

WSR 20-23-003
EMERGENCY RULES
HEALTH CARE AUTHORITY

[Filed November 5, 2020, 7:48 a.m., effective November 5, 2020, 7:48 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The health care authority is revising this section to allow for payment of office visits for clients under the alien emergency medical (AEM) program when the visit is specifically for the assessment and treatment of the COVID-19 virus.

Citation of Rules Affected by this Order: Amending WAC 182-507-0115.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This rule making is in response to the Governor's Proclamation 20-05 declaring a State of Emergency for all counties throughout the state of Washington as a result of the coronavirus disease 2019 (COVID-19) and the secretary of the federal Department of Health and Human Services declaration of a public health emergency related to COVID-19. This emergency rule making is necessary to preserve the public health, safety, and general welfare by allowing payment for the office visit for an AEM client for the assessment and treatment of the COVID-19 virus.

This emergency filing replaces the emergency rules filed under WSR 20-15-069 on July 13, 2020. The agency is refiling the emergency to continue the emergency rule while proceeding through the permanent rule-making process. Since the last emergency filing, the agency filed a CR-101 under WSR 20-15-077 on July 14, 2020, to begin the permanent rule-making process. The agency has completed the external review of a draft rule and is reviewing stakeholder comments.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

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

Date Adopted: November 5, 2020.

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 12-24-038, filed 11/29/12, effective 12/30/12)

WAC 182-507-0115 Alien emergency medical program (AEM). (1) A person nineteen years of age or older who is not pregnant and meets the eligibility criteria under WAC 182-507-0110 is eligible for the alien emergency medical program's scope of covered services described in this section if the person meets ~~((a) and (b) or (e))~~ the requirements of (a) of this subsection, as well as the requirements of either (b), (c), or (d) of this subsection:

(a) The medicaid agency determines that the primary condition requiring treatment ~~((meets the definition of))~~ is an emergency medical condition as defined in WAC 182-500-0030, and the condition is confirmed through review of clinical records; and

(b) The person's qualifying emergency medical condition is treated in one of the following hospital settings:

(i) Inpatient;

(ii) Outpatient surgery;

(iii) Emergency room services, which must include an evaluation and management (E&M) visit by a physician; or

(c) Involuntary Treatment Act (ITA) and voluntary inpatient admissions to a hospital psychiatric setting that are authorized by the agency's inpatient mental health designee (see subsection (5) of this section); or

(d) For the assessment and treatment of the COVID-19 virus, the agency covers one physician visit provided in any outpatient setting, including the office or clinic setting, or via telemedicine, online digital or telephonic services to assess/evaluate and test, if clinically indicated, as follows:

(i) If the test is positive, in addition to the services described in (b) of this subsection and subsection (2)(b) of this section, any medically necessary services to treat, including:

(A) Follow-up office visits;

(B) Medications, prior authorization requirements may apply;

(C) Respiratory services and supplies; and

(D) Medical supplies, prior authorization requirements may apply.

(ii) If a test is negative, any treatment described in (d)(i) (A) through (B) of this subsection, as a precautionary measure for an anticipated positive test result.

(e) The coverage described in (d) of this subsection is in effect only during the time period, as determined by the agency in its sole discretion, that a public health emergency related to COVID-19 exists.

(2) If a person meets the criteria in subsection (1) of this section, the agency will cover and pay for all related medically necessary health care services and professional services provided:

(a) By physicians in their office or in a clinic setting immediately prior to the transfer to the hospital, resulting in a direct admission to the hospital; and

(b) During the specific emergency room visit, outpatient surgery or inpatient admission. These services include, but are not limited to:

(i) Medications;

(ii) Laboratory, X-ray, and other diagnostics and the professional interpretations;

(iii) Medical equipment and supplies;
 (iv) Anesthesia, surgical, and recovery services;
 (v) Physician consultation, treatment, surgery, or evaluation services;
 (vi) Therapy services;
 (vii) Emergency medical transportation; and
 (viii) Nonemergency ambulance transportation to transfer the person from a hospital to a long term acute care (LTAC) or an inpatient physical medicine and rehabilitation (PM&R) unit, if that admission is prior authorized by the agency or its designee as described in subsection (3) of this section.

(3) The agency will cover admissions to an LTAC facility or an inpatient PM&R unit if:

(a) The original admission to the hospital meets the criteria as described in subsection (1) of this section;

(b) The person is transferred directly to this facility from the hospital; and

(c) The admission is prior authorized according to LTAC and PM&R program rules (see WAC 182-550-2590 for LTAC and WAC 182-550-2561 for PM&R).

(4) The agency does not cover any services, regardless of setting, once the person is discharged from the hospital after being treated for a qualifying emergency medical condition authorized by the agency or its designee under this program. Exceptions:

(a) For admissions to treat COVID-19 or complications thereof, the agency will cover up to two postdischarge physician follow-up visits, regardless of how the visits are conducted or where they are conducted.

(b) Pharmacy services, drugs, devices, and drug-related supplies listed in WAC 182-530-2000, prescribed on the same day and associated with the qualifying visit or service (as described in subsection (1) of this section) will be covered for a one-time fill and retrospectively reimbursed according to pharmacy program rules.

(5) Medical necessity of inpatient psychiatric care in the hospital setting must be determined, and any admission must be authorized by the agency's inpatient mental health designee according to the requirements in WAC 182-550-2600.

(6) There is no precertification or prior authorization for eligibility under this program. Eligibility for the AEM program does not have to be established before an individual begins receiving emergency treatment.

(7) Under this program, certification is only valid for the period of time the person is receiving services under the criteria described in subsection (1) of this section. The exception for pharmacy services is also applicable as described in subsection (4) of this section.

(a) For inpatient care, the certification is only for the period of time the person is in the hospital, LTAC, or PM&R facility - The admission date through the discharge date. Upon discharge the person is no longer eligible for coverage.

(b) For an outpatient surgery or emergency room service the certification is only for the date of service. If the person is in the hospital overnight, the certification will be the admission date through the discharge date. Upon release from the hospital, the person is no longer eligible for coverage.

(8) Under this program, any visit or service not meeting the criteria described in subsection (1) of this section is con-

sidered not within the scope of service categories as described in WAC 182-501-0060. This includes, but is not limited to:

(a) Hospital services, care, surgeries, or inpatient admissions to treat any condition which is not considered by the agency to be a qualifying emergency medical condition, including but not limited to:

(i) Laboratory X-ray, or other diagnostic procedures;

(ii) Physical, occupational, speech therapy, or audiology services;

(iii) Hospital clinic services; or

(iv) Emergency room visits, surgery, or hospital admissions.

(b) Any services provided during a hospital admission or visit (meeting the criteria described in subsection (1) of this section), which are not related to the treatment of the qualifying emergency medical condition;

(c) Organ transplants, including preevaluations, post operative care, and anti-rejection medication;

(d) Services provided outside the hospital settings described in subsection (1) of this section including, but not limited to:

(i) Office or clinic-based services rendered by a physician, an ARNP, or any other licensed practitioner;

(ii) Prenatal care, except labor and delivery;

(iii) Laboratory, radiology, and any other diagnostic testing;

(iv) School-based services;

(v) Personal care services;

(vi) Physical, respiratory, occupational, and speech therapy services;

(vii) Waiver services;

(viii) Nursing facility services;

(ix) Home health services;

(x) Hospice services;

(xi) Vision services;

(xii) Hearing services;

(xiii) Dental services;

(xiv) Durable and nondurable medical supplies;

(xv) Nonemergency medical transportation;

(xvi) Interpreter services; and

(xvii) Pharmacy services, except as described in subsection (4) of this section.

(9) The services listed in subsection (8) of this section are not within the scope of service categories for this program and therefore the exception to rule process is not available.

(10) Providers must not bill the agency for visits or services that do not meet the qualifying criteria described in this section. The agency will identify and recover payment for claims paid in error.

WSR 20-23-005

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 20-244—Filed November 5, 2020, 2:05 p.m., effective November 5, 2020, 2:05 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to close Puget Sound Crab Management Region 1 to commercial harvest and commercial pot deployment effective November 7, 2020, at 7:00 p.m.

Citation of Rules Affected by this Order: Repealing WAC 220-340-45500K; and amending WAC 220-340-455.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The provisions of this emergency rule:

(1) Closes Puget Sound Crab Management Region 1 to commercial harvest and commercial pot deployment effective November 7, 2020, at 7:00 p.m. to reserve a portion of the available quota for a harvest opportunity later in the season;

(2) Permits commercial crab harvest in Puget Sound within Crab Management Regions 2 West, 3-2, and 3-3 until further notice;

(3) Closes commercial crab harvest in Crab Management Region 2 East until further notice;

(4) Sets a limit of thirty-five pots per license per buoy tag number in Crab Management Region 1 and fifty pots per license per buoy tag number in commercial crab Regions 2 West, 3-2, and 3-3;

(5) Reduces pot limits to thirty-five per license for Regions 2 West and 3-2 after November 7.

Region 1 will close at 7:00 p.m. on November 7, 2020, until further notice to reserve approximately two hundred thousand pounds of quota to be held for late season harvest. In addition, pot limits in Regions 2 West and 3-2 will be reduced to thirty-five pots per license to meter fishery landings. There is insufficient allocation to accommodate state commercial harvest in Region 2E. There is sufficient allocation available in Regions 2 West, 3-2, and 3-3 to accommodate continued state commercial harvest. These provisions are in conformity with agreed management plans with applicable tribes. These management plans are entered into as required by court order. The Puget Sound commercial season is structured to meet harvest allocation objectives negotiated with applicable treaty tribes and outlined in the management plans. There is insufficient time to adopt permanent rules. Further adjustment of season structure may be made pending updated harvest data.

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

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

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

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

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

Date Adopted: November 5, 2020.

Kelly Susewind
Director

NEW SECTION

WAC 220-340-45500L Commercial crab fishery—Seasons and areas—Puget Sound. Notwithstanding the provisions of WAC 220-340-450:

(1) Effective immediately until further notice, it is illegal to harvest Dungeness crab for commercial purposes in Crab Management Regions 2 East and 3-1.

(2) Effective immediately and until 6:59 p.m. on November 7, 2020, it is permissible to harvest Dungeness crab for commercial purposes in Crab Management Region 1.

(3) Effective 7:00 p.m. on November 7, 2020 until further notice, it is illegal to harvest Dungeness crab for commercial purposes in Crab Management Region 1.

(4) Effective immediately and until further notice, it is permissible to harvest Dungeness crab for commercial purposes in Crab Management Regions 2 West, 3-2, and 3-3.

(5) Effective immediately and until 6:59 p.m. on November 7, 2020, it is permissible to harvest Dungeness crab for commercial purposes in the following areas in Crab Management Region 1:

(a) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 20A between a line from the boat ramp at the western boundary of Birch Bay State Park to the western point of the entrance of the Birch Bay Marina and a line from the same boat ramp to Birch Point.

(b) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22B in Fidalgo Bay south of a line projected from the red number 4 entrance buoy at Cape Sante Marina to the northern end of the eastern most oil dock.

(c) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22A in Deer Harbor north of a line projected from Steep Point to Pole Pass.

(6) Effective immediately and until further notice, it is permissible to harvest Dungeness crab for commercial purposes in the following area in Crab Management Region 2 West:

(a) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 26A-W in Useless Bay north and east of a line from the south end of the Double Bluff State Park seawall (47°58.782'N, 122°30.840'W) projected 110 degrees true to the boulder on shore (47°57.690'N, 122°26.742'W).

(7) Effective immediately and until further notice, it is illegal to harvest Dungeness crab for commercial purposes in the following areas in Crab Management Region 2 East:

(a) That portion of Marine Fish-Shellfish Management and Catch Reporting Area 24C shoreward of the 400-foot depth contour within an area described by two lines projected

northeasterly from Sandy Point and the entrance to the marina at Langley.

(b) That portion of Marine Fish-Shellfish Management and Catch Reporting Area 26A-E east of a line that extends true north from the green #1 buoy at Possession Point to Possession Point, and west of a line from the green #1 buoy at Possession Point extending northward along the 200-foot depth contour to the Glendale dock.

(c) That portion of Marine Fish-Shellfish Catch Reporting Area 26A east of a line projected from the outermost tip of the ferry dock at Mukilteo, projected to the green #3 buoy at the mouth of the Snohomish River, and west of a line projected from that #3 buoy southward to the oil boom pier on the shoreline.

(8) Effective immediately until further notice, the following areas are closed to commercial crab fishing:

(a) That portion of Marine Fish-Shellfish Management and Catch Reporting Area 25A west of the 123°7.0' longitude line projected from the new Dungeness light due south to the shore of Dungeness Bay.

(b) That portion of Marine Fish-Shellfish Management and Catch Reporting Area 23D a line from the eastern tip of Ediz Hook to the ITT Rayonier Dock.

(c) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 24A east of a line projected true north from the most westerly tip of Skagit Island and extending south to the most westerly tip of Hope Island, thence southeast to Seal Rocks, thence southeast to the green can buoy at the mouth of Swinomish Channel, thence easterly to the west side of Goat Island.

(9) Effective immediately until 6:59 p.m. on November 7, 2020, it is unlawful for any person to harvest crabs for commercial purposes with more than 35 pots per license per buoy tag number in Crab Management Region 1 and with more than 50 pots per license per buoy tag number in Crab Management Regions 2 West and 3-2.

(10) Effective immediately until further notice it is unlawful for any person to harvest crabs for commercial purposes with more than 50 pots per license per buoy tag number in Crab Management Regions 3-3.

(11) Effective 7:00 p.m. November 7, 2020 until further notice, it is unlawful for any person to harvest crabs for commercial purposes with more than 35 pots per license per buoy tag number in Crab Management Region 2 West and 3-2.

(12) All remaining, undeployed buoy tags per license per region must be onboard the designated vessel and available for immediate inspection.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-340-45500K Commercial crab fishery—Seasons and areas—Puget Sound. (20-230)

WSR 20-23-011

EMERGENCY RULES

DEPARTMENT OF HEALTH

[Filed November 6, 2020, 10:25 a.m., effective November 6, 2020, 10:25 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 246-930-010 Sex offender treatment provider, the department of health (department) is continuing the emergency rule amendment to WAC 246-930-010 to remove the words "face-to-face" from the definition of sex offender treatment, enabling sex offenders to continue accessing telehealth treatment and enabling increased social distancing during the COVID-19 declared emergency.

These rules continue the initial emergency rules filed on July 9, 2020, as WSR 20-15-057. As part of the department's continuing response to the evolving COVID-19 public health threat, continuing this emergency rule will allow sex offenders to maintain access to care to prevent recidivism, while complying with the Governor's Stay Home, Stay Healthy proclamations and mitigating the public health threat created by COVID-19.

Citation of Rules Affected by this Order: Amending WAC 246-930-010.

Statutory Authority for Adoption: RCW 18.155.040.

Other Authority: None.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The immediate continuation of this emergency rule is necessary for the preservation of public health, safety, and general welfare. The department continues to respond to the COVID-19 declared emergency and continues to take necessary actions to help prevent the spread of COVID-19 by promoting social distancing practices and the Governor's Stay Home, Stay Healthy proclamations. By extending the emergency rule amendment, the department will continue allowing sex offender treatment to occur through telehealth. By allowing treatment through telehealth rather than face-to-face, the department will support both the health of sex offenders, who require access to treatment, and the welfare of the public, who are at risk if offenders recidivate. While telehealth treatment is not an ideal substitute for in-person group or individual therapy sessions, it is a tool that will allow sex offenders to maintain access to care to prevent recidivism, while continuing to support social distancing to mitigate the public health concerns created by COVID-19.

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

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

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

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

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

Date Adopted: November 4, 2020.

Jessica Todorovich
Chief of Staff
for John Wiesman, DrPH, MPH
Secretary

AMENDATORY SECTION (Amending WSR 07-09-092, filed 4/18/07, effective 5/19/07)

WAC 246-930-010 General definitions. In these rules, the following terms shall have the definition described below, unless another definition is stated:

(1) "Affiliate sex offender treatment provider" or "affiliate" means an individual who has satisfactorily passed the examination, met the education requirements, and has been issued a certificate to evaluate and treat sex offenders under chapter 18.155 RCW, and under the supervision of a certified sex offender treatment provider in accordance with the supervision requirements set forth in WAC 246-930-075.

(2) "Certified sex offender treatment provider" or "provider" means an individual who has satisfactorily passed the examination, met the education and experience requirements, and has been issued a certificate by the department to evaluate and treat sex offenders under chapter 18.155 RCW.

(3) "Client" means a person who has been investigated by law enforcement or child protective services for committing or allegedly committing a sex offense, or who has been convicted of a sex offense.

(4) "Committee" means the sex offender treatment providers advisory committee.

(5) "Community protection contract" means the document specifying the treatment rules and requirements the client has agreed to follow in order to maximize community safety.

(6) "Co-therapy hours" means the actual number of hours the applicant spent facilitating a group session.

(7) "Credential" or its derivative means the process of licensing, registration, certification or the equivalent through which a person is legally recognized by a state agency as lawfully authorized to practice a health profession.

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

(9) "Evaluation" means a comprehensive assessment or examination of a client conducted by a provider or affiliate that examines the client's offending behavior. Evaluation results must be detailed in a written report. Examples of evaluations include forensic, SSOSA, and SSODA evaluations. Standards for assessment and evaluation reports, and evaluation experience credit are located in WAC 246-930-320 and 246-930-340.

(10) "Parties" means the defendant, the prosecuting attorney, and the supervising officer.

(11) "Secretary" means the secretary of the department of health, or designee.

(12) "SSODA" means special sex offender disposition alternative, authorized under RCW 13.40.160.

(13) "SSOSA" means special sex offender sentencing alternative, authorized under RCW 9.94A.670.

(14) "Supervising officer" is the designated representative of the agency having oversight responsibility for a client sentenced under SSOSA or SSODA, for example, a community corrections officer or a juvenile probation officer.

(15) "Treatment" means (~~face-to-face~~) individual, group, or family therapy, provided by an affiliate or provider, to a client. Treatment is focused on the client's offending behavior.

(16) "Treatment plan" means a written statement of intended care and services as documented in the evaluation that details how the client's treatment needs will be met while protecting the community during the course of treatment.

WSR 20-23-012
EMERGENCY RULES
DEPARTMENT OF HEALTH

(Pharmacy Quality Assurance Commission)

[Filed November 6, 2020, 10:30 a.m., effective November 7, 2020]

Effective Date of Rule: November 7, 2020.

Purpose: WAC 246-945-010 Prescription labeling, records, and advertising—Minimum requirements, the pharmacy quality assurance commission (commission) is adopting emergency rules to reduce burdens on practitioners prescribing Schedule II substances during the coronavirus disease (COVID-19) outbreak. This emergency rule was originally filed on April 21, 2020, under WSR 20-09-133. It was refiled on July 10, 2020, after the commission's new chapter went into effect under WSR 20-15-058. This emergency rule will continue the existing emergency rule amending WAC 246-945-010 to increase the duration of time a practitioner has to deliver a signed prescription of a Schedule II substance to the pharmacy from seven to fifteen days when a prescription is dispensed in an emergency. It also defines what a "signed prescription" means and allows for a practitioner to accomplish this requirement through paper, electronic transmission, facsimile, photograph, or scanned copy. These alternative methodologies support patients, practitioners, and pharmacists' efforts to practice social distancing and to help mitigate communal spread.

Citation of Rules Affected by this Order: Amending WAC 246-945-010.

Statutory Authority for Adoption: RCW 18.64.005; chapter 69.50 RCW.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The immediate amendment of this existing rule is necessary for the preservation of public health, safety, and general welfare. Stakeholders and leaders from the pain community have highlighted this is an immedi-

ate need for Washingtonians. This emergency rule has been in effect since April 21, 2020. This emergency rule allows more time and more avenues for complying with the requirements during the ongoing COVID-19 pandemic, reducing burdens on practitioners and pharmacists and sustaining patient access during this difficult time. The emergency rules will help address this problem and reduce barriers for providers and patient populations in need of Schedule II prescriptions throughout this public health emergency. Observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to public interest and the governor's order.

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

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

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

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

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

Date Adopted: November 6, 2020.

Tim Lynch, PharmD, MS, FABC, FASHP, Chair
Pharmacy Quality Assurance Commission

AMENDATORY SECTION (Amending WSR 20-12-072, filed 6/1/20, effective 7/1/20)

WAC 246-945-010 Prescription and chart order—Minimum requirements. (1) For the purposes of this section, prescription does not include chart orders as defined in RCW 18.64.011(3).

(2) For the purposes of WAC 246-945-010 through 246-945-013, prescription includes written and electronic prescriptions.

(3) A prescription for a noncontrolled legend drug must include, but is not limited to, the following:

- (a) Prescriber's name;
- (b) Name of patient, authorized entity, or animal name and species;
- (c) Date of issuance;
- (d) Drug name, strength, and quantity;
- (e) Directions for use;
- (f) Number of refills (if any);
- (g) Instruction on whether or not a therapeutically equivalent generic drug or interchangeable biological product may be substituted, unless substitution is permitted under a prior-consent authorization;

(h) Prescriber's manual or electronic signature, or prescriber's authorized agent signature if allowed by law; and

(i) If the prescription is written, it must be written on tamper-resistant prescription pad or paper approved by the commission pursuant to RCW 18.64.500;

(4) A prescription for a controlled substance must include all the information listed in subsection (1) of this section and the following:

- (a) Patient's address;
- (b) Dosage form;
- (c) Prescriber's address;
- (d) Prescriber's DEA registration number; and
- (e) Any other requirements listed in 21 C.F.R., Chapter II.

(5) A chart order must meet the requirements of RCW 18.64.550 and any other applicable requirements listed in 21 C.F.R., Chapter II.

(6) A controlled substance listed in Schedule II can only be dispensed pursuant to a valid prescription in accordance with WAC 246-945-011 unless there is an "emergency."

(a) For the purposes of this subsection, an "emergency" exists when the immediate administration of the drug is necessary for proper treatment and no alternative treatment is available, and further, it is not possible for the practitioner to provide a written or electronic prescription for the drug at that time.

(b) If a Schedule II drug is dispensed in an emergency, the practitioner must deliver a signed prescription to the dispenser within ~~((seven))~~ fifteen days after authorizing an emergency oral prescription or if delivered by mail it must be postmarked within the ~~((seven))~~ fifteen day period, and further the pharmacist must note on the prescription that it was filled on an emergency basis.

(c) For the purposes of this subsection, a "signed prescription" shall be either:

- (i) A paper prescription;
- (ii) An electronic prescription;
- (iii) A copy of the paper prescription sent via facsimile to the pharmacy; or
- (iv) A photograph or scanned copy of the paper prescription sent to the pharmacy.

(7) A controlled substance listed in Schedule III, IV, or V, can only be dispensed pursuant to a valid prescription in accordance with WAC 246-945-011, or an oral prescription. An oral prescription for a controlled substance listed in Schedule III, IV, or V must be promptly reduced to a written or electronic prescription that complies with WAC 246-945-011.

(8) A noncontrolled legend drug can only be dispensed pursuant to a valid prescription in accordance with WAC 246-945-011, or an oral prescription. An oral prescription for a noncontrolled legend drug must be promptly reduced to a written or electronic prescription that complies with WAC 246-945-011.

WSR 20-23-013

EMERGENCY RULES

DEPARTMENT OF HEALTH

(Pharmacy Quality Assurance Commission)

[Filed November 6, 2020, 10:39 a.m., effective November 7, 2020]

Effective Date of Rule: November 7, 2020.

Purpose: WAC 246-945-056 Schedule V, the pharmacy quality assurance commission (commission) is adopting emergency rules to remove Epidiolex from the list of Schedule V controlled substances in Washington state. This emergency rule was originally filed on May 20, 2020, under WSR 20-11-078. It was refiled on July 10, 2020, after the commission's new chapter when [went] into effect under WSR 20-15-059. Epidiolex is an FDA-approved cannabidiol with less than 0.3% tetrahydrocannabinol (THC) and descheduling the drug will maintain the emergency rule. It also aligns Washington state rule with the federal decision to exclude all hemp products with less than 0.3% THC from the definition of marijuana.

Citation of Rules Affected by this Order: Amending WAC 246-945-056.

Statutory Authority for Adoption: RCW 18.64.005, 69.50.201.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The immediate amendment of this existing rule is necessary for the preservation of public health, safety, and general welfare. Epidiolex is an FDA-approved cannabidiol with less than 0.3% THC used to help treat some seizure disorders. The 2018 Agricultural Improvement Act amended the Controlled Substances Act and declassified hemp products with less than 0.3% THC from Schedule I; however, Epidiolex was placed on Schedule V until April 6, 2020, when the United States drug enforcement agency announced that it would be descheduled as a federally controlled substance. This emergency rule will maintain the emergency rule already in effect and update Washington rule to align with the federal decision. Emergency rules are necessary to reduce burdens on practitioners prescribing Epidiolex and allow patients easier access to the care they need. This rule may also help reduce pressure on the health system during the ongoing COVID-19 pandemic. Observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest. The commission has initiated permanent rule making to deschedule Epidiolex, but it will not be complete before the current emergency rules expire.

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

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

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

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

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

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

Date Adopted: November 6, 2020.

Tim Lynch, PharmD, MS, FABC, FASHP, Chair
Pharmacy Quality Assurance Commission

AMENDATORY SECTION (Amending WSR 20-12-072, filed 6/1/20, effective 7/1/20)

WAC 246-945-056 Schedule V. The commission finds that the following substances have low potential for abuse relative to substances in Schedule IV under RCW 69.50.210 and WAC 246-945-055 and have currently accepted medical use in treatment in the United States and that the substances have limited physical dependence or psychological dependence liability relative to the substance in Schedule IV. In addition to the substances listed in RCW 69.50.212, the commission places each of the following drugs and substances by whatever official name, common or usual name, chemical name, or brand name in Schedule V.

Depressants. Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts:

(1) Brivaracetam ((2S)-2-[(4R)-2-oxo-4-propylpyrrolidin-1-yl] butanamide); also referred to as BRV; UCB-34714; Briviact;

(2) Ezogabine [N-[2-amino-4-(4-fluorobenzylamino)phenyl]-carbamic acid ethyl ester].

~~((3) Approved cannabidiol drugs. A drug product in finished dosage formulation that has been approved by the U.S. Food and Drug Administration that contains cannabidiol (2-[1R-3-methyl-6R-(1-methylethenyl)-2-cyclohexen-1-yl]-5-pentyl-1,3-benzenediol) derived from cannabis and no more than 0.1 percent (w/w) residual tetrahydrocannabinols, also known as Epidiolex.))~~

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

WSR 20-23-014
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Office of the Secretary)

[Filed November 6, 2020, 10:47 a.m., effective November 20, 2020]

Effective Date of Rule: November 20, 2020.

Purpose: The department is filing this subsequent emergency rule in response to the public health crisis created by the COVID-19 virus (commonly referred to as the "coronavirus"). The extended emergency rule allows electronic filing and electronic distribution of notices and orders to the office of administrative hearings (OAH) via email by striking the email prohibition, adding a provision for email filing with OAH, and adding clarifying language. The department has completed the appropriate procedures to adopt the rule as a

permanent rule. The CR-102 Proposed rule making was posted at WSR 20-19-148 on September 23, 2020; the public hearing was held on October 27, 2020; the CR-103 Rule-making order was filed as WSR 20-22-096 on November 3, 2020; and the permanent rule will take effect on December 4, 2020.

Citation of Rules Affected by this Order: Amending WAC 388-02-0075 How does a party file documents?

Statutory Authority for Adoption: RCW 43.17.060, 43.20A.550, 34.05.020, 34.05.350.

Other Authority: Proclamation by the Governor 20-05.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: To protect public health, safety, and welfare there is an emergent need to allow electronic filing and electronic distribution of notices and orders to OAH supporting "social distancing" due to the public health crisis created by the COVID-19 virus (commonly referred to as the "coronavirus"), and associated state of emergency in all Washington counties as proclaimed by Governor Inslee's "Proclamation by the Governor 20-05." OAH has issued "temporary emergency policy and procedures" authorizing electronic filings for the department of social and health services, health care authority, and department of children, youth, and families caseloads, effective March 25, 2020. Instructions for using secure email filing are available at www.oah.wa.gov.

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

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

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

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

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

Date Adopted: November 6, 2020.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 00-18-059, filed 9/1/00, effective 10/2/00)

WAC 388-02-0075 How does a party file documents?

(1) A party may file documents by delivering them to OAH or BOA by:

- (a) Personal service (hand delivery);
- (b) First class, registered, or certified mail;

(c) Fax transmission if the party mails a copy of the document the same day;

(d) Commercial delivery service; or

(e) Legal messenger service.

(2) ((A)) Any party ((cannot)) may file documents with OAH by secure email. The BOA does not accept electronic submission except by fax.

WSR 20-23-018

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 20-246—Filed November 6, 2020, 3:03 p.m., effective November 9, 2020]

Effective Date of Rule: November 9, 2020.

Purpose: The purpose of this emergency rule is to close fishing within the Hoodspout Hatchery Zone.

Citation of Rules Affected by this Order: Repealing WAC 220-313-06000Y; and amending WAC 220-313-060.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This emergency rule is needed to close fishing within the Hoodspout Hatchery Zone. Fishery managers estimate that the 2020 fall chum run is about 1/3 of the way through normal run timing while the hatchery has only achieved ten percent of broodstock needs. This rule is necessary to ensure hatchery broodstock goals are met. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: November 6, 2020.

Kelly Susewind
Director

NEW SECTION

WAC 220-313-06000Y Puget Sound salmon—Saltwater seasons and daily limits. Effective November 9, 2020 through November 30, 2020, the following provisions of WAC 220-313-060 regarding fishing seasons for the Hoodsport Hatchery Zone in Marine Area 12 shall be modified as described below. All other provisions of WAC 220-313-060 not addressed herein, or unless otherwise amended by emergency rule, remain in effect:

Catch Record Card Area 12: Waters within a 2,000 foot arc seaward of yellow buoys at the mouth of Finch Creek at Hoodsport Salmon Hatchery: Closed Waters.

REPEALER

The following section of the Washington Administrative Code is repealed effective December 1, 2020:

WAC 220-313-06000Y Puget Sound salmon—Saltwater seasons and daily limits.

WSR 20-23-019**EMERGENCY RULES****DEPARTMENT OF****FISH AND WILDLIFE**

[Order 20-245—Filed November 6, 2020, 3:27 p.m., effective November 6, 2020, 3:27 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend Puget Sound commercial squid rules.

Citation of Rules Affected by this Order: Amending WAC 220-340-770 and 220-340-030.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, and 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This emergency rule is needed to align the commercial squid regulation with provisions of the 2017-2022 Puget Sound Squid Management Plan. The regulation will prohibit the use of drag seine gear within Puget Sound waters and updates the requirements of harvest logs consistent with comanagement plans. There is insufficient time to adopt permanent rules, but updating of related permanent rules is currently in process (WSR 20-22-110).

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

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

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

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

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

Date Adopted: November 6, 2020.

Kelly Susewind
Director

NEW SECTION**WAC 220-340-77000C Commercial squid fishery**

Notwithstanding the provisions of WAC 220-340-770, effective immediately, until further notice, the following applies to Puget Sound as defined in WAC 220-340-010 only:

It is unlawful to fish for squid for commercial purposes with drag seine gear.

NEW SECTION**WAC 220-340-03000G Shellfish harvest logs**

Notwithstanding the provisions of WAC 220-340-030, effective immediately, until further notice, the following applies to Puget Sound as defined in WAC 220-340-010 only:

It is unlawful for vessel operators engaged in commercial harvest of squid, except when taken incidental to any other lawful fishery, to fail to permanently and legibly record in ink the following information before leaving the Marine Fish-Shellfish Management and Catch Reporting Area where taken:

The vessel's Washington department of fish and wildlife boat registration number, gear type, catch area, location (nearest landmark, bay, or GPS coordinates), starting and ending time of fishing, total vessel wattage of attracting lights, average depth of harvest, and numbers of other species caught and returned.

WSR 20-23-020**EMERGENCY RULES****DEPARTMENT OF****FISH AND WILDLIFE**

[Order 20-247—Filed November 6, 2020, 5:08 p.m., effective November 6, 2020, 5:08 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to modify commercial purse seine and gillnet seasons in Salmon Management and Catch Reporting Areas 7, 7A, and 7B, and reef net seasons in Area 7.

Citation of Rules Affected by this Order: Repealing WAC 220-354-16000I and 220-354-12000Z; and amending WAC 220-354-160, 220-354-120, and 220-354-180.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is

necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This emergency rule is needed to adjust commercial gillnet and purse seine salmon fisheries in Puget Sound Salmon Management and Catch Reporting Areas 7, 7A, 7B, and reef net fisheries in Area 7. This rule also carries forward previous modifications to commercial gillnet and purse seine seasons in Areas 12, 12B, and 12C.

Modifications to the commercial seasons in [Areas] 7, 7A are needed because comanagers still have a harvestable share of chum salmon and the ability to target that share through November 10 as part of the chum annex in the Pacific Salmon Treaty.

Modifications to the commercial seasons in [Area] 7B are needed due to a much lower than expected catch-to-date combined with a preseason forecast of chum salmon bound for the Nooksack River below the escapement goal.

There is insufficient time to adopt permanent rules.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 3, Amended 0, Repealed 2.

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

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

Date Adopted: November 6, 2020.

Kelly Susewind
Director

NEW SECTION

WAC 220-354-16000J Puget Sound salmon—Gillnet—Open periods. Effective immediately through December 2, 2020, the following provisions of WAC 220-354-160 regarding commercial gillnet open periods for Salmon Management and Catch Reporting Areas 7, 7A, 7B, 12, 12B, and 12C shall be as described below. All other provisions of WAC 220-354-160 not addressed herein, or unless otherwise amended by emergency rule, remain in effect:

Area	Open/ Closed	Time	Date	Mesh Size
7, 7A	Open	7 AM-Midnight	11/8, 11/9, 11/10	6 1/4"
7B	Open	6 AM-4 PM	Nightly 11/10	6 1/4"

Area	Open/ Closed	Time	Date	Mesh Size
7B	Closed	6 AM-4 PM	Nightly 11/16, 11/17,	
7B	Closed	7 AM-4 PM	Nightly 11/24, 12/1	
12, 12B	Closed	6 AM-6 PM	11/10, 11/12, 11/16, 11/18	
12C	Closed	6 AM-6 PM	11/10, 11/12, 11/16	

NEW SECTION

WAC 220-354-12000A Puget Sound salmon—Purse seine—Open periods. Effective immediately through December 2, 2020, the following provisions of WAC 220-354-120 regarding commercial purse seine open periods for Salmon Management and Catch Reporting Areas 7, 7A, 7B, 12, 12B, and 12C shall be as described below. All other provisions of WAC 220-354-120 not addressed herein, or unless otherwise amended by emergency rule, remain in effect:

Area	Open/ Closed	Time	Date
7, 7A	Open	7 AM-5 PM	11/8, 11/9, 11/10
7B	Open	7 AM-5 PM	11/11
7B	Closed	7 AM-PM	11/18, 11/25, 12/2
12, 12B	Closed	7 AM-5 PM	11/9, 11/17
12C	Closed	7 AM-5 PM	11/9, 11/17

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

NEW SECTION

WAC 220-354-18000P Puget Sound salmon—Reef net—Open periods. Effective immediately through November 10, 2020, the following provisions of WAC 220-354-180 regarding commercial reef net open periods for Salmon Management and Catch Reporting Area 7 shall be as described below. All other provisions of WAC 220-354-180 not addressed herein, or unless otherwise amended by emergency rule, remain in effect:

Area	Open/ Closed	Time	Date
7	Open	5 AM-9 PM	11/8, 11/9, 11/10

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-354-16000I Puget Sound salmon—Gillnet—
Open periods.

The following section of the Washington Administrative Code is repealed:

WAC 220-354-12000Z Puget Sound salmon—Purse
seine—Open periods.

WSR 20-23-023
EMERGENCY RULES
SOUTH PUGET SOUND
COMMUNITY COLLEGE

[Filed November 9, 2020, 12:44 p.m., effective November 9, 2020, 12:44 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: On May 19, 2020, the Federal Register printed amendments to Title IX regulations (85 F.R. 30575). The new regulations address the grievance process for formal complaints of sexual harassment and are scheduled to take effect on August 14, 2020. This requires emergency updates to the college's code of student rights and responsibilities to be compliant with federal regulations. Included will be language to update and clarify guidelines and procedural changes on the necessary Supplemental Title IX procedures.

Citation of Rules Affected by this Order: New Supplemental Title IX procedures; WAC 132X-60-200, 132X-60-120, 132X-60-220, 132X-60-230, 132X-60-240, 132X-60-250, 132X-60-260, 132X-60-270, and 132X-60-280.

Statutory Authority for Adoption: Chapter 34.05 RCW; and RCW 28B.50.140(13); 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq.

Under RCW 34.05.350 the agency for good cause finds that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: South Puget Sound Community College is required by the United States Department of Education to comply with the recently adopted Title IX regulations, which take effect on August 14, 2020.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 9, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 9, Amended 0, Repealed 0.

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

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

Date Adopted: August 11, 2020.

Dr. Timothy Stokes
College President

**SUPPLEMENTAL TITLE IX STUDENT CONDUCT
PROCEDURES**

NEW SECTION

WAC 132X-60-200 Order of precedence. This supplemental procedure applies to allegations of sexual harassment subject to Title IX jurisdiction pursuant to regulations promulgated by the United States Department of Education. See 34 C.F.R. Part 106. To the extent these supplemental hearing procedures conflict with South Puget Sound Community College's standard disciplinary procedures in chapter 132X-60 WAC, these supplemental procedures shall take precedence.

NEW SECTION

WAC 132X-60-210 Prohibited conduct under Title IX. Pursuant to RCW 28B.50.140(13) and Title IX of the Education Amendments Act of 1972, 20 U.S.C. Sec. 1681, South Puget Sound Community College may impose disciplinary sanctions against a student who commits, attempts to commit, or aids, abets, incites, encourages, or assists another person to commit, an act(s) of "sexual harassment."

For purposes of this supplemental procedure, "sexual harassment" encompasses the following conduct:

(1) Quid pro quo harassment. A college employee conditioning the provision of an aid, benefit, or service of the college on an individual's participation in unwelcome sexual conduct.

(2) Hostile environment. Unwelcome conduct that a reasonable person would find to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the college's educational programs or activities, or employment.

(3) Sexual assault. Sexual assault includes the following conduct:

(a) Nonconsensual sexual intercourse. Any actual or attempted sexual intercourse (anal, oral, or vaginal), however slight, with any object or body part, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.

(b) Nonconsensual sexual contact. Any actual or attempted sexual touching, however slight, with any body part or object, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

(c) Incest. Sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of

either wholly or half related. Descendant includes stepchildren and adopted children under the age of eighteen.

(d) Statutory rape. Consensual sexual intercourse between someone who is eighteen years of age or older and someone who is under the age of sixteen.

(4) Domestic violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Washington, RCW 26.50.010.

(5) Dating violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person:

(a) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(b) Where the existence of such a relationship shall be determined based on a consideration of the following factors:

(i) The length of the relationship;

(ii) The type of relationship; and

(iii) The frequency of interaction between the persons involved in the relationship.

(6) Stalking. Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others, or suffer substantial emotional distress.

NEW SECTION

WAC 132X-60-220 Title IX jurisdiction. (1) This supplemental procedure applies only if the alleged misconduct:

(a) Occurred in the United States;

(b) Occurred during a college educational program or activity; and

(c) Meets the definition of sexual harassment as that term is defined in this supplemental procedure.

(2) For purposes of this supplemental procedure, an "educational program or activity" is defined as locations, events, or circumstances over which the college exercised substantial control over both the respondent and the context in which the alleged sexual harassment occurred. This definition includes any building owned or controlled by a student organization that is officially recognized by the college.

(3) Proceedings under this supplemental procedure must be dismissed if the decision maker determines that one or all of the requirements of subsection (1)(a) through (c) of this section have not been met. Dismissal under this supplemental procedure does not prohibit the college from pursuing other disciplinary action based on allegations that the respondent violated other provisions of the college's student conduct code in chapter 132X-60 WAC.

(4) If the student conduct officer determines the facts in the investigation report are not sufficient to support Title IX jurisdiction and/or pursuit of a Title IX violation, the vice president for student services or their designee will issue a

notice of dismissal in whole or part to both parties explaining why some or all of the Title IX claims have been dismissed.

NEW SECTION

WAC 132X-60-230 Initiation of discipline. (1) Upon receiving the Title IX investigation report from the Title IX coordinator, the vice president for student services or their designee will independently review the report to determine whether there are sufficient grounds to pursue a disciplinary action against the respondent for engaging in prohibited conduct under Title IX.

(2) If the vice president for student services or their designee determines that there are sufficient grounds to proceed under these supplemental procedures, the vice president for student services or their designee will initiate a Title IX disciplinary proceeding by filing a written disciplinary notice with the chair of the student conduct committee and serving the notice on the respondent and the complainant, and their respective advisors. The notice must:

(a) Set forth the basis for Title IX jurisdiction;

(b) Identify the alleged Title IX violation(s);

(c) Set forth the facts underlying the allegation(s);

(d) Identify the range of possible sanctions that may be imposed if the respondent is found responsible for the alleged violation(s); and

(e) Explain that the parties are entitled to be accompanied by their chosen advisors during the hearing and that:

(i) The advisors will be responsible for questioning all witnesses on the party's behalf;

(ii) An advisor may be an attorney; and

(iii) The college will appoint the party an advisor of the college's choosing at no cost to the party, if the party fails to do so.

(3) Explain that if a party fails to appear at the hearing, a decision of responsibility may be made in their absence.

NEW SECTION

WAC 132X-60-240 Prehearing procedure. (1) Upon receiving the disciplinary notice, the chair of the student conduct committee will send a hearing notice to all parties, in compliance with chapter 132X-60 WAC. In no event will the hearing date be set less than ten business days after the Title IX coordinator provided the final investigation report to the parties.

(2) A party may choose to have an attorney serve as their advisor at the party's own expense. This right will be waived unless, at least five business days before the hearing, the attorney files a notice of appearance with the committee chair with copies to all parties and the student conduct officer.

(3) In preparation for the hearing, the parties will have equal access to all evidence gathered by the investigator during the investigation, regardless of whether the college intends to offer the evidence at the hearing.

NEW SECTION

WAC 132X-60-250 Rights of parties. (1) The college's standard student conduct procedures in chapter 132X-60

WAC, and this supplemental procedure shall apply equally to all parties.

(2) The college bears the burden of offering and presenting sufficient testimony and evidence to establish that the respondent is responsible for a Title IX violation by a preponderance of the evidence.

(3) The respondent will be presumed not responsible until such time as the disciplinary process has been finally resolved.

(4) During the hearing, each party shall be represented by an advisor. The parties are entitled to an advisor of their own choosing and the advisor may be an attorney. If a party does not choose an advisor, then the Title IX coordinator will appoint an advisor of the college's choosing on the party's behalf at no expense to the party.

NEW SECTION

WAC 132X-60-260 Evidence. The introduction and consideration of evidence during the hearing is subject to the following procedures and restrictions:

(1) **Relevance:** The committee chair shall review all questions for relevance and shall explain on the record their reasons for excluding any question based on lack of relevance.

(2) **Relevance means** that information elicited by the question makes facts in dispute more or less likely to be true.

(3) Questions or evidence about a complainant's sexual predisposition or prior sexual behavior are not relevant and must be excluded, unless such question or evidence:

(a) Is asked or offered to prove someone other than the respondent committed the alleged misconduct; or

(b) Concerns specific incidents of prior sexual behavior between the complainant and the respondent, which are asked or offered on the issue of consent.

(4) **Cross-examination required:** If a party or witness does not submit to cross-examination during the live hearing, the committee must not rely on any statement by that party or witness in reaching a determination of responsibility.

(5) **No negative inference:** The committee may not make an inference regarding responsibility solely on a witness's or party's absence from the hearing or refusal to answer questions.

(6) **Privileged evidence:** The committee shall not consider legally privileged information unless the holder has effectively waived the privilege. Privileged information includes, but is not limited to, information protected by the following:

(a) Spousal/domestic partner privilege;

(b) Attorney-client and attorney work product privileges;

(c) Privileges applicable to members of the clergy and priests;

(d) Privileges applicable to medical providers, mental health therapists, and counselors;

(e) Privileges applicable to sexual assault and domestic violence advocates; and

(f) Other legal privileges identified in RCW 5.60.060.

NEW SECTION

WAC 132X-60-270 Initial order. (1) In addition to complying with chapter 132X-60 WAC, the student conduct committee will be responsible for conferring and drafting an initial order that:

(a) Identifies the allegations of sexual harassment;

(b) Describes the grievance and disciplinary procedures, starting with filing of the formal complaint through the determination of responsibility, including notices to parties, interviews with witnesses and parties, site visits, methods used to gather evidence, and hearings held;

(c) Makes findings of fact supporting the determination of responsibility;

(d) Reaches conclusions as to whether the facts establish whether the respondent is responsible for engaging in sexual harassment in violation of Title IX;

(e) Contains a statement of, and rationale for, the committee's determination of responsibility for each allegation;

(f) Describes any disciplinary sanction or conditions imposed against the respondent, if any;

(g) Describes to what extent, if any, complainant is entitled to remedies designed to restore or preserve complainant's equal access to the college's education programs or activities; and

(h) Describes the process for appealing the initial order to the college president.

(2) The committee chair will serve the initial order on the parties simultaneously.

NEW SECTION

WAC 132X-60-280 Appeals. (1) The parties shall have the right to appeal from the initial order's determination of responsibility and/or dismissal of an allegation(s) of sexual harassment in a formal complaint. The right to appeal will be subject to the same procedures and time frames set forth in chapter 132X-60 WAC.

(2) The president or their delegate will determine whether the grounds for appeal have merit, provide the rationale for this conclusion, and state whether the disciplinary sanction and condition(s) imposed in the initial order are affirmed, vacated, or amended, and, if amended, set forth any new disciplinary sanction and/or condition(s).

(3) President's office shall serve the final decision on the parties simultaneously.

WSR 20-23-025

EMERGENCY RULES SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed November 9, 2020, 2:44 p.m., effective November 9, 2020, 2:44 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule revision is to (1) define student absence in the 2020-21 school year for school districts across the state to collect and use daily attendance data during the COVID-19 epidemic, and (2) establish

the minimum criteria of the attendance system that each school district must implement as required under WAC 180-16-200 (4)(c). These rules continue to support the state and school districts in addressing the challenge of chronic absenteeism, improving learning outcomes and success in school for all students, and supporting the whole child.

Citation of Rules Affected by this Order: New chapter 392-401A WAC.

Statutory Authority for Adoption: RCW 28A.300.046.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The COVID-19 pandemic has required that many school districts provide instruction remotely in school year 2020-21, either completely or partially, in order to ensure the safety of their students, staff, and communities. The immediate adoption of this emergency rule is therefore necessary for the preservation of the public health, safety, and general welfare in order to support districts in defining absence for students participating in remote learning and supporting students to access learning. By extending the period for districts to report nontruancy remote learning absences, the office of superintendent of public instruction (OSPI) intends to provide districts additional time to refine their attendance and engagement processes and continue to attempt to engage families.

On October 21, 2020, OSPI initiated permanent rule making to amend chapter 392-401 WAC to adjust the state-wide definition of absence to, among other things, reflect districts' ongoing need to provide remote learning for the remainder of the 2020-21 school year.

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

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

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

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

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

Date Adopted: November 9, 2020.

Chris P. S. Reykdal
State Superintendent
of Public Instruction

Chapter 392-401A WAC

STATEWIDE DEFINITION OF ABSENCE FOR THE 2020-21 SCHOOL YEAR

NEW SECTION

WAC 392-401A-005 Purpose. Attendance is a critical building block for student learning. If students are not present, they cannot engage in learning. Attendance is a leading indicator of equity that signals when students might need additional support and areas for system and school improvement.

The purpose of this chapter is to:

(1) Define student absence in the 2020-21 school year for school districts across the state to collect and use daily attendance data during the COVID-19 epidemic; and

(2) Establish the minimum criteria of the attendance system that each school district must implement as required under WAC 180-16-200 (4)(c).

These rules continue to support the state and school districts in addressing the challenge of chronic absenteeism, improving learning outcomes and success in school for all students, and supporting the whole child.

NEW SECTION

WAC 392-401A-010 Authority. The authority for this chapter is RCW 28A.300.046, which requires the superintendent of public instruction to adopt rules establishing a standard definition of student absence from school.

NEW SECTION

WAC 392-401A-011 Scope and application. (1) While in effect, this chapter supersedes chapter 392-401 WAC.

(2) This chapter applies to common school districts, charter public schools, and state-tribal education compact schools.

(3) This chapter does not apply to students enrolled in an alternative learning experience and claimed for state funding pursuant to WAC 392-121-182.

(4) This chapter shall be effective only during the 2020-21 school year.

NEW SECTION

WAC 392-401A-012 General definitions. (1) "Parent" has the same meaning as in WAC 392-172A-01125.

(2) "In-person learning" is when instructional activity is planned and delivered under the supervision of school district staff and on school grounds.

(3) "Remote learning" is when daily learning activities are delivered through remote learning modalities including, but not limited to, distance learning, hybrid classrooms, rotating schedules, and other methods that allow for the delivery of basic education services during the COVID-19 epidemic. Remote learning activities may be synchronous or asynchronous.

NEW SECTION

WAC 392-401A-015 Definition of absence from in-person learning. (1) A student is absent from in-person learning when the student is:

- (a) Not physically present on school grounds; and
- (b) Not participating in the following activities at an approved location during a scheduled in-person learning day:
 - (i) Instruction;
 - (ii) Any instruction-related activity; or
 - (iii) Any other district- or school-approved activity that is regulated by an instructional/academic accountability system, such as participation in district-sponsored sports.

(2) A full day absence from in-person learning is when a student is absent for fifty percent or more of their scheduled day.

NEW SECTION

WAC 392-401A-016 Definition of absence from remote learning. (1) A student is absent from remote learning when the student is not participating in planned instructional activities on a scheduled remote learning day.

(2) Evidence of student participation in remote learning may include, but is not limited to:

- (a) Daily logins to learning management systems;
- (b) Daily interactions with the teacher to acknowledge attendance (including messages, emails, phone calls or video chats); or
- (c) Evidence of participation in a task or assignment.

NEW SECTION

WAC 392-401A-018 Daily attendance taking. School districts must take daily attendance for all enrolled students participating in remote learning and in-person learning.

NEW SECTION

WAC 392-401A-020 Excused absences from in-person learning or remote learning. (1) Absences due to the following reasons must be excused:

- (a) Illness, health condition or medical appointment (including, but not limited to, medical, counseling, dental, optometry, pregnancy, and in-patient or out-patient treatment for chemical dependency or mental health) for the student or person for whom the student is legally responsible;
- (b) Family emergency including, but not limited to, a death or illness in the family;
- (c) Religious or cultural purpose, including observance of a religious or cultural holiday or participation in religious or cultural instruction;
- (d) Court, judicial proceeding, court-ordered activity, or jury service;
- (e) Post-secondary, technical school or apprenticeship program visitation, or scholarship interview;
- (f) State-recognized search and rescue activities consistent with RCW 28A.225.055;
- (g) Absence directly related to the student's homeless or foster care/dependency status;

(h) Absences related to deployment activities of a parent who is an active duty member consistent with RCW 28A.705.010;

(i) Absences due to suspensions, expulsions or emergency expulsions imposed pursuant to chapter 392-400 WAC if the student is not receiving educational services and is not enrolled in qualifying "course of study" activities as defined in WAC 392-121-107;

(j) Absences due to student safety concerns, including absences related to threats, assaults, or bullying;

(k) Absences due to a student's migrant status;

(l) An approved activity that is consistent with district policy and is mutually agreed upon by the principal or designee and a parent or emancipated youth;

(m) Absences related to the student's illness, health condition, or medical appointments due to COVID-19;

(n) Absences related to caring for a family member who has an illness, health condition, or medical appointment due to COVID-19;

(o) Absences related to the student's employment or other family obligations during regularly scheduled school hours that are temporarily necessary due to COVID-19 until other arrangements can be made, including placement in a more flexible education program;

(p) Absences due to the student's parent's work schedule or other obligations during regularly scheduled school hours, until other arrangements can be made;

(q) Absences due to the student's lack of necessary instructional tools, including internet broadband access or connectivity; and

(r) Other COVID-19 related circumstances as determined between school and parent or emancipated youth.

(2) A school principal or designee has the authority to determine if an absence meets the above criteria for an excused absence.

(3) School districts may define additional categories or criteria for excused absences.

NEW SECTION

WAC 392-401A-030 Unexcused absences from in-person learning. Any absence from in-person learning is unexcused unless it meets one of the criteria provided in WAC 392-401A-020.

NEW SECTION

WAC 392-401A-035 Unexcused absences from remote learning. (1) Absences from remote learning must be considered a "nontruancy remote learning absence" starting October 5, 2020, through February 28, 2021, unless they meet the criteria in WAC 392-401A-020. Such absences shall not be treated as unexcused.

(2) Beginning March 1, 2021, any absence is unexcused unless it meets one of the criteria in WAC 392-401A-020.

NEW SECTION

WAC 392-401A-038 Data reporting. School districts must report student absences to the office of superintendent of public instruction through the comprehensive education

and data research system (CEDARS) as provided in the CEDARS data manual.

NEW SECTION

WAC 392-401A-040 Student absences—General requirements. (1) Students shall not be absent if:

- (a) They have been suspended, expelled, or emergency expelled pursuant to chapter 392-400 WAC;
- (b) Are receiving educational services as required by RCW 28A.600.015 and chapter 392-400 WAC; and
- (c) The student is enrolled in qualifying "course of study" activities as defined in WAC 392-121-107.

(2) A school or district shall not convert or combine tardies into absences that contribute to a truancy petition.

NEW SECTION

WAC 392-401A-045 Tiered response system for student absences. (1) School districts must implement a tiered response system to reduce chronic absenteeism and address barriers to student engagement in learning during the COVID epidemic.

(2) Tiered response systems under this section must include:

- (a) Monitoring daily attendance data for all students who are absent from in-person or remote learning, whether excused, unexcused, or nontruancy remote learning;
- (b) A process to contact families and verify current contact information for each enrolled student that includes multiple attempts and modalities in the parent's home language;
- (c) Daily notification of absences to parents;
- (d) A process for outreach from the school to determine student needs, such as basic needs, connectivity and hardware, connection with health and social services as necessary;
- (e) Differentiated supports that address the barriers to attendance and participation that includes universal supports for all students and tiered interventions for students at-risk of and experiencing chronic absence, including school and district engagement teams, community truancy boards, and referral to community resources; and
- (f) When feasible and appropriate, transitioning the students to full-time in-person learning or other program to accommodate the student's needs.

WSR 20-23-038

EMERGENCY RULES

HEALTH CARE AUTHORITY

[Filed November 10, 2020, 2:21 p.m., effective November 10, 2020, 2:21 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The health care authority is revising this section to temporarily eliminate the requirement for date and signature from the medicaid client or the client's designee upon delivery of medical equipment and supplies.

Citation of Rules Affected by this Order: Amending WAC 182-543-2200.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: As the current public health emergency surrounding the outbreak of the coronavirus disease 2019 (COVID-19) continues, this rule making is necessary to allow delivery of medical equipment and supplies without the requirement of a date and signature from the client or the client's designee in order to avoid contact between the client and delivery person. The current emergency filing under WSR 20-15-107 filed on July 16, 2020, is set to expire on November 13, 2020.

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

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

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

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

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

Date Adopted: November 10, 2020.

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 18-24-021, filed 11/27/18, effective 1/1/19)

WAC 182-543-2200 Proof of delivery. (1) When a provider delivers an item directly to the client or the client's authorized representative, the provider must furnish the proof of delivery when the medicaid agency requests that information. All of the following apply:

(a) The agency requires a delivery slip as proof of delivery. The proof of delivery slip must:

(i) ~~((Be signed and dated by the client or the client's authorized representative (the date of signature must be the date the item was received by the client);~~

~~((ii)))~~ Include the client's name and a detailed description of the item(s) delivered, including the quantity and brand name; and

~~((iii)))~~ ~~((ii))~~ For medical equipment that may require future repairs, include the serial number.

(b) When the provider or supplier submits a claim for payment to the agency, the date of service on the claim must be one of the following:

(i) For a one-time delivery, the date the item was received by the client or the client's authorized representative; or

(ii) For nondurable medical supplies for which the agency has established a monthly maximum, on or after the date the item was received by the client or the client's authorized representative.

(2) When a provider uses a delivery/shipping service to deliver items which are not fitted to the client, the provider must furnish proof of delivery that the client received the equipment and/or supply, when the agency requests that information.

(a) If the provider uses a delivery/shipping service, the tracking slip is the proof of delivery. The tracking slip must include:

(i) The client's name or a reference to the client's package or packages;

(ii) The delivery service package identification number; and

(iii) The delivery address.

(b) If the provider/supplier does the delivering, the delivery slip is the proof of delivery. The delivery slip must include:

(i) The client's name;

(ii) The shipping service package identification number;

(iii) The quantity, detailed description(s), and brand name or names of the items being shipped; and

(iv) For medical equipment that may require future repairs, the serial number.

(c) When billing the agency, use:

(i) The shipping date as the date of service on the claim if the provider uses a delivery/shipping service; or

(ii) The actual date of delivery as the date of service on the claim if the provider/supplier does the delivery.

(3) A provider must not use a delivery/shipping service to deliver items which must be fitted to the client.

(4) Providers must obtain prior authorization when required before delivering the item to the client. The item must be delivered to the client before the provider bills the agency.

(5) The agency does not pay for medical equipment and related items furnished to the agency's clients when:

(a) The medical professional who provides medical justification to the agency for the item provided to the client is an employee of, has a contract with, or has any financial relationship with the provider of the item; or

(b) The medical professional who performs a client evaluation is an employee of, has a contract with, or has any financial relationship with a provider of medical equipment and related items.

WSR 20-23-043

EMERGENCY RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed November 12, 2020, 10:20 a.m., effective November 12, 2020, 10:20 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: In light of the public health emergency, the Centers for Medicare and Medicaid Services waived rules requiring in-person assessments. In addition, this change clarifies instances in which in-person interviews are not required. Therefore, the department is amending WAC 388-106-0050 What is an assessment?

Citation of Rules Affected by this Order: Amending WAC 388-106-0050.

Statutory Authority for Adoption: RCW 74.09.520.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The department wants to continue providing personal care services to vulnerable people during the pandemic. To do that, federal medicaid law requires an assessment of the person's functional eligibility. Because of the COVID-19 pandemic, in-person assessments increase the risk of transmission and the beneficiaries are often in high risk groups. Immediate amendment of this rule is necessary for the preservation of the public health and safety because without it the department may not be able to safely assess vulnerable adults so that they can receive needed medicaid services. Without the amendment, it may be difficult for the department to comply with medicaid regulations and receive federal financial participation. Existing federal law allows for the assessment to be performed remotely if the person agrees. The requirement that the beneficiary agrees to a remote assessment has been temporarily waived by the Centers for Medicaid and Medicare services. The amendment aligns the state rule with federal requirements. The amendment is remedial and curative and is intended to be applied retroactively.

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

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

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

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

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

Date Adopted: November 10, 2020.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 16-04-020, filed 1/22/16, effective 2/22/16)

WAC 388-106-0050 What is an assessment? (1) An assessment is an in-person interview in your home, current residence, or another location that is convenient to you that is conducted by the department, to inventory and evaluate your ability to care for yourself. The department will assess you at least every twelve months, or more often when there are significant changes necessitating revisions to your CARE plan, or at your request. If your assessment did not take place in the residence where you receive services, the department must visit that residence to evaluate your living situation and environment, for you to continue to receive services.

(2) Between assessments, the department may modify your current assessment without an in-person interview in your home or place of residence. The reasons that the department may modify your current assessment without conducting an in-person interview in your home or place of residence include but are not limited to the following:

(a) Errors made by department staff in coding the information from your in-person interview;

(b) New information requested by department staff at the time of your assessment and received after completion of the in-person interview (e.g. medical diagnosis);

(c) Changes in the level of informal support available to you; or

(d) Clarification of the coding selected.

(3) When the department modifies your current assessment, it will notify you using a Planned Action Notice of the modification regardless of whether the modification results in a change to your benefits. You will also receive a new service summary and assessment details, if requested.

(4) An assessment interview does not need to be in-person under the following circumstances:

(a) You agree to the interview being conducted remotely, and have adequate support to participate in the assessment if you need it; or

(b) An in-person interview is not required by the applicable federal regulation or the requirement is waived by the centers for medicare and medicaid services.

WSR 20-23-045
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed November 12, 2020, 10:50 a.m., effective November 12, 2020]

Effective Date of Rule: November 12, 2020.

Purpose: The department is extending emergency amendments to WAC 388-310-0350 WorkFirst—Other exemptions from mandatory participation, which temporarily exempt participants from mandatory WorkFirst participation.

Citation of Rules Affected by this Order: Amending WAC 388-310-0350.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.010.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This subsequent filing is necessary to extend existing emergency rules, which provide relief in response to health and economic impacts of COVID-19. The department is actively undertaking appropriate procedures to adopt the rule as a permanent rule. The department filed a CR-101 Preproposal statement of inquiry as WSR 20-14-104 on June 30, 2020; a CR-102 Proposed rule making as WSR 20-23-040 on November 10, 2020; and has scheduled a public rule-making hearing on December 22, 2020.

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

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

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

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

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

Date Adopted: November 10, 2020.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-24-056, filed 11/24/15, effective 1/1/16)

WAC 388-310-0350 WorkFirst—Other exemptions from mandatory participation. (1) **When am I exempt from mandatory participation?**

Except as provided in subsection (4) of this section, you are exempt from mandatory participation if you are:

(a) A caretaker relative as defined by WAC 388-454-0010, included in the assistance unit and:

(i) You are fifty-five years of age or older and caring for a child and you are not the child's parent; and

(ii) Your age is verified by any reliable documentation (such as a birth certificate or a driver's license).

(b) An adult with a severe and chronic disability as defined below:

(i) You have been assessed by a DSHS SSI facilitator as likely to be approved for SSI or other benefits and are required to apply for SSI or another type of federal disability benefit (such as railroad retirement or Social Security disability) in your individual responsibility plan. Your SSI application status may be verified through the SSI facilitator and/or state data exchange; or

(ii) Your disability is a severe and chronic mental, physical, emotional, or cognitive impairment that prevents you from participating in work activities for more than ten hours a week and is expected to last at least twelve months. Your disability and ability to participate must be verified by documentation from the division of developmental disabilities (DDD), division of vocational rehabilitation (DVR), home and community services division (HCS), division of mental health (MHD), behavioral health organization (BHO), and/or regional service area (RSA), or evidence from one of the medical or mental health professionals listed in subsection (2) of this section.

(c) Required in the home to care for a child with special needs when:

(i) The child has a special medical, developmental, mental, or behavioral condition; and

(ii) The child is determined by a public health nurse, school professional, one of the medical or mental health professionals listed in subsection (2) of this section, HCS, MHD, BHO, and/or an RSA to require specialized care or treatment that prevents you from participating in work activities for more than ten hours per week.

(d) Required to be in the home to care for another adult with disabilities when:

(i) The adult with disabilities cannot be left alone for significant periods of time; and

(ii) No adult other than yourself is available and able to provide the care; and

(iii) The adult with the disability is related to you; and

(iv) You are unable to participate in work activities for more than ten hours per week because you are required to be in the home to provide care; and

(v) The disability and your need to care for your disabled adult relative is verified by documentation from DDD, DVR, HCS, MHD, BHO and/or an RSA, or evidence from one of the medical or mental health professionals listed in subsection (2) of this section.

(e) A resident of Washington state during a declared state of emergency related to COVID-19.

(2) What types of medical or mental health professionals can provide medical evidence when I have a disability?

We accept medical evidence from the following sources when considering disability:

(a) For a physical impairment:

(i) A physician, which includes:

(A) Medical doctor (M.D.); and

(B) Doctor of osteopathy (D.O.);

(ii) An advanced registered nurse practitioner (ARNP) for physical impairments;

(iii) A physician's assistant (P.A.);

(iv) A doctor of optometry (O.D.) for visual acuity impairments; or

(v) Doctor of podiatry (D.P.) for foot disorders;

(b) For a mental impairment:

(i) A psychiatrist;

(ii) A psychologist;

(iii) An ARNP certified in psychiatric nursing;

(iv) A mental health professional provided the person's training and qualifications at a minimum include a master's degree; or

(v) A physician who is currently treating you for a mental impairment.

(c) We do not accept medical evidence from the medical professionals listed in subsections (2)(a) and (b), unless they are licensed in Washington state or the state where the examination was performed.

(3) Who reviews and approves an exemption from participation?

(a) If it appears that you may qualify for an exemption or you ask for an exemption, your case manager or social worker will review the information and we may use the case staffing process to determine whether the exemption will be approved. Case staffing is a process to bring together a team of multidisciplinary experts including relevant professionals and the client to identify participant issues, review case history and information, and recommend solutions.

(b) If additional medical or other documentation is needed to determine if you are exempt, your IRP will allow between thirty days and up to ninety if approved to gather the necessary documentation.

(c) Information needed to verify your exemption should meet the standards for verification described in WAC 388-490-0005. If you need help gathering information to verify your exemption, you can ask us for help. If you have been identified as needing NSA services, under chapter 388-472 WAC, your accommodation plan should include information on how we will assist you with getting the verification needed.

(d) After a case staffing, we will send you a notice that tells you whether your exemption was approved, how to request a fair hearing if you disagree with the decision, and any changes to your IRP that were made as a result of the case staffing.

(4) If I am an adult who is exempt due to my severe and chronic disability, can I still be required to participate in the WorkFirst program?

When you are exempt due to your severe and chronic disability, you may be required to:

(a) Pursue SSI or another type of federal disability benefit; and/or

(b) Participate in available treatment that is recommended by your treating medical or mental health provider or by a chemical dependency professional.

(5) Can I participate in WorkFirst while I am exempt?

(a) You may choose to fully participate in WorkFirst while you are exempt.

(b) Your WorkFirst case manager may refer you to other service providers who may help you improve your skills and move into employment.

(c) If you decide later to stop participating, and you still qualify for an exemption, you will be put back into exempt status with no financial penalty.

(6) Does an exemption from participation affect my sixty-month time limit for receiving TANF/SFA benefits?

Even if exempt from participation, each month you receive a TANF/SFA grant counts toward your sixty-month limit as described in WAC 388-484-0005.

(7) How long will my exemption last?

Unless you are an older caretaker relative, your exemption will be reviewed at least every twelve months to make sure that you still meet the criteria for an exemption. Your exemption will continue as long as you continue to meet the criteria for an exemption.

(8) What happens when I am no longer exempt?

If you are no longer exempt, then:

(a) You will become a mandatory participant under WAC 388-310-0400; and

(b) If you have received sixty or more months of TANF/SFA, your case will be reviewed for an extension. (See WAC 388-484-0006 for a description of TANF/SFA time limit extensions.)

(9) For time-limited extensions, see WAC 388-484-0006.

WSR 20-23-057

EMERGENCY RULES

STATE BOARD OF EDUCATION

[Filed November 13, 2020, 5:17 p.m., effective November 13, 2020, 5:17 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule making on chapter 180-16 WAC is to enable local education agencies to deliver instructional hours and school days during state and local public health response that could limit the ability to hold in-person instruction during the 2020-21 school year.

The rule making allows modalities other than in-person delivery of instruction to count as instructional hours for the 2019-20 school year. The rule making is intended to allow for predictability for districts if they need to change delivery methods for instruction due to public health measures. The rules commit the state board of education (SBOE) to revisiting the rule-making concept by July 2021. The rule making also requires submission of reopening templates during basic education compliance at least two weeks before school reopening and no later than September 15.

Citation of Rules Affected by this Order: Amending WAC 180-16-200.

Statutory Authority for Adoption: RCW 28A.150.220 (7).

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: RCW 28A.150.220(7) states that SBOE shall adopt rules to implement and ensure compliance with program requirements of basic education. To ensure that basic education can be delivered during the emergency state and local public health response to COVID-19, SBOE has engaged in rule making so districts can count modalities of delivering instruction other than in-person

delivery as instructional hours for the 2020-21 school year. Due to planning needs of school districts and other local education agencies, emergency rule making is necessary to provide predictability in counting instructional hours so that school districts may immediately implement public health measures if necessary.

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

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

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

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

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

Date Adopted: November 13, 2020.

Randy Spaulding
Executive Director

AMENDATORY SECTION (Amending WSR 18-24-090, filed 12/3/18, effective 1/3/19)

WAC 180-16-195 Annual reporting and review process. (1) **Annual school district reports.** A review of each school district's kindergarten through twelfth grade program shall be conducted annually for the purpose of determining compliance or noncompliance with basic education program approval requirements. On or before September 15th of each school year, each school district superintendent shall complete and return the program assurance form distributed by the state board of education. The form shall be designed to elicit data necessary to make a determination of a school district's compliance or noncompliance with basic education program approval requirements. For the 2020-21 school year, local education agencies shall submit a copy of the reopening schools plan to the state board of education and superintendent of public instruction two weeks before school begins and no later than September 15, 2020. The form shall be submitted electronically and signed by:

- (a) The school board president or chairperson, and
- (b) The superintendent of the school district.

(2) State board staff review.

(a) State board of education staff shall review each school district's program assurance form, may conduct on-site visits of selected school districts, as needed and subject to funding support, and shall prepare recommendations and reports for presentation to the state board of education: Provided, that, if a school district's initial program assurance form does not establish compliance with the basic education program approval requirements, the district shall be provided the opportunity to explain the deficiency or deficiencies.

(b) School districts may use the personnel and services of the educational service district to assist the district and

schools in the district that are out of compliance with basic education program approval requirements.

(3) Annual certification of compliance or noncompliance—Withholding of funds for noncompliance.

(a) At the November meeting of the state board of education, or at such other meeting as the board shall designate, the board shall certify by motion each school district as being in compliance or noncompliance with the basic education program approval requirements.

(b) A certification of compliance shall be effective for the then current school year subject to any subsequent ad hoc review and determination of noncompliance as may be deemed necessary by the state board of education or advisable by the superintendent of public instruction. In addition, a certification of compliance shall be effective tentatively for the succeeding school year until such time as the state board takes its annual action certifying compliance or noncompliance with the program approval requirements.

(c) A certification of noncompliance shall be effective until program compliance is assured by the school district to the satisfaction of state board of education staff, subject to review by the state board.

(d) Upon the certification of noncompliance of a school district, state board of education staff shall notify the superintendent of public instruction and the school district of a certification of noncompliance immediately after the board meeting at which certification occurred.

(e) A withholding of basic education allocation funding from a school district shall not occur for noncompliance if the school district has remediated the noncompliance situation within sixty school business days from the time the district receives notice of the noncompliance from the state board of education. The state board of education may extend the sixty days timeline only if the district demonstrates by clear and convincing evidence to the satisfaction of the state board of education that sixty days is not reasonable to make the necessary corrections. For the purposes of this section, a school business day shall mean any calendar day, exclusive of Saturdays, Sundays, and any federal and school holidays upon which the office of the superintendent of the school district is open to the public for the conduct of business. A school business day shall be concluded or terminated upon the closure of said office for the calendar day.

(f) At the discretion of the state board of education, after notification by the state board of education to a school district regarding an existing noncompliance, may recommend withholding of funds or may enter into a compliance agreement with the school district that shall include, but not be limited to, the following criteria:

(i) A deadline for school district remediation of the noncompliance(s).

(ii) A listing of all the noncompliance areas and the necessary terms that must be satisfied in each area in order for the school district to gain compliance status. This listing also shall specify additional deadlines for the accomplishment of the stated terms if different from the final deadline as specified in subsection (1) of this section.

(iii) A closing statement specifying that a school district's failure to remediate a noncompliance by the determined deadline may result, at the state board of education's or

its designee's discretion, in the recommendation to the superintendent of public instruction of withholding of the district's basic education allocation funding by the superintendent of public instruction.

(iv) The date and the signatures of the superintendent of the school district, the chair of the district's board of directors, and the chair of the state board of education, or his/her designee, to the agreement. A copy of the completed compliance agreement shall be sent to the chairperson of the school district's board of directors and the school district superintendent.

(g) In the event a school district fails to sign a compliance agreement within five school business days from the date of issuance or does not satisfy all of the terms of the signed compliance agreement within the designated amount of time, the state board of education may recommend to the superintendent of public instruction withholding state funds for the basic education allocation until program compliance is assured.

(h) Any school district may appeal to the state board of education the decision of noncompliance by the state board of education. Such appeal shall be limited to the interpretation and application of these rules by the state board of education. Such appeal shall not stay the withholding of any state funds pursuant to this section or completion of the compliance agreement.

(4) The provisions of subsection (3) (g) of this section shall not apply if the noncompliance is related to the district's fiscal condition and results in the implementation of a financial plan under RCW 28A.505.140(3).

AMENDATORY SECTION (Amending WSR 14-19-032, filed 9/8/14, effective 10/9/14)

WAC 180-16-200 Total instructional hour requirement. (1) Kindergarten total instructional hour requirement - Four hundred fifty hours annual minimum, increased to an annual minimum one thousand instructional hours according to an implementation schedule under RCW 28A.150.315.

(2) Grades 1-12 total instructional hour requirement - District-wide annual average of one thousand hours, increased beginning in the 2015-16 school year to:

(a) At least a district-wide average of one thousand eighty instructional hours for students enrolled in grades nine through twelve and a district-wide annual average of one thousand instructional hours in grades one through eight; or

(b) A district-wide annual average of one thousand twenty-seven instructional hours in grades one through twelve.

(3) For nonhigh school districts, a district-wide annual average of one thousand instructional hours in such grades as are offered by the district.

(4) For the 2020-21 school year, "instructional hours" as defined in RCW 28A.150.205 are not limited to in-person educational services. Local education agencies may count as instructional hours towards the minimum district-wide annual average those hours students are provided the opportunity to engage in educational activity planned by and under the direction of school district staff that are delivered through learning modalities which may include, but are not limited to,

distance learning, hybrid classrooms, rotating schedules, or other methods that allow for delivery of basic education services during the COVID-19 epidemic. The following are applicable to the 2020-21 school year:

(a) Nothing in this section supersedes applicable statutory or office of superintendent of public instruction funding allocation requirements;

(b) Days in which instructional hours are offered shall count as school days for the purpose of meeting the minimum one hundred eighty-day school year requirement;

(c) Local education agencies must implement a system consistent with OSPI attendance rules; and

(d) The state board of education will revisit this rule no later than its regularly scheduled July 2021 board meeting.

WSR 20-23-076

EMERGENCY RULES

DEPARTMENT OF

LABOR AND INDUSTRIES

[Filed November 16, 2020, 4:20 p.m., effective November 16, 2020, 4:20 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The department of labor and industries (L&I) is responding to the coronavirus disease 2019 (COVID-19) pandemic by amending WAC 296-800-14035 related to prohibited business activities and compliance with conditions for operations under emergency proclamations and their amendments issued under RCW 43.06.220.

Under the emergency rule:

- Employers must not allow employees to perform work where a business activity is prohibited by an emergency proclamation.
- Employers must comply with all conditions for operation required by emergency proclamation, including safe start phased reopening requirements for all business and any industry specific requirements.

Citation of Rules Affected by this Order: Amending WAC 296-800-14035.

Statutory Authority for Adoption: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.060.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This emergency rule making supersedes the emergency rule adopted on July 28, 2020, filed as WSR 20-16-054, as conditions have changed due to a new governor's proclamation being in effect (Proclamation 20-25.8).

L&I is taking action to help prevent the spread of COVID-19 and respond to the governor's proclamations allowing a phased-in reopening of businesses and establishing conditions for business operations consistent with the recommendations of medical and safety professionals as to how

businesses may reopen without increasing the risk of COVID-19 spreading.

The initial March 23, 2020, Stay Home, Stay Healthy Proclamation 20-25 required residents to stay home unless they need to pursue an essential activity, closed all businesses except essential businesses, and banned all gatherings for social, spiritual and recreational purposes. The order built upon earlier orders closing schools and restricting larger gatherings. This was followed by proclamation amendments adjusting the Stay Home, Stay Healthy order and transitioning to a phased-in approach to reopening Washington state, referred to as "Safe Start Washington." The safe start orders further build on these by continuing the safe start plan for county-by-county phased reopening. The current "Stay Safe, Stay Healthy" order is a rollback of county-by-county phased reopening in response to a COVID-19 outbreak surge.

The governor's proclamations and amendments create a systematic framework to reduce the spread of COVID-19 from person-to-person interactions, ensuring continuity of critical functions and a phased-in reopening of businesses and activities such that the number of new cases is greatly reduced and medical facilities and providers are not overwhelmed by a spike in COVID-19 cases. Business operations and employee exposures are one component of the overall public health emergency response presented by COVID-19 and ensuring compliance with the proclamation requirement helps to protect the safety and health of employees. In setting the phases and conditions for businesses, statewide and county level data was considered. In setting the conditions for businesses for the current "Stay Safe, Stay Healthy" order, the increase in cases and hospitalizations, evidence of how the virus is spread, and factors that increase the risk for person-to-person COVID-19 transmission was considered.

The conditions of businesses reopening and operating in the governor's orders are also consistent with the social/physical distancing and health and sanitation requirements of chapter 49.17 RCW and the Centers for Disease Control and Prevention. Chapter 49.17 RCW and L&I rule[s] require employers to provide a safe and healthy workplace free from recognized hazards, and an employer can be cited for a violation of the "safe place" rule where there are no specific rules to address the particular hazard. And, for COVID-19, lack of social distancing or failure to address symptomatic employees can be cited under the safe place standard. This emergency rule ensures clarity that restrictions and conditions on business under the emergency proclamations are also health and safety requirements under chapter 49.17 RCW and that employers can be subject to a citation and monetary penalties for violations.

This emergency rule is necessary for the preservation of public health, safety, and general welfare of all employees. Emergency rule making is necessary here because providing for a full notice and comment time period will allow businesses to reopen or reopen without following all conditions for reopening, endangering employees and the public during the public comment time period. The governor's proclamation has found that the hazards of the unnecessary spread of COVID-19 present an immediate threat to public health and safety. The governor's proclamation is currently in effect, and observing the time requirements of notice and opportunity to

comment upon adoption of a permanent rule would be contrary to the public interest and the governor's order.

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

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

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

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

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

Date Adopted: November 16, 2020.

Joel Sacks
Director

NEW SECTION

WAC 296-800-14035 2019 Novel coronavirus prohibited business activities and compliance with conditions for operations. (1) Where a business activity is prohibited by an emergency proclamation an employer shall not allow employees to perform work.

(2) Employers must comply with all conditions for operation required by emergency proclamation issued under RCW 43.06.220, including Safe Start phased reopening requirements for all business and any industry specific requirements.

(3) An "emergency proclamation" means a proclamation that is in effect, including proclamation amendments and conditions, and issued under RCW 43.06.220 and is in effect at the time the emergency rule was adopted.

WSR 20-23-079

RECISSION OF EMERGENCY RULES DEPARTMENT OF LICENSING

[Filed November 17, 2020, 10:41 a.m.]

The department of licensing, business and professions division, notaries public program requests to rescind the emergency rule-making order for chapter 308-30 WAC, Notaries public, filed as WSR 20-19-119 on September 21, 2020.

This document serves as the official notification of our rule rescind.

Damon Monroe
Rules Coordinator

WSR 20-23-080

EMERGENCY RULES

DEPARTMENT OF LICENSING

[Filed November 17, 2020, 10:57 a.m., effective November 17, 2020, 10:57 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: While working to adopt permanent rules regarding remote notarization, pursuant to SB 5641, the department received additional input from stakeholders on the rule language. In response to this input, the department is withdrawing the current emergency rule filed on September 21, 2020, filed under WSR 20-19-119 and replacing the current emergency rule with language that ensures consistent standards are adopted. The department is currently pursuing permanent rule making to implement remote notarization. The department originally filed notice for permanent rule making regarding SB 5641 under WSR 20-06-073. Interested stakeholders can participate in the rule-making process for the permanent rules by contacting rulescoordinator@dol.wa.gov.

Citation of Rules Affected by this Order: Amending chapter 308-30 WAC, Notaries public.

Statutory Authority for Adoption: RCW 42.45.250.

Other Authority: Not applicable.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This emergency rule making is enacted to decrease in-person notarization to assist with COVID-19 response efforts, allowing remote notarization in Washington state ahead of permanent rules being adopted in accordance with SB 5641 implementation.

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

Number of Sections Adopted at the Request of a Non-governmental Entity: New 1, Amended 0, Repealed 0.

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

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

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

Date Adopted: November 17, 2020.

Damon Monroe
Rules Coordinator

AMENDATORY SECTION (Amending WSR 18-12-028, filed 5/29/18, effective 7/1/18)

WAC 308-30-020 Definitions. Words and terms used in these rules have the same meaning as in the Revised Uniform Law on Notarial Acts, RCW 42.45.010.

"Appear personally" means:

(a) Being in the same physical location as another individual and close enough to see, hear, communicate with, and exchange tangible identification credentials with that individual; or

(b) For remote notarial acts, being in a different physical location from another individual but able to see, hear, and communicate with that individual by means of communication technology.

"Commission" is equivalent to the term "license" as defined in RCW 18.235.010(6).

"Department" means the Washington state department of licensing.

"Director" means the director of the department of licensing or the director's designee.

"Electronic journal" means a chronological record of notarizations maintained by a notary public in an electronic format in compliance with these rules.

"Electronic notarial acts" means notarizations or notarial acts with respect to electronic records.

"Electronic notarial certificate" means the part of, or attachment to, an electronic record that is completed by the notary public, contains the information required under RCW 42.45.130 and the notary's official stamp, bears that notary's electronic signature, and states the facts attested to by the notary in a notarization performed on an electronic record.

"Enroll" and "enrollment" mean a process for registering a notary public with a technology provider to access and use a tamper-evident technology in order to perform electronic notarial acts.

"Principal" means:

(a) An individual whose electronic signature is notarized; or

(b) An individual, other than a witness required for an electronic notarial act, taking an oath or affirmation from the notary public.

"Remote notarial act" means a notarization that is performed using audio-video technology that meets the requirements in WAC 308-30-310 that allows for direct interaction between the notary and the individuals that are remotely located.

"Sole control" means at all times being in the direct physical custody of the notary public or safeguarded by the notary with a password or other secure means of authentication.

"Tamper-evident technology" means a set of applications, programs, hardware, software, or other technologies designed to enable a notary public to perform electronic notarial acts and to display evidence of any changes made to an electronic record.

"Technology provider" means an individual or entity that offers the services of a tamper-evident technology for electronic notarial acts.

"Venue" means the state and county where the notary public is physically located while performing a notarial act.

AMENDATORY SECTION (Amending WSR 18-12-028, filed 5/29/18, effective 7/1/18)

WAC 308-30-030 Application process for notary public commission. (1) To apply for a notary public commission, an applicant who meets the requirements of RCW 42.45.200(2) shall submit an application on forms provided by the department. The application shall include:

(a) Evidence of a ten thousand dollar surety bond, signed by the notary public, that conforms to RCW 42.45.200(4);

(b) Payment of the prescribed fee; and

(c) A signed and notarized oath of office.

(2) As part of a notary public commission application, an applicant shall provide both their legal name and their commission name. The applicant's commission name must contain their surname, and at least the initials of the applicant's first and middle name.

(3) To apply for an electronic records notary public endorsement, an applicant who meets the requirements of RCW 42.45.200(7) shall submit an electronic records notary public application on forms provided by the department and pay the prescribed fee.

(4) An applicant may only apply for an electronic records notary public endorsement if:

(a) They currently hold an active notary public commission; or

(b) They are applying for a notary public commission and an electronic records notary public endorsement simultaneously.

(5) An individual applying for an electronic records notary public endorsement must inform the department within thirty days of applying of the tamper-evident technology provider that they have enrolled with before they perform their first electronic notarial act.

(6) To apply for a remote notary endorsement, an electronic records notary public shall submit a remote notary endorsement application on forms provided by the department.

(7) An applicant may only apply for a remote notary endorsement if:

(a) They currently hold an active notary public commission with an electronic records notary public endorsement;

(b) They currently hold an active notary public commission, and are applying for an electronic records notary public endorsement and a remote notary endorsement simultaneously; or

(c) They are applying for a notary public commission, an electronic records notary public endorsement, and a remote notarial acts endorsement simultaneously.

(8) A notary public shall reapply with the department for each commission term before performing notarial acts.

~~((7))~~ (9) A notary public may elect not to apply for an electronic records notary public endorsement or a remote notary endorsement.

AMENDATORY SECTION (Amending WSR 18-12-028, filed 5/29/18, effective 7/1/18)

WAC 308-30-040 Approval or denial of application.

(1) Upon ~~((the))~~ an applicant's fulfillment of the requirements for a notary public commission ~~((or))~~ and/or an electronic

records notary public endorsement, and/or a remote notary endorsement, the department shall approve the application and issue the notary public commission ((€)) and/or any appropriate endorsements.

(2) If the department receives an incomplete or invalid application, the department shall hold the application for thirty calendar days to allow the applicant to cure any defects. After the thirty day period, the application shall be canceled and any application fees forfeited.

(3) An applicant may not perform any notarial acts on a tangible or electronic record before receiving a notary public commission and the appropriate endorsement from the department.

~~(4) ((A notary public may not perform any electronic notarial acts before receiving an electronic records notary public endorsement from the department.~~

~~(5))~~ The department may deny a commission or endorsement application if the applicant fails to comply with these rules or does not meet the requirements for licensure.

AMENDATORY SECTION (Amending WSR 18-12-028, filed 5/29/18, effective 7/1/18)

WAC 308-30-050 Term of commission. (1) The term of a notary public commission shall expire on the expiration date of the notary public's surety bond, no more than four years after their commission date.

(2) Unless terminated pursuant to WAC 308-30-270, an electronic records notary public endorsement ((is)) and the remote notary endorsement are valid from the date the endorsement is issued by the department, and continues as long as the notary public's current commission remains valid.

AMENDATORY SECTION (Amending WSR 18-12-028, filed 5/29/18, effective 7/1/18)

WAC 308-30-150 Completion of electronic notarial certificate. (1) For every electronic notarial act and remote notarial act, a notary public shall complete an electronic notarial certificate that complies with the requirements of these rules, RCW 42.45.130 and 42.45.140.

(2) An electronic notarial certificate shall be completed at the time of notarization and in the ~~((physical))~~ presence of the principal.

AMENDATORY SECTION (Amending WSR 18-12-028, filed 5/29/18, effective 7/1/18)

WAC 308-30-200 Format of journals of notarial acts.

(1) A tangible notarial journal shall:

(a) Be a permanent, bound book with numbered pages; and

(b) Have the capacity to record for each notarial act:

(i) The information required by RCW 42.45.180(4);

(ii) A description of the notary public's method of identifying the principal; and

(iii) The principal's signature, or the signature of an authorized party in compliance with RCW 42.45.070, or a notation in the notary journal that the notarial act was performed via remote notarization.

(2) If a notary public keeps an electronic journal pursuant to RCW 42.45.180(3), the electronic journal shall:

(a) Be maintained only in addition to the tangible journal;

(b) Have the capacity to record the information required for a tangible notarial journal;

(c) Enable access by a password or other secure means of authentication;

(d) Be tamper-evident;

(e) Create a duplicate record of the journal as a backup; and

(f) Be capable of providing tangible or electronic copies of any entry made in the journal.

(3) A notary public's journal is the exclusive property of the notary public, and shall not be surrendered to an employer upon demand or termination, whether the employer paid for the journal or the notary's bond or application fees.

(4) A notary performing remote notarization must maintain a tangible notary journal as required in RCW 42.45.180 and WAC 308-30-190, this section, and WAC 308-30-210. Notaries performing remote notarization are not required to collect and maintain the signatures of the signers when those notarizations were performed remotely. Notaries must note in their tangible notary log that a notarization was performed remotely.

AMENDATORY SECTION (Amending WSR 18-12-028, filed 5/29/18, effective 7/1/18)

WAC 308-30-220 Fees for notarial acts. (1) The maximum fees a notary may charge for notarial acts are:

Notarial Act	Fee
Witnessing or attesting a signature	\$10.00
Taking an acknowledgment or a verification upon oath or affirmation	\$10.00
Certifying or attesting a copy	\$10.00
Administering an oath or affirmation	\$10.00
Certifying that an event has occurred or an act has been performed	\$10.00

(2) A notary public need not charge for notarial acts.

(3) A notary public may not charge fees for receiving or noting a protest of a negotiable instrument.

(4) A notary public may additionally charge the actual costs of copying any instrument or record.

(5) A notary public may charge a travel fee when traveling to perform a notarial act if:

(a) The notary public and the individual requesting the notarial act agree upon the travel fee in advance of the travel; and

(b) The notary public explains to the individual requesting the notarial act that the travel fee is in addition to the notarial fee in subsection (1) of this section and is not required by law.

(6) Notwithstanding the maximum fees set forth in subsection (1) of this section and the prohibition set forth in subsection (3) of this section, a notary public may charge a max-

imum fee of twenty-five dollars to perform a remote notarial act.

AMENDATORY SECTION (Amending WSR 18-12-028, filed 5/29/18, effective 7/1/18)

WAC 308-30-270 Termination or suspension of commission or endorsement. (1) The department may take action against the commission and/or endorsement of a notary public who fails to comply with these rules as provided in RCW 42.45.210, 42.45.270, and chapter 18.235 RCW. Any restriction, suspension, or revocation of a notary public's commission will automatically have the same effect on any endorsement the notary public holds.

(2) A notary public may terminate their notary public commission and/or electronic records endorsement or remote notary endorsement by notifying the department of this intent in writing and disposing of all or any part of a tamper-evident technology in the notary's control whose purpose was to perform electronic notarizations.

(3) A notary public may terminate the electronic records notary public endorsement or the remote notary endorsement and maintain the underlying notary public commission.

(4) A notary public whose commission is terminated or expired, either by the notary or the department, shall disable their official stamp by destroying, defacing, damaging, or securing the device against use. The notary shall maintain their notarial journals for ten years as required by RCW 42.45.180 and WAC 308-30-210.

NEW SECTION

WAC 308-30-290 Authorized remote notarial acts.

(1) A notary public who has received both an electronic records notary public endorsement and a remote notarial acts endorsement from the department may perform the following remote notarial acts:

- (a) Taking an acknowledgment;
- (b) Taking a verification on oath or affirmation;
- (c) Witnessing or attesting a signature;
- (d) Certifying or attesting a copy;
- (e) Certifying that an event has occurred or an act has been performed; and
- (f) Noting a protest of a negotiable instrument, if the notary public is:
 - (i) Acting under the authority of an attorney who is licensed to practice law in this state or another state; or
 - (ii) Acting under the authority of a financial institution regulated by this state, another state, or the federal government.

(2) In performing remote notarial acts, a notary public shall comply with all requirements for electronic notarial acts under this chapter.

NEW SECTION

WAC 308-30-300 Standards for identity proofing. (1)

In performing remote notarial acts, if a notary public does not have satisfactory evidence of the identity of a remotely located individual under subsection (4) of this section, the notary public must reasonably verify the individual's identity

through two different types of identity proofing consisting of a credential analysis procedure and a dynamic knowledge-based authentication assessment as provided in subsections (2) and (3) of this section.

(2) Credential analysis must use public or private data sources to confirm the validity of the identification credential presented by a remotely located individual and shall, at a minimum:

(a) Use automated software processes to aid the notary public in verifying the identity of each remotely located individual;

(b) Require the identification credential to pass an authenticity test, consistent with sound commercial practices, that uses appropriate technologies to confirm the integrity of visual, physical, or cryptographic security features and to confirm that the identification credential is not fraudulent or inappropriately modified;

(c) Use information held or published by the issuing source or an authoritative source, as available and consistent with sound commercial practices, to confirm the validity of personal details and identification credential details; and

(d) Enable the notary public visually to compare for consistency the information and photograph on the identification credential and the remotely located individual as viewed by the notary public in real time through communication technology.

(3) A dynamic knowledge-based authentication assessment is successful if it meets the following requirements:

(a) The remotely located individual must answer a quiz consisting of a minimum of five questions related to the individual's personal history or identity formulated from public or private data sources;

(b) Each question must have a minimum of five possible answer choices;

(c) At least eighty percent of the questions must be answered correctly;

(d) All questions must be answered within two minutes;

(e) If the remotely located individual fails the first attempt, the individual may retake the quiz one time within twenty-four hours;

(f) During a retake of the quiz, a minimum of forty percent of the prior questions must be replaced;

(g) If the remotely located individual fails the second attempt, the individual is not allowed to retry with the same online notary public within twenty-four hours of the second failed attempt; and

(h) The notary public must not be able to see or record the questions or answers.

(4) A notary public has satisfactory evidence of the identity of a remotely located individual if:

(a) The notary public has personal knowledge of the identity of the individual; or

(b) The individual is identified by oath or affirmation of a credible witness in accordance with the following requirements:

(i) To be a credible witness, the witness must have personal knowledge of the remotely located individual;

(ii) The notary public must have personal knowledge of the credible witness or verify the identity of the credible wit-

ness by two different types of identity proofing in accordance with subsections (1), (2), and (3) of this section; and

(iii) A credible witness may be outside the physical presence of the notary public or remotely located individual if the notary public, credible witness, and remotely located individual can communicate by using communication technology.

NEW SECTION

WAC 308-30-310 Standards for communication technology.

(1) Communication technology for remote notarial acts must provide for synchronous audio-visual feeds of sufficient audio clarity and video resolution to enable the notary public and remotely located individual to see and speak with each other. The process must provide a means for the notary public reasonably to confirm that an electronic record before the notary public is the same record in which the remotely located individual made a statement or on which the remotely located individual executed a signature.

(2) Communication technology must provide reasonable security measures to prevent unauthorized access to:

- (a) The live transmission of the audio-visual feeds;
- (b) The methods used to perform identify verification; and

(c) The electronic record that is the subject of the remote notarial act.

(3) If a remotely located individual must exit the workflow, the individual must restart the identify verification process required under WAC 308-30-300 from the beginning.

NEW SECTION

WAC 308-30-320 Certificate of notarial act for remote notarial acts.

(1) A form of notarial certificate for a remote notarial act satisfies the requirement of RCW 42.45.280(4) and 42.45.130 (1)(g) if it is in the form provided by applicable law and contains a statement substantially as follows: "This notarial act involved the use of communication technology."

(2) A short form of acknowledgment prescribed in RCW 42.45.140 satisfies the requirement of RCW 42.45.280(4) and 42.45.130 (1)(g) if it is in substantially one of the following forms for the purposes indicated:

- (a) For an acknowledgment in an individual capacity:

State of Washington
County of

This record was acknowledged before me by means of communication technology on (date) by (name(s) of individuals).

.....
(Signature of notary public)

Notary Public

(Electronic official
stamp)

(My commission expires:)

- (b) For an acknowledgment in a representative capacity:

State of Washington
County of

This record was acknowledged before me by means of communication technology on (date) by (name(s) of individuals) as (type of authority, such as officer or trustee) of (name of party on behalf of whom the instrument was executed).

.....
(Signature of notary public)

Notary Public

(Electronic official
stamp)

(My commission expires:)

- (c) For verification on oath or affirmation:

State of Washington
County of

Signed and sworn to (or affirmed) before me by means of communication technology on (date) by (name(s) of individuals making statement).

.....
(Signature of notary public)

Notary Public

(Electronic official
stamp)

(My commission expires:)

- (d) For witnessing or attesting a signature:

State of Washington
County of

Signed and attested before me by means of communication technology on (date) by (name(s) of individuals).

.....
(Signature of notary public)

Notary Public

(Electronic official
stamp)

(My commission expires:)

NEW SECTION

WAC 308-30-330 Retention of audio-visual recordings and repositories.

(1) A notary public must retain any audio-visual recording created under RCW 42.45.280 (3)(c) in a computer or other electronic storage device that protects the recording against unauthorized access by password or other secure means of authentication. The recording must be created in an industry-standard audio-visual file format and must not include images of any electronic record that was the subject of the remote notarial act.

(2) An audio-visual recording must be retained for at least ten years after the recording is made.

(3) A notary public must take reasonable steps to ensure that a backup of the audio-visual recording exists and is secure from unauthorized use.

(4) The fact that the notary public's employer, contractor, or repository keeps or stores any audio-visual recordings shall not relieve the notary of the duties required by these rules.

(5) The personal representative or guardian of a notary public shall follow RCW 42.45.280(6) related to the disposition of the notary public's audio-visual recordings upon the death or adjudication of incompetency of the notary public.

(6) The notary public, or the notary's personal representative or guardian, shall provide access instructions to the department for any audio-visual recordings maintained or stored by the notary, upon commission resignation, revocation, or expiration without renewal, or upon the death of adjudication of incompetency of the notary.

(7) A notary public, or the notary's personal representative or guardian, may by written contract engage a third party to act as a repository to provide the storage required by this section. A third party under contract under this section shall be deemed a repository under RCW 42.45.280(6).

(8) Any contract under subsection (7) of this section must:

(a) Enable the notary public, or the notary's personal representative or guardian, to comply with the retention requirements of this section even if the contract is terminated; or

(b) Provide that the information will be transferred to the notary public, or to the notary's personal representative or guardian, if the contract is terminated.

WSR 20-23-123
EMERGENCY RULES
LIQUOR AND CANNABIS
BOARD

[Filed November 18, 2020, 11:46 a.m., effective November 18, 2020, 11:46 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Chapter 314-12 WAC, General—Applicable to all licensees, the Washington state liquor and cannabis board (WSLCB) has adopted emergency rules that establish summary license suspension and petition for stay provisions that are necessary for the enforcement of any violation of any governor's proclamation issued as a result of the COVID-19 outbreak. This filing supersedes and replaces emergency rules filed as WSR 20-15-162 on July 22, 2020.

Citation of Rules Affected by this Order: New WAC 314-12-250 and 314-12-275.

Statutory Authority for Adoption: RCW 66.08.0501, 66.08.030.

Other Authority: RCW 66.44.010, 70.155.150, 70.345.-020.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of

notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: WSLCB has the authority and responsibility to adopt rules for the preservation of public health. The immediate re-adoption of a rule establishing summary license suspension and petition for stay provisions is necessary for the enforcement of governor's proclamations issued as a result of the COVID-19 outbreak.

On February 29, 2020, Governor Inslee issued Proclamation 20-05 that confirmed the person-to-person spread of the novel coronavirus (COVID-19) in Washington state, and proclaimed a State of Emergency for all counties throughout the state of Washington based on the COVID-19 outbreak in the United States.

On March 16, 2020, Governor Inslee issued Proclamation 20-13 that imposed statewide limits on food and beverage services, and areas of congregation to limit opportunities for disease exposure and transmission in the state. Proclamation 20-13 was based on both guidance from the United States Centers for Disease Control and Prevention to reduce the size of gatherings from two hundred fifty persons to fifty persons, and the necessity to prohibit any number of people from congregating in public venues for the purposes of entertainment, recreation, food or beverage service, theater, bowling or other similar activities.

On March 23, 2020, Governor Inslee issued Proclamation 20-25, entitled, "Stay Home - Stay Healthy," that among other things, imposed limits on conducting or participating in essential activities and employment in essential activities, temporarily prohibited certain public and private gatherings, and established a list of essential and nonessential businesses in Washington state. Nonessential businesses were prohibited from operation except for performing basic minimum operations. Essential businesses were encouraged to remain open and maintain operations.

On November 15, 2020, Governor Inslee issued Proclamation 20-25.8, amending Proclamations 20-05 and 20-25 et seq. entitled "Safe Start - Stay Healthy" county-by-county phased reopening. Proclamation 20-25.8 extends and amends the four-phase plan for opening the state of Washington, and incorporates issued amendatory proclamations, including 20-13.

Establishments licensed by the board are subject to the restrictions of Governor's Proclamations 20-05, 20-13, and 20-25. Although some establishments licensed by the board are considered essential, others are not or are subject to specific limitations.

These emergency rules serve a two-pronged purpose. These rules:

- Allow the board to serve an order of summary license suspension after a preliminary staff investigation indicates that a liquor, tobacco, or vapor product licensee has violated any governor's proclamation issued as a result of the COVID-19 outbreak, and that immediate cessation of licensed activities are necessary for the presentation of public health and welfare; and
- Provide a framework and process for an affected WSLCB licensee to petition the board for a stay of summary suspension, consistent with the provisions of chapter 34.05 RCW.

These rules may be extended, rescinded, or considered for inclusion in adopted rules at a later date as appropriate.

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

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

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

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

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

Date Adopted: November 18, 2020.

Jane Rushford
Chair

NEW SECTION

WAC 314-12-250 Summary license suspension. (1)

The board may serve an order of summary suspension of any license under this Title 314 WAC after the board's enforcement division has:

(a) Completed a preliminary staff investigation of a violation of a governor's proclamation; and

(b) Upon a determination that immediate cessation of the licensed activities is necessary for the protection or preservation of the public health, safety, or welfare.

(2) Suspension of any license under this section is effective twenty-four hours after personal service of the summary suspension order on the licensee or employee thereof, unless the licensee becomes compliant as provided in the order before the expiration of the twenty-four hour period.

(3) When a license has been summarily suspended by the board, an adjudicative proceeding must be promptly instituted before an administrative law judge assigned by the office of administrative hearings. If a request for an administrative hearing is timely filed by the licensee, then a hearing will be held within ninety calendar days of the effective date of the summary suspension ordered by the board. The ninety day period may be extended for good cause.

NEW SECTION

WAC 314-12-275 Petition for stay. (1) When the board summarily suspends a license under WAC 314-12-250, an affected licensee may petition the board for a stay of suspension. A petition for a stay of suspension must be received by the board within ten calendar days of service of the summary suspension order on the licensee. The petition for stay must clearly describe the basis for the stay.

(2) A hearing will be held before an administrative law judge within fourteen calendar days of receipt of a timely petition for stay. The hearing is limited to consideration of whether a stay should be granted, or whether the terms of the

suspension will be modified to allow the conduct of limited activities under current licenses.

(3) Any hearing conducted under subsection (2) of this section will be a brief adjudicative proceeding under RCW 34.05.485. The agency record for the hearing must consist of the documentary information upon which the summary suspension was based. The licensee is permitted to supplement the record with additional documentation during the brief adjudicative proceeding. The licensee must demonstrate by clear and convincing evidence that:

(a) The licensee is likely to prevail upon the merits at hearing;

(b) Without relief, the licensee will suffer irreparable injury. For purposes of this section, income alone from licensed activities is not deemed irreparable injury;

(c) The grant of relief will not substantially harm other parties to the proceedings; and

(d) The threat to the public health, safety, or welfare is not sufficiently serious to justify continuation of the suspension, or that modification of the terms of the suspension will adequately protect the public interest.

(4) The initial order on stay is effective immediately upon service unless another date is specified in the order.