and if one or more of your beneficiaries is a minor child, ~~((the department will distribute))~~ your deferred compensation funds will be distributed to the minor according to the following:

(1) ~~((Nominated UTMA custodian. If your beneficiary is a minor at the time of your death, and if you have nominated a custodian to receive funds on behalf of your minor beneficiary pursuant to RCW 11.114.030 of the Uniform~~

~~Transfers to Minors Act (UTMA), the department will distribute your funds to the custodian regardless of the amount to be distributed. If you have more than one minor beneficiary, a separate custodianship must be established for each minor.~~

~~(2) No nominated UTMA custodian. If, at the time of your death, your beneficiary is a minor and you did not nominate a custodian to receive the funds on behalf of your minor beneficiary, then your funds will be distributed according to the following:~~

~~(a) If your beneficiary is an emancipated minor and your DCP account balance is less than five thousand dollars, the department will distribute the funds directly to the minor.~~

~~(b) If your beneficiary is an unemancipated minor and your DCP account balance is less than five thousand dollars, the department will distribute the funds to an adult member of the minor's family or to a court-appointed custodian who submits a claim on behalf of the minor beneficiary. If no adult family member or court-appointed custodian submits a claim within one hundred eighty days of your death, the department will directly petition the court for the appointment of a custodian under the UTMA. After a custodian is appointed, the department will distribute the funds to the custodian.~~

~~(c) If your beneficiary is a minor and your DCP account balance is five thousand dollars or greater, the department will distribute the funds only to a court-appointed guardian.~~

~~(i) Upon satisfactory proof of guardianship, the department will distribute the funds to the guardian of the minor.~~

~~(ii) If the department does not receive satisfactory proof of guardianship within one hundred eighty days of your death, the department will petition the court for the appointment of a guardian under chapters 11.88 and 11.92 RCW. After a guardian is appointed, the department will distribute the funds to the guardian pursuant to the terms of the guardianship order.)~~ If the guardian is a parent, a Proof of Guardianship form and a copy of the minor's birth certificate is required.

(2) If the guardian is not a parent, a Proof of Guardianship form and court documentation verifying the guardianship of the minor is required.

(3) Distribution consistent with this rule releases the department and its designated recordkeeper from further liability with regard to your DCP account.

(4) The person receiving the distribution pursuant to this rule must choose a distribution date and method on behalf of the minor, consistent with the requirements of this chapter.

~~((5) Terms used. For purposes of this rule, the following terms are defined as:~~

~~(a) An "adult" is any person who has attained the age of twenty-one years.~~

~~(b) A "member of the minor's family" means a parent, stepparent, spouse, grandparent, brother, sister, uncle, or aunt of the minor, whether in whole or half blood or by adoption.)~~

AMENDATORY SECTION (Amending WSR 14-10-045, filed 4/30/14, effective 6/1/14)

**WAC 415-501-510 May I ((have)) withdraw some or all of my accumulated deferrals in the event of an unforeseeable emergency?** (1) Notwithstanding any other provi-



sions in this chapter, you may request all or a portion of your accumulated deferrals in the event of an unforeseeable emergency. Distribution will be made within sixty days following the department's approval of your request. The amount paid will be limited strictly to that amount reasonably necessary to satisfy the emergency need.

(2) For purposes of this plan, an unforeseeable emergency is severe financial hardship resulting from:

(a) A personal illness or accident or the illness or injury of a spouse or dependent who meets the definition in Section 152(a) of the Internal Revenue Code;

(b) Loss of your property due to casualty, including the need to rebuild a home following damage not otherwise covered by homeowner's insurance, e.g., as a result of natural disaster; or

(c) Other similar extraordinary and unforeseeable circumstances arising as a result of events beyond your control, such as:

(i) The imminent foreclosure of or eviction from your primary residence due to circumstances that were beyond your control;

(ii) The need to pay medical expenses, including nonrefundable deductibles as well as the cost of prescription drug medication; or

(iii) The need to pay funeral expenses of a participant's or beneficiary's spouse or dependent (as defined in Section 152(a) of the Internal Revenue Code without regard to Sections 152 (b)(1), (2), and (d)(1)).

(3) The circumstances that constitute an unforeseeable emergency depend upon the facts of each case, but, in no case will the department approve a distribution request if the financial hardship is or may be relieved:

(a) Through reimbursement or compensation by insurance or otherwise; or

(b) By liquidation of your assets, to the extent liquidation of such assets would not itself cause severe financial hardship; or

(c) By cessation of deferrals under the plan.

(4) Examples: The following types of occurrences are not considered unforeseeable emergencies: Sending your child to college or purchasing a home.

(5) If the department denies your request for distribution, you may request a review of that decision according to the provisions of WAC 415-08-015.

~~((6) If your request meets the requirement for a financial emergency withdrawal, contributions into this plan must cease for a period of at least six months from the date of the withdrawal.))~~

Title of Rule and Other Identifying Information: Amending chapter 495A-325 WAC to align with current practices for Bates Technical College.

Hearing Location(s): On August 14, 2020, at 11:00 a.m. - noon.

Zoom, virtual public hearing. See <https://batestech.zoom.us/j/92119623951> Zoom address under comment.

Date of Intended Adoption: October 1, 2020.

Submit Written Comments to: Dr. Jean Hernandez, 1101 South Yakima Avenue, Room A332, Tacoma, WA 98405-4895 AND to email below due to COVID-19 working remotely, email [jehernandez@batestech.edu](mailto:jehernandez@batestech.edu), by July 31, 2020.

Assistance for Persons with Disabilities: Contact Dr. Jean Hernandez, email [jehernandez@batestech.edu](mailto:jehernandez@batestech.edu), by July 31, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amending to align with current policies and practices for Bates Technical College.

Reasons Supporting Proposal: See purpose above.

Statutory Authority for Adoption: RCW 28B.50.140; chapter 34.05 RCW.

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

Name of Proponent: Bates Technical College, governmental.

Name of Agency Personnel Responsible for Drafting: Dr. Jean Hernandez, Bates Technical College, [jehernandez@batestech.edu](mailto:jehernandez@batestech.edu); Implementation and Enforcement: Office of the President, Bates Technical College, [kbryson@batestech.edu](mailto:kbryson@batestech.edu).

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

## WSR 20-14-098

### PROPOSED RULES

#### BATES TECHNICAL COLLEGE

[Filed June 30, 2020, 11:31 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-04-044.

June 30, 2020

Dr. Jean Hernandez  
Special Assistant to the President

AMENDATORY SECTION (Amending WSR 92-12-017, filed 5/26/92, effective 6/26/92)

**WAC 495A-325-010 Implementation of State Environmental Policy Act.** (1) It shall be the policy of Bates Technical College, District 28, that all actions taken by the district shall comply with the provisions of chapter 43.21C RCW (the State Environmental Policy Act), chapters 197-11 and 132-24 WAC.

(2) The president of the district or ((his or her)) designee shall be responsible for administering and implementing this policy.

**WSR 20-14-102**  
**PROPOSED RULES**  
**DEPARTMENT OF HEALTH**

[Filed June 30, 2020, 1:21 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-18-110.

Title of Rule and Other Identifying Information: WAC 246-830-005, 246-830-020, 246-830-035, 246-830-037, 246-830-420, 246-830-430, 246-830-440, 246-830-475, 246-830-550, 246-830-555, 246-830-557, 246-830-560, 246-830-565, and 246-830-570, massage practitioners. The board of massage in coordination with the department of health (DOH) is proposing amendments to existing sections that add new definitions, revise licensing standards for out-of-state applicants, transfer programs, approval of schools, training hours, student clinic, continuing education, standards of practice, breast massage, coverage and draping, recordkeeping, and record retention. The proposed rules also create a new section for massage of the gluteal cleft and perineum.

Hearing Location(s): On August 21, 2020, at 10:00 a.m.

In response to the coronavirus disease 2019 (COVID-19) public health emergency, the board of massage and DOH will not provide a physical location for this hearing to promote social distancing and the safety of the citizens of Washington state. A virtual public hearing, without a physical meeting space, will be held instead.

To access the meeting: Please register for board of massage regular meeting - August 21, 2020, on August 21, 2020, 9:00 a.m. PDT at <https://attendee.gotowebinar.com/register/3126916919232304399>.

Date of Intended Adoption: August 21, 2020.

Submit Written Comments to: Megan Maxey, P.O. Box 47852, Olympia, WA 98504-7852, email <https://fortress.wa.gov/doh/policyreview>, fax 360-236-2901, [megan.maxey@doh.wa.gov](mailto:megan.maxey@doh.wa.gov), by August 14, 2020.

Assistance for Persons with Disabilities: Contact Davis Hylkema, phone 360-236-4633, TTY 711, email [davis.hylkema@doh.wa.gov](mailto:davis.hylkema@doh.wa.gov), by August 14, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposal is to make additional amendments to eleven of the rules adopted in 2017 and to address the rules for education and continuing education requirements which were not amended in 2017. The anticipated effect is clarification to

some of the amendments made in 2017 and increasing the initial education and training hours.

Reasons Supporting Proposal: A comprehensive review of the chapter was completed in 2017, with the exception of the education and training rule and the continuing education rule. The board of massage (board) recognizes the significant research and findings of the minimum education hours in correlation to public protection. The proposed increase in education hours reflects these findings. The board also recognizes that an increase in hours may create barriers for people seeking licensure by endorsement. The proposed amendments redefine "substantial equivalency" to recognize experience in lieu of education deficiencies. The board also recognizes the significant cost of noncompliance with continuing education requirements. The proposed amendments attempt to clarify options for continuing education activities. The board recognizes the importance of clinical experience prior to licensure. The proposed amendments make the student clinic mandatory for initial education and training. The proposed amendments to the breast massage and massage of the gluteal cleft and perineum rules protect the public by providing specificity of the additional training requirements that licensed massage therapists must obtain prior to performing these modalities. Furthermore, the additional layers of consent to treat these areas will better protect the public and give the department more enforceable tools.

Statutory Authority for Adoption: RCW 18.108.025 and 18.108.085.

Statute Being Implemented: Chapter 18.108 RCW.

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

Name of Proponent: Board of massage and DOH, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Megan Maxey, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4945.

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 Megan Maxey, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-4945, fax 360-236-2901, TTY 711, email [megan.maxey@doh.wa.gov](mailto:megan.maxey@doh.wa.gov).

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

A small business economic impact statement has been prepared. The rule proposal may impose more than a minor cost to businesses.

Small Business Economic Impact Statement

**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.**

**Brief Description of Proposed Rules with Potential Costs:**

<b>Rule</b>	<b>Brief Description of Change</b>	<b>Probable compliance requirements</b>
WAC 246-830-037 Transfer programs and transfer of prior education and clock hours.	Require students to pass written and practical tests and to update the language based on amendments of other sections of rule.	Developing and administering written and practical tests if not already requiring it.
WAC 246-830-420 Approval of massage school, massage program, or apprenticeship program.	Further define the role of the clinical supervisor and reduce the student to faculty ratio in the student clinic.	Hiring additional staff or increasing the current staff's working hours if the school's student to teacher ratio needs to be reduced.
WAC 246-830-430 Training.	Increasing the minimum education and training hours and adding increased specificity to subject matter requirements.	Revising the program's curriculum and making changes to classroom materials if they do not already meet the standards.
WAC 246-830-440 Curriculum—Academic standards—Faculty—Student clinic.	Changing the student clinic standard from an optional program to a mandatory requirement for massage school approval.	Developing the student clinic. Hiring additional staff or increasing current staff's working hours.
WAC 246-830-475 Continuing education requirements.	Revising the continuing education requirements.	Completing a CPR certification course.
WAC 246-830-565 Record-keeping.	Puts a clear limit on the length of time that a written consent to treat is valid for.	Updating intake forms.

**Brief Description of Proposed Rules without Potential Costs:**

<b>Rule</b>	<b>Brief Description of Change</b>
WAC 246-830-005 Definitions.	Adds new definitions to define terms used throughout the chapter.
WAC 246-830-020 Applications.	Adds language to clarify existing application requirements, and repeals requirement to provide proof of AIDS education to reflect changes in law.
WAC 246-830-035 Licensing for out-of-state applicants.	Further define substantial equivalency and to update the language based on amendments of other sections of rule.
WAC 246-830-550 Standards of practice—Limitations.	Revises the standards of practice to be more specific about the limitations of massage of certain parts of the body.
WAC 246-830-555 Breast massage.	Clarifies the client or patient consent requirement. Clarifying the additional training hours that are required prior to performing breast massage.
WAC 246-830-557 Massage of the gluteal cleft or perineum.	Removes language from the standards of practice limitations rule to create a new rule specific to massage of the gluteal cleft and perineum.
WAC 246-830-560 Coverage and draping.	Adds minor, clarifying changes in relation to the sanitation requirements of the linens that are used for draping.
WAC 246-830-570 Record retention.	Clarifies that the massage therapist is not necessarily the owner of the records, the records must be accessible to the massage therapist, and the massage therapist will not be in violation if they have made a good faith attempt to obtain the records.

**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.**

**Table A:**

<b>NAICS Code (4, 5 or 6 digit)</b>	<b>NAICS Business Description</b>	<b># of businesses in WA</b>	<b>Minor Cost Threshold = 1% of Average Annual Payroll</b>
611519	Other technical and trade schools	33	\$3,065.31

Additional administrative costs could be incurred to update school curriculum and/or hire new staff or increase working hours of current staff.

Survey Question	Mean	Median
In relation to staff time, what would be the cost to update your program and/or catalog/curriculum?	\$2,279.79	\$250.00
Would the change of ratio in the student clinic have a fiscal impact for you?	\$7,474.08	\$544.00
<b>Totals</b>	<b>\$9,753.87</b>	<b>\$794.00</b>

Contact the board of massage staff for a copy of the spreadsheet for the survey responses. These averages reflect to cost estimates from those responses.

**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.**

**A. WAC 246-830-035 Licensing for out-of-state applicants. (Amended)**

**Rule Overview:** Title change to *licensing by endorsement for out-of-state applicants*.

The current rule allows people who hold a massage license in another state or jurisdiction to become licensed in Washington if that state's or jurisdiction's licensing requirements are substantially equivalent to Washington's. The current rule defines substantial equivalency as a minimum of five hundred hours of education and training at a board approved massage program. *\*Note that under WAC 246-830-430, the board is proposing to increase the minimum number of training hours from five hundred to six hundred twenty-five.*

In order to create flexibility for out-of-state applicants seeking licensure in Washington while maintaining public safety, the proposed amendment changes the definition of substantial equivalency to one of the following:

- A minimum of six hundred twenty-five hours of education and training at a board-approved program completed in no less than twenty-four weeks, or
- A minimum of five hundred hours of education and training at a board-approved school and two years of practice experience and twenty-four hours of continuing education completed within two years prior to making application.

**Rule Cost:** Potential costs will vary based on the applicant's qualifications:

- If the applicant meets one of the definitions of substantial equivalency, then there will be no additional cost to comply with the rule.
- If the applicant has completed a training program of five hundred to six hundred twenty-four hours in length but does not have two years of massage practice experience, then the applicant would have to incur the cost of either completing a board-approved transfer program or a board-approved full program.
- If the applicant has completed a training program with more than six hundred twenty-five hours but in less than twenty-four weeks, then the applicant will incur the cost to complete a board-approved transfer program or a board-approved full program.

The cost for a full board approved program ranges from \$7,000 to \$16,000, or an average of \$15.70 per credit hour. The cost per credit hour for transfer programs range from \$18-20 plus a flat fee of \$700-800.

**Potential loss of sales/revenues:** There is no potential loss of sales or revenue to the school. Any potential costs are associated with the applicant obtaining a massage license.

**B. WAC 246-830-037 Transfer programs and transfer of prior education and clock hours. (Amended)**

**Rule Overview:** Title change to *Transfer programs and transfer of credit or clock hours for prior education and training*.

The board is proposing language that mandates transfer programs require their students to pass a written and practical test at the time of enrollment in order to determine potential deficiencies. The proposed language also clarifies that if there are missing components or if the applicant cannot pass the required testing, then the applicant must successfully complete those deficient components.

**Rule Cost:** The cost to comply with this rule will vary based on the program's current structure. The responses we received from transfer programs that do not require the student to pass a written and practical test prior to enrollment indicate a projected increase of the program fee from \$40 per hour to a flat fee of \$150.

**Potential loss of sales/revenues:** Of the survey responses received, two of the schools offer a transfer program. Neither school indicated a potential loss of sales or revenues.

**C. WAC 246-830-420 Approval of massage school, massage program, or apprenticeship program. (Amended)**

**Rule Overview:** The objective of the rule is to outline the standards to become a board-approved program. The current rule language for the student clinic standard is vague in regards to duties of the clinical supervisor. The current language states:

- The student clinic must be supervised by a clinical supervisor who is a licensed massage therapist with at least two years of practical experience, and
- The clinical supervisor is responsible for reviewing the health history of the student's client/patient.

The proposed language clarifies the following standards for a student clinic:

- The student clinic must be under direct supervision of a clinical supervisor who is a licensed massage therapist with at least three years practical experience.
  - o The increase from two to three years of practical experience creates uniformity throughout the chapter. The board felt that a minimum of three years of practical experience is necessary for an instructor to

offer qualified feedback to a student. This was discussed extensively with stakeholders. They provided positive feedback on the change from two to three years.

- In addition to reviewing the student's client or patient health history, the clinical supervisor must also review and approve the student's massage plan then observe a reasonable portion of each massage session based on the competency of the student.
- In order to provide clear and meaningful feedback, the number of students per clinical supervisor is reduced from ten to six.

**Rule Cost:** The cost to reduce the student to teacher ratio will vary across the schools based on their current structure. The survey results indicate a projected increase of \$0-1,000 per program. While one program indicated a projected increase of \$2,100 for the student clinic, the program also noted that its student clinic faculty is paid \$42 per hour. This appears to be an outlier, according to the Bureau of Labor Statistics, the annual mean wage for instructors at professional schools is listed at \$21.76 per hour.

Based on information provided by AMTA-WA, the following is an overview of what happens in an appropriately supervised clinic:

- a. Clients fill out a brief health history questionnaire. Students review the health history with their supervisor to assure that the students are aware of any red flags that would say "no" to massage or limit or otherwise inform the type of massage given.
- b. Students develop a massage plan, based on that health history and any client preferences, if appropriate. This plan is reviewed by the supervisor.
- c. Students begin the massage, knowing that if they have any concerns, they can stop the massage and talk with their supervisor. Examples of concern could be client questions that the students is unable to answer; client requests for a certain type of massage that is outside the scope of legitimate massage; student concerns about their safety in general; student questions concerning massage techniques upon finding an undisclosed physical problem.
- d. A supervisor will observe a student massage for a portion of time, to assess the competency of the student. Of course, the client would have authorized this type of observation.
- e. Students complete the massage and follow up with their supervisor concerning the session in general, to include their chart notes. Follow-up with their supervisor, to include review of the chart notes, is a crucial part of learning.

Student clinic massages typically range from thirty to ninety minutes. If there are six students each performing an hour long massage, then the clinical supervisor has ten minutes to observe each massage in progress in addition to doing anything else necessary while the patient is present. With a ratio of one supervisor to ten students this observation time is reduced to six minutes per student.

**Potential loss of sales/revenues:** Some of the schools indicated a potential cost associated with the rule. However, no school indicated a potential loss of sales or revenues.

**D. WAC 246-830-430 Training. (Amended)**

**Rule Overview:** Title changed to *Education and Training*.

The board is proposing to increase the education and training hours required in a massage school from five hundred to six hundred twenty-five. This change will align Washington with the recommended national best practices for minimum training hours established in the Entry Level Analysis Project (ELAP). ELAP is a research project initiated by the Coalition of National Massage Therapy Organizations. The project's goal is to define the knowledge and skills of entry-level massage education and to recommend the minimum number of hours schools should teach to prepare graduates for safe and competent practice. It is significantly more detailed than the current rule language and considered the best practice within the United States massage educational system.

The proposed amendments also put a minimum and maximum number of hours for student clinic. As outlined in the ELAP, a minimum of fifty hours in the student clinic allows the student to receive sufficient practical experience while in a supervised setting. The maximum number of hours in a student clinic is capped at seventy-five due to the concern of schools taking advantage of students. Schools can charge clients in the student clinic, but students are not allowed to receive compensation.

**Rule Cost:** There are fifty-one board approved massage programs as follows:

- Eighteen programs have five hundred to six hundred twenty-four hours.
- Thirty-three programs are at or greater than six hundred twenty-five hours.

Because sixty-five percent of massage programs in the state are already at or above six hundred twenty-five hours they will not incur additional costs to add new instruction time and faculty. These programs will need to ensure their training hours are aligned with the new rules. If they are not in alignment, then these schools will incur a one-time cost to adjust the curriculum in subjects with deficiencies. There is no cost for the schools to apply for board approval. If a school's hours change, then the school must submit the revised catalog to the workforce training and education coordinating board for approval. There are no costs associated with approval from the Workforce Board.

For schools below six hundred twenty-five hours the survey responses indicated a range of a projected one-time cost from \$0-7,000 in administrative costs to conduct a program review and change program materials with a possible increase in the tuition.

While schools will incur both one-time and ongoing costs, there is a demonstrable positive effect on student outcomes as demonstrated by pass rates for the national exam. Data provided by the Federation of State Massage Therapy Boards provides information about the national exam pass rate in correlation to the number of training hours. The national exam is written as an entry level exam.

Training hours	First time test taker pass rate	Pass rate for all test takers
500-570 hours	75.19%	69.82%

Training hours	First time test taker pass rate	Pass rate for all test takers
600-650 hours	81.18%	75.08%
700-750 hours	77.68%	71.22%
1000+ hours	70.63%	65.50%

**Potential loss of sales/revenues:** Some of the schools indicated a potential cost associated with the rule. However, no school indicated a potential loss of sales or revenues.

**E. WAC 246-830-440 Curriculum—Academic standards—Faculty—Student clinic. (Amended)**

**Rule Overview:** The proposed language clarifies that the rule applies to massage schools and massage programs in addition to the apprenticeship programs. It also requires the faculty member(s) to have three years of experience in the subject matter being taught. To align with the updates to WAC 246-830-430, the proposed language makes the student clinic mandatory.

**Rule Cost:** For ninety-eight percent of the current board approved schools the costs to comply with this rule are minimal to none as the schools already have supervised student clinics.

The department is aware of one school that does not offer a supervised student clinic. Those students are required to complete seventy-five hours of independent massage practice and purchase their own massage tables and linens. The students are not supervised by instructors and this could pose a risk to public safety as the students have not demonstrated competency to practice independently by passing the national exam.

Review of the school's website revealed students are currently required to purchase a portable massage table and supplies. The school would need to provide supervisor time and a space for the student clinic. As previously stated, the Bureau of Labor Statistics indicates the annual mean wage for instructors at professional schools is listed at \$21.76 per hour. This would be an increase of \$1,088-\$1,632, assuming a fifty to seventy-five hour student clinic.

**Potential loss of sales/revenues:** Some of the schools indicated a potential cost associated with the rule. However, no school indicated a potential loss of sales or revenues.

**F. WAC 246-830-475 Continuing education requirements. (Amended)**

**Rule Overview:** The current rule only requires that individuals who provide "specialized training" to have two years of experience. The new language mandates that all individuals providing continuing education have at least three years of professional experience. The proposed rule also clarifies that the direct supervised training must be in-person and involve the direct application of massage therapy. The proposed language also requires therapists to maintain CPR certification.

**Rule Cost:** The costs to licensees will be minimal because the number of hours per reporting period does not increase. The potential cost is the requirement to maintain CPR certification. Research shows that CPR certification courses cost anywhere from free to \$60. Additionally, based on the department's continuing education audits, the majority of therapists already do this.

**Potential loss of sales/revenues:** There is no potential loss of sales or revenue to the schools. Any potential costs are associated with requirements for the licensee to maintain an active license.

**G. WAC 246-830-555 Breast massage. (Amended)**

**Rule Overview:** The proposed rule is reorganized for readability purposes. The proposed language adds a requirement for verbal informed consent in addition to the current requirement of signed written consent.

**Rule Cost:** There is no cost to comply with these amendments.

**Potential loss of sales/revenues:** There is no potential loss of sales or revenue to the schools.

**H. WAC 246-830-557 Massage of the gluteal cleft or perineum. (New)**

**Rule Overview:** The proposed rule language for the new section is moved from the current language in WAC 246-830-550. That section currently requires a massage therapist practicing on a patient's gluteal cleft or perineum to complete sixteen hours of specialized training and obtain both written and verbal informed consent before treatment.

The new language adds specific requirements for what topics must be included in the sixteen hours of education and training beyond the minimum competencies in order to ensure patient safety. Massage practitioners must also include additional information for the patient during the consent process regarding the patient's ability to discontinue treatment at any time, ability to have a witness present and document a therapeutic rationale for the treatment acknowledged by the client or patient. The proposed rule also requires the use of appropriate draping techniques and the use of hygienic, safe, and sanitary practices, including gloves.

**Rule Cost:** The current rule requires that a therapist receive sixteen hours of specialized training beyond the minimum competencies to perform massage of the gluteal cleft and perineum, so there is no additional cost to comply with this rule.

**Potential loss of sales/revenues:** There is no potential loss of sales or revenue to the schools.

**I. WAC 246-830-560 Coverage and draping. (Amended)**

**Rule Overview:** The proposed language adds that coverage and draping practices must be safe, functional, and hygienic. Current language only states safe and functional. It also adds language that requires all linens to be maintained in accordance with WAC 246-830-500.

**Rule Cost:** There are no costs to comply with these amendments.

**Potential loss of sales/revenues:** There is no potential loss of sales or revenue to the business.

**J. WAC 246-830-565 Recordkeeping. (Amended)**

**Rule Overview:** The rule requires all massage therapists to document treatment provided. The proposed amendments put a time limit on how long written consent is valid for and include additional recordkeeping requirements for massage of the gluteal cleft or perineum.

**Rule Cost:** There may be minimal costs to comply with this rule if intake forms need to be updated.

**Potential loss of sales/revenues:** There is no potential loss of sales or revenue to the business.

**K. WAC 246-830-570 Record retention. (Amended)**

**Rule Overview:** The proposed language clarifies that client or patient records must be retained by or otherwise accessible to the massage therapist. It also clarifies that the retainer of the records is not necessarily the massage therapist. Finally, it clarifies that a massage therapist will not be in violation of the rule if they are unable to access client or patient records after making a good faith attempt to do so.

**Rule Cost:** There are no costs to comply with the changes.

**Potential loss of sales/revenues:** There is no potential loss of sales or revenue to the business.

**SECTION 4: Analyze whether the proposed rule may impose more than minor costs on businesses in the industry.**

Based on the survey response, some of the proposed rules may impose more than minor costs on businesses that would need to hire additional staff and/or update the curriculum.

Four schools indicated they would need to hire new staff or increase the current staff's hours. The costs associated with staffing ranged from \$6,789 - \$45,260.

Five schools indicated a one-time cost to update the school's curriculum. These costs ranged from \$500 - \$20,000.

**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.**

Some of the proposed changes may have a disproportionate impact on small businesses.

To consider the impact on small businesses, we analyzed the top ten percent of large businesses who responded to the survey. The information below provides the total and average costs between the small vs. large businesses.

	Range of Total Costs Reported	Average of Total Costs Reported
Small businesses	\$0 - \$65,260	\$11,363.73
Large businesses	\$1,500 - \$7,877	\$3,851.04

**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.**

**Increase in Education and Training Hours:** The costs cannot be reduced because there are potential costs associated with making any change to a program. Data shows that increasing the education hours produces more competent massage therapists.

The increase in education hours will align Washington with the recommended national best practices for minimum training hours established in ELAP. ELAP is a research project initiated by the Coalition of National Massage Therapy Organizations. The project's goal is to define the knowledge and skills of entry-level massage education and to recom-

mend the minimum number of hours schools should teach to prepare graduates for safe and competent practice.

While schools may incur both one-time and ongoing costs, there is a demonstrable positive effect on student outcomes as demonstrated by pass rates for the national exam. Data provided by the Federation of State Massage Therapy Boards provides information about the national exam pass rate in correlation to the number of training hours:

Training hours	First time test taker pass rate	Pass rate for all test takers
500-570 hours	75.19%	69.82%
600-650 hours	81.18%	75.08%
700-750 hours	77.68%	71.22%
1000+ hours	70.63%	65.50%

The national exam is written as an entry level exam. The increase in hours is a benefit to public protection because more therapists will be able to pass the exam during their first attempt, demonstrated that their school is providing an education that better meets the minimum competency standards established for the profession.

**Student Clinic:** The potential costs to lower the student to teacher ratio in the student clinic cannot be reduced. Adding staff or increasing their hours will inevitably trigger an increase to the payroll.

Student clinic massages typically range from thirty to ninety minutes. If there are six students each performing an hour long massage, then the clinical supervisor has ten minutes to observe each massage in progress in addition to doing anything else necessary while the patient is present. With a ratio of one supervisor to ten students this observation time is reduced to six minutes per student. The benefit of reducing the student to teacher ratio in the student clinic is to provide meaningful direct supervision to students to ensure graduates have met the minimum competency standards to practice safely.

**SECTION 7: Describe how small businesses were involved in the development of the proposed rule.**

To gather information from stakeholders about the proposed rule to increase education and training hours, the department sent two surveys to the thirty-three board-approved massage schools. The survey asked about projected costs and impact to licensees to implement the proposed amendatory language.

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

Based on the survey responses, the department anticipates that up to four massage schools would increase the number of employees. No schools indicated a loss of employees.

A copy of the statement may be obtained by contacting Megan Maxey, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-4945, fax 360-236-2901, TTY 711, email [megan.maxey@doh.wa.gov](mailto:megan.maxey@doh.wa.gov).

June 26, 2020  
Jessica Todorovich

Renee Fullerton  
Executive Director  
for John Wiesman, DrPH, MPH  
Secretary

## Chapter 246-830 WAC

### MESSAGE ((PRACTITIONERS)) THERAPISTS

AMENDATORY SECTION (Amending WSR 17-14-062, filed 6/29/17, effective 7/30/17)

**WAC 246-830-005 Definitions.** The definitions in this section apply throughout the chapter unless the context clearly requires otherwise.

(1) "Animal" means any species normally recognized as treatable by veterinary medicine.

(2) "Animal massage therapist" means an individual licensed to practice massage therapy under chapter 18.108 RCW with additional education and training in animal massage therapy as required under this chapter and holds the animal massage therapist endorsement required by RCW 18.108.230.

(3) "Apprentice" means an individual enrolled in an apprenticeship program, and who is held to the same standards as students in massage schools or massage programs.

(4) "Apprenticeship educator and trainer" means a massage therapist licensed under chapter 18.108 RCW with at least ((five)) three current years of experience in full-time practice.

(5) "Apprenticeship program" means education and training in massage administered by an apprenticeship educator and trainer that satisfies the education and training requirements for massage set forth in this chapter.

(6) "Board" means the Washington state board of massage.

(7) "Breast massage" means the specific and deliberate manipulation of breast tissue pursuant to WAC 246-830-555. Massage of the surrounding chest and shoulder muscles such as massage of the intercostal, pectoral, or axillary muscles is not considered breast massage. ((Breast massage is only allowed as authorized by WAC 246-830-555.))

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

(9) "Direct supervision" means supervision by a faculty member who is a clinical supervisor of the massage school or massage program and is on the premises, in the student clinic and is readily available to students and clients or patients.

(10) "Evaluation" means the assessment of soft tissue in order to facilitate decision making regarding effective forms and techniques of massage, and identifying cautions and contraindications to ensure client or patient safety. Evaluation does not mean diagnosis.

(11) "Intraoral massage" means the manipulation or pressure of soft tissue inside the mouth or oral cavity for therapeutic purposes.

(12) "Linens" means sheets, blankets, towels, gowns, pillow cases, face cradle covers, and other nonimpervious fabrics used in the practice of massage.

(13) "Massage" and "massage therapy" mean a health care service involving the external manipulation or pressure

of soft tissue for therapeutic purposes. Massage therapy includes techniques such as tapping, compressions, friction, reflexology, Swedish gymnastics or movements, gliding, kneading, shaking, and fascial or connective tissue stretching, with or without the aids of superficial heat, cold, water, lubricants, or salts. Massage therapy does not include diagnosis or attempts to adjust or manipulate any articulations of the body or spine or mobilization of these articulations by the use of thrusting force, nor does it include genital manipulation. See WAC 246-830-550 for additional limitations on massage practice.

((13)) (14) "Massage business" means the operation of a business where massages are given.

((14)) (15) "Massage program" or "program" means education and training in massage therapy approved by the board. A massage program or program is an established area of study offered on a continuing basis.

((15)) (16) "Massage school" or "school" means an institution which has the sole purpose of offering education and training in massage therapy approved by the board.

((16)) (17) "Massage therapist" means an individual licensed as a massage therapist under chapter 18.108 RCW.

((17)) (18) "Massage transfer program" means a separate board approved program within a board approved massage program or school that allows ((board approved massage programs and massage schools)) the transfer program to accept credits and clock hours from massage schools, massage programs, colleges or universities that ((have)) may not have been approved by the board, pursuant to WAC 246-830-037.

(19) "Perineum" means the tissues between the anus and scrotum or vulva.

((18)) (20) "Secretary" means the secretary of the department of health or the secretary's designee.

((19)) (21) "Student" means an individual currently enrolled in a massage school, massage program or apprenticeship program who is practicing massage solely for the purposes of education and training as part of their current course work and who is not receiving compensation for said practice.

AMENDATORY SECTION (Amending WSR 17-14-062, filed 6/29/17, effective 7/30/17)

**WAC 246-830-020 Applications.** (1) An applicant for a massage therapist license must be eighteen years of age or older and must submit to the department:

(a) A completed application on forms provided by the department;

(b) Proof of successful completion of the required education and training of a massage school, massage program, or apprenticeship program on an official transcript or school completion form sent directly from the applicant's massage school, massage program or apprenticeship program;

(c) Proof of successful completion of a board approved examination under WAC 246-830-201;

(d) Proof of successful completion of the Washington state massage jurisprudence examination;



(c) ~~(Proof of successful completion of four clock hours of AIDS education as required by chapter 246-12 WAC, Part 8;~~

~~(f))~~ Proof of certification in American Red Cross first aid and American Heart Association CPR or the equivalent. CPR training must be in person;

~~((g))~~ (f) The required nonrefundable application fee in WAC 246-830-990; and

~~((h))~~ (g) A state criminal background check, and, if required by the department, fingerprint cards for a national or state fingerprint based background check pursuant to RCW 18.130.064(2) and chapter 246-12 WAC.

(2) The secretary may request additional supporting documentation as necessary.

(3) The secretary will not grant a license under this chapter to any person who has been convicted of violating RCW 9A.88.030, 9A.88.070, 9A.88.080, or 9A.88.090 or equivalent local ordinances within the eight years immediately preceding the date of application, except as provided in RCW 9.97.020.

AMENDATORY SECTION (Amending WSR 17-14-062, filed 6/29/17, effective 7/30/17)

**WAC 246-830-035 Licensing by endorsement for out-of-state applicants.** (1) A massage therapist applicant holding a massage license in another state or foreign jurisdiction may be granted a Washington massage license if:

(a) The board determines the other state's, territory's, or foreign jurisdiction's education and training requirements are substantially equivalent to Washington's. Substantial equivalency means a course of study at a massage school or massage program that requires:

(i) A minimum of ~~(five)~~ six hundred twenty-five hours of education and training, to be completed in no fewer than twenty-four weeks and approved by the equivalent licensing agency or agencies in the state, territory, or foreign jurisdiction in which it is located at the time of applicant's graduation; or

(ii) A minimum of five hundred hours of education and training, and approved by the equivalent licensing agency or agencies in the state, territory, or foreign jurisdiction in which it is located at the time of applicant's graduation, at least two years of experience, and documentation of at least twenty-four hours of continuing education within two years prior to making application.

(b) The applicant has a massage license in good standing as verified by the appropriate jurisdiction; and

(c) If there is a gap in practice of three or more years immediately prior to applying for a license by endorsement, the applicant must provide documentation of twenty-four hours of hands on ~~((delivery of massage therapy services))~~ continuing education of massage therapy for the two most recent years prior to making application.

(2) If an applicant does not meet the requirements of this section, then the applicant may fulfill the remaining education and training requirements as outlined in WAC 246-830-037.

(3) The applicant must have successfully passed one of the following examinations:

(a) Federation of State Massage Therapy Boards massage and bodywork licensing examination;

(b) National certification examination for therapeutic massage and bodywork; or

(c) A board-approved examination.

(4) The applicant must satisfy the requirements in WAC 246-830-020 (1)(a) through (h).

AMENDATORY SECTION (Amending WSR 17-14-062, filed 6/29/17, effective 7/30/17)

**WAC 246-830-037 Transfer programs and transfer of credit or clock hours for prior education ~~((and clock hours))~~ and training.** (1) A transfer program must be approved by the board prior to a massage school or massage program enrolling a transfer student through the use of transfer credits or clock hours.

(2) To qualify as a board approved transfer program, an authorized representative of the massage school or massage program must submit to the board a completed application packet provided by the department.

(3) Approval of a transfer program is valid for three years after initial approval and every five years for reapproval. The transfer program's initial approval expiration date will be aligned to the expiration date of the related massage school or massage program approval. The board may place restrictions on, or may revoke or suspend, approval of a transfer program that fails to comply with the requirements in this section or in RCW 18.108.028.

(4) Board approved massage schools or massage programs may operate transfer programs that accept an individual's credits or clock hours from other massage schools, massage programs, colleges or universities, subject to the following conditions:

(a) The massage school, massage program, college or university from where credits or clock hours are being transferred is:

(i) Accredited by a national or regional education accreditation organization;

(ii) Approved by a state authority with responsibility for oversight of educational or vocational programs; or

(iii) Approved by a state agency that regulates massage schools or massage programs and is a member of the federation of state massage therapy boards.

(b) The massage school, massage program, college or university from where credits or clock hours are being transferred provides an official transcript;

(c) Courses for which credits or clock hours are granted must be substantially equivalent in content and academic rigor to the courses and clock hours presently offered by the massage school or massage program. In order to determine substantial equivalency, the ~~((massage school or massage))~~ transfer program will evaluate the courses and clock hours and require transfer applicants pass written and practical tests administered by a board approved transfer program for each subject area listed in WAC 246-830-430 (1)(a) through (g).

(d) If components are missing~~((;))~~ or deficient from the massage school or massage program or the applicant cannot pass the required testing, the transfer program shall require ~~((credits or clock hours for those subjects while granting))~~ the

applicant to enroll and successfully complete those deficient components. Transfer programs may grant partial credit as appropriate(-); however, documentation of the massage school's or massage program's decision-making rationale must be maintained in the student's file; and

~~((d))~~ (e) Documentation of all previous formal education and training ((applicable to completion of a massage school or massage program is)), as well as the test or tests used to grant credit or clock hours must be included in each student's permanent file.

~~((2) A transfer program must be approved by the board prior to a massage school or massage program enrolling a transfer student via the use of transfer credits or clock hours.~~

~~(3) An authorized representative of the massage school or massage program must submit to the board a completed application packet provided by the department. Approval of a transfer program will follow the same process as outlined in WAC 246-830-420.~~

~~(4) Approval of a transfer program is valid for three years after initial approval and every five years for reapproval. The board may place restrictions on or may revoke or suspend approval of a transfer program that fails to comply with the requirements in this section or in RCW 18.108-028-))~~

AMENDATORY SECTION (Amending WSR 17-14-062, filed 6/29/17, effective 7/30/17)

**WAC 246-830-420 Approval of massage school, massage program, or apprenticeship program.** (1) To qualify as a board approved massage school, massage program or apprenticeship program, an authorized representative of the massage school, massage program or apprenticeship program must submit to the board a completed application packet provided by the department. A completed application packet must include(~~(-but not be limited to)~~):

(a) A curriculum designed to meet or exceed the requirements listed in WAC 246-830-430. The following documentation must be submitted:

(i) A table of courses offered;

(ii) A syllabus for each course that includes course title, subject matter, course hours, all instructor(s) name(s), measurable course objectives, methods of evaluation, course schedule, and textbooks or other instructional materials;

(iii) A sample ((copy of)) or samples of mid-term, final, or other equivalent exams for each of the following ((exams)) subjects: Anatomy and physiology, pathology, kinesiology, practicum criteria, ethics and professionalism, and laws and rules pertaining to massage;

(iv) A statement describing how a student will obtain first-aid and CPR training; and

(v) An institutional philosophy or mission statement.

(b) A plan for how the massage school, massage program or apprenticeship program will evaluate its academic standards. The following documentation must be submitted:

(i) A statement or policy on minimum standards for measuring student progress; and

(ii) Copies of policies and procedures, to include a policy on nondiscrimination.

(c) Documentation explaining how the massage school or massage program determines training and experience qualifications for faculty members. The following documentation must be submitted:

(i) A policy on minimum competency standards for instructors and a statement that all massage school, massage program or apprenticeship program instructors meet those standards;

(ii) A resume((s)) for each instructor; and

(iii) A listing of all instructors and the courses each instructor plans to teach.

(d) ~~((A))~~ The student clinic must be ((supervised by)) under the direct supervision of a clinical supervisor who is a licensed massage therapist with at least ((two)) three-years practical experience. The clinical supervisor is responsible for reviewing the health history of the student's client or patient, ((and must review and approve the student's massage plan)) reviewing and approving the student's massage plan, and observing a reasonable portion of each massage session based on the competency of the student. A faculty member in the role of clinical supervisor must ensure a ratio of no less than one faculty member to six students who are actively performing massage treatment.

(e) The following documentation must be submitted:

(i) A copy of policies pertaining to the student clinic;

(ii) A disclosure statement form provided to the client or patient;

(iii) A copy of the client or patient intake and screening form; ((and))

(iv) A copy of the client or patient feedback form; and

(v) A copy of the supervisor feedback form.

~~((e) Health, sanitation, and facilities must be)) (f) A statement that facilities are maintained in accordance with state and local ordinances and these rules governing health and sanitation. The following documentation must be submitted:~~

(i) A floor plan of the facility;

(ii) A floor plan of the student clinic;

(iii) A list of equipment in the classroom;

(iv) A list of equipment in the student clinic; and

(v) A list of the library contents and computer or online resources available to students.

~~((f))~~ (g) A copy of policies on faculty and student conduct.

~~((g))~~ (h) Records must be stored in a secured location and be made available upon a student's written request. The following documentation must be submitted:

(i) A copy of a sample transcript; and

(ii) A policy on release of student records consistent with applicable law(s).

~~((h))~~ (i) Eligibility to operate a massage school or massage program. The following documentation must be submitted:

(i) Verification that the school is approved to operate in the state of Washington, or has pending approval by the workforce training and education coordinating board;

(ii) Verification that the school is licensed by private vocational education (see chapter 28C.10 RCW or Title 28B RCW); or

(iii) Verification that the program is part of a college or university that is nationally or regionally accredited.

~~((†))~~ (j) Designation of an authorized representative of the school or program.

(2) The board may conduct a site inspection of the massage school, massage program or apprenticeship program prior to granting approval.

(3) The board may grant or deny approval or grant conditional approval contingent upon changes to the application requested by the board.

(4) To maintain approval status with the board, a massage school, massage program or apprenticeship program must apply for reapproval during the third year after initial approval and during the fifth year for each reapproval thereafter. Failure to apply for renewal by the expiration date of the massage school, massage program or apprenticeship program approval will mean that the approval is expired and no longer valid.

(5) In order to maintain board approval, a massage school, massage program or apprenticeship program must:

(a) Comply with any changes in training standards and guidelines adopted by the board;

(b) Notify the board of any changes in overall curriculum plan or curriculum content changes under subsection (1)(a) of this section prior to implementation by filing an addendum. The board may grant or deny the proposed change; and

(c) Notify the board of changes in authorized representative ~~((or instructors))~~ within thirty days of such change.

(6) An apprenticeship program is limited to no more than three apprentices per apprenticeship educator or trainer, and the apprenticeship must be completed within two years.

**AMENDATORY SECTION** (Amending WSR 17-14-062, filed 6/29/17, effective 7/30/17)

**WAC 246-830-430 Education and training.** (1) A massage school, massage program, transfer program, or apprenticeship program education and training must have a curriculum and system of education and training consistent with its particular area of practice. The education and training in massage therapy will consist of a minimum of ~~((five))~~ six hundred twenty-five hours. An hour of education and training is defined as fifty minutes of actual instructional time. Certification in American Red Cross first aid and American Heart Association CPR or the equivalent is required. CPR training must be in person. This requirement is in addition to the ~~((five))~~ six hundred twenty-five hours of education and training in massage therapy. These ~~((five))~~ six hundred twenty-five hours are ~~((not))~~ to be completed in ~~((less than six months))~~ no fewer than twenty-four weeks and must consist of the following minimum requirements:

(a) ~~((One hundred thirty hours of anatomy, physiology, and kinesiology including palpation, range of motion, and physics of joint function. There must be a minimum of forty hours of kinesiology.~~

~~((b) Fifty hours of pathology including indications and contraindications consistent with the particular area of practice.~~

~~((c) Two hundred sixty five hours of theory and practice of massage to include techniques, remedial movements, body~~

~~mechanics of the therapist, and the impact of techniques on pathologies. A maximum of fifty of these hours may include time spent in a student clinic. Hydrotherapy must be included when consistent with the particular area of practice.~~

~~((d) Fifty five hours of clinical/business practices, at a minimum to include hygiene, recordkeeping, medical terminology, professional ethics, business management, human behavior, client or patient interaction, and state and local laws.))~~ Ninety hours of anatomy and physiology, to include orientation to the human body, and the integumentary, skeletal, fascial, muscular, nervous, cardiovascular and other body systems.

(b) Sixty hours of kinesiology to include muscle identification and palpation, location and attachment(s), actions, range of motion, and joint classification and function.

(c) Seventy hours of pathology to include general terminology and classification of diseases, the indications, contraindications, cautions and common adaptations to massage including, but not limited to, arthritis, bursitis, cancer, headaches, skin cancer and other skin conditions, diabetes, fasciitis, sprain, strain, tendinopathy, nerve compression syndromes, osteoporosis, stress, fibromyalgia and other chronic pain syndromes, common neurological diseases, autoimmune disorders, bloodborne pathogens, common cardiovascular diseases, reproductive systems, pregnancy, and any other health care issues as they relate to the practice of massage as defined in RCW 18.108.010.

(d) Two hundred sixty hours of theory, principles, and practice of massage to include history of massage, benefits and effects, techniques and strokes, body mechanics of the therapist, application methods and styles, concepts of basic research, session planning and the adaptation of techniques appropriate to stages of healing, to include the safe use of superficial heat, cold, lubricants and salts, and considerations relevant to special populations.

(e) Fifty hours of mandatory student clinic to be directly supervised as defined in WAC 246-830-005(9), with a ratio of one instructor to no more than six students administering massage. For those education and training programs beyond six hundred twenty-five hours, in no case may the number of student clinic hours exceed seventy-five hours.

(f) Fifty-five hours of clinical/business practices, at a minimum to include hygiene, sanitation, draping, record-keeping, billing and insurance concepts, medical terminology, business models and management, and laws and rules relevant to massage and massage businesses.

(g) Forty hours of professional ethics to include the therapeutic relationship of the massage therapist and client or patient, human behavior, communication skills, professional boundaries, standards of ethical practice, and state laws and rules related to massage and health care ethics.

(2) To receive credit in an apprenticeship program for previous education and training, this education and training must have been completed within the five-year period prior to enrollment in the apprenticeship program.

(3) ~~((A student attending a massage school, massage program, transfer program or apprenticeship program outside the state of Washington must pass a jurisprudence exam.~~

(4) A massage school, massage program, transfer program or apprenticeship program may exempt a student from

~~curriculum requirements when the student's successful performance on an examination that the massage school, massage program, transfer program or apprenticeship program administers demonstrates that the student has attained competency in that subject area as a result of prior postsecondary learning or training.)~~ Only a board approved transfer program may exempt a student from curriculum requirements and grant credit or clock hours when the student's successful performance on an examination that the transfer program or apprenticeship program administers demonstrates that the student has attained competency in that subject area as a result of prior postsecondary learning or training. Any credits or clock hours granted pursuant to this subsection must be documented and retained in the student's record.

AMENDATORY SECTION (Amending WSR 17-14-062, filed 6/29/17, effective 7/30/17)

**WAC 246-830-440 Curriculum—Academic standards—Faculty—Student clinic.** (1) The curriculum of the massage school, massage program, ~~((transfer program))~~ or apprenticeship program must be designed and presented to meet or exceed the required ~~((five))~~ six hundred ~~twenty-five~~ hours completed in no fewer than twenty-four weeks.

(2) Academic standards. The massage school, massage program, or apprenticeship program educator and trainer must regularly evaluate the quality of its instruction and have a clearly defined set of standards of competence required of its students. Promotion to each successive phase of the massage program and graduation is dependent on mastery of the knowledge and skills presented in the massage school, massage program, or apprenticeship program.

(3) Faculty. ~~((A))~~ The massage school, massage program, or apprenticeship program ((educator and trainer and)) faculty ((member)) must be qualified by training and experience to give effective instruction in the subject(s) taught. ((An apprenticeship trainer and)) Faculty members who ((teaches)) teach hands on courses must have a minimum of ~~((two))~~ three-years experience in the subject matter being taught. The massage school, massage program, or apprenticeship ((trainer and faculty member should)) program shall develop and evaluate the curriculum instructional methods and facilities; student discipline, welfare, and counseling; assist in the establishment of administrative and educational policies, and scholarly and professional growth. A massage school, massage program, or apprenticeship program ((must)) shall not discriminate on the basis of sex, gender, race, age, color, religion, sexual orientation, gender expression, physical handicap, national or ethnic origin, or other basis prohibited by law in the recruitment and hiring of faculty.

(4) Student clinic ~~((optional program))~~. Any setting in which a student clinic occurs must be adequate in size, number, and resources to provide for student practice of massage on the general public. A clinic must be properly equipped rooms for consultations, massage therapy or treatment, and equipment as required in the practice of massage. A faculty member who is a massage therapist with at least ~~((two))~~ three-years of experience in massage therapy must provide direct supervision as a clinical supervisor, per WAC 246-

830-420 (1)(d), and have final decisions in the massage treatment which is rendered to clients or patients by students. A faculty member in the role of a clinical supervisor must ensure a ratio of no less than one faculty member to ~~((ten))~~ six students who are actively performing massage treatment.

AMENDATORY SECTION (Amending WSR 17-14-062, filed 6/29/17, effective 7/30/17)

**WAC 246-830-475 Continuing education requirements.** (1) To renew a license, a massage therapist must complete twenty-four hours of continuing education every two years, as provided in chapter 246-12 WAC, Part 7. Continuing education must be provided by an individual who has at least three years of professional experience in the subject area being taught. Massage therapists have a duty to ensure the continuing education they complete meets the requirements in WAC 246-830-475.

(2) The following categories of continuing education are mandatory:

(a) A minimum of eight hours must be ~~((direct supervised massage skills training))~~ in person and directly supervised involving the participation of the direct application of massage therapy as defined in RCW 18.108.010(6); and

(b) A minimum of four hours must be in professional ethics, client or patient communication, professional roles and boundaries, or Washington state massage laws and ~~((regulations. Two of these hours must include professional roles and boundaries))~~ rules. Two of the four hours may be met by attending board of massage meetings in person. A maximum of one hour is allowed per board meeting; and

(c) ~~((The remaining twelve hours may be met by meeting the requirements in subsection (2) of this section.~~

~~((2))~~ Maintenance of certification in American Heart Association CPR or equivalent. A maximum of four hours is allowed per reporting period.

(3) For the purposes of this chapter, the remaining hours of continuing education ((is)) are defined as any of the following activities ((that involve direct application of)) reasonably related to massage therapy knowledge, skills, and business practices:

(a) Documented attendance at a local, state, national, or international continuing education program((-)) or conference;

(b) First aid~~((,-CPR,-))~~ certification or emergency related ~~((classes-))~~ courses;

(c) Self-study through the use of multimedia devices or the study of books, research materials, ~~((and/or))~~ or other publications.

~~((i)) Multimedia devices. The required documentation for this activity is a letter or other documentation from the organization. A maximum of twelve hours is allowed per reporting period.~~

~~((ii)) Books, research materials, and/or other publications. The required documentation for this activity is a two page synopsis of what was learned written by the licensee. A maximum of two hours is allowed))~~ The required documentation for this activity is a one page, single spaced, twelve point font synopsis of what was learned written by the licensee. The time spent writing the synopsis is not reportable. Two hours

of credit is allowed per report, and no more than two separate reports may be submitted per reporting period((~~3~~));

(d) Teaching a course for the first time(~~(, not to exceed eight hours.))~~);

(e) Business and management courses (~~(not to exceed eight hours.~~

(f) Specialized training. Training must be provided for a fee by an individual who has no less than three years of expertise in that area.

(~~g~~));

(f) Distance learning. Distance learning includes, but is not limited to, correspondence course, multimedia or webinar, print, audio(~~(/)) or video broadcasting, audio(~~(/)) or video conferencing, computer aided instruction, e-learning(~~(/)) or on-line-learning, or computer broadcasting(~~(/)) or webcasting.~~~~~~~~ ((~~A maximum of twelve hours is allowed per reporting period.~~

(~~h~~)); or

(g) Active service on (~~(massage related boards or committees. A maximum of twelve hours is allowed per reporting period))~~ boards or participation in professional or government organizations specifically related to the practice of massage.

(4) A massage therapist must provide acceptable documentation of continuing education upon request or audit. Acceptable forms of documentation include, but are not limited to:

(a) Transcripts;

(b) A letter from the course instructor or the organization providing the continuing education;

(c) Certificate of attendance or completion; or

(d) Other formal documentation that includes the following:

(i) Participant's name;

(ii) Course title;

(iii) Course description;

(iv) Date or dates of course;

(v) Number of hours;

(vi) Indication of being an in-person course, self-study as referenced in subsection (2)(c)(i) and (ii) of this section, or distance learning as referenced in subsection (2)(f) of this section;

(vii) Instructor's name or sponsor organization name or names;

(viii) Instructor or sponsor contact information; and

(ix) Signature of the program sponsor or course instructor. Multimedia courses are exempt from this requirement.

(5) Massage therapists who maintain an active status Washington state massage license must meet all continuing education requirements regardless of whether they reside or practice in Washington state.

AMENDATORY SECTION (Amending WSR 17-14-062, filed 6/29/17, effective 7/30/17)

**WAC 246-830-550 Standards of practice—Limitations.** (1) It is not consistent with the standard of practice for a massage therapist to touch the following body parts on a client or patient except where specifically noted:

(a) (~~(Gluteal cleft distal to the coccyx, anus and rectum;~~

(b) ~~Inside the mouth unless an intraoral endorsement has been issued;~~

(e) ~~Penis;~~

(d) ~~Prostate;~~

(e) ~~Scrotum;~~

(f) ~~Vagina, to include:~~

(i) ~~Intravaginal;~~

(ii) ~~Labia (majors and minors);~~

(iii) ~~Clitoris;~~

(iv) ~~Urethra; or~~) The gluteal cleft (space distal to the coccyx to the anus) and perineum unless in accordance with WAC 246-830-557. For the purpose of this section and WAC 246-830-557, the perineum is defined as the tissues between the anus and scrotum or vulva;

(b) Anus or inside the rectum;

(c) Inside the urethra;

(d) Penis and scrotum;

(e) Vulva to include labia (major and minor), clitoris, bulb of vestibule, vulval vestibule, urinary meatus and the vaginal opening;

(f) Inside the vagina;

(g) Breasts, unless in accordance with WAC 246-830-555; or

(h) Inside the mouth unless an intraoral endorsement has been issued in accordance with WAC 246-830-490.

(2) (~~(A massage therapist must maintain evidence of the completion of at least sixteen specialized in-person contact hours of education and training if they are performing massage in the perineal area in addition to obtaining prior written and verbal informed consent. This written consent may be included within an overall general consent to massage document, if clearly delineated and either specifically initialed or signed.~~

(~~3~~)) A massage therapist (~~(must)~~) shall not engage in sexual misconduct as described in WAC 246-16-100. Sexual misconduct will constitute grounds for disciplinary action.

AMENDATORY SECTION (Amending WSR 17-14-062, filed 6/29/17, effective 7/30/17)

**WAC 246-830-555 Breast massage.** (1) Prior to performing breast massage, a massage therapist must:

(a) Acquire (~~(a)~~) prior signed or initialed written and verbal informed consent from the client or patient. If the client or patient is under eighteen years of age, prior written consent must be obtained from a parent or legal guardian of the client or patient. The written consent for breast massage may be included within an overall general consent to massage document, if clearly delineated and either specifically initialed or signed. The written consent must:

(i) (~~(Be maintained with the client or patient's records;))~~ Be documented and maintained with the client or patient records per WAC 246-830-565 and 246-830-570;

(ii) Include a statement that the client or patient may discontinue the treatment at any time for any reason; and

(iii) (~~(If the client or patient is under eighteen years of age, prior written consent must be obtained from a parent or legal guardian; and~~

~~(iv)~~) Include a statement that the client or patient has the option to have a witness present, and that the witness must be provided by the client or patient.

(b) Use appropriate draping techniques as identified in WAC 246-830-560.

(2) In addition to the requirements identified in subsection (1) of this section, a massage therapist must maintain evidence of the completion of at least sixteen hours of specialized in-person education and training in breast massage beyond the minimum competencies. Education and training in breast massage includes, but is not limited to ~~(the)~~ breast anatomy and physiology, pathology, indications, contraindications, cautions, therapeutic treatment techniques, draping, appropriate therapist-client or therapist-patient boundaries, expected outcomes, and client or patient safety related to breast massage.

(3) In addition to the requirements in subsections (1) and (2) of this section, prior to performing a massage of the breast that includes the nipples and ~~((areolas)) areolae~~, a massage therapist must obtain ~~((additional))~~ documentation as follows:

(a) A written prescription or referral from a licensed medical health care provider for this specific treatment; or

(b) ~~((An additional))~~ Prior signed or initialed written and verbal informed consent from the client or patient or from the parent or legal guardian if the client or patient is under eighteen years of age for massage of breast that includes the nipples and ~~((areolas)) areolae~~. This written consent may be included within ~~((an overall general consent to))~~ the consent for breast massage document ~~((, if clearly delineated and either specifically initialed or signed))~~.

#### NEW SECTION

**WAC 246-830-557 Massage of the gluteal cleft or perineum.** (1) A massage therapist may massage the gluteal cleft from distal to the coccyx to the anus, and the perineum, after meeting the requirements in subsections (3), (4), and (5) of this section.

(2) For the purpose of this section and WAC 246-830-550, the perineum is defined as the tissues between the anus and scrotum or vulva. Massage of the perineum does not include massage of any areas of the body listed in WAC 246-830-550 (1)(b) through (f).

(3) A massage therapist performing massage of the body parts listed in subsection (1) of this section must maintain evidence of the completion of at least sixteen hours of specific in-person education and training in massage of the specified areas beyond the minimum competencies. The education and training for massage of the body parts listed in subsection (1) of this section includes, but is not limited to, indications, contraindications, therapeutic treatment techniques, expected outcomes, client or patient safety, client or patient consent, client or patient communication, draping techniques, sanitation, and ethical responsibilities related to massaging the body parts listed in subsection (1) of this section.

(4) Prior to performing massage of the body parts listed in subsection (1) of this section, a massage therapist must obtain signed or initialed written and verbal informed consent

from the client or patient. If the client or patient is under eighteen years of age, prior written consent must be obtained from a parent or legal guardian of the client or patient. This written consent may be included within the consent to massage document, if clearly delineated. The written consent must:

(a) Be maintained with the client or patient records;

(b) Include a statement that the client or patient may discontinue the treatment at any time for any reason;

(c) Include a statement that the client or patient has the option to have a witness present, and that the witness must be provided by the client or patient; and

(d) Provide a therapeutic rationale for massaging the body parts listed in subsection (1) of this section that is acknowledged by the client or patient.

(5) A massage therapist must use appropriate draping techniques as identified in WAC 246-830-560 with the exception of clients or patients who remain clothed.

(6) A massage therapist performing massage of the body parts listed in subsection (1) of this section must use hygienic, safe, and sanitary practices, including:

(a) Wearing gloves during treatment and training that involves massage of the body parts listed in subsection (1) of this section unless the treatment or training is provided over clothing or draping that provides a barrier to transmission of biologically hazardous material and infectious disease;

(b) Using fresh gloves for every client or patient during treatment and training that involves massage of the body parts listed in subsection (1) of this section unless the treatment or training is provided over clothing or draping that provides a barrier to transmission of biologically hazardous material and infectious disease; and

(c) Gloves that have been used for treatment and training that involves massage of the body parts listed in subsection (1) of this section must not be reused for any other purpose.

AMENDATORY SECTION (Amending WSR 17-14-062, filed 6/29/17, effective 7/30/17)

**WAC 246-830-560 Coverage and draping.** (1) A massage therapist must:

(a) Allow a client or patient privacy to dress or undress except as may be necessary in emergencies or custodial situations; and

(b) Always provide the client or patient a gown or draping except as may be necessary in emergencies.

(2) Massage therapists must use safe ~~((and))~~, functional, and hygienic coverage and draping practices that comply with WAC 246-830-500 during the practice of massage when the client or patient is disrobed. The drape ~~((s))~~ or drapes must be sufficient to ensure the genitals and the gluteal cleft distal to the coccyx, anus and rectum are not exposed, and the breast area is not exposed except as allowed in subsections (3) and (4) of this section. Safe ~~((and))~~, functional, and hygienic coverage and draping means:

(a) The massage therapist explains, maintains and respects coverage and draping boundaries; ~~((and))~~

(b) Massage or movement of the body does not expose genitals or gluteal cleft distal to the coccyx, anus and rectum,

or does not expose the breast area except as allowed in subsections (3) and (4) of this section; and

(c) All linens that are used with the client or patient are kept and maintained in accordance with WAC 246-830-500.

(3) With prior signed or initialed written~~(s)~~ and verbal~~(-and signed)~~ informed consent ~~((of))~~ from the client or patient, the gluteal and breast drapes may be temporarily moved in order to perform therapeutic treatment of the area consistent with WAC 246-830-550, 246-830-555, and 246-830-557. In addition, with informed and written consent, a client or patient may choose to have their upper torso undraped during the entire massage.

(4) If variations to this coverage and draping rule occur, a massage therapist must:

(a) Maintain evidence of education and training in specific modalities that require variations in coverage and draping;

(b) Receive voluntary and informed consent of the client or patient prior to any variation of coverage or draping; and

(c) Document in the client's or patient's record the rationale for any variation of coverage or draping.

(5) Any written consent required by this section may be included within an overall general consent to massage document, if clearly delineated and either specifically initialed or signed.

**AMENDATORY SECTION** (Amending WSR 17-14-062, filed 6/29/17, effective 7/30/17)

**WAC 246-830-565 Recordkeeping.** (1) A massage therapist providing professional services to a client or patient must document services provided. Documentation should be appropriate to the venue, the type and complexity of those services and, when applicable, in sufficient detail to support and enable anticipated continuity of care. The documentation must include:

(a) Client or patient name and contact information or name and contact information of a parent or guardian if a client or patient is ~~((a minor))~~ under eighteen years of age;

(b) Age of client or patient;

(c) Health history sufficient to ascertain if there are cautions or contraindications to safe application of massage therapy, and an update of the current health status at each session;

(d) Date massage therapy is provided and the duration of treatment;

(e) The types of techniques and modalities applied;

(f) The location or areas of the body that received massage therapy;

(g) Written informed consent to treat. A written consent is considered valid for one year unless revoked;

(h) If breast massage is performed, an additional written consent to treat per WAC 246-830-555, and documentation of a therapeutic rationale;

(i) If breast massage ~~((of))~~ that includes the nipples and ~~((areolas are))~~ areolae is involved, documentation of the prescription or referral per WAC 246-830-555 (3)(a), or an additional written consent to treat per WAC 246-830-555 (3)(b);

~~((Documentation of any written consent or any modification in coverage and draping as required by WAC 246-830-560; and~~

~~((k))~~ If performing massage of the gluteal cleft or perineum, an additional written and verbal informed consent to treat is required to detail that the client or patient has a clear understanding of the therapeutic rationale, treatment plan, and areas to be massaged for that region per WAC 246-830-557(4);

(k) Documentation of any written consent or any modification in coverage and draping as required by WAC 246-830-560; and

(l) For massage therapy where the focus is on treating a health condition, the following additional information is required:

(i) Symptoms, for example, pain, loss of function, and muscle stiffness;

(ii) Evaluation and findings, for example, movement, posture, palpation assessment and findings;

(iii) Outcome measures, for example, improvement in symptoms, movement, posture, palpation, and function; and

(iv) Treatment plan for future sessions~~((s) and~~

~~((l) If performing massage in the perineal area, an additional written and verbal informed consent to treat per WAC 246-830-550(2)).~~

(2) Client or patient records must be legible, permanent, and recorded within twenty-four hours of treatment. Documentation that is not recorded on the date of service must designate both the date of service and the date of the chart note entry. Corrections or additions to the client's or patient's records must be corrected by a single line drawn through the text and initialed so the original entry remains legible. In the case of computer-organized documentation, unintended entries may be identified and corrected, but must not be deleted from the record once the record is signed and completed or locked. Errors in spelling and grammar may be corrected and deleted.

(3) Correspondence relating to any referrals by other health care providers concerning the diagnosis, evaluation or treatment of the client or patient must be retained in the client or patient record.

(4) Client or patient records should clearly identify the massage therapist who is the provider of services by name and signature or electronic signature and date of service.

**AMENDATORY SECTION** (Amending WSR 17-14-062, filed 6/29/17, effective 7/30/17)

**WAC 246-830-570 Record retention.** (1) ~~((A))~~ Massage therapist ((who treats)) records for clients or patients eighteen years of age and older must ((keep client or patient records)) be retained by, or be otherwise accessible to the massage therapist for at least three years from the date of last treatment.

(2) ~~((A))~~ Massage therapist ((who treats)) records for clients or patients under the age of eighteen years old must ((keep client or patient records)) be retained by, or be otherwise accessible to the massage therapist for at least three years after the client or patient reaches eighteen years old.

~~((A massage therapist must also comply with record retention requirements of chapter 70.02 RCW.))~~ The record retainer of the massage therapist records for clients or patients shall comply with record retention requirements of

chapter 70.02 RCW, Medical records—Health care information access and disclosure.

(4) All records must be secured with properly limited access in compliance with chapter 70.02 RCW and the Health Insurance Portability and Accountability Act (HIPAA).

(5) After the retention period, ~~((the massage therapist may dispose of the record))~~ records may be disposed of pursuant to this subsection. Disposal must be done in a secure and confidential manner in compliance with chapter 70.02 RCW and HIPAA and must include as appropriate:

- (a) Shredding;
- (b) Deleting, erasing, or reformatting electronic media; ~~((and))~~ or
- (c) Rendering other readable forms of media ~~((that are defaced or rendered))~~ unusable or unreadable.

(6) Nothing in this section shall be intended to infringe upon any rights or remedies related to unfair trade practices as those found in chapter 19.86 RCW, the Unfair Business Practices Act.

(7) A massage therapist will not be in violation of subsections (1) and (2) of this section if the massage therapist is unable to access the records after a good faith attempt has been made to obtain the records.

#### WSR 20-14-106

#### PROPOSED RULES

#### DEPARTMENT OF HEALTH

[Filed June 30, 2020, 2:37 p.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Title of Rule and Other Identifying Information: WAC 246-338-990 Fees, the department of health (department) is considering raising fees for medical test sites.

Hearing Location(s): On August 4, 2020, at 10:00 a.m.

In response to the coronavirus disease 2019 (COVID-19) public health emergency, the department will not provide a physical location for this hearing to promote social distancing and the safety of the citizens of Washington state. A virtual public hearing, without physical meeting space, will be held instead.

We invite you to participate in our public rules hearing using your computer, tablet or smartphone.

Please register at <https://attendee.gotowebinar.com/register/5773074170407487757>.

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

Date of Intended Adoption: August 11, 2020.

Submit Written Comments to: Stephanie Vaughn, P.O. Box 47852, Olympia, WA 98504-7852, email <https://fortress.wa.gov/doh/policyreview>, fax 360-236-2321, by August 4, 2020.

Assistance for Persons with Disabilities: Contact Stephanie Vaughn, phone 360-236-4617, fax 360-236-2321, TTY 711, email [stephanie.vaughn@doh.wa.gov](mailto:stephanie.vaughn@doh.wa.gov), by July 28, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To address the rising costs of the medical test site program, address the nega-

tive cash flow, and build the recommended reserve, the department proposes raising medical test site licensing and renewal fees by twenty-five percent across all license categories effective October 31, 2020. The fee amounts proposed are what the department has determined are necessary to fund current and future program operations in accordance with RCW 43.70.250 (License fees for professions, occupations, and businesses), 70.42.090 (regarding license fees for medical test sites), and the department's six-year fee recovery policy. Though the proposed fee change would go into effect November 1, 2020, existing labs will not incur the new fees until renewal in June 2021.

Reasons Supporting Proposal: The department licenses and regulates medical test sites in Washington state (chapter 70.42 RCW). Current revenue is not sufficient to maintain a positive fund balance throughout the biennium's two-year licensing cycle, resulting in a significant negative fund balance mid-cycle. The department projects the fund balance to decrease to -\$276,000 by June 2025.

State law requires the work of licensing and regulating health care facilities to be fully funded by licensing fees (RCW 43.70.250). In light of the program's financial forecast, the program requires a fee increase to bring revenue into alignment with the cost of regulating medical test sites.

Statutory Authority for Adoption: RCW 43.70.250, 70.42.090.

Statute Being Implemented: RCW 43.70.250, 70.42.090.

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting: Stephanie Vaughn, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4617; Implementation and Enforcement: Honora Estes, 111 Israel Road S.E., Tumwater, WA 98501, 253-395-6747.

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 agency did not complete a cost-benefit analysis under RCW 34.05.328. RCW 34.05.328 (5)(b)(vi) exempts rules that set or adjust fees or rates pursuant to legislative standards.

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 set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

June 30, 2020

Jessica Todorovich

Chief of Staff

for John Wiesman, DrPh, MPH

Secretary



AMENDATORY SECTION (Amending WSR 06-15-132, filed 7/19/06, effective 8/19/06)

**WAC 246-338-990 Fees.** (1) The department will assess and collect biennial fees for medical test sites as follows:

(a) Charge fees, based on the requirements authorized under RCW 70.42.090 and this section;

(b) Assess additional fees when changes listed in WAC 246-338-026 occur that require a different type of license than what the medical test site currently holds;

(c) Charge prorated fees for the remainder of the two-year cycle when the owner or applicant applies for an initial license during a biennium as defined under WAC 246-338-022 (2)(c);

(d) Charge prorated fees for licenses issued for less than a two-year period under WAC 246-338-024(3); and

(e) Determine fees according to criteria described in Table 990-1.

**Table 990-1 License Categories and Fees**

Category of License	Number of Tests/Year	Biennial Fee
Certificate of Waiver	N/A	<del>\$(150)</del> <u>190</u>
PPMP	N/A	<del>\$(200)</del> <u>250</u>
Low Volume	1-2,000 tests	<del>\$(450)</del> <u>560</u>
Category A	2,001-10,000 tests, 1-3 specialties	<del>\$(1,364)</del> <u>1,710</u>
Category B	2,001-10,000 tests, 4 or more specialties	<del>\$(1,769)</del> <u>2,210</u>
Category C	10,001-25,000 tests, 1-3 specialties	<del>\$(2,454)</del> <u>3,070</u>
Category D	10,001-25,000 tests, 4 or more specialties	<del>\$(2,818)</del> <u>3,520</u>
Category E	25,001-50,000 tests	<del>\$(3,382)</del> <u>4,230</u>
Category F	50,001-75,000 tests	<del>\$(4,187)</del> <u>5,230</u>
Category G	75,001-100,000 tests	<del>\$(4,991)</del> <u>6,240</u>
Category H	100,001-500,000 tests	<del>\$(5,835)</del> <u>7,290</u>
Category I	500,001-1,000,000 tests	<del>\$(10,369)</del> <u>12,960</u>
Category J	> 1,000,000 tests	<del>\$(12,443)</del> <u>15,550</u>
Accredited:		

**Table 990-1 License Categories and Fees**

Category of License	Number of Tests/Year	Biennial Fee
Low Volume	1-2,000 tests	<del>\$(165)</del> <u>210</u>
Category A	2,001-10,000 tests, 1-3 specialties	<del>\$(211)</del> <u>260</u>
Category B	2,001-10,000 tests, 4 or more specialties	<del>\$(231)</del> <u>290</u>
Category C	10,001-25,000 tests, 1-3 specialties	<del>\$(531)</del> <u>660</u>
Category D	10,001-25,000 tests, 4 or more specialties	<del>\$(559)</del> <u>700</u>
Category E	25,001-50,000 tests	<del>\$(787)</del> <u>980</u>
Category F	50,001-75,000 tests	<del>\$(1,254)</del> <u>1,570</u>
Category G	75,001-100,000 tests	<del>\$(1,722)</del> <u>2,150</u>
Category H	100,001-500,000 tests	<del>\$(2,227)</del> <u>2,780</u>
Category I	500,001-1,000,000 tests	<del>\$(6,428)</del> <u>8,040</u>
Category J	> 1,000,000 tests	<del>\$(8,168)</del> <u>10,210</u>
Follow-up survey for deficiencies		Direct staff time
Complaint investigation		Direct staff time

(2) The following programs are excluded from fee charges when performing only waived hematocrit or hemoglobin testing for nutritional evaluation and food distribution purposes:

- (a) Women, infant and children programs (WIC); and
- (b) Washington state migrant council.

**WSR 20-14-113**  
**PROPOSED RULES**  
**HEALTH CARE AUTHORITY**  
[Filed July 1, 2020, 8:29 a.m.]

Original Notice.  
Preproposal statement of inquiry was filed as WSR 20-06-063.

Title of Rule and Other Identifying Information: WAC 182-503-0055 Asset verification system.

Hearing Location(s): On August 4, 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/6612710727511728397>.

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

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

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

Assistance for Persons with Disabilities: Contact Amber Lougheed, phone 360-725-1349, fax 360-586-9727, telecommunication[s] relay services 711, email [amber.lougheed@hca.wa.gov](mailto:amber.lougheed@hca.wa.gov), by July 24, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is revising subsection (4) to clarify who may authorize for asset verification. Added subsection (4)(c) to clarify the agency may grant an exception to rule if authorization is not provided.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160; 42 U.S.C. 1396w.

Statute Being Implemented: RCW 41.05.021, 41.05.160; 42 U.S.C. 1396w.

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: Mark Westenhaver, P.O. Box 45534, Olympia, WA 98504-5534, 360-725-1324.

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.

July 1, 2020  
Wendy Barcus  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 19-21-007, filed 10/3/19, effective 11/3/19)

**WAC 182-503-0055 Asset verification system.** (1) This rule implements the asset verification system (AVS) outlined in section 1940 of the Social Security Act.

(2) This rule applies to any client, or those financially responsible for them, who is subject to:

(a) The disclosure of resources, as defined in WAC 182-512-0200, to determine eligibility; or

(b) Provisions related to the transfer of assets, as described in WAC 182-513-1363.

(3) For the purposes of this section:

(a) "Financial institution" means the same as defined in section 1101 of the Right to Financial Privacy Act, and may include, but is not limited to:

(i) Banks; or

(ii) Credit unions.

(b) "Financial record" means any record held by a financial institution pertaining to a customer's relationship with the financial institution; and

(c) "Financial responsibility" is described in WAC 182-506-0015.

(4) You and any other financially responsible people must provide authorization for us to obtain any financial record held by a financial institution.

(a) For you, the authorization may be provided by anyone described in WAC 182-503-0010 (1) and (2)(a), (b), or (c), except in the case of an authorized representative who must be designated by the client.

(b) For a financially responsible spouse, authorization may be provided by the spouse, their legal guardian, or their attorney-in-fact.

(c) The agency may grant an exception to rule as described in WAC 182-503-0090 if authorization is not provided by those listed in (a) and (b) of this subsection.

(5) The authorization, provided under subsection (4) of this section, will remain in effect until one of the following occurs:

(a) Your application for apple health is denied;

(b) Your eligibility for apple health is terminated; or

(c) You revoke your authorization in a written notification to us.

(6) We will:

(a) Use the authorization provided under subsection (4) of this section to electronically verify your financial records and those of any other financially responsible person to determine or renew your eligibility for apple health; or

(b) Inform you in writing at the time of application and renewal that we will obtain and use information available through AVS to determine your eligibility for apple health.

**WSR 20-14-118**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Behavioral Health Administration)

[Filed July 1, 2020, 8:55 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-03-155.

Title of Rule and Other Identifying Information: The department is proposing to create new sections in chapter 388-875 WAC, including WAC 388-875-0200 Forensic navigators—Access to jails, 388-875-0210 Forensic navigators—

tors—Access to records, 388-875-0220 Forensic navigator caseload, and 388-875-0230 Discharge of forensic navigator.

Hearing Location(s): On August 4, 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>; or by Skype. Due to the COVID-19 pandemic, hearing may be held via Skype, see DSHS website for most up-to-date information.

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

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

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

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of these rules is to clarify the duties and authority of the forensic navigator program under RCW 10.77.074. This RCW was the result of the settlement agreement and implementation plan for the Trueblood lawsuit. These rules describe the timeframes that jails must follow in providing access to forensic navigator clients, and the timeframes that entities holding relevant client records must follow in providing records to forensic navigators, to help ensure timely provision of forensic navigator services. These rules also describe the caseload prioritization for forensic navigators, and the circumstances in which forensic navigator services will terminate.

Reasons Supporting Proposal: The goal of this proposal is to ensure timely access to both clients and needed documentation supporting the work of the forensic navigator program, and to clarify the prioritization and termination of forensic navigator services. The expected outcome is improved and reliable timeliness for access to clients and records by the forensic navigator program, and clarification of the duties of the forensic navigator.

Statutory Authority for Adoption: Chapter 10.77 RCW; RCW 72.01.090.

Statute Being Implemented: RCW 10.77.074; and section 2, chapter 326, Laws of 2019.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting: Teva Weissman, 1115 Washington Street, Olympia, WA 98501, 360-902-7637; Implementation and Enforcement: Jason Karpen, 4450 10th Street S.E., Lacey, WA 98503, 360-529-6116.

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. These rules are interpretive rules which do not subject a person to a sanction or penalty.

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

Is exempt under RCW 34.05.328 (5)(c)(ii).

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 cost of copying records is minimal due to expected electronic format of the typical request and the limited volume of forensic navigator clients affecting requests from varied entities within the state.

June 25, 2020

Katherine I. Vasquez  
Rules Coordinator

#### NEW SECTION

**WAC 388-875-0200 Forensic navigators—Access to jails.** Jails that are holding forensic navigator clients must allow forensic navigators access to their clients held within that jail within twenty-four hours of a request by a forensic navigator.

#### NEW SECTION

**WAC 388-875-0210 Forensic navigators—Access to records.** A behavioral health, educational, or law enforcement agency, or a correctional facility must provide records to the forensic navigator that relate to an individual who is receiving forensic navigator services within seventy-two hours of a records request.

#### NEW SECTION

**WAC 388-875-0220 Forensic navigator caseload.** The department has discretion over the manner in which caseloads are prioritized. This prioritization may include, but is not limited to, prioritization of clients who are:

(1) In jail awaiting competency services for whom DSHS has received an order to provide competency services, over those who are not; and

(2) Frequent users of forensic mental health services over clients who are not frequent users of the forensic mental health system.

#### NEW SECTION

**WAC 388-875-0230 Discharge of forensic navigator.** Forensic navigator services must conclude upon the occurrence of any of the following events:

(1) A forensic navigator client is determined competent to stand trial;

(2) A forensic navigator client is determined not competent to stand trial, but is not ordered into the outpatient competency restoration program (OCRCP);

(3) A forensic navigator client has their criminal charges dismissed pending a civil commitment hearing;

(4) A forensic navigator client enters or returns to jail due to a revocation of OCRCP or the filing of new charges;

(5) A forensic navigator client receives a new or amended order directing inpatient admission for restoration;

(6) A forensic navigator client refuses further forensic navigator services after the court ordered restoration period ends; or

(7) In other situations, as deemed appropriate by the department, in its sole discretion.

**WSR 20-14-122**  
**PROPOSED RULES**  
**YAKIMA REGIONAL**  
**CLEAN AIR AGENCY**  
[Filed June 30, 2020, 4:50 p.m.]

Original Notice.

Proposal is exempt under RCW 70.94.141(1).

Title of Rule and Other Identifying Information: Yakima Regional Clean Air Agency Regulation 1 (YRCAA Regulation 1).

Hearing Location(s): On October 8, 2020, at 2:00 p.m.

Board meeting, via phone conference call or at Yakima City Hall if allowed in person. Depending on COVID-19 situation, if allowed in person, it will be at Yakima City Hall, if not it will be via phone conference call.

Date of Intended Adoption: October 8, 2020.

Submit Written Comments to: Hasan Tahat, 186 Iron Horse Court, Suite 101, Yakima, WA 98901, email [hasan@yrcaa.org](mailto:hasan@yrcaa.org), fax 509-834-2060, by September 8, 2020.

Assistance for Persons with Disabilities: Contact Hasan Tahat, phone 509-834-2050, fax 509-834-2060, email [hasan@yrcaa.org](mailto:hasan@yrcaa.org), by September 7, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the changes is to update the regulation to be current with federal and state rules. Some sections were repealed in 2002. Make the regulation easier for readability and clean it up for errors and references. Eventually, the regulation to be submitted for inclusion in the state implementation plan (SIP).

Reasons Supporting Proposal: YRCAA Regulation 1 was last amended in 2002. Since that time there have been numerous changes to the supporting WAC which support the Washington State Clean Air Act, chapter 70.94 RCW.

Statutory Authority for Adoption: RCW 70.94.141.

Statute Being Implemented: RCW 70.94.141.

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

Name of Proponent: YRCAA, governmental.

Name of Agency Personnel Responsible for Drafting: Hasan Tahat, 186 Iron Horse Court, Suite 101, Yakima, WA 98901, 509-834-2050; Implementation and Enforcement: Keith Hurley, 186 Iron Horse Court, Suite 101, Yakima, WA 98901, 509-834-2050.

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. YRCAA is an air pollution control authority and is not included in the list of affected agencies provided in

RCW 34.05.328 (5)(a). YRCAA is not making the regulation voluntary.

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

Is exempt under RCW 70.94.141(1).

Explanation of exemptions: In accordance with RCW 70.94.141(1), air pollution control authorities are authorized to adopt and amend rules and regulations in accordance with chapter 42.30 RCW and selected portions of chapter 34.05 RCW. YRCAA is not deemed a state agency and is not required to comply with the provisions of chapter 19.85 RCW.

June 30, 2020

Keith Hurley

Executive Director

**Reviser's note:** The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 20-16 issue of the Register.