

WSR 20-24-014**PERMANENT RULES****BELLINGHAM TECHNICAL COLLEGE**

[Filed November 19, 2020, 2:31 p.m., effective December 20, 2020]

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

Purpose: All public educational institutions receiving federal funding must comply with the United States Department of Education's recently adopted Title IX regulations, which took effect on August 14, 2020. Chapter 495B-305 WAC relates to the grievance procedure when there is an allegation of discrimination or harassment. In its current form it conflicts with the new Title IX regulations, and is not required to be in the WAC. Bellingham Technical College proposes repealing the entire section, and has made its grievance procedure an internal policy/procedure, updated to comply with the new Title IX regulations.

Citation of Rules Affected by this Order: Repealing chapter 495B-305 WAC.

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.; RCW 28B.50.130.

Adopted under notice filed as WSR 20-19-007 on September 3, 2020.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 10; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: November 19, 2020.

Ronda Laughlin
Executive Assistant
to the President

REPEALER

The following chapter of the Washington Administrative Code is repealed:

- WAC 495B-305-010 Preamble.
- WAC 495B-305-020 Definitions.
- WAC 495B-305-030 Who may file a complaint.
- WAC 495B-305-040 Confidentiality and right to privacy.
- WAC 495B-305-050 Investigation procedure.
- WAC 495B-305-060 Publication of antidiscrimination policies and procedures.

- WAC 495B-305-070 Limits to authority.
- WAC 495B-305-080 Nonretaliation, intimidation, and coercion.
- WAC 495B-305-090 Criminal complaints.
- WAC 495B-305-100 Other discrimination complaint options.

WSR 20-24-017**PERMANENT RULES****OFFICE OF****FINANCIAL MANAGEMENT**

[Filed November 20, 2020, 8:02 a.m., effective December 28, 2020]

Effective Date of Rule: December 28, 2020.

Purpose: To align chapter 357-31 WAC with the requirements in new law. HB 2739 passed during the 2020 legislative session. This bill makes several changes to the state shared leave program by amending RCW 41.04.655 (effective June 11, 2020), 41.04.665 (effective March 17, 2020); and adding a new section to chapter 41.04 RCW (effective June 11, 2020). The proposed amendment to WAC 357-31-395 removes the language under the parental leave definition, which states parental leave is for a period of up to sixteen weeks after the birth or placement of the child to align with changes to RCW 41.04.665. The bill amended the parental leave definition and created a new section. The proposed amendment to WAC 357-31-400 addresses the parental leave language that was removed in WAC 357-31-395 and adds that an employee receiving industrial insurance wage replacement benefits may receive up to twenty-five percent of their base salary from the receipt of shared leave. The proposed new section WAC 357-31-403 provides that an employer may not prevent an employee from using shared leave intermittently or on nonconsecutive days so long as the leave has not been returned. The proposed amendments to WAC 357-31-435 states that an employee is not required to deplete all applicable leave types and which leave types an employee may have in reserve to align with the new definition of "shortly deplete." The proposed amendment to WAC 357-31-687 states that an employee is not required to deplete all of their accrued vacation leave and paid military leave before receiving shared leave from the uniformed service shared leave pool. The proposed amendment to WAC 357-31-797 states that an employee is not required to deplete all of their accrued vacation leave and sick leave before receiving shared leave from the veterans' in-state service shared leave pool. The proposed amendment to WAC 357-31-390 adds language in subsection (2) stating the condition(s) listed in subsection (1)(a) through (d) of this section is likely to cause the employee to go on leave without pay status or terminate state employment and removes "shortly deplete" language in subsection (4) to align with the law. The proposed amendment to WAC 357-31-390(6) removes the language that addresses the illness or injury is work-related and the employee has diligently pursued and been found ineligible for benefits under chapter 51.32 RCW if the employee qualifies under subsection (1)(a) and allows an agency head to

grant shared leave to an employee without considering other shared leave requirements, such as meeting the reasons to qualify for shared leave; the absence will likely cause the employee to go on leave without pay status or terminate state employment; the employee's absence and the use of shared leave are justified; the employee has depleted or will shortly deplete their accrued leave; and the employee has abided by agency rules in accordance with RCW 41.04.665 (1)(e), if the employee or relative or household member is isolated or quarantined due to COVID-19. Shared leave for this purpose may be granted until the Governor's COVID-19 State of Emergency declaration, or any amendments thereto, expires. The proposed amendment to WAC 357-31-405 allows an employer to require written verification for shared leave absences related to COVID-19.

Citation of Rules Affected by this Order: New WAC 357-31-403; and amending WAC 357-31-390, 357-31-400, 357-31-403, 357-31-405, 357-31-435, 357-31-687, and 357-31-797.

Statutory Authority for Adoption: Chapter 41.06 RCW.
Other Authority: RCW 41.04.655.

Adopted under notice filed as WSR 20-20-082 on October 2, 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 1, Amended 8, 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 8, 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 1, Amended 8, Repealed 0.

Date Adopted: November 20, 2020.

Roselyn Marcus
Assistant Director of Legal
and Legislative Affairs

AMENDATORY SECTION (Amending WSR 18-17-130, filed 8/20/18, effective 9/21/18)

WAC 357-31-390 What criteria does an employee have to meet to be eligible to receive shared leave? An employee may be eligible to receive shared leave if the agency head or higher education institution president has determined the employee meets the following criteria:

(1) The employee:

(a) Suffers from, or has a relative or household member suffering from, an illness, injury, impairment or physical or mental condition which is of an extraordinary or severe nature;

(b) Has been called to service in the uniformed services;

(c) A state of emergency has been declared anywhere within the United States by the federal or any state govern-

ment and the employee has the needed skills to assist in responding to the emergency or its aftermath and volunteers their services to either a governmental agency or to a non-profit organization engaged in humanitarian relief in the devastated area, and the governmental agency or nonprofit organization accepts the employee's offer of volunteer services;

(d) Is a victim of domestic violence, sexual assault or stalking as defined in RCW 41.04.655;

(e) Is a current member of the uniformed services or is a veteran as defined under RCW 41.04.005, and is attending medical appointments or treatments for a service connected injury or disability;

(f) Is a spouse of a current member of the uniformed services or a veteran as defined under RCW 41.04.005, who is attending medical appointments or treatments for a service connected injury or disability and requires assistance while attending appointments or treatments;

(g) Needs the time for parental leave as defined in WAC 357-31-395(3); or

(h) Is sick or temporarily disabled because of a pregnancy disability as defined in WAC 357-31-395(4).

(2) The condition(s) listed in subsection (1)(a) through (d) of this section is likely to cause, the employee to go on leave without pay status or terminate state employment.

(3) The employee's absence and the use of shared leave are justified.

(4) The employee has depleted or will shortly deplete leave in accordance with WAC 357-31-435. ~~((If the employee qualifies under subsection (1)(g) or (h) of this section the employee is not required to deplete all of their vacation leave or sick leave in accordance with WAC 357-31-435.))~~

(5) The employee has abided by employer rules regarding:

(a) Sick leave use if the employee qualifies under subsection (1)(a), (d), (g), or (h) of this section; or

(b) Military leave if the employee qualifies under subsection (1)(b) of this section.

~~(6)(a) ((If the illness or injury is work related and the employee has diligently pursued and been found to be ineligible for benefits under chapter 51.32 RCW if the employee qualifies under subsection (1)(a)))~~ Until the expiration of proclamation 20-05, issued February 29, 2020, by the governor and declaring a state of emergency in the state of Washington, or any amendment thereto, whichever is later, an employer may permit an employee to receive shared leave as a result of the 2019 novel coronavirus (COVID-19). An employer should consider whether one of the following circumstances exists in determining whether to grant shared leave under this subsection:

(i) The employee tests positive for COVID-19 or has symptoms of COVID-19 and is seeking a medical diagnosis;

(ii) The employee, or a relative or household member, is isolated or quarantined as recommended, requested or ordered by a public health official or health care provider as a result of suspected or confirmed infection with or exposure to COVID-19;

(iii) The employee is considered under the criteria set by the Centers for Disease Control and Prevention (CDC) to be

at increased risk of severe illness and death due to COVID-19;

(iv) The employee cannot work due to the closure of their child's school and/or the unavailability of a child care provider due to COVID-19; or

(v) The employee is not sick but has been advised by a health care provider not to be in the workplace due to risk of COVID-19 but does not fall into the CDC high risk categories.

(b) An employer may permit use of shared leave under this subsection without considering the other requirements of this section.

AMENDATORY SECTION (Amending WSR 19-05-055, filed 2/15/19, effective 3/29/19)

WAC 357-31-395 What definitions apply to shared leave? The following definitions apply to shared leave as defined in RCW 41.04.655:

(1) ~~((As defined in RCW 41.04.655;))~~ "Employee" means any employee of the state, including employees of school districts and educational service districts, who are entitled to accrue sick leave or vacation leave and for whom accurate leave records are maintained.

(2) "Employee's relative" normally must be limited to the employee's spouse, registered domestic partner, child, grandchild, sibling, grandparent, or parent.

(3) "Parental leave" means leave to bond and care for a newborn child after birth or to bond and care for a child after placement for adoption or foster care ~~(, for a period of up to sixteen weeks after the birth or placement).~~

(4) "Pregnancy disability" means a pregnancy-related medical condition or miscarriage.

~~(5) ("Severe" or "extraordinary" condition is defined as serious, extreme or life threatening.~~

~~(6))~~ "Service in the uniformed services" means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes active duty, active duty for training, initial active duty for training, inactive duty training, full-time national guard duty including state-ordered active duty and a period for which a person is absent from a position of employment for the purpose of an examination to determine the fitness of the person to perform any such duty.

(6) "Severe" or "extraordinary" condition is defined as serious, extreme or life threatening.

(7) "Uniformed services" means the armed forces, the army national guard, and the air national guard of any state, territory, commonwealth, possession, or district when engaged in active duty for training, inactive duty training, full-time national guard duty, or state active duty, the commissioned corps of the public health service, the coast guard and any other category of persons designated by the President of the United States in time of war or national emergency.

AMENDATORY SECTION (Amending WSR 10-11-074, filed 5/14/10, effective 6/15/10)

WAC 357-31-400 How much shared leave may an employee receive? (1) The employer determines the amount of leave, if any, which an employee may receive under these

rules. However, an employee must not receive more than five hundred twenty-two days of shared leave during total state employment. An employer may authorize leave in excess of five hundred twenty-two days in extraordinary circumstances for an employee qualifying for shared leave because they are suffering from an illness, injury, impairment, or physical or mental condition which is of an extraordinary or severe nature. A nonpermanent employee who is eligible to use accrued leave or personal holiday may not use shared leave beyond the expected end date of the appointment. Leave used under the sick leave pool program, as described in WAC 357-31-570, is included in the five hundred twenty-two day limit.

(2) An employee receiving shared leave for parental leave in accordance with WAC 357-31-395 may receive up to sixteen weeks immediately after the birth or placement unless the birth parent suffers from a pregnancy disability. When a birth parent suffers from a pregnancy disability the period of sixteen weeks for parental leave begins immediately after the pregnancy disability has ended provided the parental leave is used within the first year of the child's life.

(3) An employee receiving industrial insurance wage replacement benefits may receive up to twenty-five percent of their base salary from the receipt of shared leave.

(4) Employers are encouraged to consider other methods of accommodating the employee's needs such as modified duty, modified hours, flex-time, or special assignments in place of shared leave.

NEW SECTION

WAC 357-31-403 May an employer prevent an employee from using shared leave intermittently or on nonconsecutive days? An employer may not prevent an employee from using shared leave intermittently or on nonconsecutive days so long as the leave has not been returned under WAC 357-31-445.

AMENDATORY SECTION (Amending WSR 18-17-130, filed 8/20/18, effective 9/21/18)

WAC 357-31-405 What documentation may an employee seeking shared leave be required to submit? An employee may be required to submit the following documentation before the employer approves or disapproves the employee's request for shared leave:

(1) For employees seeking shared leave under WAC 357-31-390 (1)(a), the employer may require the employee to submit a medical certificate from a licensed physician or health care practitioner verifying the severe or extraordinary nature and expected duration of the condition.

(2) For employees seeking shared leave under WAC 357-31-390 (1)(b), the employer may require the employee to submit a copy of the military orders verifying the employee's required.

(3) For employees seeking shared leave under WAC 357-31-390 (1)(c), proof of acceptance of an employee's offer to volunteer for either a governmental agency or a non-profit organization during a declared state of emergency.

(4) For employees seeking shared leave under WAC 357-31-390 (1)(d), the employer may require that the request be supported by documentation. An employee may satisfy the

verification requirement by providing the employer with one or more of the following:

(a) A police report indicating that the employee was a victim of domestic violence, sexual assault or stalking;

(b) A court order protecting or separating the employee from the perpetrator of the act of domestic violence, sexual assault or stalking;

(c) Evidence from the court or prosecuting attorney that the employee appeared or is scheduled to appear in court in connection with an incident of domestic violence, sexual assault or stalking;

(d) An employee's written statement that the employee is a victim of domestic violence, sexual assault or stalking; or

(e) Documentation that the employee is a victim of domestic violence, sexual assault or stalking, from any of the following persons from whom the employee or employee's family member sought assistance in addressing the domestic violence, sexual assault or stalking: An advocate for victims of domestic violence, sexual assault or stalking; an attorney; a member of the clergy; or a medical or other professional.

(5) Employees seeking shared leave under WAC 357-31-390 (1)(e) or (f), the employee must provide documentation in accordance with WAC 357-31-805.

(6) Employees seeking shared leave under WAC 357-31-390 (1)(g), the employer may require verification of the birth or adoption of the child or proof of a current foster parent license or a court document for foster care or placement.

(7) Employees seeking shared leave under WAC 357-31-390 (1)(h), the employer may require a medical certification from a licensed physician or health care practitioner verifying that the employee has a pregnancy disability.

(8) For employees seeking shared leave under WAC 357-31-390(6), the employer may require written verification submitted electronically, confirming the circumstances of isolation or quarantine, that the employee is high risk, that no other suitable person is available to provide child care, or other circumstances listed in WAC 357-31-390 (6)(a)(i) through (v). This may include a signed affidavit from the employee, or any other information requested by the employer.

AMENDATORY SECTION (Amending WSR 18-17-130, filed 8/20/18, effective 9/21/18)

WAC 357-31-435 Must employees use their own leave before using shared leave? (1) Employees who qualify for shared leave under WAC 357-31-390 (1)(a) must first use all compensatory time, recognition leave as described in WAC 357-31-565, personal holiday(~~(, sick leave and vacation leave))~~ and holiday credit that they have accrued before using shared leave. The employee is not required to deplete all of their accrued vacation and sick leave and can maintain up to forty hours of vacation leave and forty hours of sick leave.

(2) Employees who qualify for shared leave under WAC 357-31-390 (1)(b) must first use all of their compensatory time, recognition leave as described in WAC 357-31-565, personal holiday(~~(, accrued vacation leave and paid military leave allowed under RCW 38.40.060))~~ and holiday credit before using shared leave. The employee is not required to

deplete all of their accrued vacation leave and paid military leave allowed under RCW 38.40.060 and can maintain up to forty hours of vacation leave and forty hours of paid military leave.

(3) Employees who qualify for shared leave under WAC 357-31-390 (1)(c) and (d) must first use all compensatory time, recognition leave as described in WAC 357-31-565, personal holiday (~~and vacation leave~~) and holiday credit that they have accrued before using shared leave. The employee is not required to deplete all of their accrued vacation leave and can maintain up to forty hours of vacation leave.

(4) Employees who qualify for shared leave under WAC 357-31-390 (1)(e) or (f) must first use all leave as described in WAC 357-31-797.

(5) Employees who qualify for shared leave under WAC 357-31-390 (1)(g) and/or (h) must first use all accrued compensatory time, recognition leave as described in WAC 357-31-565 (~~and~~), personal holiday and holiday credit before using shared leave. The employee is not required to deplete all of their accrued vacation leave and sick leave and can maintain up to forty hours of vacation leave and forty hours of sick leave.

AMENDATORY SECTION (Amending WSR 18-03-080, filed 1/15/18, effective 2/16/18)

WAC 357-31-687 Must employees use their own leave before receiving shared leave from the uniformed service shared leave pool? Employees who are eligible to receive shared leave from the uniformed service shared leave pool must first use all accrued compensatory time, recognition leave as described in WAC 357-31-565, personal holiday, vacation leave, and paid military leave allowed under RCW 38.40.060 before receiving shared leave from the uniformed service shared leave pool. The employee is not required to deplete all of their accrued vacation leave and paid military leave allowed under RCW 38.40.060 and can maintain up to forty hours of vacation leave and forty hours of paid military leave.

AMENDATORY SECTION (Amending WSR 18-03-080, filed 1/15/18, effective 2/16/18)

WAC 357-31-797 Must employees use their own leave before receiving shared leave from the veterans' in-state service shared leave pool? Employees who are eligible to receive shared leave from the veterans' in-state service shared leave pool must first use all accrued compensatory time, recognition leave as described in WAC 357-31-565, personal holiday, sick leave, and vacation leave before receiving shared leave from the veterans' in-state service shared leave pool. The employee is not required to deplete all of their accrued vacation leave and sick leave and can maintain up to forty hours of vacation leave and forty hours of sick leave.

WSR 20-24-019
PERMANENT RULES
OFFICE OF

FINANCIAL MANAGEMENT

[Filed November 20, 2020, 8:22 a.m., effective December 28, 2020]

Effective Date of Rule: December 28, 2020.

Purpose: To align chapter 357-31 WAC with the requirements in new law, specifically chapter 305, Laws of 2020 (SB 6123) and to align Title 357 WAC with Governor Jay Inslee's Proclamation 20-05 that declares a State of Emergency in all counties in the state of Washington as a result of the outbreak of COVID-19. SB 6123 passed during the 2020 legislative session effective June 11, 2020. This bill adds language to chapter 41.06 RCW and requires all executive agencies to allow employees to take paid leave, not to exceed thirty days, in a two-year period, as needed to participate in life-giving procedures. For the purpose of this bill, "life-giving procedures" includes organ donation but does not include donation of blood or plasma. The proposed amendment to WAC 357-31-325 requires a general government employer to allow an employee to take paid leave, not to exceed thirty days in a two-year period to participate in life-giving procedures. The proposed amendment to WAC 357-31-326 (1) and (2) is to distinguish between the terms "life-giving procedures" and "donation of blood and plasma" between general government (GG) and higher education (HE). The proposed amendment to WAC 357-31-100 requires a GG employer to update its leave policies to address if an employee may take additional paid leave beyond thirty days in a two-year period to participate in life-giving procedures in accordance with WAC 357-31-326. The amendments to WAC 357-31-325(5) and 357-31-326(4) are a result of Governor Inslee's Proclamation 20-05. New WAC 357-31-325(5) requires a GG employer to grant leave with pay (LWP) when an employee is required by Centers of Disease Control and Prevention (CDC) guidelines to self-quarantine due to COVID-19 but is otherwise healthy and has not tested positive for COVID-19 and the employer has determined the employee does not have the option to telework. New WAC 357-31-326(4) allows a HE employer to grant LWP when an employee is required by CDC guidelines to self-quarantine due to COVID-19 but is otherwise healthy and has not tested positive for COVID-19 and the employer has determined the employee does not have the option to telework.

Citation of Rules Affected by this Order: Amending WAC 357-31-100, 357-31-325, and 357-31-326.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Adopted under notice filed as WSR 20-20-081 on October 2, 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 3, 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 3, 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 3, Repealed 0.

Date Adopted: November 20, 2020.

Roselyn Marcus
 Assistant Director of Legal
 and Legislative Affairs

AMENDATORY SECTION (Amending WSR 20-06-008, filed 2/20/20, effective 5/1/20)

WAC 357-31-100 Must an employer have a policy for requesting and approving leave? Each employer must develop a leave policy which specifies the procedure for requesting and approving all leave, as provided in the civil service rules. The employer's policy must:

(1) Allow an employee to use vacation leave without advance approval when the employee is requesting to use vacation leave to respond to family care emergencies or for an emergency health condition as provided in WAC 357-31-200 (1)(b);

(2) Allow an employee to use a reasonable amount of accrued leave or unpaid leave when the employee is a victim or has a family member, as defined in chapter 357-01 WAC, who is a victim of domestic violence, sexual assault or stalking as defined in RCW 49.76.020;

(3) Allow an employee to use accrued leave as a supplemental benefit as provided in WAC 357-31-248;

(4) Address advance notice from the employee when the employee is seeking leave under subsections (2) and (3) of this section. When advance notice cannot be given because of an emergency or unforeseen circumstances due to domestic violence, sexual assault or stalking, the employee or the employee's designee must give notice to the employer no later than the end of the first day that the employee takes such leave;

(5) Allow an employee to use sick leave for the purpose of parental leave to bond with a newborn, adoptive or foster child. The policy must state the total amount of sick leave allowed to be used beyond eighteen weeks in accordance with WAC 357-31-130;

(6) Address overtime eligible employees that are required to provide medical certification or verification to their employer for the use of paid sick leave under chapter 296-128 WAC; ~~(and)~~

(7) Address overtime eligible employees that are required to provide reasonable notice to their employer for an absence from work for the use of paid sick leave under chapter 296-128 WAC; and

(8) Address whether a general government employee may take additional accrued leave beyond thirty days in a two-year period to participate in life-giving procedures in accordance with RCW 41.06.570.

AMENDATORY SECTION (Amending WSR 14-11-033, filed 5/14/14, effective 6/16/14)

WAC 357-31-325 When must an employer grant leave with pay for other miscellaneous reasons (such as to take a state examination)? Leave with pay must be granted to an employee in accordance with WAC 357-31-320 and for the following reasons:

(1) To allow an employee to receive assessment from the employee assistance program.

(2) When an employee is scheduled to take an examination or participate in an interview for a position with a state employer during scheduled work hours.

(a) Employers may limit the number of occurrences or the total amount of paid leave that will be granted to an employee to participate in an interview or take an examination during scheduled work hours.

(b) Employers may deny an employee's request to participate in an interview or take an examination during scheduled work hours based upon operational necessity.

(3) When an employee is required to appear during working hours for a physical examination to determine physical fitness for military service.

(4) To allow a general government employee to take paid leave, not to exceed thirty days in a two-year period to participate in life-giving procedures, such as medical procedures, including testing, sampling, or donation of organs, tissues, and other body components for the purpose of donation, without compensation. For this subsection blood or plasma donations are not considered life-giving procedures.

(a) General government employers may take operational necessity into account and require the employee to provide reasonable advance notice.

(b) Employees must provide written proof from an accredited medical institution, physician, or other medical professional that the employee will or has participated in a life-giving procedure.

(5) When a general government employee is required by Centers for Disease Control and Prevention guidelines to self-quarantine due to novel coronavirus disease 2019 (COVID-19), but is otherwise healthy and has not tested positive for COVID-19, and the employer has determined the employee does not have the option to telework. An employer may subsequently determine that a telework option exists for the employee and direct the employee to telework. If the employee is directed to telework under this subsection and declines to do so, the employee must use other available leave options. The employee may receive up to fourteen days of leave with pay under this subsection. This subsection is effective until the expiration of proclamation 20-05, issued February 29, 2020, by the governor and declaring an emergency in the state of Washington, or any amendment thereto, whichever is later. An employer may require written verification, including verification submitted electronically, confirming the circumstances warranting the self-quarantine or inability to telework, which may include a signed affidavit from the employee or any other information requested by the employer.

AMENDATORY SECTION (Amending WSR 17-18-029, filed 8/28/17, effective 10/2/17)

WAC 357-31-326 When may an employer grant leave with pay? (1) ((An)) A general government employer may grant leave with pay for an employee to perform civil duties as a volunteer including, but not limited to, firefighting, search and rescue efforts, or donating blood. Leave granted to participate in ((life-giving procedures)) blood and plasma donations must not exceed five days in a two-year period.

(2) A higher education employer may grant leave with pay for an employee to perform civil duties as a volunteer including, but not limited to, firefighting, search and rescue efforts, participating in life-giving procedures, or donating blood. Leave granted to participate in life-giving procedures must not exceed five days in a two-year period.

(3) In the department of natural resources, leave with pay equivalent to one regular workshift may be allowed for the purpose of rest and recuperation after ten consecutive calendar days performing emergency work under an incident command system, defined in RCW 38.52.010. The employer may grant one additional day of leave with pay for rest and recuperation after twenty-one consecutive calendar days performing emergency work under an incident command system.

(4) When a higher education employee is required by Centers for Disease Control and Prevention guidelines to self-quarantine due to novel coronavirus disease 2019 (COVID-19), but is otherwise healthy and has not tested positive for COVID-19, and the employer has determined the employee does not have the option to telework. An employer may subsequently determine that a telework option exists for the employee and direct the employee to telework. If the employee is directed to telework under this subsection and declines to do so, the employee must use other available leave options. The employee may receive up to fourteen days of leave with pay under this subsection. This subsection is effective until the expiration of proclamation 20-05, issued February 29, 2020, by the governor and declaring an emergency in the state of Washington, or any amendment thereto, whichever is later. An employer may require written verification, including verification submitted electronically, confirming the circumstances warranting the self-quarantine or inability to telework, which may include a signed affidavit from the employee or any other information requested by the employer.

WSR 20-24-021

PERMANENT RULES

OFFICE OF

FINANCIAL MANAGEMENT

[Filed November 20, 2020, 8:25 a.m., effective December 28, 2020]

Effective Date of Rule: December 28, 2020.

Purpose: To place new provisions in Title 357 WAC, specifically WAC 357-25-027, so there are clear expectations on how public records requests will be handled in accordance with chapter 373, Laws of 2019 (ESHB 1692). ESHB 1692 was passed during the 2019 legislative session with an effective

tive date of July 1, 2020. This bill adds new sections to chapter 42.56 RCW, Public Records Act. Three of these sections were codified as RCW 42.56.660, 42.56.665 and 42.56.675. This bill prevents an employer from disclosing records of harassment or stalking. If the requestor is a different party (not the person alleged to have been involved) requesting records of an employee, who has notified the employer of harassment or stalking, the employer must immediately notify the employee. If the employee seeks an injunction, the employee must in turn notify the employer.

Citation of Rules Affected by this Order: Amending WAC 357-25-027.

Statutory Authority for Adoption: Chapter 43.01 RCW.

Other Authority: RCW 43.01.135.

Adopted under notice filed as WSR 20-20-079 on October 2, 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 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 1, Repealed 0.

Date Adopted: November 20, 2020.

Roselyn Marcus
Assistant Director of Legal
and Legislative Affairs

AMENDATORY SECTION (Amending WSR 18-17-131, filed 8/20/18, effective 9/21/18)

WAC 357-25-027 What must be included in the agency's sexual harassment policy? Agencies as defined in RCW 41.06.020 must at a minimum include the following in their policy on sexual harassment:

- (1) Indicate who is covered by the policy;
- (2) Provide that the employer is committed to providing a working environment free from sexual harassment of any kind;
- (3) ~~((State))~~ A statement that sexual harassment is an unlawful employment practice prohibited by Title VII of the Civil Rights Act of 1964 and RCW 49.60;
- (4) The definition of sexual harassment as defined by the Equal Employment Opportunity Commission;
- (5) Notify the employee or individual of their right to file a complaint with the Washington State Human Rights Commission under RCW 49.60.230 or the Federal Equal Employment Opportunity Commission under Title VII of the Civil Rights Act of 1964;
- (6) Identify how and to whom employees or individuals may raise concerns or file complaints. The policy should

allow multiple avenues for an employee or individual to raise complaints or concerns and should clearly identify the positions or entities charged with receiving these complaints;

(7) Advise all individuals covered by the policy that the employer is under a legal obligation to respond to allegations concerning a violation of the policy;

(8) Identify the manner by which the employer will respond to alleged violations of the policy, including a formal investigation if necessary;

(9) ~~((State))~~ A statement that the complainant shall be informed of the status and the outcome of an investigation;

(10) Identify the agency's investigation or response procedure;

(11) Define the roles and responsibilities of employees, managers, supervisors, and others covered by the policy with respect to the following:

- (a) Preventing or not engaging in sexual harassment;
- (b) Responding to concerns or allegations of violations of the policy;
- (c) Participation in an investigation under the policy; and
- (d) The prohibition against retaliation.

(12) ~~((State))~~ A statement that confidentiality cannot be guaranteed;

(13) A statement that responses to public records requests will be provided in accordance with RCW 42.56.660 and 42.56.675;

(14) Advise that retaliation against individuals covered by the policy who report allegations of sexual harassment or who participate in an investigation is prohibited;

~~((14))~~ (15) Advise that any employee found to have violated the policy will be subject to corrective and/or disciplinary action, up to and including dismissal;

~~((15))~~ (16) Advise that any employee found to have retaliated against individuals covered by the policy who report allegations of sexual harassment or who participate in an investigation will be subject to corrective and/or disciplinary action, up to and including dismissal; and

~~((16) State))~~ (17) A statement that an employer may not require an employee, as a condition of employment, to sign a nondisclosure agreement, waiver, or other document that prevents the employee from disclosing sexual harassment or sexual assault occurring in the workplace, at work-related events coordinated by or through the employer, or between employees, or between an employer and an employee, off the employment premises in accordance with RCW 49.44.210.

For the purposes of this subsection, "employee" has the same meaning as defined in RCW 49.44.210.

WSR 20-24-022
PERMANENT RULES
OFFICE OF

FINANCIAL MANAGEMENT

[Filed November 20, 2020, 8:29 a.m., effective December 28, 2020]

Effective Date of Rule: December 28, 2020.

Purpose: To align Title 357 WAC with the changes made to RCW 43.10.005 as a result of chapter 134 [111], Laws of 2020 (HB 2266). HB 2266 amends RCW 43.10.005 by add-

ing language to state that an employer may not require an employee to provide written certification from a health care professional when the employee requests a reasonable accommodation for the expression of breast milk. The amendment to WAC 357-26-035 adds the reasons in which an employer may provide a reasonable accommodation for pregnancy. The amendment to WAC 357-26-040 amends the reasons when an employer may deny a reasonable pregnancy-related accommodation. The amendment to WAC 357-26-045 amends the reasons an employee may need to provide documentation for a requested reasonable pregnancy accommodation.

Citation of Rules Affected by this Order: Amending WAC 357-26-035, 357-26-040, and 357-26-045.

Statutory Authority for Adoption: Chapter 43.01 RCW.

Other Authority: RCW 43.10.005.

Adopted under notice filed as WSR 20-20-080 on October 2, 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 3, 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 3, 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 3, Repealed 0.

Date Adopted: November 20, 2020.

Roselyn Marcus
Assistant Director of Legal
and Legislative Affairs

AMENDATORY SECTION (Amending WSR 19-17-041, filed 8/15/19, effective 9/23/19)

WAC 357-26-035 What actions must an employer take to provide reasonable pregnancy accommodations?

(1) An employer must provide employees who are pregnant or have a pregnancy-related health condition a reasonable pregnancy accommodation ~~((for reasons as required in RCW 43.10.005.)),~~ which includes the following:

(a) Providing more frequent, longer, or flexible restroom breaks;

(b) Modifying a no food or drink policy;

(c) Providing seating or allowing an employee to sit more frequently if the job requires standing;

(d) Providing reasonable break time for an employee to express breast milk for two years after the child's birth each time the employee has need to express the milk and providing a private location, other than a bathroom, if such a location exists at the place of business or worksite, which may be used by the employee to express breast milk. If the business location does not have a space for the employee to express breast

milk, the employer shall work with the employee to identify a convenient location and work schedule to accommodate their needs;

(e) Job restructuring, part-time or modified work schedules, reassignment to a vacant position, or acquiring or modifying equipment, devices, or an employee's work station;

(f) Providing a temporary transfer to a less strenuous or less hazardous position;

(g) Providing assistance with manual labor and limits on lifting;

(h) Scheduling flexibility for prenatal visits; and

(i) Any further pregnancy accommodation an employee may request and to which an employer must give reasonable consideration in consultation with information provided on pregnancy accommodation by the department of labor and industries or the employee's attending health care provider.

(2) An employer cannot require an employee who is pregnant or has a pregnancy-related health condition to take leave if another reasonable pregnancy accommodation can be provided.

(3) The employer is not required to create additional employment that the employer would not otherwise have created, unless the employer does so or would do so for other classes of employees who need accommodation.

AMENDATORY SECTION (Amending WSR 19-05-056, filed 2/15/19, effective 3/29/19)

WAC 357-26-040 When may an employer deny a reasonable pregnancy-related accommodation? The employer may deny a reasonable pregnancy-related accommodation based on undue hardship, which means an action requiring significant difficulty or expense, to the employer's program, enterprise or business for pregnancy accommodations listed in WAC 357-26-035 (1)(d) through ~~((~~(h)~~))~~ (i). The employer may not claim undue hardship for the pregnancy accommodations listed in WAC 357-26-035 (1)(a) through (c) or for limits on lifting over seventeen pounds.

AMENDATORY SECTION (Amending WSR 19-05-056, filed 2/15/19, effective 3/29/19)

WAC 357-26-045 When an employee is pregnant or has a pregnancy-related health condition and requests a reasonable pregnancy accommodation what documentation may the employee be required to submit? When an employee is pregnant or has a pregnancy-related health condition and requests a reasonable pregnancy accommodation, the employee may be required to submit written certification from their licensed physician or health care professional for those pregnancy accommodations listed in WAC 357-26-035 (1)~~((~~(d)~~))~~ (e) through ~~((~~(h)~~))~~ (i). An employee is not required to submit written certification for pregnancy accommodations listed in WAC 357-26-035 (1)(a) through ~~((~~(e)~~))~~ (d) or for limits lifting over seventeen pounds.

WSR 20-24-025
PERMANENT RULES
OFFICE OF

FINANCIAL MANAGEMENT

[Filed November 20, 2020, 9:00 a.m., effective December 28, 2020]

Effective Date of Rule: December 28, 2020.

Purpose: To align the Title 357 WAC with Governor Jay Inslee's Proclamation 20-05 that declares a State of Emergency in all counties in the state of Washington as a result of the outbreak of the novel coronavirus disease 2019 (COVID-19). Governor Inslee further declared that state agencies and departments are directed to use state resources and to do everything reasonably possible to assist affected political subdivisions in an effort to respond to and recover from the outbreak. The worldwide outbreak of COVID-19 and the effects of its extreme risk of person-to-person transmission throughout the United States and Washington state significantly impact the life and health of our people, as well as the economy of Washington state, and is a public disaster that affects life, health, property or the public peace. The proposed amendment to WAC 357-28-190 states that if an employee voluntarily requests to work a shift in which the majority of the hours worked are between 6:00 p.m. and 6:00 a.m. and/or when an employee is scheduled to work a shift which is split with a minimum of four intervening hours not worked will not be eligible for shift premium. The proposed amendment to WAC 357-31-130 expands the reasons in which an employee may use accrued sick leave due to COVID-19. The proposed amendment to WAC 357-46-064 extends the timeframe in which a nonrepresented employee may be furloughed in a calendar year from thirty to sixty days. The proposed amendment to WAC 357-46-066 allows an employer the ability to provide less than a seven days' notice period for a temporary layoff, if urgent budget or operational issues are present.

Citation of Rules Affected by this Order: Amending WAC 357-28-190, 357-31-130, 357-46-064, and 357-46-066.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Adopted under notice filed as WSR 20-20-083 on October 2, 2020.

Changes Other than Editing from Proposed to Adopted Version: The amendment to WAC 357-31-215 is withdrawn. A permanent amendment to WAC 357-31-215 to align with Proclamation 20-43 is not needed at this time.

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 4, 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 4, 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 4, Repealed 0.

Date Adopted: November 20, 2020.

Roselyn Marcus
 Assistant Director of Legal
 and Legislative Affairs

AMENDATORY SECTION (Amending WSR 05-01-205, filed 12/21/04, effective 7/1/05)

WAC 357-28-190 When must an employee receive shift premium? (1) Shift premium at the rate specified in the compensation plan must be paid when:

(a) An employee is scheduled to work a shift in which the majority of hours worked daily or weekly are between 6:00 p.m. and 6:00 a.m.; or

(b) An employee is scheduled to work a shift which is split with a minimum of four intervening hours not worked.

(2) Shift premium must be paid for the entire daily or weekly shift that qualifies under subsection (1) of this section. Additionally, these employees are entitled to shift premium for all hours that the employees work adjoining that evening or night shift.

(3) Shift premium may be paid at a monthly rate as specified in the compensation plan for full time employees regularly assigned to a qualifying shift.

(4) An employee assigned to a shift that qualifies for shift premium pay must receive the same shift premium for authorized periods of paid leave and holidays and for up to five days of a temporary assignment to a shift that does not qualify. Continued payment of shift premium for a temporary assignment exceeding five days is at the discretion of the employer.

(5) Compensation under the provisions of this section must be in accordance with the employer's policy, as approved by the director, for the following individuals:

(a) Employees dispatched to emergency response duty under an incident command system as defined in RCW 38.52.010; and

(b) Employees of the department of corrections who are in charge of offenders assigned to assist in forest fire suppression and other emergency incidents.

(6) Exceptions to shift premium provisions may be approved by the director.

(7) For higher education employers, shift premium must not apply to police and fire officers where special pay salaries are correlated with a rotating shift in accordance with local practice.

(8) Employees may waive shift premium.

(9) Employees who voluntarily request to work a shift as described in subsection (1)(a) and (b) of this section will not be eligible for shift premium.

AMENDATORY SECTION (Amending WSR 20-06-008, filed 2/20/20, effective 5/1/20)

WAC 357-31-130 When may an employee use accrued sick leave? The employer may require medical verification or certification of the reason for sick leave use in

accordance with the employer's leave policy and in compliance with chapter 296-128 WAC.

(1) Employers **must** allow the use of accrued sick leave under the following conditions:

(a) An employee's mental or physical illness, disability, injury or health condition that has incapacitated the employee from performing required duties; to accommodate the employee's need for medical diagnosis, care or treatment of a mental or physical illness, injury or health condition; or an employee's need for preventive medical care.

(b) By reason of exposure of the employee to a contagious disease when the employee's presence at work would jeopardize the health of others.

(c) When the employee's place of business has been closed by order of a public official for any health-related reason, or when an employee's child's school or place of care has been closed for such reason.

(d) To allow an employee to provide care for a family member with a mental or physical illness, injury or health condition; care of a family member who needs medical diagnosis, care or treatment of a mental or physical illness, injury or health condition; or care for a family member who needs preventive medical care.

(e) For family care emergencies per WAC 357-31-290, 357-31-295, 357-31-300 and 357-31-305.

(f) When an employee is required to be absent from work to care for members of the employee's household or relatives of the employee or relatives of the employee's spouse/registered domestic partner who experience an illness or injury, not including situations covered by subsection (1)(d) of this section.

(i) The employer must approve up to five days of accumulated sick leave each occurrence. Employers may approve more than five days.

(ii) For purposes of this subsection, "relatives" is limited to spouse, registered domestic partner, child, grandchild, grandparent or parent.

(g) When requested as a supplemental benefit while receiving a partial wage replacement for paid family and/or medical leave under Title 50A RCW as provided in WAC 357-31-248. Leave taken under this subsection may be subject to verification that the employee has been approved to receive benefits for paid family and/or medical leave under Title 50A RCW.

(h) If the employee or the employee's family member, as defined in chapter 357-01 WAC, is a victim of domestic violence, sexual assault or stalking as defined in RCW 49.76-020. An employer may require the request for leave under this section be supported by verification in accordance with WAC 357-31-730.

(i) In accordance with WAC 357-31-373, for an employee to be with a spouse or registered domestic partner who is a member of the armed forces of the United States, National Guard, or reserves after the military spouse or registered domestic partner has been notified of an impending call or order to active duty, before deployment, or when the military spouse or registered domestic partner is on leave from deployment.

(j) When an employee requests to use sick leave for the purpose of parental leave to bond with a newborn, adoptive

or foster child for a period up to eighteen weeks. Sick leave for this purpose must be taken during the first year following the child's birth or placement.

(2) Employers **may** allow the use of accrued sick leave under the following conditions:

(a) For condolence or bereavement;

(b) When an employee is unable to report to work due to inclement weather in accordance with the employer's policy on inclement weather as described in WAC 357-31-255; ~~((or))~~

(c) To bond with a newborn, adoptive or foster child for a period beyond eighteen weeks as allowed in subsection (1) (i) of this section. Sick leave for this purpose must be taken during the first year following the child's birth or placement. The total amount of sick leave allowed to be used, beyond subsection (1)(i) of this section must be addressed in the employer's leave policy in accordance with WAC 357-31-100; or

(d) When a child is a family member of an employee or member of an employee's household and the child's school or place of care has been closed while proclamation 20-05, issued February 29, 2020, by the governor and declaring an emergency in the state of Washington, or any amendment thereto, is in effect.

AMENDATORY SECTION (Amending WSR 16-05-058, filed 2/12/16, effective 3/14/16)

WAC 357-46-064 Are there any limits to temporary layoff? Under the provisions of WAC 357-46-063, an employer may not:

(1) Furlough an employee for more than ~~((thirty))~~ sixty calendar days in a calendar year; or

(2) Temporarily reduce an employee's regular work schedule to less than twenty hours a week for more than sixty calendar days in a calendar year.

The only exception to these limits is if the temporary layoff is due to the failure of congress to pass a continuing resolution or a federal budget.

AMENDATORY SECTION (Amending WSR 16-05-058, filed 2/12/16, effective 3/14/16)

WAC 357-46-066 What is the notice requirement to temporarily layoff an employee? An employer ~~((must))~~ will normally provide ((the)) an employee seven calendar days' notice of temporary layoff. Employers may provide less than seven calendar days' notice if urgent budget or operational issues are present. Employers must make a reasonable effort to provide as much time as possible for temporary layoff notification. The temporary layoff notice must inform the employee of their status during temporary layoff and the expected duration of the temporary layoff. Notice of temporary layoff may be provided by using alternative methods as described in WAC 357-04-105.

In the event that a temporary layoff is implemented due to the failure of congress to pass a continuing resolution or a federal budget, an employer must provide the employee at least one calendar day's notice of temporary layoff. The temporary layoff notice must inform the employee of their status during temporary layoff. Notice of temporary layoff may be

provided by using alternative methods as described in WAC 357-04-105.

WSR 20-24-034
PERMANENT RULES
EDMONDS COLLEGE

[Filed November 20, 2020, 1:36 p.m., effective December 21, 2020]

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

Purpose: To comply with new Federal Title IX regulations, revisions have been made to Edmonds College WAC, chapter 132Y-125 WAC, regarding the student code of conduct. In these sections, students' rights during an investigation are explained, Title IX hearing procedures are outlined, jurisdiction is outlined, sexual harassment is defined, and requirements for investigating a Title IX complaint are outlined.

Revisions have been made to Edmonds College WAC, chapter 132Y-300 WAC, regarding the college's nondiscrimination and harassment policy to comply with the new Federal Title IX regulations. Sections of this policy have been removed from the WAC to create expediency when updating the policies.

Citation of Rules Affected by this Order: New WAC 132Y-125-120, 132Y-125-125, 132Y-125-130, 132Y-125-135 and 132Y-125-140; repealing WAC 132Y-300-001, 132Y-300-020, 132Y-125-100, 132Y-125-105, 132Y-125-110 and 132Y-125-115; and amending WAC 132Y-300-005, 132Y-300-010, 132Y-300-015, 132Y-125-001, 132Y-125-005, 132Y-125-010, 132Y-125-015, 132Y-125-020, 132Y-125-025, 132Y-125-030, and 132Y-125-060.

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.

Adopted under notice filed as WSR 20-20-071 on October 2, 2020.

Changes Other than Editing from Proposed to Adopted Version: (1) To comply with changes to Federal Title IX regulations including an updated definition of sexual harassment, the rule of due process in the grievance process, changes to jurisdiction, and the right to a hearing with provisions for cross-examination;

(2) To provide guidance, clarity, and consistency to the student code of conduct and anti-discrimination and harassment policy; and

(3) To update the college's name in the WAC from Edmonds Community College to Edmonds College.

Number of Sections Adopted in Order to Comply with Federal Statute: New 6, Amended 11, Repealed 6; 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 0, Repealed 0.

Date Adopted: November 20, 2020.

Mushka Rohani
Executive Director
of Human Resources

AMENDATORY SECTION (Amending WSR 15-12-068, filed 5/29/15, effective 6/29/15)

WAC 132Y-125-001 Student code of conduct. (1) **Authority.** The Edmonds ((Community)) College board of trustees, acting pursuant to RCW 28B.50.140(((14))) (13), delegates to the president of the college the authority to administer disciplinary action. Administration of the disciplinary procedures is the responsibility of the vice president for student services or their designee. The student conduct officer or delegee shall serve as the principal investigator and administrator for alleged violations of this code.

(2) **Statement of student rights.** As members of the Edmonds ((Community)) College academic community, students are encouraged to develop the capacity for critical judgment and to engage in an independent search for truth. Freedom to teach and freedom to learn are inseparable facets of academic freedom. The freedom to learn depends upon appropriate opportunities and conditions in the classroom, on the campus, and in the larger community. Students should exercise their freedom with responsibility. The responsibility to secure and to respect general conditions conducive to the freedom to learn is shared by all members of the college community.

The following rights are guaranteed to each student within the limitations of statutory law and college policies necessary to achieve the educational goals of the college(~~and also acting pursuant to Edmonds Community College Academic Freedom Policy (B.1.4))~~):

(a) **Academic freedom.**

(i) Students are guaranteed the rights of free inquiry, expression, and assembly upon and within college facilities that are generally open and available to the public.

(ii) Students are free to pursue appropriate educational objectives from among the college's curricula, programs, and services, subject to the limitations of RCW 28B.50.090 (3)(b).

(iii) Students shall be protected from academic evaluation which is arbitrary, prejudiced, or capricious, but are responsible for meeting the standards of academic performance established by each of their instructors.

(iv) Students have the right to a learning environment which is free from unlawful discrimination, inappropriate and disrespectful conduct, and any and all harassment, including sexual harassment.

(b) **Due process.**

(i) The rights of students to be secure in their persons, quarters, papers, and effects against unreasonable searches and seizures is guaranteed.

(ii) No disciplinary sanction may be imposed on any student without notice to the accused of the nature of the charges.

(iii) A student accused of violating this code of student conduct is entitled, upon request, to procedural due process as set forth in the student conduct hearing procedures.

(3) **Student misconduct.** The college may impose disciplinary sanctions against a student who commits, attempts to commit, aids, abets, incites, encourages or assists another person to commit, an act(s) of misconduct which includes, but is not limited to, any of the following:

(a) **Academic dishonesty.** Any act of academic dishonesty including, but not limited to:

(i) Cheating (~~(including, but not limited to)~~): Includes any attempt to give or obtain unauthorized assistance relating to the completion of an academic assignment, intentional use or attempted use of unauthorized material, information, or study aids, misrepresentation of invention or any information such as falsifying research, inventing or exaggerating data, or listing incorrect or fictitious references.

(ii) Plagiarism including, but not limited to, presenting or submitting another person's, entities', and/or sources' ideas, words, or other works in an instructional course without assigning proper credit.

(iii) Unauthorized collaboration including, but not limited to, intentionally sharing or working together in an academic exercise when such actions are not approved by the course instructor.

(iv) Academic dishonesty including, but not limited to, presenting or submitting in an instructional course either information that is known to be false (while concealing that falsity) or work that is substantially the same as that previously submitted in another course (without the current instructor's approval).

(b) **Other dishonesty.** Any other acts of dishonesty. Such acts include, but are not limited to:

(i) Forgery, alteration, submission of falsified documents or misuse of any college document, record, or instrument of identification;

(ii) Tampering with an election conducted by or for college students; or

(iii) Knowingly furnishing false information, or failing to furnish accurate and honest information, in response to the request or requirement of a college officer or employee.

(c) **Obstruction or ~~(disruption of)~~ disruptive conduct.** Conduct, not otherwise protected by law, that interferes with, impedes, or otherwise hinders:

(i) Any instruction, research, administration, disciplinary proceeding, or other college activity, including the obstruction of the free flow of pedestrian or vehicular movement on college property or at a college activity; or

(ii) Any operation of the college, including the infringement on the rights of another member(s) of the college community; or

(iii) Any activity that is authorized to occur on college property, whether or not actually conducted or sponsored by the college.

(d) **Assault, intimidation, harassment.** Unwanted touching, assault, battery, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, stalking, or

other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property. For purposes of this subsection:

(i) Bullying is ~~((physical or verbal abuse, repeated over time, and involving a power imbalance between the aggressor and))~~ defined as repeated or aggressive unwanted behavior, not otherwise protected by law that intentionally humiliates, harms, or intimidates the victim.

(ii) Stalking is ~~((intentional and repeated harassment or repeated following of another person, which places that person in reasonable fear that the stalker intends to injure the person, another person, or the property of the person or another person, and the stalker either intends to frighten, intimidate, or harass the person, or knows or reasonably should know that the person is frightened, intimidated or harassed, even if the stalker lacks such an intent.~~

~~(A) The person being harassed or followed is placed in reasonable fear that the stalker intends to injure the person, another person, or property of the person or of another person.~~

~~(B) Reasonable fear is a fear that a reasonable person in the same situation would experience under most circumstances))~~ defined as 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.

(e) **Cyber misconduct.** Cyberstalking, cyberbullying or online harassment. Use of electronic communications including, but not limited to, electronic mail, instant messaging, text and image messaging, electronic bulletin boards, and social media sites to harass, abuse, bully or engage in other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person. Prohibited activities include, but are not limited to, unauthorized monitoring of another's email communications directly or through spyware, sending threatening emails, disrupting electronic communications with spam or by sending a computer virus, sending false messages to third parties using another's email and/or social media identity, nonconsensual recording of sexual activity, and/or nonconsensual distribution of a recording of sexual activity.

(f) **Property violation.** Attempted or actual damage to, or theft or misuse of, real or personal property, or money of:

(i) The college or state;

(ii) Any student, college official, employee, or college affiliated or sponsored organization; or

(iii) Any other member of the college community, or organization; or

(iv) Possession of such property or money after it has been stolen.

(g) **Failure to comply with directive.** Failure to comply with the direction of a college official or employee who is acting in the legitimate performance of their duties, including refusal to properly identify oneself to such a person when requested to do so.

(h) **Weapons.** Possession of any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, explosive device, or any other weapon apparently capable of producing bodily harm, unless previously authorized in writing by the president or designee.

(i) **Hazing.** Hazing includes, but is not limited to, any initiation into or affiliation with a student organization or any pastime or amusement engaged in with respect to such an organization that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm, to any student.

(j) **Tobacco violation.** Violation of the college's Tobacco ~~((Use—Smoking on Campus Policy (C-6.3.520))~~ and Smoke-Free Policy HR 8.0.

(k) **Alcohol.** The use, possession, delivery, sale, or being observably under the influence of any alcoholic beverage, except as permitted by law and applicable college policies.

(l) **Marijuana.** The use, possession, delivery, sale, or being observably under the influence of marijuana or the psychoactive compounds found in marijuana and intended for human consumption, regardless of form. While state law permits the recreational use of marijuana, federal law prohibits such use on college premises or in connection with college activities.

(m) **Drugs.** The use, possession, delivery, sale, or being observably under the influence of any legend drug, narcotic drug, or controlled substance as defined in chapters 69.41 and 69.50 RCW except in accordance with a lawful prescription for that student by a licensed health care professional.

(n) **Lewd conduct.** Conduct which is lewd, or obscene.

(o) **Discrimination.** Conduct which harms or adversely affects any member of the college community because of their race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy, marital status; age (40+); religion; creed; genetic information; sexual orientation; gender identity and expression; veteran's status; any other legally protected classification; or any violation of the college's nondiscrimination policy.

(p) **Sexual misconduct.** The term "sexual misconduct" includes sexual harassment, sexual intimidation, and sexual violence. Sexual harassment prohibited by Title IX is defined in the supplemental procedures to this code. See WAC 132Y-125-130. (prohibited conduct under Title IX).

(i) **Sexual harassment.** ~~((Conduct includes, but is not limited to, engaging in))~~ The term "sexual harassment" means unwelcome sexual or gender-based conduct including unwelcome sexual advances, requests for sexual favors, ((or other sexual conduct, including)) quid pro quo harassment, and other verbal, nonverbal, ((electronic or social media communication,)) or physical ((touching)) conduct of a sexual or a gendered nature that is sufficiently ((serious)) severe, persistent, or pervasive as to ((deny or limit, and that does deny or limit, based on sex,)):

(A) Deny or limit the ability of a student to participate in or benefit from the college's educational program((s or that));

(B) Alter the terms or conditions of employment for a college employee(s); and/or

(C) Create((s)) an intimidating, hostile, or offensive environment for other campus community members((, or violation of the college's sexual harassment policy)).

(ii) **Sexual intimidation.** The term "sexual intimidation" incorporates the definition of "sexual harassment" and means threatening or emotionally distressing conduct based on sex

including, but not limited to, nonconsensual recording of sexual activity or the distribution of such recording.

(iii) **Sexual violence.** "Sexual violence" is a type of sexual discrimination and harassment. Nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, dating violence, and stalking are all types of sexual violence.

(A) Nonconsensual sexual intercourse ((is any)). Any actual or attempted sexual intercourse (anal, oral, or vaginal), however slight, with any object, 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 ((is any intentional)). 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, as an ancestor, descendant, brother, or sister or either wholly or half related. Descendant includes stepchildren, and adopted children under the age of eighteen.

(D) Statutory rape. Consensual intercourse between a person who is eighteen years of age or older, and a person who is under the age of sixteen.

~~((E) Domestic violence ((includes asserted violent misdemeanor and felony offenses committed by the victim's current or former spouse, current or former cohabitant, person similarly situated under domestic or family violence law, or anyone else protected under domestic or family violence law.~~

~~((D))~~ 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 cohabitating with or has cohabitated with the victim, 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 the person's act under the domestic or family violence laws of the state of Washington, RCW 26.50.010.

~~((E))~~ Dating violence ((means violence by a person who has been in a romantic or intimate relationship with the victim. Whether there was such relationship will be gauged by its length, type, and frequency of interaction.

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

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

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

(aa) The length of the relationship;

(bb) The type of relationship; and

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

~~(G) Stalking ((means intentional and repeated harassment or following of another person, which places that person in reasonable fear that the perpetrator intends to injure, intimidate, or harass that person. Stalking also includes instances where the perpetrator knows or reasonably should know that the person is frightened, intimidated, or harassed, even if the perpetrator lacks such intent.~~

~~(F) Consent:)). Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:~~

~~(I) Fear for their safety or the safety of others; or~~

~~(II) Suffer substantial emotional distress.~~

For the purposes of this code, "consent" means knowing, voluntary, and clear permission by word or action, to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.

A person cannot consent if he or she is unable to understand what is happening or is disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct.

Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

(q) **Harassment.** Unwelcome and offensive conduct, including verbal, nonverbal, or physical conduct, that is directed at a person because of such person's protected status and that is sufficiently serious as to deny or limit, and that does deny or limit, the ability of a student to participate in or benefit from the college's educational program or that creates an intimidating, hostile, or offensive environment for other campus community members. Protected status includes a person's race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy, marital status; age; religion; creed; genetic information; sexual orientation; gender identity and expression; veteran's status; or any other legally protected classification. See "sexual misconduct" for the definition of "sexual harassment." ~~((as defined in (p)(i) of this subsection.))~~ Harassing conduct may include, but is not limited to, physical conduct, verbal, written, social media, and electronic communications.

(r) **Retaliation.** ~~((Retaliation against any individual for reporting, providing information, exercising one's own rights or responsibilities, or otherwise being involved in the process of responding to, investigating, or addressing allegations or violations of federal, state or local law, or college policies including, but not limited to, student conduct code provisions prohibiting discrimination and harassment.))~~ Harming, threatening, intimidating, coercing, or taking adverse action of any kind against a person because such a person reported an alleged violation of this code or college policy, provided information about an alleged violation, or participated as a witness or in any other capacity in a college investigation or disciplinary proceeding.

(s) **Misuse of electronic resources.** Theft of or other misuse of computer time or other electronic information

resources of the college. Such misuse includes, but is not limited to:

(i) Unauthorized use of such resources or opening of a file, message, or other item;

(ii) Unauthorized duplication, transfer, download, upload, or distribution of a computer program, file, message, or other item;

(iii) Unauthorized use or distribution of someone else's password or other identification;

(iv) Use of such time or resources to interfere with someone else's work;

(v) Use of such time or resources to send, display, or print an obscene or abusive message, text, or image;

(vi) Use of such time or resources to interfere with normal operation of the college's computing system or other electronic information resources;

(vii) Use of such time or resources in violation of applicable copyright or other law;

(viii) Adding to or otherwise altering the infrastructure of the college's electronic information resources without authorization; or

(ix) Failure to comply with the college's regulation on appropriate use of college information technology resources or the electronic use policies as established by the college.

(t) **Unauthorized access.** Unauthorized possession, duplication, or other use of a key, keycard, or other restricted means of access to college property, or unauthorized entry onto or into college property.

(u) **Safety violation.** Safety violation includes any non-accidental conduct that interferes with or otherwise compromises any college policy, equipment, or procedure relating to the safety and security of the campus community, including tampering with fire safety equipment and triggering false alarms or other emergency response systems.

(v) **Violation of other laws or policies.** Violation of any federal, state, or local law, rule, or regulation or other college rules or policies, including college traffic and parking rules.

(w) **Abuse or misuse of hearing procedures.** Abuse or misuse of any of the procedures relating to student complaints or misconduct including, but not limited to:

(i) Falsification or misrepresentation of information;

(ii) Disruption, or interference with the orderly conduct of a proceeding;

(iii) Interfering with someone else's proper participation in a proceeding;

(iv) Destroying or altering potential evidence, or attempting to intimidate or otherwise improperly pressure a witness or potential witness, including retaliation;

(v) Attempting to influence the impartiality of, or harassing or intimidating a student conduct committee member; or

(vi) Failure to comply with any disciplinary sanction(s) imposed under ~~((EdCC's))~~ Edmonds College's student conduct code.

(x) **Ethical violation.** The breach of any generally recognized and/or published code of ethics or standards of professional practice that governs the conduct of a particular profession for which the student is taking a course or is pursuing as an educational goal or program.

In addition to initiating discipline proceedings for violation of the student conduct code, the college may refer any

violations of federal, state or local laws to civil and criminal authorities for disposition. The college shall proceed with student disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal investigation or prosecution.

(4) **Sanctions.** Disciplinary actions include, but are not limited to, the following sanctions that may be imposed upon students according to the student code of conduct hearing procedures.

(a) **Warning.** A verbal statement to a student that there is a violation and that continued violation may be cause for further disciplinary action.

(b) **Reprimand.** Notice in writing that the student has violated one or more terms of the college's student conduct code and that continuation of the same or similar behavior may result in more severe disciplinary action.

(c) **Probation.** Formal action placing specific conditions and restrictions upon the student's continued attendance and/or enrollment, and/or participation in college programs or activities, depending upon the seriousness of the violation and which may include a deferred disciplinary sanction. If the student subject to a deferred disciplinary sanction is found in violation of any college rule during the time of disciplinary probation, the deferred disciplinary sanction which may include, but is not limited to, a suspension or a dismissal from the college, shall take effect immediately without further review. Any such sanction shall be in addition to any sanction or conditions arising from the new violation. Probation may be for a limited period of time or may be for the duration of the student's attendance and/or enrollment at the college.

(d) **Suspension.** Dismissal from the college and from the student status for a stated period of time. There may be no refund of tuition or fees for the quarter in which the action is taken.

(e) **Dismissal.** The revocation of all rights and privileges of membership in the college community and exclusion from the campus and college-owned or controlled facilities without any possibility of return. There will be no refund of tuition or fees for the quarter in which the sanction is taken.

(5) **Terms and conditions.** Disciplinary terms and conditions that may be imposed alone or in conjunction with the imposition of a sanction(s) include, but are not limited to, the following:

(a) **Restitution.** Reimbursement for damage to or misappropriation of property, or for injury to persons, or for reasonable costs incurred by the college in pursuing an investigation or disciplinary proceeding. This may take the form of monetary reimbursement, appropriate service, or other compensation.

(b) **Professional evaluation.** Referral for drug, alcohol, psychological or medical evaluation by an appropriately certified or licensed professional may be required. The student may choose the professional within the scope of practice and with the professional credentials as approved by the college. The student will sign all necessary releases to allow the college access to any such evaluation. The student's return to college may be conditioned upon compliance with recommendations set forth in such a professional evaluation. A student may not return to campus if the evaluation indicates that the student is not capable of functioning within the college

community, or if the evaluation lacks information for the college to make reasonable accommodations, or until future evaluation recommends that the student is capable of reentering the college and complying with the rules of conduct.

(c) **No contact/trespass order.** An order directing a student to have no contact with a specified student, college employee, a member of the college community, or a particular college facility for a stated period of time.

AMENDATORY SECTION (Amending WSR 15-12-068, filed 5/29/15, effective 6/29/15)

WAC 132Y-125-005 Statement of jurisdiction. (1) The student conduct code shall apply to student conduct that occurs:

(a) On college premises (~~(-to conduct that occurs)~~);

(b) At or in connection with college sponsored activities (~~(s)~~); or

(c) To off-campus conduct that, in the judgment of the college, adversely affects the college community or the pursuit of its objectives.

(2) Jurisdiction extends to, but is not limited to, locations in which students are engaged in official college activities including, but not limited to, foreign or domestic travel, activities funded by the associated students, athletic events, training internships, cooperative and distance education, online education, practicums, supervised work experiences, or any other college-sanctioned social or club activities.

(3) Students are responsible for their conduct from the time of application for admission through the actual receipt of a degree, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment.

(4) These standards shall apply to a student's conduct even if the student withdraws from college while a disciplinary matter is pending. The ~~((college))~~ student conduct officer has sole discretion, on a case-by-case basis, to determine whether the student conduct code will be applied to conduct that occurs off-campus.

AMENDATORY SECTION (Amending WSR 15-12-068, filed 5/29/15, effective 6/29/15)

WAC 132Y-125-010 Definitions. The following definitions shall apply for purposes of this student conduct code:

(1) "Business day" means a weekday, excluding week-ends and college holidays and/or college closures.

(2) "College premises" includes all campuses of the college, wherever located, and includes all land, buildings, facilities, vehicles, equipment, and other property owned, used, or controlled by the college.

(3) "Conduct review officer" is the vice president for student services or other college administrator designated by the president to be responsible for receiving and for reviewing or referring appeals of student disciplinary actions, in accordance with the procedures of this code. ~~((The president is authorized to reassign any and all of the conduct review officer's duties or responsibilities as set forth in this chapter as may be reasonably necessary.))~~

(4) "Disciplinary action" is the process by which the student conduct officer imposes discipline against a student for a violation of the student conduct code.

(5) "Disciplinary appeal" is the process by which an aggrieved student can appeal the discipline imposed by the student conduct officer. Disciplinary appeals from a suspension in excess of ten instructional days or an expulsion are heard by the student conduct appeals board. Appeals of all other appealable disciplinary action shall be reviewed through brief adjudicative proceedings.

(6) "Filing" is the process by which a document is officially delivered to a college official responsible for facilitating a disciplinary review. Unless otherwise provided, filing shall be accomplished by:

(a) Hand delivery of the document to the specified college official or college official's assistant; or

(b) Sending the document by email and first class mail to the specified college official's office and college email address.

Papers required to be filed shall be deemed filed upon actual receipt during office hours at the office of the specified college official.

(7) "~~(The)~~ President" is the president of Edmonds Community College. The president is authorized to delegate any of ~~(his or her)~~ their responsibilities as set forth in this chapter, and as may be reasonably necessary; and reassign any and all duties and responsibilities as set forth in this chapter as may be reasonably necessary.

(8) "Complainant" is an alleged victim of sexual misconduct.

(9) "Respondent" is the student against whom disciplinary ~~(proceedings have been initiated or who has received sanctions)~~ action is initiated.

~~((9))~~ (10) "Service" is the process by which a document is officially delivered to a party. Unless otherwise provided, service upon a party shall be accomplished by:

(a) Hand delivery of the document to the party; or

(b) Sending the document by email and by certified mail or first-class mail to the party's last known address.

Service is deemed complete upon hand delivery of the document or upon the date the document is emailed and deposited in the mail.

~~((10))~~ (11) "Student" includes all persons taking courses at or through the college, whether on a full-time or part-time basis, and whether such courses are credit courses, noncredit courses, online courses, or otherwise. Persons who withdraw after allegedly violating the code, who are not officially enrolled for a particular term but who have a continuing relationship with the college, or who have been notified of their acceptance for admission are considered "students."

~~((11))~~ (12) "Student conduct officer" is a college administrator designated by the ~~(vice)~~ president ~~(for student services)~~ to be responsible for implementing and enforcing the student conduct code. ~~(The vice president for student services is authorized to reassign any and all of the student conduct officer's duties or responsibilities as set forth in this chapter as may be reasonably necessary.)~~

(13) "Sexual misconduct" has the meaning ascribed to this term in WAC 132Y-125-001.

AMENDATORY SECTION (Amending WSR 15-12-068, filed 5/29/15, effective 6/29/15)

WAC 132Y-125-015 Initiation of disciplinary action.

(1) All disciplinary actions will be initiated by the student conduct officer. If that officer is the subject of a complaint initiated by the respondent, the vice president for student services shall, upon request and when feasible, designate another person to fulfill any such disciplinary responsibilities relative to the complainant.

(2) The student conduct officer shall initiate disciplinary action by serving the respondent with written notice directing him or her to attend a disciplinary meeting. The notice shall briefly describe the factual allegations, the provision(s) of the conduct code the respondent is alleged to have violated, the range of possible sanctions for the alleged violation(s), and shall also specify the time and location of the meeting. At the meeting, the student conduct officer will present the allegations to the respondent and the respondent shall be afforded an opportunity to explain what took place. If the respondent fails to attend the meeting after proper service of notice, the student conduct officer may take disciplinary action based upon the available information.

(3) Within ten days of the initial disciplinary meeting, and after considering the evidence in the case, including any facts or argument presented by the respondent, the student conduct officer shall serve the respondent with a written decision setting forth the facts and conclusions supporting his or her decision, the specific student conduct code provisions found to have been violated, the discipline imposed, if any, and a notice of any appeal rights with an explanation of the consequences of failing to file a timely appeal.

(4) The student conduct officer may take any of the following disciplinary actions:

(a) Exonerate the respondent and terminate the proceedings; or

(b) Impose a disciplinary sanction(s), as described in WAC 132Y-125-001 (4) and (5).

(c) Refer the matter directly to the student conduct committee for such disciplinary action as the committee deems appropriate. Such referral shall be in writing, to the attention of the chair of the student conduct committee, with a copy served on the respondent.

(5) In cases involving allegations of sexual misconduct, the student conduct officer, on the same date that a disciplinary decision is served on the respondent, will serve a written notice informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including disciplinary suspension or dismissal of the respondent. The notice will also inform the complainant of their appeal rights. If protective sanctions and/or conditions are imposed, the student conduct officer shall make a reasonable effort to contact the complainant to ensure prompt notice of the protective disciplinary sanctions and/or conditions.

AMENDATORY SECTION (Amending WSR 15-12-068, filed 5/29/15, effective 6/29/15)

WAC 132Y-125-020 Appeal from disciplinary action. (1) The respondent may appeal a disciplinary action by filing a written notice of appeal with the conduct review officer within twenty-one days of service of the student conduct officer's decision. Failure to timely file a notice of appeal constitutes a waiver of the right to appeal and the student conduct officer's decision shall be deemed final.

(2) The notice of appeal must include a brief statement explaining why the respondent is seeking review.

(3) The parties to an appeal shall be the respondent and the conduct review officer.

(4) A respondent, who timely appeals a disciplinary action or whose case is referred to the student conduct committee, has a right to a prompt, fair, and impartial hearing as provided for in these procedures.

(5) On appeal, the college bears the burden of establishing the evidentiary facts underlying the imposition of a disciplinary sanction by a preponderance of the evidence.

(6) Imposition of disciplinary action for violation of the student conduct code shall be stayed pending appeal, unless respondent has been summarily suspended.

(7) The student conduct committee shall hear appeals from:

(a) The imposition of disciplinary suspensions in excess of ten instructional days;

(b) Dismissals; and

(c) Disciplinary cases referred to the committee by the student conduct officer, the conduct review officer, or the president.

(8) Student conduct appeals of the imposition of the following disciplinary sanctions shall be reviewed through a brief adjudicative proceeding:

(a) Suspensions of ten instructional days or less;

(b) Probation;

(c) Written reprimands; and

(d) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions.

(9) Except as provided elsewhere in these rules, disciplinary verbal warnings and dismissals of disciplinary actions are final action and are not subject to appeal.

(10) In cases involving allegations of sexual misconduct, the complainant has the right to appeal the following actions by the student conduct officer following the same procedures as set forth above for the respondent:

(a) The dismissal of a sexual misconduct complaint; or

(b) Any disciplinary sanction(s) and conditions imposed against a respondent for a sexual misconduct violation, including a disciplinary warning.

(11) If the respondent timely appeals a decision imposing discipline for a sexual misconduct violation, the college shall notify the complainant of the appeal and provide the complainant an opportunity to intervene as a party to the appeal.

(12) Except as otherwise specified in this chapter, a complainant who timely appeals a disciplinary decision or who intervenes as a party to respondent's appeal of a disciplinary decision shall be afforded the same procedural rights as are afforded the respondent.

AMENDATORY SECTION (Amending WSR 15-12-068, filed 5/29/15, effective 6/29/15)

WAC 132Y-125-025 Brief adjudicative proceedings—Initial hearing. (1) Brief adjudicative proceedings shall be conducted by a conduct review officer (~~designated by the vice president for student services~~). The conduct review officer shall not participate in any case in which (~~he or she is~~) they are a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

(2) The parties to a brief adjudicative proceeding are the respondent, the student conduct officer, and in cases involving sexual misconduct, the complainant. Before taking action, the conduct review officer shall conduct an informal hearing and provide each party:

(a) An opportunity to be informed of the agency's view of the matter; and

(b) An opportunity to explain the party's view of the matter.

(3) The conduct review officer shall serve an initial decision upon (~~both the parties~~) the respondent and the student conduct officer within ten days of consideration of the appeal. The initial decision shall contain a brief written statement of the reasons for the decision and information about how to seek administrative review of the initial decision. If no request for review is filed within (~~twenty-one~~) ten days of service of the initial decision, the initial decision shall be deemed the final decision.

(4) In cases involving allegations of sexual misconduct, the conduct review officer, on the same date as the initial decision is served on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection. The notice will also inform the complainant of their appeal rights.

(5) If the conduct review officer, upon review, determines that the respondent's conduct may warrant imposition of a disciplinary suspension of more than ten instructional days or expulsion, the matter shall be referred to the student conduct committee for a disciplinary hearing.

AMENDATORY SECTION (Amending WSR 15-12-068, filed 5/29/15, effective 6/29/15)

WAC 132Y-125-030 Brief adjudicative proceedings—Review of an initial decision. (1) An initial decision is subject to review by the president, provided the respondent files a written request for review with the conduct review officer within (~~twenty-one~~) ten days of service of the initial decision.

(2) The president shall not participate in any case in which he or she is a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

(3) During the review, the president shall give each party an opportunity to file written responses explaining their views of the matter and shall make any inquiries necessary to ascertain whether the sanctions should be modified or

whether the proceedings should be referred to the student conduct committee for a formal adjudicative hearing.

(4) The decision on review must be in writing and must include a brief statement of the reasons for the decision and must be served on the parties within twenty days of the initial decision or of the request for review, whichever is later. The decision on review will contain a notice that judicial review may be available. A request for review may be deemed to have been denied if the president does not make a disposition of the matter within twenty days after the request is submitted.

(5) If the president upon review determines that the respondent's conduct may warrant imposition of a disciplinary suspension of more than ten instructional days or expulsion, the matter shall be referred to the student conduct committee for a disciplinary hearing.

(6) In cases involving allegations of sexual misconduct, the president, on the same date as the final decision is served on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent. The notice will also inform the complainant of their appeal rights.

AMENDATORY SECTION (Amending WSR 15-12-068, filed 5/29/15, effective 6/29/15)

WAC 132Y-125-060 Summary suspension. (1) Summary suspension is a temporary exclusion from specified college premises or denial of access to all activities or privileges for which a respondent might otherwise be eligible, while an investigation and/or formal disciplinary procedures are pending.

(2) The student conduct officer may impose a summary suspension if there is probable cause to believe that the respondent:

- (a) Has violated any provision of the code of conduct; and
- (b) Presents an immediate danger to the health, safety, or welfare of members of the college community; or
- (c) Poses an ongoing threat of substantial disruption of, or interference with, the operations of the college.

(3) Notice. Any respondent who has been summarily suspended shall be served with oral or written notice of the summary suspension. If oral notice is given, a written notification shall be served on the respondent within two business days of the oral notice.

(4) The written notification shall be entitled "Notice of Summary Suspension" and shall include:

- (a) The reasons for imposing the summary suspension, including a description of the conduct giving rise to the summary suspension and reference to the provisions of the student conduct code or the law allegedly violated;
- (b) The date, time, and location when the respondent must appear before the conduct review officer for a hearing on the summary suspension; and
- (c) The conditions, if any, under which the respondent may physically access the campus or communicate with

members of the campus community. If the respondent has been trespassed from the campus, a notice against trespass shall be included that warns the student that his or her privilege to enter into or remain on college premises has been withdrawn, that the respondent shall be considered trespassing and subject to arrest for criminal trespass if the respondent enters the college campus other than to meet with the student conduct officer or conduct review officer, or to attend a disciplinary hearing.

(5) If the respondent chooses to appeal the summary suspension, the conduct review officer shall conduct a hearing on the summary suspension as soon as practicable after imposition of the summary suspension.

(a) During the summary suspension hearing, the issue before the conduct review officer is whether there is probable cause to believe that the summary suspension should be continued pending the conclusion of disciplinary proceedings and/or whether the summary suspension should be less restrictive in scope;

(b) The respondent shall be afforded an opportunity to explain why summary suspension should not be continued while disciplinary proceedings are pending or why the summary suspension should be less restrictive in scope;

(c) If the student fails to appear at the designated hearing time, the conduct review officer may order that the summary suspension remain in place pending the conclusion of the disciplinary proceedings;

(d) As soon as practicable following the hearing, the conduct review officer shall issue a written decision, which shall include a brief explanation for any decision continuing and/or modifying the summary suspension and notice of any right to appeal; and

(e) To the extent permissible under applicable law, the conduct review officer shall provide a copy of the decision to all persons or offices, who may be bound or protected by it.

(6) In cases involving allegations of sexual misconduct, the complainant shall be notified that a summary suspension has been imposed on the same day that the summary suspension notice is served on the respondent. The college will also provide the complainant with timely notice of any subsequent changes to the summary suspension order.

NEW SECTION

WAC 132Y-125-125 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 the Edmonds College's standard disciplinary procedures, WAC 132Y-125-005 through 132Y-125-060, these supplemental procedures shall take precedence.

NEW SECTION

WAC 132Y-125-130 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, Edmonds 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. An Edmonds College student 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 Edmonds 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, 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 132Y-125-135 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 Edmonds 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 Edmonds College from pursuing other disciplinary action based on allegations that the respondent violated other provisions of the Edmonds College's student conduct code, WAC 132Y-125-001.

(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 student conduct officer 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 132Y-125-140 Initiation of discipline. (1) Upon receiving the Title IX investigation report from the Title IX coordinator, the student conduct officer 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 student conduct officer determines that there are sufficient grounds to proceed under these supplemental procedures, the student conduct officer 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);

(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) Edmonds 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 132Y-125-145 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 WAC 132Y-125-040. In no event will the hearing date be set less than ten 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 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 Edmonds College intends to offer the evidence at the hearing.

NEW SECTION

WAC 132Y-125-150 Rights of parties. (1) Edmonds College's student conduct procedures, WAC 132Y-125-040, 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 Edmonds College's choosing on the party's behalf at no expense to the party.

NEW SECTION

WAC 132Y-125-155 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 132Y-125-160 Initial order. (1) In addition to complying with WAC 132Y-125-050, 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 Edmonds College's educational programs or activities; and
 - (h) Describes the process for appealing the initial order to the Edmonds College president.
- (2) The committee chair will serve the initial order on the parties simultaneously.

NEW SECTION

WAC 132Y-125-165 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 WAC 132Y-125-055.

(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.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 132Y-125-100 Supplemental sexual misconduct procedures.

WAC 132Y-125-105 Supplemental definitions.

WAC 132Y-125-110 Supplemental complaint process.

WAC 132Y-125-115 Supplemental appeal rights.

AMENDATORY SECTION (Amending WSR 15-12-069, filed 5/29/15, effective 6/29/15)

WAC 132Y-300-005 Statement of policy. Edmonds Community College provides equal opportunity in education and employment and does not discriminate on the basis of protected classes as required by state and federal law. Prohibited discrimination and/or harassment of protected classes includes sexual harassment.

~~((1) Harassment is defined, for the purpose of this policy, as unwelcome and unauthorized incidents and/or patterns of conduct or speech that are:~~

~~(a) Persistent, pervasive, or severe; and~~

~~(b) Based on an association or perceived association with a protected class and which:~~

~~(i) The respondent either knows, or should know, will have the effect of making the college environment hostile, intimidating, or demeaning to the complainant; and~~

~~(ii) Renders the college environment (including the environment for employees, students, and visitors) hostile, intimidating, or demeaning for the complainant.~~

~~(2) Sexual harassment is a form of sex discrimination. Sexual harassment is defined, for the purpose of this policy, as unwelcome sexual advances, requests, and other unwelcome conduct of a sexual nature where:~~

~~(a) Submission to such conduct is made, either expressly or implicitly, a term or condition of an individual's employment or education; or~~

~~(b) Submission or rejection of such conduct by an individual is used as the basis for employment or educational decisions affecting any individual; or~~

~~(c) Such unwelcome conduct is sufficiently persistent, pervasive, or severe to have the effect of substantially interfering with any individual's academic or professional performance.~~

~~(3) Sexual harassment conduct includes, but is not limited to, engaging in unwelcome sexual advances; requesting~~

~~sexual favors; engaging in other sexual behaviors including verbal, nonverbal, electronic or social media communication; or physically touching that would create an intimidating, hostile, or offensive educational environment or substantially interfere with a reasonable person's work or educational performance.)~~

AMENDATORY SECTION (Amending WSR 15-12-069, filed 5/29/15, effective 6/29/15)

WAC 132Y-300-010 Procedures. (1) Introduction. Edmonds ((Community)) College, hereinafter referred to as "the college," recognizes its responsibility for investigating and resolving incidents; implementing corrective measures; monitoring the educational environment and workplace; and implementing regulations to stop, remediate, and prevent discrimination and harassment based on an individual's association ((or perceived association)) with protected classes as required by law. To this end, the college has enacted a policy prohibiting discrimination against and harassment of members of these protected classes and procedures that deal with complaints and violations of the policy. Any individual found to be in violation of the policy will be subject to disciplinary action up to and including expulsion from the college or dismissal from employment.

Any employee, student, or visitor who is the alleged subject of discrimination or harassment should report the incident or incidents to the EO/AA office, Title IX coordinator identified below. If the complaint is against that officer, the complainant should report the matter to the president's office for referral to an alternate designee.

Civil Rights: Equal Opportunity/Affirmative Action (EO/AA).

Title IX: Gender Discrimination, Sexual Harassment, and Sexual Violence.

Title: EO/AA Office, Title IX Coordinator

Office: Edmonds Community College

20000 - 68th Ave. W.

Clearview Building, Room 122

Lynnwood, WA 98036

~~((The EO/AA office, Title IX coordinator or designee:~~

~~• Will accept all complaints and referrals from college employees, students, and visitors.~~

~~• Will make determinations regarding how to handle requests by complainants for privacy.~~

~~• Will keep accurate records of all complaints and referrals for the required time period.~~

~~• May conduct investigations or assign and oversee investigations conducted by others.~~

~~• May impose interim remedial measures to protect parties during investigations of discrimination or harassment.~~

~~• Will issue written findings of fact on completed investigations.~~

~~• May recommend specific corrective measures to stop, remediate, and prevent the recurrence of inappropriate action.~~

(2) Definitions:

~~(a) Complainant. Any employee, student, or visitor of the college who is the alleged subject of discrimination or harassment due to an association or perceived association with a protected class.~~

(b) **Complaint.** A description of facts that allege violation of the college's nondiscrimination and harassment policy.

(c) **Consent.** Knowing, voluntary, and clear permission, by word or action, to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.

Individuals cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when that person knows, or should know, that the other individual is physically or mentally incapacitated has engaged in noneconsensual conduct. Intoxication is not a defense against allegations that an individual has engaged in noneconsensual sexual conduct.

(d) **Discrimination.** The unfavorable treatment of a person based on an individual's association or perceived association with a protected class. Harassment is a form of discrimination.

(e) **Harassment.** Unwelcome and unauthorized incidents and/or patterns of conduct or speech that are persistent, pervasive, or severe and based on an association or perceived association with a protected class; and which the respondent either knows, or should know, will have the effect of making the college environment hostile, intimidating, or demeaning to the complainant, and renders the college environment (including the environment for employees, students, and visitors) hostile, intimidating, or demeaning for the complainant. Examples of conduct that could rise to the level of discriminatory harassment include, but are not limited to, the following:

- Epithets, "jokes," ridicule, mockery, or other offensive or derogatory conduct focused upon an individual's membership in a protected class.
- Verbal or physical threats of violence or physical contact directed towards an individual based upon their membership in a protected class.
- Making, posting, emailing, texting, or otherwise circulating demeaning or offensive pictures, cartoons, graffiti, notes or other materials that relate to race, ethnic origin, gender, or any other protected class.

(f) **Protected class.** A group of individuals who are protected under state or federal laws, including laws that prohibit discrimination on the basis of age, citizenship, color, creed, disability, gender identity or expression, genetic information, marital status, national origin, pregnancy, race, religion, sex, sexual orientation, use of service animal, or veteran/military status.

(g) **Resolution.** The means by which the complaint is finally addressed. This may be accomplished through informal or formal processes, including counseling, mediation, or the formal imposition of discipline.

(h) **Respondent.** An individual who is a member of the campus community who allegedly discriminates against or harasses another person.

(i) **Sexual harassment.** Unwelcome sexual advances, requests, and other unwelcome conduct of a sexual nature where submission to such conduct is made, either expressly or implicitly, a term or condition of an individual's employment or education; or submission or rejection of such conduct by an individual is used as the basis for employment or educational decisions affecting any individual; or such unwelcome conduct is sufficiently persistent, pervasive, or severe to have the effect of substantially interfering with any individual's academic or professional performance. Two types of sexual harassment include:

(i) **Hostile environment sexual harassment.** A form of harassment that occurs when the conduct is sufficiently persistent, pervasive, or severe and so objectively offensive that it has the effect of altering the terms or conditions of an employee's employment or substantially limiting the ability of a student to participate in or benefit from the college's educational programs, social programs, and/or student housing.

(ii) **Quid pro quo sexual harassment.** A form of harassment that occurs when an individual in a position of real or perceived authority makes receiving a benefit conditional upon granting of sexual favors.

Examples of conduct that may qualify as sexual harassment include:

- Persistent comments or questions of a sexual nature.
- A supervisor who gives an employee a raise in exchange for submitting to sexual advances.
- An instructor who promises a student a better grade in exchange for sexual favors.
- Sexually explicit statements, questions, jokes, or anecdotes.
- Unwelcome touching, patting, hugging, kissing, or brushing against an individual's body.
- Remarks of a sexual nature about an individual's clothing, body, or speculations about previous sexual experiences.
- Persistent, unwanted attempts to change a professional relationship to an amorous relationship.
- Direct or indirect propositions for sexual activity.
- Unwelcome letters, emails, texts, telephone calls, or other communications referring to or depicting sexual activities.

(j) **Sexual violence.** A type of sexual discrimination and harassment. Noneconsensual sexual intercourse, noneconsensual sexual contact, domestic violence, dating violence, and stalking are all types of sexual violence.

(i) **Noneconsensual sexual intercourse** is any sexual intercourse (anal, oral, or vaginal), however slight, with any object, 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.

(ii) **Noneconsensual sexual contact** is any intentional sexual touching, however slight, with any 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.

(iii) **Domestic violence** includes asserted violent misdemeanor and felony offenses committed by the victim's cur-

rent or former spouse, current or former cohabitant, person similarly situated under domestic or family violence law, or anyone else protected under domestic or family violence law.

(iv) Dating violence is violence by a person who has been in a romantic or intimate relationship with the complainant. Whether there was such relationship will be gauged by its length, type, and frequency of interaction.

(v) Stalking is intentional and repeated harassment or following of another person, which places that person in reasonable fear that the respondent intends to injure, intimidate, or harass that person. Stalking also includes instances where the respondent knows or reasonably should know that the person is frightened, intimidated, or harassed, even if the respondent lacks such intent.

~~((3))~~ **(2) Filing a complaint.** The college encourages the timely reporting of any incidents of alleged discrimination or harassment. Any employee of, student of, or visitor to the college may file a complaint. Complaints ~~((may))~~ must be submitted in writing ~~((or verbally))~~.

For complainants who wish to submit a written complaint, a formal complaint form is available online at www.edcc.edu/titleix/. Hardcopies of the complaint form are available at the following locations on campus: Human resources office(s) and vice president for student services office. Any person submitting a discrimination or harassment complaint shall be provided with a written copy of the college's nondiscrimination and harassment policy and procedures.

~~((4))~~ The proposed content is designed to assist you with filing a discrimination and/or harassment complaint. Please write clearly and focus on the alleged discriminatory and/or harassing conduct. The complaint should include as much information regarding the incident(s) giving rise to the complaint as possible, including the location, date, and time of the alleged incident(s); the name of the individual or group whom the complaint is against, if known; a description of the incident(s); and the remedy sought.

You may attach additional documents if needed. Please include your contact information (phone, email, mailing address), sign, and return your complaint to the EO/AA office, Title IX coordinator or designee. A link to an online reporting form is located at <http://www.edcc.edu/titleix/>.

(3) Confidentiality and right to privacy. The college will seek to protect the privacy of the ~~((individuals involved))~~ complainant to the fullest extent possible, consistent with the legal obligation to investigate, take appropriate remedial and/or disciplinary action, comply with the state and federal laws, ~~((and follow))~~ as well as the college's policy and procedures. ~~((The college cannot guarantee complete confidentiality. The EO/AA office, Title IX coordinator or designee will determine how to handle requests for privacy.~~

The EO/AA office, Title IX coordinator or designee will inform and obtain consent from the complainant before commencing an investigation into a sexual violence complaint. If a sexual violence complainant asks for their name to not be revealed to the respondent or that the college not investigate the allegation, the EO/AA office, Title IX coordinator or designee will inform the complainant that maintaining confidentiality may limit the college's ability to fully respond to the allegations and that retaliation by the respondent and/or others is prohibited. If the complainant still insists that their

name not be disclosed or that the college not investigate, the EO/AA office, Title IX coordinator or designee will determine whether the college can honor the request and at the same time maintain a safe and nondiscriminatory environment for all members of the college community, including the complainant. Factors to be weighed during this determination may include, but are not limited to:

- The seriousness of the alleged sexual violence;
- The age of the complainant;
- Whether the sexual violence was perpetrated with a weapon;
- Whether the respondent has a history of committing acts of sexual violence or has been the subject of other sexual violence complaints;
- Whether the respondent threatened to commit additional acts of sexual violence against the complainant or others; and
- Whether relevant evidence can be obtained through other means (e.g., security cameras, other witnesses, physical evidence).

If the college is unable to honor a complainant's request for privacy, the EO/AA office, Title IX coordinator or designee will notify the complainant of the decision and ensure that complainant's identity is disclosed only to the extent reasonably necessary to effectively conduct and complete the investigation.

If the college decides not to conduct an investigation or take disciplinary action because of a request for privacy, the EO/AA office, Title IX coordinator or designee will evaluate whether other measures are available to limit the effects of the harassment and prevent its recurrence and implement such measures if reasonably feasible.

(5) Investigation procedure. Upon receiving a complaint, the college shall commence an impartial investigation. The EO/AA office, Title IX coordinator or designee shall be responsible for overseeing all investigations. The EO/AA office, Title IX coordinator or designee may conduct investigations. If the investigation is assigned to someone other than the EO/AA office, Title IX coordinator or designee then the complainant and respondent shall be notified of the appointment of an investigator.

(a) Interim measures. The EO/AA office, Title IX coordinator or designee may impose interim measures to protect the complainant and/or respondent pending the conclusion of the investigation. Interim measures may include, but are not limited to, imposition of nocontact orders, rescheduling classes, temporary work reassignments, referrals for counseling or medical assistance, and imposition of summary discipline on the respondent consistent with the college's student code of conduct or the college's employment policies and collective bargaining agreements.

(b) Investigation. Complaints shall be thoroughly and impartially investigated. The investigation shall include, but will not be limited to, interviewing the complainant and the respondent, interviewing relevant witnesses, and reviewing relevant documents. The investigation shall be concluded within a reasonable time, normally sixty days barring urgent circumstances. At the conclusion of the investigation, the investigator(s) shall set forth findings and recommendations in writing. If the investigator(s) is a designee, the investiga-

tor(s) shall send a copy of the findings and recommendations to the EO/AA office, Title IX coordinator or designee. The EO/AA office, Title IX coordinator or designee shall consider the findings and recommendations and determine, based on a preponderance of evidence, whether a violation of the nondiscrimination and harassment policy occurred, and, if so, what steps will be taken to resolve the complaint, remedy the effects of the violation on the complainant, and prevent the violation's recurrence. Possible remedial steps may include, but will not be limited to, referral for voluntary training/counseling, development of a remediation plan, a non-contact order, and referral and recommendation for formal disciplinary action. Referrals for disciplinary action will be consistent with the college's student code of conduct or the college's employment policies and collective bargaining agreements.

(e) ~~Written notice of decision.~~ The EO/AA office, Title IX coordinator or designee will provide each party and the appropriate student services administrator or appointing authority with written notice of the investigative findings and of actions taken or recommended in an effort to resolve the complaint, subject to the following limitations. The complainant shall be informed in writing of the findings and of actions taken or recommendations in an effort to resolve the complaint, such as a finding that the complaint is or is not meritorious or a recommendation that the respondent not contact the complainant. The complainant may be notified generally that the matter has been referred for disciplinary action. The respondent shall be informed in writing of the findings and of actions taken or recommended to resolve the complaint and shall be notified of referrals for disciplinary action. Both the complainant and the respondent are entitled to review any final findings, conclusions, and recommendations, subject to any FERPA confidentiality requirements.

(d) ~~Informal dispute resolution.~~ Informal dispute resolution processes, such as mediation, may be used to resolve complaints, when appropriate. Informal dispute resolution shall not be used to resolve sexual discrimination complaints without written permission from both the complainant and the respondent. If the parties elect to mediate a dispute, either party shall be free to discontinue mediation at any time. In no event shall mediation be used to resolve complaints involving allegations of sexual violence.

(e) ~~Final decision/reconsideration.~~ Either the complainant or the respondent may seek reconsideration of the decision by the EO/AA office, Title IX coordinator or designee. Requests for reconsideration must be submitted in writing to the EO/AA office, Title IX coordinator or designee within seven days of receiving the decision. Requests must specify which portion of the decision should be reconsidered and the basis for reconsideration. If no request for reconsideration is received within seven days, the decision becomes final. If a request for reconsideration is received, the EO/AA office, Title IX coordinator or designee shall respond within 14 days. The EO/AA office, Title IX coordinator or designee shall either deny the request or will issue an amended decision. Any amended decision is final and no further reconsideration is available.

~~(6))~~ Although the college will attempt to honor complainants' requests for confidentiality, it cannot guarantee

complete confidentiality. Determinations regarding how to handle requests for confidentiality will be made by the Title IX coordinator.

(a) The Title IX coordinator will inform and attempt to obtain consent from the complainant before commencing an investigation of alleged discrimination or sexual harassment. If a complainant asks that their name not be revealed to the respondent or that the college not investigate the allegation, the Title IX coordinator will inform the complainant that maintaining confidentiality may limit the college's ability to fully respond to the allegations and that retaliation by the respondent and/or others is prohibited. If the complainant still insists that their name not be disclosed or that the college not investigate, the Title IX coordinator will determine whether the college can honor the request and at the same time maintain a safe and nondiscriminatory environment for all members of the college community, including the complainant. Factors to be weighed during this determination may include, but are not limited to:

(i) The seriousness of the alleged sexual harassment;

(ii) The age of the complainant;

(iii) Whether the sexual harassment was perpetrated with a weapon;

(iv) Whether the respondent has a history of committing acts of sexual harassment or violence or has been the subject of other sexual harassment or violence complaints or findings;

(v) Whether the respondent threatened to commit additional acts of sexual harassment or violence against the complainant or others; and

(vi) Whether relevant evidence about the alleged incident can be obtained through other means (e.g., security cameras, other witnesses, physical evidence).

(b) If the college is unable to honor a complainant's request for confidentiality, the Title IX coordinator will notify the complainant of the decision and ensure that complainant's identity is disclosed only to the extent reasonably necessary to effectively conduct and complete the investigation in compliance with this grievance procedure.

(c) If the college decides not to conduct an investigation or take disciplinary action because of a request for confidentiality, the Title IX coordinator will evaluate whether other measures are available to address the circumstances giving rise to the complaint and prevent their recurrence, and implement such measures if reasonably feasible.

(4) Publication of nondiscrimination and harassment policy and procedures. The policy and procedures regarding complaints of discrimination and harassment shall be published and distributed as determined by the president or designee. Individuals who believe they have been subjected to discrimination or harassment will be provided a copy of the policy and procedures.

~~((7))~~ **(5) Limits to authority.** Nothing in these procedures shall prevent the president or designee from taking immediate disciplinary action in accordance with the college's policies and procedures, and federal, state, and/or municipal rules and regulations.

~~((8))~~ **(6) Retaliation, intimidation, and coercion.** Retaliation by, for, or against any participant (including complainant, respondent, witness, investigator, or EO/AA office,

Title IX coordinator or designee) is expressly prohibited. Retaliatory action of any kind taken against a participant who is seeking redress under the nondiscrimination and harassment policy and using these procedures is prohibited and is subject to discipline. Individuals who think they have been retaliated against, intimidated, or coerced should contact the EO/AA office, Title IX coordinator or designee immediately.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 132Y-300-001 Preamble.

WAC 132Y-300-020 Complaint content.

WSR 20-24-040
PERMANENT RULES
OFFICE OF THE
INSURANCE COMMISSIONER

[Filed November 23, 2020, 10:21 a.m., effective December 24, 2020]

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

Purpose: In 2019 and 2020, the legislature enacted SHB 2338, ESHB 2642, ESHB 1879, and SSB 5889 and related health care legislation that address accessing and receiving health care services and benefits through health plans, short-term limited duration medical plans and student health plans. Multiple provisions of office of the insurance commissioner rules in chapter 284-43 WAC need amendments to be consistent with the new laws, including rules related to carrier utilization review processes, essential health benefits, mental health parity and protection of individuals from discrimination by carriers.

Citation of Rules Affected by this Order: New WAC 284-43-5935, 284-43-5960, 284-43-5965, 284-43-5970, 284-43-5975 and 284-43-5980; and amending WAC 284-43-0160, 284-43-2000, 284-43-5642, 284-43-5940, 284-43-5950, 284-43-7000, 284-43-7010, 284-43-7020, 284-43-7040, 284-43-7060, 284-43-7080, 284-43-7100, and 284-43-7120.

Statutory Authority for Adoption: RCW 48.02.060, 48.20.460, 48.43.0128, 48.44.050, 48.46.200.

Adopted under notice filed as WSR 20-20-116 on October 6, 2020.

Changes Other than Editing from Proposed to Adopted Version: The final rule differs from the proposed rule in the following respects:

- The final rule makes a clarifying change to language related to coverage of hormone therapy in WAC 284-43-5940 (1)(b)(iv).
- The final rule makes a technical correction to replace the term "covered entity" with "issuer" in WAC 284-43-5965(3) and 284-43-5980(9).
- The final rule makes a technical correction to WAC sections referenced in WAC 284-43-7100. The reference to WAC 284-43-3070 is corrected to read WAC 284-43-3170.

- The final rule modifies WAC 284-43-5940(5) to clarify how the commissioner assesses an issuer's actions to comply with WAC 284-43-5940.

A final cost-benefit analysis is available by contacting Tabba Alam, P.O. Box 40260, Olympia, WA 98504-0260, phone 360-725-7170, email TabbaA@oic.wa.gov [TabbaA@oic.wa.gov], website www.insurance.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 6, Amended 13, 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 0, Repealed 0.

Date Adopted: November 23, 2020.

Mike Kreidler
Insurance Commissioner

AMENDATORY SECTION (Amending WSR 17-12-069, filed 6/5/17, effective 7/6/17)

WAC 284-43-0160 Definitions. Except as defined in other subchapters and unless the context requires otherwise, the following definitions shall apply throughout this chapter.

(1) "Adverse determination" has the same meaning as the definition of adverse benefit determination in RCW 48.43.005, and includes:

(a) The determination includes any decision by a health carrier's designee utilization review organization that a request for a benefit under the health carrier's health benefit plan does not meet the health carrier's requirements for medical necessity, appropriateness, health care setting, level of care, or effectiveness or is determined to be experimental or investigational and the requested benefit is therefore denied, reduced, or terminated or payment is not provided or made, in whole or in part for the benefit;

(b) The denial, reduction, termination, or failure to provide or make payment, in whole or in part, for a benefit based on a determination by a health carrier or its designee utilization review organization of a covered person's eligibility to participate in the health carrier's health benefit plan;

(c) Any prospective review or retrospective review determination that denies, reduces, or terminates or fails to provide or make payment in whole or in part for a benefit;

(d) A rescission of coverage determination; or

(e) A carrier's denial of an application for coverage.

(2) "Authorization" or "certification" means a determination by the carrier that an admission, extension of stay, or other health care service has been reviewed and, based on the information provided, meets the clinical requirements for

medical necessity, appropriateness, level of care, or effectiveness in relation to the applicable health plan.

~~((3))~~ (3) "Behavioral health agency" means an agency licensed or certified under RCW 71.24.037.

~~((4))~~ (4) "Clinical review criteria" means the written screens or screening procedures, decision rules, medical protocols, or clinical practice guidelines used by the carrier as an element in the evaluation of medical necessity and appropriateness of requested admissions, procedures, and services, including prescription drug benefits, under the auspices of the applicable plan. Clinical approval criteria has the same meaning as clinical review criteria.

~~((4))~~ (5) "Covered health condition" means any disease, illness, injury or condition of health risk covered according to the terms of any health plan.

~~((5))~~ (6) "Covered person" or "enrollee" means an individual covered by a health plan including a subscriber, policyholder, or beneficiary of a group plan.

~~((6))~~ (7) "Emergency fill" means a limited dispensed amount of medication that allows time for the processing of a preauthorization request. Emergency fill only applies to those circumstances where a patient presents at a contracted pharmacy with an immediate therapeutic need for a prescribed medication that requires a prior authorization.

~~((7))~~ (8) "Emergency medical condition" means the emergent and acute onset of a symptom or symptoms, including severe pain or emotional distress, that would lead a prudent layperson acting reasonably to believe that a health condition exists that requires immediate medical, mental health or substance use disorder treatment attention, if failure to provide medical, mental health or substance use disorder treatment attention would result in serious impairment to bodily functions or serious dysfunction of a bodily organ or part, or would place the person's health in serious jeopardy.

~~((8))~~ (9) "Emergency services" has the meaning set forth in RCW 48.43.005.

~~((9))~~ (10) "Enrollee point-of-service cost-sharing" or "cost-sharing" means amounts paid to health carriers directly providing services, health care providers, or health care facilities by enrollees and may include copayments, coinsurance, or deductibles.

~~((10))~~ (11) "Expedited prior authorization request" means any request by a provider or facility for approval of a service where the passage of time could seriously jeopardize the life or health of the enrollee, seriously jeopardize the enrollee's ability to regain maximum function, or, in the opinion of a provider or facility with knowledge of the enrollee's medical condition, would subject the enrollee to severe pain that cannot be adequately managed without the service that is the subject of the request.

~~((11))~~ (12) "Facility" means an institution providing health care services(=) including, but not limited to, hospitals and other licensed inpatient centers, ambulatory surgical or treatment centers, skilled nursing centers, residential treatment centers, diagnostic, laboratory, and imaging centers, and rehabilitation and other therapeutic settings, and as defined in RCW 48.43.005.

~~((12))~~ (13) "Formulary" means a listing of drugs used within a health plan. A formulary must include drugs covered under an enrollee's medical benefit.

~~((13))~~ (14) "Grievance" has the meaning set forth in RCW 48.43.005.

~~((14))~~ (15) "Health care provider" or "provider" means:

(a) A person regulated under Title 18 RCW or chapter 70.127 RCW, to practice health or health-related services or otherwise practicing health care services in this state consistent with state law; or

(b) An employee or agent of a person described in (a) of this subsection, acting in the course and scope of his or her employment.

~~((15))~~ (16) "Health care service" or "health service" means that service offered or provided by health care facilities and health care providers relating to the prevention, cure, or treatment of illness, injury, or disease.

~~((16))~~ (17) "Health carrier" or "carrier" means a disability insurance company regulated under chapter 48.20 or 48.21 RCW, a health care service contractor as defined in RCW 48.44.010, and a health maintenance organization as defined in RCW 48.46.020, and includes "issuers" as that term is used in the Patient Protection and Affordable Care Act (P.L. 111-148, as amended (2010)).

~~((17))~~ (18) "Health plan" or "plan" means any individual or group policy, contract, or agreement offered by a health carrier to provide, arrange, reimburse, or pay for health care service except the following:

(a) Long-term care insurance governed by chapter 48.84 RCW;

(b) Medicare supplemental health insurance governed by chapter 48.66 RCW;

(c) Limited health care service offered by limited health care service contractors in accordance with RCW 48.44.035;

(d) Disability income;

(e) Coverage incidental to a property/casualty liability insurance policy such as automobile personal injury protection coverage and homeowner guest medical;

(f) Workers' compensation coverage;

(g) Accident only coverage;

(h) Specified disease and hospital confinement indemnity when marketed solely as a supplement to a health plan;

(i) Employer-sponsored self-funded health plans;

(j) Dental only and vision only coverage; and

(k) Plans deemed by the insurance commissioner to have a short-term limited purpose or duration, or to be a student-only plan that is guaranteed renewable while the covered person is enrolled as a regular full-time undergraduate or graduate student at an accredited higher education institution, after a written request for such classification by the carrier and subsequent written approval by the insurance commissioner.

~~((18))~~ (19) "Immediate therapeutic needs" means those needs where passage of time without treatment would result in imminent emergency care, hospital admission or might seriously jeopardize the life or health of the patient or others in contact with the patient.

~~((19))~~ (20) "Indian health care provider" means:

(a) The Indian Health Service, an agency operated by the U.S. Department of Health and Human Services established by the Indian Health Care Improvement Act, Section 601, 25 U.S.C. §1661;

(b) An Indian tribe, as defined in the Indian Health Care Improvement Act, Section 4(14), 25 U.S.C. §1603(14), that

operates a health program under a contract or compact to carry out programs of the Indian Health Service pursuant to the Indian Self-Determination and Education Assistance Act (ISDEAA), 25 U.S.C. §450 et seq.;

(c) A tribal organization, as defined in the Indian Health Care Improvement Act, Section 4(26), 25 U.S.C. §1603(26), that operates a health program under a contract or compact to carry out programs of the Indian Health Service pursuant to the ISDEAA, 25 U.S.C. §450 et seq.;

(d) An Indian tribe, as defined in the Indian Health Care Improvement Act, Section 4(14), 25 U.S.C. §1603(14), or tribal organization, as defined in the Indian Health Care Improvement Act, Section 4(26), 25 U.S.C. §1603(26), that operates a health program with funding provided in whole or part pursuant to 25 U.S.C. §47 (commonly known as the Buy Indian Act); or

(e) An urban Indian organization that operates a health program with funds in whole or part provided by Indian Health Service under a grant or contract awarded pursuant to Title V of the Indian Health Care Improvement Act, Section 4(29), 25 U.S.C. §1603(29).

~~((20))~~ (21) "Managed care plan" means a health plan that coordinates the provision of covered health care services to a covered person through the use of a primary care provider and a network.

~~((21))~~ (22) "Medically necessary" or "medical necessity" in regard to mental health services and pharmacy services is a carrier determination as to whether a health service is a covered benefit because the service is consistent with generally recognized standards within a relevant health profession.

~~((22))~~ (23) "Mental health provider" means a health care provider or a health care facility authorized by state law to provide mental health services.

~~((23))~~ (24) "Mental health services" means in-patient or out-patient treatment ~~((;))~~ including, but not limited to, partial hospitalization ~~((;))~~ residential treatment, out-patient facility-based treatment, intensive outpatient treatment, emergency services, or prescription drugs to manage, stabilize or ameliorate the effects of a mental disorder listed in the most current version of the Diagnostic and Statistical Manual of Mental Disorders (DSM) ((#)) published by the American Psychiatric Association, ~~((excluding))~~ including diagnoses and treatment ~~((s))~~ for substance ~~((abuse, 291.0 through 292.9 and 303.0 through 305.9))~~ use disorder.

~~((24))~~ (25) "Network" means the group of participating providers and facilities providing health care services to a particular health plan or line of business (individual, small, or large group). A health plan network for issuers offering more than one health plan may be smaller in number than the total number of participating providers and facilities for all plans offered by the carrier.

~~((25) "Out-patient therapeutic visit" or "out-patient visit" means a clinical treatment session with a mental health provider of a duration consistent with relevant professional standards used by the carrier to determine medical necessity for the particular service being rendered, as defined in Physicians Current Procedural Terminology, published by the American Medical Association.))~~

(26) "Participating provider" and "participating facility" means a facility or provider who, under a contract with the health carrier or with the carrier's contractor or subcontractor, has agreed to provide health care services to covered persons with an expectation of receiving payment, other than coinsurance, copayments, or deductibles, from the health carrier rather than from the covered person.

(27) "Person" means an individual, a corporation, a partnership, an association, a joint venture, a joint stock company, a trust, an unincorporated organization, any similar entity, or any combination of the foregoing.

(28) "Pharmacy services" means the practice of pharmacy as defined in chapter 18.64 RCW and includes any drugs or devices as defined in chapter 18.64 RCW.

(29) "Predetermination request" means a voluntary request from an enrollee or provider or facility for a carrier or its designated or contracted representative to determine if a service is a benefit, in relation to the applicable plan.

(30) "Preservice requirement" means any requirement that a carrier places on a provider or facility that may limit their ability to deliver a service that requires prior authorization. Examples include limits on the type of provider or facility delivering the service, a service that must be provided before a specific service will be authorized, site of care/place of service, and whether a provider administered medication needs to be obtained from a specialty pharmacy.

(31) "Primary care provider" means a participating provider who supervises, coordinates, or provides initial care or continuing care to a covered person, and who may be required by the health carrier to initiate a referral for specialty care and maintain supervision of health care services rendered to the covered person.

(32) "Preexisting condition" means any medical condition, illness, or injury that existed any time prior to the effective date of coverage.

(33) "Premium" means all sums charged, received, or deposited by a health carrier as consideration for a health plan or the continuance of a health plan. Any assessment or any "membership," "policy," "contract," "service," or similar fee or charge made by a health carrier in consideration for a health plan is deemed part of the premium. "Premium" shall not include amounts paid as enrollee point-of-service cost-sharing.

(34) "Prior authorization" means a mandatory process that a carrier or its designated or contracted representative requires a provider or facility to follow to determine if a service is a benefit and meets the requirements for medical necessity, clinical appropriateness, level of care, or effectiveness in relation to the applicable plan. Prior authorization occurs before the service is delivered. For purposes of WAC 284-43-2050 and 284-43-2060, any term used by a carrier or its designated or contracted representative to describe this process is prior authorization. For example, prior authorization has also been referred to as "prospective review," "preauthorization," or "precertification."

(35) "Service area" means the geographic area or areas where a specific product is issued, accepts members or enrollees, and covers provided services. A service area must be defined by the county or counties included unless, for good cause, the commissioner permits limitation of a service

area by zip code. Good cause includes geographic barriers within a service area, or other conditions that make offering coverage throughout an entire county unreasonable.

(36) "Small group plan" means a health plan issued to a small employer as defined under RCW 48.43.005(33) comprising from one to fifty eligible employees.

(37) "Standard prior authorization request" means a request by a provider or facility for approval of a service where the request is made in advance of the enrollee obtaining a service that is not required to be expedited.

(38) "Step therapy protocol" means a drug utilization management prior authorization protocol or program that establishes the specific sequence in which prescription drugs are covered by a health carrier for a medical condition.

(39) "Substance use disorder" means a substance-related or addictive disorder listed in the most current version of the Diagnostic and Statistical Manual of Mental Disorders (DSM) published by the American Psychiatric Association.

(40) "Substitute drug" means a prescription medication, drug or therapy that a carrier covers based on an exception request. When the exception request is based on therapeutic equivalence, a substitute drug means a therapeutically equivalent substance as defined in chapter 69.41 RCW.

~~((39))~~ (41) "Supplementary pharmacy services" or "other pharmacy services" means pharmacy services involving the provision of drug therapy management and other services not required under state and federal law but that may be rendered in connection with dispensing, or that may be used in disease prevention or disease management.

(42) "Withdrawal management services" means twenty-four hour medically managed or medically monitored detoxification and assessment and treatment referral for adults or adolescents withdrawing from alcohol or drugs, which may include induction of medications for addiction recovery.

AMENDATORY SECTION (Amending WSR 17-12-069, filed 6/5/17, effective 1/1/18)

WAC 284-43-2000 Health care services utilization review—Generally. (1) Unless provided otherwise in this chapter or chapter 284-170 WAC with respect to utilization review of prescription drug services, this section governs issuer utilization review programs.

(2) These definitions apply to this section:

(a) "Concurrent care review request" means:

(i) Any request for an extension of a previously authorized inpatient stay or a previously authorized ongoing outpatient service, e.g., physical therapy, home health, etc.; and

(ii) Any request for authorization of continued withdrawal management or extension of inpatient or residential substance use disorder treatment services, including during the period of time that a behavioral health agency is arranging a transfer to an appropriate facility or lower level of care following an initial period of treatment under RCW 48.43.761.

(b) "Postservive review request" means any request for approval of care or treatment that has already been received by the enrollee.

~~((2))~~ (3) Each issuer must maintain a documented utilization review program description and written clinical review criteria based on reasonable medical evidence. The program

must include a method for reviewing and updating criteria. Issuers must make clinical review criteria available upon request to participating providers and facilities. An issuer need not use medical evidence or standards in its utilization review of religious nonmedical treatment or religious non-medical nursing care.

~~((3))~~ (4) The utilization review program must meet accepted national certification standards such as those used by the National Committee for Quality Assurance except as otherwise required by this chapter and must have staff who are properly qualified, trained, supervised, and supported by explicit written clinical review criteria and review procedures.

~~((4))~~ (5) Each issuer when conducting utilization review must:

(a) Accept information from any reasonably reliable source that will assist in the certification process;

(b) Collect only the information necessary to certify the admission, procedure or treatment, length of stay, or frequency or duration of services;

(c) Not routinely require providers or facilities to numerically code diagnoses or procedures to be considered for certification, but may request such codes, if available;

(d) Not routinely request copies of medical records on all enrollees reviewed;

(e) Require only the section(s) of the medical record during concurrent review necessary in that specific case to certify medical necessity or appropriateness of the admission or extension of stay, frequency or duration of service;

(f) For concurrent review, base review determinations solely on the medical information obtained by the issuer at the time of the review determination;

(g) For retrospective review, base review determinations solely on the medical information available to the provider or facility at the time the health service was provided;

(h) Not retrospectively deny coverage for emergency and nonemergency care that had prior authorization under the plan's written policies at the time the care was rendered unless the prior authorization was based upon a material misrepresentation by the provider or facility;

(i) Not retrospectively deny coverage or payment for care based upon standards or protocols not communicated to the provider or facility within a sufficient time period for the provider or facility to modify care in accordance with such standard or protocol; and

(j) Reverse its certification determination only when information provided to the issuer is materially different from that which was reasonably available at the time of the original determination.

~~((5))~~ (6) Each issuer must reimburse reasonable costs of medical record duplication for reviews.

~~((6))~~ (7) Each issuer must have written procedures to assure that reviews and second opinions are conducted in a timely manner.

(a) Review time frames must be appropriate to the severity of the enrollee condition and the urgency of the need for treatment, as documented in the review request.

(b) If the review request from the provider or facility is not accompanied by all necessary information, the issuer must tell the provider or facility what additional information

is needed and the deadline for its submission. Upon the sooner of the receipt of all necessary information or the expiration of the deadline for providing information, the time frames for issuer review determination and notification must be no less favorable than federal Department of Labor standards, as follows. For urgent inpatient services that require concurrent review, the time frame is as soon as possible, taking into account the medical exigencies, and no later than twenty-four hours, provided that the request is made at least twenty-four hours prior to the expiration of previously approved period of time or number of treatments. For post-service review requests, within thirty calendar days.

(c) Notification of the determination must be provided as follows:

(i) Information about whether a request was approved or denied must be made available to the provider or facility, and enrollee. Issuers must at a minimum make the information available on their website or from their call center.

(ii) Whenever there is an adverse determination the issuer must notify the provider or facility and the enrollee. The issuer must inform the parties in advance whether it will provide notification by phone, mail, fax, or other means.

(iii) Whenever the adverse determination relates to a protected individual, as defined in RCW 48.43.005, the issuer must follow RCW 48.43.505.

(d) As appropriate to the type of request, notification must include the number of extended days, the next anticipated review point, the new total number of days or services approved, and the date of admission or onset of services.

(e) The frequency of reviews for the extension of initial determinations must be based on the severity or complexity of the enrollee's condition or on necessary treatment and discharge planning activity.

((7)) (8) Concurrent care review requests related to authorization for coverage of continued withdrawal management or extension of inpatient or residential substance use disorder treatment services also must adhere to the requirements of RCW 48.43.761. In the event of a conflict between RCW 48.43.761 and the requirements of subsections (4) through (8) of this section, RCW 48.43.761 governs.

(9) No issuer may penalize or threaten a provider or facility with a reduction in future payment or termination of participating provider or participating facility status because the provider or facility disputes the issuer's determination with respect to coverage or payment for health care service.

AMENDATORY SECTION (Amending WSR 20-03-114, filed 1/16/20, effective 2/16/20)

WAC 284-43-5642 Essential health benefit categories. (1) A health benefit plan must cover "ambulatory patient services" in a manner substantially equal to the base-benchmark plan. For purposes of determining a plan's actuarial value, an issuer must classify as "ambulatory patient services" those medically necessary services delivered to enrollees in settings other than a hospital or skilled nursing facility, which are generally recognized and accepted for diagnostic or therapeutic purposes to treat illness or injury.

(a) A health benefit plan must include the following services, which are specifically covered by the base-benchmark plan, and classify them as ambulatory patient services:

(i) Home and outpatient dialysis services;

(ii) Hospice and home health care, including skilled nursing care as an alternative to hospitalization consistent with WAC 284-44-500, 284-46-500, and 284-96-500;

(iii) Provider office visits and treatments, and associated supplies and services, including therapeutic injections and related supplies;

(iv) Urgent care center visits, including provider services, facility costs and supplies;

(v) Ambulatory surgical center professional services, including anesthesiology, professional surgical services, surgical supplies and facility costs;

(vi) Diagnostic procedures including colonoscopies, cardiovascular testing, pulmonary function studies and neurology/neuromuscular procedures; and

(vii) Provider contraceptive services and supplies including, but not limited to, vasectomy, tubal ligation and insertion or extraction of FDA-approved contraceptive devices.

(b) A health benefit plan may, but is not required to, include the following services as part of the EHB-benchmark package. The base-benchmark plan specifically excludes these services. If an issuer includes these benefits in a health plan, the issuer should not include the following benefits in establishing actuarial value for the ambulatory category:

(i) Infertility treatment and reversal of voluntary sterilization;

(ii) Routine foot care for those that are not diabetic;

(iii) Coverage of dental services following injury to sound natural teeth. However, health plans must cover oral surgery related to trauma and injury. Therefore, a plan may not exclude services or appliances necessary for or resulting from medical treatment if the service is either emergency in nature or requires extraction of teeth to prepare the jaw for radiation treatments of neoplastic disease;

(iv) Private duty nursing for hospice care and home health care, to the extent consistent with state and federal law;

(v) Adult dental care and orthodontia delivered by a dentist or in a dentist's office;

(vi) Nonskilled care and help with activities of daily living;

(vii) Hearing care, routine hearing examinations, programs or treatment for hearing loss including, but not limited to, externally worn or surgically implanted hearing aids, and the surgery and services necessary to implant them. However, plans must cover cochlear implants and hearing screening tests that are required under the preventive services category, unless coverage for these services and devices are required as part of and classified to another essential health benefits category; and

(viii) Obesity or weight reduction or control other than:

(A) Covered nutritional counseling; and

(B) Obesity-related services for which the U.S. Preventive Services Task Force for prevention and chronic care has issued A and B recommendations on or before the applicable plan year, which issuers must cover under subsection (9) of this section.

(c) The base-benchmark plan's visit limitations on services in the ambulatory patient services category include:

(i) Ten spinal manipulation services per calendar year without referral;

(ii) Twelve acupuncture services per calendar year without referral;

(iii) Fourteen days respite care on either an inpatient or outpatient basis for hospice patients, per lifetime; and

(iv) One hundred thirty visits per calendar year for home health care.

(d) State benefit requirements classified to the ambulatory patient services category are:

(i) Chiropractic care (RCW 48.44.310);

(ii) TMJ disorder treatment (RCW 48.21.320, 48.44.460, and 48.46.530); and

(iii) Diabetes-related care and supplies (RCW 48.20.391, 48.21.143, 48.44.315, and 48.46.272).

(2) A health benefit plan must cover "emergency medical services" in a manner substantially equal to the base-benchmark plan. For purposes of determining a plan's actuarial value, an issuer must classify as emergency medical services the care and services related to an emergency medical condition.

(a) A health benefit plan must include the following services which are specifically covered by the base-benchmark plan and classify them as emergency services:

(i) Ambulance transportation to an emergency room and treatment provided as part of the ambulance service;

(ii) Emergency room and department based services, supplies and treatment, including professional charges, facility costs, and outpatient charges for patient observation and medical screening exams required to stabilize a patient experiencing an emergency medical condition;

(iii) Prescription medications associated with an emergency medical condition, including those purchased in a foreign country.

(b) The base-benchmark plan does not specifically exclude services classified to the emergency medical services category.

(c) The base-benchmark plan does not establish visit limitations on services in the emergency medical services category.

(d) State benefit requirements classified to the emergency medical services category include services necessary to screen and stabilize a covered person (RCW 48.43.093).

(3) A health benefit plan must cover "hospitalization" in a manner substantially equal to the base-benchmark plan. For purposes of determining a plan's actuarial value, an issuer must classify as hospitalization services the medically necessary services delivered in a hospital or skilled nursing setting including, but not limited to, professional services, facility fees, supplies, laboratory, therapy or other types of services delivered on an inpatient basis.

(a) A health benefit plan must include the following services which are specifically covered by the base-benchmark plan and classify them as hospitalization services:

(i) Hospital visits, facility costs, provider and staff services and treatments delivered during an inpatient hospital stay, including inpatient pharmacy services;

(ii) Skilled nursing facility costs, including professional services and pharmacy services and prescriptions filled in the skilled nursing facility pharmacy;

(iii) Transplant services, supplies and treatment for donors and recipients, including the transplant or donor facility fees performed in either a hospital setting or outpatient setting;

(iv) Dialysis services delivered in a hospital;

(v) Artificial organ transplants based on an issuer's medical guidelines and manufacturer recommendations;

(vi) Respite care services delivered on an inpatient basis in a hospital or skilled nursing facility;

(vii) Inpatient hospitalization where mental illness is the primary diagnosis.

(b) A health benefit plan may, but is not required to, include the following services as part of the EHB-benchmark package. The base-benchmark plan specifically excludes these services. If an issuer includes these benefits in a health plan, the issuer should not include the following benefits in establishing actuarial value for the hospitalization category:

(i) Cosmetic or reconstructive services and supplies except in the treatment of a congenital anomaly, to restore a physical bodily function lost as a result of injury or illness, or related to breast reconstruction following a medically necessary mastectomy;

(ii) The following types of surgery:

(A) Bariatric surgery and supplies;

(B) Orthognathic surgery and supplies unless due to temporomandibular joint disorder or injury, sleep apnea or congenital anomaly.

(iii) Reversal of sterilizations; and

(iv) Surgical procedures to correct refractive errors, astigmatism or reversals or revisions of surgical procedures which alter the refractive character of the eye.

(c) The base-benchmark plan establishes specific limitations on services classified to the hospitalization category that conflict with state or federal law as of January 1, 2017. Health plans may not include the base-benchmark plan limitations listed below and must cover all services consistent with federal rules and guidance implementing 42 U.S.C. 18116, Sec. 1557, including those codified at 81 Fed. Reg. 31375 et seq. (2016), that were in effect on January 1, 2017, RCW 48.30.300, 48.43.0128, 48.43.072, 48.43.073, 49.60.040 and 49.60.178:

(i) The base-benchmark plan allows a waiting period for transplant services;

(ii) The base-benchmark plan excludes coverage for sexual reassignment treatment, surgery, or counseling services; and

(iii) The base-benchmark plan excludes coverage for hospitalization where mental illness or a substance use disorder is the primary diagnosis.

(d) The base-benchmark plan's visit limitations on services in the hospitalization category include:

(i) Sixty inpatient days per calendar year for illness, injury or physical disability in a skilled nursing facility;

(ii) Thirty inpatient rehabilitation service days per calendar year. For purposes of determining actuarial value, this benefit may be classified to the hospitalization category or to the rehabilitation services category, but not to both.

(e) State benefit requirements classified to the hospitalization category are:

(i) General anesthesia and facility charges for dental procedures for those who would be at risk if the service were performed elsewhere and without anesthesia (RCW 48.43.185);

(ii) Reconstructive breast surgery resulting from a mastectomy that resulted from disease, illness or injury (RCW 48.20.395, 48.21.230, 48.44.330, and 48.46.280);

(iii) Coverage for treatment of temporomandibular joint disorder (RCW 48.21.320, 48.44.460, and 48.46.530); and

(iv) Coverage at a long-term care facility following hospitalization (RCW 48.43.125).

(4) A health benefit plan must cover "maternity and newborn services" in a manner substantially equal to the base-benchmark plan. For purposes of determining a plan's actuarial value, an issuer must classify as maternity and newborn services the medically necessary care and services delivered to women during pregnancy and in relation to delivery and recovery from delivery and to newborn children.

(a) A health benefit plan must cover the following services which are specifically covered by the base-benchmark plan and classify them as maternity and newborn services:

(i) In utero treatment for the fetus;

(ii) Vaginal or cesarean childbirth delivery in a hospital or birthing center, including facility fees;

(iii) Nursery services and supplies for newborns, including newly adopted children;

(iv) Infertility diagnosis;

(v) Prenatal and postnatal care and services, including screening;

(vi) Complications of pregnancy such as, but not limited to, fetal distress, gestational diabetes, and toxemia; and

(vii) ~~Termination of pregnancy~~ Termination of pregnancy may be included in an issuer's essential health benefits package, and be consistent with 42 U.S.C. 18023 (b)(1)(A)(i) and 45 C.F.R. 156.115, as those sections do not require, but do not prohibit, an issuer from offering the benefit. This subsection does not relieve an issuer of requirements of current state law related to coverage for termination of pregnancy)) coverage that is substantially equivalent to coverage for maternal care or services, as provided in RCW 48.43.073.

(b) A health benefit plan may, but is not required to, include genetic testing of the child's father as part of the EHB-benchmark package. The base-benchmark plan specifically excludes this service. If an issuer covers this benefit, the issuer may not include this benefit in establishing actuarial value for the maternity and newborn category.

(c) The base-benchmark plan's limitations on services in the maternity and newborn services category include coverage of home birth by a midwife or nurse midwife only for low risk pregnancy.

(d) State benefit requirements classified to the maternity and newborn services category include:

(i) Maternity services that include diagnosis of pregnancy, prenatal care, delivery, care for complications of pregnancy, physician services, and hospital services (RCW 48.43.041);

(ii) Newborn coverage that is not less than the postnatal coverage for the mother, for no less than three weeks (RCW 48.43.115); and

(iii) Prenatal diagnosis of congenital disorders by screening/diagnostic procedures if medically necessary (RCW 48.20.430, 48.21.244, 48.44.344, and 48.46.375).

(5) A health benefit plan must cover "mental health and substance use disorder services, including behavioral health treatment" in a manner substantially equal to the base-benchmark plan. For purposes of determining a plan's actuarial value, an issuer must classify as mental health and substance use disorder services, including behavioral health treatment, the medically necessary care, treatment and services for mental health conditions and substance use disorders categorized in the most recent version of the *Diagnostic and Statistical Manual of Mental Disorders (DSM)* published by the American Psychiatric Association, including behavioral health treatment for those conditions.

(a) A health benefit plan must include the following services, which are specifically covered by the base-benchmark plan, and classify them as mental health and substance use disorder services, including behavioral health treatment:

(i) Inpatient, residential, and outpatient mental health and substance use disorder treatment, including diagnosis, partial hospital programs or inpatient services;

(ii) Chemical dependency detoxification;

(iii) Behavioral treatment for a DSM category diagnosis;

(iv) Services provided by a licensed behavioral health provider for a covered diagnosis in a skilled nursing facility;

(v) Prescription medication including medications prescribed during an inpatient and residential course of treatment;

(vi) Acupuncture treatment visits without application of the visit limitation requirements, when provided for chemical dependency.

(b) A health benefit plan may, but is not required to, include ~~((the following services))~~ court-ordered mental health treatment that is not medically necessary as part of the EHB-benchmark package. The base-benchmark plan specifically excludes ~~((these))~~ this service(s). If an issuer includes ~~((these))~~ this benefit(s) in a health plan, the issuer may not include ~~((these))~~ this benefit(s) in establishing actuarial value for the category of mental health and substance use disorder services including behavioral health treatment~~((~~

~~(i) Counseling in the absence of illness, other than family counseling when the patient is a child or adolescent with a covered diagnosis and the family counseling is part of the treatment for mental health services;~~

~~(ii) Mental health treatment for diagnostic codes 302 through 302.9 in the most recent version of the *Diagnostic and Statistical Manual of Mental Disorders (DSM)*, or for "V code" diagnoses except for medically necessary services for parent-child relational problems for children five years of age or younger, neglect or abuse of a child for children five years of age or younger, bereavement for children five years of age or younger, and gender dysphoria consistent with federal rules and guidance implementing 42 U.S.C. 18116, Sec. 1557, as of January 1, 2017, including those found at 81 Fed. Reg. 31375 et seq. (2016), RCW 48.30.300 and 49.60.040, unless this exclusion is preempted by federal law; and~~

~~(iii) Court-ordered mental health treatment which is not medically necessary)).~~

(c) The base-benchmark plan establishes specific limitations on services classified to the mental health and substance abuse disorder services category that conflict with state or federal law as of January 1, 2017. The state EHB-benchmark plan requirements for these services are: The base-benchmark plan does not provide coverage for mental health services and substance use disorder treatment delivered in a home health setting in parity with medical surgical benefits consistent with state and federal law. Health plans must cover mental health services and substance use disorder treatment that is delivered in parity with medical surgical benefits, consistent with state and federal law.

(d) The base-benchmark plan's visit limitations on services in this category include court-ordered treatment only when medically necessary.

(e) State benefit requirements classified to this category include:

(i) Mental health services (RCW 48.20.580, 48.21.241, 48.44.341, and 48.46.285);

(ii) Chemical dependency detoxification services (RCW 48.21.180, 48.44.240, 48.44.245, 48.46.350, and 48.46.355); and

(iii) Services delivered pursuant to involuntary commitment proceedings (RCW 48.21.242, 48.44.342, and 48.46.-292).

(f) The Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (Public Law 110-343) (MHPAEA) applies to a health benefit plan subject to this section. Coverage of mental health and substance use disorder services, along with any scope and duration limits imposed on the benefits, must comply with the MHPAEA, and all rules, regulations and guidance issued pursuant to Section 2726 of the federal Public Health Service Act (42 U.S.C. Sec. 300gg-26) including where state law is silent, or where federal law preempts state law.

(6) A health benefit plan must cover "prescription drug services" in a manner substantially equal to the base-benchmark plan. For purposes of determining a plan's actuarial value, an issuer must classify as prescription drug services medically necessary prescribed drugs, medication and drug therapies.

(a) A health benefit plan must include the following services, which are specifically covered by the base-benchmark plan, and classify them as prescription drug services:

(i) Drugs and medications both generic and brand name, including self-administrable prescription medications, consistent with the requirements of (b) through (e) of this subsection;

(ii) Prescribed medical supplies, including diabetic supplies that are not otherwise covered as durable medical equipment under the rehabilitative and habilitative services category, including test strips, glucagon emergency kits, insulin and insulin syringes;

(iii) All FDA-approved contraceptive methods, and prescription-based sterilization procedures;

(iv) Certain preventive medications including, but not limited to, aspirin, fluoride, and iron, and medications for tobacco use cessation, according to, and as recommended by, the United States Preventive Services Task Force, when obtained with a prescription order; and

(v) Medical foods to treat inborn errors of metabolism in accordance with RCW 48.44.440, 48.46.510, 48.20.520, 48.21.300, and 48.43.176.

(b) A health benefit plan may, but is not required to, include the following services as part of the EHB-benchmark package. The base-benchmark plan specifically excludes these services for the prescription drug services category. If an issuer includes these services, the issuer may not include the following benefits in establishing actuarial value for the prescription drug services category:

(i) Insulin pumps and their supplies, which are classified to and covered under the rehabilitation and habilitation services category; and

(ii) Weight loss drugs.

(c) The base-benchmark plan's visit limitations on services in the prescription drug services category include:

(i) Prescriptions for self-administrable injectable medication are limited to thirty day supplies at a time, other than insulin, which may be offered with more than a thirty day supply. This limitation is a floor, and an issuer may permit supplies greater than thirty days as part of its health benefit plan;

(ii) Teaching doses of self-administrable injectable medications are limited to three doses per medication per lifetime.

(d) State benefit requirements classified to the prescription drug services category include:

(i) Medical foods to treat inborn errors of metabolism (RCW 48.44.440, 48.46.510, 48.20.520, 48.21.300, and 48.43.176);

(ii) Diabetes supplies ordered by the physician (RCW 48.44.315, 48.46.272, 48.20.391, and 48.21.143). Inclusion of this benefit requirement does not bar issuer variation in diabetic supply manufacturers under its drug formulary;

(iii) Mental health prescription drugs to the extent not covered under the hospitalization or skilled nursing facility services, or mental health and substance use disorders categories (RCW 48.44.341, 48.46.291, 48.20.580, and 48.21.241);

(iv) Reproductive health-related over-the-counter drugs, devices, and products approved by the federal Food and Drug Administration.

(e) An issuer's formulary is part of the prescription drug services category. The formulary filed with the commissioner must be substantially equal to the base-benchmark plan formulary, both as to U.S. Pharmacopoeia therapeutic category and classes covered and number of drugs in each class. If the base-benchmark plan formulary does not cover at least one drug in a category or class, an issuer must include at least one drug in the uncovered category or class.

(i) An issuer must file its formulary quarterly, following the filing instructions defined by the insurance commissioner in WAC 284-44A-040, 284-46A-050, and 284-58-025.

(ii) An issuer's formulary does not have to be substantially equal to the base-benchmark plan formulary in terms of formulary placement.

(iii) An issuer may include over-the-counter medications in its formulary for purposes of establishing quantitative limits and administering the benefit.

(7) A health benefit plan must cover "rehabilitative and habilitative services" in a manner substantially equal to the base-benchmark plan.

(a) For purposes of determining a plan's actuarial value, an issuer must classify as rehabilitative services the medically necessary services that help a person keep, restore or improve skills and function for daily living that have been lost or impaired because a person was sick, hurt or disabled.

(b) A health benefit plan must include the following services, which are specifically covered by the base-benchmark plan, and classify them as rehabilitative services:

(i) Cochlear implants;

(ii) Inpatient rehabilitation facilities and professional services delivered in those facilities;

(iii) Outpatient physical therapy, occupational therapy and speech therapy for rehabilitative purposes;

(iv) Braces, splints, prostheses, orthopedic appliances and orthotic devices, supplies or apparatus used to support, align or correct deformities or to improve the function of moving parts; and

(v) Durable medical equipment and mobility enhancing equipment used to serve a medical purpose, including sales tax.

(c) A health benefit plan may, but is not required to, include the following services as part of the EHB-benchmark package. The base-benchmark plan specifically excludes these services. If an issuer includes the following benefits in a health plan, the issuer may not include these benefits in establishing actuarial value for the rehabilitative and habilitative services category:

(i) Off-the-shelf shoe inserts and orthopedic shoes;

(ii) Exercise equipment for medically necessary conditions;

(iii) Durable medical equipment that serves solely as a comfort or convenience item; and

(iv) Hearing aids other than cochlear implants.

(d) For purposes of determining a plan's actuarial value, an issuer must classify as habilitative services the range of medically necessary health care services and health care devices designed to assist a person to keep, learn or improve skills and functioning for daily living. Examples include services for a child who isn't walking or talking at the expected age, or services to assist with keeping or learning skills and functioning within an individual's environment, or to compensate for a person's progressive physical, cognitive, and emotional illness. These services may include physical and occupational therapy, speech-language pathology and other services for people with disabilities in a variety of inpatient or outpatient settings.

(i) As a minimum level of coverage, an issuer must establish limitations on habilitative services on parity with those for rehabilitative services. A health benefit plan may include such limitations only if the limitations take into account the unique needs of the individual and target measurable, and specific treatment goals appropriate for the person's age and physical and mental condition. When habilitative services are delivered to treat a mental health diagnosis categorized in the most recent version of the DSM, the mental health parity requirements apply and supersede any rehabilitative services parity limitations permitted by this subsection.

(ii) A health benefit plan must not limit an enrollee's access to covered services on the basis that some, but not all,

of the services in a plan of treatment are provided by a public or government program.

(iii) An issuer may establish utilization review guidelines and practice guidelines for habilitative services that are recognized by the medical community as efficacious. The guidelines must not require a return to a prior level of function.

(iv) Habilitative health care devices may be limited to those that require FDA approval and a prescription to dispense the device.

(v) Consistent with the standards in this subsection, speech therapy, occupational therapy, physical therapy, and aural therapy are habilitative services. Day habilitation services designed to provide training, structured activities and specialized assistance to adults, chore services to assist with basic needs, vocational or custodial services are not classified as habilitative services.

(vi) An issuer must not exclude coverage for habilitative services received at a school-based health care center unless the habilitative services and devices are delivered pursuant to federal Individuals with Disabilities Education Act of 2004 (IDEA) requirements and included in an individual educational plan (IEP).

(e) The base-benchmark plan's visit limitations on services in the rehabilitative and habilitative services category include:

(i) Inpatient rehabilitation facilities and professional services delivered in those facilities are limited to thirty service days per calendar year; and

(ii) Outpatient physical therapy, occupational therapy and speech therapy are limited to twenty-five outpatient visits per calendar year, on a combined basis, for rehabilitative purposes.

(f) State benefit requirements classified to this category include:

(i) State sales tax for durable medical equipment; and

(ii) Coverage of diabetic supplies and equipment (RCW 48.44.315, 48.46.272, 48.20.391, and 48.21.143).

(g) An issuer must not classify services to the rehabilitative services category if the classification results in a limitation of coverage for therapy that is medically necessary for an enrollee's treatment for cancer, chronic pulmonary or respiratory disease, cardiac disease or other similar chronic conditions or diseases. For purposes of this subsection, an issuer must establish limitations on the number of visits and coverage of the rehabilitation therapy consistent with its medical necessity and utilization review guidelines for medical/surgical benefits. Examples of these are, but are not limited to, breast cancer rehabilitation therapy, respiratory therapy, and cardiac rehabilitation therapy. Such services may be classified to the ambulatory patient or hospitalization services categories for purposes of determining actuarial value.

(8) A health plan must cover "laboratory services" in a manner substantially equal to the base-benchmark plan. For purposes of determining actuarial value, an issuer must classify as laboratory services the medically necessary laboratory services and testing, including those performed by a licensed provider to determine differential diagnoses, conditions, outcomes and treatment, and including blood and blood services,

storage and procurement, and ultrasound, X-ray, MRI, CAT scan and PET scans.

(a) A health benefit plan must include the following services, which are specifically covered by the base-benchmark plan, and classify them as laboratory services:

(i) Laboratory services, supplies and tests, including genetic testing;

(ii) Radiology services, including X-ray, MRI, CAT scan, PET scan, and ultrasound imaging; and

(iii) Blood, blood products, and blood storage, including the services and supplies of a blood bank.

(b) A health benefit plan may, but is not required to, include the following services as part of the EHB-benchmark package. The base-benchmark plan specifically excludes procurement and storage of personal blood supplies provided by a member of the enrollee's family when this service is not medically indicated. If an issuer includes this benefit in a health plan, the issuer may not include this benefit in establishing the health plan's actuarial value.

(9) A health plan must cover "preventive and wellness services, including chronic disease management" in a manner substantially equal to the base-benchmark plan. For purposes of determining a plan's actuarial value, an issuer must classify as preventive and wellness services, including chronic disease management, the services that identify or prevent the onset or worsening of disease or disease conditions, illness or injury, often asymptomatic; services that assist in the multi-disciplinary management and treatment of chronic diseases; and services of particular preventative or early identification of disease or illness of value to specific populations, such as women, children and seniors.

(a) If a plan does not have in its network a provider who can perform the particular service, then the plan must cover the item or service when performed by an out-of-network provider and must not impose cost-sharing with respect to the item or service. In addition, a health plan must not limit sex-specific recommended preventive services based on an individual's sex assigned at birth, gender identity or recorded gender. If a provider determines that a sex-specific recommended preventive service is medically appropriate for an individual, and the individual otherwise satisfies the coverage requirements, the plan must provide coverage without cost-sharing.

(b) A health benefit plan must include the following services as preventive and wellness services, including chronic disease management:

(i) Immunizations recommended by the Centers for Disease Control's Advisory Committee on Immunization Practices;

(ii)(A) Screening and tests for which the U.S. Preventive Services Task Force for Prevention and Chronic Care have issued A and B recommendations on or before the applicable plan year.

(B) To the extent not specified in a recommendation or guideline, a plan may rely on the relevant evidence base and reasonable medical management techniques, based on necessity or appropriateness, to determine the frequency, method, treatment, or setting for the provision of a recommended preventive health service;

(ii) Services, tests and screening contained in the U.S. Health Resources and Services Administration ("HRSA") Bright Futures guidelines as set forth by the American Academy of Pediatricians; and

(iv) Services, tests, screening and supplies recommended in the HRSA women's preventive and wellness services guidelines:

(A) If the plan covers children under the age of nineteen, or covers dependent children age nineteen or over who are on the plan pursuant to RCW 48.44.200, 48.44.210, or 48.46.320, the plan must provide the child with the full range of recommended preventive services suggested under HRSA guidelines for the child's age group without cost-sharing. Services provided in this regard may be combined in one visit as medically appropriate or may be spread over more than one visit, without incurring cost-sharing, as medically appropriate; and

(B) A plan may use reasonable medical management techniques to determine the frequency, method, treatment or setting for a recommended preventive service, including providing multiple prevention and screening services at a single visit or across multiple visits. Medical management techniques may not be used that limit enrollee choice in accessing the full range of contraceptive drugs, devices, or other products approved by the federal Food and Drug Administration.

(v) Chronic disease management services, which typically include, but are not limited to, a treatment plan with regular monitoring, coordination of care between multiple providers and settings, medication management, evidence-based care, measuring care quality and outcomes, and support for patient self-management through education or tools; and

(vi) Wellness services.

(c) The base-benchmark plan establishes specific limitations on services classified to the preventive services category that conflict with state or federal law as of January 1, 2017, and should not be included in essential health benefit plans.

Specifically, the base-benchmark plan excludes coverage for obesity or weight control other than covered nutritional counseling. Health plans must cover certain obesity-related services that are listed as A or B recommendations by the U.S. Preventive Services Task Force, consistent with 42 U.S.C. 300gg-13 (a)(1) and 45 C.F.R. 147.130 (a)(1)(i).

(d) The base-benchmark plan does not establish visit limitations on services in this category. In accordance with Sec. 2713 of the Public Health Service Act (PHS Act) and its implementing regulations relating to coverage of preventive services, the base-benchmark plan does not impose cost-sharing requirements with respect to the preventive services listed under (b)(i) through (iv) of this subsection that are provided in-network.

(e) State benefit requirements classified in this category are:

(i) Colorectal cancer screening as set forth in RCW 48.43.043;

(ii) Mammogram services, both diagnostic and screening (RCW 48.21.225, 48.44.325, and 48.46.275); and

(iii) Prostate cancer screening (RCW 48.20.392, 48.21.-227, 48.44.327, and 48.46.277).

(10) Some state benefit requirements are limited to those receiving pediatric services, but are classified to other categories for purposes of determining actuarial value.

(a) These benefits include:

(i) Neurodevelopmental therapy, consisting of physical, occupational and speech therapy and maintenance to restore or improve function based on developmental delay, which cannot be combined with rehabilitative services for the same condition (RCW 48.44.450, 48.46.520, and 48.21.310). This state benefit requirement may be classified to ambulatory patient services or mental health and substance abuse disorder including behavioral health categories; and

(ii) Treatment of congenital anomalies in newborn and dependent children (RCW 48.20.430, 48.21.155, 48.44.212, and 48.46.250). This state benefit requirement may be classified to hospitalization, ambulatory patient services or maternity and newborn categories.

(b) The base-benchmark plan contains limitations or scope restrictions that conflict with state or federal law as of January 1, 2017. Specifically, the plan covers outpatient neurodevelopmental therapy services only for persons age six and under. Health plans must cover medically necessary neurodevelopmental therapy for any DSM diagnosis without blanket exclusions.

(11) Issuers must know and apply relevant guidance, clarifications and expectations issued by federal governmental agencies regarding essential health benefits. Such clarifications may include, but are not limited to, Affordable Care Act implementation and frequently asked questions jointly issued by the U.S. Department of Health and Human Services, the U.S. Department of Labor and the U.S. Department of the Treasury.

(12) Each category of essential health benefits must at a minimum cover services required by current state law and be consistent with federal rules and guidance implementing 42 U.S.C. 18116, Sec. 1557, including those codified at 81 Fed. Reg. 31375 et seq. (2016), that were in effect on January 1, 2017.

(13) This section applies to health plans that have an effective date of January 1, 2020, or later.

NEW SECTION

WAC 284-43-5935 Definitions. As used in WAC 284-43-5940 through 284-43-5980, the following terms have the following meaning:

(1) Auxiliary aids and services include:

(a) Qualified interpreters on-site or through video remote interpreting (VRI) services, as defined in 28 C.F.R. 35.104 and 36.303(b); note takers; real-time computer-aided transcription services; written materials; exchange of written notes; telephone handset amplifiers; assistive listening devices; assistive listening systems; telephones compatible with hearing aids; closed caption decoders; open and closed captioning, including real-time captioning; voice, text, and video-based telecommunication products and systems, text telephones (TTYs), videophones, and captioned telephones, or equally effective telecommunications devices; videotext displays; accessible electronic and information technology; or other effective methods of making aurally delivered infor-

mation available to individuals who are deaf or hard of hearing;

(b) Qualified readers; taped texts; audio recordings; Braille materials and displays; screen reader software; magnification software; optical readers; secondary auditory programs; large print materials; accessible electronic and information technology; or other effective methods of making visually delivered materials available to individuals who are blind or have low vision;

(c) Acquisition or modification of equipment and devices; and

(d) Other similar services and actions.

(2) Individual with limited-English proficiency means an individual whose primary language for communication is not English and who has a limited ability to read, write, speak, or understand English.

(3) Language assistance services may include, but are not limited to:

(a) Oral language assistance, including interpretation in non-English languages provided in-person or remotely by a qualified interpreter for an individual with limited-English proficiency, and the use of qualified bilingual or multilingual staff to communicate directly with individuals with limited-English proficiency;

(b) Written translation, performed by a qualified translator, of written content in paper or electronic form into languages other than English; and

(c) Taglines.

(4) National origin includes, but is not limited to, an individual's, or his or her ancestor's, place of origin (such as country or world region) or an individual's manifestation of the physical, cultural, or linguistic characteristics of a national origin group.

(5) Plan means a nongrandfathered health plan as defined in RCW 48.43.005, a plan deemed by the commissioner to have a short-term limited purpose or duration, or a plan deemed by the commissioner to be a student-only plan that is guaranteed renewable while the covered person is enrolled as a regular, full-time undergraduate student at an accredited higher education institution.

(6) Qualified bilingual/multilingual staff means a member of an issuer's workforce who is designated by the issuer to provide oral language assistance as part of the individual's current, assigned job responsibilities and who has demonstrated to the issuer that he or she:

(a) Is proficient in speaking and understanding both spoken English and at least one other spoken language, including any necessary specialized vocabulary, terminology and phraseology; and

(b) Is able to effectively, accurately, and impartially communicate directly with individuals with limited-English proficiency in their primary languages.

(7) Qualified interpreter for an individual with a disability means an interpreter who via a remote interpreting service or an on-site appearance:

(a) Adheres to generally accepted interpreter ethics principles, including client confidentiality; and

(b) Is able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary, terminology and phraseology.

For an individual with a disability, qualified interpreters can include, for example, sign language interpreters, oral transliterators (individuals who represent or spell in the characters of another alphabet), and cued language transliterators (individuals who represent or spell by using a small number of handshapes).

(8) Qualified interpreter for an individual with limited-English proficiency means an interpreter who via a remote interpreting service or an on-site appearance:

(a) Adheres to generally accepted interpreter ethics principles, including client confidentiality;

(b) Has demonstrated proficiency in speaking and understanding both spoken English and at least one other spoken language; and

(c) Is able to interpret effectively, accurately, and impartially, both receptively and expressly, to and from such language(s) and English, using any necessary specialized vocabulary, terminology and phraseology.

(9) Qualified translator means a translator who:

(a) Adheres to generally accepted translator ethics principles, including client confidentiality;

(b) Has demonstrated proficiency in writing and understanding both written English and at least one other written non-English language; and

(c) Is able to translate effectively, accurately, and impartially to and from such language(s) and English, using any necessary specialized vocabulary, terminology and phraseology.

(10) Taglines mean short statements written in non-English languages that indicate the availability of language assistance services free of charge and how to obtain them.

AMENDATORY SECTION (Amending WSR 20-03-114, filed 1/16/20, effective 2/16/20)

WAC 284-43-5940 Nondiscrimination in ~~((individual and small group))~~ health plans, short-term limited duration medical plans and student-only health plans. (1) An issuer offering a ~~((nongrandfathered individual or small group health))~~ plan, and the issuer's officials, employees, agents, or representatives may not:

(a) Design plan benefits, ~~((including formulary design,))~~ or implement its plan benefits, in a manner that results in discrimination against individuals because of their age, expected length of life, present or predicted disability, degree of medical dependency, quality of life, or other health conditions; and

(b) With respect to ~~((health))~~ the plan including, but not limited to, administration, member communication, medical protocols or criteria for medical necessity or other aspects of ~~((health))~~ plan operations:

(i) Discriminate on the basis of race, color, national origin, sex, gender identity, sexual orientation, age, or disability;

(ii) Deny, cancel, limit, or refuse to issue or renew a ~~((health))~~ plan, or deny or limit coverage of a claim, or impose additional cost sharing or other limitations or restrictions on coverage, on the basis of race, color, national origin, sex, gender identity, sexual orientation, age, or disability;

(iii) Have or implement marketing practices or benefit designs that discriminate on the basis of race, color, national

origin, sex, gender identity, sexual orientation, age, or disability. In reviewing plan design, plan features that attempt to circumvent coverage of medically necessary benefits such as by labeling a benefit as a pediatric service, and thereby excluding adults, or by placing all or most drugs for a specific condition in the highest cost-sharing tier, absent an appropriate reason for the exclusion, are potentially discriminatory. In these or other instances, the commissioner may request a justification for the practice. If requested, issuers must identify an appropriate nondiscriminatory reason that supports their benefit design;

(iv) Deny or limit coverage, deny or limit coverage of a claim, issue automatic denials of coverage or impose additional cost sharing or other limitations or restrictions on coverage, for any health services that are ordinarily or exclusively available to individuals of one sex, ~~((to a transgender individual))~~ based on the fact that an individual's sex assigned at birth, gender identity, or gender otherwise recorded is different from the one to which such health services are ordinarily or exclusively available. For example, a denial of coverage for medically necessary hormone prescriptions for transgender, gender nonconforming, or intersex individuals because the dosages exceed those typically prescribed for cisgender people would be discriminatory against transgender, nonbinary, gender nonconforming, or intersex individuals;

(v) Have or implement a categorical coverage exclusion or limitation for all medical, surgical, or behavioral health services related to ~~((gender transition))~~ a person's gender identity or sexual orientation; or

(vi) Otherwise deny or limit coverage, deny or limit coverage of a claim, or impose additional cost sharing or other limitations or restrictions on coverage, for specific medical, surgical, or behavioral health services related to a person's gender ~~((transition))~~ identity or sexual orientation if such denial, limitation, or restriction results in discrimination against a transgender, nonbinary, gender nonconforming or intersex individual.

(2) The enumeration of specific forms of discrimination in subsection (1)(b)(ii) through (vi) of this section does not limit the general applicability of the prohibition in subsection (1)(b)(i) of this section.

(3) Nothing in this section may be construed to prevent an issuer from appropriately utilizing fair and reasonable medical management techniques. Appropriate use of medical management techniques includes use of evidence based criteria for determining whether a service or benefit is medically necessary and clinically appropriate.

(4) An issuer's obligation to comply with these requirements is nondelegable; an issuer is obligated to ensure compliance with WAC 284-43-5935 through 284-43-5980, even if they use a third-party vendor or subcontracting arrangement. An issuer is not exempt from any of these requirements because it relied upon a third-party vendor or subcontracting arrangement for administration of any aspect of its benefits or services.

(5) The commissioner ~~((will))~~ may determine whether an issuer's actions to comply with this section are consistent with current state law, the legislative intent underlying RCW 48.43.0128 to maintain the enrollee protections of the

Affordable Care Act, and the federal regulations and guidance in effect as of January 1, 2017, including, but not limited to, those issued by the U.S. Department of Health and Human Services Office of Civil Rights and federal regulations implementing 42 U.S.C. Sec. 18116 (Sec. 1557 of the Affordable Care Act) as set forth in 81 Fed. Reg. 31375 et seq. (2016).

AMENDATORY SECTION (Amending WSR 20-03-114, filed 1/16/20, effective 2/16/20)

WAC 284-43-5950 Access for individuals with limited-English proficiency and individuals with disabilities. Each issuer offering a (~~(nongrandfathered individual or small group health))~~ plan, and the issuer's officials, employees, agents or representatives must take fair and reasonable steps to provide meaningful access to each enrollee or individual ((with)) likely to be encountered who has limited-English proficiency (~~(and each individual with))~~ or a disability consistent with federal rules and guidance in effect on January 1, 2017, including those implementing 42 U.S.C. Sec. 18116((;)) (Sec. 1557((, including those)) of the Affordable Care Act) as set forth in 81 Fed. Reg. 31375 et seq. (2016)((, that were in effect on January 1, 2017)).

NEW SECTION

WAC 284-43-5960 Meaningful access for individuals with limited-English proficiency. (1) **General requirement.** An issuer offering a plan shall take reasonable steps to provide meaningful access to each enrollee or individual likely to be encountered with limited-English proficiency.

(2) **Evaluation of compliance.** In evaluating whether an issuer has met its obligation under subsection (1) of this section, the commissioner will:

(a) Evaluate, and give substantial weight to, the nature and importance of access to the health services involved and the particular communication at issue, to the individual with limited-English proficiency; and

(b) Take into account other relevant factors, including whether an issuer has developed and implemented an effective written language access plan, that is appropriate to its particular circumstances, to be prepared to meet its obligations under this section.

(3) **Language assistance services requirements.** Language assistance services required under subsection (1) of this section must be provided free of charge, be accurate and timely, and protect the privacy and independence of the individual with limited-English proficiency, regardless of whether an associated health service is provided in person or through telehealth.

(4) **Specific requirements for interpreter and translation services.** Subject to subsection (1) of this section:

(a) An issuer shall offer a qualified interpreter to an individual with limited-English proficiency when oral interpretation is a reasonable step to provide meaningful access for that individual with limited-English proficiency; and

(b) An issuer shall use a qualified translator when translating written content in paper or electronic form.

(5) **Restricted use of certain persons to interpret or facilitate communication.** An issuer shall not:

(a) Require an individual with limited-English proficiency to provide their own interpreter;

(b) Rely on an adult accompanying an individual with limited-English proficiency to interpret or facilitate communication, except:

(i) In an emergency involving an imminent threat to the safety or welfare of an individual or the public where there is no qualified interpreter for the individual with limited-English proficiency immediately available; or

(ii) Where the individual with limited-English proficiency specifically requests that the accompanying adult interpret or facilitate communication, the accompanying adult agrees to provide such assistance, and reliance on that adult for such assistance is appropriate under the circumstances.

(c) Rely on a minor child to interpret or facilitate communication, except in an emergency involving an imminent threat to the safety or welfare of an individual or the public where there is no qualified interpreter for the individual with limited-English proficiency immediately available; or

(d) Rely on staff other than qualified bilingual/multilingual staff to communicate directly with individuals with limited-English proficiency.

(6) **Video remote interpreting services.** An issuer that provides a qualified interpreter for an individual with limited-English proficiency through video remote interpreting services shall provide:

(a) Real-time, full-motion video and audio over a dedicated high-speed, wide-bandwidth video connection or wireless connection that delivers high-quality video images that do not produce lags, choppy, blurry, or grainy images, or irregular pauses in communication;

(b) A sharply delineated image that is large enough to display the interpreter's face and the participating individual's face regardless of the individual's body position;

(c) A clear, audible transmission of voices; and

(d) Adequate training to users of the technology and other involved individuals so that they may quickly and efficiently set up and operate the video remote interpreting.

(7) **Acceptance of language assistance services is not required.** Nothing in this section shall be construed to require an individual with limited-English proficiency to accept language assistance services.

NEW SECTION

WAC 284-43-5965 Effective communication for people with disabilities. An issuer offering a plan shall:

(1) Take appropriate steps to ensure that communications with individuals with disabilities are as effective as communications with others with respect to benefits and services, in accordance with the standards found at 28 C.F.R. 35.160 through 35.164. Where the regulatory provisions referenced in this section use the term "public entity," the term "issuer" shall apply in its place.

(2) Provide appropriate auxiliary aids and services to persons with impaired sensory, manual, or speaking skills, where necessary to afford such persons an equal opportunity to benefit from the service in question.

(3) Ensure that their benefits and services provided through electronic and information technology, including telehealth, are accessible to individuals with disabilities, unless doing so would result in undue financial and administrative burdens or a fundamental alteration in the nature of the health programs or activities. When undue financial and administrative burdens or a fundamental alteration exist, the issuer shall provide information in a format other than an electronic format that would not result in such undue financial and administrative burdens or a fundamental alteration but would ensure, to the maximum extent possible, that individuals with disabilities receive the benefits or services of the plan that are provided through electronic and information technology.

(4) Ensure that their health programs and activities provided through websites comply with the requirements of Title II of the ADA.

(5) Make reasonable modifications to policies, practices, or procedures when such modifications are necessary to avoid discrimination on the basis of disability, unless the issuer can demonstrate that making the modifications would fundamentally alter the nature of the health program or activity. Reasonable modifications must be interpreted consistent with the term as set forth in the ADA Title II regulation at 28 C.F.R. Sec. 35.230(b)(7).

NEW SECTION

WAC 284-43-5970 Equal program access on the basis of sex. An issuer offering a plan, and the issuer's officials, employees, agents, or representatives shall:

(1) Provide individuals equal access with respect to the plan including, but not limited to, plan administration, member communication, medical protocols or criteria for medical necessity or other aspects of plan operations without discrimination on the basis of sex; and

(2) Treat individuals consistent with their gender identity and sexual orientation, except that an issuer may not deny or limit health services that are ordinarily or exclusively available to individuals of one sex, to a transgender, nonbinary, intersex or gender nonconforming individual based on the fact that the individual's sex assigned at birth, gender identity, or gender otherwise recorded is different from the one to which such health services are ordinarily or exclusively available.

NEW SECTION

WAC 284-43-5975 Designation of responsible employee and adoption of grievance procedures. (1) Each issuer shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under RCW 48.43.0128 and WAC 284-43-5935 through 284-43-5980, including the investigation of any grievance communicated to it alleging noncompliance with RCW 48.43.0128 or WAC 284-43-5935 through 284-43-5980 or alleging any action that would be prohibited by RCW 48.43.0128 or WAC 284-43-5935 through 284-43-5980.

(2) Each issuer shall adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of grievances

alleging any action that would be prohibited by RCW 48.43.-0128 or WAC 284-43-5935 through 284-43-5980. An issuer whose grievance procedures comply with 45 C.F.R. 92.7 as in effect on January 1, 2017, will be deemed compliant with this subsection.

NEW SECTION

WAC 284-43-5980 Notice requirement. (1) An issuer offering a plan shall take appropriate initial and continuing steps to notify enrollees, applicants, and members of the public of the following:

(a) The issuer does not discriminate on the basis of race, color, national origin, disability, age, sex, gender identity, or sexual orientation in its benefits and services;

(b) The issuer provides appropriate auxiliary aids and services, including qualified interpreters for individuals with disabilities and information in alternate formats, free of charge and in a timely manner, when such aids and services are necessary to ensure an equal opportunity to participate to individuals with disabilities;

(c) The issuer provides language assistance services, including translated documents and oral interpretation, free of charge and in a timely manner, when such services are necessary to provide meaningful access to individuals with limited-English proficiency;

(d) How to obtain the aids and services in (b) and (c) of this subsection;

(e) An identification of, and contact information for, the employee responsible for compliance with RCW 48.43.0128 and WAC 284-43-5935 through 284-43-5980;

(f) How to file a grievance with the issuer related to the issuer's compliance with RCW 48.43.0128 and WAC 284-43-5935 through 284-43-5980; and

(g) How to file a complaint with the commissioner related to the issuer's compliance with RCW 48.43.0128 and WAC 284-43-5935 through this section or with the federal Department of Health and Human Services, Office of Civil Rights related to the issuer's compliance with 42 U.S.C. Sec. 18119 (Sec. 1557 of the Affordable Care Act).

(2) An issuer offering a plan shall:

(a) As described in subsection (7) of this section, post a notice that conveys the information in subsection (1)(a) through (g) of this section; and

(b) As described in subsection (8) of this section, if applicable, post a nondiscrimination statement that conveys the information in subsection (1)(a) of this section.

(3) To satisfy the requirements of this section, issuers may use the sample notices published at 81 Fed. Reg. 31472 through 31473 (May 18, 2016) that convey:

(a) The information in subsection (1)(a) through (g) of this section; and

(b) The information in subsection (1)(a) of this section.

For use beginning January 1, 2022, the notice referenced in (a) of this subsection must be modified to identify the office of the insurance commissioner as the designated entity to file a complaint regarding compliance with RCW 48.43.-0128 and WAC 284-43-5935 through 284-43-5980 and the federal Department of Health and Human Services, Office of Civil Rights as the designated entity to file a complaint

regarding compliance related to the issuer's compliance with 42 U.S.C. Sec. 18119 (Sec. 1557 of the Affordable Care Act). Until that date, issuers may continue to use the sample notice published at 81 Fed. Reg. 31472 through 31473 (May 18, 2016).

(4) Except to the extent provided otherwise in subsection (5) of this section, each issuer shall:

(a) As described in subsection (7)(a) of this section, post taglines in at least the top fifteen languages spoken by individuals with limited-English proficiency in Washington state; and

(b) As described in subsection (8)(b) of this section, if applicable, post taglines in at least the top two languages spoken by individuals with limited-English proficiency in Washington state.

(5) Plans deemed by the commissioner to have a short-term limited purpose or duration that are offered in Washington state must come into compliance with the language assistance notice and tagline requirements in this section on or before April 1, 2021.

(6) To satisfy the requirements of this section, issuers may use taglines provided by the federal Department of Health and Human Services pursuant to 45 C.F.R. 92.8, as in effect on January 1, 2017.

(7)(a) Each issuer shall post the notice required by subsection (1) of this section and the taglines required by subsection (4)(a) of this section in a conspicuously visible font size:

(i) In significant publications and significant communications targeted to enrollees, applicants, and members of the public, except for significant publications and significant communications that are small-sized, such as postcards and tri-fold brochures;

(ii) In conspicuous physical locations where the issuer interacts with the public; and

(iii) In a conspicuous location on the issuer's website accessible from the home page of the issuer's website.

(b) An issuer may also post the notice and taglines in additional publications and communications.

(8) Each issuer shall post, in a conspicuously visible font size, in significant publications and significant communications that are small-sized, such as postcards and tri-fold brochures:

(a) The nondiscrimination statement required by subsection (1)(a) of this section; and

(b) The taglines required by subsection (4)(b) of this section.

(9) An issuer may combine the content of the notice required in subsection (1) of this section with the content of other notices if the combined notice clearly informs individuals of their rights under RCW 48.43.0128 and WAC 284-43-5935 through 284-43-5980 and 42 U.S.C. Sec. 18119 (Sec. 1557 of the Affordable Care Act).

AMENDATORY SECTION (Amending WSR 16-01-081, filed 12/14/15, effective 12/14/15)

WAC 284-43-7000 Scope and intent—Parity in mental health and substance use disorder benefits. This subchapter applies to ((aH)):

(1) Health plans;

(2) Plans deemed by the commissioner to have a short-term limited purpose or duration;

(3) Plans deemed by the commissioner to be student-only health plans that are guaranteed renewable while the covered person is enrolled as a regular, full-time undergraduate student at an accredited higher education institution; and

(4) Issuers.

The purpose of this ((rule)) subchapter is to consolidate existing state mental health and ((chemical dependency)) substance use disorder regulation with federal mental health and substance use disorder parity requirements into state regulation. This rule also provides health plans, plans deemed by the commissioner to have a short-term limited purpose or duration, or to be student-only health plans that are guaranteed renewable while the covered person is enrolled as a regular, full-time undergraduate student at an accredited higher education institution and issuers with the method of demonstrating compliance with these requirements. A plan or issuer's obligation to comply with these requirements is non-delegable; a plan or issuer is obligated to ensure compliance with WAC 284-43-7000 through 284-43-7120, even if they use a third-party vendor or subcontracting arrangement. A plan or issuer is not exempt from any of these requirements because it relied upon a third-party vendor or subcontracting arrangement for administration of any aspect of its mental health or substance use disorder benefits or services.

AMENDATORY SECTION (Amending WSR 16-14-106, filed 7/6/16, effective 8/6/16)

WAC 284-43-7010 Definitions. Aggregate lifetime limit means a dollar limitation on the total amount of specified benefits that may be paid under a ((health)) plan (or health insurance coverage offered in connection with a plan) for any coverage unit.

Annual dollar limit means a dollar limitation on the total amount of specified benefits that may be paid in a twelve-month period under a ((health)) plan (or health insurance coverage offered in connection with a plan) for any coverage unit.

Approved treatment program means a discrete program of ((chemical dependency)) substance use disorder treatment provided by a treatment program certified by the department of ((social and health services)) health as meeting standards adopted under chapter ((70.96A)) 71.24 RCW.

~~((Chemical dependency professional means a person certified as a chemical dependency professional by the Washington state department of health under chapter 18.205 RCW.))~~

Classification of benefits means a group into which all medical/surgical benefits and mental health or substance use disorder benefits offered by a ((health)) plan must fall. For the purposes of this rule, the only classifications that may be used are: Inpatient, in-network; inpatient, out-of-network; outpatient, in-network; outpatient, out-of-network; emergency care; and prescription drugs.

Coverage unit means the way in which a ((health)) plan or issuer groups individuals for purposes of determining benefits, or premiums or contributions. For example, different

coverage units include self-only, family, and employee-plus-spouse.

Cumulative financial requirements means financial requirements that determine whether or to what extent benefits are provided based on accumulated amounts and include deductibles and out-of-pocket maximums. Financial requirements do not include aggregate lifetime or annual dollar limits.

Cumulative quantitative treatment limitations means treatment limitations that determine whether or to what extent benefits are provided based on accumulated amounts, such as annual or lifetime day or visit limits.

Emergency condition, for the purpose of this subchapter, means a medical, mental health or substance use disorder condition manifesting itself by acute symptoms of sufficient severity, including severe emotional or physical distress or a combination of severe emotional and physical distress, that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical ~~((or~~) mental health or substance use disorder treatment attention to result in a condition placing the health of the individual, or with respect to a pregnant woman, the health of the woman or her unborn child, in serious jeopardy.

Essential health benefits (EHBs). EHBs have the same definition as found in WAC 284-43-5600 or 284-43-5602, as appropriate. The definition of EHBs includes mental health and substance use disorder services, including behavioral health treatment. For EHBs, including mental health and substance use disorder benefits, federal and state law prohibit limitations ~~((or~~) on age, condition, lifetime and annual dollar amounts.

Financial requirements means cost sharing measures such as deductibles, copayments, coinsurance, and out-of-pocket maximums. Financial requirements do not include aggregate lifetime or annual dollar limits.

Health carrier or issuer has the same meaning as RCW 48.43.005(25).

Health plan has the same meaning as RCW 48.43.005(26).

Medical/surgical benefits means benefits with respect to items or services for medical conditions or surgical procedures, as defined under the terms of the plan or health insurance coverage and in accordance with applicable federal and state law, but does not include mental health or substance use disorder benefits. Any condition defined by the plan or coverage as being ~~((or as not being))~~ a medical/surgical condition must be defined to be consistent with generally recognized independent standards of current medical practice (for example, the most current version of the *International Classification of Diseases* (ICD) or state guidelines).

Medically necessary or medical necessity:

(a) With regard to ~~((chemical dependency and))~~ substance use disorder is defined by the most recent version of *The ASAM Criteria, Treatment Criteria for Addictive, Substance Related, and Co-Occurring Conditions* as published by the American Society of Addiction Medicine (ASAM).

(b) With regard to mental health services, pharmacy services, and any substance use disorder benefits not governed by ASAM, is a carrier determination as to whether a health

service is a covered benefit because the service is consistent with generally recognized standards within a relevant health profession.

Mental health benefits means benefits with respect to items or services for mental health and substance use disorder conditions, as defined under the terms of the plan or health insurance coverage and in accordance with applicable federal and state law. Any condition defined by the plan or coverage as being ~~((or as not being))~~ a mental health condition must be defined to be consistent with ~~((generally recognized independent standards of current medical practice (for example,))~~ the most current version of the *Diagnostic and Statistical Manual of Mental Disorders* ~~((DSM), the most current version of the~~ *International Classification of Diseases* (ICD), or state guidelines), as published by the American Psychiatric Association.

Nonquantitative treatment limitations (NQLT) means processes, strategies, or evidentiary standards, or other factors that are not expressed numerically, but otherwise limit the scope or duration of benefits for treatment. NQLTs include, but are not limited to:

(a) Medical management standards limiting or excluding benefits based on medical necessity or medical appropriateness, or based on whether the treatment is experimental or investigative;

(b) Formulary design for prescription drugs;

(c) For plans with multiple network tiers (such as preferred providers and participating providers), network tier design;

(d) Standards for provider admission to participate in a network, including reimbursement rates;

(e) Plan methods for determining usual, customary, and reasonable charges;

(f) Refusal to pay for higher-cost therapies until it can be shown that a lower-cost therapy is not effective (also known as fail-first policies or step therapy protocols);

(g) Exclusions based on failure to complete a course of treatment; and

(h) Restrictions based on geographic location, facility type, provider specialty, and other criteria that limit the scope or duration of benefits for services provided under the plan or coverage.

Plan means a health plan, a short-term limited duration medical plan or a student-only health plan.

Predominant level: If a type of financial requirement or quantitative treatment limitation applies to substantially all medical surgical benefits in a classification, the predominant level is the level that applies to more than one-half of the medical/surgical benefits in that classification subject to the financial requirement or quantitative treatment limitation.

Quantitative parity analysis means a mathematical test by which plans and issuers determine what level of a financial requirement or quantitative treatment limitation, if any, is the most restrictive level that could be imposed on mental health or substance use disorder benefits within a classification.

Quantitative treatment limitations means types of objectively quantifiable treatment limitations such as frequency of treatments, number of visits, days of coverage,

days in a waiting period or other similar limits on the scope or duration of treatment.

Short-term limited duration medical plan means a plan deemed by the commissioner to have a short-term limited purpose or duration.

Student-only health plan means a health plan that is guaranteed renewable while the covered person is enrolled as a regular, full-time undergraduate student at an accredited higher education institution.

Substance use disorder (~~includes illness characterized by a physiological or psychological dependency, or both, on a controlled substance regulated under chapter 69.50 RCW and/or alcoholic beverages. It is further characterized by a frequent or intense pattern of pathological use to the extent the user exhibits a loss of self-control over the amount and circumstances of use; develops symptoms of tolerance or physiological and/or psychological withdrawal if use of the controlled substance or alcoholic beverage is reduced or discontinued; and the user's health is substantially impaired or endangered or his or her social or economic function is substantially disrupted. Any disorder defined by the plan as being or as not being a substance use disorder must be defined to be consistent with generally recognized independent standards of current medical practice (for example, the most current version of the DSM, the most current version of the ICD, or state guidelines))~~) means a substance-related or addictive disorder listed in the most current version of the *Diagnostic and Statistical Manual of Mental Disorders (DSM)* published by the American Psychiatric Association.

Substance use disorder benefits means benefits with respect to items or services for substance use disorders, as defined under the terms of the plan or health insurance coverage and in accordance with applicable federal and state law. Substance use disorder benefits must include payment for reasonable charges for medically necessary treatment and supporting service rendered to an enrollee either within an approved treatment program or by a health care professional that meets the requirements of RCW 18.205.040(2), as part of the approved treatment plan.

Substantially all: A type of financial requirement or quantitative treatment limitation considered to apply to substantially all medical/surgical benefits in a classification of benefits if it applies to at least two-thirds of all medical/surgical benefits in that classification as determined by WAC 284-43-7040 (2)(a).

Treatment limitations means limits on benefits based on the frequency of treatment, number of visits, days of coverage, days in a waiting period, or other similar limits on the scope or duration of treatment. Treatment limitations include both quantitative treatment limitations, which are expressed numerically (such as fifty outpatient visits per year), and non-quantitative treatment limitations, which otherwise limit the scope or duration of benefits for treatment under a plan or coverage. A permanent exclusion of all benefits for a particular condition or disorder, however, is not a treatment limitation for purposes of this section.

AMENDATORY SECTION (Amending WSR 16-14-106, filed 7/6/16, effective 8/6/16)

WAC 284-43-7020 Classification of benefits. (1) A ((health)) plan providing mental health or substance use disorder benefits, must provide mental health or substance use disorder benefits in every classification in which medical/surgical benefits are provided.

(2) Parity requirements must be applied to the following six classifications of benefits: Inpatient, in-network; inpatient, out-of-network; outpatient, in-network; outpatient, out-of-network; emergency care; and prescription drugs. These are the only classifications of benefits that can be used.

(a) **Inpatient, in-network.** Benefits furnished on an inpatient basis and within a network of providers established or recognized under a plan or health insurance coverage.

(b) **Inpatient, out-of-network.** Benefits furnished on an inpatient basis and outside any network of providers established or recognized under a plan or health insurance coverage. This classification includes inpatient benefits under a plan (or health insurance coverage) that has no network of providers.

(c) **Outpatient, in-network.** Benefits furnished on an outpatient basis and within a network of providers established or recognized under a plan or health insurance coverage.

(d) **Outpatient, out-of-network.** Benefits furnished on an outpatient basis and outside any network of providers established or recognized under a plan or health insurance coverage. This classification includes outpatient benefits under a plan (or health insurance coverage) that has no network of providers.

(e) **Emergency care.** Benefits for treatment of an emergency condition related to a mental health or substance use disorder. Such benefits must comply with the requirements for emergency medical services in RCW 48.43.093. Medically necessary detoxification must be covered as an emergency medical condition according to RCW 48.43.093, and may be provided in hospitals licensed under chapter 70.41 RCW. Medically necessary detoxification services must not require prenotification.

(f) **Prescription drugs.** Benefits for prescription drugs.

(3) In determining the classification in which a particular benefit belongs, a plan must apply the same standards to medical/surgical benefits as applied to mental health or substance use disorder benefits.

An issuer or ((health)) plan must assign covered intermediate mental health/substance use disorder benefits such as residential treatment, partial hospitalization, and intensive outpatient treatment, to the existing six classifications in the same way that they assign comparable intermediate medical/surgical benefits to these classifications. For example, if a ((health)) plan classifies medical care in skilled nursing facilities as inpatient benefits, then it must also treat covered mental health care in residential treatment facilities as inpatient benefits. If a ((health)) plan or issuer treats home health care as an outpatient benefit, then any covered intensive outpatient mental health or substance use disorder services and partial hospitalization must be considered outpatient benefits as well.

(4) A ~~((health))~~ plan or issuer may not apply any financial requirement or treatment limitation to mental health or substance use disorder benefits that is more restrictive than the predominant financial requirement or treatment limitation applied to medical/surgical benefits. This parity analysis must be ~~((done on a classification-by-classification basis))~~ calculated for each type of financial requirement or treatment limitation within a coverage unit for each classification of services.

(5) Medical/surgical benefits and mental health or substance use disorder benefits cannot be categorized as being offered outside of these six classifications and therefore not subject to the parity analysis.

(a) A ~~((health))~~ plan or issuer must treat the least restrictive level of the financial requirement or quantitative treatment limitation that applies to at least two-thirds of medical/surgical benefits across all provider tiers in a classification as the predominant level that it may apply to mental health or substance use disorder benefits in the same classification.

(b) If a ~~((health))~~ plan or issuer classifies providers into tiers, and varies cost-sharing based on the different tiers, the criteria for classification must be applied to generalists and specialists providing mental health or substance use disorder services no more restrictively than such criteria are applied to medical/surgical benefit providers.

(6) Permitted subclassifications:

(a) A ~~((health))~~ plan or issuer is permitted to divide benefits furnished on an outpatient basis into two subclassifications:

- (i) Office visits; and
- (ii) All other outpatient items and services.

(b) A ~~((health))~~ plan or issuer may divide its benefits furnished on an in-network basis into subclassifications that reflect network tiers, if the tiering is based on reasonable factors and without regard to whether a provider is a mental health or substance use disorder provider or a medical/surgical provider.

(c) After network tiers are established, the ~~((health))~~ plan or issuer may not impose any financial requirement or treatment limitation on mental health or substance use disorder benefits in any tier that is more restrictive than the predominant financial requirement or treatment limitation that applies to substantially all medical/surgical benefits in that tier.

(d) If a ~~((health))~~ plan applies different levels of financial requirements to different tiers of prescription drug benefits based on reasonable factors and without regard to whether a drug is generally prescribed with respect to medical/surgical benefits or with respect to mental health/substance use disorder benefits, the ~~((health))~~ plan satisfies the parity requirements with respect to prescription drug benefits. Reasonable factors include: Cost, efficacy, generic versus brand name, and mail order versus pharmacy pick-up.

(e) A parity analysis applying the financial requirement and treatment rules found in WAC 284-43-7040 and 284-43-7060 must be performed ~~((within each subclassification))~~ for each type of financial requirement or quantitative treatment limitation within a coverage unit for each subclassification of services.

(7) **Prohibited subclassifications:** All subclassifications other than the permitted subclassification listed in subsection (6) of this section are specifically prohibited. For example, a plan is prohibited from basing a subclassification on generalists and specialists.

AMENDATORY SECTION (Amending WSR 16-01-081, filed 12/14/15, effective 12/14/15)

WAC 284-43-7040 Measuring ~~((health))~~ plan benefits—Financial requirements and quantitative treatment limitations. (1) Classification of benefits must be measured as follows:

(a) By type and level of financial requirement or treatment limitation.

(i) A financial requirement or treatment limitation type includes deductibles, copayments, coinsurance, and out-of-pocket maximums. Types of quantitative treatment limitations include annual, episode, and lifetime day and visit limits.

(ii) A financial requirement or treatment limitation level includes the amount of the financial requirement or treatment limitation type. For example, different levels of coinsurance include twenty percent and thirty percent; different levels of a copayment include fifteen dollars and twenty dollars; different levels of a deductible include two hundred fifty dollars and five hundred dollars; and different levels of an episode limit include twenty-one inpatient days per episode and thirty inpatient days per episode.

(b) A ~~((health))~~ plan or issuer may not apply any financial requirement or quantitative treatment limitation to mental health/substance use disorder benefits in any classification that is more restrictive than the predominant financial requirement or quantitative treatment limitation of that type applied to substantially all medical/surgical benefits in the same classification. Whether a financial requirement or treatment limitation is a predominant financial requirement or treatment limitation that applies to substantially all medical/surgical benefits in a classification is determined separately for each type of financial requirement or treatment limitation.

(c) The determination of the portion of medical/surgical benefits in a classification of benefits subject to a financial requirement or quantitative treatment limitation (or subject to any level of a financial requirement or quantitative treatment limitation) is based on the dollar amount of all plan payments for medical/surgical benefits in the classification expected to be paid under the ~~((health))~~ plan for the plan year.

(i) The dollar amount of plan payments is based on the amount the plan allows (before enrollee cost sharing) rather than the amount the plan pays (after enrollee cost sharing) because payment based on the allowed amount covers the full scope of the benefits being provided.

(ii) A reasonable actuarial method must be used to determine the dollar amount expected to be paid under a plan for medical/surgical benefits subject to a financial requirement or quantitative treatment limitation.

(d) Clarifications for certain threshold requirements when performing "substantially all" and "predominant" tests.

(i) For any deductible, the dollar amount of plan payments includes all plan payments with respect to claims that would be subject to the deductible if it had not been satisfied.

(ii) For any out-of-pocket maximum, the dollar amount of plan payments includes all plan payments associated with out-of-pocket payments that are taken into account towards the out-of-pocket maximum as well as all plan payments associated with out-of-pocket payments that would have been made towards the out-of-pocket maximum if it had not been satisfied.

(iii) Similar rules apply for any other thresholds at which the rate of plan payment changes.

(2) Application to different coverage units. If a ((health)) plan or insurer applies different levels of a financial requirement or quantitative treatment limitation to different coverage units in a classification of medical/surgical benefits, the "predominant" level that applies to "substantially all" medical/surgical benefits in the classification is determined separately for each coverage unit.

(a) Determining "substantially all": A type of financial requirement or quantitative treatment limitation is considered to apply to substantially all medical/surgical benefits in a classification of benefits if it applies to at least two-thirds of all medical/surgical benefits in that classification.

(i) Benefits subject to a zero level for a type of financial requirement are treated as benefits not subject to that type of financial requirement. Benefits with no quantitative treatment limitations are treated as benefits not subject to that type of quantitative treatment limitation.

(ii) If a type of financial requirement or quantitative treatment limitation does not apply to at least two-thirds of all medical/surgical benefits in a classification, the financial requirement or quantitative treatment limitation of that type cannot be applied to mental health or substance use disorder benefits in that classification.

(b) Determining "predominant":

(i) If a type of financial requirement or quantitative treatment limitation applies to at least two-thirds of all medical/surgical benefits in a classification as determined under (a) of this subsection, the level of the financial requirement or quantitative treatment limitation that applies to more than one-half of medical/surgical benefits in that classification subject to the financial requirement or quantitative treatment limitation is the predominant level of that type in a classification of benefits.

(ii) If a type of financial requirement or quantitative treatment limitation applies to at least two-thirds of all medical/surgical benefits in a classification and there is no single level that applies to more than one-half of medical/surgical benefits in the classification subject to the financial requirement or quantitative treatment limitation, the ((health)) plan or issuer must combine levels until the combination of levels applies to more than one-half of medical/surgical benefits subject to the financial requirement or quantitative treatment limitation in the classification.

(iii) The least restrictive level within the combination is considered the predominant level of that type in the classification. (For this purpose, a ((health)) plan must combine the most restrictive levels first, with each less restrictive level added to the combination until the combination applies to

more than one-half of the benefits subject to the financial requirement or treatment limitation.)

(3) Cumulative financial requirements and cumulative quantitative treatment limitations.

(a) A ((health)) plan or issuer may not apply cumulative financial requirements (such as deductibles and out-of-pocket maximums) or cumulative quantitative treatment limitations (such as annual or lifetime day or visit limits) for mental health or substance use disorder benefits in a classification that accumulate separately from any cumulative requirement or limitation established for medical/surgical benefits in the same classification.

(b) Cumulative requirements and limitation must also satisfy the quantitative parity analysis.

AMENDATORY SECTION (Amending WSR 16-01-081, filed 12/14/15, effective 12/14/15)

WAC 284-43-7060 Measuring ((health)) plan benefits—Nonquantitative treatment limitations. (1) A ((health)) plan or issuer may not impose an NQTL with respect to mental health or substance use disorder in any classification unless, under the terms of the ((health)) plan as written and in operation, any processes, strategies, evidentiary standards or other factors used in applying the NQTL to mental health or substance use disorder benefits in the classification are comparable to, and are applied no more stringently than, the processes, strategies, evidentiary standards, or other factors used in applying the limitation with respect to medical/surgical benefits in the same classification.

(2) All ((health)) plan standards, such as in-and-out-of-network geographic limitations, limitations on inpatient services for situations where the ((participant)) enrollee is a threat to self or others, exclusions for court-ordered and involuntary holds, experimental treatment limitations, service coding, exclusions for services provided by clinical social workers, and network adequacy, while not specifically enumerated in the illustrative list of NQTLs must be applied in a manner that complies with this subsection.

AMENDATORY SECTION (Amending WSR 16-01-081, filed 12/14/15, effective 12/14/15)

WAC 284-43-7080 Prohibited exclusions. (1) Benefits for actual treatment and services rendered may not be denied solely because a course of treatment was interrupted or was not completed.

(2) If a service is prescribed for a mental health condition and is medically necessary, it may not be denied solely on the basis that it is part of a category of services or benefits that is excluded by the terms of the contract.

(3) Benefits for mental health services and substance use disorder may not be limited or denied based solely on age or condition.

(4) Nothing in this section relieves a ((health)) plan or an issuer from its obligations to pay for a court ordered substance use disorder benefit or mental health benefit when it is medically necessary.

AMENDATORY SECTION (Amending WSR 16-14-106, filed 7/6/16, effective 8/6/16)

WAC 284-43-7100 Required disclosures. (1) ((Health)) Plans and issuers must provide reasonable access to and copies of all documents, records, and other information relevant to an individual's claim. ((Health))

(a) Plans and issuers must provide disclosures consistent with WAC 284-43-4040, ((284-43-3070)) 284-43-3170, 284-43-3110, and 284-43-2000(~~, within a reasonable time~~). For any other disclosures related to an individual's claim, the plan or issuer must provide disclosures within thirty days.

(b) When a claim relates to a protected individual, as defined in RCW 48.43.005, the health carrier must comply with RCW 48.43.505.

(2) ((Health)) Plans and issuers must provide the criteria, processes, strategies, evidentiary standards and other factors used to make medical necessity determinations of mental health or substance use disorder benefits. These must be made available free of charge by the ((health)) plan issuer to any current or potential ((participant)) enrollee, beneficiary, or contracting provider upon request, within a reasonable time in compliance with WAC 284-43-2000, and in a manner that provides reasonable access to the requestor. This requirement includes information on the processes, strategies, evidentiary standards, and other factors used to apply an NQTL with respect to medical/surgical and mental health or substance use disorder benefits under the ((health)) plan.

(3) The reason for any adverse benefit decision for mental health or substance use disorder benefits must be provided with the notification of the adverse benefit decision. When an adverse benefit decision relates to a protected individual, as defined in RCW 48.43.005, the health carrier must comply with RCW 48.43.505.

(4) Compliance with these disclosure requirements is not determinative of compliance with any other provisions of applicable federal or state law.

(5) If a ((health)) plan is subject to ERISA, it must provide the reason for the claim denial in a form and manner consistent with the requirements of 29 C.F.R. 2560.503-1.

AMENDATORY SECTION (Amending WSR 16-14-106, filed 7/6/16, effective 8/6/16)

WAC 284-43-7120 Compliance and reporting of quantitative parity analysis. (1) ((Health)) Plans and issuers must file a justification demonstrating the analysis of each plan's financial requirements and quantitative treatment limitations as required under WAC 284-43-7040.

(2) Filing of this justification is subject to the requirements of chapters 284-44A, 284-46A, and 284-58 WAC and may be rejected and closed if it does not comply.

**WSR 20-24-041
PERMANENT RULES
OFFICE OF THE**

INSURANCE COMMISSIONER

[Filed November 23, 2020, 10:53 a.m., effective December 24, 2020]

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

Purpose: The proposed rules will seek to clarify/amend WAC 284-30-650. These rules will also seek to explicitly clarify that the changes apply to all other regulated entities that have to comply with chapter 48.30 RCW.

Citation of Rules Affected by this Order: Amending WAC 284-30-650.

Statutory Authority for Adoption: RCW 48.02.060, 48.44.050, 48.46.200, and 48.30.010.

Adopted under notice filed as WSR 20-20-121 on October 6, 2020.

A final cost-benefit analysis is available by contacting Tabba Alam, P.O. Box 40260, Olympia, WA 98504-0260, phone 360-725-7170, fax 360-586-3109, TTY 360-586-0241, email TabbaA@oic.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 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 0, Repealed 0.

Date Adopted: November 23, 2020.

Mike Kreidler
Insurance Commissioner

AMENDATORY SECTION (Amending WSR 13-12-079, filed 6/5/13, effective 1/1/14)

WAC 284-30-650 Prompt responses required. It is an unfair practice for an insurer, and a prohibited practice for a health care service contractor or a health maintenance organization, to fail to respond promptly to any inquiry from the insurance commissioner relative to the business of insurance. A lack of response within fifteen business days from receipt of an inquiry will be considered untimely. A response must be in writing ((and submitted using the commissioner's electronic company complaint system)), unless otherwise indicated in the inquiry. If the inquiry originates from the commissioner's electronic company complaint system, the response must be in writing and submitted using that same system. This rule also applies to any other entity or person subject to the requirements of chapter 48.30 RCW.

WSR 20-24-047
PERMANENT RULES
DEPARTMENT OF HEALTH

[Filed November 23, 2020, 2:51 p.m., effective January 1, 2021]

Chief of Staff
for John Wiesman, DrPH, MPH
Secretary

Effective Date of Rule: January 1, 2021.

Purpose: WAC 246-10-501 and 246-10-502, application of and preliminary record in brief adjudicative proceedings (BAP). The department of health (department) adopted amendments to these rules to: (1) Add categories that qualify for the use of BAP, including matters involving vital statistics and the coordinated quality improvement program (CQIP); (2) implement legislation; and (3) update existing citations and make other housekeeping changes.

The amendments add cases involving vital statistics and CQIP decisions to the existing list of cases a BAP may be requested for to be heard before the department. WAC 246-10-502 was amended to identify the corresponding preliminary records to be used in BAPs for these two new categories. In addition, existing citations related to specific types of environmental health matters that qualify to be heard as a BAP have been revised to reflect changes in statute as dictated by HB 2246. Other updates to existing citations, including repealing citations that no longer exist and adding relevant citations that were missing, were also adopted to ensure that WAC 246-10-501 and 246-10-502 are current.

Citation of Rules Affected by this Order: Amending WAC 246-10-501 and 246-10-502.

Statutory Authority for Adoption: RCW 43.70.040 and 34.05.413.

Other Authority: RCW 34.05.410, 18.130.050; ESSB 5332 (chapter 148, Laws of 2019), and HB 2246 (chapter 20, Laws of 2020).

Adopted under notice filed as WSR 20-20-128 on October 6, 2020.

Changes Other than Editing from Proposed to Adopted Version: In WAC 246-10-501 (1)(l) the citations to both WAC 246-293-401 and 246-293-420 have been removed. Originally it was thought these rule sections may be relevant to the appeal process, however, after further review, it was determined that they were not necessary. Only the original citation to WAC 246-293-430 is needed.

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

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

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

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

Date Adopted: November 20, 2020.

Jessica Todorovich

AMENDATORY SECTION (Amending WSR 18-18-049, filed 8/29/18, effective 9/29/18)

WAC 246-10-501 Application of brief adjudicative proceedings. (1) If an adjudicative proceeding is requested, a brief adjudicative proceeding will be conducted where the matter involves one or more of the following:

(a) A determination whether an applicant for a professional, business, or facility license meets the minimum criteria for an unrestricted license and the department proposes to deny such a license or to issue a restricted license;

(b) An application to approve a water system plan under WAC 246-290-100;

(c) An application to approve a project report under WAC 246-290-110;

(d) An application for source approval under WAC 246-290-130;

(e) An application to approve construction documents under WAC 246-290-120;

(f) An application to approve an existing Group A water system under WAC 246-290-140;

(g) An application for source approval under WAC ~~((246-291-100 or 246-291-110))~~ 246-291-125;

(h) An application to approve a design report under WAC 246-291-120;

(i) An application to approve an existing Group B water system under WAC ~~((246-291-130))~~ 246-291-280;

(j) An application to approve a water system plan under WAC 246-291-140;

(k) A decision under WAC 246-293-190;

(l) A decision with respect to service area conflicts under WAC 246-293-430;

(m) An application for approval as a satellite management agency under WAC 246-295-040;

(n) A civil penalty imposed under RCW ~~((70-119A-040))~~ 70A.125.040 when the amount of the civil penalty does not exceed two thousand five hundred dollars;

(o) A request to bank nursing home beds under RCW 70.38.111 ~~((8) and 70.38.115(13))~~ (9);

(p) A determination as to whether a person is in compliance with the terms and conditions of a final order previously issued by the department, except final orders under RCW 18.130.110;

(q) Any approval of a school or curriculum when such approval by the department is required or authorized by statute or rule;

(r) A determination whether a license holder requesting renewal has submitted all required information and meets minimum criteria for license renewal;

(s) A decision to deny, modify, or impose conditions upon an operating permit under WAC 246-294-050;

(t) A decision to deny or revoke certification as a home care aide when a long-term care worker is disqualified from working with vulnerable persons under chapter 74.39A RCW;

(u) A civil penalty imposed against a health carrier or third-party administrator under RCW 70.290.060;

(v) A decision to deny or revoke a credential under RCW 18.108.085(3);

(w) An action to suspend a credential under RCW ~~((18.130.125 or))~~ 18.130.127;

(x) Issuance of written citation and assessment of a fine under RCW 18.130.230;

(y) An action to invalidate a credential that was issued to a person who failed to meet credentialing requirements;

(z) A decision to withdraw a credential issued in error. For the purposes of this rule, "credential issued in error" means a credential issued to an individual who did not fully complete the application process or meet the credentialing requirements yet was inadvertently granted a credential; ~~((or))~~

(aa) A decision to deny a request for a list of applicants for professional licenses or of professional licensees for commercial purposes under RCW 42.56.070(8);

(bb) A decision to deny or revoke registration of a report or application for an amendment, or withhold or deny issuance of a certification under RCW 70.58A.040 (1)(f);

(cc) A decision to deny a request for data under RCW 70.58A.520; or

(dd) A decision to deny an application for approval of a coordinated quality improvement program, or to revoke approval of a coordinated quality improvement program under RCW 43.70.510.

(2) If an adjudicative proceeding is requested, in a matter not listed in subsection (1) of this section, a brief adjudicative proceeding may be conducted in the discretion of the presiding officer when it appears that protection of the public interest does not require that the department provide notice and an opportunity to participate to persons other than the parties and:

(a) Only legal issues exist; or

(b) Both parties have agreed to a brief adjudicative proceeding.

AMENDATORY SECTION (Amending WSR 18-18-049, filed 8/29/18, effective 9/29/18)

WAC 246-10-502 Preliminary record in brief adjudicative proceedings. (1) The preliminary record with respect to an application for a professional, business, or facility license, or for approval of a school or curriculum must consist of:

(a) The application for the license or approval and all associated documents;

(b) All documents relied on by the program in proposing to deny the application;

(c) All correspondence between the applicant for license or approval and the program regarding the application.

(2) Preliminary record.

(a) The preliminary record with respect to decisions made under WAC 246-290-100, 246-290-110, 246-290-120, 246-290-130, 246-290-140, 246-291-120, 246-291-125, 246-291-280, and 246-291-140 must consist of the decision document, all documents constituting the applicant's submittal and

such other documents as the applicant or the department may wish to include in the preliminary record.

(b) The preliminary record with respect to decisions made under WAC 246-293-190.

(i) If proceedings are required and have been conducted by local agencies under the applicable coordinated water system plan, the preliminary record shall consist of the record submitted to the department under WAC 246-10-124(3).

(ii) If hearings are not required or have not been conducted by local agencies under the applicable coordinated water system plan or if the external boundaries of the coordination act area have been approved but a coordinated water system plan has not been adopted, then the preliminary record shall consist of such documents as the presiding officer may solicit from the affected parties.

(c) The preliminary record with respect to a decision made under WAC 246-293-401, 246-293-420, and 246-293-430 shall consist of the record submitted to the presiding officer under WAC 246-10-124(4).

(d) The preliminary record with respect to a decision under WAC 246-294-050 shall consist of:

(i) The permit, if any;

(ii) All documents relied upon by the program in proposing to deny, modify, or impose conditions upon the permit; and

(iii) The decision document.

(e) The preliminary record with respect to decisions made under WAC 246-295-040 shall consist of the decision document, all documents constituting the applicant's submittal, comments submitted by the county, and such other documents as the applicant or the department may wish to include in the preliminary record.

(f) The preliminary record with respect to civil penalties imposed under RCW 70.119A.040 shall consist of the notice of imposition of penalties, the departmental order, if any, all documentation of communication between the program and the person or persons incurring the civil penalties regarding the violation or violations for which the civil penalties were imposed, and such other documents as the person or persons incurring the civil penalties or the department may wish to include in the preliminary record.

(g) The preliminary record with respect to an action to deny or revoke a credential under RCW 18.108.085(3) shall consist of a certified copy of the court documents reflecting a conviction, any documentation regarding a certification of restoration of opportunity under RCW 9.97.020, and such other documents as the person making the request and the department may wish to include in the preliminary record which are relevant to the issue of the applicant's or licensee's identity.

(h) The preliminary record with respect to an action to suspend a credential under RCW ~~((18.130.125 or))~~ 18.130.127 shall consist of the report from the lending agency to the department of the licensee's nonpayment or default on a federally or state-guaranteed educational loan or service-conditional scholarship, and such other documents as the person making the request and the department may wish to include in the preliminary record.

(i) The preliminary record with respect to the issuance of a written citation and assessment of a fine under RCW

18.130.230 shall consist of the citation, as described in RCW 18.130.230(2), the request by the disciplining authority to produce documents, records, or other items within the licensee's control, the licensee's request for extension of time and the disciplining authority's response if a request for extension of time was made, and such other documents as the licensee or disciplining authority may wish to include in the preliminary record with respect to whether or not the licensee timely provided the items requested.

(j) The preliminary record with respect to a decision to withdraw a credential issued in error shall consist of the application for credential and any associated documents, all documents relied on by the program in proposing to withdraw the credential, and all correspondence between the person to whom the credential was issued in error and the program regarding the application or credential.

(k) The preliminary record with respect to a decision to deny a request for a list of applicants for professional licenses or of professional licensees for commercial purposes shall consist of the written request for the list, any other documents relied on by the program in proposing to deny the request, all correspondence regarding the request between the person making the request and the department, and such other documents as the person making the request and the department may wish to include in the preliminary record.

(l) The preliminary record with respect to a decision to deny or revoke registration of a report or application for an amendment, or withhold or deny issuance of a certification under RCW 70.58A.040 (1)(f) shall consist of the application to amend any correspondence between the person who made the request and such other documents as the applicant or the department may wish to include in the preliminary record.

(m) The preliminary record with respect to a decision to withhold or deny certification of a vital record under RCW 70.58A.530 shall consist of request for certification, any correspondence between the person who made the request and the program, all documents relied on by the program in proposing to deny the request, and such other documents as the applicant or the department may wish to include in the preliminary record.

(n) The preliminary record with respect to a decision to deny an application or revoke an approved plan under RCW 43.70.510 and chapter 246-50 WAC shall consist of:

(i) For initial approval all documents required in WAC 246-50-030;

(ii) For modification of an approved plan all documents required in WAC 246-50-035(1);

(iii) For alternative programs all documents required in WAC 246-50-040; and

(iv) Any correspondence between the applicant and the program, all documents relied on by the program in proposing to deny the request, and such other documents as the applicant or the department may wish to include in the preliminary record.

(3) The preliminary record with respect to compliance with prior department orders shall consist of:

(a) The official department file of the proceeding in which the order was issued;

(b) All matters submitted by the person to whom the order is directed purporting to demonstrate compliance with the order;

(c) All documents relied on by the department in asserting noncompliance; and

(d) All correspondence between the department and the person to whom the order is directed respecting compliance.

(4) The preliminary record with respect to matters submitted to a brief adjudicative proceeding under WAC 246-10-501(2) shall be as agreed by the parties.

(5) For the purposes of this section, "decision document" shall mean one or more documents that provide notice to the affected party of the department's action, and that contain(s) the information provided by an initiating document.

WSR 20-24-064

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed November 24, 2020, 12:34 p.m., effective December 25, 2020]

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

Purpose: The department is amending WAC 458-20-179 to reflect 2020 legislation (ESB 5402) that clarifies that "cogeneration" is qualified by "as existing on June 30, 2006." The department is also amending WAC 458-20-179 to improve the rule's format and readability.

Citation of Rules Affected by this Order: Amending WAC 458-20-179.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

Adopted under notice filed as WSR 20-19-042 on September 10, 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; and 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 24, 2020.

Atif Aziz
Rules Coordinator

AMENDATORY SECTION (Amending WSR 20-04-022, filed 1/27/20, effective 2/27/20)

WAC 458-20-179 Public utility tax. Introduction.
This rule explains the public utility tax (PUT) imposed by

chapter 82.16 RCW. The PUT is a tax for engaging in certain public service and transportation businesses within this state.

The department of revenue (department) has adopted other rules that relate to the application of PUT. Readers may want to refer to rules in the following list:

- (1) WAC 458-20-104 Small business tax relief based on income of business;
- (2) WAC 458-20-121 Sales of heat or steam—Including production by cogeneration;
- (3) WAC 458-20-13501 Timber harvest operations;
- (4) WAC 458-20-175 Persons engaged in the business of operating as a private or common carrier by air, rail or water in interstate or foreign commerce;
- (5) WAC 458-20-180 Motor carriers;
- (6) WAC 458-20-192 Indians—Indian country;
- (7) WAC 458-20-193D Transportation, communication, public utility activities, or other services in interstate or foreign commerce; and
- (8) WAC 458-20-251 Sewerage collection and other related activities.

This rule contains examples that identify a number of facts and then state a conclusion. The examples should be used only as a general guide. The tax results of other situations must be determined after a review of all of the facts and circumstances.

Part I - General Information

(101) **Persons subject to the public utility tax.** The PUT is imposed by RCW 82.16.020 on certain public service and transportation businesses including railroad, express, railroad car, water distribution, sewerage collection, light and power, telegraph, gas distribution, motor transportation, urban transportation, log transportation, vessels under sixty-five feet in length operating upon the waters within the state of Washington, and tugboat businesses.

(a) **Hauling by watercraft.** Income from hauling persons or property for hire by watercraft between points in Washington is subject to one of two PUT classifications, depending on the nature of the service. Income from:

(*) (i) Operating tugboats of any size, and the sale of transportation services by vessels sixty-five feet and over, is subject to tax under the "other public service business" PUT classification.

(*) (ii) The sale of transportation services using vessels under sixty-five feet, other than tugboats, is subject to tax under the "vessels under sixty-five feet" (~~(public utility tax)~~) PUT classification.

~~(These classifications do)~~ Hauling persons or property for hire by watercraft does not include sightseeing tours, fishing charters, or activities that are in the nature of guided tours, where the tour may include some water transportation. Persons engaged in providing tours should refer to WAC 458-20-258, Travel agents and tour operators.

(b) **Other businesses subject to the public utility tax.** The PUT also applies to any other public service business subject to control by the state, or having the powers of eminent domain, or any business declared by the legislature to be of a public service nature, unless the activity is subject to tax under chapter 82.04 RCW, Business and occupation (B&O) tax.

(i) The phrase "subject to control by the state" means control by the utilities and transportation commission or any other state agency required by law to exercise control of a business of a public service nature regarding rates charged or services rendered. Examples of other public service businesses include, but are not limited to: Airplane transportation, boom, dock, ferry, ~~(pipeline)~~ pipe line, toll bridge, toll logging road, water transportation, and wharf businesses. RCW 82.16.010.

(ii) Persons engaged in the same business activities as the businesses described above are subject to the PUT even if they are not publicly recognized as providing ~~(that)~~ these types of services or the amount of income from these activities is not substantial. For example, an industrial manufacturing company that owns and operates a well, and that sells a relatively small amount of water to its wholly owned subsidiary, is subject to the PUT as a water distribution business on its sales of water.

(c) ~~(Are)~~ **Taxability of amounts derived from interest and penalties** ~~(taxable?)~~. Amounts charged to customers as interest or penalties are generally subject to the service and other activities B&O tax. This includes interest charged for failure to timely pay for utility services or for incidental services. Incidental services include for example meter installation or other activities which are performed prior to the customer receiving utility services. Any interest or penalty resulting from the failure to timely pay a local improvement district or utility local improvement district assessment is not subject to public utility or B&O taxes.

(102) **Tax rates and measure of tax.** The rates of tax for each business activity subject to the PUT are imposed under RCW 82.16.020 and set forth on appropriate lines of the state public utility tax addendum for the excise tax return. The measure of the PUT is the gross income of the business. The term "gross income" means the value proceeding or accruing from the performance of the particular public service or transportation business involved, including operations incidental to that business. No deduction may be taken on account of the cost of the commodity furnished or sold, the cost of materials used, labor costs, interest, discounts, delivery costs, taxes, or any other expense whatsoever paid or accrued, nor on account of losses. RCW 82.16.010(~~(3)~~).

(103) **Persons subject to public utility tax may also be subject to B&O tax.** The B&O tax does not apply to any business activities for which the PUT is specifically imposed, including amounts derived from activities for which a deduction from the PUT is available under RCW 82.16.050. RCW 82.04.310(1). However, many persons engaged in business activities subject to the PUT are also engaged in other business activities subject to the B&O tax.

For example, a gas distribution company operating a system for the distribution of natural gas for sale may also make retail sales of gas appliances. The gas distribution company is subject to the PUT on its distribution of natural gas to consumers. It is also subject to retailing B&O tax and must collect and remit retail sales tax on its retail sales of gas appliances. Repairs of customer owned appliances are also a retailing activity subject to retail sales tax.

In distinguishing gross income taxable under the PUT from gross income taxable under the B&O tax, the depart-

ment is guided by the uniform system of accounts established for the specific type of utility concerned. Because of differences in the uniform systems of accounts established for various types of utility businesses, such guides are not controlling for the purposes of classifying revenue under the Revenue Act.

(104) Charges for service connections, line extensions, and other similar services.

(a) For existing customers, amounts derived from services that are incidental to a public utility activity are subject to the PUT. Thus, amounts received for the following are subject to the PUT:

- (i) Service connection, start-up, and testing fees;
- (ii) Charges for line extensions, repairs, raisings, and/or drops;
- (iii) Meter or pole replacement;
- (iv) Meter reading or load factor charges; and
- (v) Connecting or disconnecting.

(b) For new customers, amounts received for any of the services noted above in Part (104)(a) of this rule are subject to service and other activities B&O tax.

A "new customer" is a customer who previously has not received the utility service at the location. For example, a customer of a water distribution company who currently receives water at a residence and constructs a new residence at a different location is considered a "new customer" with respect to any meter installation services performed at the new residence, until the customer actually receives water at that location. It is immaterial that this customer may be receiving water at the old residence. The charge for installing the meter for this customer at the new location is subject to service and other activities B&O tax.

(105) Contributions of equipment or facilities. Contributions to a utility business in the form of equipment or facilities are not considered income to the utility business, if the contribution is a condition of receiving service.

(a) **Example 1.** An industrial customer purchases and pays sales tax on transformers it installs. The customer then provides the transformers to a public utility district as a condition of receiving future service. The public utility district is not subject to the PUT or B&O tax on the receipt of the transformers. Use tax is not owed by the utility district as the customer paid sales tax at the time of purchase.

(b) **Example 2.** For a water or sewerage collection business, the value of pipe, valves, pumps, or similar items provided by a developer for purposes of servicing the developed area is likewise not subject to PUT or B&O tax.

Part II - Exemptions, Deductions, and Nontaxable Receipts

(201) Exemptions. This subsection describes PUT exemptions. Also see subsections in this rule that discuss specific utilities.

(a) **Income exemption.** Persons subject to the PUT are exempt from the payment of the tax if their ~~((taxable))~~ gross income from utility activities does not meet a minimum threshold. RCW 82.16.040. For detailed information about this exemption, refer to WAC 458-20-104, Small business tax relief based on income of business.

(b) **Ride sharing.** RCW 82.16.047 exempts amounts received in the course of commuter ride sharing or ride sharing for persons with special transportation needs in accordance with RCW 46.74.010. For detailed information about this exemption, refer to WAC 458-20-261, Commute trip reduction incentives.

(c) **State route number 16.** RCW 82.16.046 exempts amounts received from operating state route number 16 corridor transportation systems and facilities constructed and operated under chapter 47.46 RCW.

(202) Deductions. In general, costs of doing business are not deductible under the PUT. However, RCW 82.16.050 provides for limited deductions. This subsection describes a number of those deductions. The deductible amounts should be included in the gross income reported on the state public utility tax addendum for the excise tax return and then deducted on the deduction detail page to determine the amount of taxable income. Deductions taken but not identified on the appropriate deduction detail page may be disallowed. Also see Parts III and IV of this rule, which identify additional deductions available to power and light, gas distribution, and water distribution businesses.

(a) **Cash discounts.** The amount of cash discount actually taken by the purchaser or customer is deductible under RCW 82.16.050(4).

(b) **Credit losses.** The amount of credit losses actually sustained by taxpayers whose regular books of account are kept on an accrual basis is deductible under RCW 82.16.050(5). For additional information regarding credit losses see WAC 458-20-196, Bad debts.

(c) **Taxes.** Amounts derived by municipally owned or operated public service businesses directly from taxes levied for their support are deductible under RCW 82.16.050(1). However, service charges that are spread on the property tax rolls and collected as taxes are not deductible.

Local improvement district and utility local improvement district assessments, including interest and penalties on such assessments, are not income because they are exercises of the jurisdiction's taxing authority. These assessments may be composed of a share of the costs of capital facilities, installation labor, connection fees, etc.

(d) **Prohibitions imposed by federal law or the state or federal constitutions.** Amounts derived from business that the state is prohibited from taxing under federal law or the state or federal constitutions are deductible under RCW 82.16.050(6).

(e) **Sales of commodities for resale.** Amounts derived from the sale of commodities to persons in the same public service business as the seller, for resale within this state, are deductible under RCW 82.16.050(2). This deduction is allowed only with respect to water distribution, gas distribution, or other public service businesses that furnish water, gas, or any other commodity in the performance of a public service business. For example, income from the sale of natural gas by a gas distributing company to natural gas companies located in Washington, who resell the gas to their customers, is deductible from the gas distributing company's gross income.

(f) **Services furnished jointly.** In general, costs of doing business are not deductible under the PUT. However, RCW

82.16.050(3) allows a deduction for amounts actually paid by a taxpayer to another person taxable under the PUT as the latter's portion of the consideration due for services furnished jointly by both, provided the full amount paid by the customer for the service is received by the taxpayer and reported as gross income subject to the PUT. The services must be furnished jointly by both the taxpayer and another person taxable under the PUT.

Example 1. Manufacturing Company hires ABC Transport (ABC) to haul goods from Tacoma to a manufacturing facility in Bellingham. ABC subcontracts part of the haul to XYZ Freight (XYZ) and has XYZ haul the goods from Tacoma to Everett, where the goods are loaded into ABC's truck and transported to Bellingham. Assuming all other requirements of the deduction are met, ABC may deduct the payments it makes to XYZ from its gross income as XYZ's portion of the consideration paid by Manufacturing Company for transportation services furnished jointly by both ABC and XYZ. See WAC 458-20-180 for additional information on motor carriers.

Example 2. Dakota Electricity Generator (DEG) sells electricity to Mod Industrial Firm (MIF). DEG hires Wheeler #1 to transmit the electricity from DEG to MIF. Wheeler #1 subcontracts a portion of the transmission service to Wheeler #2.

- Wheeler #1 and Wheeler #2 are jointly furnishing transmission services to DEG. Assuming all other requirements of the deduction are met, Wheeler #1 may claim a "services jointly provided" deduction in the amount paid to Wheeler #2.

- DEG may not claim a "services jointly provided" deduction for the amount DEG paid Wheeler #1. DEG and Wheeler #1 are *not* jointly furnishing a service to MIF. DEG is selling electricity to MIF, and Wheeler #1 is selling transmission services to DEG.

Example 3. City A's water department purchases water from City B's water department. City A sells the water to its customers. City A may not take a deduction for its payment to City B's water department as "services jointly provided." The sale of water by City A to its customers is not a service jointly provided to City A's customers by both City A and City B.

City B, however, may take a deduction under RCW 82.16.050(2) for its sales of water to City A since this is a sale of commodities to a person in the same public service business, for resale within this state.

(203) **Nontaxable amounts.** The following amounts are not considered taxable income.

(a) **Insurance claim amounts.** Amounts received from insurance companies in payment of losses, which are distinguishable from amounts received to settle contract payment disagreements.

(b) **Payment of damages.** Amounts received from individuals and others in payment of damages caused by them to the utility's plant or equipment.

(c) **Amounts from eminent domain proceedings or governmental action.** Amounts received as compensation for compensatory or involuntary taking of facilities of a public utility, by the exercise of eminent domain or governmental action, are considered liquidated damages.

Part III - Light and Power Business

(301) **Light and power business.** Public utility tax is imposed by RCW 82.16.020 on gross income from providing light and power services. Light and power business means the business of operating a plant or system for the generation, production or distribution of electrical energy for hire or sale and includes the wheeling of electricity for others. RCW 82.16.010.

(302) **Requirements for light and power businesses.** RCW 82.16.090 requires that customer billings issued by light and power businesses serving more than twenty thousand customers include the following information:

(a) The rates and amounts of taxes paid directly by the customer on products or services rendered by such business; ~~(and)~~

(b) The rate, origin, and approximate amount of each tax levied on the revenue of such business which has been added as a component of the amount charged to the customer. This does not include taxes levied by the federal government or taxes levied under chapters 54.28, 80.24, or 82.04 RCW; and

(c) The total amount of kilowatt-hours of electricity consumed for the most recent twelve-month period or other information that provides the customer their energy usage over a twelve-month period.

(303) **Wheeling of electricity.** "Wheeling of electricity" is the activity of delivering or distributing electricity owned by others using power lines and equipment of the person doing the wheeling. Income from wheeling electricity is subject to the PUT.

(304) **Exchanges of electricity by light and power businesses.** There is no specific exemption that applies to an "exchange" of electrical energy or its rights. However, exchanges of electrical energy between light and power businesses qualify for deduction in computing the PUT as sales of power to another light and power business for resale. RCW 82.16.050(11). An exchange is a transaction that is considered to be a sale and involves a delivery or transfer of energy or its rights by one party to another for which the second party agrees, subject to the terms and conditions of the agreement, to deliver electrical energy at the same or another time. Examples of deductible exchange transactions include, but are not limited to, the following:

(a) The exchange of electric power for electric power between one light and power business and another light and power business;

(b) The transmission of electric power by one light and power business to another light and power business pursuant to the agreement for coordination of operations among power systems of the Pacific Northwest executed as of September 15, 1964;

(c) The acquisition of electric power by the Bonneville Power Administration (BPA) for resale to its Washington customers in the light and power business;

(d) The residential exchange of electric power entered into between a light and power business and the administrator of the BPA pursuant to the Pacific Northwest Electric Power Planning and Conservation Act, P.L. 96-501, Sec. 5(c), 16 U.S.C. Sec. 839c. In some cases, power is not physically transferred, but the purpose of the residential exchange is for BPA to pay a "subsidy" to the exchanging utilities. These

subsidies are considered a nontaxable adjustment (rebate or discount) for purchases of power from BPA.

(305) **Exemptions.** The following exemptions are available for sales of electricity, and are in addition to the general exemptions found in Part II of this rule.

(a) **Sales of electricity to an electrolytic processor.** RCW 82.16.0421 provides an exemption for sales of electricity made by light and power businesses to chlor-alkali electrolytic processing businesses or sodium chlorate electrolytic processing businesses for the electrolytic process. This exemption, which is scheduled to expire ~~((June 30))~~ July 1, 2029, applies to sales of electricity ~~((made by))~~ occurring on or before December 31, 2028.

The exemption does not apply to amounts received from the remarketing or resale of electricity originally obtained by contract for the electrolytic process.

(i) **Exemption certificate required.** To claim the exemption, the chlor-alkali electrolytic processing business or the sodium chlorate electrolytic processing business must provide the light and power business with an exemption certificate. RCW 82.16.0421. A certificate can be obtained from the department's website at: dor.wa.gov.

(ii) **Annual tax performance report requirement.** RCW 82.16.0421 requires taxpayers receiving the benefit of this tax preference to file an annual tax performance report by May 31st of the year following any calendar year in which a taxpayer becomes eligible to claim the tax preference. See RCW 82.32.534 for more information on the annual tax performance report requirement for tax preferences.

(iii) **Qualification requirements.** To qualify all the following requirements must be met:

(A) The electricity used in the electrolytic process must be separately metered from the electricity used for the general operations of the business;

(B) The price charged for the electricity used in the electrolytic process must be reduced by an amount equal to the tax exemption available to the light and power business; and

(C) Disallowance of all or part of the exemption is a breach of contract and the damages to be paid by the chlor-alkali electrolytic processing business or the sodium chlorate electrolytic processing business is the amount of the tax exemption disallowed.

(b) **Sales of electricity to aluminum smelters.** RCW 82.16.0498 provides an exemption to be taken in the form of a credit. The credit is allowed if the contract for sale of electricity to an aluminum smelter specifies that the price charged for the electricity will be reduced by an amount equal to the credit. The exemption does not apply to amounts received from the remarketing or resale of electricity originally obtained by contract for the smelting process. The credit allowed is the same amount as the utility tax that would otherwise have been due under RCW 82.16.020.

~~((e) **BPA credits or funds.** Effective June 10, 2010, through June 30, 2015, RCW 82.04.310 exempted from the B&O tax credits or payments received by persons from the BPA, for the purpose of implementing energy conservation programs or demand side management programs. This exemption expired June 30, 2015, and credits or payments received on or after July 1, 2015, are subject to the B&O tax under the service and other activities classification.))~~

(306) **Deductions.** The following deductions are available for sales of electricity, and are in addition to the general deductions found in Part II of this rule.

(a) **Sales of electricity for resale or for consumption outside Washington.** Amounts derived from the production, sale, or transfer of electrical energy for resale within or outside the state of Washington or for consumption outside the state are deductible under RCW 82.16.050(11). These sales of electricity are also not subject to the manufacturing B&O tax. RCW 82.04.310.

(b) **Low density light and power businesses.** RCW 82.16.053 provides a deduction for light and power businesses having seventeen or fewer customers per mile of distribution power lines with retail power rates that exceed the state average power rate. The statute requires the department to determine the state average electric power rate each year and make this rate available to these businesses. This rate and additional information regarding this deduction can be found on the department's website at: dor.wa.gov.

(c) **Conservation - Electrical energy and gas.** RCW 82.16.055 provides deductions relating to the production or generation of energy from cogeneration or renewable resources, and for measures to improve the efficiency of energy end-use.

(i) **Restrictions.** Use of the deductions is subject to the following restrictions:

(A) They apply only to new facilities for the production or generation of energy from cogeneration or renewable energy resources or measures to improve the efficiency of energy end-use on which construction or installation was begun after June 12, 1980, and before January 1, 1990;

(B) The measures or projects must be, at the time they are placed in service, reasonably expected to save, produce, or generate energy at a total incremental system cost per unit of energy delivered to end-use which is less than or equal to the incremental system cost per unit of energy delivered to end-use from similarly available conventional energy resources that utilize nuclear energy or fossil fuels and that the gas or electric utility could acquire to meet energy demand in the same time period; and

(C) They may be taken for a period not exceeding thirty years after the project is placed in operation. Any recurring costs determined to be eligible for deduction under this rule will cease to be eligible in whole or part at the time of termination of any energy conservation measure or project that originally authorized the deduction under RCW 82.16.055.

(ii) **What can be deducted.** The following may be deducted from a taxpayer's gross income:

(A) Amounts equal to the cost of production at the plant for consumption within the state of Washington of electrical energy produced or generated from cogeneration ~~((as defined in RCW 82.08.02565)),~~ as existing on June 30, 2006. For purposes of this deduction, "cogeneration" means the sequential generation of electrical or mechanical power and useful heat from the same primary energy source or fuel. See RCW 82.16.055; RCW 82.35.020 (prior to July 1, 2006, repeal);

(B) Amounts equal to the cost of production at the plant for consumption within the state of Washington of electrical energy or gas produced or generated from renewable energy resources such as solar energy, wind energy, hydroelectric

energy, geothermal energy, wood, wood wastes, municipal wastes, agricultural products and wastes, and end-use waste heat;

(C) Amounts expended to improve consumers' efficiency of energy end-use or to otherwise reduce the use of electrical energy or gas by the consumer;

(D) Amounts received by a utility as a contribution for the installation of service, and later refunded to the customer, are deductible from gross income at the time the amounts are refunded;

(E) Production expenses, eligible fuel costs and book depreciation of capital costs. Eligible fuel costs are all fuels if used for cogeneration or nonfossil fuel costs if not a cogeneration facility.

(307) **Credits.** Credit is available to light and power businesses that make incentive payments to eligible customers under the state energy performance standard early adoption incentive program. The credit is equal to the amount of incentive payments made under RCW 19.27A.220 in any calendar year, plus documented administrative costs not to exceed eight percent of the incentive payments.

(a) A light and power business may take the credit against its PUT liability, but the credit may not exceed the PUT that would normally be due. The credit may be claimed during the same calendar year that the light and power business made incentive payments and incurred administrative expenses, or carried forward for the following two calendar years. A light and power business may not carry the credit backward or receive a refund in the place of a credit.

(b) A business that claims credit in excess of the amount actually earned must repay the excess amount, in addition to interest accruing from the date the credit was claimed to the date of repayment. The department must provide written notice of the amount of any excess credit and interest due. The amount due must be paid within thirty days of the date of notice. The interest rate for excess credit claimed is equal to the rate for delinquent excise taxes under chapter 82.32 RCW. However, businesses do not need to repay excess credits claimed based on amounts reported to the business by the department of commerce under RCW 19.27A.220, if the amounts are later found abnormal or inaccurate through no fault of the business.

(c) The right to earn credits under this early adoption incentive program expires June 30, 2032.

Part IV - Gas and Water Distribution Businesses

(401) **Gas distribution.** Gross income received for the distribution of gas is taxable under PUT as provided by RCW 82.16.020. Gas distribution business means the business of operating a plant or system for the production or distribution for hire or sale of gas, whether manufactured or natural. RCW 82.16.010. See Part II for general exemptions and deductions that may apply to gas distribution businesses.

(402) **Requirements for gas distribution businesses.** RCW 82.16.090 requires that customer billings issued by gas distribution businesses serving more than twenty thousand customers include the following information:

(a) The rates and amounts of taxes paid directly by the customer on products or services rendered by such business; ~~(and)~~

(b) The rate, origin, and approximate amount of each tax levied on the revenue of such business which has been added as a component of the amount charged to the customer. This does not include taxes levied by the federal government or taxes levied under chapters 54.28, 80.24, or 82.04 RCW~~(-);~~ and

(c) The total kilowatt-hours of electricity consumed for the most recent twelve-month period or other information that provides the customer their energy usage over a twelve-month period.

(d) In addition to the general exemptions and deductions noted in Part II of this rule, the law provides the following:

(i) **Sales of natural or manufactured gas to aluminum smelters.** RCW 82.16.0498 provides an exemption to be taken in the form of a credit for sales of natural or manufactured gas to aluminum smelters. The credit is allowed if the contract for sale of gas to an aluminum smelter specifies that the price charged for the gas will be reduced by an amount equal to the credit. The credit allowed is the same amount as the utility tax that would otherwise have been due under RCW 82.16.020.

(ii) **Conservation - Energy from gas.** RCW 82.16.055 provides deductions for the production or generation of energy from cogeneration or renewable resources and for measures to improve the efficiency of energy end-use. See subsection (306)(c) of this rule.

(iii) **Compressed natural gas and liquefied natural gas used as transportation fuel.**

(A) Effective July 1, 2015, RCW 82.16.310 provides an exemption for sales by a gas distribution business of natural gas, compressed natural gas, and liquefied natural gas if the:

(I) Compressed natural gas or liquefied natural gas is sold or used as transportation fuel; or

(II) Buyer uses natural gas to manufacture compressed natural gas or liquefied natural gas to be sold or used as transportation fuel.

(B) Effective July 28, 2019, RCW 82.16.310 provides an exemption for sales by a gas distribution business of renewable natural gas.

(C) The buyer must provide and the seller must retain an exemption certificate. See the department's website at ~~(+)~~ dor.wa.gov for the "Purchases of Compressed or Liquefied Natural Gas for Use as Transportation Fuel" form. RCW 82.16.310.

(D) Although sales of natural gas, compressed natural gas, liquefied natural gas, and renewable natural gas may be exempt under RCW 82.16.310, the income from such sales may be subject to other taxes such as ~~((business and occupation))~~ B&O tax and retail sales tax.

(E) For the purpose of this subsection, "transportation fuel" means fuel for the generation of power to propel a motor vehicle as defined in RCW 46.04.320, a vessel as defined in RCW 88.02.310, or a locomotive or railroad car. "Renewable natural gas" is defined in RCW 54.04.190 to mean a gas consisting largely of methane and other hydrocarbons derived from the decomposition of organic material in landfills, wastewater treatment facilities, and anaerobic digesters.

(403) **Credits for gas distribution businesses.** Credit is available to gas distribution businesses that make incentive

payments to eligible customers under the state energy performance standard early adoption incentive program. The credit is equal to the amount of incentive payments made under RCW 19.27A.220 in any calendar year, plus documented administrative costs not to exceed eight percent of the incentive payments.

(a) A gas distribution business may take the credit against its PUT liability, but the credit may not exceed the PUT that would normally be due. The credit may be claimed during the same calendar year that the gas distribution business made incentive payments and incurred administrative expenses, or carried forward for the following two calendar years. A gas distribution business may not carry the credit backward or receive a refund in the place of a credit.

(b) A business that claims credit in excess of the amount actually earned must repay the excess amount, in addition to interest accruing from the date the credit was claimed to the date of repayment. The department must provide written notice of the amount of any excess credit and interest due. The amount due must be paid within thirty days of the date of notice. The interest rate for excess credit claimed is equal to the rate for delinquent excise taxes under chapter 82.32 RCW. However, businesses do not need to repay excess credits claimed based on amounts reported to the business by the department of commerce under RCW 19.27A.220, if the amounts are later found abnormal or inaccurate through no fault of the business.

(c) The right to earn credits under this early adoption incentive program expires June 30, 2032.

(404) **Water distribution.** PUT is imposed on amounts derived from the distribution of water under RCW 82.16.020. Water distribution business means the business of operating a plant or system for the distribution of water for hire or sale. RCW 82.16.010. In addition to the general exemptions and deductions noted in Part II of this rule, the law provides the following:

(a) **Water distribution by a nonprofit water association.** Amounts derived from the distribution of water by a nonprofit water association and used for capital improvements, related to the water distribution service, by that association are deductible under RCW 82.16.050(12).

(b) **Distribution of irrigation water.** Amounts derived from the distribution of water through an irrigation system, for irrigation purposes, are deductible under RCW 82.16.050 (7). The phrase "for irrigation purposes" means water used solely for nourishing plant life. Thus, when a water distribution business supplies potable water and some of the water is segregated and separately supplied solely for the nourishing of plant life as opposed to water supplied for domestic, municipal, or industrial uses, charges for such separately supplied irrigation water may be deducted from gross income subject to the PUT.

To meet the "irrigation system" requirement, a water distribution business must demonstrate that its distribution system has turnouts or similar connections for irrigation purposes that are separate from service hookups or similar connections for domestic, industrial, or municipal uses. Under the appropriate circumstances, the use of separate meters and cross-connection or back flow devices may be evidence of such separate connections.

WSR 20-24-065
PERMANENT RULES
DEPARTMENT OF REVENUE

[Filed November 24, 2020, 12:40 p.m., effective December 25, 2020]

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

Purpose: The department is amending the rules listed below to incorporate 2020 legislation, SB 6212 and ESHB 2588. SB 6212 allows a city or county levying a local property tax to fund affordable housing for very low-income households to expand the use of this money to fund affordable home ownership, owner-occupied home repair, and foreclosure prevention programs for low-income households. ESHB 2588 allows a county to dissolve a district that has been determined to be unauditible and impose a separate property tax levy or assessment if the county assumes responsibility for services previously provided by a dissolved district.

Citation of Rules Affected by this Order: Amending WAC 458-19-005 Definitions, 458-19-070 Five dollar and ninety cents statutory aggregate limit calculation, and 458-19-075 Constitutional one percent limit calculation.

Statutory Authority for Adoption: RCW 84.52.0502, 84.55.060.

Adopted under notice filed as WSR 20-19-071 on September 14, 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 3, 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 0, Repealed 0.

Date Adopted: November 24, 2020.

Atif Aziz
Rules Coordinator

AMENDATORY SECTION (Amending WSR 18-14-095, filed 7/3/18, effective 8/3/18)

WAC 458-19-005 Definitions. (1) **Introduction.** This rule contains definitions of the terms used throughout chapters 84.52 and 84.55 RCW and chapter 458-19 WAC in the administration of the system used to levy property taxes on taxable property within the state of Washington.

(2) Unless the context clearly requires otherwise, the following definitions apply:

(a) "Annexation" means one taxing district is adding territory or another dissimilar taxing district from outside the annexing taxing district's boundary and includes a merger of

a portion of a fire protection district under chapter 52.06 RCW with another fire protection district.

(b) "Assessed value" means the value of taxable property placed on the assessment rolls. The term is often abbreviated with the initials "A.V."

(c) "Certified property tax levy rate" means the tax rate calculated by the county assessor in accordance with law to produce the lawful amount of the certified property tax levy.

(d) "Consolidated levy rate" means:

(i) For purposes of the statutory aggregate dollar rate levy limit, the sum of all regular levy rates set for collection (~~(exclusive of)~~), not including the rates (set) for the state levy, ports, public utility districts, financing affordable housing (~~(for very low income households)~~) under RCW 84.52.105, acquiring conservation futures under RCW 84.34.230, criminal justice purposes under RCW 84.52.135, emergency medical care or emergency medical services under RCW 84.52.069, county ferry districts under RCW 36.54.130, the portions of the fire protection and regional fire protection service authority levies protected under RCW 84.52.125, the portion of metropolitan park district levies protected under RCW 84.52.120, transit-related purposes under RCW 84.52.140, the protected portion of the levies imposed under RCW 84.52.816 by flood control zone districts, and levies imposed by a regional transit authority under RCW 81.104.175; and

(ii) For purposes of the constitutional one percent limit, the sum of all regular levy rates set for collection (~~(exclusive of)~~), including the rates for the state levy, but not including the rates (set) for port and public utility districts.

(e) "Consolidation" means the act of combining two or more similar taxing districts into one taxing district; for example, the combination of two fire protection districts into one fire protection district.

(f) "Constitutional one percent limit" means the levy limit established by Article VII, section 2 of the state Constitution, which prohibits the aggregate of all tax levies on real and personal property from exceeding one percent (\$10 per \$1,000) of the true and fair value of property. This limit does not apply to excess levies, levies by port districts, and levies by public utility districts. This limit is also set forth in RCW 84.52.050.

(g) "Department" means the department of revenue of the state of Washington.

(h) "Excess property tax levy" or "excess levy" means a voter-approved property tax levy by or for a taxing district, other than a port or public utility district, that is subject to neither the statutory aggregate dollar rate limit set forth in RCW 84.52.043 nor the constitutional one percent limit set forth in Article VII, section 2 of the state Constitution and in RCW 84.52.050. It does not include regular levies allowed to exceed the levy limit with voter approval.

(i) "Improvement" means any valuable change in or addition to real property, including the subdivision or segregation of parcels of real property or the merger of parcels of real property.

(j) "Inflation" means the percentage change in the implicit price deflator for personal consumption expenditures for the United States as published for the most recent twelve-month period by the Bureau of Economic Analysis of the

Federal Department of Commerce by September 25th of the year before the taxes are payable; see RCW 84.55.005.

(k) "Joint taxing district" means a taxing district that exists in two or more counties; the term does not include the state nor does it include an intercounty rural library district.

(l) "Junior taxing district" means a taxing district other than the state, a county, a county road district, a city, a town, a port district, or a public utility district.

(m) "Levy limit" means:

(i) The statutorily established limit that prohibits a taxing district, other than the state, from levying regular property taxes for a particular year that exceed the limit factor multiplied by the highest amount of regular property taxes that could have been lawfully levied in the taxing district in any year since 1985, plus an additional dollar amount calculated by multiplying the regular property tax levy rate of that district for the preceding year, or the last year the taxing district levied taxes, by the increase in assessed value in the taxing district resulting from:

(A) New construction;

(B) Improvements to property;

(C) Increases in the assessed value of state assessed property; and

(D) Increases in assessed value due to the construction of wind turbine, solar, biomass, and geothermal facilities, if such facilities generate electricity and the property is not included elsewhere under chapter 84.55 RCW for purposes of providing an additional dollar amount. The property may be classified as real or personal property.

(ii) For purposes of the levy limit, the phrase "highest amount of regular property taxes that could have been lawfully levied" means the maximum amount that could have been levied by a taxing district under the limitation set forth in chapter 84.55 RCW unless the highest amount that could have been levied was actually restricted by the taxing district's statutory dollar rate limit. If the taxing district's levy was restricted by the statutory dollar rate limit, the highest amount that could have been lawfully levied is the amount produced by multiplying the assessed value of the taxing district by the statutory dollar rate.

(iii) For purposes of the levy limit, the regular property tax levy rate of the district for the preceding year, or the last year the taxing district levied taxes, may reflect a reduced rate due to the \$5.90 statutory aggregate limitation and/or the constitutional one percent limitation, if prorating occurred in the district.

The regular property tax levy rate of the district for the preceding year may also reflect a levy error or a levy error correction. If this occurs, the rate used will be the rate had the levy error or levy error correction not occurred. RCW 84.52.-085.

(iv) The levy limit for the state is the amount calculated under WAC 458-19-550.

(n) "Levy rate" means the dollar amount per thousand dollars of assessed value applied to taxable property within a taxing district and is calculated by dividing the total amount of a statutorily authorized levy of a taxing district by the total assessed value of that district and is expressed in dollars and cents per thousand dollars of assessed value.

(o) "Limit factor" means:

(i) For taxing districts with a population of less than ten thousand in the calendar year immediately prior to the assessment year, one hundred one percent;

(ii) For taxing districts, other than the state, having made a finding of substantial need in accordance with RCW 84.55.-0101, the lesser of the substantial need factor or one hundred one percent;

(iii) For all other taxing districts, excluding the state, the lesser of one hundred one percent or one hundred percent plus inflation; or

(iv) For the state, the limits described in WAC 458-19-550.

(p) "New construction" means the construction or alteration of any property for which a building permit was issued, or should have been issued, under chapter 19.27, 19.27A, or 19.28 RCW or other laws providing for building permits, which results in an increase in the value of the property.

(q) "Regular property tax levy" or "regular levy" means a property tax levy by or for a taxing district that is subject to the statutory aggregate dollar rate limit set forth in RCW 84.52.043, the constitutional one percent limit set forth in RCW 84.52.050, or is a levy imposed by or for a port district or a public utility district.

(r) "Regular property taxes" means those taxes resulting from regular property tax levies.

(s) "Senior taxing district" means the state (for support of common schools), a county, a county road district, a city, or a town.

(t) "Statutory aggregate dollar rate limit" or "statutory aggregate limit" means the maximum aggregate regular property tax levy rate within a county established by law for senior and junior taxing districts, other than the state. The current limit is \$5.90 per \$1,000 of assessed valuation. See RCW 84.52.043 and WAC 458-19-070.

(u) "Statutory dollar rate limit" means the maximum regular property tax levy rate established by law for a particular type of taxing district.

(v) "Substantial need limit factor" means a limit factor approved by a taxing district's legislative authority that exceeds one hundred percent plus inflation. This limit cannot exceed one hundred one percent.

~~((v) "Statutory dollar rate limit" means the maximum regular property tax levy rate established by law for a particular type of taxing district.))~~

(w) "Super majority" means a majority of at least three-fifths of the registered voters of a taxing district approving a proposition authorizing a levy, at which election the number of persons voting "yes" on the proposition constitutes three-fifths of a number equal to forty percent of the total votes cast in the taxing district in the last preceding general election; or by a majority of at least three-fifths of the registered voters of the taxing district voting on the proposition when the number of registered voters voting on the proposition exceeds forty percent of the total votes cast in the taxing district in the last preceding general election.

(x) "Tax code area" means a geographical area made up of one or more taxing districts, which is established for the purpose of properly calculating, collecting, and distributing taxes. Only one tax code area will have the same combination of taxing districts, with limited exceptions.

(y) "Taxing district" means the state and any county, city, town, port district, school district, road district, metropolitan park district, regional transit authority, water-sewer district, or other municipal corporation, having the power or legal authority to impose burdens upon property within the district on an ad valorem basis, for the purpose of obtaining revenue for public purposes, as distinguished from municipal corporations authorized to impose burdens, or for which burdens may be imposed for public purposes, on property in proportion to the increase in benefits received.

AMENDATORY SECTION (Amending WSR 18-04-006, filed 1/25/18, effective 2/25/18)

WAC 458-19-070 Five dollars and ninety cents statutory aggregate dollar rate limit calculation. (1) **Introduction.** This rule describes the process used to reduce or eliminate a levy rate when the assessor finds the statutory aggregate dollar rate limit exceeds five dollars and ninety cents. The aggregate of all regular levy rates of junior taxing districts and senior taxing districts, other than the state and other specifically identified districts, cannot exceed five dollars and ninety cents per thousand dollars of assessed value in accordance with RCW 84.52.043. When the county assessor finds that this limit has been exceeded, the assessor (~~recomputes~~) recalculates the levy rates and establishes a new consolidated levy rate (~~in the manner set forth~~) as described in RCW 84.52.010. (~~This rule describes the prorationing process used to establish a consolidated levy rate when the assessor finds the statutory aggregate levy rate exceeds five dollars and ninety cents. If prorationing is required,))~~ The five dollar and ninety cents statutory aggregate dollar rate limit is reviewed before the constitutional one percent limit.

(2) **Levies not subject to statutory aggregate dollar rate limit.** The following levies are not subject to the statutory aggregate dollar rate limit of five dollars and ninety cents per thousand dollars of assessed value:

(a) Levies by the state;

(b) Levies by or for port or public utility districts;

(c) Excess property tax levies authorized in Article VII, section 2 of the state Constitution;

(d) Levies by or for county ferry districts under RCW 36.54.130;

(e) Levies for acquiring conservation futures under RCW 84.34.230;

(f) Levies for emergency medical care or emergency medical services under RCW 84.52.069;

(g) Levies for financing affordable housing (~~for very low income households~~) under RCW 84.52.105;

(h) The portion of metropolitan park district levies protected under RCW 84.52.120;

(i) The portions of levies by fire protection districts and regional fire protection service authorities protected under RCW 84.52.125;

(j) Levies for criminal justice purposes under RCW 84.52.135;

(k) Levies for transit-related purposes by a county under RCW 84.52.140;

(l) The protected portion of the levies imposed under RCW 84.52.816 by flood control zone districts; and

(m) Levies imposed by a regional transit authority under RCW 81.104.175.

(3) ~~((Prorating under))~~ **Consolidated levy rate limitation.** RCW 84.52.010 ~~((sets forth the prorating))~~ explains the order in which the regular levies of taxing districts will be reduced or eliminated by the assessor to comply with the statutory aggregate dollar rate limit of five dollars and ninety cents per thousand dollars of assessed value. The order ~~((contained))~~ in the statute lists which taxing districts are the first to either reduce or eliminate their levy rate. Taxing districts that are at the same level ~~((within the prorating order))~~ are grouped together in tiers. Reductions or eliminations in levy rates are made on a pro rata basis within each tier of taxing district levies until the consolidated levy rate no longer exceeds the statutory aggregate dollar rate limit of five dollars and ninety cents.

As opposed to the order ~~((contained))~~ in RCW 84.52.010, which lists the taxing districts that are the first to have their levy rates reduced or eliminated, this rule is written in reverse order; that is, it lists the taxing districts that must be first either fully or partially funded. If the statutory aggregate dollar rate is exceeded, then the levy rates for taxing districts within a particular tier must be reduced or eliminated on a pro rata basis. The proration factor, which is multiplied by each levy rate within the tier, is obtained by dividing the dollar rate remaining available to the taxing districts in that tier as a group by the sum of the levy rates originally certified by or for all of the taxing districts within the tier.

(a) Step one: Total the aggregate regular levy rates requested by all affected taxing districts in the tax code area. If this total is less than five dollars and ninety cents per thousand dollars of assessed value, no ~~((prorating))~~ levy rate reduction or elimination is necessary. If this total levy rate is more than five dollars and ninety cents, the assessor must proceed through the following steps until the aggregate dollar rate is brought within that limit.

(b) Step two: Subtract from \$5.90 the levy rates of the county, including the rate of any separate property tax levy as described in RCW 84.55.135, and the county road district if the tax code area includes an unincorporated portion of the county, or the levy rates of the county and the city or town if the tax code area includes an incorporated area, as applicable.

(c) Step three: Subtract from the remaining levy capacity the levy rates, if any, for fire protection districts under RCW 52.16.130, regional fire protection service authorities under RCW 52.26.140 (1)(a), library districts under RCW 27.12.050 and 27.12.150, the first fifty cents per thousand dollars of assessed value for metropolitan park districts created before January 1, 2002, under RCW 35.61.210, and the first fifty cents per thousand dollars of assessed value for public hospital districts under RCW 70.44.060(6).

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levies within this tier must be reduced on a pro rata basis until the balance is zero. After prorating, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step four.

(d) Step four: Subtract from the remaining levy capacity the levy rates, if any, for fire protection districts under RCW 52.16.140 and 52.16.160, and regional fire protection service authorities under RCW 52.26.140 (1)(b) and (c). However, under RCW 84.52.125, a fire protection district or regional fire protection service authority may protect up to twenty-five cents per thousand dollars of assessed value of the total levies made under RCW 52.16.140 and 52.16.160, or 52.26.140 (1)(b) and (c) from ~~((prorating))~~ reduction or elimination.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levies within this tier must be reduced on a pro rata basis until the balance is zero. It is at this point that the provisions of RCW 84.52.125 come into play; that is, a fire protection district or regional fire protection service authority may protect up to twenty-five cents per thousand dollars of assessed value of the total levies made under RCW 52.16.140 and 52.16.160, or 52.26.140 (1)(b) and (c) from ~~((prorating))~~ reduction or elimination under RCW 84.52.043(2), if the total levies would otherwise be ~~((prorated))~~ reduced or eliminated under RCW 84.52.010 (3)(a)(iii) with respect to the five-dollar and ninety cent per thousand dollars of assessed value limit. After prorating, there is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(ii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step five.

(e) Step five: Subtract from the remaining levy capacity the levy rate, if any, for the first fifty cents per thousand dollars of assessed value of metropolitan park districts created on or after January 1, 2002, under RCW 35.61.210.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levies within this tier must be reduced on a pro rata basis until the balance is zero. After prorating, there is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step six.

(f) Step six: Subtract from the remaining levy capacity the twenty-five cent per thousand dollars of assessed value levy rate for metropolitan park districts if it is not protected under RCW 84.52.120, the twenty-five cent per thousand dollars of assessed value levy rate for public hospital districts under RCW 70.44.060(6), and the levy rates, if any, for cemetery districts under RCW 68.52.310 and all other junior taxing districts if those levies are not listed in steps three through five or seven or eight of this subsection.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levies within this tier must be reduced on a pro rata basis until the balance is zero. After prorationing, there is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step seven.

(g) Step seven: Subtract from the remaining levy capacity the levy rate, if any, for flood control zone districts other than the portion of a levy protected under RCW 84.52.816.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levies within this tier must be reduced on a pro rata basis until the balance is zero. After prorationing, there is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step eight.

(h) Step eight: Subtract from the remaining levy capacity the levy rates, if any, for city transportation authorities under RCW 35.95A.100, park and recreation service areas under RCW 36.68.525, park and recreation districts under RCW 36.69.145, and cultural arts, stadium, and convention districts under RCW 67.38.130.

(i) If the balance is zero, there is no remaining levy capacity for other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levies within this tier must be reduced on a pro rata basis until the balance is zero. After prorationing, there is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step nine.

(i) Step nine: Subtract from the remaining levy capacity the levy imposed, if any, for cultural access programs under RCW 36.160.080 until the remaining levy capacity equals zero.

(4) Example.

DISTRICT	ORIGINAL LEVY RATE	PRORATION FACTOR	FINAL LEVY RATE	REMAINING LEVY CAPACITY
County	1.8000	NONE	1.8000	
County Road	2.2500	NONE	2.2500	1.850
Library	.5000	NONE	.5000	
Fire	.5000	NONE	.5000	
Hospital	.5000	NONE	.5000	.350
Fire	.2000	NONE	.2000	.150
Cemetery	.1125	.4138	.0466	
Hospital	.2500	.4138	.1034	
Totals	6.1125		5.90	

(a) Beginning with the limit of \$5.90, subtract the original certified levy rates for the county and county road taxing districts leaving \$1.85 available for the remaining districts.

(b) Subtract the total of the levy rates for each district within the next tier: The library's \$.50, the fire district's \$.50 and the hospital's \$.50 = \$1.50, which leaves \$.35 available for the remaining districts.

(c) Subtract the fire district's additional \$.20 levy rate, which leaves \$.15 available for the remaining districts.

(d) The remaining \$.15 must be shared by the cemetery and the hospital districts within the next tier of levies. The cemetery district originally sought to levy \$.1125 and the hospital district sought to levy \$.25. The proration factor is arrived at by dividing the amount available (\$.15) by the original levy rates (\$.3625) requested within that tier resulting in a proration factor of .4138. Finally, the original levy rates in this tier of \$.1125 and \$.25 for the cemetery and hospital, respectively, are multiplied by the proration factor.

AMENDATORY SECTION (Amending WSR 18-04-006, filed 1/25/18, effective 2/25/18)

WAC 458-19-075 Constitutional one percent limit calculation. (1) **Introduction.** This rule explains how to determine if the constitutional one percent limit is being exceeded and the sequence in which levy rates will be reduced or eliminated in accordance with RCW 84.52.010 if the constitutional one percent limit is exceeded. The constitutional one percent calculation is made after the assessor ensures that the \$5.90 statutory aggregate dollar rate limit is not exceeded. The total amount of all regular property tax levies that can be applied against taxable property is limited to one percent of the true and fair value of the property in money. The one percent limit is stated in Article VII, section 2 of the state Constitution and the enabling statute, RCW 84.52.050. The constitutional one percent limit is based (~~upon~~) on the amount of taxes actually levied on the true and fair value of the property, not the dollar rate used in (~~computing~~) calculating property taxes. (~~This rule explains how to determine if the constitutional one percent limit is~~

being exceeded and the sequence in which levy rates will be reduced or eliminated in accordance with RCW 84.52.010 if the constitutional one percent limit is exceeded. The constitutional one percent calculation is made after the assessor ensures that the \$5.90 statutory aggregate dollar rate limit is not exceeded.)

(2) **Preliminary calculations.** After ~~((prorating))~~ reducing or eliminating the levy rates under RCW 84.52.043 (the ~~((five dollar and ninety cent per thousand dollars of assessed value))~~ \$5.90 statutory aggregate dollar rate limit) has occurred, make the following calculations to determine if the constitutional one percent limit is being exceeded:

(a) First, add together all ~~((the))~~ regular levy rates ~~((, except))~~ in the tax code area, including the rates for the state levy, but not the rates for port and public utility districts, ~~((in the tax code area,))~~ to arrive at a combined levy rate for that tax code area. "Regular levy rates" in this context means the levy rates that remain after ~~((prorating))~~ reduction or elimination under RCW 84.52.043 has occurred. The levy rates for port and public utility districts are not included in this ~~((computation))~~ calculation because they are not subject to the constitutional one percent limit. ~~((The rates for the following regular levies are used to calculate the combined levy rate of any particular tax code area:~~

(i) ~~The local aggregate rate specified in RCW 84.52.065 for the state levy;~~

(ii) ~~Levies by or for county ferry districts under RCW 36.54.130;~~

(iii) ~~Levies for acquiring conservation futures under RCW 84.34.230;~~

(iv) ~~Levies for emergency medical care or emergency medical services under RCW 84.52.069;~~

(v) ~~Levies for financing affordable housing for very low-income households under RCW 84.52.105;~~

(vi) ~~The portion of metropolitan park district levies protected under RCW 84.52.120;~~

(vii) ~~The portions of levies by fire protection districts and regional fire protection service authorities protected under RCW 84.52.125;~~

(viii) ~~Levies for criminal justice purposes under RCW 84.52.135;~~

(ix) ~~Levies for transit related purposes by a county with a population of one million five hundred thousand or more under RCW 84.52.140;~~

(x) ~~The protected portion of the levies imposed under RCW 84.52.816 by flood control zone districts; and~~

(xi) ~~Levies imposed, if any, by a regional transit authority under RCW 81.104.175.)~~

(b) Second, divide ten dollars by the higher of the real or personal property ratio of the county for the assessment year in which the levy is made to determine the maximum effective levy rate. If the combined levy rate exceeds the maximum effective levy rate, then the individual levy rates must be reduced or eliminated until the combined levy rate is equal to the maximum effective levy rate.

(3) ~~((Prorating))~~ **Constitutional one percent limit.** RCW 84.52.010 ~~((sets forth the prorating))~~ provides the order in which levy rates are to be reduced or eliminated when the constitutional one percent limit is exceeded.

As opposed to the order ~~((contained))~~ in RCW 84.52.-010, which lists the taxing districts that are the first to have their levy rates reduced or eliminated, this rule is written in reverse order; that is, it lists the taxing districts that must be first either fully or partially funded. If the constitutional one percent limit is exceeded, then the levy rates for taxing districts within a particular tier must be reduced or eliminated on a pro rata basis.

If the constitutional one percent limit is exceeded after performing the preliminary calculations described in subsection (2) of this rule, the following levies must be reduced or eliminated until the combined levy rate no longer exceeds the maximum effective levy rate:

(a) Step one: Subtract the aggregate levy rate calculated for the state for the support of common schools from the effective rate limit;

(b) Step two: Subtract the levy rates for the county, including the rate of any separate property tax levy as described in RCW 84.55.135, county road district, regional transit authority, and for city or town purposes;

(c) Step three: Subtract from the remaining levy capacity the levy rates for fire protection districts under RCW 52.16.-130, regional fire protection service authorities under RCW 52.26.140 (1)(a), library districts under RCW 27.12.050 and 27.12.150, the first fifty cents per thousand dollars of assessed value for metropolitan park districts created before January 1, 2002, under RCW 35.61.210, and the first fifty cents per thousand dollars of assessed value for public hospital districts under RCW 70.44.060(6).

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levies within this tier must be reduced on a pro rata basis until the balance is zero. After prorating, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step four.

(d) Step four: Subtract from the remaining levy capacity the levy rates for fire protection districts under RCW 52.16.-140 and 52.16.160, and regional fire protection service authorities under RCW 52.26.140 (1)(b) and (c).

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levies within this tier must be reduced on a pro rata basis until the balance is zero. After prorating, there is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step five.

(e) Step five: Subtract from the remaining levy capacity the levy rate for the first fifty cents per thousand dollars of assessed value of metropolitan park districts created on or after January 1, 2002, under RCW 35.61.210.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levy is reduced to the remaining balance from step four. There is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step six.

(f) Step six: Subtract from the remaining levy capacity the levy rates for all other junior taxing districts if those levies are not listed in steps three through five or steps seven through seventeen of this subsection.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levies within this tier must be reduced on a pro rata basis until the balance is zero. After prorationing, there is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step seven.

(g) Step seven: Subtract from the remaining levy capacity the levy rate for flood control zone districts other than the portion of a levy protected under RCW 84.52.816.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levy is reduced to the remaining balance in step six. There is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step eight.

(h) Step eight: Subtract from the remaining levy capacity the levy rates for city transportation authorities under RCW 35.95A.100, park and recreation service areas under RCW 36.68.525, park and recreation districts under RCW 36.69.-145, and cultural arts, stadium, and convention districts under RCW 67.38.130.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levies within this tier must be reduced on a pro rata basis until the balance is zero. After prorationing, there is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step nine.

(i) Step nine: Subtract from the remaining levy capacity the levy imposed, if any, for cultural access programs under RCW 36.160.080.

(i) If the balance is zero, there is no remaining levy capacity from any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, the levy is reduced to the remaining balance in step eight. There is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed to step ten.

(j) Step ten: Subtract from the remaining levy capacity the levy rate for the first thirty cents per thousand dollars for emergency medical care or emergency medical services under RCW 84.52.069.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levy is reduced to the remaining balance in step nine. There is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step eleven.

(k) Step eleven: Subtract from the remaining levy capacity the levy rates for levies used for acquiring conservation futures under RCW 84.34.230, financing affordable housing (~~(for very low income households)~~) under RCW 84.52.105, and any portion of a levy rate for emergency medical care or emergency medical services under RCW 84.52.069 in excess of thirty cents per thousand dollars of assessed value.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levies within this tier must be reduced on a pro rata basis until the balance is zero. After prorationing, there is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step twelve.

(l) Step twelve: Subtract from the remaining levy capacity the portion of the levy by a metropolitan park district with a population of one hundred fifty thousand or more that is protected under RCW 84.52.120.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the portion of the levy within this tier must be reduced to the remaining balance in step eleven. There is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step thirteen.

(m) Step thirteen: Subtract from the remaining levy capacity the levy rates for county ferry districts under RCW 36.54.130.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levy is reduced to the remaining balance in step twelve. There is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step fourteen.

(n) Step fourteen: Subtract from the remaining levy capacity the levy rate for criminal justice purposes imposed under RCW 84.52.135.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levy is reduced to the remaining balance in step thirteen. There is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step fifteen.

(o) Step fifteen: Subtract from the remaining levy capacity the levy rate for a fire protection district or regional fire protection service authority protected under RCW 84.52.125.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the portion of the levy within this tier must be reduced to the remaining balance in step fourteen. There is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step sixteen.

(p) Step sixteen: Subtract from the remaining levy capacity the levy rate for transit-related purposes by a county under RCW 84.52.140.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levy is reduced to the remaining balance in step fifteen. There is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step seventeen.

(q) Step seventeen: Subtract from the remaining levy capacity the protected portion of the levy imposed under RCW 84.52.816 by a flood control zone district until the remaining levy capacity equals zero.

WSR 20-24-066
PERMANENT RULES
DEPARTMENT OF REVENUE

[Filed November 24, 2020, 12:45 p.m., effective December 25, 2020]

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

Purpose: The department is amending the rules listed below to incorporate 2020 legislation, SSB 6319. This legislation changed the requirement that a person eligible for this exemption occupy their principal place of residence for more than six months, instead of more than nine months, each calendar year. This legislation also removed the requirement that an application for exemption contain the signature of two witnesses or the county assessor or county assessor's deputy.

Citation of Rules Affected by this Order: Amending WAC 458-16A-100 Senior citizen, disabled person, and disabled veteran exemption—Definitions, 458-16A-130 Senior citizen, disabled person, and disabled veteran exemption—Qualifications for exemption, and 458-16A-150 Senior citizen, disabled person, and disabled veteran exemption—Requirements for keeping the exemption.

Statutory Authority for Adoption: RCW 84.36.389, 84.36.865.

Adopted under notice filed as WSR 20-19-051 on September 10, 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 3, 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 0, Repealed 0.

Date Adopted: November 24, 2020.

Atif Aziz
Rules Coordinator

AMENDATORY SECTION (Amending WSR 20-04-017, filed 1/24/20, effective 2/24/20)

WAC 458-16A-100 Senior citizen, disabled person, and disabled veteran exemption—Definitions. (1) **Introduction.** This rule contains definitions of the terms used for the senior citizen, disabled person, and disabled veteran property tax exemption described in RCW 84.36.381 through 84.36.389.

(2) **Annuity.** "Annuity" means a series of long-term periodic payments, under a contract or agreement. It does not include payments for the care of dependent children. For purposes of this subsection, "long-term" means a period of more than one full year from the annuity starting date.

Annuity distributions must be included in "disposable income," as that term is defined in subsection (13) of this rule, regardless of whether the distributions are taxable under federal law. A one-time, lump sum, total distribution is not an "annuity" for purposes of this rule, and only the taxable portion that would be included in federal adjusted gross income should be included in disposable income.

(3) **Assessment year.** "Assessment year" means the year the assessor lists and values the principal residence for property taxes. The assessment year is the calendar year prior to the year the taxes are due and payable. The assessment year is the year before the claimant receives the reduction in their property taxes because of the senior citizen, disabled person, and disabled veteran exemption.

(4) **Capital gain.** "Capital gain" means the amount the seller receives for property, other than inventory, over that seller's adjusted basis in the property. The seller's initial basis in the property is the property's cost plus taxes, freight charges, and installation fees. In determining the capital gain, the seller's costs of transferring the property to a new owner are also added onto the adjusted basis of the property. If the property is acquired in some other manner than by purchase, the seller's initial basis in the property is determined by the way the seller received the property (e.g., property exchange, payment for services, gift, or inheritance). The seller increases and decreases the initial basis of the property for events occurring between the time the property is acquired and when it is sold (e.g., increased by the cost of improvements made later to the property).

(5) **Claimant.** "Claimant" means a person claiming the senior citizen, disabled person, and disabled veteran exemption by filing an application with the assessor in the county where the property is located.

(6) **Combined disposable income.** "Combined disposable income" means the annual disposable income of the claimant, the claimant's spouse or domestic partner, and any cotenant occupying the residence for the assessment year, reduced by amounts paid by the claimant or the claimant's spouse or domestic partner for their:

- (a) Legally prescribed drugs;
- (b) Home health care;
- (c) Nursing home, boarding home, assisted living facility, or adult family home expenses; and
- (d) Health care insurance premiums for medicare under Title XVIII of the Social Security Act.

Disposable income is not reduced by these amounts if payments are reimbursed by insurance or a government program (e.g., medicare or medicaid). When the application is made, the combined disposable income is calculated for the assessment year.

(7) **Cotenant.** "Cotenant" means a person who resides with the claimant and who has an ownership interest in the residence.

(8) **County median household income.** "County median household income" means the median household income estimates for the state of Washington by county of the legal address of the principal place of residence, as published by the office of financial management.

(9) **Department.** "Department" means the state department of revenue.

(10) **Depreciation.** "Depreciation" means the annual deduction allowed to recover the cost of business or investment property having a useful life of more than one year. In limited circumstances, this cost, or a part of this cost, may be taken as a section 179 expense on the federal income tax return in the year business property is purchased.

(11) **Disability.** "Disability" means the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months. RCW 84.36.383; 42 U.S.C. Sec. 423 (d)(1) (A).

(12) **Disabled veteran.** "Disabled veteran" means a veteran of the armed forces of the United States entitled to and receiving compensation from the United States Department of Veterans Affairs (VA) at:

- (a) A combined service-connected evaluation rating of eighty percent or higher; or
- (b) A total disability rating for a service-connected disability without regard to evaluation percent.

(13) **Disposable income.** "Disposable income" means the adjusted gross income as defined in the Federal Internal Revenue Code of 2001, and as amended after that date, plus all the other items described below to the extent they are not included in or have been deducted from adjusted gross income:

- (a) Capital gains, other than gain excluded from the sale of a principal residence that is reinvested prior to the sale or within the same calendar year in a different principal residence;
- (b) Amounts deducted for loss;
- (c) Amounts deducted for depreciation;
- (d) Pension and annuity receipts;
- (e) Military pay and benefits other than attendant-care and medical-aid payments. Attendant-care and medical-aid payments are any payments for medical care, home health care, health insurance coverage, hospital benefits, or nursing home benefits provided by the military;
- (f) Veterans benefits other than:
 - (i) Attendant-care payments and medical-aid payments, defined as any payments for medical care, home health care, health insurance coverage, hospital benefits, or nursing home benefits provided by the VA;
 - (ii) Disability compensation, defined as payments made by the VA to a veteran because of a service-connected disability; and
 - (iii) Dependency and indemnity compensation, defined as payments made by the VA to a surviving spouse, child, or parent because of a service-connected death;
- (g) Federal Social Security Act and railroad retirement benefits;
- (h) Dividend receipts; and
- (i) Interest received on state and municipal bonds.

(14) **Domestic partner.** "Domestic partner" means a person registered under chapter 26.60 RCW or a partner in a legal union of two persons, other than a marriage, that was validly formed in another jurisdiction, and that is substantially equivalent to a domestic partnership under chapter 26.60 RCW.

(15) **Domestic partnership.** "Domestic partnership" means a partnership registered under chapter 26.60 RCW or a legal union of two persons, other than a marriage, that was validly formed in another jurisdiction, and that is substantially equivalent to a domestic partnership under chapter 26.60 RCW.

(16) **Excess levies.** "Excess levies" has the same meaning as provided in WAC 458-19-005 for "excess property tax levy."

(17) **Excluded military pay or benefits.** "Excluded military pay or benefits" means military pay or benefits excluded from a person's federal gross income, other than those amounts excluded from that person's federal gross income for attendant-care and medical-aid payments. Members of the armed forces receive many different types of pay and allowances. Some payments or allowances are included in their gross income for federal income tax purposes while others are excluded. Excluded military pay or benefits include:

- (a) Compensation for active service while in a combat zone or a qualified hazardous duty area;
- (b) Death allowances for burial services, gratuity payment to a survivor, or travel of dependents to the burial site;
- (c) Moving allowances;
- (d) Travel allowances;
- (e) Uniform allowances;
- (f) Group term life insurance payments made by the military on behalf of the claimant, the claimant's spouse or domestic partner, or the cotenant; and
- (g) Survivor and retirement protection plan premiums paid by the military on behalf of the claimant, the claimant's spouse or domestic partner, or the cotenant.

(18) **Family dwelling unit.** "Family dwelling unit" means the dwelling unit occupied by a single person, any number of related persons, or a group not exceeding a total of eight related and unrelated nontransient persons living as a single noncommercial housekeeping unit. The term does not include a boarding or rooming house.

(19) **Home health care.** "Home health care" means the treatment or care of either the claimant or the claimant's spouse or domestic partner received in the home. It must be similar to the type of care provided in the normal course of treatment or care in a nursing home, although the person providing the home health care services need not be specially licensed. The treatment and care must meet at least one of the following criteria. It must be for:

- (a) Medical treatment or care received in the home;
- (b) Physical therapy received in the home;
- (c) Food, oxygen, lawful substances taken internally or applied externally, necessary medical supplies, or special needs furniture or equipment (such as wheel chairs, hospital beds, or therapy equipment), brought into the home as part of a necessary or appropriate in-home service that is being rendered (such as a meals on wheels type program); or
- (d) Attendant care to assist the claimant, or the claimant's spouse or domestic partner, with household tasks, and such personal care tasks as meal preparation, eating, dressing, personal hygiene, specialized body care, transfer, positioning, ambulation, bathing, toileting, self-medication a person provides for himself or herself, or such other tasks as may be

necessary to maintain a person in their own home, but does not include improvements or repair of the home itself.

(20) **Income threshold 1.** "Income threshold 1" means:

(a) For taxes levied for collection in calendar years prior to 2020, a combined disposable income equal to thirty thousand dollars; and

(b) For taxes levied for collection in calendar year 2020 and thereafter, a combined disposable income equal to the greater of income threshold 1 for the previous year or forty-five percent of the county median household income, adjusted every five years beginning August 1, 2019, as provided in RCW 84.36.385(8).

(21) **Income threshold 2.** "Income threshold 2" means:

(a) For taxes levied for collection in calendar years prior to 2020, a combined disposable income equal to thirty-five thousand dollars; and

(b) For taxes levied for collection in calendar year 2020 and thereafter, a combined disposable income equal to the greater of income threshold 2 for the previous year or fifty-five percent of the county median household income, adjusted every five years beginning August 1, 2019, as provided in RCW 84.36.385(8).

(22) **Income threshold 3.** "Income threshold 3" means:

(a) For taxes levied for collection in calendar years prior to 2020, a combined disposable income equal to forty thousand dollars; and

(b) For taxes levied for collection in calendar year 2020 and thereafter, a combined disposable income equal to the greater of income threshold 3 for the previous year or sixty-five percent of the county median household income, adjusted every five years beginning August 1, 2019, as provided in RCW 84.36.385(8).

(23) **Lease for life.** "Lease for life" means a lease that terminates upon the death of the lessee.

(24) **Legally prescribed drugs.** "Legally prescribed drugs" means drugs supplied by prescription of a medical practitioner authorized to issue prescriptions by the laws of this state or another jurisdiction.

(25) **Life estate.** "Life estate" means an estate whose duration is limited to the life of the party holding it or of some other person.

(a) Reservation of a life estate upon a principal residence placed in trust or transferred to another is a life estate.

(b) Beneficial interest in a trust is considered a life estate for the settlor of a revocable or irrevocable trust who grants to themselves the beneficial interest directly in their principal residence, or the part of the trust containing their personal residence, for at least the period of their life.

(c) Beneficial interest in an irrevocable trust is considered a life estate, or a lease for life, for the beneficiary who is granted the beneficial interest representing their principal residence held in an irrevocable trust, if the beneficial interest is granted under the trust instrument for a period that is not less than the beneficiary's life.

(26) **Owned.** "Owned" includes "contract purchase" as well as "in fee," a "life estate," and any "lease for life." A residence owned by a marital community or domestic partnership or owned by cotenants is deemed to be owned by each spouse or each domestic partner or each cotenant.

(27) **Ownership by a marital community or domestic partnership.** "Ownership by a marital community or domestic partnership" means property owned in common by both spouses or domestic partners. Property held in separate ownership by one spouse or domestic partner is not owned by the marital community or domestic partnership. The person claiming the exemption must own the property for which the exemption is claimed. For example, a person qualifying for the exemption by virtue of age, disability, or disabled veteran status may not claim this exemption on a residence owned by the person's spouse or domestic partner as a separate estate outside the marital community or domestic partnership unless the claimant has a life estate in that separate estate.

(28) **Pension.** "Pension" generally means an arrangement providing for payments, not wages, to a person or to that person's family, who has fulfilled certain conditions of service or reached a certain age. Pension distributions may be triggered by separation from service, attainment of a specific age, disability, death, or other events. A pension may allow payment of all or a part of the entire pension benefit, in lieu of regular periodic payments.

(29) **Principal residence.** "Principal residence" means the claimant owns and occupies the residence as their principal or main residence. It does not include a residence used merely as a vacation home. For purposes of this exemption:

(a) Principal or main residence means the claimant occupies the residence for more than ~~((nine))~~ six months each calendar year.

(b) Confinement of the claimant to a hospital, nursing home, assisted living facility, adult family home, or home of a relative for the purpose of long-term care, does not disqualify the claim for exemption if:

(i) The residence is temporarily unoccupied;

(ii) The residence is occupied by the claimant's spouse or domestic partner or a person financially dependent on the claimant for support;

(iii) The residence is occupied by a caretaker who is not paid for watching the house;

(iv) The residence is rented for the purpose of paying nursing home, hospital, boarding home, or adult family home costs.

(c) For purposes of this subsection, "relative" means any individual related to the claimant by blood, marriage, or adoption.

(30) **Regular gainful employment.** "Regular gainful employment" means consistent or habitual labor or service which results in an increase in wealth or earnings.

(31) **Regular property tax levies.** "Regular property tax levies" has the same meaning as provided in WAC 458-19-005 for "regular property tax levy."

(32) **Replacement residence.** "Replacement residence" means a residence that qualifies for the senior citizen, disabled person, and disabled veteran exemption and replaces the prior residence of the person receiving the exemption.

(33) **Residence.** "Residence" means a single-family dwelling unit whether the unit is separate or part of a multi-unit dwelling and includes up to one acre of the parcel of land on which the dwelling stands. A residence also includes any additional property up to a total of five acres that comprises

the residential parcel if land use regulations require this larger parcel size. The term also includes:

(a) A share ownership in a cooperative housing association, corporation, or partnership if the person claiming exemption can establish that his or her share represents the specific unit or portion of the structure in which they reside.

(b) A single-family dwelling situated on leased lands and on lands the fee of which is vested in the United States, any instrumentality thereof including an Indian tribe, the state of Washington, or its political subdivisions.

(c) A mobile home which has substantially lost its identity as a mobile unit by being fixed in location on land owned or rented by the owner of the mobile home and placed on a foundation, posts, or blocks with fixed pipe connections for sewer, water or other utilities even though it may be listed and assessed by the county assessor as personal property. It includes up to one acre of the parcel of land on which the mobile home is located if both the land and mobile home are owned by the same qualified claimant. It also includes any additional property up to a total of five acres that comprises the residential parcel if land use regulations require this larger parcel size.

(34) **Veteran.** "Veteran" means a veteran of the armed forces of the United States.

(35) **Veterans benefits.** "Veterans benefits" means benefits paid or provided under any law, regulation, or administrative practice administered by the VA. Federal law excludes from gross income any veterans' benefits payments, paid under any law, regulation, or administrative practice administered by the VA.

AMENDATORY SECTION (Amending WSR 20-04-017, filed 1/24/20, effective 2/24/20)

WAC 458-16A-130 Senior citizen, disabled person, and disabled veteran exemption—Qualifications for exemption. (1) **Introduction.** This rule describes the qualifications a claimant must meet for the senior citizen, disabled person, and disabled veteran property tax exemption. To qualify for the exemption, the claimant must:

(a) Meet the age or disability requirements as described in subsection (2) of this rule;

(b) Have a combined disposable income below the prescribed amounts in subsection (3) of this rule; and

(c) Own the property and occupy it as their principal residence for more than ~~((nine))~~ six months each calendar year as described in subsection (4) of this rule.

(2) **Age, retirement, and disability requirements.** To qualify for the exemption:

(a) The senior citizen claiming the exemption must be age sixty-one or older on December 31st of the year in which the claim is filed. No proof is required concerning a senior citizen's employment status to claim the exemption.

(b) The disabled person claiming the exemption must be at the time of filing, retired from regular gainful employment and unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months.

(c) The veteran claiming the exemption must be at the time of filing, a veteran of the armed forces of the United States entitled to and receiving compensation from the United States Department of Veterans Affairs (VA) at:

(i) A combined service-connected evaluation rating of eighty percent or higher; or

(ii) A total disability rating for a service-connected disability without regard to evaluation percent.

(d) The surviving spouse or domestic partner of a claimant, who applies to continue their spouse's or domestic partner's exemption, must be age fifty-seven or older in the calendar year the claimant dies.

(3) **Income requirements.** To qualify for the exemption, the claimant's combined disposable income must be equal to or less than one of the three income thresholds described in RCW 84.36.383. The income thresholds, which are published by the department beginning August 1, 2019, and by March 1st every fifth year thereafter, will determine the amount of property tax the claimant is exempt from on their principal residence, as follows:

(a) Income threshold 3. A claimant's combined total disposable income that is equal to or less than income threshold 3 is exempt on their principal residence from the following:

(i) All excess property taxes;

(ii) The additional state property tax imposed under RCW 84.52.065(2); and

(iii) The portion of the regular property taxes authorized pursuant to RCW 84.55.050 to remove the property tax levy limit (lid lift) approved by the voters, if the legislative authority of the county or city imposing the additional regular property taxes identified this exemption in the ordinance placing the lid lift measure on the ballot.

(b) Income threshold 2. A claimant's combined total disposable income that is equal to or less than income threshold 2, but greater than income threshold 1, is exempt on their principal residence from the following:

(i) All property taxes listed under income threshold 3; and

(ii) All regular property taxes on the greater of fifty thousand dollars or thirty-five percent of the valuation of their residence, but not to exceed seventy thousand dollars of the valuation of their residence.

(c) Income threshold 1. A claimant's combined total disposable income that is equal to or less than income threshold 1, is exempt on their principal residence from the following:

(i) All property taxes listed under income threshold 3; and

(ii) All regular property taxes on the greater of sixty thousand dollars or sixty percent of the valuation of their residence.

(4) **Principal residence requirements.** To qualify for the exemption, the claimant must own the property and occupy it as their principal residence for more than ~~(nine)~~ six months each calendar year. The claimant must occupy the principal residence at the time of filing for each year the exemption is claimed. WAC 458-16A-100 and 458-16A-135 provide additional information regarding the definitions of principal residence and residence, and the supporting documents required to demonstrate the property is owned and occupied as a claimant's principal residence.

AMENDATORY SECTION (Amending WSR 20-04-017, filed 1/24/20, effective 2/24/20)

WAC 458-16A-150 Senior citizen, disabled person, and disabled veteran exemption—Requirements for keeping the exemption. (1) **Introduction.** This rule explains how and when a senior citizen, disabled person, or disabled veteran must file additional documents with the county assessor to maintain their senior citizen, disabled person, or disabled veteran property tax exemption. The rule also explains what happens when the claimant or the property no longer qualifies for the full exemption.

Examples. This rule includes examples that identify a set of facts and then state a conclusion. These examples should only be used as a general guide.

(2) **Continuing the exemption.** The claimant must keep the assessor up to date on their continued qualification for the senior citizen, disabled person, or disabled veteran property tax exemption. The claimant keeps the assessor up to date in the following three ways:

(a) First, the claimant submits a change in status form when any change affects their exemption. In some circumstances, the change in status form may be submitted by an executor, a surviving spouse, a surviving domestic partner, or a purchaser to notify the county of a change in status affecting the exemption;

(b) Second, the claimant submits a renewal application for the exemption either on the assessor's request following an amendment of the income requirement, or at least once every six years; and

(c) Third, the claimant applies to transfer the exemption when moving to a new principal residence.

(3) **Change in status.** When a claimant's circumstances change in a way that affects their qualification for the senior citizen, disabled person, or disabled veteran property tax exemption, the claimant must submit a completed change in status form to notify the county of this change.

(a) **When to submit form.** The claimant must submit a change in status form to the county assessor for any change affecting that person's qualification for the exemption within thirty days of the change in status. If the claimant is unable or fails to submit a change in status form, any subsequent property owner, including a claimant's estate or surviving spouse or surviving domestic partner, should submit a change in status form to avoid interest, and in some cases, the penalty for willfully claiming the exemption based on erroneous information.

(b) **Change in status described.** A change in status includes:

(i) Changes that affect the property (i.e., changes in land use regulations, new construction, boundary line changes, rentals, ownership changes, etc.);

(ii) Changes to the property owner's annual income that increase or decrease property taxes due under the exemption; or

(iii) Changes that affect the property owner's eligibility for the exemption (i.e., death, moving to a replacement residence, moving to another residence the claimant does not own, not meeting the occupancy requirements, marriage, registration in a state registered domestic partnership, improvement of a disability for a disabled person's claim, or a dis-

abled person entering into gainful employment, and in some cases, moving into a hospice, a nursing home, or any other long-term care facility).

(c) **Change in status form.** The county assessor designs the change in status form or adapts a master form obtained from the department. The county must obtain approval of the final form from the department before it may be distributed. The claimant, the claimant's agent, or a subsequent owner of the residence must use a change in status form from the county where the principal residence is located. The person filing the form must ~~((provide true and accurate))~~ certify that under penalty of perjury under the laws of Washington, the information on the change in status form is true and correct.

(d) **Obtaining the form.** The claimant or subsequent property owner may obtain the form from the county assessor where their principal residence is located. The form may also be obtained electronically if available from the county assessor and electronic filing has been approved by the department.

(e) **Failure to submit the form after a change in status occurs.** If the claimant fails to submit the change in status form, the application information relied on becomes erroneous for the period following the change in status. Upon discovery of the erroneous information, the assessor determines the status of the exemption, and notifies the county treasurer to collect any unpaid property taxes and interest from the claimant, the claimant's estate, or if the property has been transferred, from the subsequent property owner. The treasurer may collect any unpaid property taxes, interest, and penalties for a period not to exceed five years as provided under RCW 84.36.385. In addition, if a person willfully fails to submit the form or provides erroneous information, that person is liable for an additional penalty equal to one hundred percent of the unpaid taxes. If the change in status results in a refund of property taxes, the treasurer may refund property taxes and interest for up to the most recent three years after the taxes were due as provided in RCW 84.69.030.

(f) **Loss of the exemption.** As provided in RCW 84.40.-360, if the change in status disqualifies the applicant for the exemption, property taxes must be recalculated based on the current full assessed value of the property and paid from the date the change in status occurred.

For example, the exemption is lost when the claimant dies, unless the spouse or domestic partner also qualifies. The property taxes are then recalculated based on the full assessed value of the principal residence, on a pro rata basis, beginning the day following the date of the claimant's death through the remainder of the year.

(g) **Loss of exemption on part of the property.** If a change in status results in the removal of a portion of the property from the exemption, property taxes on that portion are no longer exempt and must be recalculated based on the current full assessed value of that portion of the property and paid from the date the change in status occurred.

For example, a property owner subdivides their one-acre lot into two parcels. The parcel that does not have the principal residence built on it will no longer qualify for the exemption. The property taxes are then recalculated based on the full assessed value of that parcel on a pro rata basis for the

remainder of the year beginning the day following the date the subdivision was given final approval.

(h) **Exemption reduced.** If the change in income reduces the exemption amount, the increased property taxes are due in the year following the change in income. For example, a claimant's income rises so that only excess levies and the state property tax levy imposed under RCW 84.52.-065(2) on the principal residence are exempt. The claimant's income is based on the assessment year. In the following year when the taxes are collected, the property taxes due will be calculated with only an exemption for excess levies and an exemption for the state property tax levy imposed under RCW 84.52.065(2).

(4) **Renewal application.** The county assessor must notify claimants when to file a renewal application with updated supporting documentation.

(a) **Notice to renew.** Written notice must be sent by the assessor and must be mailed at least three weeks in advance of the expected claimant response date.

(b) **When to renew.** The assessor must request a renewal application at least once every six years. The assessor may request a renewal application for any year the income requirements are amended in the statute after the exemption is granted.

(c) **Processing renewal applications.** Renewal applications are processed in the same manner as the initial application.

(d) **The renewal application form.** The county assessor may design the renewal application form or adapt either its own application form or the application master form obtained from the department. The county must obtain approval of the final renewal application form from the department before it may be distributed and used, and must also obtain authorization from the department if providing an option to file by electronic means. The property owner must use a renewal form from the county where the principal residence is located ~~((The claimant must provide true and accurate))~~ and must certify under penalty of perjury under the laws of Washington, the information on the renewal application form is true and correct.

(e) **Obtaining the renewal application.** The assessor provides the renewal application, in either paper or electronic form, to senior citizens, disabled persons, or disabled veterans claiming the exemption.

(f) **Failure to submit the renewal application.** If the property owner fails to submit the renewal application, the exemption is discontinued until the claimant reapplies for the exemption. The assessor may postpone collection activities and continue to work with an eligible claimant to complete an application for a missed period.

(5) **Transfer of the exemption.** When a claimant moves to a replacement residence, they must file a change in status form with the assessor in the county where their former principal residence was located. No claimant may receive an exemption on more than the equivalent of one residence in any year.

(a) **Exemption on the former residence.** The exemption on the former residence will apply through the closing date of the sale of the former residence, provided the former residence was the claimant's principal residence prior to the

date of closing. Property taxes must be recalculated based on the current full assessed value of the property and paid from the day following the date the sale closed. The taxes are paid from the remaining portion of the year.

(b) **Exemption on the replacement residence.** Upon moving, the claimant must reapply for the exemption in the county where the replacement residence is located if the claimant wants to continue receiving the exemption. The same application, supporting documents, and application process is used for the exemption on the replacement residence as when a claimant first applies. The exemption on the replacement residence applies on a pro rata basis in the year the claimant moves, but only from the latter of the date the claimant moves into the new principal residence or the day following the date the sale closes on their former residence.

WSR 20-24-067

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed November 24, 2020, 12:49 p.m., effective December 25, 2020]

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

Purpose: The department is amending WAC 458-02-200 to incorporate 2020 legislation, SSB 6632. This legislation changed the maximum amount of handling fees that may be charged by the department to process business license applications and business license renewal applications. Language was also added to this rule to address ESB 5402, which also passed during the 2020 legislative session. This legislation allowed the department to waive or cancel the business license delinquency fee if the licensee failed to renew timely and it was due to an undisputable [indisputable] error or failure by the department.

Citation of Rules Affected by this Order: Amending WAC 458-02-200 Business licensing service—Applications, licenses, renewals—Fees—Posting.

Statutory Authority for Adoption: RCW 19.02.030(3).

Adopted under notice filed as WSR 20-19-041 on September 10, 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 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 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 0, Repealed 0.

Date Adopted: November 24, 2020.

Atif Aziz
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-08-010, filed 3/20/14, effective 4/20/14)

WAC 458-02-200 Business licensing service—Applications, licenses, renewals—Fees—(~~Posting~~). (1) **Introduction.** This rule provides information about business license application handling fees, renewal application handling fees, and late filing delinquency fees as described in chapter 19.02 RCW. Information about ((the)) individual licenses ((that)) may be obtained from the business licensing service (BLS) of the department of revenue ((the)) department) and is available online at((: <http://bls.dor.wa.gov/>)) dor.wa.gov.

(2) **Definitions.** The definitions in RCW 19.02.020 apply to this rule.

(3) **What fee do I need to pay when applying for or renewing a license? Individual license fees vary depending on the license(s) for which you are applying or renewing.** The fee payable is the total amount of all applicable individual license fees, business license application handling fees, renewal application handling fees, late filing delinquency fees, and other penalty fees((, and handling fees, and)). The method of payment may ((include)) result in additional ((fees charged to cover)) charges for credit or debit card processing((. Licensing fees vary depending on the license(s) for which you are applying or renewing)).

((3)) (4) **What does the department do with the fees?** The department will distribute the fees received for individual licenses to the respective regulatory agencies. The application and renewal handling fees and the late filing delinquency fees support the operation of the BLS. Credit or debit card payment processing fees are charged and retained by a third-party payment processor.

((4)) (5) **When do I get my business license? ((The))** A business license will not be issued until the total fees ((payable is)) due are collected and all required information has been submitted. Some individual licenses require review and approval by the regulating authorities, and the business license will not be issued until the regulating authorities have approved them.

((5)) (6) **Can I get a refund?** The business license application handling fee and renewal application handling fee((s)) collected under RCW 19.02.075 are not refundable. The late filing delinquency fee under RCW 19.02.085 may not be waived or refunded unless the department determines that the licensee failed to renew a license by the business license expiration date due to an undisputable error or failure by the department that caused the late filing. When a license is denied or when an applicant withdraws an application, a refund of any other refundable portion of the total payment will be made in accordance with the applicable licensing laws.

((6)) (7) **What are the ((handling)) fees?** The business license application handling fee, renewal application handling fee, late renewal filing delinquency fee, and individual license fee amounts are as follows:

Type of ((handling)) fee:	Fee amount:
Business license application ((filing)) <u>handling fee to open the first business location of a new business, or to reopen a closed business:</u>	\$(49.00) 90.00
<u>Business license application handling fee for an existing business adding a new business location or requesting a city's license endorsement for a nonresident business:</u>	\$0
<u>Business license application handling fee for any other purpose(s):</u>	\$19.00
Business <u>license renewal application ((filing)) <u>handling fee:</u></u>	\$(41.00) 10.00
<u>Late renewal filing delinquency fee:</u>	Up to \$150.00 per business location. See subsection (9)(b) of this rule.
<u>Individual license fee:</u>	Varies depending on type of license.

~~((7))~~ (8) **What should I do with my business license?**

The business license document must be displayed in a conspicuous place at the business location for which the license is issued.

~~((8))~~ (9) **Do I need to renew my business license?**

(a) The various licenses endorsed and displayed on the business license may each have a requirement to be renewed periodically. The department ((~~will~~)) may prorate the terms of individual licenses ((~~issuance~~)) and associated fees as ((~~appropriate~~)) needed so that all requested licenses ((~~are renewed~~)) on the account are due for renewal at the same time.

(b) Licenses requiring renewal must be renewed by the expiration date or the department will assess a delinquency fee. The delinquency fee is calculated according to RCW 19.02.085 and must be paid by the licensee before a business license is renewed. Other regulatory agencies may also assess delinquency fees and/or penalties for late renewal, and may cancel the individual licenses for nonrenewal. Reissuance of individual licenses canceled for nonrenewal may require the filing of a new business license application.

WSR 20-24-068

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed November 24, 2020, 12:54 p.m., effective December 25, 2020]

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

Purpose: The following rules are being updated to reflect changes made in 2020 legislation, ESB 5402. Specifically,

the department is amending WAC 458-20-185 to update and correct citations, and update the name of the liquor and cannabis board (LCB). WAC 458-20-186 is amended [to] update the name of LCB and correct a definition. WAC 458-20-264 is amended to reflect the transition of the cigarette tax program from the special programs division to the taxpayer account administration division. It is also amended to correct and update a citation.

Citation of Rules Affected by this Order: Amending WAC 458-20-185, 458-20-186, and 458-20-264.

Statutory Authority for Adoption: RCW 82.24.550, 82.32.300, 82.01.060.

Adopted under notice filed as WSR 20-19-145 on September 23, 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 3, 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 3, 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 24, 2020.

Atif Aziz
Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-01-107, filed 12/18/14, effective 1/18/15)

WAC 458-20-185 Tax on tobacco products. (1) Introduction. This rule explains the tax liabilities of persons engaged in business as retailers or distributors of tobacco products other than cigarettes. The tax on tobacco products (also called "other tobacco products tax," "tobacco tax," or "OTP tax") is in addition to all other taxes owed, such as retailing or wholesaling business and occupation tax, sales tax, and litter tax. See WAC 458-20-186 for tax liabilities associated with taxes that apply exclusively to cigarettes.

(2) **Organization of rule.** The information provided in this rule is divided into five parts:

(a) Part I provides definitions and explains the tax liabilities of persons engaged in the business of selling or distributing tobacco products (excluding cigarettes) in this state.

(b) Part II explains wholesale and retail tobacco products vendor licensing requirements and responsibilities.

(c) Part III explains the requirements and responsibilities for persons transporting tobacco products in Washington.

(d) Part IV explains the recordkeeping requirements and enforcement of the tobacco tax.

(e) Part V describes the credits for tax paid and the procedures that must be followed to qualify for credit.

Part I - Tax on Tobacco Products (excluding Cigarettes)

(101) **Definitions.** For the purposes of this rule, the following definitions apply:

(a) **"Actual price"** means the total amount of consideration for which tobacco products are sold, valued in money, whether received in money or otherwise, including any charges by the seller necessary to complete the sale such as charges for delivery, freight, transportation, or handling.

(b) **"Affiliated"** means related in any way by virtue of any form or amount of common ownership, control, operation, or management.

(c) **"Board"** means the liquor ~~((control))~~ and cannabis board.

(d) **"Business"** means any trade, occupation, activity, or enterprise engaged in for the purpose of selling or distributing tobacco products in this state.

(e) **"Cigar"** means a roll for smoking that is of any size or shape and that is made wholly or in part of tobacco, irrespective of whether the tobacco is pure or flavored, adulterated or mixed with any other ingredient, if the roll has a wrapper made wholly or in greater part of tobacco. "Cigar" does not include a cigarette.

(f) **"Cigarette"** has the same meaning as in RCW 82.24.010.

(g) **"Department"** means the department of revenue.

(h) **"Distributor"** means:

(i) Any person engaged in the business of selling tobacco products in this state who brings, or causes to be brought, into this state from without the state any tobacco products for sale;

(ii) Any person who makes, manufactures, fabricates, or stores tobacco products in this state for sale in this state;

(iii) Any person engaged in the business of selling tobacco products from outside this state who ships or transports tobacco products to retailers in this state, to be sold by those retailers;

(iv) Any person engaged in the business of selling tobacco products in this state who handles for sale any tobacco products that are within this state but upon which tax has not been imposed. RCW 82.26.010 ~~((3)(a) through (d)))~~ (8). (For example, Sunshine Tobacco Shop ("Sunshine") buys cigars from an out-of-state manufacturer for resale to consumers in this state. The cigars are shipped to Sunshine via common carrier. In this instance, Sunshine is a distributor, must have both a tobacco distributor license and a tobacco products retailer license, and must pay the tobacco products tax on the products it brings into the state. However, if Sunshine bought its merchandise exclusively from in-state distributors that have paid the tobacco products tax on that merchandise, Sunshine would not be considered a distributor, and would need only a tobacco products retailer license.)

(i) **"Indian," "Indian country,"** and **"Indian tribe"** have the same meaning as defined in chapter 82.24 RCW and WAC 458-20-192.

(j) **"Indian distributor"** means a federally recognized Indian tribe or tribal entity that would otherwise meet the definition of distributor under RCW 82.26.010, if federally recognized Indian tribes and tribal entities were not excluded from the definition of "person" in RCW 82.26.010.

(k) **"Indian retailer"** means a federally recognized Indian tribe or tribal entity that would otherwise meet the

definition of retailer under RCW 82.26.010, if federally recognized Indian tribes and tribal entities were not excluded from the definition of "person" in RCW 82.26.010.

(l) **"Indian tribal organization"** means a federally recognized Indian tribe, or tribal entity, and includes an Indian distributor or retailer that is owned by an Indian who is an enrolled tribal member conducting business under tribal license or similar tribal approval within Indian country.

(m) **"Little cigar"** means a cigar that has a cellulose acetate integrated filter.

(n) **"Manufacture"** means the production, assembly, or creation of new tobacco products. For the purposes of this rule, "manufacture" does not necessarily have the same meaning as provided in RCW 82.04.120.

(o) **"Manufacturer"** means a person who manufactures and sells tobacco products.

(p) **"Manufacturer's representative"** means a person hired by a manufacturer to sell or distribute the manufacturer's tobacco products, and includes employees and independent contractors.

(q) **"Moist snuff"** means tobacco that is finely cut, ground, or powdered; is not for smoking; and is intended to be placed in the oral, but not the nasal, cavity.

(r) **"Person"** means any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, copartnership, joint venture, club, company, joint stock company, business trust, municipal corporation, the state and its departments and institutions, political subdivision of the state of Washington, corporation, limited liability company, association, society, any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise. The term excludes any person immune from state taxation, including the United States or its instrumentalities, and federally recognized Indian tribes and enrolled tribal members, conducting business within Indian country. For purposes of RCW 82.26.200(1), in the case of sales from distributors to retailers, as discussed in subsection (205) of this rule, "person" also includes any person immune from state taxation, such as the United States or its instrumentalities, and federally recognized Indian tribes and enrolled tribal members, conducting business within Indian country.

(s) **"Place of business"** means any place where tobacco products are sold or where tobacco products are manufactured, stored, or kept for the purpose of sale, including any vessel, vehicle, airplane, train, or vending machine.

(t) **"Retailer"** means any person engaged in the business of selling tobacco products to ultimate consumers.

(u) **"Retail outlet"** means each place of business from which tobacco products are sold to consumers.

(v) **"Sale"** means:

(i) Any transfer, exchange, or barter, in any manner or by any means whatsoever, for a consideration, and includes and means all sales made by any person.

(ii) The term "sale" includes a gift by a person engaged in the business of selling tobacco products, for advertising, promoting, or as a means of evading the provisions of ~~((this))~~ chapter 82.26 RCW.

(w) **"Store," "stores,"** or **"storing"** means the holding of tobacco products for later sale or delivery inside or outside this state. For example:

(i) Wilderness Enterprises ships products from out-of-state to its Kent warehouse. All products are intended for future sale to Alaska. Wilderness Enterprises is a distributor that stores tobacco products in this state. Wilderness Enterprises is liable for tobacco products tax on the products stored in this state. (However, see subsection (501)(a) of this rule for credits that may be available to Wilderness Enterprises for out-of-state sales.)

(ii) Cooper Enterprises brings tobacco products into this state for sale. It rents storage space from a third party, Easy Storage. Cooper Enterprises (the distributor), not Easy Storage, is responsible for the tax and reporting requirements on the stored tobacco products.

(x) **"Taxable sales price"** means:

(i) In the case of a taxpayer that is not affiliated with the manufacturer, distributor, or other person from whom the taxpayer purchased tobacco products, the actual price for which the taxpayer purchased the tobacco products. For purposes of this subsection, "person" includes both persons as defined in (r) of this subsection and any person immune from state taxation, including the United States or its instrumentalities, and federally recognized Indian tribes and enrolled tribal members, conducting business within Indian country;

(ii) In the case of a taxpayer that purchases tobacco products from an affiliated manufacturer, affiliated distributor, or other affiliated person, and that sells those tobacco products to unaffiliated distributors, unaffiliated retailers, or ultimate consumers, the actual price for which that taxpayer sells those tobacco products to unaffiliated distributors, unaffiliated retailers, or ultimate consumers. For purposes of this subsection, "person" includes both persons as defined in (r) of this subsection and any person immune from state taxation, including the United States or its instrumentalities, and federally recognized Indian tribes and enrolled tribal members, conducting business within Indian country;

(iii) In the case of a taxpayer that sells tobacco products only to affiliated distributors or affiliated retailers, the price, determined as nearly as possible according to the actual price for which other distributors sell similar tobacco products of like quality and character to unaffiliated distributors, unaffiliated retailers, or ultimate consumers;

(iv) In the case of a taxpayer that is a manufacturer selling tobacco products directly to ultimate consumers, the actual price for which the taxpayer sells those tobacco products to ultimate consumers;

(v) In the case of a taxpayer that has acquired tobacco products under a sale as defined in (v)(ii) of this subsection, the price, determined as nearly as possible according to the actual price for which the taxpayer or other distributors sell the same tobacco products or similar tobacco products of like quality and character to unaffiliated distributors, unaffiliated retailers, or ultimate consumers; or

(vi) In any case where (x)(i) through (v) of this subsection do not apply, the price, determined as nearly as possible according to the actual price for which the taxpayer or other distributors sell the same tobacco products or similar tobacco products of like quality and character to unaffiliated distributors, unaffiliated retailers, or ultimate consumers.

(y) **"Taxpayer"** means a person liable for the tax imposed by chapter 82.26 RCW.

(z) **"Tobacco products"** means cigars, cheroots, stogies, periques, granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco, snuff, snuff flour, cavendish, plug and twist tobacco, fine-cut and other chewing tobaccos, shorts, refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking, and any other product, regardless of form, that contains tobacco and is intended for human consumption or placement in the oral or nasal cavity or absorption into the human body by any other means, but does not include cigarettes as defined in RCW 82.24.010.

(aa) **"Unaffiliated distributor"** means a distributor that is not affiliated with the manufacturer, distributor, or other person from whom the distributor has purchased tobacco products.

(bb) **"Unaffiliated retailer"** means a retailer that is not affiliated with the manufacturer, distributor, or other person from whom the retailer has purchased tobacco products.

(102) **Imposition of tax.** The tobacco tax is imposed upon the sale, handling, or distribution of all tobacco products in this state. Taxes are imposed at the time the distributor (a) brings, or causes to be brought, into this state from without the state tobacco products for sale; (b) makes, manufactures, fabricates, or stores tobacco products in this state for sale in this state; (c) ships or transports tobacco products to retailers in this state, to be sold by those retailers; or (d) handles for sale any tobacco products that are within this state but upon which tax has not been imposed. RCW 82.26.020 (2). The distributor who first possesses the tobacco product for sale in this state is the distributor liable for the tax. RCW 82.26.030.

Examples. The following examples, while not exhaustive, illustrate some of the circumstances in which the tax is imposed. These examples should be used only as a general guide. The status of each situation must be determined after a review of all of the facts and circumstances.

(a) BET Distributors sells and ships tobacco products from Kentucky via common carrier to Surprise Enterprises in Washington. The tax is due from Surprise Enterprises, a licensed distributor, because it is the first possessor in Washington that holds the product for sale. However, BET Distributors must give the board notice of its intent to ship tobacco products into this state.

(b) BET Distributors sells and ships tobacco products in its own trucks from Kentucky to Jamie's Enterprises, a licensed distributor in Washington. The tax is due from BET Distributors, because it is the first possessor in Washington that holds the product for sale.

(c) Garden State Cigars is located in New Jersey. It ships its products to Washington retailers via common carrier. The retailers must be licensed as distributors and are liable for the tax. However, Garden State Cigars must give the board notice of its intent to ship tobacco products into this state.

(d) An Indian retailer located in Indian Country in Washington State sells tobacco products to Washington retailers who pick up the products in Indian Country and take it back to their retail outlets. The Washington retailers must be licensed as distributors and are liable for the tax. The Indian

retailer is not required to hold a state tobacco products retailer or distributor license. State-licensed distributors making retail sales to Indian retailers may claim a credit against the tax under RCW 82.26.110.

(103) **Rates.** The rate of the Washington state tobacco tax depends upon the tobacco product sold (cigars, other tobacco products, moist snuff, or little cigars) and is found in RCW 82.26.020.

(104) **Promotions.** Tobacco products sold, provided at a reduced cost, or given away for advertising or any other purpose are taxed in the same manner as if they were sold, used, consumed, handled, possessed, or distributed in this state. RCW 82.26.010 (18)(b).

Part II - Wholesale and Retail Tobacco Products Vendor Licensing Requirements and Responsibilities

(201) **License required.** No person may engage in the retail or wholesale distribution of tobacco products in this state without a license, except for any person immune from state taxation, including federally recognized Indian tribes and enrolled tribal members, conducting business within Indian country, and the United States or its instrumentalities.

(202) **Tobacco distributor license.** Prior to selling or distributing tobacco products from a stock of goods in Washington or to retailers in Washington, each distributor must first obtain a tobacco distributor license from the department through its business licensing service.

(a) **Background check.** Each distributor must undergo a criminal background check by the board before a license will be issued. RCW 82.26.150(3). See chapter 314-33 WAC for board standards. Failure to provide information sufficient to complete the background check may result in denial of the license.

(b) **Application.** Application for a license or renewal of a license is made on forms supplied by the department and must be accompanied by the annual license fee as provided in chapter 82.26 RCW. A tobacco distributor license is valid for one year from the date it is issued. The annual license fee is waived if the licensee has applied for or already has a cigarette wholesaler license.

(c) **Multiple locations.** If the distributor sells, intends to sell, or stores tobacco products at more than one place of business, whether temporary or permanent, a separate license with a license fee as provided in chapter 82.26 RCW is required for each additional place of business. Each license must be exhibited in the place of business for which it is issued.

(203) **Duties and responsibilities of licensed distributors.**

(a) **Sales restricted.** Distributors selling tobacco products in this state may sell tobacco products only to Washington retailers or distributors who have a current tobacco license, to other licensed distributors, the federal government or its instrumentalities, or to Indian tribal organizations.

(b) **Manufacturer's representatives.** Manufacturers selling tobacco products through manufacturer's representatives must provide the board a current list of the names and addresses of all such representatives and must ensure that the list provided to the board is kept current. RCW 82.26.210.

(204) **Tobacco products retailer license.** Prior to the retail sale or distribution of tobacco products, each retailer must first be issued a tobacco products retailer license from the department through its business licensing service.

(a) **Background check.** Each retailer must undergo a criminal background check by the board before a license will be issued. RCW 82.26.150(3). See chapter 314-33 WAC for board standards. Failure to provide information sufficient to complete the background check may result in denial of the license.

(b) **Application.** Application for a license or renewal of a license is made on forms supplied by the department and must be accompanied by the annual license fee as provided in chapter 82.26 RCW. A tobacco products retailer license is valid for one year from the date it is issued. The annual license fee is waived if the licensee has already applied for or already has a cigarette retailer license at the same business location.

(c) **Multiple locations.** If the retailer sells tobacco products at more than one place of business, whether temporary or permanent, a separate license with a license fee as provided in chapter 82.26 RCW is required for each additional place of business. Each license must be exhibited in the place of business for which it is issued.

(205) **Duties and responsibilities of retailers.** A retailer that obtains tobacco products from an unlicensed distributor or any other person that is not licensed under ~~((this))~~ chapter 82.26 RCW must be licensed both as a retailer and a distributor and is liable for the tax imposed under RCW 82.26.020 with respect to the tobacco products acquired from the unlicensed person that are held for sale, handling, or distribution in this state. For example, if a retailer buys tobacco products from an Indian retailer or an out-of-state wholesaler who does not have a tobacco distributor license, the retailer must obtain a distributor license and pay the tobacco tax due. An Indian retailer in Indian country is not required to hold a state tobacco products retailer or distributor license.

(206) **Licensing enforcement.** The board ~~((assumed))~~ is responsible for enforcing the licensing ~~((enforcement responsibilities for))~~ of tobacco products ~~((on July 1, 2009))~~. See chapters 314-33 and 314-34 WAC for the board's enforcement provisions on tobacco products.

Part III - Transporting Tobacco Products in Washington

(301) **Transportation of tobacco products restricted.**

(a) Other than as provided in (b) of this subsection, only licensed distributors or retailers in their own vehicles, or manufacturer's representatives authorized to sell or distribute tobacco products in this state, can transport tobacco products in this state. Individuals transporting the product must have a copy of a valid retailer's or distributor's license in their possession and evidence that they are representatives of the licensees. Individuals transporting tobacco products for sale must also have in their possession invoices or delivery tickets for the tobacco products that show the name and address of the consignor or seller, the name and address of the consignee or purchaser, and the quantity and brands of the tobacco products being transported. It is the duty of the distributor, retailer, or manufacturer responsible for the delivery or transportation of the tobacco products to ensure that all drivers,

agents, representatives, or employees have the delivery tickets or invoices in their possession for all such shipments.

(b) All other persons must give notice to the board in advance of transporting or causing tobacco products to be transported in this state for sale. This includes those transporting tobacco products in this state via common carrier. For example: Peg's Primo Cigars (PPC), a small out-of-state distributor, sells tobacco products to retailers in Washington. PPC ships the products via common carrier. Before placing the product in shipment to Washington, PPC must give notice to the board of the pending shipment. The notice must include the name and address of the consignor or seller, the name and address of the consignee or purchaser, the quantity and brands of the tobacco products being transported, and the shipment date.

Part IV - Recordkeeping and Enforcement

(401) **Books and records.** An accurate set of records showing all transactions related to the purchase, sale, or distribution of tobacco products must be retained. RCW 82.26.060, 82.26.070 and 82.26.080. All records must be preserved for five years from the date of the transaction.

(a) **Distributors.** Distributors must keep at each place of business complete and accurate records for that place of business. The records to be kept by distributors include itemized invoices of tobacco products held, purchased, manufactured, brought in or caused to be brought in from without the state or shipped or transported to retailers in this state, and of all sales of tobacco products. The itemized invoice for each purchase or sale must be legible and must show the seller's name and address, the purchaser's name and address, the date of sale, and all prices and discounts. Itemized invoices must be preserved for five years from the date of sale.

(b) **Retailers.** Retailers must secure itemized invoices of all tobacco products purchased. The itemized invoice for each purchase must be legible and must show the seller's name and address, the purchaser's name and address, the date of sale, and all prices and discounts. Itemized invoices must be preserved for five years from the date of sale. Retailers are responsible for the tax on any tobacco products for which they do not have invoices.

(402) **Reports and returns.** The department may require any person dealing in tobacco products in this state to complete and return forms, as furnished by the department, setting forth sales, inventory, shipments, and other data required by the department to maintain control over trade in tobacco.

(a) **Tax returns.** The tax is reported on the combined excise tax return that must be filed according to the reporting frequency assigned by the department. Detailed instructions for preparation of these returns may be obtained from the department.

(b) **Reports.**

(i) Retailers and distributors of tobacco products may be required to file a report with the department in compliance with the provisions of the National Uniform Tobacco Settlement when purchasing tobacco products (e.g., "roll your own tobacco") from certain manufacturers. See WAC 458-20-264 and chapter 70.157 RCW.

(ii) A person who sells, transfers, or ships for profit smokeless tobacco (as such term is defined in 15 U.S.C. Sec. 375) in interstate commerce, whereby such smokeless tobacco is shipped into Washington, or who advertises or offers such smokeless tobacco for sale, transfer, or shipment in this state, must file a report as required under 15 U.S.C. Sec. 376. This report is due no later than the tenth day of each calendar month and must include a memorandum or invoice covering all transactions and shipments of smokeless tobacco made into Washington during the previous calendar month.

(c) **Access to premises and records.** Retailers and distributors must allow department personnel free access to their premises to inspect the tobacco products on the premises and to examine the books and records for the business. For further details, see subsection (405) of this section.

(403) **Criminal provisions.** Chapter 82.26 RCW prohibits certain activities with respect to tobacco products. Persons handling tobacco within this state must refer to these statutes.

(404) **Search, seizure, and forfeiture.** Any tobacco products in the possession of a person selling tobacco in this state without a license or transporting tobacco products without the proper invoices or delivery tickets may be seized without a warrant by any agent of the department, agent of the board, or law enforcement officer of this state. In addition, all conveyances, including aircraft, vehicles, or vessels used to transport the illegal tobacco product may be seized and forfeited.

(405) **Enforcement.** Pursuant to RCW 82.26.121 and 66.44.010, enforcement officers of the board may enforce all provisions of the law with respect to the tax on tobacco products. Retailers and distributors must allow department personnel and enforcement officers of the board free access to their premises to inspect the tobacco products on the premises and to examine the books and records of the business. If a retailer fails to allow free access, or hinders, or interferes with department personnel and/or enforcement officers of the board, that retailer's registration certificate issued under RCW 82.32.030 is subject to revocation. Additionally, any licenses issued under chapter 82.26 or 82.24 RCW are subject to suspension or revocation by the department or board.

(406) **Penalties.** Penalties and interest may be assessed in accordance with chapter 82.32 RCW for nonpayment of tobacco tax.

Part V - Credits

(501) **Credits.**

(a) **Interstate and foreign sales.** A credit is available to distributors for tobacco products sold to retailers and wholesalers outside the state for resale. This credit may be taken only for the amount of tobacco products tax reported and previously paid on such products. RCW 82.26.110. No credit may be taken for a sale of tobacco products from a stock of goods in this state to a consumer outside the state.

(b) **Returned or destroyed goods.** A credit may be taken for tax previously paid when tobacco products are destroyed or returned to the manufacturer. Credits claimed against tax owed or as a refund of tax paid, must be supported by documentation.

(c) **Sales to the United States.** A credit is available to distributors for tobacco products sold to the United States or any of its agencies or instrumentalities.

(d) **Sales to Indian tribal organizations.** A credit is available to distributors for tobacco products sold to any Indian tribal organization.

(e) **Documentation.** Credits claimed against tax owed or as a refund of tax paid, must be supported by documentation. The department provides two documents to assist taxpayers in determining the amount of credits available - The Tobacco Products Tax Credit Worksheet and Claim for Credit of Tobacco Product Tax. See the department's website (dor.wa.gov) for more information.

AMENDATORY SECTION (Amending WSR 20-11-006, filed 5/8/20, effective 6/8/20)

WAC 458-20-186 Tax on cigarettes. (1) Introduction. This rule explains the tax liabilities of persons who sell, use, consume, handle, possess, or distribute cigarettes in Washington. The tax on cigarettes (also called the "cigarette tax") is in addition to all other taxes owed, such as retailing or wholesaling business and occupation tax, retail sales tax, use tax, and litter tax. See WAC 458-20-185 for tax liabilities associated with taxes that apply to tobacco products other than cigarettes.

(2) **Organization of rule.** The information provided in this rule is divided into eight parts:

(a) Part I explains the tax liabilities of persons who sell, use, consume, handle, possess, or distribute cigarettes in this state.

(b) Part II explains wholesale and retail cigarette vendor licensing requirements and responsibilities.

(c) Part III explains stamping requirements, cigarette tax rates, and refunds.

(d) Part IV describes the roll-your-own cigarette provisions.

(e) Part V describes the exemptions from the tax and the procedures that must be followed to qualify for exemption.

(f) Part VI explains the requirements and responsibilities for persons transporting cigarettes in Washington.

(g) Part VII explains the enforcement and administration of the cigarette tax.

(h) Part VIII explains requirements and responsibilities related to making sales or purchases of cigarettes in Indian country.

Part I - Tax on Cigarettes

(101) **In general.** Except as otherwise provided in chapter 82.24 RCW and this rule, the Washington state cigarette tax is due and payable by the first person who sells, uses, consumes, handles, possesses, or distributes the cigarettes in this state.

(102) **Definitions.** For the purposes of this rule, the following definitions apply:

(a) "Board" means the liquor ~~((control))~~ and cannabis board.

(b) "Business" includes all activities engaged in with the object of gain, benefit, or advantage to the taxpayer or to another person or class, directly or indirectly, including any

trade, occupation, activity, or enterprise engaged in for the purpose of selling or distributing cigarettes in this state.

(c) "Cigarette" means any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and irrespective of the tobacco being flavored, adulterated, or mixed with any other ingredient, where such roll has a wrapper or cover made of paper or any material, except where such wrapper is wholly or in the greater part made of natural leaf tobacco in its natural state. Cigarette includes a roll-your-own cigarette.

(d) "Cigarette paper" means any paper or any other material except tobacco, prepared for use as a cigarette wrapper.

(e) "Cigarette tube" means cigarette paper made into a hollow cylinder for use in making cigarettes.

(f) "Commercial cigarette-making machine" means a machine that is operated in a retail establishment and that is capable of being loaded with loose tobacco, cigarette paper or tubes, and any other components related to the production of roll-your-own cigarettes, including filters.

(g) "Department" means the department of revenue.

(h) "Governmental entity" means:

(i) The United States;

(ii) The state of Washington (state) including, its departments and institutions, as distinct from its corporate agencies or instrumentalities; and

(iii) Any municipal corporation or political subdivision of the state of Washington.

(i) "Indian tribal organization" means a federally recognized Indian tribe, or tribal entity, and includes an Indian wholesaler or retailer that is owned by an Indian who is an enrolled tribal member conducting business under tribal license or similar tribal approval within Indian country. For purposes of this rule, the terms "Indian," "Indian country," and "Indian tribe" have the same meaning as defined in WAC 458-20-192.

(j) "Manufacture" means the production, assembly, or creation of new cigarettes. For the purposes of this rule, "manufacture" does not necessarily have the same meaning as provided in RCW 82.04.120.

(k) "Manufacturer" means a person who manufactures and sells cigarettes.

(l) "Municipal corporation or political subdivision of the state of Washington" means any county, city, town, school district, fire protection district, or other authority identified as a municipal corporation or political subdivision of the state of Washington by statute and that qualifies for the property tax exemption provided by Article VII of the Washington state Constitution.

(m) "Person" means any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, copartnership, joint venture, club, company, joint stock company, business trust, municipal corporation, political subdivision of the state of Washington, corporation, limited liability company, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise and the United States or any instrumentality thereof.

(n) "Place of business" means any location where business is transacted with, or sales are made to, customers. The

term includes, but is not limited to, any vending machine and any vehicle, truck, vessel or the like at which sales are made.

(o) "Possession" means both:

(i) Physical possession by the purchaser; and

(ii) When cigarettes are being transported to or held for the purchaser or his or her designee by a person other than the purchaser, constructive possession by the purchaser or his or her designee, which constructive possession is deemed to occur at the location of the cigarettes being so transported or held.

(p) "Retailer" means every person, other than a wholesaler, who purchases, sells, offers for sale or distributes any one or more of the articles taxed herein, irrespective of quantity or amount, or the number of sales, and all persons operating under a retailer's registration certificate.

(q) "Roll-your-own cigarettes" means cigarettes produced by a commercial cigarette-making machine.

(r) "Sale" means any transfer of the ownership of, title to, or possession of property for a valuable consideration.

(s) "Stamp" means any stamp authorized by the state of Washington, including the stamp or stamps by use of which the cigarette tax is paid or identification is made of those cigarettes with respect to which no tax is imposed.

(t) "United States" means:

(i) The federal government, including the executive, legislative, and judicial branches, its departments, and federal entities exempt from state or local taxation by reason of specific federal statutory exemption.

The mere fact that an entity is a federal entity, such as an instrumentality of the federal government or a federal corporation, does not mean that the entity is immune from tax. The taxability of a federal entity depends on the benefits and immunities conferred upon it by Congress. Thus, to determine the current taxable status of federal entities, the relevant portion of the federal law should be examined.

(ii) "United States" does not include entities associated with, but not a part of the United States, such as the National Guard (an instrumentality of the state of Washington). Nor does it include entities contracting with the United States government to administer its programs.

(u) "Wholesaler" means every person who purchases, sells, or distributes cigarettes to retailers for the purpose of resale only.

(103) **Imposition of tax.** The cigarette tax is imposed on the first person to sell, use, consume, handle, possess, or distribute cigarettes in Washington. Please refer to subsection (302) of this rule for an explanation of the measure and rate of the tax.

(a) **Payment.** Payment of the cigarette tax is made through the purchase of stamps from banks authorized by the department to sell the stamps. Please refer to subsection (301) of this rule for an explanation of stamping requirements.

(b) **Possession of cigarettes in Washington state.**

(i) Every person (A) in possession of unstamped cigarettes in this state, and (B) not specifically exempt by law, is liable for payment of the cigarette tax as provided in chapter 82.24 RCW and this rule.

(ii) Active duty or retired military personnel, and their dependents, may purchase cigarettes for their own consumption on military reservations without paying the state tax (see

Part V). However, such persons are not permitted to give or resell those cigarettes to others.

(iii) Possession of unstamped and untaxed cigarettes, and possession of counterfeit cigarettes, are criminal offenses in this state. See Part VII.

Part II - Wholesale and Retail Cigarette Vendor Licensing Requirements and Responsibilities

(201) **License required.** No person, other than a governmental entity or an Indian tribal organization, may engage in the retail or wholesale distribution of cigarettes in this state without a license. Failure to obtain the required license prior to selling cigarettes at wholesale or retail is a criminal act. RCW 82.24.500.

(202) **Cigarette wholesaler license.** Prior to the sale or distribution of cigarettes at wholesale, each wholesaler must first obtain a cigarette wholesaler license from the department through its business licensing service.

(a) **Background check.** Each wholesaler must undergo a criminal background check by the board before a license will be issued. RCW 82.24.510. See chapter 314-33 WAC for board standards. Failure to provide information sufficient to complete the background check may result in denial of the license by the department.

(b) **Application.** Application for a license or renewal of a license is made on forms supplied by the department and must be accompanied by the annual license fee as provided in chapter 82.24 RCW. A cigarette wholesaler license is valid for one year from the date it is issued.

(c) **Multiple locations.** If the wholesaler sells, stores, or intends to sell, cigarettes at more than one place of business, whether temporary or permanent, a separate license with a license fee as provided in chapter 82.24 RCW is required for each additional place of business. Each license must be exhibited in the place of business for which it is issued.

(d) **Bond required.** Each licensed wholesaler must file a bond with the department in an amount determined by the department, but not less than five thousand dollars. The bond must be executed by the wholesaler as principal, and by a corporation approved by the department and authorized to engage in business as a surety company in this state, as surety. The bond must run concurrently with the cigarette wholesaler license.

(203) **Duties and responsibilities of licensed wholesalers.**

(a) **Stamps.** Except as provided in Parts IV and VIII of this rule, only licensed wholesalers may purchase or obtain cigarette stamps. Wholesalers are prohibited by law from selling or providing stamps to any other wholesaler or person.

(b) **Numbering.** Each roll of stamps, or group of sheets, has a separate serial number. The department keeps records of which wholesaler purchases each roll or group of sheets. Wholesalers and retailers of roll-your-own cigarettes are prohibited from possessing stamps other than those specifically issued to them.

(c) **Sales restricted.** Wholesalers selling cigarettes in this state may sell:

(i) Stamped or unstamped cigarettes to other Washington licensed cigarette wholesalers;

(ii) State tax stamped cigarettes only to Washington retailers who have a current cigarette retailer license or to an Indian tribal organization;

(iii) Tribal tax stamped cigarettes to Indian tribal organizations if the Indian tribal organization is subject to a cigarette compact between the state of Washington and the Indian tribe; or

(iv) Tax-exempt stamped cigarettes to an Indian tribal organization if the Indian tribe does not have a cigarette compact and is subject to the cigarette allocation per WAC 458-20-192.

(d) Unstamped cigarettes. Except as provided in Parts IV, V, and VIII of this rule, no person other than a licensed wholesaler may possess unstamped cigarettes in this state. Cigarettes are "unstamped" if they do not have a "stamp" as the term is defined in subsection (102)(s). Licensed wholesalers may possess unstamped cigarettes in this state only in the following circumstances:

(i) Licensed wholesalers may possess unstamped cigarettes for up to seventy-two hours after receipt; however, the cigarettes must be stamped on or before sale or transfer to any other party other than another licensed wholesaler. Licensed wholesalers may possess unstamped cigarettes for more than seventy-two hours after receipt if they receive prior written permission from the department to do so.

(ii) Licensed wholesalers may set aside, without stamping, that portion of their stock reasonably necessary for conducting sales to persons outside this state or to instrumentalities of the federal government, so long as the licensed wholesalers have furnished a surety bond in a sum equal to eighty percent of the amount of tax that would be affixed to the cigarettes that are set aside for the conduct of such business without affixing the stamps. All unstamped stock must be kept separate and apart from stamped stock.

(e) Transfers. Wholesalers in possession of unstamped cigarettes under subsection (204)(d) of this rule that are transferred by the wholesaler to another facility within this state must be transferred in compliance with RCW 82.24.250.

(204) **Cigarette retailer license.** Prior to the retail sale or distribution of cigarettes, each retailer must first be issued a cigarette retailer license from the department through its business licensing service. A license is required for each location at which cigarettes are sold at retail. Each license must be exhibited at the place of business for which it is issued.

(a) Background check. Each retailer must undergo a criminal background check by the board before a license will be issued. RCW 82.24.510. See chapter 314-33 WAC for board standards. Failure to provide information sufficient to complete the background check may result in denial of the license by the department.

(b) Application. Applications for a license or renewal of a license are made on forms supplied by the department and must be accompanied by the annual license fee as provided in chapter 82.24 RCW. A retail cigarette license is valid for one year from the date it is issued.

(c) Multiple locations. A separate license with a license fee as provided in chapter 82.24 RCW is required for each additional place of business at which the retailer operates.

Each license must be exhibited in the place of business for which it is issued.

(d) **Cigarette vending machine license.** Retailers who have received a cigarette retailer license and operate cigarette vending machines must obtain a cigarette vending machine license from the department and are required to pay an additional annual fee as set forth in chapter 82.24 RCW for each vending machine.

(e) **Commercial cigarette making machine license.** Retailers who have received a cigarette retailer license and tobacco products retailer license (see WAC 458-20-185) and operate commercial cigarette making machines must obtain a commercial cigarette making machine license from the department and are required to pay an additional annual fee as set forth in chapter 82.24 RCW for each location with a machine. Each license must be exhibited in the place of business for which it is issued.

Persons operating a commercial cigarette making machine are also subject to federal licensing requirements as a cigarette manufacturer. Please contact the Alcohol and Tobacco Tax and Trade Bureau of the United States Department of the Treasury.

(205) **Duties and responsibilities of retailers.**

(a) No retailer in this state may possess unstamped cigarettes unless he or she is also a licensed wholesaler.

(b) Retailers may obtain cigarettes only from cigarette wholesalers licensed by this state.

(206) **Additional requirements for manufacturers, wholesalers, and retailers.** Persons making wholesale or retail sales of cigarettes or manufacturing cigarettes must comply with all the provisions of chapters 70.155 and 70.158 RCW.

(207) **Licensing enforcement.** The board has the licensing enforcement responsibilities for cigarettes. See chapters 314-33 and 314-34 WAC for rules related to the board's enforcement of cigarette licensing.

Part III - Stamping, Rates, and Refunds

(301) **Cigarette stamps.**

(a) Stamps indicating payment of the cigarette tax must be affixed prior to any sale, use, consumption, handling, possession, or distribution of all cigarettes other than those specifically exempted as explained in Part V of this rule. The stamp must be affixed securely and applied one time (not to be reused) to the smallest container or package (such as a pack of cigarettes rather than a carton of cigarettes), unless the department, in its sole discretion, determines that it is impractical to do so. Stamps must be of the type authorized by the department and affixed in such a manner that they cannot be removed from the package or container without being mutilated or destroyed. Further, the stamps must be affixed in such manner as to permit the department to readily ascertain by inspection whether or not such tax has been paid. RCW 82.24.030(1). To that end, any package that is missing more than fifty percent of the stamp will be considered unstamped and untaxed.

(b) Licensed wholesalers may purchase state-approved cigarette stamps from authorized banks. Payment for stamps must be made at the time of purchase unless the wholesaler has prior approval of the department to defer payment and

furnishes a surety bond equal to the proposed monthly credit limit. Payments under a deferred plan are due within thirty days following purchase. Licensed wholesalers are compensated for affixing the stamps at the rate of \$6.00 per thousand stamps affixed (the "stamping allowance").

(302) Rates.

(a) The Washington state cigarette tax is imposed on a per cigarette basis. The rate of the tax is a combination of statutory rates found in chapter 82.24 RCW.

(b) When the rate of tax increases, the first person who sells, uses, consumes, handles, possesses, or distributes previously taxed cigarettes after the rate increase is liable for the additional tax.

(303) Refunds. Any person may request a refund of the face value of the stamps when the tax is not applicable and the stamps are returned to the department.

(a) Forms. The claim for refund must be filed on a form provided by the department. Documentation supporting the claim must be provided at the time the claim for refund is made as specified on the form. The department has the following forms for cigarette tax refund claims:

(i) Cigarette Tax Claim for Refund form. The form is for wholesalers who have returned stamped cigarettes to the manufacturer or are returning damaged or unused stamps to the department. An affidavit or certificate from the manufacturer for stamped cigarettes returned to the manufacturer for destruction or by an agent of the department verifying the voiding of stamps and authorizing the refund must accompany the claim for refund.

(ii) Tribal Member Claim for Refund form. This refund form is for Indian tribal members who purchase state stamped cigarettes as consumers within their own Indian country.

(b) Refunds may be claimed for stamped cigarettes if the stamps are:

(i) Damaged, or unfit for sale, and as a result are destroyed or returned to the manufacturer or distributor; or

(ii) Improperly or partially affixed through burns, jams, double stamps, stamped on carton flaps, or improperly removed from the stamp roll.

Refunds for stamped cigarettes will not include the stamping allowance.

Part IV - Roll-Your-Own Cigarettes

(401) Retailers.

(a) Licenses required. Only retailers licensed to sell cigarettes in Washington may provide consumers with access to a commercial cigarette making machine to make roll-your-own cigarettes. Retailers must also be licensed to sell tobacco products in Washington in order to sell the tobacco to make roll-your-own cigarettes.

(b) Stamped containers. A retailer may not allow consumers to use a commercial cigarette making machine unless the retailer provides the consumer with a box or similar container to transport the roll-your-own cigarettes affixed with cigarette stamps, and the consumer transports the cigarettes from the retailer only in such box or similar container. A retailer must provide cigarette tubes to a consumer in one or more twenty unit denominations. For purposes of this rule, a

"similar container" to a box is any package used to transport roll-your-own cigarettes.

(402) Stamps. Retailers of roll-your-own cigarettes must purchase and affix roll-your-own cigarette tax stamps for the cigarettes produced through the cigarette making machine. Retailers must contact the department's taxpayer account administration division to purchase the stamps. Stamps affixed must be for an amount equaling the cigarette tax due. Each cigarette tube or paper provided to the consumer is deemed a cigarette for purposes of imposing and collecting the cigarette tax. Stamps must be of the type authorized by the department and affixed in the manner provided for wholesalers in subsection (301)(a) of this rule. Retailers purchasing stamps for roll-your-own cigarettes are compensated for affixing the stamps with the stamping allowance provided under subsection (301)(b) of this rule, as well as an additional amount of five cents per cigarette to offset the cost of the tobacco products tax under chapter 82.26 RCW and WAC 458-20-185. See RCW 82.24.030(6) for additional rules relating to the affixing of stamps for roll-your-own cigarettes.

Part V - Exemptions

(501) In general. There are limited exemptions from the cigarette tax provided by law. This part discusses exemptions and the procedures that must be followed to qualify for an exemption for certain government sales and sales in interstate commerce. For exemptions for sales in Indian country, please see Part VIII of this rule.

(502) Government sales. The cigarette tax does not apply to the sale of cigarettes to:

(a) The United States Army, Navy, Air Force, Marine Corps, or Coast Guard exchanges and commissaries and Navy or Coast Guard ships' stores;

(b) The United States Veteran's Administration; or

(c) Any person authorized to purchase from the federal instrumentalities named in (a) or (b) above, if the cigarettes are purchased from the instrumentality for personal consumption.

(503) Interstate commerce. The cigarette tax does not apply to cigarettes sold to persons licensed as cigarette wholesalers in other states when, as a condition of the sale, the seller either delivers the cigarettes to the buyer at a point outside this state, or delivers the same to a common carrier with the shipment consigned by the seller to the buyer at a location outside this state.

Part VI - Transporting Cigarettes in Washington

(601) Transportation of cigarettes restricted. No person other than a licensed wholesaler may transport unstamped cigarettes in this state except as specifically set forth in RCW 82.24.250 and this rule, or as may be allowed under a cigarette compact under RCW 43.06.450 through 43.06.466. Licensed wholesalers transporting unstamped cigarettes in this state must do so only in their own vehicles unless they have given prior notice to the board of their intent to transport unstamped cigarettes in a vehicle belonging to another person.

(602) Notice required. Persons other than licensed wholesalers using their own vehicles intending to transport

unstamped cigarettes in this state must first give notice to the board of their intent to do so, except as provided under RCW 82.24.250(5), or other applicable law.

(603) **Transportation of unstamped cigarettes.** All persons transporting unstamped cigarettes must have in their actual possession invoices or delivery tickets for such cigarettes. The invoices or delivery tickets must show the true name and address of the consignee or purchaser, the true name and address of the consignor or seller, and the quantity and brands of the cigarettes transported. It is the duty of the person responsible for the delivery or transport of the cigarettes to ensure that all drivers, agents, or employees have the delivery tickets or invoices in their actual possession for all such shipments.

(604) **Purchase or consignment.** If the unstamped cigarettes transported pursuant to subsection (601), (602), or (603) of this rule are consigned to or purchased by any person in this state, that purchaser or consignee must be a person who is authorized by chapter 82.24 RCW to possess unstamped cigarettes in this state. As provided in RCW 82.24.250, the following persons are "authorized by chapter 82.24 RCW to possess unstamped cigarettes in this state":

(a) A wholesaler, licensed under Washington state law;

(b) The United States or an agency thereof;

(c) Any person, including an Indian tribal organization, who, after notice has been given to the board as provided in subsection (602) of this rule, brings or causes to be brought in the state unstamped cigarettes, if within seventy-two hours after receipt of the cigarettes the person has caused stamps to be affixed in accordance with subsection (301) of this rule;

(d) Any purchaser or consignee of unstamped cigarettes, including an Indian tribal organization, who has given notice to the board in advance of receiving unstamped cigarettes and who within seventy-two hours after receipt of the cigarettes has caused the stamps to be affixed in accordance with subsection (301) of this rule.

(605) **Compliance required.** No person may possess or transport cigarettes in this state unless the cigarettes have been properly stamped or that person has fully complied with the requirements of RCW 82.24.250 and this rule. Failure to comply with the requirements of RCW 82.24.250 is a criminal act. Cigarettes in the possession of persons who have failed to comply are deemed contraband and are subject to seizure and forfeiture under RCW 82.24.130.

Part VII - Enforcement and Administration

(701) **Books and records.** An accurate set of records showing all transactions related to the purchase, sale, or distribution of cigarettes must be retained. RCW 82.24.090. These records may be combined with those required in connection with the tobacco products tax (see WAC 458-20-185), if there is a segregation therein of the amounts involved. All records must be preserved for five years from the date of the transaction.

(702) **Reports and returns.** The department may require any person dealing with cigarettes in this state to complete and return forms, as furnished by the department, setting forth sales, inventory, and other data required by the department to maintain control over trade in cigarettes.

(a) Manufacturers and wholesalers selling stamped, unstamped, or untaxed cigarettes must submit a complete record of sales of cigarettes in this state monthly. This report is due no later than the fifteenth day of the calendar month and must include all transactions occurring in the previous month.

(b) Persons making sales of tax-exempt cigarettes to Indian tribes or Indian retailers pursuant to WAC 458-20-192 (9)(a) must transmit a copy of the invoice for each such sale to the taxpayer account administration division of the department prior to shipment.

(c) Wholesalers selling stamped cigarettes manufactured by nonparticipating manufacturers as defined in WAC 458-20-264 must report all such sales to the taxpayer account administration division no later than the twenty-fifth day of the calendar month and must include all transactions occurring in the previous month. See WAC 458-20-264, National Uniform Tobacco Settlement, for more details on this report.

(d) A person who sells, transfers, or ships for profit cigarettes (as ~~((such))~~ the term "cigarette" is defined in 15 U.S.C. Sec. 375) in interstate commerce, whereby such cigarettes are shipped into Washington, or who advertises or offers such cigarettes for sale, transfer, or shipment in this state, must file a report as required under 15 U.S.C. Sec. 376. This report is due no later than the 10th day of each calendar month and must include a memorandum or invoice covering all shipments of cigarettes made into Washington during the previous calendar month.

(e) Washington consumers who purchase cigarettes outside Washington state, or from some other source without paying Washington taxes, must pay both the cigarette tax and the use tax directly to the department of revenue within seventy-two hours of first possessing them in this state using a "Tax Declaration for Cigarettes" form, which may be obtained from the department.

(703) **Criminal provisions.** Chapter 82.24 RCW prohibits certain activities with respect to cigarettes. Persons handling cigarettes within this state must refer to these statutes. The prohibited activities include, but are not limited to, the following:

(a) **Transportation, possession, or receiving 10,000 or fewer cigarettes.** Transportation, possession or receiving 10,000 or fewer unstamped cigarettes is prohibited unless the notice requirements set forth in RCW 82.24.250 have been met; failure to meet those notice requirements is a gross misdemeanor. RCW 82.24.110 (1)(n) and (o).

(b) **Transportation, possession, or receiving more than 10,000 cigarettes.** Transportation, possession, or receiving more than 10,000 unstamped cigarettes is prohibited unless the notice requirements set forth in RCW 82.24.250 have been met; failure to meet those notice requirements is a felony. RCW 82.24.110(2).

(c) **Forgery or counterfeiting of stamps.** Alteration, fabrication, forgery, and counterfeiting of stamps are felonies. RCW 82.24.100.

(d) **Counterfeit cigarettes.** The manufacture, sale, or possession of counterfeit cigarettes in this state is a felony. RCW 82.24.570.

(704) **Search, seizure, and forfeiture.** Any collection agent of the department, enforcement officer of the board, or

law enforcement officer of this state may search for, seize, and subsequently dispose of unstamped cigarette packages and containers, counterfeit cigarettes, conveyances of all kinds (including aircraft, vehicles, and vessels) used for the transportation of unstamped and/or counterfeit cigarettes, and vending machines used for the sale of unstamped and/or counterfeit cigarettes. See RCW 82.24.130, et seq., for provisions relating to search, seizure, and forfeiture of property, possible redemption of property, and for treatment of such property in the absence of redemption.

(705) **Penalties.** RCW 82.24.120 provides a penalty for failure to affix the cigarette stamps or to cause the stamps to be affixed as required, or to pay any tax due under chapter 82.24 RCW. In addition to the tax deemed due, a penalty equal to the greater of \$10.00 per package of unstamped cigarettes or \$250.00 will be assessed. Interest is also assessed on the amount of the tax at the rate as computed under RCW 82.32.050(2) from the date the tax became due until the date of payment. The department may, in its sole discretion, cancel all or part of the penalty for good cause.

Part VIII - Sales in Indian Country

(801) **Definitions.** The definitions of "Indian," "Indian country," and "Indian tribe" in WAC 458-20-192 apply to this rule.

(802) **Cigarette compacts.** The state cigarette tax does not apply to cigarettes taxed by an Indian tribe in accordance with a cigarette compact under RCW 43.06.450 through 43.06.466. Cigarette wholesalers making sales in conformance with such compact will be required to obtain and affix a unique tribal stamp prior to sale. For additional information, wholesalers should contact the Indian tribe in question and the department.

(803) **Sales to Indians in Indian country.** The state cigarette tax does not apply to cigarettes sold in Indian country to tribal members of the particular tribe where the cigarettes are purchased for personal consumption. Sales of cigarettes to nonmembers are subject to the tax. Licensed wholesalers may sell exempt stamped cigarettes to tribal retailers in accordance with the requirements of WAC 458-20-192 and the instructions of the department. For reporting such sales, see subsection (702)(b) of this rule.

(804) **Refunds.** Indians who purchase, in their own Indian country, cigarettes to which state stamps have been affixed may apply for a refund under subsection (303) of this rule.

(805) **Licenses.** Indians and Indian tribes engaged in business in Indian country are not required to obtain a cigarette wholesaler or state-issued retailer license in order to purchase cigarettes from state-licensed wholesalers.

(806) **Preemption.** Application of the state cigarette tax may be preempted by tribal, federal, or state law, depending on the circumstance. For additional information, please consult WAC 458-20-192.

AMENDATORY SECTION (Amending WSR 00-23-117, filed 11/22/00, effective 12/23/00)

WAC 458-20-264 National Uniform Tobacco Settlement. (1) **Introduction.** In 1998 the state of Washington

entered into an agreement with cigarette manufacturers called the Master Settlement Agreement. Subsequent to entering into that agreement, the Legislature enacted chapter 393, Laws of 1999, codified as chapter 70.157 RCW. The statute requires the department of revenue (department) to promulgate regulations to ascertain the amount of excise tax paid by certain tobacco product manufacturers on "cigarettes" as that term is defined in RCW 70.157.010 and as set forth below. The department will do that by determining the number of cigarettes sold in Washington that were manufactured by nonparticipating tobacco product manufacturers. This rule explains the information to be reported to the department by retailers of tobacco products purchased from a person who is not required to file in Washington the report required by this rule, tobacco products distributors, and cigarette wholesalers. These reporting requirements are in addition to any other tax-reporting requirements.

(2) **Definitions.** For the purposes of WAC 458-20-264 the following definitions apply unless the context requires otherwise.

(a) "Affiliate" means a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. Solely for purposes of this definition, the terms "owns," "is owned" and "ownership" mean ownership of an equity interest, or the equivalent thereof, of ten percent or more, and the term "person" means an individual, partnership, committee, association, corporation or any other organization or group of persons.

(b) "Cigarette" means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains:

(i) Any roll of tobacco wrapped in paper or in any substance not containing tobacco; or

(ii) Tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or

(iii) Any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in clause (i) of this definition.

The term "cigarette" includes "roll-your-own" tobacco (i.e., any tobacco which, because of its appearance, type, packaging, or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes). For purposes of this definition of "cigarette," 0.09 ounces of "roll-your-own" tobacco shall constitute one individual "cigarette."

(c) "Cigarette wholesaler" means any person who is licensed pursuant to chapter 82.24 RCW.

(d) "Master Settlement Agreement" means the settlement agreement (and related documents) entered into on November 23, 1998, by the state and leading United States tobacco product manufacturers.

(e) "Nonparticipating manufacturer" means any manufacturer of cigarettes or "roll-your-own" tobacco who is not a signatory to the Master Settlement Agreement. A manufac-

turer ceases to be a nonparticipating manufacturer upon entering into the Master Settlement Agreement.

(f) "Tobacco products distributor" means any person who meets the definition((s)) of "distributor" found in RCW 82.26.010((3)) (8).

(g) "Tobacco product manufacturer" means an entity that after May 18, 1999, directly (and not exclusively through any affiliate):

(i) Manufactures cigarettes anywhere that such manufacturer intends to be sold in the United States, including cigarettes intended to be sold in the United States through an importer (except where such importer is an original participating manufacturer (as that term is defined in the Master Settlement Agreement) that will be responsible for the payments under the Master Settlement Agreement with respect to such cigarettes as a result of the provisions of subsections II(mm) of the Master Settlement Agreement and that pays the taxes specified in subsection II(z) of the Master Settlement Agreement, and provided that the manufacturer of such cigarettes does not market or advertise such cigarettes in the United States);

(ii) Is the first purchaser anywhere for resale in the United States of cigarettes manufactured anywhere that the manufacturer does not intend to be sold in the United States; or

(iii) Becomes a successor of an entity described in paragraph (i) or (ii) of this definition.

The term "tobacco product manufacturer" does not include an affiliate of a tobacco product manufacturer unless such affiliate itself falls within any of (i) through (iii) above.

(h) "Units sold" means the number of individual cigarettes sold and each 0.09 ounces of "roll-your-own" tobacco sold in the state by the applicable tobacco product manufacturer (whether directly or through a distributor, retailer or similar intermediary or intermediaries) during the year in question, as measured by excise taxes collected by the state on packs bearing the excise tax stamp of the state or "roll-your-own" tobacco containers.

(3) **Report required.** Every person who sells at retail tobacco products purchased from a person who is not required to file in Washington the report required by this subsection, every tobacco products distributor, and every cigarette wholesaler must file a report in a form and manner requested by the department. The report must be filed within the twenty-five days after the end of the month in which the sales were made. Mail the report to Department of Revenue, ((Special Programs Division)) Taxpayer Account Administration, P.O. Box ((47477)) 47476, Olympia, WA 98504-((7477)) 7476.

The report must include the information listed below with respect to units sold that were manufactured by a nonparticipating tobacco product manufacturer.

(a) The number of units sold;

(b) The brand of the unit;

(c) The name and address of the person from whom each unit was purchased;

(d) The name and address of the manufacturer of the unit, if known; and

(e) The name and address of the importer of the unit, if known, and whether that importer is the exclusive importer of the unit, if known.

Example: A retailer may need to file the report required in subsection (3) when purchasing roll-your-own tobacco over the internet or through a catalog from a vendor located outside of Washington, from an enrolled member of an Indian tribe located on a reservation in Washington, or in person from a vendor located in another state.

(4) **Recordkeeping requirement.** Every person who sells at retail tobacco products purchased from a person who is not required to file in Washington the report required by the rule, every tobacco products distributor, and every cigarette wholesaler, must maintain complete and accurate records to support the data supplied pursuant to paragraph (3) of this section.

(5) **Confidentiality.** The data filed pursuant to this rule is confidential taxpayer information and subject to the protection provided in RCW 82.32.330.

WSR 20-24-070

PERMANENT RULES

OFFICE OF THE

INSURANCE COMMISSIONER

[Filed November 24, 2020, 1:12 p.m., effective December 25, 2020]

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

Purpose: Amend one current regulation and create a new regulation to provide guidance on the limitations and use of implementation credits. The amended regulation is WAC 284-30-320 concerning definitions in trade practices and the new regulation is WAC 284-30-595 concerning unfair trade practices in the use of implementation credits. The anticipated effect of the proposed rules is to provide reference and guidance to insurers and implement the legislative amendments made to RCW 48.30.140 and 48.30.150 through passage of SHB 1075.

Citation of Rules Affected by this Order: New WAC 284-30-595; and amending WAC 284-30-320.

Statutory Authority for Adoption: RCW 48.02.060 and 48.43.715.

Adopted under notice filed as WSR 20-20-119 on October 6, 2020.

A final cost-benefit analysis is available by contacting Tabba Alam, P.O. Box 40260, Olympia, WA 98504-0260, phone 360-725-7170, email TabbaA@oic.wa.gov, website www.insurance.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 1, 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 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 24, 2020.

Mike Kreidler
Insurance Commissioner

AMENDATORY SECTION (Amending WSR 09-11-129, filed 5/20/09, effective 8/21/09)

WAC 284-30-320 Definitions. When used in this regulation, WAC 284-30-300 through 284-30-400:

(1) "Actual cash value" means the fair market value of the loss vehicle immediately prior to the loss.

(2) "Claimant" means, depending upon the circumstance, either a first party claimant, a third-party claimant, or both and includes a claimant's designated legal representative and a member of the claimant's immediate family designated by the claimant.

(3) "Comparable motor vehicle" means a vehicle that is the same make and model, of the same or newer model year, similar body style, with similar options and mileage as the loss vehicle and in similar overall condition, as established by current data. To achieve comparability, deductions or additions for options, mileage or condition may be made if they are itemized and appropriate in dollar amount.

(4) "Current data" means data within ninety days prior to or after the date of loss.

(5) "Documented expenses" means specific incurred expenses which are either paid by the group policyholder or paid on behalf of the group policyholder and for which documentation is obtained by the insurer. Such documented expenses include, but are not limited to, training, marketing, consumer awareness, information technology and computer programming and operations and administration. Such expenses must be specifically disbursed and actually incurred within the limits set forth in the policy or policy addendum.

(6) "File" means a record in any retrievable format, and unless otherwise specified, includes paper and electronic formats.

~~((6))~~ (7) "First party claimant" means an individual, corporation, association, partnership or other legal entity asserting a right as a covered person to payment under an insurance policy or insurance contract arising out of the occurrence of the contingency or loss covered by a policy or contract.

~~((7))~~ (8) "Group policyholder" means a policy owner under a group policy which provides coverage to an entire group of fifty-one or more individuals.

(9) "Insurance policy" or "insurance contract" mean any contract of insurance, indemnity, suretyship, or annuity issued, proposed for issuance, or intended for issuance by any insurer.

~~((8))~~ (10) "Insurer" means any individual, corporation, association, partnership, reciprocal exchange, interinsurer, ~~(Lloyds insurer,)~~ fraternal mutual insurer, fraternal mutual

life insurer, and any other legal entity engaged in the business of insurance, authorized or licensed to issue or who issues any insurance policy or insurance contract in this state. "Insurer" does not include health care service contractors, as defined in RCW 48.44.010, and health maintenance organizations, as defined in RCW 48.46.020.

~~((9))~~ (11) "Investigation" means all activities of the insurer directly or indirectly related to the determination of liabilities under coverages afforded by an insurance policy or insurance contract.

~~((10))~~ (12) "Loss vehicle" means the damaged motor vehicle or a motor vehicle that the insurer determines is a "total loss."

~~((11))~~ (13) "Motor vehicle" means any vehicle subject to registration under chapter 46.16 RCW.

~~((12))~~ (14) "Notification of claim" means any notification, whether in writing or other means acceptable under the terms of an insurance policy or insurance contract, to the insurer or its agent, by a claimant, which reasonably apprises the insurer of the facts pertinent to a claim.

~~((13))~~ (15) "Principally garaged area" means the place where the loss vehicle is normally kept, consistent with the applicable policy of insurance.

~~((14))~~ (16) "Shall describe any such payment" means the specific expenses that are described in the group policyholder's contract or subsequent contract addendum with the insurer and which establish the limits of acceptable expenses under the contract.

(17) "Third-party claimant" means any individual, corporation, association, partnership or other legal entity asserting a claim against any individual, corporation, association, partnership or other legal entity insured under an insurance policy or insurance contract of the insurer.

~~((15))~~ (18) "Total loss" means that the insurer has determined that the cost of parts and labor, plus the salvage value, meets or exceeds, or is likely to meet or exceed, the "actual cash value" of the loss vehicle. Other factors may be considered in reaching the total loss determination, such as the existence of a biohazard or a death in the vehicle resulting from the loss.

~~((16))~~ (19) "Written" or "in writing" means any retrievable method of recording an agreement or document, and, unless otherwise specified, includes paper and electronic formats.

NEW SECTION

WAC 284-30-595 Unfair practices regarding documented expenses for implementation credits. Under RCW 48.30.140 and 48.30.150, an insurer may issue payment to offset a documented expense that is incurred by a group policy holder while transferring from one policy to another policy provided that the insurer maintains evidence of the documented expense for three years from the date of the expense. An insurer will describe in the policy or in any such filing with the commissioner that the payment made to the group policy holder will not exceed the amount of the documented expenses.

(1) The failure to maintain and document an expense incurred by a group policy holder constitutes an unfair trade practice and is a violation of this chapter.

(2) Upon the commissioner's request, the insurer must provide proof of a documented expense in the form of paper or electronic copy.

WSR 20-24-073
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed November 24, 2020, 3:33 p.m., effective December 25, 2020]

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

Purpose: The department is amending WAC 388-466-0120 Refugee Cash Assistance (RCA), to align rule more closely with federal law and allow department of social and health services (DSHS) to extend RCA benefits beyond eight months when approved by the federal Office of Refugee Resettlement (ORR). RCA recipients are typically eligible to receive benefits for a maximum of eight months. However, during emergencies (such as the COVID-19 pandemic) federal law allows ORR to approve a blanket extension of the RCA eligibility period up to a thirty-six month maximum.

Emergency amendments to this rule have been in place since May 6, 2020, under WSR 20-10-118, and were extended under WSR 20-19-004, effective September 4, 2020.

Citation of Rules Affected by this Order: Amending WAC 388-466-0120.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.250.

Other Authority: 45 C.F.R. § 400.300; 8 U.S.C. § 1522 (e)(1).

Adopted under notice filed as WSR 20-20-088 on October 5, 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 24, 2020.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-03-137, filed 1/23/13, effective 2/23/13)

WAC 388-466-0120 Refugee cash assistance (RCA).

(1) Who can apply for refugee cash assistance (RCA)?

Anyone can apply to the department of social and health services (DSHS) for refugee cash assistance and have their eligibility determined within thirty days.

(2) How do I know if I qualify for RCA?

You may be eligible for RCA if you meet all of the following conditions:

(a) You have resided in the United States for less than eight months;

(b) You meet the immigration status requirements of WAC 388-466-0005;

(c) You meet the income and resource requirements under chapters 388-450 and 388-470 WAC;

(d) You meet the work and training requirements of WAC 388-466-0150; and

(e) You provide the name of the voluntary agency (VOLAG) which helped bring you to this country.

(3) What are the other reasons for not being eligible for RCA?

You may not be able to get RCA if you:

(a) Are eligible for temporary assistance for needy families (TANF) or supplemental security income (SSI); or

(b) Have been denied TANF due to your refusal to meet TANF eligibility requirements; or

(c) Are employable and have voluntarily quit or refused to accept a bona fide offer of employment within thirty consecutive days immediately prior to your application for RCA; or

(d) Are a full-time student in a college or university.

(4) If I am an asylee, what date will be used as an entry date?

If you are an asylee, your entry date will be the date that your asylum status is granted. For example: You entered the United States on December 1, 1999 as a tourist, then applied for asylum on April 1, 2000, interviewed with the asylum office on July 1, 2000 and were granted asylum on September 1, 2000. Your entry date is September 1, 2000. On September 1, 2000, you may be eligible for refugee cash assistance.

(5) If I am a victim of human trafficking, what kind of documentation do I need to provide to be eligible for RCA?

You are eligible for RCA to the same extent as a refugee if you are:

(a) An adult victim, eighteen years of age or older, you provide the original certification letter from the U.S. Department of Health and Human Services (DHHS), and you meet eligibility requirements in subsections (2)(c) and (d) of this section. You do not have to provide any other documentation of your immigration status. Your entry date will be the date on your certification letter;

(b) A child victim under the age of eighteen, in which case you do not need to be certified. DHHS issues a special letter for children. Children also have to meet income eligibility requirement;

(c) A family member of a certified victim of human trafficking, you have a T-2, T-3, T-4, or T-5 Visa (Derivative T-

Visas), and you meet the eligibility requirements in subsections (2)(c) and (d) of this section.

(6) Does getting a onetime cash grant from a voluntary agency (VOLAG) affect my eligibility for RCA?

No. In determining your eligibility for RCA DSHS does not count a onetime resettlement cash grant provided to you by your VOLAG.

(7) What is the effective date of my eligibility for RCA?

The date DSHS has sufficient information to make eligibility decision is the date your RCA begins.

(8) When does my RCA end?

(a) Your RCA ends on the last day of the eighth month starting with the month of your arrival to the United States. Count the eight months from the first day of the month of your entry into the United States. For example, if you entered the United States on May 28, 2000, May is your first month and December 2000 is your last month of RCA.

(b) If you get a job, your income will affect your RCA based on the TANF rules (chapter 388-450 WAC). If you earn more than is allowed by WAC 388-478-0035, you are no longer eligible for RCA.

(c) You may receive RCA benefits for more months if the federal office of refugee resettlement extends the eligibility period.

(9) Are there other reasons why RCA may end?

Your RCA also ends if:

(a) You move out of Washington state;

(b) Your unearned income and/or resources go over the maximum limit (WAC 388-466-0140); or

(c) You, without good cause, refuse to meet refugee employment and training requirements (WAC 388-466-0150).

(10) Will my spouse be eligible for RCA, if he/she arrives in the U.S. after me?

When your spouse arrives in the United States, DSHS determines his/her eligibility for RCA and/or other income assistance programs.

(a) Your spouse may be eligible for up to eight months of RCA based on his/her date of arrival into the United States.

(b) If you live together, you and your spouse are part of the same assistance unit and your spouse's eligibility for RCA is determined based on you and your spouse's combined income and resources (WAC 388-466-0140).

(11) Can I get additional money in an emergency?

If you have an emergency and need a cash payment to get or keep your housing or utilities, you may apply for the DSHS program called additional requirements for emergent needs (AREN). To receive AREN, you must meet the requirements in WAC 388-436-0002.

(12) What can I do if I disagree with a decision or action that has been taken by DSHS on my case?

If you disagree with a decision or action taken on your case by the department, you have the right to request a review of your case or an administrative hearing (WAC 388-02-0090). Your request must be made within ninety days of the date of the decision or action.

WSR 20-24-082
PERMANENT RULES
HEALTH CARE AUTHORITY

[Filed November 25, 2020, 9:58 a.m., effective December 26, 2020]

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

Purpose: This rule making is required to comply with the requirements in 2ESHB 1388 which changed the designation of the state behavioral health services, effective July 1, 2018. The single-bed certification rules were previously filed under Preproposal statement of inquiry WSR 18-14-080, and Emergency rule-making order WSR 19-13-057, as WAC 182-538D-0526.

The rule making under WSR 18-14-080 was finalized under WSR 19-24-063. Rule making for single bed certification was continued through a separate rule-making process, and this is the outcome of that effort. Single bed certification has also been renumbered from WAC 182-538D-0526 to WAC 182-300-0100 to reflect that it is not solely a service under medicaid.

Citation of Rules Affected by this Order: New WAC 182-300-0100.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160; and 2ESHB 1388 (chapter 201, Laws of 2018).

Adopted under notice filed as WSR 20-15-147 on July 21, 2020.

Changes Other than Editing from Proposed to Adopted Version:

Proposed/Adopted	WAC Subsection	Reason
WAC 182-300-0100		
Proposed	At the discretion of the health care authority (HCA) or HCA's designee, an exception may be granted to a facility that is not certified under chapter 246-341 WAC, for a person on a seventy-two-hour detention, a five-day detention pending a revocation proceeding, or a fourteen-day commitment in order to allow timely and appropriate treatment. An exception may also be granted for a maximum of thirty days to allow a community facility to provide treatment...	Changed "seventy-two-hour" to "initial" to align with new detention timelines. Changed "a maximum" to "renewable periods" to allow for more flexibility to accommodate patient needs.
Adopted	At the discretion of HCA or HCA's designee, an exception may be granted to a facility that is not certified under chapter 246-341 WAC, for a person on an seventy-two-hour <u>initial</u> detention, a five-day detention pending a revocation proceeding, or a fourteen-day commitment in order to allow timely and appropriate treatment. An exception may also be granted for a maximum <u>renewable periods</u> of thirty days to allow a community facility to provide treatment...	
WAC 182-300-0100(2)		
Proposed	(2) HCA or HCA's designee may issue a single bed certification to the facility for timely...	Added to improve clarity.
Adopted	(2) HCA or HCA's designee may issue a single bed certification <u>in writing</u> to the facility for timely...	
WAC 182-300-0100 (2)(b)(i)		
Proposed	(i) The person is expected to be ready for discharge from inpatient services within the next thirty days and being at a community facility would facilitate continuity of care, consistent with the person's individual treatment needs;	Changed to improve clarity.
Adopted	(i) The person is expected to be ready for discharge from inpatient services <u>at the facility referred to in subsection (2)(a)</u> within the next thirty days and being remaining at a <u>community that</u> facility would facilitate continuity of care, consistent with the person's individual treatment needs;	
WAC 182-300-0100 (2)(b)(ii)		
Proposed	(ii) The person can receive appropriate mental health treatment in a residential treatment facility, as defined in WAC 246-337-005, and the single bed certification will be only to that facility;	To improve consistency and remove redundancy.
Adopted	(ii) The person can receive appropriate mental health treatment in a residential treatment facility, as defined in WAC 246-337-005, and the single bed certification will be only to that facility;	
WAC 182-300-0100 (2)(b)(iii)		
Proposed	(iii) The person can receive appropriate mental health treatment in a hospital with a psychiatric unit, a psychiatric hospital, or a hospital that is willing and able to provide timely and appropriate mental health treatment, including a temporary health care facility that has a behavioral health component credentialed or approved by the department of health, and the single bed certification will apply only to that facility.	Changed "behavioral" to "mental" to more accurately reflect care being provided. Removed clause in last sentence for same reason cited for WAC 182-300-0100 (2)(b)(ii).

Proposed/Adopted	WAC Subsection	Reason
Adopted	(iii) The person can receive appropriate mental health treatment in a hospital with a psychiatric unit, a psychiatric hospital, or a hospital that is willing and able to provide timely and appropriate mental health treatment, including a temporary health care facility that has a <u>behavioral mental health</u> component credentialed or approved by the department of health, and the single bed certification will apply only to that facility.	
WAC 182-300-0100 (3)(a)		
Proposed	(a) Implement standards for administration that include written procedures to assure that a mental health professional, as defined in RCW 71.05.020, and licensed physicians are available for consultation and communication with both the person and the direct patient care staff;	To indicate that an advanced registered nurse practitioner or physician assistant is able to perform the consultation.
Adopted	(a) Implement standards for administration that include written procedures to assure that a mental health professional, as defined in RCW 71.05.020, and <u>a licensed physicians, psychiatric advanced registered nurse practitioner, or physician assistant</u> are available for consultation and communication with both the person and the direct patient care staff;	
WAC 182-300-0100 (3)(b)		
Proposed	(b) Use a plan of care/treatment. The person's medical or clinical record must contain documentation that:	To improve clarity.
Adopted	(b) Use a plan of care or treatment. The <u>person's</u> medical or clinical record must contain documentation that:	
WAC 182-300-0100 (3)(b)(ii)		
Proposed	(ii) A mental health professional, as defined in RCW 71.05.020, has had contact with each involuntarily detained person at least daily for the purposes of:	To make the reference specific to the individual and not refer to involuntary patients generally.
Adopted	(ii) A mental health professional, as defined in RCW 71.05.020, has had contact with each involuntarily detained <u>the person</u> at least daily for the purposes of:	
WAC 182-300-0100(4)		
Proposed	If a person requires medical services that are not generally available at a facility certified under this chapter, or at a state psychiatric hospital...	To cite the correct chapter.
Adopted	If a person requires medical services that are not generally available at a facility certified under this chapter <u>246-341 WAC</u> , or at a state psychiatric hospital...	
WAC 182-300-0100 (4)(a)		
Proposed	(a) The single bed certification request must adequately describe why the person requires medical services that are not available at a facility certified under this chapter, a state psychiatric hospital...	To cite the correct chapter.
Adopted	(a) The single bed certification request must adequately describe why the person requires medical services that are not available at a facility certified under this chapter <u>246-341 WAC</u> , a state psychiatric hospital...	

Proposed/Adopted	WAC Subsection	Reason
WAC 182-300-0100 (4)(c)(i)		
Proposed	(i) With the authorization of the hospital, and consistent with any applicable hospital policies and procedures...	Hospital is too narrow a term to be used here.
Adopted	(i) With the authorization of the hospital <u>hospital facility</u> , and consistent with any applicable hospital <u>hospital facility</u> policies and procedures...	
WAC 182-300-0100 (4)(c)(ii)		
Proposed	(ii) The hospital provides medical services and a plan...	Hospital is too narrow of a term to be used here.
Adopted	(ii) The hospital <u>hospital facility</u> provides medical services and a plan...	
WAC 182-300-0100 (4)(c)(ii)(A)		
Proposed	(A) The hospital providing services;	Hospital is too narrow of a term to be used here.
Adopted	(A) The hospital <u>hospital facility</u> providing services;	
WAC 182-300-0100 (4)(d)		
Proposed	(d) If a qualified medical professional determines that mental health treatment for the person is not clinically indicated, the requirements in (c) of this subsection...	
Adopted	(d) If a qualified medical professional determines that mental health treatment for the person is not clinically indicated <u>appropriate due to medical instability</u> , the requirements in (c) of this subsection...	
WAC 182-300-0100(5)		
Proposed	HCA or HCA's designee makes the decision and gives written notification to the requesting entity in the form of a single bed certification. The single bed certification must not contradict a specific provision of federal or state law.	To remove confusing and redundant language. Because of this change, the subsequent subsections were renumbered.
Adopted	HCA or HCA's designee makes the decision and gives written notification to the requesting entity in the form of a single bed certification. The single bed certification must not contradict a specific provision of federal or state law.	
WAC 182-300-0100(6)		
Proposed	(6) A person who receives services under a single bed certification under this section must be transferred: (a) To an evaluation and treatment facility if on a seventy-two hour detention, a five-day detention pending a revocation proceeding, or a fourteen-day commitment; or (b) To a state hospital if on a ninety- or one hundred eighty-day inpatient commitment, or if the person's less restrictive alternative order or conditional release was revoked, as soon as the attending physician considers the person medically stable and a bed becomes available, unless the treating facility consents to continue treatment and continued treatment in the current setting is consistent with the best clinical interests of the person.	To remove confusion and better reflect HCA policy. Because of this change, the subsequent subsections were renumbered.

Proposed/Adopted	WAC Subsection	Reason
Adopted	(4)(e) A person who receives services under a single bed certification under this section must be transferred: (a) To an evaluation and treatment facility if on a seventy-two hour detention, a five-day detention pending a revocation proceeding, or a fourteen-day commitment; or (b) To a state hospital if on a ninety- or one hundred eighty-day inpatient commitment, or if the person's less restrictive alternative order or conditional release was revoked, state hospital, or other placement as soon as the attending physician considers the person medically stable and a bed becomes available, unless the treating facility consents to continue treatment and continued treatment in the current setting is consistent with the best clinical interests of the person.	

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 0, Amended 0, Repealed 0.

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

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

Date Adopted: November 25, 2020.

Wendy Barcus
Rules Coordinator

Chapter 182-300 WAC
SINGLE BED CERTIFICATION

NEW SECTION

WAC 182-300-0100 Single bed certification. At the discretion of the health care authority (HCA) or HCA's designee, an exception may be granted to a facility that is not certified under chapter 246-341 WAC, for a person on an initial detention, a five-day detention pending a revocation proceeding, or a fourteen-day commitment in order to allow timely and appropriate treatment. An exception may also be granted for renewable periods of thirty days to allow a community facility to provide treatment to a person on a ninety- or one hundred eighty-day inpatient involuntary commitment order or to a person who has been revoked from a less restrictive alternative order or conditional release. For involuntarily detained or committed children, an exception may be granted to allow timely and appropriate treatment in a facility not certified under chapter 246-341 WAC, until the child's discharge from that setting to the community, or until they transfer to a bed in a children's long-term inpatient program (CLIP).

(1) In the case of an adult, the behavioral health administrative services organization (BH-ASO) or a designee must submit a written request for a single bed certification to HCA or HCA's designee. In the case of a child, the facility must submit the written request to HCA or HCA's designee and provide a copy to the BH-ASO. HCA or HCA's designee must receive and approve the request in order for a facility to accept a person for timely and appropriate treatment under this section. If HCA or HCA's designee has assumed the duties assigned to a nonparticipating BH-ASO, HCA or HCA's designee may designate an entity to request a single bed certification as described in this section.

(2) HCA or HCA's designee may issue a single bed certification in writing to the facility for timely and appropriate mental health treatment when the following requirements are met in each instance where such certification is sought for a person:

(a) The facility that is the site of the proposed single bed certification confirms that it is willing and able to provide directly, or by direct arrangement with other public or private agencies, timely and appropriate mental health treatment to the person for whom the single bed certification is sought; and

(b) The request for single bed certification describes why the person meets at least one of the following criteria:

(i) The person is expected to be ready for discharge from inpatient services at the facility referred to in (a) of this subsection within the next thirty days and remaining at that facility would facilitate continuity of care, consistent with the person's individual treatment needs;

(ii) The person can receive appropriate mental health treatment in a residential treatment facility, as defined in WAC 246-337-005; or

(iii) The person can receive appropriate mental health treatment in a hospital with a psychiatric unit, a psychiatric hospital, or a hospital that is willing and able to provide timely and appropriate mental health treatment, including a temporary health care facility that has a mental health component credentialed or approved by the department of health.

(3) In order to provide timely and appropriate mental health treatment, the facility receiving the single bed certification, or the public or private agency the facility has a direct arrangement with to provide mental health treatment, must:

(a) Implement standards for administration that include written procedures to assure that a mental health professional, as defined in RCW 71.05.020, and a licensed physician, psychiatric advanced registered nurse practitioner, or physician assistant are available for consultation and communication with both the person and the direct patient care staff;

(b) Use a plan of care or treatment. The person's medical or clinical record must contain documentation that:

(i) An individualized mental health treatment plan was developed, when possible, collaboratively with the person. If the person is unwilling or unable to participate in development of the plan, documentation must be made in the record. Development of this plan may include participation of a multidisciplinary team, a mental health professional as defined in RCW 71.05.020, or collaboration with members of the person's support system as identified by the person; and

(ii) A mental health professional, as defined in RCW 71.05.020, has had contact with the person at least daily for the purposes of:

(A) Observation and evaluation;

(B) Assessing whether the person is appropriate for release from involuntary commitment to accept treatment on a voluntary basis; and

(c) Have standards for administration and monitoring of medication, including psychiatric medications. A person has a right to make an informed decision regarding the use of antipsychotic medication consistent with RCW 71.05.215.

(4) If a person requires medical services that are not generally available at a facility certified under chapter 246-341 WAC, or at a state psychiatric hospital, or a facility that meets the requirements of subsections (2) and (3) of this section, HCA or HCA's designee may issue a single bed certification to that facility for the person as follows:

(a) The single bed certification request must adequately describe why the person requires medical services that are not available at a facility certified under chapter 246-341 WAC, a state psychiatric hospital, or a facility that meets the requirements of subsections (2) and (3) of this section;

(b) The facility that is the site of the requested single bed certification must confirm that it is willing and able to provide the medical services; and

(c) The facility has documented that one of the following has been met:

(i) With the authorization of the facility, and consistent with any applicable facility policies and procedures, the BH-ASO assigns a mental health professional to provide the person appropriate mental health treatment at the facility, including observation and evaluation, during the period of time the person is provided medical services; or

(ii) The facility provides medical services and a plan that addresses the person's mental health treatment needs until the person is medically stable and the BH-ASO or a designee identifies an appropriate facility for the person that is one of the following:

(A) The facility providing services;

(B) A facility that is certified as an evaluation and treatment (E&T) facility; or

(C) A facility that can meet the person's needs under the single bed certification criteria in this section.

(d) If a qualified medical professional determines that mental health treatment for the person is not appropriate due to medical instability, the requirements in (c) of this subsection do not apply. When the person is determined to be medically stable, the facility must ensure the requirements in (c) of this subsection are met;

(e) A person who receives services under a single bed certification under this section must be transferred to an evaluation and treatment facility, state hospital, or other placement as soon as the attending physician considers the person medically stable and a bed becomes available, unless the treating facility consents to continue treatment and continued treatment in the current setting is consistent with the best clinical interests of the person.

(5) HCA or HCA's designee may make site visits at any time to verify that the terms of the single bed certification are being met. Failure to comply with any term of this exception may result in corrective action. If HCA or HCA's designee determines that the violation places people in imminent jeopardy, immediate revocation of this exception can occur.

(6) The BH-ASO retains the responsibility for ensuring due process required by RCW 71.24.300 (6)(b).

(7) Neither a person nor a facility has fair hearing rights as defined under chapter 182-526 WAC regarding single bed certification decisions made by HCA or HCA's designee staff.

WSR 20-24-083

PERMANENT RULES

HEALTH CARE AUTHORITY

[Filed November 25, 2020, 10:52 a.m., effective January 1, 2021]

Effective Date of Rule: January 1, 2021.

Purpose: The agency is amending these sections to replace fee-for-service equivalency language with actual managed care payments.

Citation of Rules Affected by this Order: Amending WAC 182-548-1400, 182-548-1450, 182-549-1400, and 182-549-1450.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160; 42 U.S.C. 1396a (bb)(5)(A).

Adopted under notice filed as WSR 20-19-076 on September 15, 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 4, 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 4, Repealed 0.

Date Adopted: November 25, 2020.

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 17-12-016, filed 5/30/17, effective 7/1/17)

WAC 182-548-1400 Federally qualified health centers—Payment methodologies. (1) For services provided during the period beginning January 1, 2001, and ending December 31, 2008, the medicaid agency's payment methodology for federally qualified health centers (FQHC) was a prospective payment system (PPS) as authorized by 42 U.S.C. 1396a (bb)(2) and (3).

(2) For services provided beginning January 1, 2009, FQHCs have the choice to be reimbursed under the PPS or to be reimbursed under an alternative payment methodology (APM), as authorized by 42 U.S.C. 1396a (bb)(6). As required by 42 U.S.C. 1396a (bb)(6), payments made under the APM will be at least as much as payments that would have been made under the PPS.

(3) The agency calculates FQHC PPS encounter rates as follows:

(a) Until an FQHC's first audited medicaid cost report is available, the agency pays an average encounter rate of other

similar FQHCs within the state, otherwise known as an interim rate.

(b) Upon availability of the FQHC's first audited medicaid cost report, the agency sets FQHC encounter rates at one hundred percent of its total reasonable costs as defined in the cost report. FQHCs receive this rate for the remainder of the calendar year during which the audited cost report became available. The encounter rate is then increased each January 1st by the percent change in the medicare economic index (MEI).

(4) For FQHCs in existence during calendar years 1999 and 2000, the agency sets encounter rates prospectively using a weighted average of one hundred percent of the FQHC's total reasonable costs for calendar years 1999 and 2000 and adjusted for any increase or decrease in the scope of services furnished during the calendar year 2001 to establish a base encounter rate.

(a) The agency adjusts PPS base encounter rates to account for an increase or decrease in the scope of services provided during calendar year 2001 in accordance with WAC 182-548-1500.

(b) PPS base encounter rates are determined using audited cost reports, and each year's rate is weighted by the total reported encounters. The agency does not apply a capped amount to these base encounter rates. The formula used to calculate base encounter rates is as follows:

$$\text{Specific FQHC Base Encounter Rate} = \frac{(\text{Year 1999 Rate} \times \text{Year 1999 Encounters}) + (\text{Year 2000 Rate} \times \text{Year 2000 Encounters})}{(\text{Year 1999 Encounters} + \text{Year 2000 Encounters}) \text{ for each FQHC}}$$

(c) Beginning in calendar year 2002 and any year thereafter, encounter rates are increased by the MEI for primary care services, and adjusted for any increase or decrease in the FQHC's scope of services.

(5) The agency calculates the FQHC's APM encounter rate for services provided during the period beginning January 1, 2009, and ending April 6, 2011, as follows:

(a) The APM utilizes the FQHC base encounter rates, as described in subsection (4)(b) of this section.

(b) Base rates are adjusted to reflect any approved changes in scope of service in calendar years 2002 through 2009.

(c) The adjusted base rates are then increased by each annual percentage, from calendar years 2002 through 2009, of the IHS Global Insight index, also called the APM index. The result is the year 2009 APM rate for each FQHC that chooses to be reimbursed under the APM.

(6) This subsection describes the encounter rates that the agency pays FQHCs for services provided during the period beginning April 7, 2011, and ending June 30, 2011. On January 12, 2012, the federal Centers for Medicare and Medicaid Services (CMS) approved a state plan amendment (SPA) containing the methodology outlined in this section.

(a) During the period that CMS approval of the SPA was pending, the agency continued to pay FQHCs at the encounter rates described in subsection (5) of this section.

(b) Each FQHC has the choice of receiving either its PPS rate, as determined under the method described in subsection (3) of this section, or a rate determined under a revised APM, as described in (c) of this subsection.

(c) The revised APM uses each FQHC's PPS rate for the current calendar year, increased by five percent.

(d) For all payments made for services provided during the period beginning April 7, 2011, and ending June 30, 2011, the agency will recoup from FQHCs any amount in excess of the encounter rate established in this section. This process is specified in emergency rules that took effect on October 29, 2011, (WSR 11-22-047) and February 25, 2012 (WSR 12-06-002).

(7) This subsection describes the encounter rates that the agency pays FQHCs for services provided on and after July 1, 2011. On January 12, 2012, CMS approved a SPA containing the methodology outlined in this section.

(a) Each FQHC has the choice of receiving either its PPS rate as determined under the method described in subsection (3) of this section, or a rate determined under a revised APM, as described in (b) of this subsection.

(b) The revised APM is as follows:

(i) For FQHCs that rebased their rate effective January 1, 2010, the revised APM is their allowed cost per visit during the cost report year increased by the cumulative percentage increase in the MEI between the cost report year and January 1, 2011.

(ii) For FQHCs that did not rebase their rate effective January 1, 2010, the revised APM is based on their PPS base rate from 2001 (or subsequent year for FQHCs receiving their initial FQHC designation after 2002) increased by the cumulative percentage increase in the IHS Global Insight index from the base year through calendar year 2008 and by the cumulative percentage increase in the MEI from calendar

years 2009 through 2011. The rates were increased by the MEI effective January 1, 2012, and will be increased by the MEI each January 1st thereafter.

(c) For all payments made for services provided during the period beginning July 1, 2011, and ending January 11, 2012, the agency will recoup from FQHCs any amount paid in excess of the encounter rate established in this section. This process is specified in emergency rules that took effect on October 29, 2011, (WSR 11-22-047) and February 25, 2012 (WSR 12-06-022).

(d) For FQHCs that choose to be paid under the revised APM, the agency will periodically rebase the encounter rates using the FQHC cost reports and other relevant data. Rebas-ing will be done only for FQHCs that are reimbursed under the APM.

(e) The agency will ensure that the payments made under the APM are at least equal to the payments that would be made under the PPS.

(8) This subsection describes the payment methodology that the agency uses to pay participating FQHCs for services provided beginning July 1, 2017.

(a) Each FQHC may receive payments under the APM described in subsection (7) of this section, or receive payments under the revised APM described in this subsection.

(b) The revised APM is as follows:

(i) The revised APM establishes a budget-neutral, base-line per member per month (PMPM) rate for each FQHC. The PMPM rate accounts for enhancement payments in accordance with the definition of enhancements in WAC 182-548-1100. For the purposes of this section, "budget-neu-tral" means the cost of the revised APM to the agency will not exceed what would have otherwise been spent not including the revised APM on a per member per year basis.

(ii) The agency pays the FQHC a PMPM payment each month for each managed care client assigned to them by an MCO.

(iii) The agency pays the FQHC a PMPM rate in addition to the amounts the MCO pays the FQHC. The agency may prospectively adjust the FQHC's PMPM rate for any of the following reasons:

(A) Quality and access metrics performance.

(B) FQHC encounter rate changes.

(iv) In accordance with 42 U.S.C. 1396a (bb)(5)(A), the agency performs an annual reconciliation.

(A) If the FQHC was underpaid, the agency pays the dif-ference, and the PMPM rate may be subject to prospective adjustment under (b)(iii) of this subsection.

(B) If the FQHC was overpaid, the PMPM rate may be subject to prospective adjustment under (b)(iii) of this sub-section.

AMENDATORY SECTION (Amending WSR 17-12-016, filed 5/30/17, effective 7/1/17)

WAC 182-548-1450 Federally qualified health cen-ters—General payment information. (1) The agency limits encounters to one per client, per day except in the following circumstances:

(a) The visits occur with different health care profession-als with different specialties; or

(b) There are separate visits with unrelated diagnoses.

(2) FQHC services and supplies incidental to the pro-vider's services are included in the encounter rate payment.

(3) Fluoride treatment and sealants must be provided on the same day as an encounter-eligible service. If provided on another day, the rules for non-FQHC services in subsection (4) of this section apply.

(4) Payments for non-FQHC services provided in an FQHC are made on a fee-for-service basis using the agency's published fee schedules. Non-FQHC services are subject to the coverage guidelines and limitations listed in chapters 182-500 through 182-557 WAC.

(5) For clients enrolled with a managed care organization (MCO), covered FQHC services are paid for by that plan.

(6) For clients enrolled with an MCO, the agency pays each FQHC a supplemental payment in addition to the amounts paid by the MCO. The supplemental payments, called enhancements, are paid in amounts necessary to ensure compliance with 42 U.S.C. 1396a (bb)(5)(A).

(a) The FQHCs receive an enhancement payment each month for each managed care client assigned to them by an MCO.

(b) To ensure that the appropriate amounts are paid to each FQHC, the agency performs an annual reconciliation of the enhancement payments. For each FQHC, the agency (~~will~~) compares the amount (~~(actually)~~) paid in enhance-ment payments to the amount determined by the following formula: (Managed care encounters times encounter rate) less (~~fee-for-service equivalent of~~) actual MCO payments for FQHC services. If the FQHC has been overpaid, the agency (~~will~~) recoups the appropriate amount. If the FQHC has been underpaid, the agency (~~will~~) pays the difference.

(7) Only clients enrolled in Title XIX (medicaid) or Title XXI (CHIP) are eligible for encounter or enhancement pay-ments. The agency does not pay the encounter rate or the enhancement rate for clients in state-only medical programs. Services provided to clients in state-only medical programs are considered fee-for-service regardless of the type of ser-vice performed.

AMENDATORY SECTION (Amending WSR 20-02-070, filed 12/26/19, effective 1/26/20)

WAC 182-549-1400 Rural health clinics—Reim-bursement and limitations. (1) For services provided during the period beginning January 1, 2001, and ending December 31, 2008, the medicaid agency's payment methodology for rural health clinics (RHC) was a prospective payment system (PPS) as authorized by 42 U.S.C. 1396a (bb)(2) and (3).

(2) For services provided beginning January 1, 2009, RHCs have the choice to be reimbursed under the PPS or be reimbursed under an alternative payment methodology (APM), as authorized by 42 U.S.C. 1396a (bb)(6). As required by 42 U.S.C. 1396a (bb)(6), payments made under the APM are at least as much as payments that would have been made under the PPS.

(3) The agency calculates RHC PPS encounter rates for RHC core services as follows:

(a) Until an RHC submits its first audited medicare cost report to the agency, the agency pays the RHC an average

encounter rate of other similar RHCs within the state, otherwise known as an interim rate. Similar RHCs are defined as either all hospital based or all free-standing RHCs;

(b) Upon submission of the RHC's first audited medicare cost report, the agency sets RHC's encounter rates at one hundred percent of its costs as defined in the cost report divided by the total number of encounters the RHC has provided during the time period covered in the audited cost report. RHCs receive this rate for the remainder of the calendar year during which the audited cost report became available to the agency. The agency then increases the encounter rate each January 1st by the percent change in the medicare economic index (MEI).

(4) For RHCs in existence during calendar years 1999 and 2000, the agency sets the encounter rates prospectively

$$\text{Specific RHC Base Encounter Rate} = \frac{(\text{Year 1999 Rate} \times \text{Year 1999 Encounters}) + (\text{Year 2000 Rate} \times \text{Year 2000 Encounters})}{(\text{Year 1999 Encounters} + \text{Year 2000 Encounters}) \text{ for each RHC}}$$

(c) Beginning in calendar year 2002 and any year thereafter, encounter rates are increased by the MEI and adjusted for any increase or decrease in the RHC's scope of services.

(5) The agency calculated RHC's APM encounter rates for services provided during the period beginning January 1, 2009, and ending April 6, 2011, as follows:

(a) The APM used the RHC base encounter rates as described in subsection (4)(b) of this section.

(b) Base rates were increased by each annual percentage, from calendar years 2002 through 2009, of the IHS Global Insight index, also called the APM index.

(c) The result was the year 2009 APM rates for each RHC that chose to be reimbursed under the APM.

(6) This subsection describes the encounter rates that the agency paid RHCs for services provided during the period beginning April 7, 2011, and ending June 30, 2011. On January 12, 2012, the federal Centers for Medicare and Medicaid Services (CMS) approved a state plan amendment (SPA) containing the methodology outlined in this section.

(a) During the period that CMS approval of the SPA was pending, the agency continued to pay RHCs at the encounter rate described in subsection (5) of this section.

(b) Each RHC had the choice of receiving either its PPS rate, as determined under the method described in subsection (3) of this section, or a rate determined under a revised APM, as described in (c) of this subsection.

(c) The revised APM used each RHC's PPS rate for the current calendar year, increased by five percent.

(d) For all payments made for services provided during the period beginning April 7, 2011, and ending June 30, 2011, the agency recouped from RHCs any amount paid in excess of the encounter rate established in this section. This process was specified in emergency rules that took effect on October 29, 2011, (WSR 11-22-047) and February 25, 2012 (WSR 12-06-002).

(7) This subsection describes the encounter rate that the agency pays RHCs for services provided on and after July 1, 2011. On January 12, 2012, CMS approved a SPA containing the methodology outlined in this section.

(a) Each RHC has the choice of receiving either its PPS rate, as determined under the method described in subsection

using a weighted average of one hundred percent of the RHC's total reasonable costs for calendar years 1999 and 2000 and adjusted for any increase or decrease in the scope of services furnished during the calendar year 2001 to establish a base encounter rate.

(a) The agency adjusts PPS base encounter rates to account for an increase or decrease in the scope of services provided during calendar year 2001 in accordance with WAC 182-549-1500.

(b) PPS base encounter rates are determined using medicare's audited cost reports, and each year's rate is weighted by the total reported encounters. The agency does not apply a capped amount to these base encounter rates. The formula used to calculate base encounter rates is as follows:

(3) of this section, or a rate determined under a revised APM, as described in (b) of this subsection.

(b) The revised APM is as follows:

(i) For RHCs that rebased their rate effective January 1, 2010, the revised APM is their allowed cost per visit during the cost report year increased by the cumulative percentage increase in the MEI between the cost report year and January 1, 2011.

(ii) For RHCs that did not rebase their rate effective January 1, 2010, the revised APM is based on their PPS base rate from 2001 (or subsequent year for RHCs receiving their initial RHC designation after 2002) increased by the cumulative percentage increase in the IHS Global Insight index from the base year through calendar year 2008 and the cumulative increase in the MEI from calendar years 2009 through 2011. The rates are increased by the MEI effective January 1, 2012, and each January 1st thereafter.

(c) For all payments made for services provided during the period beginning July 1, 2011, and ending January 11, 2012, the agency recouped from RHCs any amount paid in excess of the encounter rate established in this section. This process was specified in emergency rules that took effect on October 29, 2011, (WSR 11-22-047) and February 25, 2012 (WSR 12-06-002).

(d) For RHCs that choose to be paid under the revised APM, the agency periodically rebases the encounter rates using the RHC cost reports and other relevant data. Rebasing is done only for RHCs that are reimbursed under the APM.

(e) The agency makes sure that the payments made under the APM are at least equal to the payments that would be made under the PPS.

(8) This subsection describes the payment methodology that the agency uses to pay participating RHCs for services provided beginning July 1, 2017.

(a) Each RHC may receive payments under the APM described in subsection (7) of this section, or receive payments under the revised APM described in this subsection.

(b) The revised APM is as follows:

(i) The revised APM establishes a budget-neutral, baseline per member per month (PMPM) rate for each RHC. The PMPM rate will account for enhancement payments in accor-

dance with the definition of enhancements in WAC 182-548-1100. For the purposes of this section, "budget-neutral" means the cost of the revised APM to the agency will not exceed what would have otherwise been spent not including the revised APM on a per member per year basis.

(ii) The agency pays the RHC a PMPM payment each month for each managed care client assigned to them by an MCO.

(iii) The agency pays the RHC a PMPM payment each month in addition to the amounts the MCO pays the RHC.

(iv) The agency may prospectively adjust the RHC's PMPM rate for any of the following reasons:

(A) Quality and access metrics performance.

(B) RHC encounter rate changes.

(v) In accordance with 42 U.S.C. 1396a (bb)(5)(A), the agency performs an annual reconciliation.

(A) If the RHC was underpaid, the agency pays the difference, and the PMPM rate may be subject to prospective adjustment under (b)(iv) of this subsection.

(B) If the RHC was overpaid, the PMPM rate may be subject to prospective adjustment under (b)(iv) of this subsection.

AMENDATORY SECTION (Amending WSR 20-02-070, filed 12/26/19, effective 1/26/20)

WAC 182-549-1450 Rural health clinics—General payment information. (1) The medicaid agency pays for one encounter, per client, per day except in the following circumstances:

(a) The visits occur with different health care professionals with different specialties; or

(b) There are separate visits with unrelated diagnoses.

(2) Rural health clinic (RHC) services and supplies incidental to the provider's services are included in the encounter rate payment.

(3) The agency pays for non-RHC services provided in an RHC on a fee-for-service basis using the agency's published fee schedules. Non-RHC services are subject to the coverage guidelines and limitations listed in chapters 182-500 through 182-557 WAC.

(4) For clients enrolled with a managed care organization (MCO), that MCO pays for covered RHC services.

(5) For clients enrolled with MCOs, the RHC receives an encounter rate using either the method described in (a) or (b) of this subsection.

(a) RHCs receive an enhancement payment in addition to the MCO's negotiated payment. The agency makes enhancement payments in amounts necessary to make sure that the RHC receives the full encounter rate to comply with 42 U.S.C. 1396a (bb)(5)(A).

(i) The RHCs receive a monthly enhancement payment for each managed care client assigned to them by an MCO.

(ii) To make sure that each RHC receives the appropriate amounts, the agency performs an annual reconciliation of the enhancement payments. For each RHC, the agency compares the amount (~~(actually)~~) paid in enhancement payments to the amount determined by the following formula: (Managed care encounters times encounter rate) less (~~(the fee-for-service equivalent of)~~) actual MCO payments for RHC services. If

the RHC has been overpaid, the agency recoups the appropriate amount. If the RHC has been underpaid, the agency pays the difference. For dates of service on and after January 1, 2018, reconciliations are conducted in the calendar year following the calendar year for which the enhancements were paid. Reconciliations are conducted by the agency or the clinic with final review and approval by the agency. The process of settling over or under payments may extend beyond the calendar year in which the reconciliations were conducted.

(b) Effective January 1, 2018, instead of distributing monthly enhancement payments to the RHCs, MCOs pay the full encounter rate directly to participating clinics for encounter-eligible services.

(i) RHC participation in this option is voluntary. The RHC must notify the agency in writing whether it will participate or not by no later than November 1st prior to the year of participation.

(ii) The agency performs a reconciliation with the MCO as outlined in the MCO contract. Reconciliations make sure appropriate amounts are paid to each RHC and that MCOs are not put at risk for, or have any right to, the enhancement portion of the claim. If an MCO has been overpaid, the agency recoups the appropriate amount. If an MCO has been underpaid, the agency pays the difference.

(iii) RHCs participating in the revised alternative payment method (APM) as described in WAC 182-549-1400(8) are not eligible to receive encounter payments directly from MCOs under this section.

(6) Only those services provided to clients enrolled in the Title XIX (medicaid) program or the Title XXI (CHIP) program are eligible for encounter or enhancement payments. The agency does not pay the encounter rate or the enhancement rate for services provided to clients in state-only medical programs. Services provided to clients in state-only medical programs are considered fee-for-service, regardless of the type of service performed.

WSR 20-24-091

PERMANENT RULES

WASHINGTON STATE UNIVERSITY

[Filed November 25, 2020, 2:47 p.m., effective December 26, 2020]

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

Purpose: The university is updating the campus parking and traffic regulations for Washington State University Health Sciences Spokane.

Citation of Rules Affected by this Order: Amending WAC 504-14-100, 504-14-200, 504-14-350, 504-14-510, 504-14-810, 504-14-860, 504-14-865, 504-14-870, 504-14-880, and 504-14-885.

Statutory Authority for Adoption: RCW 28B.30.150.

Adopted under notice filed as WSR 20-19-138 on September 23, 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 10, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 10, 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 10, Repealed 0.

Date Adopted: November 25, 2020.

Deborah L. Bartlett, Director
Procedures, Records, and Forms, and
University Rules Coordinator

AMENDATORY SECTION (Amending WSR 19-09-080, filed 4/17/19, effective 5/18/19)

WAC 504-14-100 Definitions. The definitions in this section are applicable within the context of this chapter.

(1) Access-control/gate card. A plastic card that provides access to a location, building, or parking area, and/or activates a gate or similar device controlling access to certain parking areas.

(2) Campus. Describes all property owned, leased, and/or controlled by the WSUS campus which is or may hereafter be dedicated mainly to the educational, research, housing, recreational, parking, or other activities of the university.

(3) Day. Unless otherwise specified, the term "day" refers to a calendar day.

(4) Disability parking. See individuals with disability.

(5) Disability zone. A parking zone designated for exclusive use by individuals with disability and identified with a sign bearing the associated international symbol.

(6) Electric-assisted bicycle. As defined under RCW 46.04.169.

(7) Fire zone. An area needed for emergency access to buildings, fire hydrants, or fire equipment. Such areas include, but are not limited to, areas with adjacent curbs or rails painted red.

(8) Holiday. See university holiday.

(9) Illegal use of permit. A parking violation in which a parking ticket is issued under the following circumstances:

(a) Use of a parking permit or indicator on a vehicle other than the specified vehicle identified by a license plate number on the permit.

(b) Use of a counterfeit parking permit or indicator.

(c) Use of a parking permit or indicator obtained under false pretenses.

(d) Use of a modified parking permit or indicator.

(e) Use and/or retention of a parking permit or indicator by individual(s) ineligible, or no longer eligible, for such permit as described and authorized in this chapter.

(10) Impound. To take and hold a vehicle in legal custody by use of a ~~((wheel lock))~~ vehicle immobilization device and/or towing.

(11) Indicator. A decal or hanger displayed adjacent to a parking permit which defines additional parking areas available to a permit holder.

(12) Loading zone. A loading dock, or an area signed "loading zone" adjacent to a facility or in a parking area. Such an area is intended for loading and unloading bulky or voluminous material. Loading zones are restricted at all times unless signed otherwise.

(13) Moped. As defined under RCW 46.04.304.

(14) Motorcycle. As defined under RCW 46.04.330.

(15) Motorized foot scooter. As defined under RCW 46.04.336.

(16) Motor vehicle. As defined under RCW 46.04.320. Also referred to as "vehicle" in this chapter.

(17) No parking zone. Any area not specifically marked and/or signed for parking. Such areas include, but are not limited to, areas with adjacent curbs or rails painted yellow.

(18) Officer. Any parking or campus ~~((safety and))~~ security official employed by the university who is designated by the parking administrator or chancellor to place and remove ~~((wheel locks))~~ vehicle immobilization devices or to cause vehicles to be towed under this chapter.

(19) Owner. The individual registered with any state as the present owner of a vehicle in the most current registration records available to the university, the owner's expressed representative, or any transferee not designated in such records, provided that the parking administrator has received actual written notice of the transfer.

(20) Park/parking. This refers to the placement or standing of a vehicle, with or without a driver in attendance, and with or without the engine running.

(21) Parking administrator. The manager in charge of the parking office or designee.

(22) Parking appeals committee. Any individual or individuals appointed to consider parking violations and the application of fees, fines, and sanctions. Said individual or individuals are appointed by the chancellor or designee whose responsibilities include supervision of the parking office.

(23) Parking office. The university department which is charged with the responsibility of managing, operating, planning, and maintaining parking facilities; enforcing the parking regulations; and coordinating commute trip reduction efforts for the WSUS campus.

(24) Parking meter. A single fixed device that typically requires payment and limits the amount of time a vehicle can park in a single space. Also referred to as "meter" in this chapter. A parking meter is not a parking payment device.

(25) Parking payment device. A machine that requires payment and vends a parking permit and/or a paid receipt. Parking payment devices may be located in various places on the campus. A parking payment device is not a parking meter.

(26) Parking permit. A vinyl, plastic, paper, or other instrument sanctioned by the parking office that is displayed from a vehicle and authorizes parking in specified areas. Some parking permits may be purchased online and may be virtual in nature (see definition of virtual permit in subsection ~~((47))~~ (50) of this section) and identified by other means, such as by license plate. Also referred to as "permit" in this chapter.

(27) Parking ticket. The first notice of a parking violation which is usually placed in a visible location on a motor vehicle.

(28) Pay parking facility. A location where parking is provided, and payment is made on-site via a parking payment device, cashier, or means other than a parking meter.

(29) Pedestrian mall. A space that is designed primarily for pedestrian use, but with limited authorized use of motor vehicle and other motorized and nonmotorized conveyances.

(30) Individuals with disability. For the purpose of this chapter individuals with disability refers to an individual or individuals with disability or disabilities who qualify for a state-issued individual with disabilities parking identification and permit.

(31) Resident priority zone. A parking area close to a residence hall that is typically limited to use by residence hall students.

(32) Residence hall student. A student with a current, valid residence hall contract, who lives in a residence hall.

(33) Residence hall. Residence hall units (dormitories) that are owned by the university but are not included as university-owned housing apartments. Occupants of residence halls are considered residence hall students and are eligible for parking permits in resident priority zones.

(34) Service vehicle. A vehicle used to provide a service for WSUS or a tenant or contractor of WSUS (e.g., a university-owned vehicle or a privately owned vehicle with a valid service vehicle authorization displayed).

(35) Service zone. Parking spaces or area designated for the use of service vehicles, other government-owned vehicles, and vehicles displaying a service indicator or commercial permit. Authorized vehicles may park in these zones on an occasional basis for a maximum of fifteen minutes, except for vehicles that display a service indicator issued for an extended time. Service zones are restricted at all times unless signed otherwise.

(36) Staff. For the purposes of these regulations, "staff" includes all nonstudent employees of the university and the nonstudent employees of other entities located on, or regularly doing business on campus. Teaching assistants, research assistants, and other students employed by the university, or other entities located on, or regularly doing business on campus, are not "staff." They are considered to be students for the purpose of these rules.

(37) Standing. "Standing" is the stopping of a vehicle with the driver remaining in it.

(38) Storage of a vehicle. Impounded vehicles are held in storage until released. During such time they are subject to storage fees.

(39) Student. The term student includes all individuals who are not staff who are taking courses at the university, enrolled full-time or part-time, pursuing undergraduate, graduate, professional studies, or auditing one or more class.

(40) Summer session. The summer session includes all summer sessions beginning on the first day of the earliest session, and ending on the last day of the latest session.

(41) University. Refers to Washington State University Health Sciences Spokane or WSUS.

(42) University holiday. A day regarded by the university as an official university holiday.

(43) University-owned housing. Housing units or apartments, and their respective parking areas, that are owned by the university, but are not included as residence halls. Occupants of university-owned housing are eligible for housing parking permits issued by the university.

(44) Unpaid. A full or partial outstanding balance due. This definition includes parking tickets which are pending appeal.

(45) Vacation. A period of time when classes or final exams are not in session. Except for holidays that fall within this period, the business offices of WSUS typically are open during this time.

(46) Vehicle immobilization device. A device used to temporarily immobilize a motor vehicle. Immobilized vehicles are considered to be impounded in place and subject to storage fees.

(47) Vehicle immobilization-eligible list. The current list of vehicle immobilization-eligible vehicles as maintained by the parking office. A vehicle remains on the vehicle immobilization-eligible list until all fines and fees related to parking tickets are paid in full or otherwise resolved to include the payment of fines and fees related to parking tickets not yet eligible for late fees.

(48) Vehicle immobilization-eligible vehicle. Any vehicle on which three or more parking tickets more than thirty days old are unpaid and which parking tickets were issued during the time the vehicle was registered to or otherwise held by the owner. The vehicle remains vehicle immobilization-eligible until all fines and fees related to parking tickets are paid in full or otherwise resolved to include the payment of fines and fees related to parking tickets not yet eligible for late fees.

(49) Vehicle storage. Vehicle storage means the parking or leaving of any vehicle for a period of more than twenty-four consecutive hours.

~~((47))~~ (50) Virtual permit. A virtual permit is authorization given at the time of vehicle registration with the parking office, allowing the registered vehicle to park in a designated lot, zone, or space. The virtual permit is associated to the vehicle license plate number and is used to identify the parking authorization.

~~((48))~~ (51) Visitors. Individuals who are not staff or students and who only visit the campus on an occasional basis.

~~((49))~~ Wheel lock. A device used to temporarily immobilize a motor vehicle. Wheel locked vehicles are considered to be impounded in place and subject to storage fees.

~~(50)~~ Wheel lock-eligible list. The current list of wheel lock-eligible vehicles as maintained by the parking office. A vehicle remains on the wheel lock-eligible list until all fines and fees related to parking tickets are paid in full or otherwise resolved to include the payment of fines and fees related to parking tickets not yet eligible for late fees.

~~(51)~~ Wheel lock-eligible vehicle. Any vehicle on which three or more parking tickets more than thirty days old are unpaid and which parking tickets were issued during the time the vehicle was registered to or otherwise held by the owner. The vehicle remains wheel lock-eligible until all fines and fees related to parking tickets are paid in full or otherwise

~~resolved to include the payment of fines and fees related to parking tickets not yet eligible for late fees.)~~

(52) WSU disability permit. WSU-issued zone permit displayed with a valid state-issued disability placard or disability license plate.

(53) WSUS. Washington State University Health Sciences Spokane.

AMENDATORY SECTION (Amending WSR 19-09-080, filed 4/17/19, effective 5/18/19)

WAC 504-14-200 Enforcement authority. The uni-versity parking office staff and ~~((the safety and))~~ security officers are charged with the impartial enforcement of these regulations and have authority to issue parking tickets, to impound vehicles, and to control access to areas.

AMENDATORY SECTION (Amending WSR 19-09-080, filed 4/17/19, effective 5/18/19)

WAC 504-14-350 Use of areas for emergency, maintenance, events, construction, or special needs. WSUS reserves the right to close and/or restrict access to any campus parking area, roadway, and/or sidewalk at any time it is deemed necessary for maintenance, safety, events, construction, or to meet special needs. The parking office provides notice to users when possible.

Public safety, ~~((safety and))~~ security, and maintenance personnel performing official duties may deviate from these regulations as required to conduct emergency procedures.

AMENDATORY SECTION (Amending WSR 19-09-080, filed 4/17/19, effective 5/18/19)

WAC 504-14-510 Parking permits—General. (1) The university issues parking permits for designated areas of the campus. Any vehicle parked on the campus must clearly display a valid university parking permit in accordance with this chapter during the posted hours when and where permits are required. University staff and students may not use any other permit in lieu of a valid university parking permit.

(2) Inoperable vehicles. It is the owner's responsibility to immediately contact the parking office or campus ~~((safety and))~~ security in the event that the owner's vehicle becomes inoperable when the vehicle is parked on campus.

AMENDATORY SECTION (Amending WSR 19-09-080, filed 4/17/19, effective 5/18/19)

WAC 504-14-810 Violations, fines, and sanctions. (1) Violations and fines. Parking violations are processed by the university. Fines must be paid at the parking office or at other authorized locations by mail, or from the university's parking website. Schedules for parking violations, fines, and sanctions are posted in the public area of the parking office and on the university's parking website.

(2) Reduction of fines. Internal policies regarding disposition of parking tickets may be established on approval of the chancellor or designee whose responsibilities include supervision of the parking office.

(3) Inoperable vehicles. It is the owner's responsibility to immediately contact the parking office in the event that the owner's vehicle becomes inoperable when the vehicle is present on campus.

(4) Payment of parking fines.

(a) All parking fines are due upon issuance of a parking ticket. Thirty days after date of issuance of a parking ticket, a late fee is added to all unpaid parking fines. For example, a parking ticket issued on May 1st is assessed a late fee on May 31st.

(b) Failure to pay the fine and fee assessed for any violation results in referral to the university controller's office for internal collection.

(c) Account balances not paid to the university voluntarily may be forwarded to an external collections agency and are subject to additional collection fees of up to fifty percent, attorney's fees, and court costs when necessary.

(d) Where collection efforts are unsuccessful, the controller or designee may notify the registrar to refrain from issuing student transcripts or to withhold permission to reenroll for a subsequent term until outstanding fines and fees are paid.

(e) The procedures discussed above are not exclusive, however, and failure by anyone to pay fines and fees may also lead to towing or use of the ~~((wheel lock))~~ vehicle immobilization device described in these regulations. Nor are the procedures discussed above a precondition to towing or use of the ~~((wheel lock))~~ vehicle immobilization device.

(5) Failure to pay fines. Failure to pay a fine or comply with other penalties assessed pursuant to these regulations, and exhausting or failing to exercise appeals provided for in these regulations, may result in the inability to renew a vehicle license through the state pursuant to RCW 46.16.216.

AMENDATORY SECTION (Amending WSR 19-09-080, filed 4/17/19, effective 5/18/19)

WAC 504-14-860 Appeal procedures. The parking ticket represents a determination that a parking violation has been committed and the determination is final unless otherwise provided for or appealed as provided in this chapter.

(1) Purpose. The parking appeals process serves three primary functions:

(a) To hear parking ticket appeals;

(b) To hear appeals of ~~((wheel lock))~~ vehicle immobilization eligibility determination; and

(c) To hear appeals of impoundments.

(2) Procedure. Any individual who has received a parking ticket may appeal the alleged parking violation. Appeal of ~~((wheel lock))~~ vehicle immobilization eligibility determinations and impoundments are described in WAC 504-14-865 and 504-14-870.

(3) Written parking ticket appeals. The appeal must be in writing and received at the parking office within ten calendar days of issuance of the parking ticket. Online forms for this purpose are available from the parking office. The parking appeals committee makes an initial decision regarding the appeal within twenty calendar days during the academic year and within thirty calendar days during the summer months after receipt of the appeal. The committee provides a brief

statement of the reason for its decision to the appellant within ten calendar days of the decision.

(4) Review hearing of initial decision. If the appellant is dissatisfied with the initial decision, the appellant may request a hearing before a hearing officer or the parking appeals committee. Such a request must be made within ten calendar days of the date of the initial parking appeals committee decision. If no such request is received, the initial decision is final. During the hearing the appellant and representatives of the parking office may present and cross-examine witnesses. The hearing officer or appeals committee must render a decision in writing and provide appellant with the decision within ten calendar days after the hearing.

(5) Appeal to district court. RCW 28B.10.560 provides that an individual who is not satisfied with the final decision of the university may appeal to district court. The application for appeal to district court must be in writing and must be filed at the parking office within ten calendar days after the date of the review hearing. The parking office forwards the documents relating to the appeal to the district court.

AMENDATORY SECTION (Amending WSR 19-09-080, filed 4/17/19, effective 5/18/19)

WAC 504-14-865 General. (1) Pursuant to the provisions of this chapter, an officer must cause a vehicle to be ~~((wheel lock))~~ vehicle immobilized, or towed, or both, if:

(a) The vehicle is on the ~~((wheel lock))~~ vehicle immobilization-eligible list; or

(b) The vehicle displays a lost, stolen, or counterfeit parking permit.

(2) Any vehicle may be towed away at owner's/operator's expense if the vehicle:

(a) Has been immobilized by ~~((wheel lock))~~ a vehicle immobilization device for more than twenty-four hours; or

(b) Is illegally parked in a marked tow-away zone; or

(c) Is a hazard or obstruction to vehicular or pedestrian traffic (including, but not limited to, vehicles parked at curbs or rails painted yellow or red or in crosswalks); or

(d) Cannot be immobilized with a ~~((wheel lock))~~ vehicle immobilization device; or

(e) Is illegally parked in a disability space; or

(f) Is parked in an area designated to be used for emergencies, maintenance, events, or construction; or

(g) Is otherwise illegally parked based on the executive authority of the parking office or university ~~((safety and))~~ security.

(3) The driver and/or owner of a towed vehicle must pay towing and storage expenses.

(4) Any vehicle immobilized by use of ~~((the wheel lock))~~ a vehicle immobilization device in excess of twenty-four hours is assessed a storage fee for each calendar day or portion thereof, beyond the first twenty-four hours.

(5) The university assumes no responsibility in the event of damages resulting from towing, use of ~~((wheel lock))~~ vehicle immobilization devices, storage, or attempts to move a vehicle with a ~~((wheel lock))~~ vehicle immobilization device installed.

(6) No vehicle impounded by towing or ~~((wheel lock))~~ vehicle immobilization devices is released until the following fines are paid in cash or with an approved payment card:

(a) All unpaid parking ticket fines and late fees against said vehicle and any other vehicle registered to the violator and/or owner;

(b) A ~~((wheel lock))~~ vehicle immobilization fee; and

(c) All towing and storage fees.

(7) An individual wishing to challenge the validity of any fines or fees imposed under this chapter may appeal such fines or fees as provided in WAC 504-14-860. However, in order to secure release of the vehicle, such individual must pay the amount of such fines or fees as a bond which is refunded to the extent the appeal is successful.

(8) An accumulation of six unpaid violations during any twelve-month period, exclusive of overtime at parking meter violations, and overtime in time zone violations, subjects the violator to revocation or denial of parking privileges. Vehicles without permits which accumulate the above number of violations may be prohibited from parking on university property.

AMENDATORY SECTION (Amending WSR 19-09-080, filed 4/17/19, effective 5/18/19)

WAC 504-14-870 ~~((Wheel lock))~~ Vehicle immobilization-eligible list. (1) The parking administrator is responsible for creating and maintaining the ~~((wheel lock))~~ vehicle immobilization-eligible list. See definition of "~~((wheel lock))~~ vehicle immobilization-eligible vehicle" under WAC 504-14-100~~((51))~~ (48).

(2) A ~~((wheel lock))~~ vehicle immobilization-eligible vehicle is placed on the ~~((wheel lock))~~ vehicle immobilization-eligible list after notice has been issued as provided in subsection (3) of this section and an appeal of the ~~((wheel lock))~~ vehicle immobilization eligibility determination, if requested, under subsection (4) of this section.

(3) At least ten days prior to placing a vehicle on the ~~((wheel lock))~~ vehicle immobilization-eligible list, the parking administrator must mail a notice to the owner. The parking administrator mails the notice to the address stated on the most current registration records available to the university from a state, or any more current address of which the parking administrator has actual written notice. The notice is sent by first class United States mail, postage prepaid. The notice must set forth:

(a) The make and license plate number of the alleged ~~((wheel lock))~~ vehicle immobilization-eligible vehicle.

(b) A specified date on which the ~~((wheel lock))~~ vehicle immobilization-eligible vehicle is subject to placement on the ~~((wheel lock))~~ vehicle immobilization-eligible list.

(c) A list of the three or more alleged unpaid parking tickets, including the parking ticket number, date, time, place of the violation, and the nature of the violation. This list must include all unpaid parking tickets issued to a particular vehicle to include the payment of fines and fees related to parking tickets not yet eligible for late fees.

(d) That the owner may avoid the placement of the vehicle on the ~~((wheel lock))~~ vehicle immobilization-eligible list by making payment in full of fines and late fees on all unpaid

parking tickets to include the payment of fines and fees related to parking tickets not yet eligible for late fees by the specified date on which the vehicle is subject to placement on the ~~((wheel lock))~~ vehicle immobilization-eligible list.

(e) The name, mailing address (and street address if different), and telephone number of the parking office that may be contacted to appeal the ~~((wheel lock))~~ vehicle immobilization eligibility determination. Such an appeal only considers whether an individual vehicle was properly placed on the ~~((wheel lock))~~ vehicle immobilization-eligible list and not the merits of an individual parking ticket, which may be addressed pursuant to a separate appeals process described in WAC 504-14-860.

(f) That the vehicle is subject to ~~((wheel lock))~~ vehicle immobilization, towing, or both once it is placed on the ~~((wheel lock))~~ vehicle immobilization-eligible list.

(g) That all late fees, ~~((wheel lock))~~ vehicle immobilization fees, towing, and storage fees are payable in full to obtain the release of a vehicle ~~((wheel locked))~~ immobilized or towed pursuant to this chapter in addition to payment of any and all unpaid parking tickets on this vehicle or other vehicles owned by the registered owner to include the payment of fines and fees related to parking tickets not yet eligible for late fees.

(4) If a request for an appeal of a ~~((wheel lock))~~ vehicle immobilization eligibility determination is received by the parking administrator before the specified date in the notice for placement of the vehicle on the ~~((wheel lock))~~ vehicle immobilization-eligible list, then the parking administrator must afford the owner an opportunity to appeal the ~~((wheel lock))~~ vehicle immobilization eligibility determination prior to the placing of a vehicle on the ~~((wheel lock))~~ vehicle immobilization-eligible list. Although the parking administrator does not have the authority to adjudicate the merits of any parking ticket, they must, however, receive evidence and other input from the owner appealing the ~~((wheel lock))~~ vehicle immobilization eligibility determination that the notice given under subsection (3) of this section was erroneous or based on erroneous information.

(5) If an owner timely participates in the appeal as scheduled by the parking administrator, the administrator must furnish the owner written notice of ~~((his or her))~~ their decision prior to placing the vehicle on the ~~((wheel lock))~~ vehicle immobilization-eligible list.

(6) After the specified date provided in the notice issued under subsection (3) of this section, the parking administrator must review the records to ensure that the alleged unpaid parking tickets have not been paid or otherwise resolved, and that no information has been received indicating that the notice was erroneous.

(7) Once a vehicle has been placed on the ~~((wheel lock))~~ vehicle immobilization-eligible list, it must not be removed from the list unless and until:

(a) The fines and fees on all unpaid parking tickets issued during the time it has been registered to or otherwise held by the owner are paid or otherwise resolved to include the payment of fines and fees related to parking tickets not yet eligible for late fees;

(b) The parking administrator receives reliable information that title to the vehicle has been transferred; or

(c) The parking administrator determines that the placement of the vehicle on the ~~((wheel lock))~~ vehicle immobilization-eligible list was erroneous.

(8) If a vehicle is not properly registered in any state or no registration information is available to the university and the vehicle is ~~((wheel lock))~~ vehicle immobilization eligible, then notice is provided by posting on the vehicle a conspicuous notice, which must set forth:

(a) A description of the alleged ~~((wheel lock))~~ vehicle immobilization-eligible vehicle;

(b) A specified date on which the ~~((wheel lock))~~ vehicle immobilization-eligible vehicle is subject to placement on the ~~((wheel lock))~~ vehicle immobilization-eligible list;

(c) That the owner may avoid placement of the vehicle on the ~~((wheel lock))~~ vehicle immobilization-eligible list by making payment in full of fines and late fees on all unpaid parking tickets to include the payment of fines and fees related to parking tickets not yet eligible for late fees by the specified date certain on which the vehicle is subject to placement on the ~~((wheel lock))~~ vehicle immobilization-eligible list; and

(d) That the vehicle is subject to ~~((wheel lock))~~ vehicle immobilization, towing, or both once it is placed on the ~~((wheel lock))~~ vehicle immobilization-eligible list.

(9) An officer must attempt to ~~((wheel lock))~~ provide vehicle immobilization on any vehicle which appears on the ~~((wheel lock))~~ vehicle immobilization-eligible list when parked, lawfully or unlawfully, on campus.

(10) The parking administrator must ensure ~~((that))~~ officers are on duty or services are available to remove ~~((wheel locks))~~ vehicle immobilization devices from vehicles Monday through Friday between 8:00 a.m. and 5:00 p.m.; except during recognized holidays.

AMENDATORY SECTION (Amending WSR 19-09-080, filed 4/17/19, effective 5/18/19)

WAC 504-14-880 Fees, fines, and release of an impounded vehicle. The owner of an impounded vehicle may not secure the release of the stored vehicle until payment in full of fines and fees has been made on all unpaid parking tickets to include the payment of fines and fees related to parking tickets not yet eligible for late fees relating to the vehicle which were issued while the vehicle was owned by the individual who owned the vehicle at the time it is ~~((wheel locked))~~ immobilized by a vehicle immobilization device or towed hereunder, and the owner has paid in full the ~~((wheel lock))~~ vehicle immobilization fee, unpaid parking tickets, late fees, storage fees, and towing fees for any and all other vehicles owned by the registered owner.

AMENDATORY SECTION (Amending WSR 19-09-080, filed 4/17/19, effective 5/18/19)

WAC 504-14-885 Theft, damage, or removal of a ~~((wheel lock))~~ vehicle immobilization device. The following conduct of any individual must be reported to the parking office or university ~~((safety and))~~ security:

(1) Causing physical damage to a ~~((wheel lock))~~ vehicle immobilization device;

(2) Removing, or attempting to remove, a ((~~wheel lock~~)) vehicle immobilization device; or

(3) Taking or stealing a ((~~wheel lock~~)) vehicle immobilization device.

WSR 20-24-093
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed November 30, 2020, 7:12 a.m., effective January 1, 2021]

Effective Date of Rule: January 1, 2021.

Purpose: RCW 51.16.035 requires the department of labor and industries (L&I) to classify all occupations or industries by degree of hazard. The department researched and evaluated the operations of fulfillment centers currently classified in Classification 2102 Warehouses - General Merchandise. After actuarial review of historical losses of fulfillment centers and more traditional warehouses, classification changes were justified to ensure these operations are being classified by their degree of hazard to ensure fair rates in the industry.

This rule making is adopted to ensure classifications and rates accurately reflect expected losses for fulfillment centers. L&I created one new classification and rate for fulfillment centers and amended two classifications to reflect references to the new classification.

Citation of Rules Affected by this Order: New WAC 296-17-89509 and 296-17A-2103; and amending WAC 296-17A-2102 and 296-17A-6407.

Statutory Authority for Adoption: RCW 51.04.020 and 51.16.035.

Adopted under notice filed as WSR 20-19-128 on September 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 2, Amended 2, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 2, Amended 2, 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 30, 2020.

Joel Sacks
 Director

NEW SECTION

WAC 296-17-89509 Classification 2103.

Fulfillment centers rate
Effective January 1, 2021

Class	Accident Fund	Stay at Work	Medical Aid Fund	Supplemental Pension Fund
2103	1.3620	0.0209	0.6532	0.1372

AMENDATORY SECTION (Amending WSR 12-11-109, filed 5/22/12, effective 7/1/12)

WAC 296-17A-2102 Classification 2102.

2102-00 Warehouses - General merchandise

Applies to establishments operating as warehouses for general merchandise. This merchandise belongs to a customer and is usually stored for long periods of time. Products typically involved are bulk, nonperishable materials which might include, but not be limited to:

- Coffee;
- Dry cement;
- Potatoes;
- Rice.

Work contemplated by this classification includes, but is not limited to:

- Maintaining the facility;
- Moving merchandise within the facility;
- Recordkeeping;
- Routine maintenance;
- Security.

Equipment and machinery used includes:

- Cleaning and recordkeeping supplies;
- Forklifts;
- Pallet jacks;
- Shop vehicles.

This classification excludes:

• Delivery drivers who are to be reported separately in classification 1102;

• Businesses that meet the criteria for the definition of fulfillment centers in classification 2103 are classified in 2103;

• Wholesale dealers who operate a warehouse for storage of their own product which is to be reported separately in the classification applicable to the product being sold;

• Warehousing of household furnishings by a moving and storage company which is to be reported separately in classification 6907;

• Cold storage plants which are to be reported separately in classification 4401;

• Ministorage warehousing which is to be reported separately in classification 4910;

• Field bonded warehouses which are to be reported separately in classification 2008;

• Warehousing of a manufacturer's own product which is to be reported separately in the manufacturing classification applicable to the work being performed.

Special note: Even though this type of operation may handle some "grocery" products, it differs from 2102-11 in that the products being handled in 2102-00 are in bulk packaging (not cases of consumer-size packages), do not belong to the business that is warehousing them, and are not intended for sale to a wholesaler/retailer.

2102-04 Recycle, collection and receiving stations; rags, bottles, paper and metal container dealers, N.O.C.

Applies to establishments engaged in the collection of used paper, aluminum, tin, glass, and plastic for the purpose of selling the material to another business that will recycle/remanufacture it into new products. These facilities normally acquire material by placing collection bins at various remote locations, operating a drop-off center (this phase of the business is known in the trade as a "buy back center"). This classification includes dealers of rags, bottles, paper and metal containers not covered by another classification (N.O.C.). Work contemplated by this classification includes, but is not limited to:

- Sorting material;
- Operating various pieces of equipment used to crush, reduce, wash, and bale material;
- Weighing containers;
- Paying customers for receipt of items that have a redemption value by the pound or piece ("buying back");
- Operating shop or yard vehicles.

Machinery and equipment includes, but is not limited to:

- Balers;
- Can crushers;
- Collection bins;
- Forklifts;
- Shredders;
- Rolloff trucks to handle the collection bins;
- Shop or yard vehicles;
- Weigh scales.

This classification excludes:

- All trucking outside of the yard which is to be reported separately in classification 1102;

• Businesses that meet the criteria for the definition of fulfillment centers in classification 2103 are classified in 2103;

• Establishments engaged in collecting, sorting and reducing scrap metal such as junk dealers, scrap metal dealers or processors, which also receive glass, paper, plastic, etc., which are to be reported separately in classification 0604; and

• Establishments engaged in collecting used computer equipment for recycling which may be reported in classification 4107.

Special note: Classification 2102-04 should not be assigned to an employer who also operates a business subject to classification 4305-18 (Garbage, refuse or ashes collecting) without careful review and an on-site survey. Most garbage collecting businesses have some type of "recycle" program as part of their normal operations in an effort to sort and reduce the amount of waste that goes to landfills and this is considered an inclusion.

2102-11 Grocery, fruit or produce distributors - Wholesale or combined wholesale and retail

Applies to establishments engaged in the wholesale, or wholesale/retail, distribution of a variety of grocery items, fruit and produce. A business in this classification buys products from the manufacturer and sells to retail grocery stores, restaurants, and similar businesses. Grocery items may include, but not be limited to:

- Beverages;

- Dairy products;
- Frozen foods;
- Household cleaning supplies;
- Packaged foods;
- Paper products;
- Personal care items.

Work contemplated by this classification includes, but is not limited to:

- Breakdown of merchandise into smaller lots;
- Incidental repackaging;
- Maintaining the facility;
- Moving merchandise within the facility;
- Recordkeeping;
- Security;
- Unloading deliveries.

Equipment and machinery includes, but is not limited to:

- Forklifts;
- Pallet jacks;
- Strapping and shrink wrapping equipment;
- Vehicles.

This classification excludes:

• Delivery drivers who are to be reported separately in classification 1101;

• Businesses that meet the criteria for the definition of fulfillment centers in classification 2103 are classified in 2103;

• Any general merchandise warehouse operations in which the operator of the warehouse does not own the merchandise being handled and it is in bulk quantities, which is to be reported separately in classification 2102-00;

• Cold storage plants handling food products which are to be reported separately in classification 4401;

• Operations specializing in vegetable/fruit packing for wholesale distribution which are to be reported separately in classification 2104;

• Operations specializing in wholesale distribution of beer, wine, ale or soft drinks which are to be reported separately in classification 2105;

• Field bonded warehouses which are to be reported separately in classification 2008; and

• The warehousing of a manufacturer's own product which is to be reported separately in the manufacturing classification applicable to the work being performed.

2102-28 Wool or cotton merchants

Applies to establishments operating as wool or cotton merchants. Merchants subject to this classification buy raw wool or cotton from others, do incidental sorting, grading and repackaging, and sell the product to another business for use as a raw material to make products such as yarn, thread or fabric. Work contemplated by this classification includes, but is not limited to:

- Hand sorting the product by grade (quality);
- Maintaining the facility;
- Moving merchandise within the facility;
- Repackaging;
- Recordkeeping;
- Security;
- Unloading deliveries.

Equipment and machinery includes, but is not limited to:

- Forklifts;

- Pallet jacks;
- Repackaging equipment;
- Vehicles.

This classification excludes:

- Drivers who are to be reported separately in classification 1102;
- Wholesale dealers of a finished wool or cotton product which are to be reported separately in the classification applicable to the product; and
- The warehousing of a manufacturer's own product which is to be reported separately in the manufacturing classification applicable to the work being performed.

AMENDATORY SECTION (Amending WSR 19-11-109, filed 5/21/19, effective 7/1/19)

WAC 296-17A-6407 Classification 6407.

6407-00 Wholesale stores, N.O.C. - Including combined wholesale and retail store operations

Applies to establishments engaged in the wholesale, or combined wholesale and retail sales of merchandise that is not covered by another classification (N.O.C.). Establishments subject to classification 6407 usually own the merchandise they sell, but may also be marketing goods on consignment, in which case classification 6407 still applies because the exposure and processes are the same. This classification is primarily the wholesale counterpart (supplier) for establishments assigned to retail store classification 6305, 6406, and 6411.

Classification 6407 also applies to retail stores with high volume warehouse and distribution facilities without the normal exposures associated with a retail store.

Work contemplated by classification 6407 includes, but is not limited to, maintaining warehouse inventories, sorting and grading goods, and breaking down bulk quantities to repackage into smaller lots. Equipment typically used includes, but is not limited to:

- Balers to bind merchandise into bundles;
- Strapping equipment to secure palletized goods;
- Forklifts; and
- Hand tools.

This classification excludes:

- Delivery which is to be reported separately in classification 1101;
- Businesses that meet the criteria for the definition of fulfillment centers in classification 2103 are classified in 2103;

- Large high volume sales operations where retail customers select and carry out the goods they purchase, which are reported in the classification applicable to the merchandise sold.

Special notes: When assigning classification 6407, care must be exercised to look beyond the words "wholesale" or "retail." The manufacturer of a product will also "wholesale" their merchandise (or a combination of their own merchandise and finished products bought from other manufacturers) to a customer. These sales are an integral part of the manufacturing/marketing process and is an inclusion in the manufacturing classification. Establishments that buy goods, such as clothing or cloth goods, in wholesale quantities, then screen

print or embroider them for resale are performing manufacturing operations and are to be reported separately in the appropriate manufacturing classification.

Warehouse operations in classification 2102, with the exception of grocery dealers, do not own the product they are warehousing and are not in the business of selling the goods they store. Businesses in classification 6407 may operate a warehouse, but only as an integral part of the wholesaling/distribution process, which is included in classification 6407.

NEW SECTION

WAC 296-17A-2103 Classification 2103.

2103-00 Fulfillment centers

Applies to businesses engaged in operating facilities called fulfillment centers. Fulfillment centers in this rule are defined as businesses that:

- Have an online marketplace to sell their own merchandise and third-party sellers' merchandise;
- Sell their own name brand merchandise retail online;
- Offer warehousing and order fulfillment services for third-party sellers;
- Use automated vehicles and robotics within the facility;
- Emphasize quick timelines and monitor employees for speed; and
- Offer same-day or two-day delivery options.

These businesses store, sell, and ship a wide variety of goods. Types of goods for sale may include, but are not limited to:

- Appliances;
- Arts/crafts/sewing;
- Automotive;
- Baby products;
- Beauty products;
- Cell phones and accessories;
- Clothing, shoes and jewelry;
- Collectibles and fine art;
- Computers;
- Electronics;
- Grocery/gourmet foods;
- Home and kitchen;
- Health and personal care;
- Industrial and scientific;
- Office products;
- Pet supplies;
- Patio, lawn and garden;
- Sports and outdoors;
- Tools and home improvement;
- Toys and games.

Operations may include, but are not limited to:

- Customer service centers;
- Logistic operations, coordinating customer orders with the closest fulfillment center and planning transportation needs;
- Warehouses - Pick, pack, and ship customer orders. Some warehouses may be specifically for large items like furniture;
- Sortation centers - Customer orders are sorted by final destination and consolidated on to trucks for faster delivery;

WSR 20-24-094
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed November 30, 2020, 7:16 a.m., effective January 1, 2021]

Effective Date of Rule: January 1, 2021.

Purpose: The department is adopting an overall average premium rate change of zero percent to ensure adequate premiums to cover expected losses for 2021 claims. Financial projections point to the need for a rate increase, but the department of labor and industries is using funds from the workers' compensation contingency reserve to keep the average rate from increasing in 2021.

This rule adoption amends the tables of classification base premium rates, experience rating plan parameters, experience modification factor calculation limitations, and retrospective rating plan size groupings for the workers' compensation insurance program for calendar year 2021.

This adoption also amends experience rating and retrospective rating rules (WAC 296-17-870 Evaluation of actual losses, and 296-17B-530 Determining case incurred losses) to explain that all accepted COVID-19 claim losses will not be included in the determination of an employer's experience modification factor or in an employer's retrospective rating adjustment calculation. An employer will not lose their claim free discount as a result of an allowed COVID-19 claim.

This adoption is also notice that the director intends to transfer the amount of the accident and medical aid funds combined that exceed ten percent of funded liabilities as required by RCW 51.44.023.

Citation of Rules Affected by this Order: Amending WAC 296-17-855 Experience modification, 296-17-870 Evaluation of actual losses, 296-17-875 Table I, 296-17-880 Table II, 296-17-885 Table III, 296-17-890 Table IV, 296-17-895 Industrial insurance accident fund base rates, stay at work, and medical aid base rates by class of industry, 296-17-89502 Industrial insurance accident fund, stay at work, medical aid and supplemental pension rates by class of industry for nonhourly rated classifications, 296-17-89507 Horse racing rates, 296-17-89508 Farm internship program industrial insurance, accident fund, stay at work fund, medical aid fund, and supplemental pension by class, 296-17-901 Risk classification hazard group table, 296-17-920 Assessment for supplemental pension fund, 296-17B-530 Determining case incurred losses, 296-17B-540 Determining loss incurred for each claim, and 296-17B-900 Retrospective rating plans standard premium size ranges.

Statutory Authority for Adoption: RCW 51.16.035 (base rates), 51.32.073 (supplemental pension), 51.18.010 (retrospective rating), and 51.04.020(1) (general authority).

Adopted under notice filed as WSR 20-19-129 on September 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.

- Specialty centers - Designed for specific item categories or for seasonal use;
- Receiving centers - Take in large orders of types of inventory expected to sell quickly and allocating to other locations;

- Third-party vendor services - Services include order, payment, and returns processing. Fulfillment centers also offer warehousing and order fulfillment to third-party sellers;

- Specialized, automated or mechanized tools or equipment or systems - Used to speed sorting or delivery or processing including, but not limited to, robotic vehicles, or mechanized equipment.

Work activities may include, but are not limited to:

- Using automated or mechanized tools, equipment, systems or vehicles and/or robotics;
- Unpacking and inspecting incoming goods;
- Placing goods in storage and recording their location;
- Quality assurance;
- Picking goods from computer recorded locations to make up an individual shipment;
- Sorting and packing orders;
- Shipping.

Equipment and machinery may include, but are not limited to:

- Bins;
- Forklifts;
- Computer devices;
- Conveyors;
- Handheld scanners;
- Mailing machines;
- Packing machines;
- Robots (small and large);
- Trucks or vans.

Special Notes:

- This classification differs from subclassification 2102-00 Warehouses in that businesses in subclassification 2102-00 store merchandise that they do not own, usually store merchandise for long periods of time, and do not fulfill orders placed by individual retail customers.

- This classification differs from classification 6407 Wholesale stores in that businesses in classification 2103 meet the definition of "fulfillment centers" at the beginning of this rule and businesses in classification 6407 do not meet all of the criteria to be classified as fulfillment centers.

Exclusions:

- Delivery drivers (other than those involved in transferring inventory between facilities owned by the business) are reported separately in classification 1101;

- Warehouse operations that store products for others, do not own any of the products being stored, and are not in the business of selling the goods they store are classified in 2102;

- Businesses selling a specific category of goods are classified in the store classification applicable to the products sold;

- Wholesale distributors that do not operate automated and robotic fulfillment centers that sell both retail and wholesale of products for themselves as well as third-party vendors are classified in 6407.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 15, 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 30, 2020.

Joel Sacks
Director

AMENDATORY SECTION (Amending WSR 19-24-029, filed 11/25/19, effective 1/1/20)

WAC 296-17-855 Experience modification. The basis of the experience modification shall be a comparison of the actual losses charged to an employer during the experience period with the expected losses for an average employer reporting the same exposures in each classification. The comparison shall contain actuarial refinements designed to weigh the extent to which the actual experience is credible, due consideration being given to the volume of the employer's experience. Except for those employers who qualify for an adjusted experience modification as specified in WAC 296-17-860 or 296-17-865, the experience modification factor shall be calculated from the formula:

$$\text{EXPERIENCE MODIFICATION FACTOR} = \frac{\text{Credible Actual Primary Loss} + \text{Credible Actual Excess Loss}}{\text{Expected Loss}}$$

Where

Credible Actual Primary Loss = Actual Primary Loss x Primary Credibility

+ Expected Primary Loss x (100% - Primary Credibility)

Credible Actual Excess Loss = Actual Excess Loss x Excess Credibility

+ Expected Excess Loss x (100% - Excess Credibility)

The meaning and function of each term in the formula is specified below.

For each claim, the actual primary loss is the first dollar portion of the claim costs, which has been shown in actuarial studies, to have the greater credibility in predicting future experience. These amounts are summed over all claims. For each claim in excess of ~~(((\$20,112))~~ \$20,743 the actual primary loss shall be determined from the formula:

$$\text{(ACTUAL PRIMARY LOSS)} = \frac{50,280}{(\text{Total loss} + 30,168)} \times \text{total loss}$$

$$\text{Primary Loss} = \frac{51,857}{(\text{Total Loss} + 31,114)} \times \text{Total Loss}$$

For each claim, less than ~~(((\$20,112))~~ \$20,743 the full value of the claim shall be considered a primary loss.

For each claim, the excess actual loss is the remaining portion of the claim costs, which have been shown in actuarial studies to have less credibility in predicting future experience. The excess actual loss for each claim shall be determined by subtracting the primary loss from the total loss. These amounts are summed over all claims.

For any claim without disability benefits (time loss, partial permanent disability, total permanent disability or death) either actually paid or estimated to be paid, the total actual losses for calculating the primary loss and excess loss shall first be reduced by the lesser of ~~(((\$3,220))~~ \$3,340 or the total cost of the claim. Here are some examples for these claims:

Total Loss	Type of Claim	Total Loss (after deduction)	Primary Loss	Excess Loss
(300)	Medical Only	0	0	0
4,000	Medical Only	780	780	0
4,000	Timeloss	4,000	4,000	0
30,000	Medical Only	26,780	23,644	3,136
30,000	Timeloss	30,000	25,070	4,930
130,000	PPD	130,000	40,810	89,190
500,000	TPD Pension	300,137	45,688	254,449
2,000,000	TPD Pension	300,137	45,688	254,449
<u>300</u>	<u>Medical Only</u>	<u>0</u>	<u>0</u>	<u>0</u>
<u>4,000</u>	<u>Medical Only</u>	<u>660</u>	<u>660</u>	<u>0</u>
<u>4,000</u>	<u>Timeloss</u>	<u>4,000</u>	<u>4,000</u>	<u>0</u>
<u>30,000</u>	<u>Medical Only</u>	<u>26,660</u>	<u>23,930</u>	<u>2,730</u>
<u>30,000</u>	<u>Timeloss</u>	<u>30,000</u>	<u>25,456</u>	<u>4,544</u>
<u>130,000</u>	<u>PPD</u>	<u>130,000</u>	<u>41,842</u>	<u>88,158</u>
<u>500,000</u>	<u>TPD Pension</u>	<u>331,662</u>	<u>47,409</u>	<u>284,253</u>
<u>2,000,000</u>	<u>TPD Pension</u>	<u>331,662</u>	<u>47,409</u>	<u>284,253</u>

Note: The deduction, ~~(((\$3,220))~~ \$3,340, is twice the average case incurred cost of these types of claims occurring during the three-year period used for experience rating. On average this results in reducing the average actual loss about seventy percent for these types of claims adjusted. This is done to help make the transition between the two different experience rating methods better by helping make the change in experience factor reasonable for small changes to the actual losses.

For each employer, the primary credibility and the excess credibility determines the percentage weight given to the corresponding actual primary losses and the actual excess losses, included in the calculation of the experience modification, based on the volume of expected losses. Primary credibility and excess credibility values are set forth in Table II.

An employer's expected losses shall be determined by summing the expected loss for each of the three years of the experience period, which are calculated by multiplying the reported exposure in each classification during the year by the corresponding classification expected loss rate and rounding the result to the nearest cent. Classification expected loss rates by year are set forth in Table III.

Expected losses in each classification shall be multiplied by the classification "Primary-Ratio" to obtain "expected primary losses" which shall be rounded to the nearest cent. Expected excess losses shall then be calculated by subtract-

ing expected primary losses from expected total losses rounded to the nearest cent. Primary-Ratios are also set forth in Table III.

AMENDATORY SECTION (Amending WSR 19-23-080, filed 11/19/19, effective 1/1/20)

WAC 296-17-870 Evaluation of actual losses. (1) Except as provided in subsections (3) through ~~((42))~~ (13) of this section, the actual losses for claims with a date of injury during the experience period will be evaluated on the "valuation date." Losses on claims occurring outside the experience period will not be included. The actual losses for closed claims must include:

- (a) Accident and medical aid payments; and
- (b) Pension reserve amounts paid by the accident fund; and
- (c) Accident and medical aid benefits or payments that are scheduled to be paid; and
- (d) Reserve for other accident and medical aid benefits accessible by the worker while the claim is closed.

The actual losses for claims that are open may, in addition, also include a reserve for future payments. Actual losses do not include wage subsidies or reimbursements paid by the stay-at-work program.

(2) **Valuation date.** The valuation date shall be June 1, seven months immediately preceding the effective date of premium rates.

(3) **Retroactive adjustments - Revision of losses between valuation dates.** No claim value shall be revised between valuation dates and no retroactive adjustment of an experience modification shall be made because of disputation concerning the judgment of the claims examiner or because of subsequent developments except as specifically provided in the following cases:

- (a) In cases where loss values are included or excluded through mistake other than error of judgment.
- (b) In cases where a third party recovery is made, subject to subsection (5)(a) of this section.
- (c) In cases where the claim qualifies as a second injury claim under the provisions of RCW 51.16.120.
- (d) In cases where a claim, which was previously evaluated as a compensable claim, is closed and is determined to be noncompensable (ineligible for benefits other than medical treatment).
- (e) In cases where a claim is closed and is determined to be ineligible for any benefits.

In the above specified cases retroactive adjustment of the experience modification shall be made for each rating in which the claim was included. Retroactive adjustments will not be made for rating periods more than ten years prior to the date on which the claim status was changed.

(4) **Average death value.** Each fatality occurring to a worker included within the mandatory or elective coverage of Title 51 RCW shall be assigned the "average death value." The "average death value" shall be the average incurred cost for all such fatalities occurring during the experience period. The average death value is set forth in WAC 296-17-880 (Table II).

(5) **Third-party recovery - Effect on experience modification.**

(a) For claims with injury dates prior to July 1, 1994, a potential claim cost recovery from action against a third party, either by the injured worker or by the department, shall not be considered in the evaluation of actual losses until such time as the third-party action has been completed. If a third-party recovery is made after a claim had previously been used in an experience modification calculation, the experience modification shall be retroactively adjusted. The department shall compute a percentage recovery by dividing the current valuation of the claim into the amount recovered or recoverable as of the recovery date, and shall reduce both primary and excess losses previously used in the experience modification calculation by that percentage.

(b) For claims with injury dates on or after July 1, 1994, if the department determines that there is a reasonable potential of recovery from an action against a third party, both primary and excess values of the claim shall be reduced by fifty percent for purposes of experience modification calculation, until such time as the third-party action has been completed. This calculation shall not be retroactively adjusted, regardless of the final outcome of the third-party action. After a third-party recovery is made, the actual percentage recovery shall be applied to future experience modification calculations.

(c) For third-party actions completed before July 1, 1996, the claim shall be credited with the department's net share of the recovery, after deducting attorney fees and costs. For third-party actions completed on or after July 1, 1996, the claim shall be credited with the department's gross share of the recovery, before deducting attorney fees and costs.

(d) **Definitions:**

(i) As used in this section, "recovery date" means the date the money is received at the department or the date the order confirming the distribution of the recovery becomes final, whichever comes first.

(ii) As used in this section, "recoverable" means any amount due as of the recovery date and/or any amount available to offset case reserved future benefits.

(6) **Second injury claims.** The primary and excess values of any claim which becomes eligible for second injury relief under the provisions of RCW 51.16.120, as now or hereafter amended, shall be reduced by the percentage of relief granted.

(7) **Occupational disease claims.** When a claim results from an employee's exposure to an occupational disease hazard, the "date of injury," solely for the purpose of experience rating, will be the date the claim for benefits was received by the department. The cost of any occupational disease claim, paid from the accident fund and medical aid fund and arising from exposure to the disease hazard under two or more employers, shall be prorated to each period of employment involving exposure to the hazard. Each insured employer who had employed the claimant during the experience period, and for at least ten percent of the claimant's exposure to the hazard, shall be charged for his/her share of the claim based upon the prorated costs.

(8) **Maximum claim value.** No claim shall enter an employer's experience record at a value greater than the

"maximum claim value." The maximum claim value is set forth in WAC 296-17-880 (Table II).

(9) **Catastrophic losses.** Whenever a single accident results in the deaths or total permanent disability of three or more workers employed by the same employer, costs charged to the employer's experience shall be limited as required by RCW 51.16.130.

(10) **Acts of terrorism.** Whenever any worker insured with the state fund sustains an injury or occupational disease as a result of an incident certified to be an act of terrorism under the U.S. Terrorism Risk Insurance Act of 2002, the costs of the resulting claim shall be excluded from the experience rating computation of the worker's employer.

(11) **Claims filed by preferred workers.** The costs of subsequent claims filed by certified preferred workers will not be included in experience calculations, as provided in WAC 296-16-150.

(12) **Life and rescue phase of emergencies:** This provision applies to "emergency workers" of nongovernmental employers assigned to report in classification 7205 (WAC 296-17A-7205) who assist in a life and rescue phase of a state or local emergency (disaster). The life and rescue phase of an emergency is defined in RCW 51.16.130(3) as being the first seventy-two hours after a natural or man-made disaster has occurred. For an employer to qualify for this special experience rating relief, a state or local official such as, but not limited to, the governor; a county executive; a mayor; a fire marshal; a sheriff or police chief must declare an emergency and must request help from private sector employers to assist in locating and rescuing survivors. This special relief is only applicable to nongovernmental employers during this initial seventy-two hour phase of the declared emergency unless the emergency has been extended by the official who declared the emergency. The cost of injuries or occupational disease claims filed by employees of nongovernmental employers assisting in the life and rescue phase of a declared emergency will not be charged to the experience record of the nongovernmental state fund employer.

(13) **2019 Coronavirus (COVID-19) claims:** All accepted COVID-19 claim losses will not be included in the determination of an employer's experience modification factor. An employer will not lose their claim free discount as a result of an allowed COVID-19 claim.

AMENDATORY SECTION (Amending WSR 19-24-029, filed 11/25/19, effective 1/1/20)

WAC 296-17-875 Table I.

**Primary Losses for Selected Claim Values
Effective January 1, ((2020)) 2021**

TOTAL LOSS AFTER DEDUCTION	PRIMARY LOSS
((5,000	5,000
10,000	10,000
15,000	15,000
20,112	20,112
29,834	25,000

TOTAL LOSS AFTER DEDUCTION	PRIMARY LOSS
44,627	30,000
69,102	35,000
100,000	38,627
117,385	40,000
200,000	43,690
300,137 **	45,688))
5,000	5,000
10,000	10,000
15,000	15,000
20,743	20,743
28,963	25,000
42,706	30,000
64,602	35,000
100,000	39,551
104,964	40,000
200,000	44,876
331,662 **	47,409

** Maximum claim value

AMENDATORY SECTION (Amending WSR 19-24-029, filed 11/25/19, effective 1/1/20)

WAC 296-17-880 Table II.

**PRIMARY AND EXCESS CREDIBILITY VALUES
Effective January 1, ((2020)) 2021**

Maximum Claim Value = (((\$300,137)) \$331,662
Average Death Value = (((\$300,137)) \$331,662

Expected Losses	Primary Credibility	Excess Credibility
((0 - 5,973	12%	7%
5,974 - 6,377	13%	7%
6,378 - 6,785	14%	7%
6,786 - 7,196	15%	7%
7,197 - 7,614	16%	7%
7,615 - 8,036	17%	7%
8,037 - 8,464	18%	7%
8,465 - 8,898	19%	7%
8,899 - 9,336	20%	7%
9,337 - 9,782	21%	7%
9,783 - 10,233	22%	7%
10,234 - 10,692	23%	7%
10,693 - 11,156	24%	7%
11,157 - 11,629	25%	7%
11,630 - 12,111	26%	7%

Expected Losses		Primary Credibility	Excess Credibility	Expected Losses		Primary Credibility	Excess Credibility
12,112	- 12,596	27%	7%	210,440	- 217,233	61%	15%
12,597	- 13,093	28%	7%	217,234	- 236,352	62%	15%
13,094	- 13,597	29%	7%	236,353	- 250,104	62%	16%
13,598	- 14,110	30%	7%	250,105	- 262,427	63%	16%
14,111	- 14,636	31%	7%	262,428	- 282,974	63%	17%
14,637	- 15,167	32%	7%	282,975	- 288,668	64%	17%
15,168	- 15,713	33%	7%	288,669	- 315,073	64%	18%
15,714	- 16,270	34%	7%	315,074	- 315,841	64%	19%
16,271	- 16,839	35%	7%	315,842	- 341,649	65%	19%
16,840	- 17,420	36%	7%	341,650	- 348,712	65%	20%
17,421	- 18,016	37%	7%	348,713	- 368,388	66%	20%
18,017	- 18,632	38%	7%	368,389	- 381,583	66%	21%
18,633	- 19,259	39%	7%	381,584	- 395,300	67%	21%
19,260	- 19,907	40%	7%	395,301	- 414,453	67%	22%
19,908	- 20,573	41%	7%	414,454	- 422,385	68%	22%
20,574	- 21,262	42%	7%	422,386	- 447,319	68%	23%
21,263	- 21,975	43%	7%	447,320	- 449,643	69%	23%
21,976	- 22,713	44%	7%	449,644	- 477,075	69%	24%
22,714	- 23,482	45%	7%	477,076	- 480,189	69%	25%
23,483	- 24,286	46%	7%	480,190	- 504,685	70%	25%
24,287	- 25,127	47%	7%	504,686	- 513,061	70%	26%
25,128	- 26,015	48%	7%	513,062	- 532,474	71%	26%
26,016	- 26,957	49%	7%	532,475	- 545,931	71%	27%
26,958	- 27,959	50%	7%	545,932	- 560,444	72%	27%
27,960	- 29,044	51%	7%	560,445	- 578,800	72%	28%
29,045	- 30,232	52%	7%	578,801	- 588,596	73%	28%
30,233	- 31,555	53%	7%	588,597	- 611,670	73%	29%
31,556	- 31,690	54%	7%	611,671	- 616,931	74%	29%
31,691	- 33,080	54%	8%	616,932	- 644,540	74%	30%
33,081	- 34,944	55%	8%	644,541	- 645,454	75%	30%
34,945	- 52,886	56%	8%	645,455	- 674,164	75%	31%
52,887	- 58,289	57%	8%	674,165	- 677,409	75%	32%
58,290	- 83,259	57%	9%	677,410	- 703,063	76%	32%
83,260	- 85,755	57%	10%	703,064	- 710,279	76%	33%
85,756	- 108,382	58%	10%	710,280	- 732,152	77%	33%
108,383	- 118,623	58%	11%	732,153	- 743,149	77%	34%
118,624	- 133,662	59%	11%	743,150	- 761,438	78%	34%
133,663	- 151,494	59%	12%	761,439	- 776,018	78%	35%
151,495	- 159,093	60%	12%	776,019	- 790,917	79%	35%
159,094	- 184,365	60%	13%	790,918	- 808,888	79%	36%
184,366	- 184,687	61%	13%	808,889	- 820,593	80%	36%
184,688	- 210,439	61%	14%	820,594	- 841,756	80%	37%

Expected Losses		Primary Credibility	Excess Credibility	Expected Losses		Primary Credibility	Excess Credibility
841,757	- 850,470	81%	37%	1,562,552	- 1,597,626	100%	60%
850,471	- 874,627	81%	38%	1,597,627	- 1,632,959	100%	61%
874,628	- 880,548	82%	38%	1,632,960	- 1,668,550	100%	62%
880,549	- 907,498	82%	39%	1,668,551	- 1,704,404	100%	63%
907,499	- 910,829	83%	39%	1,704,405	- 1,740,521	100%	64%
910,830	- 940,368	83%	40%	1,740,522	- 1,776,907	100%	65%
940,369	- 941,314	84%	40%	1,776,908	- 1,813,562	100%	66%
941,315	- 972,008	84%	41%	1,813,563	- 1,850,493	100%	67%
972,009	- 973,235	84%	42%	1,850,494	- 1,887,700	100%	68%
973,236	- 1,002,909	85%	42%	1,887,701	- 1,925,186	100%	69%
1,002,910	- 1,006,105	85%	43%	1,925,187	- 1,962,956	100%	70%
1,006,106	- 1,034,026	86%	43%	1,962,957	- 2,001,013	100%	71%
1,034,027	- 1,038,976	86%	44%	2,001,014	- 2,039,360	100%	72%
1,038,977	- 1,065,354	87%	44%	2,039,361	- 2,077,998	100%	73%
1,065,355	- 1,071,846	87%	45%	2,077,999	- 2,116,934	100%	74%
1,071,847	- 1,096,900	88%	45%	2,116,935	- 2,156,167	100%	75%
1,096,901	- 1,104,716	88%	46%	2,156,168	- 2,195,706	100%	76%
1,104,717	- 1,128,663	89%	46%	2,195,707	- 2,235,549	100%	77%
1,128,664	- 1,137,584	89%	47%	2,235,550	- 2,275,704	100%	78%
1,137,585	- 1,160,649	90%	47%	2,275,705	- 2,316,172	100%	79%
1,160,650	- 1,170,455	90%	48%	2,316,173	- 2,356,959	100%	80%
1,170,456	- 1,192,856	91%	48%	2,356,960	- 2,398,069	100%	81%
1,192,857	- 1,203,323	91%	49%	2,398,070	- 2,439,500	100%	82%
1,203,324	- 1,225,288	92%	49%	2,439,501	- 2,481,263	100%	83%
1,225,289	- 1,236,195	92%	50%	2,481,264	- 2,523,355	100%	84%
1,236,196	- 1,257,949	93%	50%	2,523,356	- 2,565,789	100%	85%
1,257,950	- 1,269,064	93%	51%	2,565,790	and higher	100%	86%))
1,269,065	- 1,290,840	94%	51%	0	= 5,943	12%	7%
1,290,841	- 1,301,933	94%	52%	5,944	= 6,345	13%	7%
1,301,934	- 1,323,964	95%	52%	6,346	= 6,751	14%	7%
1,323,965	- 1,334,802	95%	53%	6,752	= 7,160	15%	7%
1,334,803	- 1,357,322	96%	53%	7,161	= 7,576	16%	7%
1,357,323	- 1,367,672	96%	54%	7,577	= 7,996	17%	7%
1,367,673	- 1,390,918	97%	54%	7,997	= 8,422	18%	7%
1,390,919	- 1,400,542	97%	55%	8,423	= 8,854	19%	7%
1,400,543	- 1,424,753	98%	55%	8,855	= 9,289	20%	7%
1,424,754	- 1,433,412	98%	56%	9,290	= 9,733	21%	7%
1,433,413	- 1,458,831	99%	56%	9,734	= 10,182	22%	7%
1,458,832	- 1,466,280	99%	57%	10,183	= 10,639	23%	7%
1,466,281	- 1,493,155	100%	57%	10,640	= 11,100	24%	7%
1,493,156	- 1,527,728	100%	58%	11,101	= 11,571	25%	7%
1,527,729	- 1,562,551	100%	59%	11,572	= 12,050	26%	7%

Expected Losses		Primary Credibility	Excess Credibility	Expected Losses		Primary Credibility	Excess Credibility		
<u>12,051</u>	=	<u>12,533</u>	<u>27%</u>	<u>7%</u>	<u>209,388</u>	=	<u>216,147</u>	<u>61%</u>	<u>15%</u>
<u>12,534</u>	=	<u>13,028</u>	<u>28%</u>	<u>7%</u>	<u>216,148</u>	=	<u>235,170</u>	<u>62%</u>	<u>15%</u>
<u>13,029</u>	=	<u>13,529</u>	<u>29%</u>	<u>7%</u>	<u>235,171</u>	=	<u>248,853</u>	<u>62%</u>	<u>16%</u>
<u>13,530</u>	=	<u>14,039</u>	<u>30%</u>	<u>7%</u>	<u>248,854</u>	=	<u>261,115</u>	<u>63%</u>	<u>16%</u>
<u>14,040</u>	=	<u>14,563</u>	<u>31%</u>	<u>7%</u>	<u>261,116</u>	=	<u>281,559</u>	<u>63%</u>	<u>17%</u>
<u>14,564</u>	=	<u>15,091</u>	<u>32%</u>	<u>7%</u>	<u>281,560</u>	=	<u>287,225</u>	<u>64%</u>	<u>17%</u>
<u>15,092</u>	=	<u>15,634</u>	<u>33%</u>	<u>7%</u>	<u>287,226</u>	=	<u>313,498</u>	<u>64%</u>	<u>18%</u>
<u>15,635</u>	=	<u>16,189</u>	<u>34%</u>	<u>7%</u>	<u>313,499</u>	=	<u>314,262</u>	<u>64%</u>	<u>19%</u>
<u>16,190</u>	=	<u>16,755</u>	<u>35%</u>	<u>7%</u>	<u>314,263</u>	=	<u>339,941</u>	<u>65%</u>	<u>19%</u>
<u>16,756</u>	=	<u>17,333</u>	<u>36%</u>	<u>7%</u>	<u>339,942</u>	=	<u>346,968</u>	<u>65%</u>	<u>20%</u>
<u>17,334</u>	=	<u>17,926</u>	<u>37%</u>	<u>7%</u>	<u>346,969</u>	=	<u>366,546</u>	<u>66%</u>	<u>20%</u>
<u>17,927</u>	=	<u>18,539</u>	<u>38%</u>	<u>7%</u>	<u>366,547</u>	=	<u>379,675</u>	<u>66%</u>	<u>21%</u>
<u>18,540</u>	=	<u>19,163</u>	<u>39%</u>	<u>7%</u>	<u>379,676</u>	=	<u>393,323</u>	<u>67%</u>	<u>21%</u>
<u>19,164</u>	=	<u>19,807</u>	<u>40%</u>	<u>7%</u>	<u>393,324</u>	=	<u>412,381</u>	<u>67%</u>	<u>22%</u>
<u>19,808</u>	=	<u>20,470</u>	<u>41%</u>	<u>7%</u>	<u>412,382</u>	=	<u>420,273</u>	<u>68%</u>	<u>22%</u>
<u>20,471</u>	=	<u>21,156</u>	<u>42%</u>	<u>7%</u>	<u>420,274</u>	=	<u>445,082</u>	<u>68%</u>	<u>23%</u>
<u>21,157</u>	=	<u>21,865</u>	<u>43%</u>	<u>7%</u>	<u>445,083</u>	=	<u>447,395</u>	<u>69%</u>	<u>23%</u>
<u>21,866</u>	=	<u>22,599</u>	<u>44%</u>	<u>7%</u>	<u>447,396</u>	=	<u>474,690</u>	<u>69%</u>	<u>24%</u>
<u>22,600</u>	=	<u>23,365</u>	<u>45%</u>	<u>7%</u>	<u>474,691</u>	=	<u>477,788</u>	<u>69%</u>	<u>25%</u>
<u>23,366</u>	=	<u>24,165</u>	<u>46%</u>	<u>7%</u>	<u>477,789</u>	=	<u>502,162</u>	<u>70%</u>	<u>25%</u>
<u>24,166</u>	=	<u>25,001</u>	<u>47%</u>	<u>7%</u>	<u>502,163</u>	=	<u>510,496</u>	<u>70%</u>	<u>26%</u>
<u>25,002</u>	=	<u>25,885</u>	<u>48%</u>	<u>7%</u>	<u>510,497</u>	=	<u>529,812</u>	<u>71%</u>	<u>26%</u>
<u>25,886</u>	=	<u>26,822</u>	<u>49%</u>	<u>7%</u>	<u>529,813</u>	=	<u>543,201</u>	<u>71%</u>	<u>27%</u>
<u>26,823</u>	=	<u>27,819</u>	<u>50%</u>	<u>7%</u>	<u>543,202</u>	=	<u>557,642</u>	<u>72%</u>	<u>27%</u>
<u>27,820</u>	=	<u>28,899</u>	<u>51%</u>	<u>7%</u>	<u>557,643</u>	=	<u>575,906</u>	<u>72%</u>	<u>28%</u>
<u>28,900</u>	=	<u>30,081</u>	<u>52%</u>	<u>7%</u>	<u>575,907</u>	=	<u>585,653</u>	<u>73%</u>	<u>28%</u>
<u>30,082</u>	=	<u>31,397</u>	<u>53%</u>	<u>7%</u>	<u>585,654</u>	=	<u>608,612</u>	<u>73%</u>	<u>29%</u>
<u>31,398</u>	=	<u>31,532</u>	<u>54%</u>	<u>7%</u>	<u>608,613</u>	=	<u>613,846</u>	<u>74%</u>	<u>29%</u>
<u>31,533</u>	=	<u>32,915</u>	<u>54%</u>	<u>8%</u>	<u>613,847</u>	=	<u>641,317</u>	<u>74%</u>	<u>30%</u>
<u>32,916</u>	=	<u>34,769</u>	<u>55%</u>	<u>8%</u>	<u>641,318</u>	=	<u>642,227</u>	<u>75%</u>	<u>30%</u>
<u>34,770</u>	=	<u>52,622</u>	<u>56%</u>	<u>8%</u>	<u>642,228</u>	=	<u>670,793</u>	<u>75%</u>	<u>31%</u>
<u>52,623</u>	=	<u>57,998</u>	<u>57%</u>	<u>8%</u>	<u>670,794</u>	=	<u>674,022</u>	<u>75%</u>	<u>32%</u>
<u>57,999</u>	=	<u>82,843</u>	<u>57%</u>	<u>9%</u>	<u>674,023</u>	=	<u>699,548</u>	<u>76%</u>	<u>32%</u>
<u>82,844</u>	=	<u>85,326</u>	<u>57%</u>	<u>10%</u>	<u>699,549</u>	=	<u>706,728</u>	<u>76%</u>	<u>33%</u>
<u>85,327</u>	=	<u>107,840</u>	<u>58%</u>	<u>10%</u>	<u>706,729</u>	=	<u>728,491</u>	<u>77%</u>	<u>33%</u>
<u>107,841</u>	=	<u>118,030</u>	<u>58%</u>	<u>11%</u>	<u>728,492</u>	=	<u>739,433</u>	<u>77%</u>	<u>34%</u>
<u>118,031</u>	=	<u>132,994</u>	<u>59%</u>	<u>11%</u>	<u>739,434</u>	=	<u>757,631</u>	<u>78%</u>	<u>34%</u>
<u>132,995</u>	=	<u>150,737</u>	<u>59%</u>	<u>12%</u>	<u>757,632</u>	=	<u>772,138</u>	<u>78%</u>	<u>35%</u>
<u>150,738</u>	=	<u>158,298</u>	<u>60%</u>	<u>12%</u>	<u>772,139</u>	=	<u>786,962</u>	<u>79%</u>	<u>35%</u>
<u>158,299</u>	=	<u>183,443</u>	<u>60%</u>	<u>13%</u>	<u>786,963</u>	=	<u>804,844</u>	<u>79%</u>	<u>36%</u>
<u>183,444</u>	=	<u>183,764</u>	<u>61%</u>	<u>13%</u>	<u>804,845</u>	=	<u>816,490</u>	<u>80%</u>	<u>36%</u>
<u>183,765</u>	=	<u>209,387</u>	<u>61%</u>	<u>14%</u>	<u>816,491</u>	=	<u>837,547</u>	<u>80%</u>	<u>37%</u>

Expected Losses		Primary Credibility	Excess Credibility	Expected Losses		Primary Credibility	Excess Credibility		
<u>837,548</u>	=	<u>846,218</u>	<u>81%</u>	<u>37%</u>	<u>1,554,739</u>	=	<u>1,589,638</u>	<u>100%</u>	<u>60%</u>
<u>846,219</u>	=	<u>870,254</u>	<u>81%</u>	<u>38%</u>	<u>1,589,639</u>	=	<u>1,624,794</u>	<u>100%</u>	<u>61%</u>
<u>870,255</u>	=	<u>876,145</u>	<u>82%</u>	<u>38%</u>	<u>1,624,795</u>	=	<u>1,660,207</u>	<u>100%</u>	<u>62%</u>
<u>876,146</u>	=	<u>902,961</u>	<u>82%</u>	<u>39%</u>	<u>1,660,208</u>	=	<u>1,695,882</u>	<u>100%</u>	<u>63%</u>
<u>902,962</u>	=	<u>906,275</u>	<u>83%</u>	<u>39%</u>	<u>1,695,883</u>	=	<u>1,731,818</u>	<u>100%</u>	<u>64%</u>
<u>906,276</u>	=	<u>935,666</u>	<u>83%</u>	<u>40%</u>	<u>1,731,819</u>	=	<u>1,768,022</u>	<u>100%</u>	<u>65%</u>
<u>935,667</u>	=	<u>936,607</u>	<u>84%</u>	<u>40%</u>	<u>1,768,023</u>	=	<u>1,804,494</u>	<u>100%</u>	<u>66%</u>
<u>936,608</u>	=	<u>967,148</u>	<u>84%</u>	<u>41%</u>	<u>1,804,495</u>	=	<u>1,841,241</u>	<u>100%</u>	<u>67%</u>
<u>967,149</u>	=	<u>968,369</u>	<u>84%</u>	<u>42%</u>	<u>1,841,242</u>	=	<u>1,878,261</u>	<u>100%</u>	<u>68%</u>
<u>968,370</u>	=	<u>997,894</u>	<u>85%</u>	<u>42%</u>	<u>1,878,262</u>	=	<u>1,915,560</u>	<u>100%</u>	<u>69%</u>
<u>997,895</u>	=	<u>1,001,074</u>	<u>85%</u>	<u>43%</u>	<u>1,915,561</u>	=	<u>1,953,141</u>	<u>100%</u>	<u>70%</u>
<u>1,001,075</u>	=	<u>1,028,856</u>	<u>86%</u>	<u>43%</u>	<u>1,953,142</u>	=	<u>1,991,008</u>	<u>100%</u>	<u>71%</u>
<u>1,028,857</u>	=	<u>1,033,781</u>	<u>86%</u>	<u>44%</u>	<u>1,991,009</u>	=	<u>2,029,163</u>	<u>100%</u>	<u>72%</u>
<u>1,033,782</u>	=	<u>1,060,027</u>	<u>87%</u>	<u>44%</u>	<u>2,029,164</u>	=	<u>2,067,608</u>	<u>100%</u>	<u>73%</u>
<u>1,060,028</u>	=	<u>1,066,487</u>	<u>87%</u>	<u>45%</u>	<u>2,067,609</u>	=	<u>2,106,349</u>	<u>100%</u>	<u>74%</u>
<u>1,066,488</u>	=	<u>1,091,415</u>	<u>88%</u>	<u>45%</u>	<u>2,106,350</u>	=	<u>2,145,386</u>	<u>100%</u>	<u>75%</u>
<u>1,091,416</u>	=	<u>1,099,192</u>	<u>88%</u>	<u>46%</u>	<u>2,145,387</u>	=	<u>2,184,727</u>	<u>100%</u>	<u>76%</u>
<u>1,099,193</u>	=	<u>1,123,020</u>	<u>89%</u>	<u>46%</u>	<u>2,184,728</u>	=	<u>2,224,371</u>	<u>100%</u>	<u>77%</u>
<u>1,123,021</u>	=	<u>1,131,896</u>	<u>89%</u>	<u>47%</u>	<u>2,224,372</u>	=	<u>2,264,325</u>	<u>100%</u>	<u>78%</u>
<u>1,131,897</u>	=	<u>1,154,846</u>	<u>90%</u>	<u>47%</u>	<u>2,264,326</u>	=	<u>2,304,591</u>	<u>100%</u>	<u>79%</u>
<u>1,154,847</u>	=	<u>1,164,603</u>	<u>90%</u>	<u>48%</u>	<u>2,304,592</u>	=	<u>2,345,174</u>	<u>100%</u>	<u>80%</u>
<u>1,164,604</u>	=	<u>1,186,892</u>	<u>91%</u>	<u>48%</u>	<u>2,345,175</u>	=	<u>2,386,079</u>	<u>100%</u>	<u>81%</u>
<u>1,186,893</u>	=	<u>1,197,306</u>	<u>91%</u>	<u>49%</u>	<u>2,386,080</u>	=	<u>2,427,302</u>	<u>100%</u>	<u>82%</u>
<u>1,197,307</u>	=	<u>1,219,162</u>	<u>92%</u>	<u>49%</u>	<u>2,427,303</u>	=	<u>2,468,857</u>	<u>100%</u>	<u>83%</u>
<u>1,219,163</u>	=	<u>1,230,014</u>	<u>92%</u>	<u>50%</u>	<u>2,468,858</u>	=	<u>2,510,738</u>	<u>100%</u>	<u>84%</u>
<u>1,230,015</u>	=	<u>1,251,659</u>	<u>93%</u>	<u>50%</u>	<u>2,510,739</u>	=	<u>2,552,960</u>	<u>100%</u>	<u>85%</u>
<u>1,251,660</u>	=	<u>1,262,719</u>	<u>93%</u>	<u>51%</u>	<u>2,552,961</u>	=	<u>and higher</u>	<u>100%</u>	<u>86%</u>
<u>1,262,720</u>	=	<u>1,284,386</u>	<u>94%</u>	<u>51%</u>					
<u>1,284,387</u>	=	<u>1,295,423</u>	<u>94%</u>	<u>52%</u>					
<u>1,295,424</u>	=	<u>1,317,344</u>	<u>95%</u>	<u>52%</u>					
<u>1,317,345</u>	=	<u>1,328,128</u>	<u>95%</u>	<u>53%</u>					
<u>1,328,129</u>	=	<u>1,350,535</u>	<u>96%</u>	<u>53%</u>					
<u>1,350,536</u>	=	<u>1,360,834</u>	<u>96%</u>	<u>54%</u>					
<u>1,360,835</u>	=	<u>1,383,963</u>	<u>97%</u>	<u>54%</u>					
<u>1,383,964</u>	=	<u>1,393,539</u>	<u>97%</u>	<u>55%</u>					
<u>1,393,540</u>	=	<u>1,417,629</u>	<u>98%</u>	<u>55%</u>					
<u>1,417,630</u>	=	<u>1,426,245</u>	<u>98%</u>	<u>56%</u>					
<u>1,426,246</u>	=	<u>1,451,537</u>	<u>99%</u>	<u>56%</u>					
<u>1,451,538</u>	=	<u>1,458,949</u>	<u>99%</u>	<u>57%</u>					
<u>1,458,950</u>	=	<u>1,485,689</u>	<u>100%</u>	<u>57%</u>					
<u>1,485,690</u>	=	<u>1,520,089</u>	<u>100%</u>	<u>58%</u>					
<u>1,520,090</u>	=	<u>1,554,738</u>	<u>100%</u>	<u>59%</u>					

AMENDATORY SECTION (Amending WSR 19-24-029, filed 11/25/19, effective 1/1/20)

WAC 296-17-885 Table III.

**Expected Loss Rates and Primary Ratios
by Risk Classification and Fiscal Year
Expected Loss Rates in Dollars Per Worker Hour
Effective January 1, (~~2020~~) 2021**

(Class	2016	2017	2018	Primary Ratio
101	0.7400	0.6571	0.5775	0.438
103	1.0630	0.9535	0.8528	0.433
104	0.6823	0.6081	0.5376	0.432
105	0.8320	0.7412	0.6551	0.503
106	2.1307	1.9093	1.7060	0.466
107	0.7343	0.6567	0.5830	0.412

((Class	2016	2017	2018	Primary- Ratio	((Class	2016	2017	2018	Primary- Ratio
108	0.6823	0.6081	0.5376	0.432	1003	0.5503	0.4877	0.4281	0.491
112	0.5148	0.4666	0.4228	0.408	1004	0.3304	0.2901	0.2504	0.480
201	1.3971	1.2488	1.1075	0.374	1005	6.3669	5.6532	4.9791	0.426
202	1.4944	1.3366	1.1869	0.375	1006	0.1676	0.1473	0.1273	0.551
210	0.6122	0.5482	0.4873	0.416	1007	0.2262	0.2015	0.1781	0.457
212	0.6653	0.5943	0.5269	0.421	1101	0.8583	0.7632	0.6738	0.472
214	1.1611	1.0320	0.9071	0.423	1102	1.2903	1.1475	1.0125	0.417
217	0.9036	0.8070	0.7161	0.452	1103	0.8244	0.7285	0.6369	0.480
219	0.6583	0.5860	0.5167	0.432	1104	0.4919	0.4408	0.3931	0.488
301	0.6738	0.6063	0.5445	0.471	1105	0.5682	0.5026	0.4394	0.495
302	1.5105	1.3340	1.1619	0.425	1106	0.2833	0.2534	0.2252	0.537
303	1.4383	1.2859	1.1437	0.415	1108	0.3714	0.3325	0.2958	0.506
306	0.5663	0.5025	0.4409	0.468	1109	1.2517	1.1142	0.9858	0.462
307	0.6570	0.5832	0.5122	0.485	1301	0.4895	0.4312	0.3745	0.501
308	0.4718	0.4225	0.3767	0.514	1303	0.3090	0.2693	0.2304	0.570
403	1.3967	1.2395	1.0891	0.488	1304	0.0165	0.0146	0.0128	0.488
502	0.7754	0.6852	0.5981	0.462	1305	0.4071	0.3583	0.3114	0.496
504	1.4481	1.3060	1.1776	0.423	1401	0.2135	0.1950	0.1795	0.467
507	2.2323	2.0248	1.8401	0.424	1404	0.5881	0.5202	0.4559	0.511
508	0.9229	0.8274	0.7379	0.373	1405	0.5727	0.5049	0.4395	0.520
509	0.6435	0.5733	0.5054	0.375	1407	0.4869	0.4286	0.3725	0.558
510	1.7700	1.6038	1.4556	0.410	1501	0.6324	0.5566	0.4833	0.490
511	1.0684	0.9476	0.8303	0.463	1507	0.4192	0.3722	0.3275	0.519
512	0.9547	0.8564	0.7652	0.454	1701	0.6039	0.5338	0.4668	0.481
513	0.6900	0.6143	0.5426	0.457	1702	1.0232	0.9198	0.8225	0.335
514	0.9904	0.8847	0.7840	0.473	1703	0.6714	0.5977	0.5276	0.402
516	1.0815	0.9680	0.8619	0.446	1704	0.6039	0.5338	0.4668	0.481
517	1.3800	1.2474	1.1281	0.392	1801	0.3416	0.3047	0.2697	0.433
518	0.8544	0.7619	0.6733	0.442	1802	0.5464	0.4875	0.4316	0.433
519	0.9451	0.8370	0.7332	0.473	2002	0.6541	0.5863	0.5232	0.464
521	0.4202	0.3783	0.3400	0.465	2004	0.4638	0.4081	0.3535	0.555
601	0.3698	0.3290	0.2896	0.470	2007	0.5975	0.5359	0.4792	0.470
602	0.4930	0.4359	0.3798	0.406	2008	0.2984	0.2663	0.2364	0.527
603	0.5229	0.4647	0.4084	0.414	2009	0.3169	0.2814	0.2475	0.551
604	0.8359	0.7474	0.6646	0.462	2101	0.5070	0.4549	0.4065	0.522
606	0.4404	0.3881	0.3372	0.546	2102	0.7408	0.6495	0.5614	0.543
607	0.5786	0.5096	0.4431	0.496	2104	0.3122	0.2809	0.2516	0.586
608	0.3234	0.2850	0.2473	0.459	2105	0.4910	0.4338	0.3783	0.524
701	1.3971	1.2488	1.1075	0.374	2106	0.4263	0.3816	0.3398	0.503
803	0.4661	0.4085	0.3522	0.537	2201	0.2508	0.2244	0.2000	0.507
901	0.8544	0.7619	0.6733	0.442	2202	0.4784	0.4284	0.3814	0.470
1002	0.6537	0.5855	0.5215	0.435	2203	0.4105	0.3695	0.3317	0.508

((Class	2016	2017	2018	Primary- Ratio	((Class	2016	2017	2018	Primary- Ratio
2204	0.2508	0.2244	0.2000	0.507	3701	0.2638	0.2343	0.2056	0.464
2401	0.3586	0.3182	0.2795	0.449	3702	0.3208	0.2870	0.2551	0.499
2903	0.5833	0.5233	0.4681	0.522	3708	0.5111	0.4555	0.4028	0.505
2904	0.5699	0.5113	0.4563	0.442	3802	0.1669	0.1499	0.1343	0.496
2905	0.3742	0.3343	0.2968	0.505	3808	0.3212	0.2862	0.2527	0.476
2906	0.3920	0.3552	0.3207	0.505	3901	0.1277	0.1132	0.0994	0.597
2907	0.3882	0.3463	0.3065	0.521	3902	0.4078	0.3644	0.3235	0.524
2908	0.7985	0.7170	0.6398	0.513	3903	0.3181	0.2843	0.2523	0.524
2909	0.3325	0.3016	0.2740	0.482	3905	0.1124	0.1003	0.0887	0.586
3101	0.6332	0.5601	0.4895	0.506	3906	0.4105	0.3671	0.3266	0.527
3102	0.2638	0.2343	0.2056	0.464	3909	0.2328	0.2077	0.1839	0.561
3103	0.3169	0.2850	0.2556	0.445	4101	0.2044	0.1819	0.1605	0.510
3104	0.5211	0.4623	0.4060	0.526	4103	0.4615	0.4110	0.3635	0.517
3105	0.6432	0.5778	0.5164	0.516	4107	0.1656	0.1459	0.1267	0.523
3303	0.3119	0.2766	0.2431	0.531	4108	0.1291	0.1147	0.1010	0.538
3304	0.5291	0.4729	0.4204	0.533	4109	0.1725	0.1565	0.1419	0.501
3309	0.3549	0.3168	0.2810	0.510	4201	0.6717	0.5889	0.5076	0.467
3402	0.3953	0.3511	0.3087	0.516	4301	0.7541	0.6775	0.6071	0.527
3403	0.1226	0.1095	0.0970	0.485	4302	0.6664	0.5928	0.5231	0.527
3404	0.3620	0.3197	0.2787	0.548	4304	0.8957	0.8103	0.7338	0.516
3405	0.2366	0.2110	0.1863	0.502	4305	0.9447	0.8250	0.7081	0.519
3406	0.2350	0.2069	0.1798	0.576	4401	0.3119	0.2766	0.2431	0.531
3407	0.5897	0.5231	0.4595	0.475	4402	0.5830	0.5122	0.4435	0.548
3408	0.1860	0.1624	0.1394	0.556	4404	0.3559	0.3168	0.2794	0.525
3409	0.1457	0.1292	0.1134	0.560	4501	0.1488	0.1312	0.1141	0.586
3410	0.1457	0.1292	0.1134	0.560	4502	0.0514	0.0457	0.0403	0.508
3411	0.4294	0.3810	0.3346	0.465	4504	0.1030	0.0906	0.0784	0.611
3412	0.4977	0.4391	0.3825	0.470	4802	0.3432	0.3082	0.2760	0.520
3414	0.5806	0.5155	0.4540	0.478	4803	0.3219	0.2890	0.2583	0.568
3415	0.6487	0.5807	0.5176	0.454	4804	0.4953	0.4468	0.4026	0.522
3501	0.4310	0.3872	0.3460	0.516	4805	0.3360	0.3009	0.2683	0.534
3503	0.2612	0.2331	0.2066	0.522	4806	0.0961	0.0859	0.0764	0.602
3506	0.6569	0.5897	0.5262	0.437	4808	0.3972	0.3557	0.3170	0.489
3509	0.3483	0.3081	0.2698	0.550	4809	0.2679	0.2405	0.2151	0.505
3510	0.2986	0.2674	0.2380	0.518	4810	0.1979	0.1772	0.1580	0.560
3511	0.6208	0.5553	0.4942	0.485	4811	0.4194	0.3791	0.3425	0.539
3512	0.3095	0.2741	0.2392	0.589	4812	0.3947	0.3517	0.3110	0.526
3513	0.3838	0.3471	0.3132	0.502	4813	0.1969	0.1771	0.1588	0.575
3602	0.0812	0.0719	0.0628	0.552	4814	0.1134	0.1030	0.0935	0.565
3603	0.4355	0.3918	0.3515	0.475	4815	0.2329	0.2115	0.1926	0.579
3604	0.5787	0.5222	0.4700	0.478	4816	0.3209	0.2934	0.2699	0.517
3605	0.3953	0.3511	0.3087	0.516	4900	0.0905	0.0805	0.0709	0.449

((Class	2016	2017	2018	Primary- Ratio	((Class	2016	2017	2018	Primary- Ratio
4901	0.0320	0.0284	0.0249	0.485	6120	0.2605	0.2292	0.1986	0.533
4902	0.0795	0.0702	0.0612	0.547	6121	0.2996	0.2635	0.2283	0.533
4903	0.1358	0.1193	0.1031	0.557	6201	0.3630	0.3213	0.2812	0.501
4904	0.0142	0.0126	0.0110	0.563	6202	0.6549	0.5782	0.5038	0.537
4905	0.3473	0.3112	0.2777	0.565	6203	0.0996	0.0894	0.0794	0.633
4906	0.0919	0.0804	0.0692	0.559	6204	0.1241	0.1098	0.0959	0.583
4907	0.0543	0.0485	0.0428	0.598	6205	0.1669	0.1483	0.1304	0.536
4908	0.0774	0.0693	0.0613	0.578	6206	0.1758	0.1549	0.1346	0.587
4909	0.0309	0.0278	0.0245	0.578	6207	0.9096	0.8145	0.7281	0.490
4910	0.3906	0.3467	0.3051	0.508	6208	0.2306	0.2053	0.1814	0.593
4911	0.0445	0.0401	0.0358	0.460	6209	0.2496	0.2247	0.2017	0.534
5001	6.0559	5.4799	4.9656	0.375	6301	0.0993	0.0875	0.0761	0.493
5002	0.4905	0.4315	0.3741	0.533	6303	0.0451	0.0400	0.0349	0.525
5003	1.6180	1.4399	1.2719	0.409	6305	0.0847	0.0747	0.0652	0.583
5004	0.7301	0.6655	0.6096	0.426	6306	0.2826	0.2477	0.2133	0.569
5005	0.6633	0.5934	0.5282	0.401	6308	0.0487	0.0431	0.0377	0.517
5006	0.9050	0.8148	0.7320	0.358	6309	0.1628	0.1444	0.1268	0.559
5101	0.7394	0.6548	0.5738	0.445	6402	0.2362	0.2090	0.1826	0.584
5103	0.6430	0.5780	0.5171	0.502	6403	0.1282	0.1132	0.0988	0.594
5106	0.6430	0.5780	0.5171	0.502	6404	0.2781	0.2487	0.2215	0.550
5108	0.6488	0.5712	0.4963	0.533	6405	0.4849	0.4292	0.3755	0.506
5109	0.4408	0.3893	0.3388	0.492	6406	0.1275	0.1124	0.0978	0.588
5201	0.2451	0.2171	0.1894	0.537	6407	0.2436	0.2161	0.1897	0.538
5204	0.7558	0.6705	0.5895	0.437	6408	0.4453	0.3972	0.3514	0.486
5206	0.3446	0.3095	0.2767	0.440	6409	0.5315	0.4718	0.4149	0.493
5207	0.1341	0.1196	0.1060	0.553	6410	0.2735	0.2403	0.2079	0.547
5208	0.5601	0.5003	0.4435	0.492	6411	0.0464	0.0416	0.0372	0.534
5209	0.4960	0.4397	0.3853	0.494	6501	0.0905	0.0790	0.0678	0.576
5300	0.0854	0.0748	0.0644	0.578	6502	0.0243	0.0215	0.0187	0.535
5301	0.0285	0.0255	0.0225	0.495	6503	0.0630	0.0550	0.0471	0.550
5302	0.0075	0.0066	0.0058	0.534	6504	0.2664	0.2383	0.2114	0.601
5305	0.0399	0.0351	0.0306	0.563	6505	0.1505	0.1324	0.1146	0.654
5306	0.0365	0.0324	0.0284	0.577	6506	0.1097	0.0972	0.0852	0.556
5307	0.5695	0.5001	0.4328	0.502	6509	0.2281	0.2032	0.1792	0.590
5308	0.0791	0.0700	0.0611	0.582	6510	0.3357	0.3013	0.2697	0.385
6103	0.0812	0.0721	0.0633	0.601	6511	0.2448	0.2176	0.1918	0.557
6104	0.3448	0.3045	0.2655	0.563	6512	0.0761	0.0677	0.0599	0.483
6105	0.3678	0.3260	0.2856	0.484	6601	0.1554	0.1387	0.1231	0.527
6107	0.1118	0.1004	0.0890	0.639	6602	0.4862	0.4357	0.3895	0.522
6108	0.2573	0.2296	0.2026	0.578	6603	0.2455	0.2173	0.1897	0.541
6109	0.0908	0.0799	0.0693	0.513	6604	0.0720	0.0637	0.0555	0.570
6110	0.3779	0.3335	0.2907	0.514	6605	0.2124	0.1884	0.1648	0.539

((Class	2016	2017	2018	Primary- Ratio	((Class	2016	2017	2018	Primary- Ratio
6607	0.0971	0.0866	0.0766	0.547	7120	4.7234	4.1252	3.5405	0.519
6608	0.4283	0.3786	0.3300	0.413	7121	5.3466	4.8456	4.3981	0.363
6620	2.5778	2.2419	1.9036	0.584	7122	0.3330	0.2988	0.2674	0.515
6704	0.1172	0.1027	0.0885	0.597	7200	1.4971	1.3085	1.1244	0.475
6705	0.5939	0.5305	0.4709	0.578	7201	1.2082	1.0547	0.9054	0.515
6706	0.2158	0.1953	0.1766	0.506	7202	0.0229	0.0203	0.0177	0.520
6707	12.4046	10.7263	9.0735	0.686	7203	0.0921	0.0837	0.0753	0.598
6708	7.9276	7.3252	6.8242	0.479	7204	0.0000	0.0000	0.0000	0.500
6709	0.2210	0.1958	0.1716	0.570	7205	0.0000	0.0000	0.0000	0.500
6801	0.5806	0.4948	0.4080	0.568	7301	0.5238	0.4764	0.4341	0.481
6802	0.7042	0.6156	0.5292	0.561	7302	0.7194	0.6527	0.5934	0.468
6803	0.4360	0.3879	0.3414	0.359	7307	0.4636	0.4093	0.3577	0.558
6804	0.2403	0.2126	0.1857	0.576	7308	0.2321	0.2086	0.1864	0.569
6809	3.5552	3.2088	2.8710	0.570	7309	0.2340	0.2075	0.1821	0.591
6901	0.0163	0.0163	0.0162	0.746	7400	1.7216	1.5048	1.2930	0.475))
6902	0.7168	0.6426	0.5749	0.424					
6903	4.4373	4.0302	3.6662	0.346					
6904	0.8093	0.7077	0.6084	0.488	Class	2017	2018	2019	Primary Ratio
6905	0.5985	0.5219	0.4455	0.532	101	0.7485	0.6747	0.5739	0.417
6906	0.2374	0.2250	0.2172	0.639	103	0.9666	0.8764	0.7541	0.421
6907	0.7639	0.6729	0.5848	0.556	104	0.6700	0.6032	0.5120	0.415
6908	0.3027	0.2698	0.2383	0.495	105	0.8109	0.7340	0.6285	0.494
6909	0.0974	0.0863	0.0757	0.549	106	1.8604	1.6904	1.4603	0.465
7100	0.0176	0.0155	0.0132	0.546	107	0.6967	0.6280	0.5339	0.417
7101	0.0190	0.0170	0.0151	0.457	108	0.6700	0.6032	0.5120	0.415
7103	0.7345	0.6379	0.5426	0.524	112	0.5068	0.4608	0.3980	0.403
7104	0.0205	0.0182	0.0160	0.519	201	1.4681	1.3206	1.1188	0.366
7105	0.0154	0.0136	0.0120	0.533	202	1.3730	1.2338	1.0434	0.371
7106	0.2500	0.2191	0.1892	0.600	210	0.6135	0.5540	0.4724	0.410
7107	0.2839	0.2532	0.2239	0.577	212	0.6227	0.5615	0.4778	0.429
7108	0.1975	0.1735	0.1501	0.609	214	1.1910	1.0690	0.9014	0.414
7109	0.0928	0.0825	0.0726	0.541	217	0.8693	0.7837	0.6668	0.454
7110	0.3250	0.2932	0.2646	0.423	219	0.6124	0.5484	0.4606	0.463
7111	0.2907	0.2544	0.2187	0.481	301	0.6696	0.6087	0.5257	0.463
7112	0.6463	0.5740	0.5051	0.556	302	1.4908	1.3360	1.1241	0.406
7113	0.3631	0.3220	0.2829	0.556	303	1.3693	1.2341	1.0502	0.412
7114	0.6625	0.5837	0.5077	0.597	306	0.5495	0.4943	0.4184	0.447
7115	0.4742	0.4214	0.3714	0.577	307	0.6495	0.5846	0.4954	0.477
7116	0.3565	0.3207	0.2881	0.450	308	0.4652	0.4224	0.3638	0.515
7117	1.0514	0.9386	0.8325	0.517	403	1.3286	1.1954	1.0128	0.486
7118	1.4321	1.2732	1.1231	0.518	502	0.6913	0.6193	0.5207	0.468
7119	1.3731	1.2056	1.0443	0.520	504	1.4947	1.3563	1.1689	0.409
					507	2.1186	1.9338	1.6836	0.401

<u>Class</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>Primary Ratio</u>	<u>Class</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>Primary Ratio</u>
<u>508</u>	<u>0.8573</u>	<u>0.7707</u>	<u>0.6525</u>	<u>0.361</u>	<u>1405</u>	<u>0.5290</u>	<u>0.4768</u>	<u>0.4051</u>	<u>0.506</u>
<u>509</u>	<u>0.6272</u>	<u>0.5619</u>	<u>0.4718</u>	<u>0.369</u>	<u>1407</u>	<u>0.5343</u>	<u>0.4805</u>	<u>0.4073</u>	<u>0.528</u>
<u>510</u>	<u>1.7101</u>	<u>1.5566</u>	<u>1.3487</u>	<u>0.414</u>	<u>1501</u>	<u>0.6503</u>	<u>0.5822</u>	<u>0.4891</u>	<u>0.490</u>
<u>511</u>	<u>0.9681</u>	<u>0.8724</u>	<u>0.7406</u>	<u>0.460</u>	<u>1507</u>	<u>0.3889</u>	<u>0.3515</u>	<u>0.2999</u>	<u>0.517</u>
<u>512</u>	<u>0.9268</u>	<u>0.8392</u>	<u>0.7195</u>	<u>0.455</u>	<u>1701</u>	<u>0.6012</u>	<u>0.5422</u>	<u>0.4618</u>	<u>0.442</u>
<u>513</u>	<u>0.6384</u>	<u>0.5752</u>	<u>0.4887</u>	<u>0.448</u>	<u>1702</u>	<u>0.9373</u>	<u>0.8432</u>	<u>0.7142</u>	<u>0.322</u>
<u>514</u>	<u>0.9120</u>	<u>0.8250</u>	<u>0.7050</u>	<u>0.467</u>	<u>1703</u>	<u>0.6434</u>	<u>0.5774</u>	<u>0.4874</u>	<u>0.400</u>
<u>516</u>	<u>1.0725</u>	<u>0.9683</u>	<u>0.8263</u>	<u>0.446</u>	<u>1704</u>	<u>0.6012</u>	<u>0.5422</u>	<u>0.4618</u>	<u>0.442</u>
<u>517</u>	<u>1.2906</u>	<u>1.1714</u>	<u>1.0101</u>	<u>0.382</u>	<u>1801</u>	<u>0.3401</u>	<u>0.3063</u>	<u>0.2600</u>	<u>0.418</u>
<u>518</u>	<u>0.8269</u>	<u>0.7446</u>	<u>0.6311</u>	<u>0.420</u>	<u>1802</u>	<u>0.5441</u>	<u>0.4900</u>	<u>0.4160</u>	<u>0.418</u>
<u>519</u>	<u>0.9500</u>	<u>0.8543</u>	<u>0.7234</u>	<u>0.457</u>	<u>2002</u>	<u>0.6175</u>	<u>0.5593</u>	<u>0.4798</u>	<u>0.470</u>
<u>521</u>	<u>0.4467</u>	<u>0.4059</u>	<u>0.3503</u>	<u>0.453</u>	<u>2004</u>	<u>0.4401</u>	<u>0.3959</u>	<u>0.3346</u>	<u>0.552</u>
<u>601</u>	<u>0.3811</u>	<u>0.3430</u>	<u>0.2904</u>	<u>0.468</u>	<u>2007</u>	<u>0.5783</u>	<u>0.5249</u>	<u>0.4523</u>	<u>0.456</u>
<u>602</u>	<u>0.4873</u>	<u>0.4346</u>	<u>0.3620</u>	<u>0.405</u>	<u>2008</u>	<u>0.2979</u>	<u>0.2707</u>	<u>0.2337</u>	<u>0.511</u>
<u>603</u>	<u>0.5539</u>	<u>0.4969</u>	<u>0.4184</u>	<u>0.389</u>	<u>2009</u>	<u>0.3105</u>	<u>0.2816</u>	<u>0.2419</u>	<u>0.522</u>
<u>604</u>	<u>0.8061</u>	<u>0.7310</u>	<u>0.6286</u>	<u>0.443</u>	<u>2101</u>	<u>0.5008</u>	<u>0.4559</u>	<u>0.3944</u>	<u>0.501</u>
<u>606</u>	<u>0.4287</u>	<u>0.3851</u>	<u>0.3251</u>	<u>0.540</u>	<u>2102</u>	<u>0.5599</u>	<u>0.5069</u>	<u>0.4345</u>	<u>0.481</u>
<u>607</u>	<u>0.5812</u>	<u>0.5201</u>	<u>0.4368</u>	<u>0.507</u>	<u>2103</u>	<u>0.9189</u>	<u>0.8197</u>	<u>0.6847</u>	<u>0.563</u>
<u>608</u>	<u>0.3201</u>	<u>0.2858</u>	<u>0.2385</u>	<u>0.450</u>	<u>2104</u>	<u>0.3180</u>	<u>0.2915</u>	<u>0.2548</u>	<u>0.555</u>
<u>701</u>	<u>1.4681</u>	<u>1.3206</u>	<u>1.1188</u>	<u>0.366</u>	<u>2105</u>	<u>0.5345</u>	<u>0.4788</u>	<u>0.4021</u>	<u>0.527</u>
<u>803</u>	<u>0.4669</u>	<u>0.4189</u>	<u>0.3530</u>	<u>0.523</u>	<u>2106</u>	<u>0.4602</u>	<u>0.4164</u>	<u>0.3566</u>	<u>0.502</u>
<u>901</u>	<u>0.8269</u>	<u>0.7446</u>	<u>0.6311</u>	<u>0.420</u>	<u>2201</u>	<u>0.2875</u>	<u>0.2606</u>	<u>0.2242</u>	<u>0.523</u>
<u>1002</u>	<u>0.6140</u>	<u>0.5539</u>	<u>0.4719</u>	<u>0.436</u>	<u>2202</u>	<u>0.4658</u>	<u>0.4218</u>	<u>0.3614</u>	<u>0.467</u>
<u>1003</u>	<u>0.5296</u>	<u>0.4767</u>	<u>0.4044</u>	<u>0.492</u>	<u>2203</u>	<u>0.4343</u>	<u>0.3948</u>	<u>0.3404</u>	<u>0.525</u>
<u>1004</u>	<u>0.3114</u>	<u>0.2778</u>	<u>0.2315</u>	<u>0.477</u>	<u>2204</u>	<u>0.2875</u>	<u>0.2606</u>	<u>0.2242</u>	<u>0.523</u>
<u>1005</u>	<u>6.2942</u>	<u>5.6512</u>	<u>4.7781</u>	<u>0.417</u>	<u>2401</u>	<u>0.3739</u>	<u>0.3354</u>	<u>0.2831</u>	<u>0.453</u>
<u>1006</u>	<u>0.1667</u>	<u>0.1499</u>	<u>0.1268</u>	<u>0.528</u>	<u>2903</u>	<u>0.5528</u>	<u>0.5035</u>	<u>0.4362</u>	<u>0.508</u>
<u>1007</u>	<u>0.2357</u>	<u>0.2124</u>	<u>0.1806</u>	<u>0.452</u>	<u>2904</u>	<u>0.5663</u>	<u>0.5130</u>	<u>0.4398</u>	<u>0.425</u>
<u>1101</u>	<u>0.8929</u>	<u>0.8047</u>	<u>0.6847</u>	<u>0.471</u>	<u>2905</u>	<u>0.3874</u>	<u>0.3509</u>	<u>0.3009</u>	<u>0.515</u>
<u>1102</u>	<u>1.2289</u>	<u>1.1050</u>	<u>0.9366</u>	<u>0.412</u>	<u>2906</u>	<u>0.4135</u>	<u>0.3784</u>	<u>0.3296</u>	<u>0.483</u>
<u>1103</u>	<u>0.7955</u>	<u>0.7139</u>	<u>0.6026</u>	<u>0.472</u>	<u>2907</u>	<u>0.3759</u>	<u>0.3406</u>	<u>0.2920</u>	<u>0.531</u>
<u>1104</u>	<u>0.4789</u>	<u>0.4348</u>	<u>0.3743</u>	<u>0.481</u>	<u>2908</u>	<u>0.7728</u>	<u>0.7004</u>	<u>0.6001</u>	<u>0.524</u>
<u>1105</u>	<u>0.6170</u>	<u>0.5543</u>	<u>0.4684</u>	<u>0.495</u>	<u>2909</u>	<u>0.3367</u>	<u>0.3093</u>	<u>0.2722</u>	<u>0.455</u>
<u>1106</u>	<u>0.2927</u>	<u>0.2653</u>	<u>0.2276</u>	<u>0.538</u>	<u>3101</u>	<u>0.6317</u>	<u>0.5692</u>	<u>0.4833</u>	<u>0.490</u>
<u>1108</u>	<u>0.3485</u>	<u>0.3168</u>	<u>0.2732</u>	<u>0.500</u>	<u>3102</u>	<u>0.2285</u>	<u>0.2057</u>	<u>0.1740</u>	<u>0.461</u>
<u>1109</u>	<u>1.2721</u>	<u>1.1477</u>	<u>0.9790</u>	<u>0.443</u>	<u>3103</u>	<u>0.2970</u>	<u>0.2695</u>	<u>0.2320</u>	<u>0.438</u>
<u>1301</u>	<u>0.4882</u>	<u>0.4376</u>	<u>0.3684</u>	<u>0.492</u>	<u>3104</u>	<u>0.5190</u>	<u>0.4698</u>	<u>0.4022</u>	<u>0.517</u>
<u>1303</u>	<u>0.3082</u>	<u>0.2758</u>	<u>0.2314</u>	<u>0.539</u>	<u>3105</u>	<u>0.6847</u>	<u>0.6242</u>	<u>0.5407</u>	<u>0.495</u>
<u>1304</u>	<u>0.0162</u>	<u>0.0146</u>	<u>0.0124</u>	<u>0.506</u>	<u>3303</u>	<u>0.3069</u>	<u>0.2775</u>	<u>0.2371</u>	<u>0.521</u>
<u>1305</u>	<u>0.4126</u>	<u>0.3695</u>	<u>0.3105</u>	<u>0.487</u>	<u>3304</u>	<u>0.5563</u>	<u>0.5055</u>	<u>0.4361</u>	<u>0.514</u>
<u>1401</u>	<u>0.2174</u>	<u>0.1998</u>	<u>0.1763</u>	<u>0.472</u>	<u>3309</u>	<u>0.3402</u>	<u>0.3080</u>	<u>0.2641</u>	<u>0.502</u>
<u>1404</u>	<u>0.6156</u>	<u>0.5546</u>	<u>0.4719</u>	<u>0.512</u>	<u>3402</u>	<u>0.3902</u>	<u>0.3526</u>	<u>0.3008</u>	<u>0.506</u>

<u>Class</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>Primary</u> <u>Ratio</u>	<u>Class</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>Primary</u> <u>Ratio</u>
<u>3403</u>	<u>0.1123</u>	<u>0.1014</u>	<u>0.0862</u>	<u>0.490</u>	<u>4302</u>	<u>0.6180</u>	<u>0.5597</u>	<u>0.4799</u>	<u>0.501</u>
<u>3404</u>	<u>0.3728</u>	<u>0.3362</u>	<u>0.2857</u>	<u>0.531</u>	<u>4304</u>	<u>0.8942</u>	<u>0.8201</u>	<u>0.7199</u>	<u>0.505</u>
<u>3405</u>	<u>0.2345</u>	<u>0.2119</u>	<u>0.1806</u>	<u>0.492</u>	<u>4305</u>	<u>0.9181</u>	<u>0.8217</u>	<u>0.6901</u>	<u>0.497</u>
<u>3406</u>	<u>0.2339</u>	<u>0.2106</u>	<u>0.1786</u>	<u>0.566</u>	<u>4401</u>	<u>0.3069</u>	<u>0.2775</u>	<u>0.2371</u>	<u>0.521</u>
<u>3407</u>	<u>0.5908</u>	<u>0.5332</u>	<u>0.4545</u>	<u>0.459</u>	<u>4402</u>	<u>0.5520</u>	<u>0.4959</u>	<u>0.4190</u>	<u>0.522</u>
<u>3408</u>	<u>0.2031</u>	<u>0.1814</u>	<u>0.1518</u>	<u>0.544</u>	<u>4404</u>	<u>0.3571</u>	<u>0.3235</u>	<u>0.2773</u>	<u>0.496</u>
<u>3409</u>	<u>0.1489</u>	<u>0.1345</u>	<u>0.1150</u>	<u>0.550</u>	<u>4501</u>	<u>0.1486</u>	<u>0.1337</u>	<u>0.1134</u>	<u>0.578</u>
<u>3410</u>	<u>0.1489</u>	<u>0.1345</u>	<u>0.1150</u>	<u>0.550</u>	<u>4502</u>	<u>0.0521</u>	<u>0.0472</u>	<u>0.0403</u>	<u>0.485</u>
<u>3411</u>	<u>0.4186</u>	<u>0.3762</u>	<u>0.3180</u>	<u>0.472</u>	<u>4504</u>	<u>0.0965</u>	<u>0.0872</u>	<u>0.0744</u>	<u>0.589</u>
<u>3412</u>	<u>0.5104</u>	<u>0.4572</u>	<u>0.3843</u>	<u>0.448</u>	<u>4802</u>	<u>0.3687</u>	<u>0.3356</u>	<u>0.2906</u>	<u>0.507</u>
<u>3414</u>	<u>0.6158</u>	<u>0.5533</u>	<u>0.4682</u>	<u>0.488</u>	<u>4803</u>	<u>0.3432</u>	<u>0.3134</u>	<u>0.2721</u>	<u>0.557</u>
<u>3415</u>	<u>0.7434</u>	<u>0.6705</u>	<u>0.5713</u>	<u>0.477</u>	<u>4804</u>	<u>0.5007</u>	<u>0.4575</u>	<u>0.3984</u>	<u>0.518</u>
<u>3501</u>	<u>0.4588</u>	<u>0.4182</u>	<u>0.3622</u>	<u>0.495</u>	<u>4805</u>	<u>0.3307</u>	<u>0.3017</u>	<u>0.2619</u>	<u>0.525</u>
<u>3503</u>	<u>0.2597</u>	<u>0.2346</u>	<u>0.2003</u>	<u>0.518</u>	<u>4806</u>	<u>0.0978</u>	<u>0.0893</u>	<u>0.0775</u>	<u>0.588</u>
<u>3506</u>	<u>0.6425</u>	<u>0.5805</u>	<u>0.4957</u>	<u>0.444</u>	<u>4808</u>	<u>0.3888</u>	<u>0.3535</u>	<u>0.3054</u>	<u>0.463</u>
<u>3509</u>	<u>0.3523</u>	<u>0.3179</u>	<u>0.2707</u>	<u>0.540</u>	<u>4809</u>	<u>0.2323</u>	<u>0.2114</u>	<u>0.1828</u>	<u>0.490</u>
<u>3510</u>	<u>0.2936</u>	<u>0.2673</u>	<u>0.2311</u>	<u>0.499</u>	<u>4810</u>	<u>0.2048</u>	<u>0.1865</u>	<u>0.1614</u>	<u>0.559</u>
<u>3511</u>	<u>0.6319</u>	<u>0.5740</u>	<u>0.4949</u>	<u>0.463</u>	<u>4811</u>	<u>0.4203</u>	<u>0.3850</u>	<u>0.3365</u>	<u>0.517</u>
<u>3512</u>	<u>0.2959</u>	<u>0.2683</u>	<u>0.2298</u>	<u>0.565</u>	<u>4812</u>	<u>0.3904</u>	<u>0.3542</u>	<u>0.3047</u>	<u>0.506</u>
<u>3513</u>	<u>0.3682</u>	<u>0.3351</u>	<u>0.2894</u>	<u>0.514</u>	<u>4813</u>	<u>0.2007</u>	<u>0.1840</u>	<u>0.1607</u>	<u>0.559</u>
<u>3602</u>	<u>0.0853</u>	<u>0.0770</u>	<u>0.0655</u>	<u>0.533</u>	<u>4814</u>	<u>0.1112</u>	<u>0.1024</u>	<u>0.0903</u>	<u>0.557</u>
<u>3603</u>	<u>0.4042</u>	<u>0.3671</u>	<u>0.3163</u>	<u>0.483</u>	<u>4815</u>	<u>0.2287</u>	<u>0.2110</u>	<u>0.1869</u>	<u>0.571</u>
<u>3604</u>	<u>0.5747</u>	<u>0.5232</u>	<u>0.4523</u>	<u>0.473</u>	<u>4816</u>	<u>0.3113</u>	<u>0.2876</u>	<u>0.2551</u>	<u>0.513</u>
<u>3605</u>	<u>0.3902</u>	<u>0.3526</u>	<u>0.3008</u>	<u>0.506</u>	<u>4900</u>	<u>0.0921</u>	<u>0.0829</u>	<u>0.0701</u>	<u>0.452</u>
<u>3701</u>	<u>0.2285</u>	<u>0.2057</u>	<u>0.1740</u>	<u>0.461</u>	<u>4901</u>	<u>0.0337</u>	<u>0.0303</u>	<u>0.0255</u>	<u>0.476</u>
<u>3702</u>	<u>0.3007</u>	<u>0.2724</u>	<u>0.2334</u>	<u>0.502</u>	<u>4902</u>	<u>0.0833</u>	<u>0.0750</u>	<u>0.0637</u>	<u>0.524</u>
<u>3708</u>	<u>0.4795</u>	<u>0.4361</u>	<u>0.3768</u>	<u>0.469</u>	<u>4903</u>	<u>0.1388</u>	<u>0.1244</u>	<u>0.1049</u>	<u>0.535</u>
<u>3802</u>	<u>0.1691</u>	<u>0.1540</u>	<u>0.1334</u>	<u>0.482</u>	<u>4904</u>	<u>0.0137</u>	<u>0.0124</u>	<u>0.0105</u>	<u>0.556</u>
<u>3808</u>	<u>0.3233</u>	<u>0.2921</u>	<u>0.2494</u>	<u>0.474</u>	<u>4905</u>	<u>0.3162</u>	<u>0.2886</u>	<u>0.2509</u>	<u>0.551</u>
<u>3901</u>	<u>0.1238</u>	<u>0.1123</u>	<u>0.0963</u>	<u>0.581</u>	<u>4906</u>	<u>0.0923</u>	<u>0.0827</u>	<u>0.0695</u>	<u>0.543</u>
<u>3902</u>	<u>0.3951</u>	<u>0.3584</u>	<u>0.3080</u>	<u>0.537</u>	<u>4907</u>	<u>0.0523</u>	<u>0.0477</u>	<u>0.0411</u>	<u>0.599</u>
<u>3903</u>	<u>0.3081</u>	<u>0.2795</u>	<u>0.2403</u>	<u>0.537</u>	<u>4908</u>	<u>0.0765</u>	<u>0.0696</u>	<u>0.0598</u>	<u>0.578</u>
<u>3905</u>	<u>0.1130</u>	<u>0.1029</u>	<u>0.0890</u>	<u>0.566</u>	<u>4909</u>	<u>0.0306</u>	<u>0.0279</u>	<u>0.0239</u>	<u>0.578</u>
<u>3906</u>	<u>0.4060</u>	<u>0.3688</u>	<u>0.3180</u>	<u>0.521</u>	<u>4910</u>	<u>0.3862</u>	<u>0.3484</u>	<u>0.2966</u>	<u>0.496</u>
<u>3909</u>	<u>0.2234</u>	<u>0.2024</u>	<u>0.1735</u>	<u>0.555</u>	<u>4911</u>	<u>0.0452</u>	<u>0.0410</u>	<u>0.0350</u>	<u>0.442</u>
<u>4101</u>	<u>0.2075</u>	<u>0.1874</u>	<u>0.1600</u>	<u>0.519</u>	<u>5001</u>	<u>5.9922</u>	<u>5.4424</u>	<u>4.7016</u>	<u>0.358</u>
<u>4103</u>	<u>0.4630</u>	<u>0.4206</u>	<u>0.3629</u>	<u>0.497</u>	<u>5002</u>	<u>0.4835</u>	<u>0.4341</u>	<u>0.3661</u>	<u>0.523</u>
<u>4107</u>	<u>0.1648</u>	<u>0.1482</u>	<u>0.1255</u>	<u>0.502</u>	<u>5003</u>	<u>1.6646</u>	<u>1.4985</u>	<u>1.2734</u>	<u>0.394</u>
<u>4108</u>	<u>0.1326</u>	<u>0.1198</u>	<u>0.1024</u>	<u>0.533</u>	<u>5004</u>	<u>0.7760</u>	<u>0.7132</u>	<u>0.6289</u>	<u>0.402</u>
<u>4109</u>	<u>0.1649</u>	<u>0.1510</u>	<u>0.1320</u>	<u>0.496</u>	<u>5005</u>	<u>0.7130</u>	<u>0.6424</u>	<u>0.5463</u>	<u>0.382</u>
<u>4201</u>	<u>0.6307</u>	<u>0.5635</u>	<u>0.4714</u>	<u>0.443</u>	<u>5006</u>	<u>0.8863</u>	<u>0.7993</u>	<u>0.6811</u>	<u>0.360</u>
<u>4301</u>	<u>0.7521</u>	<u>0.6844</u>	<u>0.5919</u>	<u>0.525</u>	<u>5101</u>	<u>0.7391</u>	<u>0.6624</u>	<u>0.5576</u>	<u>0.443</u>

<u>Class</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>Primary Ratio</u>	<u>Class</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>Primary Ratio</u>
<u>5103</u>	<u>0.6605</u>	<u>0.5997</u>	<u>0.5161</u>	<u>0.503</u>	<u>6403</u>	<u>0.1252</u>	<u>0.1130</u>	<u>0.0962</u>	<u>0.577</u>
<u>5106</u>	<u>0.6605</u>	<u>0.5997</u>	<u>0.5161</u>	<u>0.503</u>	<u>6404</u>	<u>0.2731</u>	<u>0.2488</u>	<u>0.2155</u>	<u>0.533</u>
<u>5108</u>	<u>0.6685</u>	<u>0.5991</u>	<u>0.5041</u>	<u>0.534</u>	<u>6405</u>	<u>0.4830</u>	<u>0.4347</u>	<u>0.3686</u>	<u>0.501</u>
<u>5109</u>	<u>0.4075</u>	<u>0.3658</u>	<u>0.3079</u>	<u>0.491</u>	<u>6406</u>	<u>0.1254</u>	<u>0.1132</u>	<u>0.0962</u>	<u>0.577</u>
<u>5201</u>	<u>0.2495</u>	<u>0.2245</u>	<u>0.1897</u>	<u>0.547</u>	<u>6407</u>	<u>0.2397</u>	<u>0.2165</u>	<u>0.1847</u>	<u>0.528</u>
<u>5204</u>	<u>0.7556</u>	<u>0.6783</u>	<u>0.5730</u>	<u>0.423</u>	<u>6408</u>	<u>0.4742</u>	<u>0.4292</u>	<u>0.3678</u>	<u>0.478</u>
<u>5206</u>	<u>0.3409</u>	<u>0.3094</u>	<u>0.2664</u>	<u>0.416</u>	<u>6409</u>	<u>0.5203</u>	<u>0.4682</u>	<u>0.3969</u>	<u>0.490</u>
<u>5207</u>	<u>0.1270</u>	<u>0.1154</u>	<u>0.0994</u>	<u>0.547</u>	<u>6410</u>	<u>0.2731</u>	<u>0.2451</u>	<u>0.2067</u>	<u>0.539</u>
<u>5208</u>	<u>0.5469</u>	<u>0.4955</u>	<u>0.4247</u>	<u>0.482</u>	<u>6411</u>	<u>0.0408</u>	<u>0.0371</u>	<u>0.0321</u>	<u>0.538</u>
<u>5209</u>	<u>0.5095</u>	<u>0.4586</u>	<u>0.3882</u>	<u>0.492</u>	<u>6501</u>	<u>0.0921</u>	<u>0.0824</u>	<u>0.0692</u>	<u>0.564</u>
<u>5300</u>	<u>0.0813</u>	<u>0.0731</u>	<u>0.0617</u>	<u>0.559</u>	<u>6502</u>	<u>0.0235</u>	<u>0.0212</u>	<u>0.0180</u>	<u>0.507</u>
<u>5301</u>	<u>0.0268</u>	<u>0.0242</u>	<u>0.0208</u>	<u>0.490</u>	<u>6503</u>	<u>0.0670</u>	<u>0.0596</u>	<u>0.0495</u>	<u>0.536</u>
<u>5302</u>	<u>0.0071</u>	<u>0.0064</u>	<u>0.0054</u>	<u>0.528</u>	<u>6504</u>	<u>0.2478</u>	<u>0.2265</u>	<u>0.1968</u>	<u>0.592</u>
<u>5305</u>	<u>0.0377</u>	<u>0.0340</u>	<u>0.0289</u>	<u>0.545</u>	<u>6505</u>	<u>0.1475</u>	<u>0.1333</u>	<u>0.1136</u>	<u>0.640</u>
<u>5306</u>	<u>0.0362</u>	<u>0.0326</u>	<u>0.0277</u>	<u>0.582</u>	<u>6506</u>	<u>0.1127</u>	<u>0.1017</u>	<u>0.0866</u>	<u>0.552</u>
<u>5307</u>	<u>0.5701</u>	<u>0.5099</u>	<u>0.4278</u>	<u>0.500</u>	<u>6509</u>	<u>0.2172</u>	<u>0.1975</u>	<u>0.1701</u>	<u>0.577</u>
<u>5308</u>	<u>0.0778</u>	<u>0.0705</u>	<u>0.0604</u>	<u>0.570</u>	<u>6510</u>	<u>0.3003</u>	<u>0.2706</u>	<u>0.2302</u>	<u>0.385</u>
<u>6103</u>	<u>0.0799</u>	<u>0.0726</u>	<u>0.0624</u>	<u>0.585</u>	<u>6511</u>	<u>0.2383</u>	<u>0.2161</u>	<u>0.1858</u>	<u>0.544</u>
<u>6104</u>	<u>0.3379</u>	<u>0.3051</u>	<u>0.2601</u>	<u>0.545</u>	<u>6512</u>	<u>0.0765</u>	<u>0.0690</u>	<u>0.0590</u>	<u>0.471</u>
<u>6105</u>	<u>0.4142</u>	<u>0.3718</u>	<u>0.3135</u>	<u>0.480</u>	<u>6601</u>	<u>0.1552</u>	<u>0.1411</u>	<u>0.1218</u>	<u>0.511</u>
<u>6107</u>	<u>0.1138</u>	<u>0.1040</u>	<u>0.0898</u>	<u>0.637</u>	<u>6602</u>	<u>0.4895</u>	<u>0.4456</u>	<u>0.3861</u>	<u>0.509</u>
<u>6108</u>	<u>0.2375</u>	<u>0.2157</u>	<u>0.1853</u>	<u>0.576</u>	<u>6603</u>	<u>0.2571</u>	<u>0.2316</u>	<u>0.1964</u>	<u>0.555</u>
<u>6109</u>	<u>0.0897</u>	<u>0.0804</u>	<u>0.0675</u>	<u>0.519</u>	<u>6604</u>	<u>0.0682</u>	<u>0.0616</u>	<u>0.0525</u>	<u>0.556</u>
<u>6110</u>	<u>0.3512</u>	<u>0.3150</u>	<u>0.2652</u>	<u>0.520</u>	<u>6605</u>	<u>0.2249</u>	<u>0.2028</u>	<u>0.1718</u>	<u>0.549</u>
<u>6120</u>	<u>0.2498</u>	<u>0.2245</u>	<u>0.1898</u>	<u>0.514</u>	<u>6607</u>	<u>0.0869</u>	<u>0.0791</u>	<u>0.0684</u>	<u>0.536</u>
<u>6121</u>	<u>0.3333</u>	<u>0.2980</u>	<u>0.2496</u>	<u>0.525</u>	<u>6608</u>	<u>0.4075</u>	<u>0.3640</u>	<u>0.3044</u>	<u>0.400</u>
<u>6201</u>	<u>0.3870</u>	<u>0.3484</u>	<u>0.2955</u>	<u>0.493</u>	<u>6620</u>	<u>2.5436</u>	<u>2.2688</u>	<u>1.8865</u>	<u>0.572</u>
<u>6202</u>	<u>0.6428</u>	<u>0.5798</u>	<u>0.4929</u>	<u>0.521</u>	<u>6704</u>	<u>0.1217</u>	<u>0.1092</u>	<u>0.0920</u>	<u>0.592</u>
<u>6203</u>	<u>0.0951</u>	<u>0.0871</u>	<u>0.0759</u>	<u>0.620</u>	<u>6705</u>	<u>0.5904</u>	<u>0.5382</u>	<u>0.4661</u>	<u>0.573</u>
<u>6204</u>	<u>0.1294</u>	<u>0.1169</u>	<u>0.0999</u>	<u>0.571</u>	<u>6706</u>	<u>0.2113</u>	<u>0.1933</u>	<u>0.1685</u>	<u>0.512</u>
<u>6205</u>	<u>0.1606</u>	<u>0.1452</u>	<u>0.1240</u>	<u>0.526</u>	<u>6707</u>	<u>12.9247</u>	<u>11.6029</u>	<u>9.7842</u>	<u>0.664</u>
<u>6206</u>	<u>0.1822</u>	<u>0.1642</u>	<u>0.1393</u>	<u>0.576</u>	<u>6708</u>	<u>8.1066</u>	<u>7.5046</u>	<u>6.6810</u>	<u>0.485</u>
<u>6207</u>	<u>0.8689</u>	<u>0.7875</u>	<u>0.6774</u>	<u>0.489</u>	<u>6709</u>	<u>0.2098</u>	<u>0.1900</u>	<u>0.1625</u>	<u>0.548</u>
<u>6208</u>	<u>0.2261</u>	<u>0.2059</u>	<u>0.1782</u>	<u>0.594</u>	<u>6801</u>	<u>0.5706</u>	<u>0.5017</u>	<u>0.4073</u>	<u>0.557</u>
<u>6209</u>	<u>0.2433</u>	<u>0.2224</u>	<u>0.1934</u>	<u>0.539</u>	<u>6802</u>	<u>0.7085</u>	<u>0.6341</u>	<u>0.5324</u>	<u>0.552</u>
<u>6301</u>	<u>0.1059</u>	<u>0.0953</u>	<u>0.0808</u>	<u>0.473</u>	<u>6803</u>	<u>0.4198</u>	<u>0.3752</u>	<u>0.3141</u>	<u>0.374</u>
<u>6303</u>	<u>0.0425</u>	<u>0.0384</u>	<u>0.0325</u>	<u>0.520</u>	<u>6804</u>	<u>0.2387</u>	<u>0.2153</u>	<u>0.1830</u>	<u>0.557</u>
<u>6305</u>	<u>0.0828</u>	<u>0.0748</u>	<u>0.0636</u>	<u>0.578</u>	<u>6809</u>	<u>3.3970</u>	<u>3.0978</u>	<u>2.6741</u>	<u>0.564</u>
<u>6306</u>	<u>0.2847</u>	<u>0.2559</u>	<u>0.2162</u>	<u>0.554</u>	<u>6901</u>	<u>0.0175</u>	<u>0.0174</u>	<u>0.0166</u>	<u>0.787</u>
<u>6308</u>	<u>0.0485</u>	<u>0.0437</u>	<u>0.0371</u>	<u>0.495</u>	<u>6902</u>	<u>0.6801</u>	<u>0.6161</u>	<u>0.5296</u>	<u>0.411</u>
<u>6309</u>	<u>0.1723</u>	<u>0.1559</u>	<u>0.1333</u>	<u>0.535</u>	<u>6903</u>	<u>4.0915</u>	<u>3.7086</u>	<u>3.1895</u>	<u>0.343</u>
<u>6402</u>	<u>0.2271</u>	<u>0.2057</u>	<u>0.1761</u>	<u>0.571</u>	<u>6904</u>	<u>0.8427</u>	<u>0.7526</u>	<u>0.6291</u>	<u>0.473</u>

<u>Class</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>Primary Ratio</u>	<u>Expected Loss Rates in Dollars Per Sq. Ft. of Wallboard Installed</u>				
					<u>Class</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>Primary Ratio</u>
<u>6905</u>	<u>0.6377</u>	<u>0.5691</u>	<u>0.4744</u>	<u>0.509</u>					
<u>6906</u>	<u>0.2495</u>	<u>0.2390</u>	<u>0.2247</u>	<u>0.619</u>	(<u>540</u>	<u>0.0173</u>	<u>0.0155</u>	<u>0.0137</u>	<u>0.458</u>
<u>6907</u>	<u>0.7113</u>	<u>0.6425</u>	<u>0.5478</u>	<u>0.539</u>	541	<u>0.0068</u>	<u>0.0061</u>	<u>0.0054</u>	<u>0.453</u>
<u>6908</u>	<u>0.2901</u>	<u>0.2622</u>	<u>0.2238</u>	<u>0.483</u>	550	<u>0.0271</u>	<u>0.0242</u>	<u>0.0217</u>	<u>0.415</u>
<u>6909</u>	<u>0.1013</u>	<u>0.0916</u>	<u>0.0780</u>	<u>0.528</u>	551	<u>0.0113</u>	<u>0.0102</u>	<u>0.0093</u>	<u>0.392</u>)
<u>7100</u>	<u>0.0170</u>	<u>0.0151</u>	<u>0.0127</u>	<u>0.537</u>					
<u>7101</u>	<u>0.0185</u>	<u>0.0167</u>	<u>0.0142</u>	<u>0.461</u>					
<u>7103</u>	<u>0.7816</u>	<u>0.6960</u>	<u>0.5791</u>	<u>0.498</u>	<u>Class</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>Primary Ratio</u>
<u>7104</u>	<u>0.0197</u>	<u>0.0178</u>	<u>0.0152</u>	<u>0.500</u>	<u>540</u>	<u>0.0161</u>	<u>0.0145</u>	<u>0.0124</u>	<u>0.458</u>
<u>7105</u>	<u>0.0149</u>	<u>0.0136</u>	<u>0.0116</u>	<u>0.517</u>	<u>541</u>	<u>0.0068</u>	<u>0.0061</u>	<u>0.0053</u>	<u>0.438</u>
<u>7106</u>	<u>0.2552</u>	<u>0.2296</u>	<u>0.1947</u>	<u>0.582</u>	<u>550</u>	<u>0.0264</u>	<u>0.0238</u>	<u>0.0205</u>	<u>0.385</u>
<u>7107</u>	<u>0.3151</u>	<u>0.2846</u>	<u>0.2427</u>	<u>0.564</u>	<u>551</u>	<u>0.0103</u>	<u>0.0093</u>	<u>0.0080</u>	<u>0.403</u>
<u>7108</u>	<u>0.2190</u>	<u>0.1973</u>	<u>0.1675</u>	<u>0.603</u>					
<u>7109</u>	<u>0.0861</u>	<u>0.0778</u>	<u>0.0665</u>	<u>0.520</u>					
<u>7110</u>	<u>0.3404</u>	<u>0.3093</u>	<u>0.2673</u>	<u>0.412</u>					
<u>7111</u>	<u>0.2822</u>	<u>0.2511</u>	<u>0.2083</u>	<u>0.476</u>					
<u>7112</u>	<u>0.6411</u>	<u>0.5812</u>	<u>0.4992</u>	<u>0.539</u>					
<u>7113</u>	<u>0.3686</u>	<u>0.3328</u>	<u>0.2839</u>	<u>0.547</u>					
<u>7114</u>	<u>0.6813</u>	<u>0.6154</u>	<u>0.5250</u>	<u>0.585</u>					
<u>7115</u>	<u>0.4734</u>	<u>0.4305</u>	<u>0.3716</u>	<u>0.557</u>					
<u>7116</u>	<u>0.3673</u>	<u>0.3325</u>	<u>0.2851</u>	<u>0.456</u>					
<u>7117</u>	<u>0.9906</u>	<u>0.8974</u>	<u>0.7694</u>	<u>0.511</u>					
<u>7118</u>	<u>1.4155</u>	<u>1.2775</u>	<u>1.0893</u>	<u>0.500</u>					
<u>7119</u>	<u>1.4197</u>	<u>1.2754</u>	<u>1.0793</u>	<u>0.489</u>					
<u>7120</u>	<u>4.5901</u>	<u>4.1084</u>	<u>3.4501</u>	<u>0.497</u>					
<u>7121</u>	<u>6.3024</u>	<u>5.7193</u>	<u>4.9320</u>	<u>0.352</u>					
<u>7122</u>	<u>0.3328</u>	<u>0.3033</u>	<u>0.2632</u>	<u>0.514</u>					
<u>7200</u>	<u>1.5951</u>	<u>1.4168</u>	<u>1.1738</u>	<u>0.477</u>					
<u>7201</u>	<u>1.2905</u>	<u>1.1514</u>	<u>0.9619</u>	<u>0.494</u>					
<u>7202</u>	<u>0.0219</u>	<u>0.0196</u>	<u>0.0165</u>	<u>0.527</u>					
<u>7203</u>	<u>0.0873</u>	<u>0.0802</u>	<u>0.0699</u>	<u>0.586</u>					
<u>7204</u>	<u>0.0000</u>	<u>0.0000</u>	<u>0.0000</u>	<u>0.500</u>					
<u>7205</u>	<u>0.0000</u>	<u>0.0000</u>	<u>0.0000</u>	<u>0.500</u>					
<u>7301</u>	<u>0.5527</u>	<u>0.5079</u>	<u>0.4470</u>	<u>0.465</u>					
<u>7302</u>	<u>0.6644</u>	<u>0.6101</u>	<u>0.5366</u>	<u>0.437</u>					
<u>7307</u>	<u>0.4695</u>	<u>0.4235</u>	<u>0.3609</u>	<u>0.555</u>					
<u>7308</u>	<u>0.2313</u>	<u>0.2105</u>	<u>0.1816</u>	<u>0.581</u>					
<u>7309</u>	<u>0.2294</u>	<u>0.2083</u>	<u>0.1791</u>	<u>0.585</u>					
<u>7400</u>	<u>1.8343</u>	<u>1.6293</u>	<u>1.3498</u>	<u>0.477</u>					

AMENDATORY SECTION (Amending WSR 19-24-029, filed 11/25/19, effective 1/1/20)

WAC 296-17-890 Table IV.

**Maximum Experience Modifications
For Firms with No Compensable Accidents:
Effective January 1, (~~2020~~) 2021**

<u>Expected Loss Range</u>	<u>Maximum Experience Modification</u>
(+ - 5,410	0.90
5,411 - 6,605	0.89
6,606 - 7,285	0.88
7,286 - 7,965	0.87
7,966 - 8,646	0.86
8,647 - 9,326	0.85
9,327 - 10,006	0.84
10,007 - 10,686	0.83
10,687 - 11,366	0.82
11,367 - 12,070	0.81
12,071 - 12,803	0.80
12,804 - 13,565	0.79
13,566 - 14,356	0.78
14,357 - 15,177	0.77
15,178 - 16,026	0.76
16,027 - 16,905	0.75
16,906 - 17,813	0.74
17,814 - 18,751	0.73
18,752 - 19,717	0.72
19,718 - 20,713	0.71
20,714 - 21,738	0.70
21,739 - 22,792	0.69

Expected Loss Range	Maximum Experience Modification
22,793 - 23,875	0.68
23,876 - 24,988	0.67
24,989 - 26,130	0.66
26,131 - 27,301	0.65
27,302 - 29,057	0.64
29,058 - 31,692	0.63
31,693 - 35,644	0.62
35,645 - 41,572	0.61
41,573 and higher	0.60))
<u>1</u> = <u>5,383</u>	<u>0.90</u>
<u>5,384</u> = <u>6,572</u>	<u>0.89</u>
<u>6,573</u> = <u>7,249</u>	<u>0.88</u>
<u>7,250</u> = <u>7,925</u>	<u>0.87</u>
<u>7,926</u> = <u>8,602</u>	<u>0.86</u>
<u>8,603</u> = <u>9,279</u>	<u>0.85</u>
<u>9,280</u> = <u>9,956</u>	<u>0.84</u>
<u>9,957</u> = <u>10,632</u>	<u>0.83</u>
<u>10,633</u> = <u>11,309</u>	<u>0.82</u>
<u>11,310</u> = <u>12,010</u>	<u>0.81</u>
<u>12,011</u> = <u>12,741</u>	<u>0.80</u>
<u>12,742</u> = <u>13,500</u>	<u>0.79</u>
<u>13,501</u> = <u>14,288</u>	<u>0.78</u>
<u>14,289</u> = <u>15,105</u>	<u>0.77</u>
<u>15,106</u> = <u>15,951</u>	<u>0.76</u>
<u>15,952</u> = <u>16,826</u>	<u>0.75</u>
<u>16,827</u> = <u>17,730</u>	<u>0.74</u>
<u>17,731</u> = <u>18,663</u>	<u>0.73</u>
<u>18,664</u> = <u>19,625</u>	<u>0.72</u>
<u>19,626</u> = <u>20,615</u>	<u>0.71</u>
<u>20,616</u> = <u>21,635</u>	<u>0.70</u>
<u>21,636</u> = <u>22,684</u>	<u>0.69</u>
<u>22,685</u> = <u>23,762</u>	<u>0.68</u>
<u>23,763</u> = <u>24,869</u>	<u>0.67</u>
<u>24,870</u> = <u>26,004</u>	<u>0.66</u>
<u>26,005</u> = <u>27,169</u>	<u>0.65</u>
<u>27,170</u> = <u>28,916</u>	<u>0.64</u>
<u>28,917</u> = <u>31,536</u>	<u>0.63</u>
<u>31,537</u> = <u>35,467</u>	<u>0.62</u>
<u>35,468</u> = <u>41,363</u>	<u>0.61</u>
<u>41,364</u> and higher	<u>0.60</u>

AMENDATORY SECTION (Amending WSR 19-24-029, filed 11/25/19, effective 1/1/20)

WAC 296-17-895 Industrial insurance accident fund base rates, stay at work and medical aid base rates by class of industry. Industrial insurance accident fund, stay at work and medical aid fund base rates by class of industry shall be as set forth below.

Class	Base Rates Effective January 1, ((2020)) 2021		
	Accident Fund	Stay at Work	Medical Aid Fund
((101	1.3901	0.0215	0.5632
103	1.8152	0.0279	0.9236
104	1.2604	0.0195	0.5415
105	1.2880	0.0196	0.8017
106	3.3331	0.0507	2.0099
107	1.4172	0.0219	0.5720
108	1.2604	0.0195	0.5415
112	0.9017	0.0138	0.4801
201	2.9172	0.0454	0.9669
202	3.0964	0.0482	1.0492
210	1.1673	0.0180	0.4971
212	1.2531	0.0194	0.5283
214	2.2923	0.0356	0.8312
217	1.5613	0.0240	0.7752
219	1.2500	0.0193	0.5074
301	1.0292	0.0156	0.6647
302	3.0488	0.0475	1.0082
303	2.6462	0.0409	1.1352
306	1.0127	0.0156	0.4674
307	1.1142	0.0171	0.5669
308	0.6691	0.0101	0.4826
403	2.3195	0.0356	1.1963
502	1.4215	0.0220	0.5891
504	2.4344	0.0373	1.3043
507	3.6057	0.0549	2.1769
508	1.8655	0.0290	0.6737
509	1.3904	0.0217	0.4198
510	2.9710	0.0454	1.6554
511	1.9568	0.0302	0.8544
512	1.5863	0.0243	0.8749
513	1.1969	0.0184	0.5770
514	1.6711	0.0256	0.9076
516	1.8572	0.0285	0.9385
517	2.4678	0.0380	1.1883
518	1.5782	0.0243	0.7018

Base Rates Effective January 1, ((2020)) 2021				Base Rates Effective January 1, ((2020)) 2021			
Class	Accident Fund	Stay at Work	Medical Aid Fund	Class	Accident Fund	Stay at Work	Medical Aid Fund
519	1.6514	0.0254	0.7687	1801	0.6292	0.0097	0.2741
521	0.6497	0.0099	0.4132	1802	1.0067	0.0155	0.4386
601	0.6538	0.0101	0.3184	2002	1.0594	0.0162	0.6050
602	1.0440	0.0163	0.3127	2004	0.7129	0.0109	0.4301
603	1.0483	0.0163	0.3707	2007	0.9299	0.0141	0.5727
604	1.3866	0.0212	0.7452	2008	0.4103	0.0062	0.3041
606	0.6672	0.0102	0.4000	2009	0.4504	0.0068	0.3254
607	0.9750	0.0150	0.4534	2101	0.6980	0.0105	0.5359
608	0.6198	0.0096	0.2319	2102	1.1289	0.0173	0.6211
701	2.9172	0.0454	0.9669	2104	0.3565	0.0052	0.3915
803	0.7544	0.0116	0.3832	2105	0.7864	0.0120	0.4385
901	1.5782	0.0243	0.7018	2106	0.6293	0.0095	0.4255
1002	1.1569	0.0178	0.5510	2201	0.3601	0.0054	0.2514
1003	0.8998	0.0138	0.4696	2202	0.7884	0.0120	0.4422
1004	0.6130	0.0095	0.2480	2203	0.5796	0.0087	0.4391
1005	11.8215	0.1830	4.8087	2204	0.3601	0.0054	0.2514
1006	0.2582	0.0039	0.1505	2401	0.6506	0.0100	0.2806
1007	0.3900	0.0060	0.1912	2903	0.7856	0.0118	0.6281
1101	1.4194	0.0218	0.7283	2904	0.9950	0.0153	0.5089
1102	2.4542	0.0381	0.9397	2905	0.5653	0.0086	0.3696
1103	1.4002	0.0216	0.6559	2906	0.5722	0.0086	0.4623
1104	0.7574	0.0115	0.4848	2907	0.5709	0.0086	0.3926
1105	0.9559	0.0147	0.4765	2908	1.1826	0.0178	0.8704
1106	0.3909	0.0059	0.3031	2909	0.4608	0.0069	0.3789
1108	0.5600	0.0085	0.3779	3101	1.0410	0.0160	0.5449
1109	2.0853	0.0320	1.0587	3102	0.4766	0.0073	0.2167
1301	0.8327	0.0128	0.3889	3103	0.5209	0.0080	0.2957
1303	0.4696	0.0072	0.2558	3104	0.7865	0.0120	0.4881
1304	0.0276	0.0004	0.0140	3105	0.9272	0.0139	0.7000
1305	0.6859	0.0106	0.3195	3303	0.4564	0.0069	0.2946
1401	0.2674	0.0040	0.2479	3304	0.7183	0.0108	0.5462
1404	0.8970	0.0137	0.5108	3309	0.5217	0.0079	0.3405
1405	0.9094	0.0139	0.4886	3402	0.6173	0.0094	0.3702
1407	0.6940	0.0105	0.4395	3403	0.2039	0.0031	0.1142
1501	1.0955	0.0169	0.4840	3404	0.5438	0.0083	0.3440
1507	0.6377	0.0097	0.3929	3405	0.3803	0.0058	0.2260
1701	1.0276	0.0158	0.4808	3406	0.3218	0.0049	0.2253
1702	2.2424	0.0350	0.6752	3407	1.0084	0.0155	0.4910
1703	1.3329	0.0207	0.4779	3408	0.2877	0.0044	0.1569
1704	1.0276	0.0158	0.4808	3409	0.1952	0.0029	0.1449

Base Rates Effective January 1, ((2020)) 2021				Base Rates Effective January 1, ((2020)) 2021			
Class	Accident Fund	Stay at Work	Medical Aid Fund	Class	Accident Fund	Stay at Work	Medical Aid Fund
3410	0.1952	0.0029	0.1449	4404	0.5360	0.0081	0.3559
3411	0.7557	0.0116	0.3468	4501	0.2021	0.0030	0.1485
3412	0.8966	0.0139	0.3769	4502	0.0808	0.0012	0.0490
3414	0.9636	0.0148	0.4915	4504	0.1371	0.0021	0.1077
3415	1.0746	0.0165	0.5717	4802	0.4599	0.0069	0.3647
3501	0.6212	0.0093	0.4691	4803	0.3886	0.0057	0.3777
3503	0.3821	0.0058	0.2660	4804	0.6422	0.0096	0.5532
3506	1.1751	0.0181	0.5804	4805	0.4509	0.0067	0.3619
3509	0.4887	0.0074	0.3329	4806	0.1077	0.0016	0.1143
3510	0.4310	0.0065	0.3101	4808	0.6033	0.0092	0.3862
3511	0.9656	0.0147	0.5936	4809	0.3873	0.0058	0.2785
3512	0.4205	0.0063	0.3363	4810	0.2400	0.0036	0.2197
3513	0.5449	0.0082	0.4383	4811	0.5099	0.0075	0.5040
3602	0.1201	0.0018	0.0788	4812	0.5766	0.0087	0.3856
3603	0.6674	0.0101	0.4360	4813	0.2261	0.0033	0.2387
3604	0.8870	0.0134	0.6024	4900	0.1693	0.0026	0.0732
3605	0.6173	0.0094	0.3702	4901	0.0561	0.0009	0.0277
3701	0.4766	0.0073	0.2167	4902	0.1175	0.0018	0.0733
3702	0.4950	0.0075	0.3164	4903	0.2086	0.0032	0.1219
3708	0.7861	0.0120	0.4780	4904	0.0202	0.0003	0.0146
3802	0.2485	0.0038	0.1724	4905	0.4132	0.0061	0.3901
3808	0.5443	0.0083	0.2870	4906	0.1409	0.0022	0.0792
3901	0.1563	0.0023	0.1390	4907	0.0697	0.0010	0.0663
3902	0.5874	0.0089	0.4158	4908	0.1064	0.0016	0.0981
3903	0.4581	0.0069	0.3244	4909	0.0425	0.0006	0.0393
3905	0.1389	0.0021	0.1284	4910	0.6030	0.0092	0.3539
3906	0.5627	0.0085	0.4244	4911	0.0756	0.0012	0.0436
3909	0.3112	0.0046	0.2554	5001	11.0596	0.1704	5.0996
4101	0.3165	0.0048	0.1933	5002	0.7774	0.0119	0.4254
4103	0.6724	0.0102	0.4468	5003	3.1027	0.0482	1.1600
4107	0.2666	0.0041	0.1421	5004	1.1043	0.0167	0.7426
4108	0.1818	0.0027	0.1256	5005	1.2580	0.0195	0.5033
4109	0.2388	0.0036	0.2047	5006	1.8128	0.0281	0.6694
4201	1.2808	0.0199	0.4475	5101	1.3689	0.0212	0.5588
4301	0.9879	0.0148	0.8146	5103	0.9599	0.0145	0.6812
4302	0.9696	0.0147	0.6445	5106	0.9599	0.0145	0.6812
4304	1.1233	0.0167	1.0208	5108	1.0030	0.0153	0.5686
4305	1.5970	0.0246	0.7116	5109	0.7821	0.0120	0.3643
4401	0.4564	0.0069	0.2946	5201	0.3923	0.0060	0.2382
4402	0.8865	0.0135	0.5055	5204	1.3907	0.0215	0.5568

Base Rates Effective January 1, ((2020)) 2021				Base Rates Effective January 1, ((2020)) 2021			
Class	Accident Fund	Stay at Work	Medical Aid Fund	Class	Accident Fund	Stay at Work	Medical Aid Fund
5206	0.5994	0.0092	0.3085	6407	0.3614	0.0055	0.2343
5207	0.1755	0.0026	0.1432	6408	0.7200	0.0110	0.4125
5208	0.8969	0.0137	0.5358	6409	0.8665	0.0133	0.4665
5209	0.8396	0.0129	0.4292	6410	0.4208	0.0064	0.2394
5300	0.1246	0.0019	0.0768	6411	0.0617	0.0009	0.0512
5301	0.0455	0.0007	0.0268	6501	0.1318	0.0020	0.0779
5302	0.0120	0.0002	0.0068	6502	0.0372	0.0006	0.0220
5305	0.0594	0.0009	0.0388	6503	0.1073	0.0016	0.0531
5306	0.0487	0.0007	0.0384	6504	0.3149	0.0046	0.3247
5307	0.9650	0.0149	0.4350	6505	0.1711	0.0025	0.1690
5308	0.1081	0.0016	0.0828	6506	0.1558	0.0024	0.1095
6103	0.1005	0.0015	0.0908	6509	0.2919	0.0043	0.2626
6104	0.4859	0.0073	0.3320	6510	0.6413	0.0099	0.2590
6105	0.6394	0.0098	0.3100	6511	0.3241	0.0049	0.2514
6107	0.1310	0.0019	0.1572	6512	0.1219	0.0019	0.0670
6108	0.3453	0.0051	0.2944	6601	0.2137	0.0032	0.1584
6109	0.1551	0.0024	0.0761	6602	0.6440	0.0097	0.5045
6110	0.6137	0.0094	0.3249	6603	0.3753	0.0057	0.2372
6120	0.4203	0.0064	0.2241	6604	0.1002	0.0015	0.0725
6121	0.4833	0.0074	0.2577	6605	0.3331	0.0051	0.2130
6201	0.5928	0.0091	0.3153	6607	0.1332	0.0020	0.1040
6202	1.0064	0.0153	0.6073	6608	0.8873	0.0138	0.2780
6203	0.1085	0.0016	0.1318	6620	4.1124	0.0629	2.2269
6204	0.1627	0.0024	0.1254	6704	0.1609	0.0024	0.1108
6205	0.2430	0.0037	0.1660	6705	0.7155	0.0106	0.6674
6206	0.2374	0.0036	0.1753	6706	0.2966	0.0044	0.2438
6207	1.3021	0.0197	0.8903	6707	13.6675	0.2035	11.7244
6208	0.2715	0.0040	0.2595	6708	9.5208	0.1385	10.6427
6209	0.3256	0.0048	0.2890	6709	0.3000	0.0045	0.2274
6301	0.1711	0.0026	0.0785	6801	1.0345	0.0161	0.3489
6303	0.0705	0.0011	0.0417	6802	1.0641	0.0163	0.5922
6305	0.1146	0.0017	0.0863	6803	0.9721	0.0152	0.2527
6306	0.4206	0.0064	0.2511	6804	0.3357	0.0050	0.2490
6308	0.0769	0.0012	0.0434	6809	4.7311	0.0696	4.6841
6309	0.2253	0.0034	0.1646	6901	0.0000	0.0000	0.0555
6402	0.3160	0.0047	0.2452	6902	1.2313	0.0189	0.5980
6403	0.1646	0.0025	0.1333	6903	8.6703	0.1342	3.5153
6404	0.3503	0.0052	0.2960	6904	1.6944	0.0262	0.6754
6405	0.7874	0.0121	0.4246	6905	1.2669	0.0196	0.5005
6406	0.1691	0.0025	0.1271	6906	0.0000	0.0000	0.4530

Base Rates Effective January 1, ((2020)) 2021				Base Rates Effective January 1, ((2020)) 2021			
Class	Accident Fund	Stay at Work	Medical Aid Fund	Class	Accident Fund	Stay at Work	Medical Aid Fund
6907	1.1181	0.0170	0.7094	105	1.2504	0.0190	0.7289
6908	0.4940	0.0075	0.2819	106	2.8185	0.0428	1.7145
6909	0.1440	0.0022	0.0992	107	1.3290	0.0205	0.5180
7100	0.0297	0.0005	0.0145	108	1.2781	0.0198	0.4907
7101	0.0333	0.0005	0.0173	112	0.9049	0.0139	0.4370
7103	1.2803	0.0198	0.5068	201	3.0790	0.0479	0.9632
7104	0.0313	0.0005	0.0200	202	2.8843	0.0449	0.9036
7105	0.0227	0.0003	0.0152	210	1.1667	0.0180	0.4737
7106	0.3224	0.0049	0.2345	212	1.1412	0.0176	0.4833
7107	0.3583	0.0053	0.3158	214	2.3836	0.0370	0.7918
7108	0.2481	0.0037	0.1947	217	1.5176	0.0233	0.6853
7109	0.1354	0.0020	0.0936	219	1.1342	0.0175	0.4335
7110	0.5395	0.0082	0.2966	301	1.0423	0.0159	0.6093
7111	0.5386	0.0084	0.2017	302	3.0173	0.0469	0.9669
7112	0.8841	0.0133	0.6604	303	2.5466	0.0393	1.0121
7113	0.4902	0.0074	0.3574	306	1.0139	0.0156	0.4177
7114	0.8413	0.0126	0.6699	307	1.1181	0.0172	0.5170
7115	0.5950	0.0089	0.5084	308	0.6589	0.0100	0.4398
7116	0.5680	0.0087	0.3371	403	2.2339	0.0343	1.0480
7117	1.5308	0.0231	1.0653	502	1.2511	0.0193	0.4925
7118	2.1277	0.0323	1.3439	504	2.6132	0.0401	1.2286
7119	2.1934	0.0337	1.1100	507	3.5714	0.0545	1.9359
7120	7.9850	0.1232	3.5577	508	1.8144	0.0282	0.5632
7121	10.0528	0.1552	4.3895	509	1.3773	0.0215	0.3852
7122	0.4529	0.0068	0.3540	510	2.8667	0.0438	1.5018
7200	2.7813	0.0432	0.9789	511	1.7280	0.0266	0.7712
7201	2.0403	0.0315	0.8739	512	1.5541	0.0238	0.7930
7202	0.0360	0.0005	0.0206	513	1.1391	0.0175	0.4961
7203	0.1129	0.0016	0.1343	514	1.5492	0.0237	0.7958
7204	0.0000	0.0000	0.0000	516	1.8588	0.0286	0.8561
7205	0.0000	0.0000	0.0000	517	2.3709	0.0365	1.0348
7301	0.7228	0.0108	0.6014	518	1.6024	0.0248	0.6173
7302	1.0275	0.0154	0.7680	519	1.6829	0.0259	0.7170
7307	0.6326	0.0096	0.4371	521	0.7158	0.0109	0.3984
7308	0.2835	0.0042	0.2805	601	0.6794	0.0105	0.3013
7309	0.2922	0.0043	0.2516	602	1.0453	0.0163	0.2835
7400	3.1985	0.0497	1.1257))	603	1.1619	0.0181	0.3562
101	1.4036	0.0217	0.5564	604	1.3510	0.0207	0.6988
103	1.6664	0.0256	0.8141	606	0.6560	0.0100	0.3561
104	1.2781	0.0198	0.4907	607	0.9624	0.0148	0.4166

Base Rates Effective January 1, ((2020)) 2021				Base Rates Effective January 1, ((2020)) 2021			
Class	Accident Fund	Stay at Work	Medical Aid Fund	Class	Accident Fund	Stay at Work	Medical Aid Fund
<u>608</u>	<u>0.6288</u>	<u>0.0098</u>	<u>0.2096</u>	<u>2102</u>	<u>0.8772</u>	<u>0.0134</u>	<u>0.4864</u>
<u>701</u>	<u>3.0790</u>	<u>0.0479</u>	<u>0.9632</u>	<u>2104</u>	<u>0.3783</u>	<u>0.0056</u>	<u>0.3691</u>
<u>803</u>	<u>0.7507</u>	<u>0.0115</u>	<u>0.3623</u>	<u>2105</u>	<u>0.8668</u>	<u>0.0133</u>	<u>0.4145</u>
<u>901</u>	<u>1.6024</u>	<u>0.0248</u>	<u>0.6173</u>	<u>2106</u>	<u>0.6910</u>	<u>0.0105</u>	<u>0.4064</u>
<u>1002</u>	<u>1.1055</u>	<u>0.0170</u>	<u>0.4749</u>	<u>2201</u>	<u>0.3939</u>	<u>0.0059</u>	<u>0.2661</u>
<u>1003</u>	<u>0.8634</u>	<u>0.0132</u>	<u>0.4217</u>	<u>2202</u>	<u>0.7706</u>	<u>0.0118</u>	<u>0.4031</u>
<u>1004</u>	<u>0.5871</u>	<u>0.0091</u>	<u>0.2192</u>	<u>2203</u>	<u>0.6037</u>	<u>0.0091</u>	<u>0.4239</u>
<u>1005</u>	<u>11.8650</u>	<u>0.1837</u>	<u>4.4426</u>	<u>2204</u>	<u>0.3939</u>	<u>0.0059</u>	<u>0.2661</u>
<u>1006</u>	<u>0.2594</u>	<u>0.0040</u>	<u>0.1407</u>	<u>2401</u>	<u>0.6769</u>	<u>0.0105</u>	<u>0.2701</u>
<u>1007</u>	<u>0.4089</u>	<u>0.0063</u>	<u>0.1844</u>	<u>2903</u>	<u>0.7589</u>	<u>0.0114</u>	<u>0.5567</u>
<u>1101</u>	<u>1.4773</u>	<u>0.0227</u>	<u>0.7010</u>	<u>2904</u>	<u>1.0168</u>	<u>0.0156</u>	<u>0.4750</u>
<u>1102</u>	<u>2.3317</u>	<u>0.0361</u>	<u>0.8575</u>	<u>2905</u>	<u>0.5679</u>	<u>0.0086</u>	<u>0.3576</u>
<u>1103</u>	<u>1.3713</u>	<u>0.0211</u>	<u>0.5884</u>	<u>2906</u>	<u>0.6222</u>	<u>0.0094</u>	<u>0.4518</u>
<u>1104</u>	<u>0.7468</u>	<u>0.0113</u>	<u>0.4477</u>	<u>2907</u>	<u>0.5377</u>	<u>0.0081</u>	<u>0.3593</u>
<u>1105</u>	<u>1.0320</u>	<u>0.0159</u>	<u>0.4755</u>	<u>2908</u>	<u>1.1469</u>	<u>0.0173</u>	<u>0.7608</u>
<u>1106</u>	<u>0.4092</u>	<u>0.0062</u>	<u>0.2844</u>	<u>2909</u>	<u>0.4679</u>	<u>0.0070</u>	<u>0.3727</u>
<u>1108</u>	<u>0.5201</u>	<u>0.0079</u>	<u>0.3428</u>	<u>3101</u>	<u>1.0408</u>	<u>0.0160</u>	<u>0.5089</u>
<u>1109</u>	<u>2.1915</u>	<u>0.0337</u>	<u>0.9911</u>	<u>3102</u>	<u>0.4164</u>	<u>0.0064</u>	<u>0.1780</u>
<u>1301</u>	<u>0.8407</u>	<u>0.0130</u>	<u>0.3594</u>	<u>3103</u>	<u>0.4983</u>	<u>0.0076</u>	<u>0.2609</u>
<u>1303</u>	<u>0.4884</u>	<u>0.0075</u>	<u>0.2314</u>	<u>3104</u>	<u>0.7654</u>	<u>0.0116</u>	<u>0.4662</u>
<u>1304</u>	<u>0.0269</u>	<u>0.0004</u>	<u>0.0129</u>	<u>3105</u>	<u>0.9970</u>	<u>0.0150</u>	<u>0.7015</u>
<u>1305</u>	<u>0.7041</u>	<u>0.0109</u>	<u>0.2943</u>	<u>3303</u>	<u>0.4502</u>	<u>0.0068</u>	<u>0.2708</u>
<u>1401</u>	<u>0.2768</u>	<u>0.0041</u>	<u>0.2359</u>	<u>3304</u>	<u>0.7759</u>	<u>0.0117</u>	<u>0.5291</u>
<u>1404</u>	<u>0.9178</u>	<u>0.0140</u>	<u>0.5054</u>	<u>3309</u>	<u>0.5110</u>	<u>0.0078</u>	<u>0.2997</u>
<u>1405</u>	<u>0.8384</u>	<u>0.0128</u>	<u>0.4420</u>	<u>3402</u>	<u>0.6070</u>	<u>0.0092</u>	<u>0.3435</u>
<u>1407</u>	<u>0.7971</u>	<u>0.0122</u>	<u>0.4288</u>	<u>3403</u>	<u>0.1917</u>	<u>0.0029</u>	<u>0.0984</u>
<u>1501</u>	<u>1.1235</u>	<u>0.0173</u>	<u>0.4614</u>	<u>3404</u>	<u>0.5685</u>	<u>0.0087</u>	<u>0.3298</u>
<u>1507</u>	<u>0.5872</u>	<u>0.0089</u>	<u>0.3407</u>	<u>3405</u>	<u>0.3844</u>	<u>0.0059</u>	<u>0.2048</u>
<u>1701</u>	<u>1.0516</u>	<u>0.0162</u>	<u>0.4628</u>	<u>3406</u>	<u>0.3231</u>	<u>0.0049</u>	<u>0.2021</u>
<u>1702</u>	<u>2.1243</u>	<u>0.0332</u>	<u>0.5753</u>	<u>3407</u>	<u>0.9991</u>	<u>0.0153</u>	<u>0.4734</u>
<u>1703</u>	<u>1.2895</u>	<u>0.0200</u>	<u>0.4317</u>	<u>3408</u>	<u>0.3177</u>	<u>0.0049</u>	<u>0.1542</u>
<u>1704</u>	<u>1.0516</u>	<u>0.0162</u>	<u>0.4628</u>	<u>3409</u>	<u>0.1999</u>	<u>0.0030</u>	<u>0.1350</u>
<u>1801</u>	<u>0.6457</u>	<u>0.0100</u>	<u>0.2501</u>	<u>3410</u>	<u>0.1999</u>	<u>0.0030</u>	<u>0.1350</u>
<u>1802</u>	<u>1.0331</u>	<u>0.0160</u>	<u>0.4001</u>	<u>3411</u>	<u>0.7284</u>	<u>0.0112</u>	<u>0.3158</u>
<u>2002</u>	<u>0.9914</u>	<u>0.0151</u>	<u>0.5337</u>	<u>3412</u>	<u>0.9582</u>	<u>0.0148</u>	<u>0.3519</u>
<u>2004</u>	<u>0.6655</u>	<u>0.0101</u>	<u>0.3871</u>	<u>3414</u>	<u>1.0213</u>	<u>0.0157</u>	<u>0.4672</u>
<u>2007</u>	<u>0.9196</u>	<u>0.0140</u>	<u>0.5143</u>	<u>3415</u>	<u>1.2073</u>	<u>0.0185</u>	<u>0.5934</u>
<u>2008</u>	<u>0.4106</u>	<u>0.0062</u>	<u>0.2873</u>	<u>3501</u>	<u>0.6680</u>	<u>0.0101</u>	<u>0.4699</u>
<u>2009</u>	<u>0.4507</u>	<u>0.0068</u>	<u>0.3034</u>	<u>3503</u>	<u>0.3894</u>	<u>0.0059</u>	<u>0.2342</u>
<u>2101</u>	<u>0.7178</u>	<u>0.0108</u>	<u>0.4904</u>	<u>3506</u>	<u>1.1400</u>	<u>0.0175</u>	<u>0.5228</u>

Base Rates Effective January 1, (2020) 2021				Base Rates Effective January 1, (2020) 2021			
Class	Accident Fund	Stay at Work	Medical Aid Fund	Class	Accident Fund	Stay at Work	Medical Aid Fund
<u>3509</u>	<u>0.5014</u>	<u>0.0076</u>	<u>0.3074</u>	<u>4806</u>	<u>0.1108</u>	<u>0.0016</u>	<u>0.1077</u>
<u>3510</u>	<u>0.4305</u>	<u>0.0065</u>	<u>0.2913</u>	<u>4808</u>	<u>0.6074</u>	<u>0.0092</u>	<u>0.3568</u>
<u>3511</u>	<u>0.9996</u>	<u>0.0152</u>	<u>0.5773</u>	<u>4809</u>	<u>0.3459</u>	<u>0.0052</u>	<u>0.2243</u>
<u>3512</u>	<u>0.4024</u>	<u>0.0060</u>	<u>0.3025</u>	<u>4810</u>	<u>0.2498</u>	<u>0.0037</u>	<u>0.2096</u>
<u>3513</u>	<u>0.5306</u>	<u>0.0080</u>	<u>0.3804</u>	<u>4811</u>	<u>0.5371</u>	<u>0.0080</u>	<u>0.4626</u>
<u>3602</u>	<u>0.1277</u>	<u>0.0019</u>	<u>0.0753</u>	<u>4812</u>	<u>0.5785</u>	<u>0.0088</u>	<u>0.3569</u>
<u>3603</u>	<u>0.6157</u>	<u>0.0093</u>	<u>0.3770</u>	<u>4813</u>	<u>0.2345</u>	<u>0.0035</u>	<u>0.2296</u>
<u>3604</u>	<u>0.8990</u>	<u>0.0136</u>	<u>0.5573</u>	<u>4900</u>	<u>0.1699</u>	<u>0.0026</u>	<u>0.0701</u>
<u>3605</u>	<u>0.6070</u>	<u>0.0092</u>	<u>0.3435</u>	<u>4901</u>	<u>0.0607</u>	<u>0.0009</u>	<u>0.0263</u>
<u>3701</u>	<u>0.4164</u>	<u>0.0064</u>	<u>0.1780</u>	<u>4902</u>	<u>0.1262</u>	<u>0.0019</u>	<u>0.0695</u>
<u>3702</u>	<u>0.4610</u>	<u>0.0070</u>	<u>0.2768</u>	<u>4903</u>	<u>0.2197</u>	<u>0.0034</u>	<u>0.1115</u>
<u>3708</u>	<u>0.7478</u>	<u>0.0114</u>	<u>0.4404</u>	<u>4904</u>	<u>0.0193</u>	<u>0.0003</u>	<u>0.0128</u>
<u>3802</u>	<u>0.2523</u>	<u>0.0038</u>	<u>0.1632</u>	<u>4905</u>	<u>0.3826</u>	<u>0.0057</u>	<u>0.3317</u>
<u>3808</u>	<u>0.5340</u>	<u>0.0082</u>	<u>0.2727</u>	<u>4906</u>	<u>0.1423</u>	<u>0.0022</u>	<u>0.0731</u>
<u>3901</u>	<u>0.1557</u>	<u>0.0023</u>	<u>0.1246</u>	<u>4907</u>	<u>0.0667</u>	<u>0.0010</u>	<u>0.0619</u>
<u>3902</u>	<u>0.5431</u>	<u>0.0082</u>	<u>0.3786</u>	<u>4908</u>	<u>0.1041</u>	<u>0.0015</u>	<u>0.0925</u>
<u>3903</u>	<u>0.4236</u>	<u>0.0064</u>	<u>0.2953</u>	<u>4909</u>	<u>0.0416</u>	<u>0.0006</u>	<u>0.0370</u>
<u>3905</u>	<u>0.1399</u>	<u>0.0021</u>	<u>0.1217</u>	<u>4910</u>	<u>0.6124</u>	<u>0.0094</u>	<u>0.3213</u>
<u>3906</u>	<u>0.5613</u>	<u>0.0085</u>	<u>0.3871</u>	<u>4911</u>	<u>0.0814</u>	<u>0.0012</u>	<u>0.0394</u>
<u>3909</u>	<u>0.3036</u>	<u>0.0046</u>	<u>0.2205</u>	<u>5001</u>	<u>11.2701</u>	<u>0.1738</u>	<u>4.7411</u>
<u>4101</u>	<u>0.3129</u>	<u>0.0048</u>	<u>0.1812</u>	<u>5002</u>	<u>0.7710</u>	<u>0.0118</u>	<u>0.3889</u>
<u>4103</u>	<u>0.6672</u>	<u>0.0101</u>	<u>0.4325</u>	<u>5003</u>	<u>3.2016</u>	<u>0.0496</u>	<u>1.1534</u>
<u>4107</u>	<u>0.2695</u>	<u>0.0041</u>	<u>0.1316</u>	<u>5004</u>	<u>1.1860</u>	<u>0.0179</u>	<u>0.7743</u>
<u>4108</u>	<u>0.1887</u>	<u>0.0029</u>	<u>0.1161</u>	<u>5005</u>	<u>1.4130</u>	<u>0.0219</u>	<u>0.4948</u>
<u>4109</u>	<u>0.2315</u>	<u>0.0035</u>	<u>0.1852</u>	<u>5006</u>	<u>1.7961</u>	<u>0.0279</u>	<u>0.6108</u>
<u>4201</u>	<u>1.2306</u>	<u>0.0191</u>	<u>0.3961</u>	<u>5101</u>	<u>1.3748</u>	<u>0.0213</u>	<u>0.5126</u>
<u>4301</u>	<u>1.0025</u>	<u>0.0151</u>	<u>0.7404</u>	<u>5103</u>	<u>0.9952</u>	<u>0.0151</u>	<u>0.6366</u>
<u>4302</u>	<u>0.9385</u>	<u>0.0143</u>	<u>0.5555</u>	<u>5106</u>	<u>0.9952</u>	<u>0.0151</u>	<u>0.6366</u>
<u>4304</u>	<u>1.1022</u>	<u>0.0164</u>	<u>0.9506</u>	<u>5108</u>	<u>1.0402</u>	<u>0.0159</u>	<u>0.5269</u>
<u>4305</u>	<u>1.5587</u>	<u>0.0240</u>	<u>0.6659</u>	<u>5109</u>	<u>0.7288</u>	<u>0.0112</u>	<u>0.3228</u>
<u>4401</u>	<u>0.4502</u>	<u>0.0068</u>	<u>0.2708</u>	<u>5201</u>	<u>0.3903</u>	<u>0.0059</u>	<u>0.2237</u>
<u>4402</u>	<u>0.8727</u>	<u>0.0134</u>	<u>0.4382</u>	<u>5204</u>	<u>1.4318</u>	<u>0.0222</u>	<u>0.5076</u>
<u>4404</u>	<u>0.5587</u>	<u>0.0085</u>	<u>0.3288</u>	<u>5206</u>	<u>0.6048</u>	<u>0.0093</u>	<u>0.2932</u>
<u>4501</u>	<u>0.2042</u>	<u>0.0031</u>	<u>0.1344</u>	<u>5207</u>	<u>0.1685</u>	<u>0.0025</u>	<u>0.1272</u>
<u>4502</u>	<u>0.0841</u>	<u>0.0013</u>	<u>0.0458</u>	<u>5208</u>	<u>0.8832</u>	<u>0.0135</u>	<u>0.4899</u>
<u>4504</u>	<u>0.1286</u>	<u>0.0019</u>	<u>0.0968</u>	<u>5209</u>	<u>0.8668</u>	<u>0.0133</u>	<u>0.4160</u>
<u>4802</u>	<u>0.5077</u>	<u>0.0077</u>	<u>0.3545</u>	<u>5300</u>	<u>0.1192</u>	<u>0.0018</u>	<u>0.0685</u>
<u>4803</u>	<u>0.4192</u>	<u>0.0062</u>	<u>0.3681</u>	<u>5301</u>	<u>0.0421</u>	<u>0.0006</u>	<u>0.0242</u>
<u>4804</u>	<u>0.6524</u>	<u>0.0098</u>	<u>0.5183</u>	<u>5302</u>	<u>0.0113</u>	<u>0.0002</u>	<u>0.0061</u>
<u>4805</u>	<u>0.4375</u>	<u>0.0065</u>	<u>0.3436</u>	<u>5305</u>	<u>0.0572</u>	<u>0.0009</u>	<u>0.0347</u>

Base Rates Effective January 1, ((2020)) 2021				Base Rates Effective January 1, ((2020)) 2021			
Class	Accident Fund	Stay at Work	Medical Aid Fund	Class	Accident Fund	Stay at Work	Medical Aid Fund
<u>5306</u>	<u>0.0489</u>	<u>0.0007</u>	<u>0.0337</u>	<u>6504</u>	<u>0.2881</u>	<u>0.0042</u>	<u>0.2920</u>
<u>5307</u>	<u>0.9641</u>	<u>0.0149</u>	<u>0.4012</u>	<u>6505</u>	<u>0.1688</u>	<u>0.0025</u>	<u>0.1524</u>
<u>5308</u>	<u>0.1061</u>	<u>0.0016</u>	<u>0.0790</u>	<u>6506</u>	<u>0.1593</u>	<u>0.0024</u>	<u>0.1018</u>
<u>6103</u>	<u>0.0985</u>	<u>0.0015</u>	<u>0.0833</u>	<u>6509</u>	<u>0.2790</u>	<u>0.0042</u>	<u>0.2354</u>
<u>6104</u>	<u>0.4808</u>	<u>0.0073</u>	<u>0.3043</u>	<u>6510</u>	<u>0.5890</u>	<u>0.0091</u>	<u>0.2114</u>
<u>6105</u>	<u>0.7307</u>	<u>0.0113</u>	<u>0.3123</u>	<u>6511</u>	<u>0.3178</u>	<u>0.0048</u>	<u>0.2289</u>
<u>6107</u>	<u>0.1332</u>	<u>0.0019</u>	<u>0.1498</u>	<u>6512</u>	<u>0.1245</u>	<u>0.0019</u>	<u>0.0626</u>
<u>6108</u>	<u>0.3188</u>	<u>0.0048</u>	<u>0.2572</u>	<u>6601</u>	<u>0.2138</u>	<u>0.0032</u>	<u>0.1497</u>
<u>6109</u>	<u>0.1515</u>	<u>0.0023</u>	<u>0.0699</u>	<u>6602</u>	<u>0.6587</u>	<u>0.0099</u>	<u>0.4675</u>
<u>6110</u>	<u>0.5715</u>	<u>0.0088</u>	<u>0.2769</u>	<u>6603</u>	<u>0.3775</u>	<u>0.0057</u>	<u>0.2332</u>
<u>6120</u>	<u>0.4073</u>	<u>0.0062</u>	<u>0.2026</u>	<u>6604</u>	<u>0.0955</u>	<u>0.0014</u>	<u>0.0640</u>
<u>6121</u>	<u>0.5516</u>	<u>0.0085</u>	<u>0.2489</u>	<u>6605</u>	<u>0.3476</u>	<u>0.0053</u>	<u>0.2114</u>
<u>6201</u>	<u>0.6345</u>	<u>0.0097</u>	<u>0.3159</u>	<u>6607</u>	<u>0.1188</u>	<u>0.0018</u>	<u>0.0905</u>
<u>6202</u>	<u>0.9876</u>	<u>0.0150</u>	<u>0.5673</u>	<u>6608</u>	<u>0.8603</u>	<u>0.0134</u>	<u>0.2452</u>
<u>6203</u>	<u>0.1013</u>	<u>0.0015</u>	<u>0.1180</u>	<u>6620</u>	<u>4.0897</u>	<u>0.0627</u>	<u>2.0253</u>
<u>6204</u>	<u>0.1694</u>	<u>0.0026</u>	<u>0.1196</u>	<u>6704</u>	<u>0.1680</u>	<u>0.0025</u>	<u>0.1067</u>
<u>6205</u>	<u>0.2358</u>	<u>0.0036</u>	<u>0.1471</u>	<u>6705</u>	<u>0.7027</u>	<u>0.0104</u>	<u>0.6296</u>
<u>6206</u>	<u>0.2496</u>	<u>0.0038</u>	<u>0.1662</u>	<u>6706</u>	<u>0.2874</u>	<u>0.0043</u>	<u>0.2248</u>
<u>6207</u>	<u>1.2684</u>	<u>0.0193</u>	<u>0.7764</u>	<u>6707</u>	<u>14.0761</u>	<u>0.2101</u>	<u>11.4756</u>
<u>6208</u>	<u>0.2538</u>	<u>0.0037</u>	<u>0.2426</u>	<u>6708</u>	<u>9.7896</u>	<u>0.1436</u>	<u>10.0015</u>
<u>6209</u>	<u>0.3088</u>	<u>0.0046</u>	<u>0.2665</u>	<u>6709</u>	<u>0.2939</u>	<u>0.0044</u>	<u>0.2020</u>
<u>6301</u>	<u>0.1805</u>	<u>0.0028</u>	<u>0.0819</u>	<u>6801</u>	<u>1.0093</u>	<u>0.0157</u>	<u>0.3136</u>
<u>6303</u>	<u>0.0670</u>	<u>0.0010</u>	<u>0.0367</u>	<u>6802</u>	<u>1.0678</u>	<u>0.0163</u>	<u>0.5439</u>
<u>6305</u>	<u>0.1109</u>	<u>0.0017</u>	<u>0.0779</u>	<u>6803</u>	<u>0.9244</u>	<u>0.0144</u>	<u>0.2379</u>
<u>6306</u>	<u>0.4190</u>	<u>0.0064</u>	<u>0.2395</u>	<u>6804</u>	<u>0.3430</u>	<u>0.0052</u>	<u>0.2195</u>
<u>6308</u>	<u>0.0782</u>	<u>0.0012</u>	<u>0.0398</u>	<u>6809</u>	<u>4.6235</u>	<u>0.0687</u>	<u>3.9823</u>
<u>6309</u>	<u>0.2468</u>	<u>0.0037</u>	<u>0.1591</u>	<u>6901</u>	<u>0.0000</u>	<u>0.0000</u>	<u>0.0602</u>
<u>6402</u>	<u>0.3021</u>	<u>0.0045</u>	<u>0.2235</u>	<u>6902</u>	<u>1.1890</u>	<u>0.0183</u>	<u>0.5370</u>
<u>6403</u>	<u>0.1652</u>	<u>0.0025</u>	<u>0.1169</u>	<u>6903</u>	<u>8.2534</u>	<u>0.1279</u>	<u>2.9400</u>
<u>6404</u>	<u>0.3528</u>	<u>0.0053</u>	<u>0.2701</u>	<u>6904</u>	<u>1.7873</u>	<u>0.0277</u>	<u>0.6802</u>
<u>6405</u>	<u>0.7843</u>	<u>0.0120</u>	<u>0.3922</u>	<u>6905</u>	<u>1.3775</u>	<u>0.0214</u>	<u>0.4906</u>
<u>6406</u>	<u>0.1674</u>	<u>0.0025</u>	<u>0.1139</u>	<u>6906</u>	<u>0.0000</u>	<u>0.0000</u>	<u>0.4429</u>
<u>6407</u>	<u>0.3582</u>	<u>0.0054</u>	<u>0.2134</u>	<u>6907</u>	<u>1.0270</u>	<u>0.0156</u>	<u>0.6426</u>
<u>6408</u>	<u>0.7580</u>	<u>0.0116</u>	<u>0.4133</u>	<u>6908</u>	<u>0.4855</u>	<u>0.0074</u>	<u>0.2529</u>
<u>6409</u>	<u>0.8580</u>	<u>0.0132</u>	<u>0.4128</u>	<u>6909</u>	<u>0.1540</u>	<u>0.0023</u>	<u>0.0935</u>
<u>6410</u>	<u>0.4207</u>	<u>0.0064</u>	<u>0.2213</u>	<u>7100</u>	<u>0.0285</u>	<u>0.0004</u>	<u>0.0128</u>
<u>6411</u>	<u>0.0538</u>	<u>0.0008</u>	<u>0.0421</u>	<u>7101</u>	<u>0.0326</u>	<u>0.0005</u>	<u>0.0162</u>
<u>6501</u>	<u>0.1353</u>	<u>0.0021</u>	<u>0.0716</u>	<u>7103</u>	<u>1.3868</u>	<u>0.0215</u>	<u>0.4972</u>
<u>6502</u>	<u>0.0377</u>	<u>0.0006</u>	<u>0.0194</u>	<u>7104</u>	<u>0.0308</u>	<u>0.0005</u>	<u>0.0181</u>
<u>6503</u>	<u>0.1163</u>	<u>0.0018</u>	<u>0.0482</u>	<u>7105</u>	<u>0.0226</u>	<u>0.0003</u>	<u>0.0139</u>

**Base Rates Effective
January 1, ((2020)) 2021**

Class	Accident Fund	Stay at Work	Medical Aid Fund
<u>7106</u>	<u>0.3321</u>	<u>0.0050</u>	<u>0.2178</u>
<u>7107</u>	<u>0.4243</u>	<u>0.0064</u>	<u>0.2936</u>
<u>7108</u>	<u>0.2719</u>	<u>0.0041</u>	<u>0.1985</u>
<u>7109</u>	<u>0.1300</u>	<u>0.0020</u>	<u>0.0787</u>
<u>7110</u>	<u>0.5791</u>	<u>0.0089</u>	<u>0.2885</u>
<u>7111</u>	<u>0.5321</u>	<u>0.0083</u>	<u>0.1774</u>
<u>7112</u>	<u>0.8673</u>	<u>0.0131</u>	<u>0.5999</u>
<u>7113</u>	<u>0.5073</u>	<u>0.0077</u>	<u>0.3250</u>
<u>7114</u>	<u>0.8570</u>	<u>0.0129</u>	<u>0.6360</u>
<u>7115</u>	<u>0.5869</u>	<u>0.0088</u>	<u>0.4755</u>
<u>7116</u>	<u>0.5997</u>	<u>0.0092</u>	<u>0.3115</u>
<u>7117</u>	<u>1.4666</u>	<u>0.0222</u>	<u>0.9268</u>
<u>7118</u>	<u>2.1989</u>	<u>0.0336</u>	<u>1.1804</u>
<u>7119</u>	<u>2.3137</u>	<u>0.0355</u>	<u>1.0812</u>
<u>7120</u>	<u>7.7935</u>	<u>0.1201</u>	<u>3.3295</u>
<u>7121</u>	<u>12.2022</u>	<u>0.1886</u>	<u>4.8007</u>
<u>7122</u>	<u>0.4414</u>	<u>0.0066</u>	<u>0.3372</u>
<u>7200</u>	<u>2.9834</u>	<u>0.0464</u>	<u>0.9284</u>
<u>7201</u>	<u>2.2410</u>	<u>0.0347</u>	<u>0.8445</u>
<u>7202</u>	<u>0.0341</u>	<u>0.0005</u>	<u>0.0177</u>
<u>7203</u>	<u>0.1088</u>	<u>0.0016</u>	<u>0.1158</u>
<u>7204</u>	<u>0.0000</u>	<u>0.0000</u>	<u>0.0000</u>
<u>7205</u>	<u>0.0000</u>	<u>0.0000</u>	<u>0.0000</u>
<u>7301</u>	<u>0.7631</u>	<u>0.0114</u>	<u>0.6095</u>
<u>7302</u>	<u>0.9734</u>	<u>0.0147</u>	<u>0.6903</u>
<u>7307</u>	<u>0.6305</u>	<u>0.0095</u>	<u>0.4056</u>
<u>7308</u>	<u>0.2847</u>	<u>0.0042</u>	<u>0.2545</u>

**Base Rates Effective
January 1, ((2020)) 2021**

Class	Accident Fund	Stay at Work	Medical Aid Fund
<u>7309</u>	<u>0.2806</u>	<u>0.0042</u>	<u>0.2368</u>
<u>7400</u>	<u>3.4309</u>	<u>0.0534</u>	<u>1.0676</u>

AMENDATORY SECTION (Amending WSR 19-24-029, filed 11/25/19, effective 1/1/20)

WAC 296-17-89502 Industrial insurance accident fund, stay at work, medical aid and supplemental pension rates by class of industry for nonhourly rated classifications. The base rates as set forth below are for classifications whose premium rates are based on units other than hours worked.

**Base Rates Effective
January 1, ((2020)) 2021**

Class	Accident Fund	Stay at Work	Medical Aid Fund	Supplemental Pension Fund
((540	0.0302	0.0005	0.0146	0.0010
541	0.0112	0.0002	0.0062	0.0010
550	0.0488	0.0008	0.0219	0.0010
551	0.0202	0.0003	0.0096	0.0010))
540	0.0281	0.0004	0.0126	0.0011
541	0.0115	0.0002	0.0058	0.0011
550	0.0498	0.0008	0.0197	0.0011
551	0.0184	0.0003	0.0081	0.0011

AMENDATORY SECTION (Amending WSR 19-24-029, filed 11/25/19, effective 1/1/20)

WAC 296-17-89507 Horse racing rates. Horse racing industry industrial insurance accident fund, stay at work fund, medical aid fund, supplemental pension fund and composite rate by class.

Base Rates Effective January 1, ((2020)) 2021

Class	Accident Fund	Stay at Work	Medical Aid Fund	Supplemental Pension Fund	Composite Rate
((6618	74.00*	1.00*	74.00*	1.00*	150.00*
6625	71.41**	1.23**	73.88**	12.25**	158.77**
6626	0.6126***	0.0105***	0.6744***	0.1225***	1.4200***
6627	9.8330****	0.1700****	8.4680****	0.9190****	19.3900****))
<u>6618</u>	<u>74.00*</u>	<u>1.00*</u>	<u>74.00*</u>	<u>1.00*</u>	<u>150.00*</u>
<u>6625</u>	<u>76.95**</u>	<u>1.32**</u>	<u>71.84**</u>	<u>13.72**</u>	<u>163.83**</u>
<u>6626</u>	<u>0.5888***</u>	<u>0.0101***</u>	<u>0.6139***</u>	<u>0.1372***</u>	<u>1.3500***</u>
<u>6627</u>	<u>10.5590****</u>	<u>0.1810****</u>	<u>8.2610****</u>	<u>1.0290****</u>	<u>20.0300****</u>

*This rate is calculated on a percentage of ownership in a horse or horses.

**This rate is calculated per month.

***This rate is calculated per horse per day.

***This rate is calculated per day.

Note: These rates are not subject to experience rating or retrospective rating.

AMENDATORY SECTION (Amending WSR 20-12-086, filed 6/2/20, effective 7/3/20)

WAC 296-17-89508 Farm internship program industrial insurance, accident fund, stay at work fund, medical aid fund, and supplemental pension by class.

Base Rates Effective

~~((March 30, 2020))~~ January 1, 2021

Class	Accident Fund	Stay at Work Fund	Medical Aid Fund	Supplemental Pension Fund
((4814	0.1194	0.0017	0.1456	0.1225
4815	0.2216	0.0032	0.3035	0.1225
4816	0.3572	0.0052	0.4070	0.1225))
4814	0.1175	0.0017	0.1330	0.1372
4815	0.2176	0.0031	0.2776	0.1372
4816	0.3514	0.0051	0.3725	0.1372

AMENDATORY SECTION (Amending WSR 18-24-073, filed 11/30/18, effective 1/1/19)

WAC 296-17-901 Risk classification hazard group table. Effective June 30, 2017.

Risk Classification	Hazard Group
101	9
103	9
104	((8)) 9
105	4
106	7
107	9
108	9
112	7
201	9
202	9
210	9
212	9
214	8
217	8
219	8
301	5
302	9
303	9
306	8
307	7
308	3
403	7
502	8

Risk Classification	Hazard Group
504	9
507	8
508	9
509	9
510	7
511	7
512	9
513	7
514	6
516	8
517	9
518	9
519	8
521	8
540	9
541	9
550	9
551	9
601	7
602	8
603	9
604	7
606	4
607	6
608	7
701	((8)) 9
803	4
901	9
1002	7
1003	6
1004	5
1005	8
1006	4
1007	7
1101	5
1102	8
1103	8
1104	3
1105	7
1106	6

Risk Classification	Hazard Group	Risk Classification	Hazard Group
1108	6	3103	7
1109	7	3104	6
1301	3	3105	5
1303	3	3303	3
1304	5	3304	3
1305	6	3309	6
1401	8	3402	6
1404	3	3403	6
1405	3	3404	4
1407	4	3405	3
1501	5	3406	1
1507	6	3407	7
1701	6	3408	1
1702	9	3409	((+)) <u>2</u>
1703	9	3410	2
1704	6	3411	6
1801	7	3412	8
1802	((6)) <u>7</u>	3414	7
2002	6	3415	9
2004	4	3501	((6)) <u>3</u>
2007	7	3503	3
2008	6	3506	5
2009	3	3509	1
2101	6	3510	3
2102	5	3511	6
<u>2103</u>	<u>5</u>	3512	3
2104	2	3513	5
2105	3	3602	3
2106	5	3603	4
2201	4	3604	7
2202	5	3605	((5)) <u>6</u>
2203	3	3701	6
2204	4	3702	4
2401	4	3708	5
2903	4	3802	4
2904	4	3808	7
2905	5	3901	1
2906	5	3902	3
2907	2	3903	((6)) <u>3</u>
2908	7	3905	1
2909	4	3906	4
3101	5	3909	5
3102	6	4101	5

Risk Classification	Hazard Group	Risk Classification	Hazard Group
4103	5	5002	4
4107	6	5003	9
4108	3	5004	7
4109	4	5005	9
4201	6	5006	9
4301	4	5101	8
4302	4	5103	4
4304	5	5106	((3)) 4
4305	5	5108	5
4401	((6)) 3	5109	6
4402	1	5201	4
4404	6	5204	8
4501	1	5206	7
4502	5	5207	3
4504	1	5208	5
4601	6	5209	6
4802	6	5300	1
4803	2	5301	3
4804	2	5302	3
4805	2	5305	2
4806	3	5306	1
4808	6	5307	4
4809	3	5308	1
4810	2	6103	1
4811	3	6104	3
4812	3	6105	5
4813	3	6107	1
4814	2	6108	1
4815	1	6109	4
4816	5	6110	4
4900	9	6120	3
4901	5	6121	7
4902	3	6201	7
4903	2	6202	6
4904	2	6203	1
4905	1	6204	2
4906	2	6205	3
4907	3	6206	2
4908	1	6207	6
4909	((5)) 1	6208	1
4910	6	6209	4
4911	6	6301	7
5001	9	6303	5

Risk Classification	Hazard Group	Risk Classification	Hazard Group
6305	1	6901	1
6306	4	6902	9
6308	5	6903	9
6309	3	6904	4
6402	1	6905	3
6403	2	6906	1
6404	3	6907	5
6405	5	6908	4
6406	((3)) <u>1</u>	6909	3
6407	2	7100	7
6408	7	7101	7
6409	6	7102	3
6410	3	7103	5
6411	((+)) <u>3</u>	7104	3
6501	1	7105	3
6502	3	7106	3
6503	4	7107	2
6504	1	7108	5
6505	1	7109	4
6506	2	7110	5
6509	2	7111	3
6510	8	7112	3
6511	3	7113	3
6512	7	7114	5
6601	4	7115	3
6602	4	7116	8
6603	4	7117	5
6604	1	7118	8
6605	2	7119	6
6607	4	7120	9
6608	9	7121	9
6620	1	7122	5
6704	1	7200	6
6705	1	7201	6
6706	4	7202	5
6707	1	7203	1
6708	7	7301	6
6709	3	7302	7
6801	5	7307	4
6802	3	7308	3
6803	9	7309	1
6804	4	7400	((5)) <u>6</u>
6809	1		

Risk Classification	Hazard Group
The following classes have no hazard group assigned to them	
6618	
6625	
6626	
6627	
7204	
7205	

AMENDATORY SECTION (Amending WSR 19-24-029, filed 11/25/19, effective 1/1/20)

WAC 296-17-920 Assessment for supplemental pension fund. The amount of ~~((61.25 mils (\$0.06125)))~~ 68.6 mils (\$0.0686) shall be retained by each employer from the earnings of each worker for each hour or fraction thereof the worker is employed. The amount of money so retained from the employee shall be matched in an equal amount by each employer, except as otherwise provided in these rules, all such moneys shall be remitted to the department on or before the last day of January, April, July, and October of each year for the preceding calendar quarter, provided self-insured employers shall remit to the department as provided under WAC 296-15-229. All such moneys shall be deposited in the supplemental pension fund.

AMENDATORY SECTION (Amending WSR 12-21-054, filed 10/15/12, effective 12/14/12)

WAC 296-17B-530 Determining case incurred losses. If a claim is closed, we will use the actual losses for the claim as defined in WAC 296-17-870(1). If the claim is open, we will use either the case reserve amounts or the actual losses, whichever are higher.

Where not in conflict with these rules, we will use the rules for valuing claims for experience rating found in WAC 296-17-870 (1), (5) through (7), and (10) through ~~((12))~~ (13).

Employer reimbursements from the Washington stay-at-work program will not be included in the case incurred costs of claims.

2019 Novel coronavirus (COVID-19) claims: All accepted COVID-19 claim losses with a date of injury or last injurious exposure on or after January 1, 2020, will not be included in the retrospective rating adjustment calculations.

AMENDATORY SECTION (Amending WSR 19-24-029, filed 11/25/19, effective 1/1/20)

WAC 296-17B-540 Determining loss incurred for each claim. (1) Calculating the initial loss incurred:

For each of your claims, we will multiply the case incurred loss by the appropriate discounted loss development factors to determine the initial loss incurred.

If you have a fatality, we will use four hundred ~~((eighteen thousand dollars (\$418,000)))~~ forty-seven thousand two hundred dollars (\$447,200) as the claim's initial incurred loss

for the claim, with ~~((three hundred eighty-three thousand seven hundred dollars (\$383,700)))~~ four hundred seventeen thousand one hundred dollars (\$417,100) for accident fund incurred loss and ~~((thirty-four thousand three hundred dollars (\$34,300)))~~ thirty thousand one hundred dollars (\$30,100) for the medical aid incurred loss, regardless of the case incurred loss, and before recovery factors if applicable.

(2) Applying the single loss occurrence limit:

The initial loss incurred for a claim will be the amount we use as the loss incurred unless the single loss occurrence limit applies.

The single loss occurrence limit applies when the sum of all initial losses incurred for your claims arising out of a single event is greater than your selected single loss occurrence limit. In that case, each claim's initial loss incurred will be its proportionate share of your single loss occurrence limit.

(3) Applying the expected loss ratio factors:

The preliminary loss incurred for a claim will be the amount of the initial loss incurred, after application of the single loss limit, multiplied by the appropriate expected loss ratio factor. The accident fund and medical aid fund portions of each claim will have separate expected loss ratio factors applied.

AMENDATORY SECTION (Amending WSR 19-24-029, filed 11/25/19, effective 1/1/20)

WAC 296-17B-900 Retrospective rating plans standard premium size ranges.

RETROSPECTIVE RATING STANDARD PREMIUM SIZE RANGES

Effective January 1, ~~((2020))~~ 2021

Size Group Number	Standard Premium Range	
	From:	To:
((1	5,270 -	6,159
2	6,160 -	6,959
3	6,960 -	7,839
4	7,840 -	8,779
5	8,780 -	9,779
6	9,780 -	10,849
7	10,850 -	12,009
8	12,010 -	13,219
9	13,220 -	14,519
10	14,520 -	15,879
11	15,880 -	17,319
12	17,320 -	18,879
13	18,880 -	20,519
14	20,520 -	22,259
15	22,260 -	24,089
16	24,090 -	26,029
17	26,030 -	28,089
18	28,090 -	30,279

Size Group Number	Standard Premium Range		Size Group Number	Standard Premium Range	
	From:	To:		From:	To:
19	30,280	32,579	61	714,600	800,599
20	32,580	35,019	62	800,600	902,699
21	35,020	37,629	63	902,700	1,026,999
22	37,630	40,379	64	1,027,000	1,179,999
23	40,380	43,309	65	1,180,000	1,370,999
24	43,310	46,419	66	1,371,000	1,617,999
25	46,420	49,719	67	1,618,000	1,942,999
26	49,720	53,239	68	1,943,000	2,397,999
27	53,240	56,989	69	2,398,000	3,066,999
28	56,990	60,959	70	3,067,000	4,170,999
29	60,960	65,209	71	4,171,000	6,251,999
30	65,210	69,749	72	6,252,000	11,439,999
31	69,750	74,599	73	11,440,000	29,269,999
32	74,600	79,799	74	29,270,000	and over))
33	79,800	85,369	<u>1</u>	<u>5,120</u>	<u>5,979</u>
34	85,370	91,249	<u>2</u>	<u>5,980</u>	<u>6,759</u>
35	91,250	97,679	<u>3</u>	<u>6,760</u>	<u>7,609</u>
36	97,680	104,699	<u>4</u>	<u>7,610</u>	<u>8,529</u>
37	104,700	112,199	<u>5</u>	<u>8,530</u>	<u>9,499</u>
38	112,200	120,299	<u>6</u>	<u>9,500</u>	<u>10,539</u>
39	120,300	128,999	<u>7</u>	<u>10,540</u>	<u>11,659</u>
40	129,000	138,299	<u>8</u>	<u>11,660</u>	<u>12,839</u>
41	138,300	148,399	<u>9</u>	<u>12,840</u>	<u>14,099</u>
42	148,400	159,299	<u>10</u>	<u>14,100</u>	<u>15,419</u>
43	159,300	170,899	<u>11</u>	<u>15,420</u>	<u>16,819</u>
44	170,900	183,599	<u>12</u>	<u>16,820</u>	<u>18,329</u>
45	183,600	197,399	<u>13</u>	<u>18,330</u>	<u>19,919</u>
46	197,400	212,299	<u>14</u>	<u>19,920</u>	<u>21,609</u>
47	212,300	228,399	<u>15</u>	<u>21,610</u>	<u>23,389</u>
48	228,400	246,399	<u>16</u>	<u>23,390</u>	<u>25,279</u>
49	246,400	265,799	<u>17</u>	<u>25,280</u>	<u>27,279</u>
50	265,800	286,999	<u>18</u>	<u>27,280</u>	<u>29,399</u>
51	287,000	310,599	<u>19</u>	<u>29,400</u>	<u>31,639</u>
52	310,600	336,799	<u>20</u>	<u>31,640</u>	<u>33,999</u>
53	336,800	366,199	<u>21</u>	<u>34,000</u>	<u>36,539</u>
54	366,200	398,799	<u>22</u>	<u>36,540</u>	<u>39,209</u>
55	398,800	435,399	<u>23</u>	<u>39,210</u>	<u>42,049</u>
56	435,400	477,099	<u>24</u>	<u>42,050</u>	<u>45,069</u>
57	477,100	524,299	<u>25</u>	<u>45,070</u>	<u>48,279</u>
58	524,300	578,599	<u>26</u>	<u>48,280</u>	<u>51,699</u>
59	578,600	641,299	<u>27</u>	<u>51,700</u>	<u>55,339</u>
60	641,300	714,599	<u>28</u>	<u>55,340</u>	<u>59,189</u>

Size Group Number	Standard Premium Range		Size Group Number	Standard Premium Range	
	From:	To:		From:	To:
<u>29</u>	<u>59,190</u> =	<u>63,319</u>	<u>71</u>	<u>4,050,000</u> =	<u>6,070,999</u>
<u>30</u>	<u>63,320</u> =	<u>67,729</u>	<u>72</u>	<u>6,071,000</u> =	<u>11,109,999</u>
<u>31</u>	<u>67,730</u> =	<u>72,439</u>	<u>73</u>	<u>11,110,000</u> =	<u>28,419,999</u>
<u>32</u>	<u>72,440</u> =	<u>77,489</u>	<u>74</u>	<u>28,420,000</u> =	<u>and over</u>
<u>33</u>	<u>77,490</u> =	<u>82,889</u>			
<u>34</u>	<u>82,890</u> =	<u>88,699</u>			
<u>35</u>	<u>88,700</u> =	<u>94,949</u>			
<u>36</u>	<u>94,950</u> =	<u>101,699</u>			
<u>37</u>	<u>101,700</u> =	<u>108,999</u>			
<u>38</u>	<u>109,000</u> =	<u>116,799</u>			
<u>39</u>	<u>116,800</u> =	<u>125,199</u>			
<u>40</u>	<u>125,200</u> =	<u>134,299</u>			
<u>41</u>	<u>134,300</u> =	<u>144,099</u>			
<u>42</u>	<u>144,100</u> =	<u>154,599</u>			
<u>43</u>	<u>154,600</u> =	<u>165,899</u>			
<u>44</u>	<u>165,900</u> =	<u>178,299</u>			
<u>45</u>	<u>178,300</u> =	<u>191,699</u>			
<u>46</u>	<u>191,700</u> =	<u>206,099</u>			
<u>47</u>	<u>206,100</u> =	<u>221,799</u>			
<u>48</u>	<u>221,800</u> =	<u>239,299</u>			
<u>49</u>	<u>239,300</u> =	<u>258,099</u>			
<u>50</u>	<u>258,100</u> =	<u>278,699</u>			
<u>51</u>	<u>278,700</u> =	<u>301,599</u>			
<u>52</u>	<u>301,600</u> =	<u>326,999</u>			
<u>53</u>	<u>327,000</u> =	<u>355,599</u>			
<u>54</u>	<u>355,600</u> =	<u>387,199</u>			
<u>55</u>	<u>387,200</u> =	<u>422,799</u>			
<u>56</u>	<u>422,800</u> =	<u>463,299</u>			
<u>57</u>	<u>463,300</u> =	<u>509,099</u>			
<u>58</u>	<u>509,100</u> =	<u>561,799</u>			
<u>59</u>	<u>561,800</u> =	<u>622,699</u>			
<u>60</u>	<u>622,700</u> =	<u>693,899</u>			
<u>61</u>	<u>693,900</u> =	<u>777,399</u>			
<u>62</u>	<u>777,400</u> =	<u>876,499</u>			
<u>63</u>	<u>876,500</u> =	<u>996,999</u>			
<u>64</u>	<u>997,000</u> =	<u>1,145,999</u>			
<u>65</u>	<u>1,146,000</u> =	<u>1,330,999</u>			
<u>66</u>	<u>1,331,000</u> =	<u>1,570,999</u>			
<u>67</u>	<u>1,571,000</u> =	<u>1,886,999</u>			
<u>68</u>	<u>1,887,000</u> =	<u>2,327,999</u>			
<u>69</u>	<u>2,328,000</u> =	<u>2,977,999</u>			
<u>70</u>	<u>2,978,000</u> =	<u>4,049,999</u>			

**WSR 20-24-098
PERMANENT RULES
NOXIOUS WEED
CONTROL BOARD**

[Filed November 30, 2020, 11:44 a.m., effective January 1, 2021]

Effective Date of Rule: January 1, 2021.

Purpose: The Washington state noxious weed list provides the basis for noxious weed control efforts for county and district weed control boards as well as other entities. This rule-making order amends chapter 16-750 WAC by:

WAC 16-750-005 adding one species to the class A list, Turkish thistle, *Carduus cinereus*.

WAC 16-750-011, Class B designation changes:

- Undesignating hawkweeds: All nonnative species and hybrids of the Wall subgenus, *Hieracium*, in Snohomish County of region 2.
- Designate Ravenna grass, *Tripsidium ravennae*, in Chelan County of region 4.
- Designate saltcedar, *Tamarix ramosissima*, in Benton and Franklin counties of region 6.
- Designate spurge laurel, *Daphne laureola*, in Skamania County of region 3.
- Designate spurge, myrtle, *Euphorbia myrsinites*, in Stevens County of region 4.
- Designate tansy ragwort, *Jacobaea vulgaris*, in Klickitat County of region 5.
- Designate velvetleaf, *Abutilon theophrasti*, in Franklin County of region 6.
- Designate wild chervil, *Anthriscus sylvestris*, in Island County of region 2 and Clark, Cowlitz, and Skamania counties of region 3.
- Designate water primrose, *Ludwigia hexapetala*, in Cowlitz County of region 3.
- Designate white bryony, *Bryonia alba*, in Garfield County of region 6.
- Designate yellow archangel, *Lamium galeobdolon*, in Cowlitz County of region 3.
- Designate yellow floating heart, *Nymphoides peltata*, in Cowlitz County of region 3.

Scientific name changes, WAC 16-750-011 and 16-750-015:

- *Anchusa arvensis*, annual bugloss to *Lycopsis arvensis*.
- *Polygonum cuspidatum*, Japanese knotweed to *Fallopia japonica*.
- *Polygonum sachalinense*, giant knotweed to *Fallopia sachalinensis*.

- *Polygonum x bohemicum*, Bohemian knotweed to *Fallopia x bohémica*.
- *Saccharum ravennae*, Ravenna grass to *Tripidium ravennae*.
- *Matricaria perforata*, scentless mayweed to *Tripleurospermum inodorum*.
- *Silene latifolia* ssp. *alba*, white cockle to *Silene latifolia*.
- *Centaurea x moncktonii*, meadow knapweed to *Centaurea x gerstlaueri*.
- *Zostera japonica*, Japanese eelgrass to *Nanozostera japonica*.

Citation of Rules Affected by this Order: Amending WAC 16-750-005, 16-750-011, and 16-750-015.

Statutory Authority for Adoption: Chapter 17.10 RCW.

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 20-20-126 on October 6, 2020.

Changes Other than Editing from Proposed to Adopted Version: Hanging sedge, *Carex pendula*, is not adopted or added to the class A noxious weed list WAC 16-750-005.

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 3, 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 30, 2020.

Anthony Stadelman
Chairman

AMENDATORY SECTION (Amending WSR 19-24-052, filed 11/26/19, effective 1/1/20)

WAC 16-750-005 State noxious weed list—Class A noxious weeds.

Common Name	Scientific Name
broom, French	<i>Genista monspessulana</i>
broom, Spanish	<i>Spartium junceum</i>
common crupina	<i>Crupina vulgaris</i>
cordgrass, common	<i>Spartina anglica</i>
cordgrass, dense-flowered	<i>Spartina densiflora</i>
cordgrass, salt meadow	<i>Spartina patens</i>
cordgrass, smooth	<i>Spartina alterniflora</i>
dyer's woad	<i>Isatis tinctoria</i>
eggleaf spurge	<i>Euphorbia oblongata</i>

Common Name	Scientific Name
false brome	<i>Brachypodium sylvaticum</i>
floating primrose-willow	<i>Ludwigia peploides</i>
flowering rush	<i>Butomus umbellatus</i>
garlic mustard	<i>Alliaria petiolata</i>
giant hogweed	<i>Heracleum mantegazzianum</i>
goatsrue	<i>Galega officinalis</i>
hydrilla	<i>Hydrilla verticillata</i>
Johnsongrass	<i>Sorghum halepense</i>
knapweed, bighead	<i>Centaurea macrocephala</i>
knapweed, Vochin	<i>Centaurea nigrescens</i>
kudzu	<i>Pueraria montana</i> var. <i>lobata</i>
meadow clary	<i>Salvia pratensis</i>
oriental clematis	<i>Clematis orientalis</i>
purple starthistle	<i>Centaurea calcitrapa</i>
reed sweetgrass	<i>Glyceria maxima</i>
ricefield bulrush	<i>Schoenoplectus mucronatus</i>
sage, clary	<i>Salvia sclarea</i>
sage, Mediterranean	<i>Salvia aethiopsis</i>
silverleaf nightshade	<i>Solanum elaeagnifolium</i>
small-flowered jewelweed	<i>Impatiens parviflora</i>
South American sponge-plant	<i>Limnobium laevigatum</i>
Syrian bean-caper	<i>Zygophyllum fabago</i>
Texas blueweed	<i>Helianthus ciliaris</i>
thistle, Italian	<i>Carduus pycnocephalus</i>
thistle, milk	<i>Silybum marianum</i>
thistle, slenderflower	<i>Carduus tenuiflorus</i>
<u>thistle, Turkish</u>	<u><i>Carduus cinereus</i></u>
variable-leaf milfoil	<i>Myriophyllum heterophyllum</i>
wild four o'clock	<i>Mirabilis nyctaginea</i>

AMENDATORY SECTION (Amending WSR 19-24-052, filed 11/26/19, effective 1/1/20)

WAC 16-750-011 State noxious weed list—Class B noxious weeds.

Name		Will be a "Class B designate" in all lands lying within:	
(1)	blueweed, <i>Echium vulgare</i>	(a)	regions 1, 2, 3, 4, 6
		(b)	region 5, except Spokane County
(2)	Brazilian elodea, <i>Egeria densa</i>	(a)	region 1, except Grays Harbor County
		(b)	region 2, except Kitsap County
		(c)	King County of region 2, except lakes Dolloff, Fenwick, Union, Washington, and Sammamish, and the Sammamish River
		(d)	region 3, except Wahkiakum County
		(e)	regions 4, 5, and 6
(3)	bugloss, annual, <i>Anchusa arvensis</i>	(a)	regions 1, 2, 3, 4, and 6
		(b)	region 5, except Spokane County
(4)	bugloss, common, (<i>Anchusa</i>) <i>Lycopsis officinalis</i>	(a)	regions 1, 2, 3, and 6
		(b)	All of region 4 except those areas lying within the Entiat River Valley between the Columbia River confluence and Stormy Creek in Chelan County
		(c)	region 5, except Spokane County
(5)	butterfly bush, <i>Buddleja davidii</i>	(a)	Grays Harbor County of region 1
		(b)	San Juan County of region 2
		(c)	Cowlitz County of region 3
(6)	camelthorn, <i>Alhagi maurorum</i>	(a)	regions 1, 2, 3, 4, 5, and 6
(7)	common fennel, <i>Foeniculum vulgare</i> (except bulbing fennel, <i>F. vulgare</i> var. <i>azoricum</i>)	(a)	region 1, except Jefferson County
		(b)	region 2, except King and Skagit counties
		(c)	region 3, except Clark County
		(d)	regions 4, 5, and 6
(8)	common reed, <i>Phragmites australis</i> (nonnative genotypes only)	(a)	regions 1, 2, 3, and 4
		(b)	region 5, except Grant County
		(c)	Asotin, Columbia, and Garfield counties of region 6
(9)	Dalmatian toadflax, <i>Linaria dalmatica</i> ssp. <i>dalmatica</i>	(a)	regions 1, 2, and 3
		(b)	Adams, Kittitas, and Lincoln counties of region 5
		(c)	Benton, Franklin, and Walla Walla counties of region 6
(10)	Eurasian watermilfoil, <i>Myriophyllum spicatum</i>	(a)	region 1, except Pacific County
		(b)	Island, Kitsap, and San Juan counties of region 2
		(c)	Clark and Cowlitz counties of region 3
		(d)	Chelan and Okanogan counties, and all lakes with public boat launches except Fan Lake in Pend Oreille County of region 4
		(e)	Adams, Kittitas, Lincoln, and Whitman counties of region 5
		(f)	Asotin, Columbia, and Garfield counties of region 6
(11)	European coltsfoot, <i>Tussilago farfara</i>	(a)	regions 1, 2, 3, 4, 5, and 6
(12)	fanwort, <i>Cabomba caroliniana</i>	(a)	regions 1, 2, 4, 5, and 6
		(b)	region 3, except Cowlitz County

Name		Will be a "Class B designate" in all lands lying within:	
(13)	gorse, <i>Ulex europaeus</i>	(a)	region 1, except Grays Harbor and Pacific counties
		(b)	regions 2, 3, 4, 5, 6
(14)	grass-leaved arrowhead, <i>Sagittaria graminea</i>	(a)	region 1
		(b)	region 2, except Snohomish County
		(c)	regions 3, 4, 5, and 6
(15)	hairy willow-herb, <i>Epilobium hirsutum</i>	(a)	regions 1, 3, and 4
		(b)	region 2, except Thurston and Whatcom counties
		(c)	region 5, except Klickitat County
		(d)	region 6, except Benton and Franklin counties
(16)	hawkweed oxtongue, <i>Picris hieracioides</i>	(a)	regions 1, 2, 4, 5, and 6
		(b)	region 3, except Skamania County
(17)	hawkweed, orange, <i>Hieracium aurantiacum</i>	(a)	regions 1, 3, and 6
		(b)	region 2, except Whatcom County
		(c)	region 4, except Pend Oreille and Stevens counties
		(d)	region 5, except Kittitas and Spokane counties
(18)	hawkweeds: All nonnative species and hybrids of the Meadow subgenus (<i>Pilosella</i>), including, but not limited to, mouseear (<i>Hieracium pilosella</i>), pale (<i>H. lactucella</i>), queen-devil (<i>H. glomeratum</i>), tall (<i>H. piloselloides</i>), whiplash (<i>H. flagellare</i>), yellow (<i>H. caespitosum</i>), and yellow-devil (<i>H. x floribundum</i>)	(a)	region 1
		(b)	region 2, except Thurston County
		(c)	region 3, except Cowlitz County
		(d)	region 4, except Pend Oreille and Stevens counties
		(e)	region 5, except Klickitat and Spokane counties
		(f)	region 6
(19)	hawkweeds: All nonnative species and hybrids of the Wall subgenus (<i>Hieracium</i>), including, but not limited to, common (<i>Hieracium lachenalii</i>), European (<i>H. sabaudum</i>), polar (<i>H. atratum</i>), smooth (<i>H. laevigatum</i>), spotted (<i>H. maculatum</i>), and wall (<i>H. murorum</i>)	(a)	regions 1, 3, 5, and 6
		(b)	region 2, except King, Skagit, <u>Snohomish</u> , and Whatcom counties
		(c)	region 4, except Stevens County
(20)	herb-Robert, <i>Geranium robertianum</i>	(a)	regions 4, 5, and 6
(21)	hoary alyssum, <i>Berteroa incana</i>	(a)	regions 1, 2, 3, and 6
		(b)	region 4, except Pend Oreille and Ferry counties
		(c)	region 5, except Klickitat County
(22)	houndstongue, <i>Cynoglossum officinale</i>	(a)	regions 1, 2, and 3
		(b)	Chelan and Douglas counties of region 4
		(c)	Yakima, Grant and Adams counties of region 5
		(d)	Benton and Franklin counties of region 6
(23)	indigobush, <i>Amorpha fruticosa</i>	(a)	regions 1, 2, and 4
		(b)	Lewis County of region 3
		(c)	region 5, except Klickitat County

Name		Will be a "Class B designate" in all lands lying within:	
(24)	knapweed, black, <i>Centaurea nigra</i>	(a)	regions 1, 2, 3, 4, 5, and 6
(25)	knapweed, brown, <i>Centaurea jacea</i>	(a)	regions 1, 2, 3, 4, 5, and 6
(26)	knapweed, diffuse, <i>Centaurea diffusa</i>	(a)	region 1
		(b)	region 2
		(c)	region 3, except Cowlitz County
		(d)	Adams County of region 5
(27)	knapweed, meadow, <i>Centaurea x ((monectonii) gerstlaueri)</i>	(a)	regions 1 and 4
		(b)	region 2, except Whatcom County
		(c)	Thurston County of region 2, except below the ordinary high-water mark of the Nisqually River
		(d)	Lewis and Wahkiakum counties of region 3
		(e)	region 5, except Kittitas and Klickitat counties
		(f)	region 6, except Franklin and Walla Walla counties
(28)	knapweed, Russian, <i>Rhaponiticum repens</i>	(a)	regions 1, 2, and 3
		(b)	Ferry and Pend Oreille counties of region 4
		(c)	Lincoln, Spokane, and Whitman counties of region 5
		(d)	Adams County of region 5, except for the area west of Highway 17 and north of Highway 26
		(e)	Asotin and Garfield counties of region 6
(29)	knapweed, spotted, <i>Centaurea stoebe</i>	(a)	region 1, except Grays Harbor
		(b)	region 2, except Whatcom County
		(c)	Clark, Lewis, and Wahkiakum counties of region 3
		(d)	Ferry County of region 4
		(e)	Adams, Grant and Yakima counties of region 5
		(f)	region 6, except Columbia and Walla Walla counties
(30)	knotweed, Bohemian, (<i>Polygonum x bohemicum</i>) <i>Fallopia x bohémica</i>	(a)	Island and San Juan counties of region 2
		(b)	Skamania County of region 3
		(c)	region 4, 5, and 6
(31)	knotweed, giant, (<i>Polygonum sachalinense</i>) <i>Fallopia sachalinensis</i>	(a)	region 2, except King, Pierce, and Snohomish counties
		(b)	region 3, except Cowlitz and Lewis counties
		(c)	regions 4, 5, and 6
(32)	knotweed, Himalayan, <i>Persicaria wallichii</i>	(a)	region 1, except Pacific County
		(b)	region 2, except King and Pierce counties
		(c)	region 3, except Wahkiakum County
		(d)	region 4, 5, and 6
(33)	knotweed, Japanese, (<i>Polygonum cuspidatum</i>) <i>Fallopia japonica</i>	(a)	Island, San Juan, and Whatcom counties of region 2
		(b)	Skamania County of region 3
		(c)	region 4, except Okanogan County
		(d)	region 5, except Spokane County
		(e)	region 6

Name		Will be a "Class B designate" in all lands lying within:	
(34)	kochia, <i>Bassia scoparia</i>	(a)	regions 1, 2, and 3
		(b)	Stevens and Pend Oreille counties of region 4
		(c)	Adams County of region 5
(35)	lesser celandine, <i>Ficaria verna</i>	(a)	region 1, 3, 4, 5, and 6
		(b)	region 2, except King and Whatcom counties
(36)	loosestrife, garden, <i>Lysimachia vulgaris</i>	(a)	regions 1, 2, 3, 4, 5, 6
(37)	loosestrife, purple, <i>Lythrum salicaria</i>	(a)	Clallam, Jefferson, and Mason counties of region 1
		(b)	region 2, except Kitsap, Skagit, and Snohomish counties
		(c)	Clark, Lewis, and Skamania counties of region 3
		(d)	region 4, except Douglas County
		(e)	region 5, except Grant and Spokane counties
		(f)	region 6, except Asotin and Franklin counties
(38)	loosestrife, wand, <i>Lythrum virgatum</i>	(a)	Clallam, Jefferson, and Mason counties of region 1
		(b)	region 2, except Kitsap, Skagit, and Snohomish counties
		(c)	Clark, Lewis, and Skamania counties of region 3
		(d)	region 4, except Douglas County
		(e)	region 5, except Grant and Spokane counties
		(f)	region 6, except Asotin and Franklin counties
(39)	Malta starthistle, <i>Centaurea melitensis</i>	(a)	regions 1, 2, and 3
		(b)	region 4, except T36 R38 in the area contained within Hwy 395/Hwy 20, Pingston Creek Road, and Highland Loop Road in Stevens County
		(c)	region 5, except Klickitat and Whitman counties
(40)	parrotfeather, <i>Myriophyllum aquaticum</i>	(a)	region 1, except Pacific County
		(b)	regions 2, 4, 5, and 6
		(c)	Clark and Skamania counties of region 3
(41)	perennial pepperweed, <i>Lepidium latifolium</i>	(a)	regions 1, 2, and 4
		(b)	region 3, except Clark and Cowlitz counties
		(c)	Kittitas, Lincoln and Spokane counties of region 5
		(d)	Columbia and Garfield counties of region 6
(42)	poison hemlock, <i>Conium maculatum</i>	(a)	Clallam, Mason, and Pacific counties of region 1
		(b)	region 2, except King, Skagit, and Whatcom counties
		(c)	Clark and Skamania counties of region 3
		(d)	Chelan, Douglas, and Pend Oreille counties of region 4
		(e)	Grant, Kittitas and Lincoln counties of region 5
(43)	policeman's helmet, <i>Impatiens glandulifera</i>	(a)	region 1, 3, 4, 5, and 6
		(b)	region 2, except Thurston and Whatcom counties
(44)	puncturevine, <i>Tribulus terrestris</i>	(a)	regions 1, 2, and 3
		(b)	Ferry, Pend Oreille, and Stevens counties of region 4
		(c)	region 5, except Grant, Klickitat, and Yakima counties
(45)	Ravenna grass, ((<i>Saecharum</i>)) <i>Tripidium ravennae</i>	(a)	Cowlitz County of region 3
		(b)	region 4((, except Chelan County)))

Name		Will be a "Class B designate" in all lands lying within:	
		(c)	region 5, except Yakima County
		(d)	region 6, except Benton County
(46)	rush skeletonweed, <i>Chondrilla juncea</i>	(a)	regions 1, 2, and 3
		(b)	region 4, except all areas of Stevens County south of Township 29
		(c)	Kittitas and Yakima counties of region 5, and Adams County, except those areas lying east of Sage Road, the western border of Range 36
		(d)	Asotin County of region 6
(47)	saltcedar, <i>Tamarix ramosissima</i> (unless intentionally planted prior to 2004)	(a)	regions 1, 3, 4, ((and)) <u>5, and 6</u>
		(b)	region 2, except King and Thurston counties
		((c))	region 6, except Benton and Franklin counties))
(48)	Scotch broom, <i>Cytisus scoparius</i>	(a)	regions 4 and 6
		(b)	region 5, except Klickitat County
(49)	shiny geranium, <i>Geranium lucidum</i>	(a)	regions 1, 4, 5, and 6
		(b)	regions 2, except Thurston County
		(c)	region 3, except Clark County
(50)	spurge flax, <i>Thymelaea passerina</i>	(a)	region 4, except Okanogan County
		(b)	regions 5 and 6
(51)	spurge laurel, <i>Daphne laureola</i>	(a)	region 1, except Clallam and Jefferson counties
		(b)	region 2, except King, Kitsap, and Pierce counties
		(c)	region 3 ((, except Skamania County))
		(d)	regions 4, 5, and 6
(52)	spurge, leafy, <i>Euphorbia virgata</i>	(a)	regions 1, 2, 3, and 4
		(b)	region 5, except Spokane County
		(c)	region 6, except Columbia County
(53)	spurge, myrtle, <i>Euphorbia myrsinites</i>	(a)	region 1, except Clallam and Jefferson counties
		(b)	region 2, except King, Kitsap, Pierce, and Whatcom counties
		(c)	regions 3, 5, and 6
		(d)	region 4, except Okanogan ((and Stevens counties)) <u>County</u>
(54)	sulfur cinquefoil, <i>Potentilla recta</i>	(a)	region 1
		(b)	region 2, except Pierce and Thurston counties
		(c)	region 3, except Lewis and Skamania counties
		(d)	Adams, Grant, Lincoln, and Whitman counties of region 5
		(e)	region 6, except Asotin County
(55)	tansy ragwort, <i>Jacobaea vulgaris</i>	(a)	Island and San Juan counties of region 2
		(b)	Clark and Wahkiakum counties of region 3
		(c)	regions 4, <u>5</u> , and 6
		((d))	region 5, except Klickitat County))
(56)	thistle, musk, <i>Carduus nutans</i>	(a)	regions 1, 2, 3, and 6
		(b)	region 4, except Douglas and Ferry counties
		(c)	region 5, except Kittitas County

Name		Will be a "Class B designate" in all lands lying within:	
(57)	thistle, plumeless, <i>Carduus acanthoides</i>	(a)	regions 1, 2, 3, 5, 6
		(b)	region 4, except those areas north of State Highway 20 in Stevens County
(58)	thistle, Scotch, <i>Onopordum acanthium</i>	(a)	regions 1, 2, and 3
		(b)	region 4, except Douglas County
		(c)	region 5, except Spokane and Whitman counties
(59)	velvetleaf, <i>Abutilon theophrasti</i>	(a)	regions 1, 2, 3, ((and)) <u>4, and 6</u>
		(b)	region 5, except Yakima County
		((c))	region 6, except Franklin County
(60)	water primrose, <i>Ludwigia hexapetala</i>	(a)	regions 1, 2, <u>3</u> , 4, 5, and 6
		((b))	region 3, except Cowlitz County
(61)	white bryony, <i>Bryonia alba</i>	(a)	regions 1, 2, 3, and 4
		(b)	region 5, except Whitman County
		(c)	Benton ((County)) <u>and Garfield counties</u> of region 6
(62)	wild chervil, <i>Anthriscus sylvestris</i>	(a)	regions 1, <u>3</u> , 4, and 6
		(b)	region 2, except ((Island and)) Whatcom ((counties)) <u>County</u>
		(c)	((Wahkiakum and Lewis counties of region 3
		((d))	region 5, except Whitman County
(63)	yellow archangel, <i>Lamium galeobdolon</i>	(a)	Clallam County of region 1
		(b)	Island, San Juan, Skagit, and Whatcom counties of region 2
		(c)	<u>Cowlitz</u> , Skamania, and Wahkiakum counties of region 3
		(d)	regions 4, 5, and 6
(64)	yellow floating heart, <i>Nymphoides peltata</i>	(a)	regions 1, 2, <u>3</u> , and 6
		(b)	((region 3, except Cowlitz County
		((e))	region 4, except Stevens County
		((d)) (c)	region 5, except Spokane County
(65)	yellow nutsedge, <i>Cyperus esculentus</i>	(a)	regions 1 and 4
		(b)	region 2, except Skagit and Thurston counties
		(c)	region 3, except Clark County
		(d)	region 5, except Klickitat and Yakima counties
		(e)	region 6, except Franklin and Walla Walla counties
(66)	yellow starthistle, <i>Centaurea solstitialis</i>	(a)	regions 1, 2, and 3
		(b)	region 4, except T36 R38 in the area contained within Hwy 395/Hwy 20, Pingston Creek Road, and Highland Loop Road in Stevens County
		(c)	region 5, except Klickitat, and Whitman counties

AMENDATORY SECTION (Amending WSR 17-24-035, filed 11/29/17, effective 1/1/18)

WAC 16-750-015 State noxious weed list—Class C noxious weeds.

Common Name	Scientific Name
absinth wormwood	<i>Artemisia absinthium</i>

Common Name	Scientific Name
Austrian fieldcress	<i>Rorippa austriaca</i>
babysbreath	<i>Gypsophila paniculata</i>
black henbane	<i>Hyoscyamus niger</i>
blackberry, evergreen	<i>Rubus laciniatus</i>

Common Name	Scientific Name	Common Name	Scientific Name
blackberry, Himalayan	<i>Rubus ((armeniacus)) bifrons</i>	scentless mayweed	<i>((Matricaria perforata)) Tripleurospermum inodorum</i>
blackgrass	<i>Alopecurus myosuroides</i>	smoothseed alfalfa dodder	<i>Cuscuta approximata</i>
buffalobur	<i>Solanum rostratum</i>	spikeweed	<i>Centromadia pungens</i>
cereal rye	<i>Secale cereale</i>	spiny cocklebur	<i>Xanthium spinosum</i>
common barberry	<i>Berberis vulgaris</i>	spotted jewelweed	<i>Impatiens capensis</i>
common catsear	<i>Hypochaeris radicata</i>	Swainsonpea	<i>Sphaerophysa salsula</i>
common groundsel	<i>Senecio vulgaris</i>	thistle, bull	<i>Cirsium vulgare</i>
common St. Johnswort	<i>Hypericum perforatum</i>	thistle, Canada	<i>Cirsium arvense</i>
common tansy	<i>Tanacetum vulgare</i>	tree-of-heaven	<i>Ailanthus altissima</i>
common teasel	<i>Dipsacus fullonum</i>	ventenata	<i>Ventenata dubia</i>
curly-leaf pondweed	<i>Potamogeton crispus</i>	white cockle	<i>Silene latifolia ((ssp. alba))</i>
English hawthorn	<i>Crataegus monogyna</i>	wild carrot (except where commercially grown)	<i>Daucus carota</i>
English ivy 4 cultivars only:	<i>Hedera hibernica</i> 'Hibernica'	yellow flag iris	<i>Iris pseudacorus</i>
	<i>Hedera helix</i> 'Baltica'	yellow toadflax	<i>Linaria vulgaris</i>
	<i>Hedera helix</i> 'Pittsburgh'		
	<i>Hedera helix</i> 'Star'		
Eurasian watermilfoil hybrid	<i>Myriophyllum spicatum</i> x <i>M. sibiricum</i>		
field bindweed	<i>Convolvulus arvensis</i>		
fragrant water lily	<i>Nymphaea odorata</i>		
hairy whitetop	<i>Lepidium appelianum</i>		
hoary cress	<i>Lepidium draba</i>		
Italian arum	<i>Arum italicum</i>		
Japanese eelgrass	<i>((Zostera)) Nanozostera japonica</i>		
jointed goatgrass	<i>Aegilops cylindrica</i>		
jubata grass	<i>Cortaderia jubata</i>		
lawnweed	<i>Soliva sessilis</i>		
longspine sandbur	<i>Cenchrus longispinus</i>		
Medusahead	<i>Taeniatherum caput-medusae</i>		
nonnative cattail species and hybrids	Including, but not limited to, <i>Typha angustifolia</i> , <i>T. domingensis</i> and <i>T. x glauca</i>		
old man's beard	<i>Clematis vitalba</i>		
oxeye daisy	<i>Leucanthemum vulgare</i>		
pampas grass	<i>Cortaderia selloana</i>		
perennial sowthistle	<i>Sonchus arvensis</i> ssp. <i>arvensis</i>		
reed canarygrass	<i>Phalaris arundinacea</i>		
Russian olive	<i>Elaeagnus angustifolia</i>		

WSR 20-24-103
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed December 1, 2020, 7:46 a.m., effective January 4, 2021]

Effective Date of Rule: January 4, 2021.

Purpose: The department adopted updates in chapter 296-65 WAC Asbestos removal and encapsulation (WSR 20-03-153) on January 21, 2020, which removed confusing and unnecessary language and clarified requirements for asbestos supervisors and trainers. The purpose of this rule making is to update a grammatical error and a housekeeping item that adds clarity. No requirements were affected.

Amended Sections:

WAC 296-65-012 (4)(b), Asbestos supervisor certification.

- Replaced the word worker with supervisor.

WAC 296-65-030(1), Methods of compliance.

- Clarified that this section is for certified asbestos abatement contractors by adding "certified asbestos abatement contractors" to the heading.

Citation of Rules Affected by this Order: Amending WAC 296-65-012 (4)(b) and 296-65-030(1).

Statutory Authority for Adoption: RCW 49.17.010, 49.17.040, 49.17.050 and 49.17.060; chapter 49.26 RCW.

Adopted under notice filed as WSR 20-19-134 on September 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 2, 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: December 1, 2020.

Joel Sacks
Director

AMENDATORY SECTION (Amending WSR 20-03-153, filed 1/21/20, effective 3/2/20)

WAC 296-65-012 Asbestos supervisor certification.

(1) To qualify for an asbestos supervisor certificate, an individual must:

(a) Have at least 1600 hours of experience in one or more of the following disciplines:

- (i) Asbestos abatement;
- (ii) Asbestos project design;
- (iii) Consultation on asbestos abatement projects;
- (iv) Asbestos operations and maintenance program supervision;

(v) Asbestos construction project supervision;

(b) Successfully complete an approved forty hour asbestos supervisor training course;

(c) Achieve a score of at least seventy percent on a one hundred question multiple choice closed book examination approved by the department but administered by the training course sponsor:

(i) If an individual does not pass the examination, then another examination (meeting the above criteria) may be given after a sufficient period of study. The new examination must not duplicate more than fifty percent of the questions used on prior examinations;

(ii) If an individual does not pass the second examination, they will be required to take an approved asbestos supervisor initial course.

(d) Complete an initial application notarized by an approved training course sponsor.

(e) Submit an approved affidavit of experience to the department from past and current employers verifying hours of experience as outlined in this subsection.

(f) Pay the fee prescribed in WAC 296-65-025.

(2) Certificates will be issued and emailed to the individual applicants and will be valid one year from the date of course completion.

(3) Certified asbestos supervisors must do the following to renew and continue certification prior to certificate expiration date:

(a) Attend and successfully complete an approved eight-hour asbestos supervisor refresher course;

(b) Complete a renewal application notarized by an approved training course sponsor; and

(c) Pay the fee prescribed in WAC 296-65-025.

(4) Individuals whose certificates have been expired for less than twelve months will be required to achieve a score of at least seventy percent on a fifty question multiple choice closed book examination administered by the department. A nonrefundable fifty dollar fee will be charged to take this examination.

(a) If an individual does not pass the examination, then another examination (meeting the above criteria) may be given after a sufficient period of study. The new examination must not duplicate more than fifty percent of the questions used on prior examinations.

(b) If an individual does not pass the second exam, then they will be required to take an approved asbestos (~~worker~~) supervisor initial course.

(5) Individuals whose certificates have been expired for more than twelve months will be required to take an approved asbestos supervisor initial course.

(6) An individual must not supervise any asbestos abatement project prior to issuance of the certificate.

(7) Temporary certification will be issued at the successful completion of an approved asbestos supervisor refresher course. Temporary certification is valid for six weeks from the completion of the course.

(8) The initial TSCA Title II supervisor accreditation certificate and the current supervisor certificate must be available for inspection at all times, either electronically or physically, at the location of the asbestos project.

(9) The department may suspend or revoke a certificate as provided in WAC 296-65-050 and chapter 296-900 WAC.

AMENDATORY SECTION (Amending WSR 20-03-153, filed 1/21/20, effective 3/2/20)

WAC 296-65-030 Methods of compliance. (1) Certified asbestos abatement contractors:

(a) Only certified asbestos abatement contractors may submit bids, or work on asbestos abatement projects.

(b) Certified asbestos contractors must employ at least one certified asbestos supervisor.

(2) Only certified asbestos supervisors may supervise asbestos abatement projects as required in WAC 296-62-0772.

(3) Only certified asbestos workers may work on asbestos projects as required in WAC 296-62-0772.

(4) A certified asbestos supervisor must provide direct, on-site supervision for asbestos abatement projects.

(5) Asbestos workers must have access to, and be under the control of certified asbestos supervisors throughout the duration of asbestos abatement projects.

(6) Any construction, renovation, remodeling, maintenance, repair, or demolition which was started without meeting the requirements of this section must be halted immediately and cannot be resumed before meeting such requirements.

WSR 20-24-105
PERMANENT RULES
OFFICE OF THE
INSURANCE COMMISSIONER

[Filed December 1, 2020, 8:36 a.m., effective January 1, 2021]

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

Purpose: The commissioner is adopting rules regarding prescription drug utilization management to ensure implementation as provided for in ESHB 1879 (chapter 171, Laws of 2019), which has been codified in RCW 48.43.400, 48.43-410, and 48.43.420.

Citation of Rules Affected by this Order: New WAC 284-43-2021 and 284-43-2022; and amending WAC 284-43-2020, 284-43-5080, 284-43-5100, and 284-43-5170.

Statutory Authority for Adoption: RCW 48.02.060, 48.43.400, 48.43.410, and 48.43.420.

Adopted under notice filed as WSR 20-19-135 on September 22, 2020.

Changes Other than Editing from Proposed to Adopted Version: A technical change was made to WAC 284-43-2021 (8)(a) to add "or such drug is contraindicated" in order to include this requirement from ESHB 1879.

A final cost-benefit analysis is available by contacting Tabba Alam, P.O. Box 40260, Olympia, WA 98504-0260, phone 360-725-7170, email rulescoordinator@oic.wa.gov, website www.insurance.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 2, Amended 4, 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 2, Amended 4, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: December 1, 2020.

Mike Kreidler
Insurance Commissioner

AMENDATORY SECTION (Amending WSR 16-01-081, filed 12/14/15, effective 12/14/15)

WAC 284-43-2020 Drug utilization review—Generally. (1) These definitions apply to this section only:

(a) "Nonurgent review request" means any request for approval of care or treatment where the request is made in advance of the patient obtaining medical care or services, or a renewal of a previously approved request, and is not an urgent care request.

(b) "Urgent care review request" means any request for approval of care or treatment where the passage of time could seriously jeopardize the life or health of the patient, seriously

jeopardize the patient's ability to regain maximum function or, in the opinion of a provider with knowledge of the patient's medical condition, would subject the patient to severe pain that cannot be adequately managed without the care or treatment that is the subject of the request.

(2) Each issuer must maintain a documented drug utilization review program. The program must include a method for reviewing and updating criteria. Issuers must make drug review criteria available upon request to a participating provider. Beginning January 1, 2021, an issuer must post its clinical review criteria for prescription drugs and the drug utilization management exception process on its website. An issuer must also require any entity performing prescription drug benefit administration on the issuer's behalf to post the drug utilization management exception process and clinical review criteria used for the issuer's enrollees on the entity's website. The review criteria must be accessible to both providers and enrollees and presented in plain language that is understandable to both providers and enrollees. The clinical review criteria must include all rules and criteria related to the prescription drug utilization management exception process including the specific information and documentation that must be submitted by a health care provider or enrollee to be considered a complete exception request.

(3) The drug utilization review program must meet accepted national certification standards such as those used by the National Committee for Quality Assurance except as otherwise required by this chapter.

(4) The drug utilization review program must have staff who are properly qualified, trained, supervised, and supported by explicit written clinical review criteria and review procedures.

(5) Each issuer must have written procedures to assure that reviews are conducted in a timely manner.

(a) If the review request from a provider or enrollee is not accompanied by all necessary information, the issuer must tell the provider or enrollee what additional information is needed and the deadline for its submission. Upon the sooner of the receipt of all necessary information or the expiration of the deadline for providing information, the time frames for issuer determination and notification must be no less favorable than United States Department of Labor standards, and are as follows:

(i) For urgent care review requests:

(A) Must approve the request within forty-eight hours if the information provided is sufficient to approve the claim and include the authorization number, if a prior authorization number is required, in its approval;

(B) Must deny the request within forty-eight hours if the requested service is not medically necessary and the information provided is sufficient to deny the claim; or

(C) Within twenty-four hours, if the information provided is not sufficient to approve or deny the claim, the issuer must request that the provider submits additional information to make the prior authorization determination:

(I) The issuer must give the provider forty-eight hours to submit the requested information;

(II) The issuer must then approve or deny the request within forty-eight hours of the receipt of the requested addi-

tional information and include the authorization number in its approval;

(ii) For nonurgent care review requests:

(A) Must approve the request within five calendar days if the information is sufficient to approve the claim and include the authorization number in its approval;

(B) Must deny the request within five calendar days if the requested service is not medically necessary and the information provided is sufficient to deny the claim; or

(C) Within five calendar days, if the information provided is not sufficient to approve or deny the claim, the issuer must request that the provider submits additional information to make the prior authorization determination:

(I) The issuer must give the provider five calendar days to submit the requested additional information;

(II) The issuer must then approve or deny the request within four calendar days of the receipt of the additional information and include the authorization number in its approval.

(b) Notification of the prior authorization determination must be provided as follows:

(i) Information about whether a request was approved must be made available to the provider;

(ii) Whenever there is an adverse determination resulting in a denial the issuer must notify the requesting provider by one or more of the following methods; phone, fax and/or secure electronic notification, and the covered person in writing or via secure electronic notification. Status information will be communicated to the billing pharmacy, via electronic transaction, upon the issuer's receipt of a claim after the request has been denied. The issuer must transmit these notifications within the time frames specified in (a)(i) and (ii) of this subsection in compliance with United States Department of Labor standards.

(6) When a provider or enrollee requests an exception to an issuer's drug utilization program, the urgent and nonurgent time frames established in RCW 48.43.420, WAC 284-43-2021 and 284-43-2022 shall apply.

(7) No issuer may penalize or threaten a pharmacist or pharmacy with a reduction in future payment or termination of participating provider or participating facility status because the pharmacist or pharmacy disputes the issuer's determination with respect to coverage or payment for pharmacy service.

NEW SECTION

WAC 284-43-2021 Prescription drug utilization management exception and substitution process. (1) For purposes of this section and WAC 284-43-2022:

(a) "Emergency fill" means a limited dispensed amount of medication that allows time for the processing of prescription drug utilization management.

(b) "Medically appropriate" means prescription drugs that under the applicable standard of care are appropriate:

(i) To improve or preserve an enrollee's health, life, or function;

(ii) To slow the deterioration of an enrollee's health, life, or function; or

(iii) For the early screening, prevention, evaluation, diagnosis, or treatment of a disease, condition, illness, or injury.

(2) Beginning January 1, 2021, a carrier must establish an exception request program so that enrollees and providers may request substitution of a preferred drug, therapy or medication, and exceptions to prescription drug benefit limitations and procedures under a carrier's drug utilization management program. The process must include both nonurgent and urgent exception request procedures.

(3) A carrier must treat an exception request as urgent when an enrollee is experiencing a health condition that may seriously jeopardize the enrollee's life, health or ability to regain maximum function, or when the enrollee is undergoing a current course of treatment using a nonformulary drug.

(4) A carrier's exception request standards, procedures and the process description must be available to the commissioner for review upon request. A carrier must require any entity the carrier uses to administer its prescription drug benefit or to make coverage decisions for prescription drug, therapy, or medication coverage, to comply with the carrier's exception process requirements. Neither the exception request process criteria nor the type or volume of documentation required to support an exception request may be unreasonably burdensome to the enrollee or their provider.

(5) The exception request procedures must:

(a) Clearly explain the process a provider and enrollee may use to request approval from the carrier, or any entity providing benefit administration, to substitute one drug, therapy or medication for another drug, therapy or medication on both an urgent and nonurgent basis.

(b) Explain how the exception process provides an enrollee with access to drugs, therapies, or medication that are both on and off the carrier's formulary.

(c) Permit an enrollee and their provider to use the exception request process when a formulary's tiering structure changes during the year and an enrollee is using a drug affected by the change.

(d) Permit a request for an exception to utilization management restrictions applied by the carrier or any entity providing benefit administration, such as a requirement for step therapy, dosage limitations, or therapeutic substitution.

(e) Permit substitution coverage for nonspecialty and specialty drugs, biologics, self-administered medication, and off-label prescriptions of medications, which means a prescription of a medication, drug, or therapy for an indication that deviates significantly from the approved U.S. Food and Drug Administration labeling. An indication is defined as a diagnosis, illness, injury, syndrome, condition or other clinical parameter for which a drug may be given. A carrier is not required to permit substitution coverage for vaccines.

(6) A carrier must not establish a special formulary tier or copayment or other cost-sharing requirement that is only applicable to prescription drugs approved for coverage under an exception request. When an enrollee or their provider requests a formulary or tiering exception to obtain a nonpreferred drug that is in a higher cost-sharing tier, a carrier may apply the cost-share for the substituted drug based on the substituted drug's placement on the formulary. For a drug that is not on the formulary, the carrier must apply the enrollee's

share of cost to their out-of-pocket maximum calculations. A carrier's prescription drug benefit must include a description of the enrollee's cost-share obligation for off-formulary coverage of substituted drugs, therapies, or medications accessed through the exception process.

(7) A carrier must not require the enrollee to submit a new exception request for a refill if the enrollee's prescribing physician or other prescriber continues to prescribe the drug and the drug continues to be approved by the U.S. Food and Drug Administration for treating the enrollee's disease or medical condition, or if the drug was prescribed as part of the enrollee's participation in a clinical trial.

(a) If the substituted drug is for an off-label drug use, a carrier may require the enrollee to submit a new exception request when a prescription fill and renewal cycle ends.

(b) A carrier may require an enrollee to try an AB-rated generic equivalent or a biological product that is an interchangeable biological product prior to providing coverage for the equivalent branded prescription drug.

(c) A carrier must consider exception requests for a U.S. Food and Drug Administration approved drug used for purposes other than what is indicated on the official label if the use is medically acceptable. A carrier must take into consideration major drug compendia, authoritative medical literature, and accepted standards of practice when making its decision.

(8) Subject to the terms and conditions of the policy that otherwise limit or exclude coverage, the carrier must grant the exception request if it can determine at least one of the following from the information submitted by a provider or enrollee in support of the exception request:

(a) The enrollee does not tolerate the covered generic or formulary drug or such drug is contraindicated;

(b) The enrollee's provider has determined that the covered generic or formulary drug is not therapeutically efficacious for an enrollee. A carrier may require the provider to submit specific clinical documentation as part of the exception request;

(c) The enrollee's provider has determined clinically efficacious treatment requires a dosage that differs from a carrier's formulary dosage limitation for the covered drug. A carrier may require the provider to submit specific clinical documentation as part of the exception request and must review that documentation prior to making a decision;

(d) The enrollee has tried the required prescription drug or another prescription drug in the same pharmacologic class or a drug with the same mechanism of action and, based on the enrollee's documented history, establishes to their provider's satisfaction that they discontinued use of that drug because it was not therapeutically efficacious, effective, had a diminished effect or caused the enrollee an adverse event. A carrier may not deny an exception request solely on the basis that the enrollee's prior use of the required or preferred drug was not within a specific time frame;

(e) The provider has determined that changing from a currently prescribed drug to a drug required by the carrier's formulary management protocols may cause clinically predictable adverse reactions, or physical or mental harm to the enrollee. A carrier's exception program must include uniform standards for the type of clinical documentation required to

establish that an adverse reaction, or physical or mental harm is clinically predictable; or

(f) The drug required by the carrier's formulary management protocols is not in the best interest of the enrollee. To grant an exception request under this standard, a carrier must require submission of documentation of medical appropriateness, including an explanation of why the provider expects the enrollee's use of the required drug to either create a barrier to the enrollee's adherence to or compliance with their plan of care, to negatively impact a comorbid condition of the enrollee, to cause a clinically predictable negative drug interaction or to decrease the enrollee's ability to achieve or maintain reasonable functional ability in performing daily activities.

(9) A carrier must include specific direction in its process explaining how an enrollee may request coverage for an emergency fill of a substitute drug, therapy or medication. A carrier must cover an emergency fill if the treating health care provider determines that the emergency fill is necessary to keep the enrollee stable while the exception request is being processed.

(a) A carrier is not required to grant an exception request for a substitute drug on the basis that an emergency fill was requested.

(b) The emergency fill exception request process in subchapter D of this chapter provides an exception to the carrier's emergency fill policy as required by WAC 284-170-470(8).

NEW SECTION

WAC 284-43-2022 Time frame for exception and substitution request determinations. (1) A carrier must make an exception request determination in a timely manner as defined in this section. A carrier may not deny the exception request if the enrollee or provider does not receive a response to an exception request within the time frames in this section.

(2) A carrier must maintain a sufficient record of each exception request to establish its compliance with the required exception process and time frames under chapter 284-43 WAC and RCW 48.43.420. Upon the commissioner's request, a carrier must make all records and documentation available and produce all requested documentation from any entity providing benefit administration or exception request decisions on its behalf within the time frame set by the commissioner.

(3) If a provider fails to submit sufficient information for the carrier to approve or deny an exception request, a carrier must notify the provider of the specific information needed within three business days of receiving a nonurgent exception request and one business day of receiving an urgent exception request. A carrier must notify the provider that the documentation is insufficient and must explain what information is missing. A carrier may establish a specific reasonable time frame for submission of the additional information. This time frame must be communicated to the provider or enrollee with a carrier's request for additional information. If the additional information is not received within that time frame, a carrier may deny the request.

(4) When a carrier receives sufficient information to make a decision regarding a nonurgent exception request, a carrier must make its determination and notify the enrollee or the enrollee's designee and the prescribing provider (or other prescriber, as appropriate) no later than three business days following receipt of the request.

(5) When a carrier receives sufficient information to make a decision regarding an urgent exception request, a carrier must make its determination and notify the enrollee or the enrollee's designee and the prescribing provider (or other prescriber, as appropriate) no later than one business day following receipt of the request.

(6) Use of a carrier's exception process is not a grievance or appeal pursuant to RCW 48.43.530 and 48.43.535. Denial of an exception request is an adverse benefit determination, and an enrollee, their representative provider or facility, or representative may request review of that decision using a carrier's appeal or adverse benefit determination review process.

(7) A carrier's denial of an exception request is subject to the requirements of RCW 48.43.535 and chapter 284-43A WAC, which grants enrollees access to independent external review of carrier decisions to deny, modify, reduce or terminate coverage of or payment for a health care service or if the carrier exceeds the timelines for making an exception request decision and denies coverage. While the external review is conducted, the carrier must cover the drug if the exception request was urgent or was for an emergency fill. If such an exigency ceases, any drug previously covered under such exigency may only be reauthorized through the standard exception request process. If the independent external review reverses the carrier's denial of either an urgent or nonurgent exception request, the carrier must retrospectively cover the nonformulary drug and continue coverage for the duration of the prescription.

(8) A carrier may not penalize or threaten a provider with a reduction in future payment or termination of a participating provider agreement because the provider disputes a carrier's determination with respect to coverage or payment for a substitute drug.

AMENDATORY SECTION (Amending WSR 17-03-087, filed 1/12/17, effective 2/12/17)

WAC 284-43-5080 Prescription drug benefit design.

(1) A carrier may design its prescription drug benefit to include cost control measures, including requiring preferred drug substitution in a given therapeutic class, if the restriction is for a less expensive, equally therapeutic alternative product available to treat the condition.

(2) A carrier may include elements in its prescription drug benefit design that, where clinically feasible, create incentives for the use of generic drugs. Examples of permitted incentives include, but are not limited to, refusal to pay for higher cost drugs until it can be shown that a lower cost drug or medication is not effective (also known as step therapy protocols or fail-first policies), establishing a preferred brand and nonpreferred brand formulary, or otherwise limiting the benefit to the use of a generic drug in lieu of brand

name drugs, subject to a substitution process as set forth in subsection (3) of this section.

(3) A carrier ~~((must establish a process that a provider and enrollee (or their designee) may use to request a substitution for a prescribed therapy, drug or medication that is not on the formulary.~~

~~(a) The process must not unreasonably restrict an enrollee's access to nonformulary or alternate medications for refractory conditions. Used in this context, "refractory" means "not responsive to treatment."~~

~~(b) For an individual or small group plan, a carrier must make its determination on a standard exception and notify the enrollee or the enrollee's designee and the prescribing provider (or other prescriber, as appropriate) of its coverage determination no later than seventy two hours following receipt of the request. A carrier that grants a standard exception request must provide coverage of the nonformulary drug for the duration of the prescription, including refills.~~

~~(c) For an individual or small group plan, a carrier must have a process for an enrollee, the enrollee's designee, or the enrollee's prescribing provider (or other prescriber) to request an expedited review based on exigent circumstances. For purposes of this section, "exigent circumstances" exist when an enrollee is experiencing a health condition that may seriously jeopardize the enrollee's life, health, or ability to regain maximum function or when an enrollee is undergoing a current course of treatment using a nonformulary drug.~~

~~(i) A carrier must make its coverage determination on an expedited review request based on exigent circumstances and notify the enrollee or the enrollee's designees and the prescribing provider (or other prescriber) of its coverage determination no later than twenty-four hours following receipt of the request.~~

~~(ii) A carrier that grants an exception based on exigent circumstances must provide coverage of the nonformulary drug for the duration of the exigency.~~

~~(d) Subject to the terms and conditions of the policy that otherwise limit or exclude coverage, the carrier must permit substitution of a covered generic drug or formulary drug if:~~

~~(i) An enrollee does not tolerate the covered generic or formulary drug; or~~

~~(ii) An enrollee's provider determines that the covered generic or formulary drug is not therapeutically efficacious for an enrollee. A carrier may require the provider to submit specific clinical documentation as part of the substitution request; or~~

~~(iii) The provider determines that a dosage is required for clinically efficacious treatment that differs from a carrier's formulary dosage limitation for the covered drug. A carrier may require the provider to submit specific clinical documentation as part of the substitution request and must review that documentation prior to making a decision.~~

~~(4) A carrier may include a preauthorization requirement for its prescription drug benefit and its substitution process, based on accepted peer reviewed clinical studies, Federal Drug Administration black box warnings, the fact that the drug is available over the counter, objective and relevant clinical information about the enrollee's condition, specific medical necessity criteria, patient safety, or other criteria that meet an accepted, medically applicable standard of care.~~

~~(a) Neither the substitution process criteria nor the type or volume of documentation required to support a substitution request may be unreasonably burdensome to the enrollee or their provider.~~

~~(b) The substitution process must be administered consistently, and include a documented consultation with the prescribing provider prior to denial of a substitution request.~~

~~(5) Use of a carrier's substitution process is not a grievance or appeal pursuant to RCW 48.43.530 and 48.43.535. Denial of a substitution request is an adverse benefit determination, and an enrollee, their representative provider or facility, or representative may request review of that decision using the carrier's appeal or adverse benefit determination review process.~~

~~(6) In an individual or small group plan, if the carrier denies a request for a standard exception or for an expedited exception, the carrier must have a process for the enrollee, the enrollee's designee, or the enrollee's prescribing provider (or other prescriber) to request that the original exception request and subsequent denial of such request be reviewed by an independent review organization.~~

~~(a) A carrier must determine whether or not to grant an external exception request review and notify the enrollee or the enrollee's designee and the prescribing provider (or other prescriber, as appropriate) of its decision no later than seventy-two hours following its receipt of the request, if the original request was a standard exception request, and no later than twenty-four hours following its receipt of the request, if the original request was an expedited exception request.~~

~~(b) If a standard exception request is granted after an external review, the health plan must provide coverage of the nonformulary drug for the duration of the prescription. If an expedited exception request is granted after an external review, the health plan must provide coverage of the nonformulary drug for the duration of the exigency. If such an exigency ceases, any drug previously covered under such exigency may only be reauthorized through the standard exception request process)) may include a preauthorization requirement for its prescription drug benefit and its substitution process, based on accepted peer reviewed clinical studies, Federal Drug Administration black box warnings, the fact that the drug is available over-the-counter, objective and relevant clinical information about the enrollee's condition, specific medical necessity criteria, patient safety, or other criteria that meet an accepted, medically applicable standard of care.~~

~~(4) A carrier may require an enrollee to try an AB-rated generic equivalent or a biological product that is an interchangeable biological product prior to providing coverage for the equivalent branded prescription drug.~~

AMENDATORY SECTION (Amending WSR 16-01-081, filed 12/14/15, effective 12/14/15)

WAC 284-43-5100 Formulary changes. An issuer is not required to use a formulary as part of its prescription drug benefit design. If a formulary is used, an issuer must, at a minimum, comply with these requirements when a formulary change occurs.

(1) In addition to the requirements set forth in WAC 284-30-450, an issuer must not exclude or remove a medication from its formulary if the medication is the sole prescription medication option available to treat a disease or condition for which the health benefit plan, policy or agreement otherwise provides coverage, unless the medication or drug is removed because the drug or medication becomes available over-the-counter, is proven to be medically inefficacious, or for documented medical risk to patient health.

(2) If a drug is removed from an issuer's formulary for a reason other than withdrawal of the drug from the market, availability of the drug over-the-counter, or the issue of black box warnings by the Federal Drug Administration, an issuer must continue to cover a drug that is removed from the issuer's formulary for the time period required for an enrollee who is taking the medication at the time of the formulary change to use an issuer's ~~((substitution))~~ exception request process to request continuation of coverage for the removed medication, and receive a decision through that process, unless patient safety requires swifter replacement.

(3) Formularies and related preauthorization information must be posted on an issuer or issuer's contracted pharmacy benefit manager website and must be current. Unless the removal is done on an immediate or emergency basis or because a generic equivalent becomes available without prior notice, formulary changes must be posted ~~((thirty))~~ sixty days before the effective date of the change. In the case of an emergency removal, the change must be posted as soon as practicable, without unreasonable delay.

(4) An issuer must make current formulary information electronically available for loading into e-prescribing applications/electronic health records utilizing the National Council for Prescription Drug Programs (NCPDP) formulary and benefit standard transaction. Issuers must include all required data elements as well as the following information, to the extent supported by the transaction:

- (a) Tier level;
- (b) Contract exclusions;
- (c) Quantity limits;
- (d) Preauthorization required;
- (e) Preferred/step therapy.

(5) The issuer's exception request process for any aspect of its prescription drug utilization management program must permit requests for off-formulary substitutions, as well as substitution of one drug on the formulary for another.

AMENDATORY SECTION (Amending WSR 17-01-166, filed 12/21/16, effective 1/21/17)

WAC 284-43-5170 Prescription drug benefit disclosures. (1) A carrier must include the following information in the certificate of coverage issued for a health benefit plan, policy or agreement that includes a prescription drug benefit in addition to those required elsewhere in Titles 48 RCW and 284 WAC. The commissioner may disapprove any contract issued on or after January 1, 2018, if the requirements of this subsection are not met.

(a) A clear statement explaining that the health benefit plan uses the following in its coverage of drugs (as applicable):

- (i) Exclusion of certain brand name or other medications from its formulary;
- (ii) Therapeutic drug substitution;
- (iii) Incentives for use of generic drugs (such as step-therapy protocols);
- (iv) Prior authorization requirements;
- (v) Mid-plan year formulary changes; or
- (vi) Other limits of its prescription drug benefit.

(b) For health plans delivered, issued, or renewed on or before January 1, 2021, a clear explanation of the substitution process required under WAC 284-43-5080 that the enrollee or their provider must use to seek coverage of a prescription drug or medication that is not in the formulary or is not the carrier's preferred drug or medication for the covered medical condition.

(c) For health plans delivered, issued, or renewed on or after January 1, 2021, a clear explanation of the exception and substitution processes required under WAC 284-43-2021, 284-43-2022, and 284-43-5080.

(d) A clear statement explaining that consumers may be eligible to receive an emergency fill for prescription drugs under the circumstances described in WAC 284-170-470. The disclosure must include the process for consumers to obtain an emergency fill, and cost-sharing requirements, if any, for an emergency fill.

~~((e))~~ (e) The process for developing coverage standards and formularies, including the principal criteria by which drugs are selected for inclusion, exclusion, restriction or limitation.

~~((e))~~ (f) The process of changing formularies and coverage standards, including changes in the use of substitute drugs. If the plan has provisions for "grandfathering" certain ongoing prescriptions or other coverage exceptions, these practices must be disclosed.

~~((f))~~ (g) The disclosure must state whether drugs may move between tiers during a plan year and whether this may affect cost-sharing.

~~((g))~~ (h) Any medication management, disease management, or other pharmacy-related services reimbursed by the plan in addition to those required under state and federal law in connection with dispensing drugs, such as disease management services for migraine, diabetes, smoking cessation, asthma, or lipid management.

~~((h))~~ (i) The general categories of drugs excluded from coverage must be disclosed. Such categories may include items such as appetite suppressants, dental prescriptions, cosmetic agents or most over-the-counter medications. This subsection does not require that any particular category of coverage for drugs or pharmacy services should be excluded, reduced, or limited by a health plan.

(2) When a carrier eliminates a previously covered drug from its formulary, or establishes new limitations on coverage of the drug or medication, at a minimum a carrier must ensure that prior notice of the change will be provided as soon as is practicable, to enrollees who filled a prescription for the drug within the prior three months.

(a) Provided the enrollee agrees to receive electronic notice and such agreement has not been withdrawn, either electronic mail notice, or written notice by first class mail at

the last known address of the enrollee, are acceptable methods of notice.

(b) If neither of these notice methods is available because the carrier lacks contact information for enrollees, a carrier may post notice on its website or at another location that may be appropriate, so long as the posting is done in a manner that is reasonably calculated to reach and be noticed by affected enrollees.

(3) A carrier and health plan may use provider and enrollee education to promote the use of therapeutically equivalent generic drugs. The materials must not mislead an enrollee about the difference between biosimilar or bioequivalent, and therapeutically equivalent, generic medications.

(4) A carrier must include the following statement in the certificate of coverage issued for a health benefit plan, policy, or agreement that includes a prescription drug benefit, and provide current contact information as prompted below:

YOUR PRESCRIPTION DRUG RIGHTS

You have the right to safe and effective pharmacy services. You also have the right to know what drugs are covered by your plan and the limits that apply. If you have a question or concern about your prescription drug benefits, please contact us (the health carrier) at (health carrier's contact phone number) or visit (health carrier's website). If you would like to know more about your rights, or if you have concerns about your plan, you may contact the Washington state office of insurance commissioner at 1-800-562-6900 or www.insurance.wa.gov. If you have a concern about the pharmacists or pharmacies serving you, please contact the Washington state department of health at 360-236-4700, www.doh.wa.gov, or HSQACSC@doh.wa.gov.

WSR 20-24-107

PERMANENT RULES

BATES TECHNICAL COLLEGE

[Filed December 1, 2020, 9:37 a.m., effective January 1, 2021]

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

Purpose: Amending chapter 495A-121 WAC, Student rights and responsibilities, to align with model student code of conduct and reflect changes in federal law regarding Title IX, as well as align with Bates Technical College's practices.

Citation of Rules Affected by this Order: Amending chapter 495A-121 WAC.

Statutory Authority for Adoption: RCW 34.05.250, 28B.50.140(13).

Adopted under notice filed as WSR 20-19-005 on September 3, 2020.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 10, Repealed 0; Federal Rules or Standards: New 0, Amended 10, 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 13, Repealed 6.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 13, Repealed 6.

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: December 1, 2020.

Dr. Jean Hernandez
Special Assistant
to the President

AMENDATORY SECTION (Amending WSR 19-14-073, filed 6/30/19, effective 7/31/19)

WAC 495A-121-011 Definitions. The definitions set forth in this section shall apply throughout this chapter. The following words and phrases shall mean:

(1) "Assembly" means any activity engaged in by two or more persons, and the object of which is to gain publicity, advocate a view, petition for a cause, or disseminate information to any persons or group of persons.

(2) "Board of trustees" shall mean the five-member governance board appointed by the governor of the state of Washington for Bates Technical College, District ((No-)) 28.

(3) "Calendar day" means days will be counted by excluding the first day and including the last day of timelines. When the last day falls on a Saturday, Sunday, or holiday, the timeline runs until the next date on which the college is open for business.

(4) "College" shall mean Bates Technical College, District ((No-)) 28.

(5) "College community" means students, employees, trustees, and volunteers.

(6) "College facilities" and "college facility" mean and include any real and personal property owned, rented, leased, or operated by the college, all buildings and appurtenances attached thereto, and all parking lots and other grounds. College facilities extend to distance education classroom environments and agencies or institutions that have educational agreements with the college.

(7) "College official" includes any person employed by the college performing assigned duties.

(8) "College premises" includes all campuses of the college where located and includes all land, buildings, facilities, vehicles, equipment, and other property owned, used, or controlled by the college.

(9) "College president" shall mean the chief executive officer of the college appointed by the board of trustees.

(10) "Complainant" is any person who submits a complaint alleging that a student violated the student conduct code, or in matters of sexual misconduct, a complainant is an alleged victim of sexual misconduct.

(11) "Conduct review officer" is the college administrator designated by the president to be responsible for receiving and for reviewing or referring appeals of student disciplinary actions in accordance with the procedures of this code.

(12) "Consent" means a person gives knowing, voluntary, and clear permission by word or action to engage in mutually agreed upon sexual activity. Each party has the

responsibility to make certain that the other has consented before engaging in the sexual activity. For consent to be valid there must be at the time of the act of sexual intercourse or sexual contact actual words or action indicating freely given agreement to have sexual intercourse or sexual contact.

A person may be incapable of giving consent by reason of age, threat, intimidation, lack of opportunity to object, disability, drug or alcohol consumption, or other cause. A person cannot consent if they are unable to understand what is happening, are disoriented, helpless, asleep, or unconscious for any reason including due to alcohol or other drugs.

Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual activity. An individual has engaged in nonconsensual sexual activity when the individual knows, or should know, that the other person is physically, emotionally, or mentally incapacitated.

(13) "Controlled substance" means and includes any drug or substance as defined in chapter 69.50 RCW as now law or hereafter amended.

(14) "Day" means a weekday, excluding weekends, college holidays, and college closures unless otherwise specified.

(15) "Disciplinary action" is the process by which the student conduct officer imposes discipline against a student for a violation of the student conduct code. Disciplinary action does not include instructional decisions and actions that are under the authority of faculty members and instructional administrators, such as determination of academic credit and grading. These determinations and any review or appeal of these are outside the scope of this chapter.

(16) "Disciplinary appeal" is the process by which an aggrieved student can appeal the discipline imposed by the student conduct officer. Disciplinary appeals from a suspension in excess of ten days or a dismissal are heard by the student/faculty disciplinary committee. Appeals of all other disciplinary action that can be appealed is reviewed through brief adjudicative proceedings.

(17) "Employee" means any classified, faculty, administrator, exempt, student worker or volunteer person.

(18) "Family Educational Rights and Privacy Act" and "FERPA" mean the law and regulations known by those names (20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99).

(19) "Filing" is the process by which a document is officially delivered to a college official responsible for facilitating a disciplinary review. Unless otherwise provided, filing shall be accomplished by:

(a) Hand delivery of the document to the specified college official or college official's assistant; or

(b) By sending the document by email to the specified college official's email address.

Paper required to be filed is deemed filed upon actual receipt during office hours at the office of the specified college official.

(20) "Instructor" and "faculty" mean any employee of Bates Technical College, District ((No-)) 28 who is employed on a full-time or part-time basis as a teacher, instructor, counselor, faculty advisor, or librarian. Instructors have separate authority to impose academic sanctions. Bates Technical College's student code of conduct proceedings are not the exclusive means of addressing academic misconduct.

(21) "RCW" means Revised Code of Washington and can be accessed at <http://apps.leg.wa.gov/rcw/>.

(22) "Respondent" is the student against whom disciplinary action is initiated.

(23) "Service" is the process by which a document is officially delivered to a party. Unless otherwise provided, service upon a party is accomplished by:

- (a) Hand delivery of the document to the party; or
- (b) By sending the document by email to the party's last known address.

Service is deemed complete upon hand delivery of the document or upon the date the document is emailed.

(24) "Sexual misconduct" is the definition ascribed to this term in WAC 495A-121-041(14) and chapter 495A-115 WAC.

(25) "Student" includes all persons taking courses at or through the college whether on a full-time or part-time basis and whether such courses are credit courses, noncredit courses, online courses, continuing education, or contract courses. Persons meeting the following criteria are considered students:

- (a) Who withdraw after allegedly violating the code;
- (b) Who are not officially enrolled for a particular term but have a continuing relationship with the college; or
- (c) Who have been notified of their acceptance for admission.

(26) "Student conduct officer" is a college administrator designated by the president to be responsible for investigating allegations of student misconduct and taking disciplinary action based on the prohibited conduct listed in WAC 495A-121-041 and 495A-115-020. The president may reassign any of the student conduct officer's responsibilities under this chapter as deemed appropriate.

(27) "Student organization" means any number of students who meet the college's formal requirements to form a club or organization.

(28) "Visitors" means guests, applicants, contractors, vendors, advisory board members, foundation board members, and members of the public on college premises.

(29) "WAC" means the Washington Administrative Code and can be accessed at <http://app.leg.wa.gov/wac/>.

AMENDATORY SECTION (Amending WSR 19-14-073, filed 6/30/19, effective 7/31/19)

WAC 495A-121-012 Jurisdiction. Refer to WAC 495A-115-030 for Title IX violations jurisdiction as it applies to student conduct procedures relating to Title IX.

(1) The student conduct code shall apply to student conduct that occurs:

- (a) In or on college facilities;
- (b) At or in connection with college-sponsored activities; or
- (c) Off campus when in the judgment of the college it adversely affects the college community or the pursuit of its objectives.

(2) This chapter applies to conduct which occurs at all locations where students are engaged in college activities, including:

- (a) Foreign or domestic travel;

(b) Activities funded or sponsored by the associated students;

- (c) Athletic or recreational events;
- (d) Training internships or cooperative education;
- (e) Distance education or online education;
- (f) Practicums or supervised work experiences;
- (g) Apprenticeship sites; or
- (h) Any other college-sanctioned activities.

(3) This chapter applies to conduct from the time of application for admission through the actual receipt of a degree or certificate, including conduct that may occur before classes begin, after classes end, during the academic year, or during periods between terms of actual enrollment. This chapter shall apply to a student's conduct even if the student withdraws from the college while a disciplinary matter is pending.

(4) The college has sole discretion on a case-by-case basis to determine whether this student conduct code applies to conduct that occurs off campus.

(5) In addition to initiating disciplinary proceedings for violation of the student conduct code, the college may refer any violations of federal, state, or local laws to civil and criminal authorities for disposition. The college may continue with student disciplinary proceedings regardless of whether the underlying conduct is subject to civil proceedings or criminal prosecution.

AMENDATORY SECTION (Amending WSR 19-14-073, filed 6/30/19, effective 7/31/19)

WAC 495A-121-020 Student rights. As members of the academic community, students are encouraged to develop the capacity for critical judgment and to engage in an independent search for truth. The freedom to learn depends upon appropriate opportunities and conditions in the classroom, on the campus, and in the larger community. The responsibility to secure and to respect general conditions conducive to the freedom to learn is shared by all members of the college community.

The following enumerated rights are assured to each student within the limitations of statutory law and college policy which are deemed necessary to achieve the educational goals of the college:

- (1) Academic freedom.
 - (a) Students are assured the rights of free inquiry, expression, and assembly upon and within college facilities that are generally open and available to the public.

(b) Students are free to pursue appropriate educational objectives from among the college's curricula, programs, and services that are subject to the limitations of RCW 28B.50-090 (3)(b).

(c) The college protects students from academic evaluation that is arbitrary, prejudiced, or capricious. Students are responsible for meeting the standards of academic performance established by each instructor.

(d) Students have the right to a learning environment that is free of discrimination, inappropriate and disrespectful conduct, and all harassment including sexual harassment. Chapter 495A-115 WAC describes the college's student conduct procedures for handling Title IX complaints.

(2) Due process.

(a) The college assures the rights of students to be secure in their persons, quarters, papers, and effects against unreasonable searches and seizures.

(b) No disciplinary sanction may be imposed on any student without notice to the accused of the nature of the charges.

(c) A student accused of violating this student conduct code is entitled, upon request, to procedural due process as set forth in this chapter.

AMENDATORY SECTION (Amending WSR 19-14-073, filed 6/30/19, effective 7/31/19)

WAC 495A-121-041 Prohibited conduct. The college may impose disciplinary sanctions against a student who commits, attempts to commit, aids, abets, incites, encourages, or assists another person to commit an act(s) of misconduct that includes, but is not limited to, the following:

(1) Academic dishonesty. Any act of academic dishonesty including, but not limited to, cheating, plagiarism, and fabrication.

(a) Cheating includes ~~((using or))~~ any attempt to ~~((use;))~~ give~~((;))~~ or obtain unauthorized assistance ~~((related))~~ relating to the completion of an academic assignment.

(b) Plagiarism includes taking and using as one's own, without proper attribution, the ideas, writings, or work of another person in completing an academic assignment. ~~((Plagiarism))~~ Prohibited conduct also may include the unauthorized submission for credit of academic work that has been submitted for credit in another course.

(c) Fabrication includes falsifying data, information, or citations in completing an academic assignment and also includes providing false or deceptive information to an instructor concerning the completion of an assignment.

(d) Academic consequences for academic dishonesty or abetting in academic dishonesty may be imposed at the discretion of a faculty member up to and including a failing grade for the course. Students should refer to each of their faculty's course syllabus. Further academic consequences may follow consistent with the provisions in any program handbook. Incidents of academic dishonesty also may be referred to the student conduct officer for disciplinary action consistent with this chapter in addition to the academic consequences identified above.

(e) The decision to bring a student conduct proceeding under this student code of conduct for academic dishonesty is at the sole discretion of the student conduct officer. Nothing in this student code of conduct prohibits instructors and/or academic administrators from imposing academic sanctions up to and including a failing grade in an academic course or dismissal from an academic program in response to academic dishonesty. Policies and procedures governing the imposition of academic sanctions for academic dishonesty can be found in the college's policy on academic standards, the instructor's course syllabus, and any applicable program handbook.

(2) Other dishonesty. Any other acts of dishonesty that include, but are not limited to:

(a) Forgery, alteration, submission of falsified documents, or misuse of any college document, record, or instrument of identification;

(b) Tampering with an election conducted by or for college students; or

(c) Furnishing false information or failing to furnish correct information in response to the request or requirement of a college officer or employee.

(3) Obstruction or disruption. Obstruction or disruption of:

(a) Any instruction, research, administration, disciplinary proceeding, or other college activity, including the obstruction of the free flow of pedestrian or vehicular movement on college property or at a college activity; or

(b) Any activity that is authorized to occur on college property.

(4) Assault, intimidation, and harassment. Assault, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, stalking, or other conduct that harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property.

(5) Bullying is severe or pervasive physical or verbal (written or oral) abuse.

(6) Cyber misconduct. Cyberstalking, cyberbullying, or online harassment. Use of electronic communications including, but not limited to, email, instant messaging, online bulletin boards, and social media sites to harass, abuse, bully, or engage in other conduct that harms, threatens, or is reasonably perceived as threatening the health or safety of another person. Prohibited activities include, but are not limited to, unauthorized monitoring of another's email communications directly or through spyware, sending threatening emails, disrupting electronic communications with spam or by sending a computer virus, sending false messages to third parties using another's email identity, nonconsensual recording of sexual activity, and nonconsensual distribution of a recording of sexual activity.

(7) Property violation. Damage to, theft, or misuse of real or personal property or money of:

(a) The college or state;

(b) Any student, college officer, or employee;

(c) Any other member of the college community or visitors; or

(d) Possession of such property or money after it has been stolen.

(8) Failure to comply with a directive from a college officer or employee who is acting in the legitimate performance of their duties or failure to properly identify oneself to said person when requested to do so.

(9) Weapons. The possession, transportation, and use of firearms or other dangerous weapons on campus apparently capable of producing bodily harm is prohibited on the college campus subject to the following exceptions:

(a) Certified law enforcement officers acting within the scope of their employment;

(b) Private contracted security with expressed prior written permission from the college to possess firearms or dangerous weapons while employed by the college or for a permitted or contracted event;

(c) Knives, tools, and other objects that are being used for a legitimate educational purpose as part of a college instructional program;

(d) A student with a valid concealed weapons permit may store a firearm in the student's vehicle parked on campus in accordance with RCW 9.41.050 (2) or (3), provided the vehicle is locked and the weapon is concealed from view; or

(e) The president may grant permission to bring a weapon on campus upon a determination that the weapon is reasonably related to a legitimate pedagogical purpose. Such permission shall be in writing and shall be subject to such terms or conditions incorporated in the written document.

(10) Hazing. Hazing includes, but is not limited to, any initiation into a student organization or involvement in any pastime or amusement with said organization that causes or is likely to cause a student bodily danger, physical harm, and serious mental or emotional harm.

(11) Alcohol, drug, and tobacco violations.

(a) Alcohol. The use, possession, delivery, sale, or being observably under the influence of any alcoholic beverage except as permitted by law and applicable college policies.

(b) Marijuana. The use, possession, delivery, sale, or being observably under the influence of marijuana or the psychoactive compounds found in marijuana regardless of form including edibles. While state law permits the recreational use of marijuana, federal law prohibits the use on all college premises and in connection with all college activities.

(c) Drugs. The use, possession, delivery, sale, or being observably under the influence of any legend drug, including anabolic steroids, androgens, or human growth hormones as defined in chapter 69.41 RCW or any other controlled substance under chapter 69.50 RCW except as prescribed for a student's use by a licensed practitioner.

(d) Tobacco, electronic cigarettes, and related products. Use of tobacco, electronic cigarettes, smoking devices, and related products on or in any college facility is prohibited. Exceptions include in a designated smoking area or in a closed private vehicle when in compliance with applicable Washington state laws and college policies. Related products include, but are not limited to, cigarettes, pipes, bidi, clove cigarettes, water pipes, hookahs, chewing tobacco, and snuff.

(12) Disorderly conduct. Conduct that:

(a) Disrupts campus operations or the educational, social, or housing programs; or

(b) Assisting or encouraging another person to engage in said disruptive behavior.

(13) Discriminatory conduct. Discriminatory conduct that harms or adversely affects any member of the college community or visitor. The misconduct includes, but is not limited to, race; color; national origin; sensory, mental, or physical disability; use of a service animal; gender, including pregnancy; marital status; age; religion; creed; genetic information; sexual orientation; gender identity; veteran's status; or any other legally protected classification as defined by the college's nondiscrimination statement.

(14) Sexual misconduct. The term sexual misconduct includes sexual harassment, sexual intimidation, and sexual violence.

(a) Sexual harassment. ~~((The term sexual harassment means unwelcome conduct of a sexual nature that is suffi-~~

~~ciently serious as to deny or limit, or that does deny or limit based on sex, the ability of a student to participate in or benefit from the college's educational, social, or housing programs. Sexual harassment includes unwelcome sexual advances, requests for sexual favors, and other verbal, non-verbal, or physical conduct of a sexual nature or that creates an intimidating, hostile, or offensive environment for other college community members or visitors.))~~ Sexual harassment that does not meet the Title IX definition or is a one-time offense is included in this chapter. In such cases, the term sexual harassment means unwelcome conduct of a sexual nature that is sufficiently serious as to deny or limit, or that does deny or limit based on sex, the ability of a student to participate in or benefit from the college's educational, social, or housing programs. Sexual harassment includes unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature or that creates an intimidating, hostile, or offensive environment for students, other college community members, or visitors. For a description of prohibited conduct under Title IX refer to WAC 495A-115-020.

(b) Sexual intimidation. The term sexual intimidation means threatening or emotionally distressing conduct based on sex and including, but not limited to, nonconsensual recording of sexual activity or the distribution of such recording.

(c) Sexual violence outside of Title IX. Sexual violence outside of Title IX is a type of sexual discrimination and sexual harassment. Nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, intimate partner violence, and stalking are all types of sexual violence.

(i) Nonconsensual sexual intercourse outside of Title IX is any sexual intercourse (anal, oral, or vaginal), however slight, that is without consent or by force by a person upon another person or with any object. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object and also defined as oral copulation by mouth to genital contact or genital to mouth contact.

(ii) Nonconsensual sexual contact outside of Title IX is any intentional sexual touching, however slight, by a person upon another person or with an object that is without consent or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, other bodily orifice of another individual, or any other bodily contact in a sexual manner.

(iii) Domestic violence outside of Title IX includes asserted violent misdemeanor and felony offenses committed by the victim's current or former spouse, current or former cohabitant, person similarly situated under domestic or family violence law, or anyone else protected under domestic or family violence law.

(iv) Intimate partner violence outside of Title IX is violence by a person who is or has been in a dating, romantic, or intimate relationship with the victim.

(v) Stalking outside of Title IX is intentional and repeated harassment or following another person which places that person in reasonable fear that the perpetrator intends to injure, intimidate, or harass that person. Stalking also includes instances where the perpetrator knows or reasonably should know that the person is frightened, intimidated, or harassed even if the perpetrator lacks such intent.

(15) Harassment. Unwelcome and offensive verbal, non-verbal, or physical conduct that is directed at a person because of said person's protected status and that is sufficiently serious:

(a) As to deny or limit or that does deny or limit the ability of a student to participate in or benefit from the college's educational, social, or housing programs; or

(b) That creates an intimidating, hostile, or offensive environment for other community college members or visitors.

Harassing conduct may include, but is not limited to, physical, verbal, written, social media, and electronic communications. Protected status includes a person's race; color; national origin; sensory, mental, or physical disability; use of a service animal; gender, including pregnancy; marital status; age; religion; creed; genetic information; sexual orientation; gender identity; veteran's status; or any other legally protected classification. See ~~((subsection (14)(a) of this section))~~ WAC 495A-115-020 for the definition of sexual harassment.

(16) Retaliation. Any intentional, adverse action taken by an accused individual or allied third party, absent legitimate nondiscriminatory purposes, as reprisal against any individual for reporting, providing information, exercising one's rights or responsibilities, or otherwise being involved in the process of responding to, investigating, or addressing allegations or violations of federal, state, or local law, or college policies including, but not limited to, student conduct code provisions prohibiting discrimination and harassment. For a definition of violations of Title IX see chapter 495A-115 WAC. Retaliatory actions include, but are not limited to, threats or actual violence against the person or their property, adverse educational or employment consequences, ridicule, intimidation, bullying, or ostracism.

(17) Theft or misuse of electronic resources. Theft or other misuse of computer time or other electronic information resources of the college includes, but is not limited to:

(a) Unauthorized use of such resources or opening of a file, message, or other item;

(b) Unauthorized duplication, transfer, or distribution of a computer program, file, message, or other item;

(c) Unauthorized use or distribution of someone else's password or other identification;

(d) Use of said computer time or resources to interfere with someone else's work;

(e) Use of said computer time or resources to send, display, or print an obscene or abusive message, text, or image;

(f) Use of said computer time or resources to interfere with normal operation of the college's computing system or other electronic information resources;

(g) Use of said computer time and resources in violation of applicable copyright or other laws;

(h) Adding to or altering the infrastructure of the college's electronic information resources without authorization; or

(i) Failure to comply with the student computing resources policy.

(18) Unauthorized access. Unauthorized possession, duplication, or other use of a key, keycard, or other restricted means of access to college property or unauthorized entry onto or into college property.

(19) Safety violations. Safety violations include any non-accidental conduct that interferes with or otherwise compromises any college policy, equipment, or procedure relating to the safety and security of the college community or visitors, including tampering with fire safety equipment and triggering false alarms or other emergency response systems.

(20) Violation of other laws or policies. Violation of any federal, state, or local law, rule, or regulation, or college policies or rules, including college traffic and parking rules.

(21) Ethical violation. The breach of any generally recognized and published code of ethics or standards of professional practice that governs the conduct of a particular profession for which the student is taking a course or is pursuing as an educational goal or program.

AMENDATORY SECTION (Amending WSR 19-14-073, filed 6/30/19, effective 7/31/19)

WAC 495A-121-043 Classroom conduct. (1) Faculty members have the authority to take appropriate action to maintain order and proper conduct in their classroom and maintain the effective cooperation of students in fulfilling the objectives of the course.

(2) Bringing any person, thing, or object to a teaching and learning environment that may disrupt the environment or cause a safety or health hazard without the expressed approval of the faculty member is prohibited.

(3) Faculty members have the right to temporarily suspend any student(s) from ~~((a single class or related activity for the remainder of that day))~~ their classroom/course/lab/clinical/activity for up to three days if the student's misconduct creates disruption to the point that it is difficult or impossible to maintain the decorum of the class, related activity, or the learning and teaching environment. The faculty member's syllabus shall outline how an absence of this type will impact the student's responsibilities in completing assignments, other coursework, or activities. The faculty member shall report this temporary suspension to the student conduct officer or designee on the same day. In consultation with the faculty member, the student conduct officer may set conditions for the student that must be followed upon returning to the class or activity.

(4) The suspension of up to ~~((one day))~~ three days discussed in subsection (3) of this section shall not be subject to any further appeal or review. However, any further discipline imposed by the student conduct officer or designee shall be processed in accordance with this chapter.

(5) Any suspension initiated by a faculty member or instructional administrator under this section will not affect any student grading that is based directly on attendance.

AMENDATORY SECTION (Amending WSR 19-14-073, filed 6/30/19, effective 7/31/19)

WAC 495A-121-044 Disciplinary sanctions. The following disciplinary sanctions may be imposed upon students found to have violated the student conduct code. Depending upon the misconduct, more than one sanction may be imposed. Other than college dismissal or revocation or withholding of a degree or certificate, disciplinary sanctions are not made a part of the student's academic record but are part

of the student's disciplinary record. Violation of any term or condition of a disciplinary sanction constitutes a new violation and may subject the student to additional sanctions.

(1) Disciplinary warning. A verbal statement to a student that there is a violation and that continued violations may be cause for further disciplinary action.

(2) Written reprimand. Notice in writing that the student has violated one or more terms of this code of conduct and that continuation of the same or similar behavior may result in more severe disciplinary action.

(3) Disciplinary probation. Formal action placing specific conditions and restrictions upon the student's continued attendance depending upon the seriousness of the violation and may include a deferred disciplinary sanction. If the student subject to a deferred disciplinary sanction is found in violation of any college rule during the time of disciplinary probation, the deferred disciplinary sanction may include, but is not limited to, a suspension or a dismissal from the college that shall take effect immediately. If the deferred sanction is a suspension in excess of ten days or a dismissal, the student shall have a right to appeal to the student/~~(faculty)~~ faculty disciplinary committee. Other deferred sanctions shall be subject to brief administrative proceedings as described in this chapter.

Any sanction shall be in addition to any sanction or conditions arising from the new violation. Probation may be for a limited period of time or may be for the duration of the student's attendance at the college.

(4) Disciplinary suspension. Dismissal from the college and from the student status for a stated period of time. There will be no refund of tuition or fees for the quarter in which the action was taken.

(5) Dismissal. The revocation of all rights and privileges of being a student at Bates Technical College and exclusion from all college campuses and college owned or controlled facilities without any possibility of returning. There is no refund of tuition or fees for the quarter in which the action is taken.

Disciplinary terms and conditions that may be imposed in conjunction with the imposition of a disciplinary sanction include, but are not limited to, the following:

(6) Educational sanction. The college may require the student to complete an educational activity or experience directly related to the violation committed at the student's expense.

(7) Professional evaluation. Referral for drug, alcohol, psychological, or medical evaluation by an appropriately certified or licensed professional may be required. The student may choose the professional within the scope of practice and with the professional credentials as defined by the college. The student will sign all necessary releases to allow the college access to the evaluation. The student's return to college may be conditioned upon compliance with recommendations set forth in a professional evaluation. If the evaluation indicates that the student is not capable of functioning within the college community, the student remains suspended until further evaluation recommends that the student is capable of reentering the college and complying with the rules of conduct.

(8) Not in good standing. If a student is deemed not in good standing with the college, the student is subject to the following restrictions:

(a) Ineligible to hold an office in any student organization recognized by the college;

(b) Ineligible to hold an elected or appointed office of the college; and

(c) Ineligible to represent the college to anyone outside the college community in any capacity including representing the college at any official function or any forms of intercollegiate competition or representation.

(9) Restitution or monetary fine. Reimbursement for damage to or misappropriation of property, for injury to persons, or for reasonable costs incurred by the college in pursuing an investigation or disciplinary proceeding. This may take the form of monetary reimbursement, appropriate service, monetary fine, or other compensation.

~~(10) ((Hold on transcript or registration. This is a temporary measure restricting release of a student's transcript or access to registration. Upon satisfactory completion of the conditions of the sanction, the hold will be released.~~

~~(11))~~ (11) Revocation of admission, degree, or certificate. Admission to or the award of a degree or certificate from the college may be revoked for fraud, misrepresentation, violation of standards of conduct for students in obtaining the degree or certificate, or other serious violations committed by a student prior to graduation.

~~((12))~~ (12) Withholding degree or certificate. The college may withhold awarding a degree or certificate otherwise earned until the completion of the process set forth in this chapter and including the completion of all sanctions imposed.

~~((13))~~ (13) No trespass order. A student may be restricted from college property based on misconduct.

~~((14))~~ (14) No contact order. An order directing a student to have no contact with a specified member of the college community, visitor, or a particular college facility.

AMENDATORY SECTION (Amending WSR 19-14-073, filed 6/30/19, effective 7/31/19)

WAC 495A-121-061 Initiation of disciplinary action.

(1) All disciplinary actions are initiated by the student conduct officer. If the respondent has submitted an active complaint against the student conduct officer, the president shall, upon request, designate another person to fulfill any disciplinary responsibilities relative to the complaint.

(2) For all complaints relating to violations of Title IX, the college shall follow chapter 495A-115 WAC.

(3) For all other disciplinary matters, the student conduct officer initiates disciplinary action by serving the respondent with written notice directing the student to attend a disciplinary meeting. The notice briefly describes the factual allegations, the provision(s) of the student conduct code that the respondent is alleged to have violated, the range of possible sanctions for the alleged violation(s)~~(s)~~ and specifies the time and location of the meeting. At the meeting the student conduct officer presents the allegations to the respondent, and the respondent is afforded an opportunity to explain what took place. If the respondent fails to attend the meeting after

proper service of notice, the student conduct officer may take disciplinary action based upon the available information.

~~((3) Prior to taking disciplinary action in a case involving sexual misconduct, the student conduct officer will make a reasonable effort to contact the complainant(s):~~

~~(a) To discuss the results of the investigation; and~~

~~(b) If the allegations of sexual misconduct are found to have merit, to discuss the possible disciplinary sanctions or conditions that may be imposed upon the respondent and are for the complainant's protection.))~~

(4) Within ten days of the initial disciplinary meeting and after considering the evidence in the case including any facts or argument presented by the respondent, the student conduct officer will serve the respondent with a written decision setting forth the facts and conclusions supporting the decision, the specific student conduct code provisions found to have been violated, the discipline imposed, if any, and a notice of appeal rights with an explanation of the consequences of failing to file a timely appeal.

(5) The student conduct officer may take any of the following disciplinary actions:

(a) Exonerate the respondent and terminate the proceedings;

(b) Impose a disciplinary sanction(s) as described in WAC 495A-121-044; or

(c) Refer the matter directly to the student/faculty disciplinary committee for disciplinary action as the committee deems appropriate. This referral is in writing, to the attention of the chair of the student/faculty disciplinary committee, and with a copy served on the respondent.

~~((6) In cases involving allegations of sexual misconduct, both the respondent and the complainant will be provided the same procedural rights to participate in student discipline matters, including the right to participate in the initial disciplinary decision-making process and to appeal the disciplinary decision. On the same date that a disciplinary decision is served on the respondent, the student conduct officer will serve a written notice informing the complainant whether the allegations of sexual misconduct were found to have merit and describe any disciplinary sanctions or conditions imposed upon the respondent for the complainant's protection, including disciplinary suspension or dismissal of the respondent. The notice also informs the complainant of their appeal rights. If protective sanctions or conditions are imposed, the student conduct officer will make a reasonable effort to contact the complainant and ensure prompt notice of the protective disciplinary sanctions or conditions.))~~

AMENDATORY SECTION (Amending WSR 19-14-073, filed 6/30/19, effective 7/31/19)

WAC 495A-121-062 Summary suspension procedures. Summary suspension is a temporary exclusion from specified college premises or denial of access to all activities or privileges for which a respondent might otherwise be eligible while an investigation or formal disciplinary procedure is pending.

(1) The student conduct officer may impose a summary suspension if there is probable cause to believe that the respondent:

(a) Has violated any provision of the student conduct code and presents an immediate danger to the health, safety, or welfare of members of the college community or visitors; or

(b) Poses an ongoing threat of substantial disruption of or interference with the operations of the college.

(2) Notice. Any respondent who has been summarily suspended will be served with oral or written notice of the summary suspension. If oral notice is given, a written notification will be served on the respondent within two days of the oral notice by the student conduct officer.

(3) The written notification is entitled "notice of summary suspension" and includes:

(a) The reasons for imposing the summary suspension including a description of the conduct giving rise to the summary suspension and reference to the provisions of the student conduct code or the law allegedly violated;

(b) The date, time, and location when the respondent must appear before the conduct review officer for a hearing on the summary suspension; and

(c) The conditions, if any, under which the respondent may physically access the college premises or communicate with members of the college community and visitors. If the respondent has been trespassed from the college premises, a notice against trespass will be included that warns the respondent that the privilege to enter into or remain on college premises has been withdrawn and that the respondent is considered trespassing and subject to arrest for criminal trespass. The respondent may only enter the college premises for a scheduled meeting with the student conduct officer or conduct review officer or to attend a disciplinary hearing.

(4) The conduct review officer shall conduct a hearing on the summary suspension as soon as practicable after imposition of the summary suspension.

(a) During the summary suspension hearing, the issue before the conduct review officer is whether there is probable cause to believe that summary suspension should be continued pending the conclusion of disciplinary proceedings and whether the summary suspension should be less restrictive in scope.

(b) The respondent is afforded an opportunity to explain why summary suspension should not be continued while disciplinary proceedings are pending or why the summary suspension should be less restrictive in scope.

(c) If the respondent fails to appear at the designated hearing time, the conduct review officer may order that the summary suspension remain in place pending the conclusion of the disciplinary proceedings.

(d) As soon as practicable following the hearing, the conduct review officer shall issue a written decision that includes a brief explanation for any decision continuing or modifying the summary suspension and notice of any right to appeal.

(e) To the extent permissible under applicable law, the conduct review officer shall provide a copy of the decision to all persons or offices who may be bound or protected by it.

(5) In cases involving allegations of Title IX sexual misconduct, the ~~((complainant will be notified that a summary suspension has been imposed on the same day that the summary suspension notice is served on the respondent. The college also will provide the complainant with timely notice of~~

any subsequent changes to the summary suspension order)) college shall follow chapter 495A-115 WAC.

AMENDATORY SECTION (Amending WSR 19-14-073, filed 6/30/19, effective 7/31/19)

WAC 495A-121-063 Appeals of disciplinary action.
For complaints involving alleged violations of Title IX refer to chapter 495A-115 WAC. For other disciplinary actions:

(1) The respondent may appeal a disciplinary action by filing a written notice of appeal with the conduct review officer within ten days of service of the student conduct officer's decision. Failure to timely file a notice of appeal constitutes a waiver of the right to appeal, and the student conduct officer's decision is deemed final.

(2) The notice of appeal must include a brief statement explaining why the respondent is seeking review.

(3) The parties to an appeal are the respondent and the conduct review officer.

(4) A respondent who appeals a disciplinary action within the ten days of service or whose case is referred to the student/faculty disciplinary committee has a right to a prompt, fair, and impartial hearing as provided for in these procedures.

(5) On appeal the college bears the burden of establishing the evidentiary facts underlying the imposition of a disciplinary sanction by a preponderance of the evidence.

(6) Imposition of disciplinary action for violation of the student conduct code will be delayed pending appeal, unless the respondent has been summarily suspended.

(7) The student/faculty disciplinary committee shall hear appeals from:

(a) The imposition of disciplinary suspensions in excess of ten days;

(b) Dismissals; and

(c) Discipline cases referred to the committee by the student conduct officer, the conduct review officer, or the president.

(8) Student conduct appeals from the imposition of the following disciplinary sanctions shall be reviewed through a brief adjudicative proceeding:

(a) Suspensions of ten days or less;

(b) Disciplinary probation;

(c) Written reprimands; and

(d) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions.

(9) Except as provided elsewhere in these rules, disciplinary warnings and dismissals of disciplinary actions are final action and are not subject to appeal.

(10) ~~((In cases involving allegations of sexual misconduct, the complainant has the right to appeal the following actions by the student conduct officer following the same procedures as set forth above for the respondent:~~

~~(a) The dismissal of a sexual misconduct complaint; or~~

~~(b) Any disciplinary sanction(s) and conditions imposed against a respondent for a sexual misconduct violation including a disciplinary warning.~~

~~(11) If the respondent timely appeals a decision imposing discipline for a sexual misconduct violation, the college will notify the complainant of the appeal and provide the~~

~~complainant an opportunity to intervene as a party to the appeal.~~

~~((12) Except as otherwise specified in this chapter, a complainant who timely appeals a disciplinary decision or who intervenes as a party to a respondent's appeal of a disciplinary decision will be afforded the same procedural rights as are afforded the respondent.~~

~~((13))~~ Brief adjudicative proceedings and the initial hearing shall be conducted by a conduct review officer. The conduct review officer will not participate in any case in which:

(a) The individual is involved as a complainant or witness;

(b) There is direct or personal interest, prejudice, or bias; or

(c) The conduct review officer has taken previous actions in an advisory capacity.

~~((14))~~ (11) The parties to a brief adjudicative proceeding are the respondent ~~(;)~~ and the college, represented by the student conduct officer ~~(, and the complainant in cases involving sexual misconduct)~~. Before taking action, the conduct review officer will conduct an informal hearing and provide ~~((each))~~ the party:

(a) An opportunity to be informed of the college's view of the matter; and

(b) An opportunity to explain the party's view of the matter.

~~((15))~~ (12) The conduct review officer will service an initial decision upon both the respondent and the student conduct officer within ten days of the completion of the informal hearing. The initial decision contains a brief written statement of the reasons for the decision and information about how to seek administrative review of the initial decision. If no request for review is filed within ten days of service of the initial decision, the initial decision is deemed the final decision.

~~((16) In cases involving allegations of sexual misconduct, the conduct review officer on the same date as the initial decision is served on the respondent will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing the disciplinary sanctions and conditions imposed upon the respondent for the complainant's protection. The notice also will inform the complainant of their appeal rights.~~

~~((17))~~ (13) If upon review the conduct review officer determines that the respondent's conduct may warrant imposition of a disciplinary suspension of more than ten days or dismissal, the matter will be referred to the student/faculty disciplinary committee for a disciplinary hearing.

~~((18))~~ (14) An initial decision from the brief adjudicative proceeding is subject to review by the president provided a party files a written request for review with the conduct review officer within ten days of service of the initial decision.

~~((19))~~ (15) The president will not participate in any case in which:

(a) They were involved as a complainant or witness;

(b) There is direct or personal interest, prejudice or bias; or

(c) Previous actions have been taken in an advisory capacity.

~~((20))~~ (16) During the review, the president will give each party an opportunity to file written responses explaining their view of the matter and will make any inquiries necessary to ascertain whether the sanctions should be modified or whether the proceedings should be referred to the ~~((student conduct))~~ student/faculty disciplinary committee for a formal adjudicative hearing.

~~((21))~~ (17) The decision on review must be in writing, must include a brief statement of the reason for the decision, and must be served on the parties within twenty calendar days of the initial decision or of the request for review, whichever is later. The decision on review will contain a notice that judicial review may be available. If the president does not make a disposition of the matter within twenty calendar days after the request is submitted, a request for review is deemed denied.

~~((22))~~ (18) If upon review the president determines that the imposed sanctions are insufficient and that the respondent's conduct may warrant imposition of a heightened disciplinary suspension of more than ten days or dismissal, the matter will be referred to the student/faculty disciplinary committee for a disciplinary hearing.

~~((23) In cases involving allegations of sexual misconduct, the president on the same date as the final decision is served on the respondent will serve written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing the disciplinary sanctions and conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent. The notice also will inform the complainant of their appeal rights.)~~

AMENDATORY SECTION (Amending WSR 19-14-073, filed 6/30/19, effective 7/31/19)

WAC 495A-121-065 Procedural guidelines of the student/faculty disciplinary committee. In addition to this chapter, the student/faculty disciplinary committee shall follow WAC 495A-115-050 through 495A-115-080 when handling allegations of Title IX violations. For other disciplinary actions:

(1) Proceedings of the student/faculty disciplinary committee shall be governed by the Administrative Procedure Act, chapter 34.05 RCW.

(2) The student/faculty disciplinary committee chair will serve all parties with written notice of the hearing not less than seven calendar days in advance of the hearing date. The chair may shorten this notice period if both parties agree and also may continue the hearing to a later time for good cause shown.

(3) The committee chair is authorized to conduct prehearing conferences or to make prehearing decisions concerning the extent and form of the discovery, issuance of protective decisions, and similar procedural matters.

(4) A request filed at least five days before the hearing by a party or at the direction of the committee chair will result in the parties exchanging no later than the third day prior to the hearing the lists of potential witnesses and copies of potential

exhibits that they reasonably expect to present to the committee. Failure to participate in good faith in the requested exchange may be cause for exclusion from the hearing of the witness or exhibit not disclosed, absent a showing of good cause for the failure.

(5) In advance of the hearing the committee chair may provide to the committee copies of:

(a) The conduct officer's notification of the imposition of discipline or referral to the committee; and

(b) The notice of appeal or response to the referral by the respondent. If doing so, the chair should remind the members that these pleadings are not evidence of any facts they may allege.

(6) Before the hearing the parties may agree to designate specific exhibits as admissible without objection and whether the committee chair may provide copies of these admissible exhibits to the committee members in advance of the hearing.

(7) Upon request the student conduct officer will provide reasonable assistance to the respondent in obtaining relevant and admissible evidence that is within the college's control.

(8) With the exception of procedural communications that are necessary to maintain an orderly process, communications between committee members and other hearing participants regarding issues in the proceeding are generally prohibited without notice and opportunity for all parties to participate, and improper "ex parte" communication will be placed on the record as further provided in RCW 34.05.455.

(9) Each party may be accompanied at the hearing by a nonattorney assistant of the party's choice. A respondent or complainant may elect to be represented by an attorney at their own cost and will be deemed to have waived that right unless at least four days before the hearing written notice of the attorney's identity and participation is filed with the committee chair with a copy to the student conduct officer. The committee is ordinarily advised by an assistant attorney general. If the respondent or the complainant is represented by an attorney, the student conduct officer also may be represented by a second assistant attorney general.

(10) Upon the failure of any party to attend or participate in a hearing the student/faculty disciplinary committee may:

(a) Proceed with the hearing and issuance of its decision; or

(b) Serve a decision of default in accordance with RCW 34.05.440.

(11) The hearing ordinarily is closed to the public. However, if all parties agree on the record that some or all of the proceedings be open, the chair will determine the extent to which the hearing is open. If any person disrupts the proceedings, the chair may exclude that person from the hearing room.

(12) The chair shall cause the hearing to be recorded by a method the chair selects in accordance with RCW 34.05.-449. The recording or a copy will be made available to the party upon request. The chair shall assure maintenance of the record of the proceeding that is required by RCW 34.05.476 that also shall be available upon request for inspection and copying by the party. Other recording also shall be permitted in accordance with WAC 10-08-190.

(13) The chair shall preside at the hearing and decide procedural questions that arise during the hearing except as overridden by majority vote of the committee.

(14) The student conduct officer will present the case for imposing disciplinary sanctions unless represented by an assistant attorney general.

(15) All testimony shall be given under oath or affirmation. Evidence shall be admitted or excluded in accordance with RCW 34.05.452.

~~(16) ((In cases involving allegations of sexual misconduct no party can directly question or cross-examine one another. Attorneys for the parties also are prohibited from questioning the opposing party absent expressed permission from the committee chair. Subject to this exception, all cross-examination questions will be directed to the committee chair who in their discretion will pose the questions on the party's behalf.~~

(17)) At the conclusion of the hearing the student/faculty disciplinary committee shall permit the parties to make closing argument, and the committee will determine the form to be used. The committee also may permit each party to propose findings, conclusions, or a proposed decision for its consideration.

((18)) (17) Within thirty calendar days following the later of the conclusion of the hearing or the committee's receipt of closing arguments, the committee shall issue an initial decision in accordance with RCW 34.05.461 and WAC 10-08-210. The initial decision will include findings on all material issues of fact, conclusions on all material issues of law, and provisions of the student conduct code that were violated. Those findings based substantially on the credibility of evidence or the demeanor of witnesses will be identified.

((19)) (18) The committee's initial decision will include a determination on appropriate discipline, if deemed ~~((appropriate))~~ applicable. If the matter was referred to the committee by the student conduct officer, the committee shall identify and impose disciplinary sanction(s) or condition(s), as authorized in the student conduct code. If the matter is an appeal by the respondent, the committee may affirm, reverse, or modify the disciplinary sanction(s) or condition(s) imposed by the student conduct officer or impose additional disciplinary sanction(s) or condition(s) as authorized herein.

((20)) (19) The committee's initial decision also will include a statement of the available procedures and time frames for seeking reconsideration or appeal.

((21)) (20) The committee chair shall cause copies of the initial decision to be served on the parties and their legal counsel of record. The committee chair also will promptly transmit a copy of the decision and the record of the committee's proceedings to the president.

~~((22) In cases involving allegations of sexual misconduct, on the same date as the initial decision is served on the respondent the chair of the student/faculty disciplinary committee will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describe the disciplinary sanctions or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent. Complainant may appeal the student/faculty disciplinary committee's initial decision to the~~

~~president subject to the same procedures and deadlines applicable to other parties. The notice also will inform the complainant of their appeal rights.))~~

AMENDATORY SECTION (Amending WSR 19-14-073, filed 6/30/19, effective 7/31/19)

WAC 495A-121-066 Appeal of the student/faculty disciplinary committee's decision. For complaints involving student misconduct that allege Title IX violations refer to WAC 495A-115-080 for a description of the appeal procedure. For other disciplinary ~~((claims))~~ complaints:

(1) A respondent who is aggrieved by the findings or conclusions issued by the student/faculty disciplinary committee may appeal the committee's initial decision to the president by filing a written notice of appeal with the president's office within ten days of service of the committee's initial decision. Failure to file a timely appeal constitutes a waiver of the right, and the initial decision is deemed final.

(2) The written notice of appeal must identify the specific findings of fact and conclusions of law in the initial decision that are challenged and must contain arguments why the appeal should be granted. The president's review is restricted to the hearing record made before the student/faculty disciplinary committee and normally limited to a review of those issues and arguments raised in the notice of appeal. If necessary to aid review, the president may ask for additional briefings from the parties on issues raised on appeal.

(3) The president will provide a written decision to the respondent and the student conduct officer within thirty calendar days after receipt of the notice of appeal. The president's decision is final and includes a notice of the rights to request reconsideration or judicial review.

~~(4) ((In cases involving allegations of sexual misconduct, on the same date that the final decision is served on the respondent the president will serve a written notice informing the complainant of the final decision. This notice informs the complainant whether the allegations of sexual misconduct were found to have merit and describe the disciplinary sanctions or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent.~~

~~(5))~~ The president has discretion to suspend the disciplinary action pending review of the merits of the findings, conclusions, and disciplinary actions imposed.

~~((6))~~ (5) Per RCW 34.05.455 the president shall not engage in improper "ex parte" communication with the parties regarding an appeal.

AMENDATORY SECTION (Amending WSR 19-14-073, filed 6/30/19, effective 7/31/19)

WAC 495A-121-091 Student ~~((complaints))~~ grievances. ~~((Complaints))~~ Grievances should be filed as soon as possible and no more than thirty days after the incident occurs. For matters relating to Title IX violations, the college shall follow chapter 495A-115 WAC.

(1) Step one. The student shall first schedule an informal meeting with the instructor or staff member to resolve the concern(s).

If an informal meeting does not resolve the concern(s), within ten working days from the time of the informal meeting, the student may present the grievance in writing to the instructor or staff member involved with a copy sent to the area administrator of student services. Within ten working days after receiving the grievance, the instructor or staff member shall respond to the grievance in writing.

(2) Step two. If the grievance is not resolved at step one, the student may within ten working days of the receipt of the written response, appeal to the area administrator by submitting the appropriate copy of the grievance form and all documents from step one to the area administrator.

(a) The area administrator shall hear the grievance within ten working days after receipt of the grievance form and shall render a decision in writing within ten working days after such hearing.

(b) The student will be afforded an adequate and fair opportunity to fully present their position and the relevant facts as they relate to the issues raised by the grievance.

(3) Step three. If the grievance is not resolved at step two, the student may within ten working days of receipt of the written response, provide the appropriate copy of the student grievance form and a written appeal, accompanied by documents and correspondence, to the senior administrator of student services.

(a) The senior administrator of student services shall hear the grievance within ten working days after receipt of the written appeal and shall render a decision in writing within ten working days after such hearing concludes.

(b) The student will be afforded an adequate and fair opportunity to fully present their position and the relevant facts and issues to be addressed in the grievance.

(c) The decision of the senior administrator of student services shall be final and binding on all parties involved in the grievance.

(d) Any settlement of the grievance shall be applicable to that grievance only and shall not be a precedent or have binding effect or disposition on any other grievances of similar nature.

Complaints should be filed as soon as possible and no more than thirty days after the incident occurs.

(1) Step one. The student shall first schedule an informal meeting with the instructor or staff member to resolve the concern(s).

If an informal meeting does not resolve the concern(s), within ten working days from the time of the informal meeting, the student may present the grievance in writing to the instructor or staff member involved with a copy sent to the area administrator of student services. Within ten working days after receiving the grievance, the instructor or staff member shall respond to the grievance in writing.

(2) Step two. If the grievance is not resolved at step one, the student may within ten working days of the receipt of the written response, appeal to the area administrator by submitting the appropriate copy of the grievance form and all documents from step one to the area administrator.

(a) The area administrator shall hear the grievance within ten working days after receipt of the grievance form and shall render a decision in writing within ten working days after such hearing.

(b) The student will be afforded an adequate and fair opportunity to fully present their position and the relevant facts as they relate to the issues raised by the grievance.

(3) Step three. If the grievance is not resolved at step two, the student may within ten working days of receipt of the written response, provide the appropriate copy of the student grievance form and a written appeal, accompanied by documents and correspondence, to the senior administrator of student services.

(a) The senior administrator of student services shall hear the grievance within ten working days after receipt of the written appeal and shall render a decision in writing within ten working days after such hearing concludes.

(b) The student will be afforded an adequate and fair opportunity to fully present their position and the relevant facts and issues to be addressed in the grievance.

(c) The decision of the senior administrator of student services shall be final and binding on all parties involved in the grievance.

(d) Any settlement of the grievance shall be applicable to that grievance only and shall not be a precedent or have binding effect or disposition on any other grievances of similar nature.

AMENDATORY SECTION (Amending WSR 19-14-073, filed 6/30/19, effective 7/31/19)

WAC 495A-121-093 Time limits on filing a ((~~complaint~~)) grievance. The student must file a ((~~complaint~~)) grievance within one quarter of the event, which caused the grievance to be filed. The senior administrator of student services may suspend this rule under exceptional circumstances such as extended illness((~~;~~)) or a leave of absence. No complaints will be considered after two quarters of the occurrence of the source of the grievance. When either party to the ((~~complaint~~)) grievance is no longer present at the college and does not expect to return, the senior administrator of student services will give the absent party reasonable opportunity to reply to the ((~~complaint~~)) grievance before making a decision.

The student must file a complaint within one quarter of the event, which caused the grievance to be filed. The senior administrator of student services may suspend this rule under exceptional circumstances such as extended illness, or a leave of absence. No complaints will be considered after two quarters of the occurrence of the source of the grievance. When either party to the complaint is no longer present at the college and does not expect to return, the senior administrator of student services will give the absent party reasonable opportunity to reply to the complaint before making a decision.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 495A-121-024 Campus speakers.

WAC 495A-121-046 Groups and organizations.

WAC 495A-121-047 Refunds and access.

- WAC 495A-121-048 Readmission after suspension or expulsion.
- WAC 495A-121-049 Reestablishment of performance standing.
- WAC 495A-121-090 Student grievance procedure.

WSR 20-24-108
PERMANENT RULES
DEPARTMENT OF
RETIREMENT SYSTEMS

[Filed December 1, 2020, 10:02 a.m., effective January 1, 2021]

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

Purpose: To clarify eligibility to rollover funds from another source into a deferred compensation program account.

Citation of Rules Affected by this Order: Amending WAC 415-501-415.

Statutory Authority for Adoption: RCW 41.50.050.

Adopted under notice filed as WSR 20-21-048 on October 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 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 0, Repealed 0.

Date Adopted: December 1, 2020.

Tracy Guerin
Director

AMENDATORY SECTION (Amending WSR 04-22-053, filed 10/29/04, effective 11/29/04)

WAC 415-501-415 May I move funds into the plan from an eligible retirement plan? (1) Rollover. If you established your deferred compensation account through your own employment with a participating employer, you may roll pretax contributions into the plan from an individual retirement account (IRA) or from another eligible retirement plan. If your account was established as a beneficiary following the original account owner's death, or as a result of a domestic relations order as described in WAC 415-501-495, you are not eligible to roll additional funds into the account.

(a) The plan will keep a separate accounting of all funds rolled into the plan.

(b) Distributions of money rolled into the plan may be subject to an additional ten percent tax on early distributions.

(2) **Plan-to-plan transfer.** You may transfer money into the plan from another eligible governmental Section 457(b) plan maintained by a political subdivision, subject to the following conditions:

(a) The political subdivision also participates in DCP;

(b) The transferor plan allows direct plan-to-plan transfers; and

(c) You are employed by the political subdivision at the time of the transfer.

(3) **Rollover/transfer application.** You must complete the appropriate form to transfer or roll money (~~over~~) into your deferred compensation account. Forms are available through the department or on its website.

WSR 20-24-109
PERMANENT RULES
DEPARTMENT OF
RETIREMENT SYSTEMS

[Filed December 1, 2020, 10:07 a.m., effective January 1, 2021]

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

Purpose: To clarify whether certain payments to law enforcement officers' and firefighters' Plan 2 members are considered basic salary for the purpose of calculating retirement benefits, in accordance with RCW 41.26.030 (4)(b).

Citation of Rules Affected by this Order: Amending WAC 415-104-360, 415-104-370, and 415-104-401.

Statutory Authority for Adoption: RCW 41.50.050.

Adopted under notice filed as WSR 20-21-049 on October 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 3, Repealed 0.

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

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

Date Adopted: December 1, 2020.

Tracy Guerin
Director

AMENDATORY SECTION (Amending WSR 97-01-016, filed 12/6/96, effective 1/6/97)

WAC 415-104-360 How is basic salary for LEOFF Plan ((H)) 2 determined? (1) What payments are included in LEOFF Plan ((H)) 2 basic salary? Other than the specific

exclusions listed in WAC 415-104-397 and 415-104-401, a payment that is a salary or wage earned during a calendar month for personal services rendered by a member to an employer qualifies as LEOFF Plan ((H)) 2 basic salary.

(a) Certain payments that are not for personal services rendered also qualify if there is a specific statutory provision identifying those payments as LEOFF Plan ((H)) 2 basic salary. See WAC 415-104-373.

(b) Specific types of payments that qualify as LEOFF Plan ((H)) 2 basic salary include, but are not limited to, the payments described in WAC 415-104-363(1) and 415-104-365 through 415-104-379.

(c) Other payments not specifically listed qualify as basic salary for LEOFF Plan ((H)) 2 only if those payments are a salary or wage for services rendered.

(2) Basic salary is earned when the service is rendered, rather than when payment is made.

Example: At the end of a month, a firefighter is paid regular compensation for June, plus overtime compensation for May. When the payment is reported to the department, the payment must be properly distributed between what was earned in May and what was earned in June.

(3) Salary characterizations are based upon the nature of the payment. Whether a payment is basic salary depends upon whether the payment is earned as a salary or wage for services rendered. The name given to the payment is not controlling. The department determines whether a payment is basic salary by considering:

- (a) What the payment is for; and
- (b) Whether the reason for the payment brings it within the statutory definition of basic salary.

AMENDATORY SECTION (Amending WSR 97-01-016, filed 12/6/96, effective 1/6/97)

WAC 415-104-370 Overtime is included in LEOFF Plan ((H)) 2 basic salary. Overtime, additional pay earned for working time in excess of regularly scheduled shift(s), is a salary or wage for services rendered. Overtime payments are considered part of basic salary for LEOFF Plan ((H)) 2. Overtime includes, but is not limited to:

(1) **Additional pay for working on a holiday.** If a member receives an extra payment (~~((because he or she worked))~~) for working on a scheduled holiday, the payment is overtime. The employer may make the additional payment when the holiday occurs or in a lump sum at some other time. In either case, the payment is considered to be basic salary for LEOFF Plan ((H)) 2;

Examples: A firefighter works on Christmas day. As compensation for working on a holiday, ~~((she))~~ the firefighter is given the option of taking some other day off with pay or ~~((of))~~ receiving an extra day's pay. If ~~((she))~~ the firefighter opts for the extra day of pay, this payment is overtime and is LEOFF Plan ((H)) 2 basic salary. If ~~((she))~~ the firefighter opts to take a day off instead, this is paid leave ~~((and))~~ that qualifies as LEOFF Plan ((H)) 2 basic salary.

Some employers create holiday leave banks for these employees, and it is considered a regular workday if an employee works on the holiday. Later, the employee may use hours from the holiday leave bank to take a day off and/or cash out all or some of the hours in the future. These cashed out days are reportable if the accrued leave was associated with state or federal holidays.

(2) **Callback pay**, which is a special rate of pay some employers provide members for being called back to work after the end of the member's regular shift;

(3) **Court pay**, which is an additional payment for appearing in court or performing other duties outside of a member's regularly scheduled shift.

(4) Compensatory time (comp time), is paid time off given to an employee instead of overtime pay in compensation for extra hours of work. However, if the employee later receives this leave as a paid cash out, that payment is for overtime previously worked and therefore is basic salary. Basic salary is earned when the service is rendered, rather than when the payment is made. If the comp time is used as leave, it is reported as leave when used.

Example: An employee works eight additional hours in March and receives twelve hours of comp time. The employer has a policy that all unused comp time must be paid out at the end of the fiscal year in June. When this cash out is paid to the employee, the compensation and eight hours were earned in March and should be reported as such. If the comp time is used as leave, it is reported as leave whenever it is used.

AMENDATORY SECTION (Amending WSR 97-01-016, filed 12/6/96, effective 1/6/97)

WAC 415-104-401 Cash outs of accrued leave or other forms of severance pay are not LEOFF Plan ((H)) 2 basic salary. (1) A cash out from an employer for unused accrued leave~~((;))~~ is a deferred salary or wage for services previously rendered. However, the payment is not basic salary because it is specifically excluded from the definition of basic salary for LEOFF Plan 2 in RCW 41.26.030 ~~((+3)(b)))~~.

Example 1: "Kelly" days reduce the number of hours an employee works and are commonly used to minimize the need to pay overtime. A firefighter may accrue eleven "Kelly" days based on the shift schedule of the employee. If used as leave and paid at the normal rate of pay, these are basic salary. However, a cash out of this leave is excluded from the definition of basic salary.

Example 2: A police officer may receive a personal or "floating" holiday each year. If used as leave and paid at the normal rate of pay, this holiday pay is basic salary. However, a cash out of this leave is excluded from the definition of basic salary.

Example 3: An administrator may receive a monthly accrual of "executive leave" in lieu of additional salary, in recognition of additional hours of public service such as community meetings, council meetings, and major events. However, a cash out of this leave is excluded from the definition of basic salary.

(2) Other forms of severance pay are not basic salary.

Any form of severance payment received from an employer upon termination((§)) is not included as basic salary in LEOFF Plan ((H)) 2 because it is excluded from the statutory definition of basic salary.

WSR 20-24-120

PERMANENT RULES

OFFICE OF THE

INSURANCE COMMISSIONER

[Filed December 2, 2020, 8:20 a.m., effective January 2, 2021]

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

Purpose: The commissioner is adopting rules regarding confidential communications to ensure implementation as provided for in ESSB 5889 (chapter 56, Laws of 2019), which amended existing statutes and created RCW 48.43.-5051. In addition to adding new sections, the commissioner is amending existing WAC.

Citation of Rules Affected by this Order: New WAC 284-43-0400, 284-43-0410, 284-43-0420 and 284-43-0430; and amending WAC 284-04-510, 284-43-2050, 284-43-3070, and 284-43-4040.

Statutory Authority for Adoption: RCW 48.02.060, 48.43.505, and 48.43.5051.

Adopted under notice filed as WSR 20-20-115 on October 6, 2021.

Changes Other than Editing from Proposed to Adopted Version: A technical change was made to WAC 284-43-0420(1) to add "unless the format is otherwise specified by

law or regulation" in order to allow for requirements of other existing laws. Another technical change was made to WAC 284-43-0420 and 284-43-0430 to change the term "provider" to "authorized representative, or provider acting on behalf of the enrollee" to align the language of other similar laws.

A final cost-benefit analysis is available by contacting Tabba Alam, P.O. Box 40260, Olympia, WA 98504-0260, phone 360-725-7170, email TabbaA@oic.wa.gov, website www.insurance.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 4, Amended 4, 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 4, Amended 4, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: December 2, 2020.

Mike Kreidler

Insurance Commissioner

AMENDATORY SECTION (Amending WSR 01-03-034, filed 1/9/01, effective 2/9/01)

WAC 284-04-510 Right to limit disclosure of health information. (1)(a) Notwithstanding other provisions of this chapter, a licensee shall limit disclosure of any information, including health information, about an individual who is the subject of the information if the individual clearly states in writing that disclosure to specified individuals of all or part of that information could jeopardize the safety of the individual. Disclosure of information under this subsection shall be limited consistent with the individual's request, such as a request for the licensee to not release any information to a spouse to prevent domestic violence.

(b) Whenever the licensee is a health carrier, as defined in WAC 284-43-0160, and the request relates to a protected individual, as defined in RCW 48.43.005, the health carrier must follow RCW 48.43.505.

(2)(a) Notwithstanding any insurance law requiring the disclosure of information, a licensee shall not disclose non-public personal health information concerning health services related to reproductive health, sexually transmitted diseases, chemical dependency and mental health, including mailing appointment notices, calling the home to confirm appointments, or mailing a bill or explanation of benefits to a policyholder or certificate holder, if the individual who is the subject of the information makes a written request. In addition, a licensee shall not require an adult individual to obtain the policyholder's or other covered person's authorization to receive health care services or to submit a claim.

(b) Whenever the licensee is also a health carrier, as defined in WAC 284-43-0610, and the request relates to a protected individual, as defined in RCW 48.43.005, the health carrier must follow RCW 48.43.505.

(3)(a) A licensee shall recognize the right of any minor who may obtain health care without the consent of a parent or legal guardian pursuant to state or federal law, to exclusively exercise rights granted under this section regarding health information; and

(b) Shall not disclose any nonpublic personal health information related to any health care service to which the minor has lawfully consented, including mailing appointment notices, calling the home to confirm appointments, or mailing a bill or explanation of benefits to a policyholder or other covered person, without the express authorization of the minor. In addition, a licensee shall not require the minor to obtain the policyholder's or other covered person's authorization to receive health care services or to submit a claim as to health care which the minor may obtain without parental consent under state or federal law; and

(c) Whenever the licensee is also a health carrier, as defined in WAC 284-43-0610, the health carrier must follow RCW 48.43.505.

(4) When requesting nondisclosure, the individual shall include in the request:

- (a) Their name and address;
- (b) Description of the type of information that should not be disclosed;
- (c) In the case of reproductive health information, the type of services subject to nondisclosure;
- (d) The identity or description of the types of persons from whom information should be withheld;
- (e) Information as to how payment will be made for any benefit cost sharing;
- (f) A phone number or email address where the individual may be reached if additional information or clarification is necessary to satisfy the request.

(5) Where the licensee is required to follow RCW 48.43.505, the nondisclosure request shall be made using the form in RCW 48.43.505(4).

SUBCHAPTER (~~B~~) **B1**

PLAN MANAGEMENT

SUBCHAPTER B2

CONFIDENTIALITY OF INSURANCE COMMUNICATIONS

NEW SECTION

WAC 284-43-0400 Purpose and scope. (1) The purpose of this subchapter is to establish uniform regulatory standards for health carriers and to create minimum standards for carriers to adopt policies and procedures that conform administrative, business, and operational practices to protect an enrollee's right to privacy and right to confidential health care services granted under state or federal laws.

(2) This subchapter applies to all health carriers except as otherwise expressly provided in this subchapter. Health carriers are responsible for compliance with the provisions of this subchapter and are responsible for the compliance of any person or organization acting on behalf of or at the direction of the carrier, or acting pursuant to carrier standards or requirements concerning the coverage of, payment for, or administration of health care benefits. A carrier may not offer as a defense to a violation of any provision of this subchapter that the violation arose from the act or omission of a participating provider or facility, network administrator, claims administrator, health care benefit manager, or other person acting on behalf of or at the direction of the carrier, or acting pursuant to carrier standards or requirements under a contract with the carrier rather than from the direct act or omission of the carrier.

NEW SECTION

WAC 284-43-0410 Definitions. (1) "Communications subject to confidentiality" means written, verbal, or electronic communication regarding sensitive health care services, and all health care services if a protected individual has requested to limited disclosure including:

- (a) Bills and attempts to collect payment, except for premium billing that does not contain any health information;
- (b) A notice of adverse benefit determination;
- (c) An explanation of benefits notice;
- (d) A carrier's request for additional information regarding a claim;
- (e) A notice of contested claim;
- (f) The name and address of a provider, a description of services provided, and other visit information; and
- (g) Any written, oral, or electronic communication from a carrier that contains protected health information.

(2) "Protected individual" has the same meaning as the definition of protected individual in RCW 48.43.005.

(3) "Sensitive health care services" has the same meaning as the definition of sensitive health care services in RCW 48.43.005.

NEW SECTION

WAC 284-43-0420 Sensitive health care services. (1) A health carrier must direct all communication regarding sensitive health care services, including communications subject to confidentiality, directly to the protected individual. To facilitate communication of these services, a carrier must allow the protected individual to select their preferred communication format unless the format is otherwise specified by law or regulation and may provide sensitive health services communications to the protected individual by:

- (a) Health care portal that is only accessible to the protected individual;
- (b) Email address, if provided by the protected individual;
- (c) Telephone of the protected individual; or
- (d) Mail to the address requested by a protected individual, and if no address has been requested, then mail to the known address if the communication and envelope are addressed only to the protected individual.

(2) When a protected individual provides their express written consent or verbal authorization on a recorded line, a health carrier may disclose information concerning sensitive health care services for that protected individual as specified by the protected individual.

(3) A health carrier must establish a process for informing enrollees, including protected individuals, of how communications regarding sensitive health care services are managed, including the process to update the protected individual's contact information.

(a) Health carriers must post a confidentiality request form clearly and conspicuously on its website for individuals to change their communication preferences regarding sensitive health information, such as updating their address, or to select another means of communication. When carriers post the form on their website, or make the form available through other means, the form must accompany clear instructions about how a protected individual or enrollee may submit the form including other means available to change the contact information regarding sensitive health care information. If carriers utilize their own confidentiality request form, then carriers must also provide a link to the form specified for use and made available on the office of the insurance commissioner's website. Carriers must accept the form specified by the commissioner when submitted by an enrollee, authorized representative, or provider acting on behalf of the enrollee.

(b) Health carriers must implement the request and any subsequent request for changes within three business days from receipt of the request. If a request is incomplete or missing information, the carrier must implement as much of the request as possible, and contact the enrollee to obtain a complete request within three business days.

(4) For the purposes of appealing an adverse benefit determination, a protected individual may request that a health carrier direct sensitive health care communications and communications subject to confidentiality to another individual including, but not limited to, the policyholder, primary subscriber, or health care provider.

(5) Confidentiality of sensitive health care services does not prevent a health carrier from communicating with a provider, health care benefit manager, third-party administrator, another carrier and other HIPAA covered entities when necessary to process claims, state or federal mandated reporting, or for other activities necessary to ensure coverage including, but not limited to, coordination of benefits. If a carrier needs to communicate with a health care benefit manager or third-party administrator, then the health care benefit manager or third-party administrator must first ensure continued confidentiality, including continuing to communicate with the protected individual using their selected method of communication. If a carrier has a need to discuss services with another carrier or insurer, they must notify the other carrier or insurer of these requirements or ensure that they are aware of these requirements and any existing confidentiality requests.

(6) Communications and confidentiality required by this section must be provided according to the terms and requirements set forth in RCW 48.43.505.

NEW SECTION

WAC 284-43-0430 Requests regarding confidentiality and to limit disclosure. (1) When requested by an enrollee, a health carrier must limit disclosure of that enrollee's information, including personal health information and communications subjected to confidentiality. Once limited, a health carrier must communicate directly with the enrollee through the identified physical address, email, telephone number, or carrier portal.

(2) Health carriers must establish a process for informing enrollees, including protected individuals, of the ability to request confidentiality, limit disclosure, and update their contact information. Enrollees must be able to provide a request telephonically, or submit it by email or online, such as through a portal or on the carrier's webpage.

(a) Health carriers must post a confidentiality request form clearly and conspicuously on their website for individuals limit disclosure or to change their limits regarding communication preferences, such as updating their address, or selecting another means of communication. When carriers post the form on their website, or make the form available through other means, carriers must ensure that the form is accompanied by clear instructions about how a protected individual or enrollee may submit the form and the process, including other means available to change the enrollee's contact information. If carriers utilize their own confidentiality request form, then carriers must also provide a link to the form specified for use and made available on the office of the insurance commissioner's website. Carriers must accept the form specified by the commissioner when submitted by an enrollee, authorized representative, or provider acting on behalf of the enrollee.

(b) Carriers must implement the request and any subsequent request for changes within three business days from receipt of the request. If a request is incomplete or missing information, the carrier must implement as much of the request as possible, and contact the enrollee to obtain a complete request within three business days.

(c) The request must remain in effect until the enrollee revokes or modifies the request in writing.

(3) Requests to limit disclosure do not prevent a health carrier from communicating with a provider, health care benefit manager, third-party administrator, another carrier and other HIPAA covered entities when necessary to process claims, state or federal mandated reporting, or for other activities necessary to ensure coverage including, but not limited to, coordination of benefits. If a carrier needs to communicate with a health care benefit manager or third-party administrator, then the benefit manager or third-party administrator must first ensure continued confidentiality, including continuing to communicate with the enrollee using their selected method of communication. If a carrier has a need to discuss services with another carrier or insurer, they must notify the other carrier or insurer of these requirements or ensure that they are aware of these requirements and any existing confidentiality requests.

(4) Confidentiality required by this section must be provided according to the terms and requirements set forth in RCW 48.43.505.

(5) Carriers must have processes and procedures in place to track information related to confidentiality requests made under the requirements of this subchapter and RCW 48.43-505, including the number of requests received by the carrier and the related time frames for processing the request. Carriers will submit this information to the commissioner when requested.

AMENDATORY SECTION (Amending WSR 17-12-069, filed 6/5/17, effective 1/1/18)

WAC 284-43-2050 Prior authorization processes. (1)

This section applies to health benefit plans as defined in RCW 48.43.005, contracts for limited health care services as defined in RCW 48.44.035, and stand-alone dental and stand-alone vision plans. This section applies to plans issued or renewed on or after January 1, 2018. Unless stated otherwise, this section does not apply to prescription drug services.

(2) A carrier or its designated or contracted representative must maintain a documented prior authorization program description and use evidence-based clinical review criteria. A carrier or its designated or contracted representative must make determinations in accordance with the carrier's current clinical review criteria and use the medical necessity definition stated in the enrollee's plan. The prior authorization program must include a method for reviewing and updating clinical review criteria. A carrier is obligated to ensure compliance with prior authorization requirements, even if they use a third-party contractor. A carrier is not exempt from these requirements because it relied upon a third-party vendor or subcontracting arrangement for its prior authorization program. A carrier or its designated or contracted representative is not required to use medical evidence or standards in its prior authorization of religious nonmedical treatment or religious nonmedical nursing care.

(3) A prior authorization program must meet standards set forth by a national accreditation organization including, but not limited to, National Committee for Quality Assurance (NCQA), URAC, Joint Commission, and Accreditation Association for Ambulatory Health Care in addition to the requirements of this chapter. A prior authorization program must have staff who are properly qualified, trained, supervised, and supported by explicit written, current clinical review criteria and review procedures.

(4) Effective November 1, 2019, a carrier or its designated or contracted representative must have a current and accurate online prior authorization process. All parts of the process that utilize personally identifiable information must be accessed through a secure online process. The online process must be accessible to a participating provider and facility so that, prior to delivering a service, a provider and facility will have enough information to determine if a service is a benefit under the enrollee's plan and the information necessary to submit a complete prior authorization request. A carrier with an integrated delivery system is not required to comply with this subsection for the employees participating in the integrated delivery system. The online process must provide the information required for a provider or facility to determine for an enrollee's plan for a specific service:

(a) If a service is a benefit;

(b) If a prior authorization request is necessary;

(c) What, if any preservice requirements apply; and

(d) If a prior authorization request is necessary, the following information:

(i) The clinical review criteria used to evaluate the request; and

(ii) Any required documentation.

(5) Effective November 1, 2019, in addition to other methods to process prior authorization requests, a carrier or its designated or contracted representative that requires prior authorization for services must have a secure online process for a participating provider or facility to complete a prior authorization request and upload documentation if necessary. A carrier with an integrated delivery system is not required to comply with this subsection for the employees participating in the integrated delivery system.

(6) Except for an integrated delivery system, a carrier or its designated or contracted representative must have a method that allows an out-of-network provider or facility to:

(a) Have access to any preservice requirements; and

(b) Request a prior authorization if prior authorization is required for an out-of-network provider or facility.

(7) A carrier or its designated or contracted representative that requires prior authorization for any service must allow a provider or facility to submit a request for a prior authorization at all times, including outside normal business hours.

(8) A carrier or its designated or contracted representative is responsible for maintaining a system of documenting information and supporting evidence submitted by a provider or facility while requesting prior authorization. This information must be kept until the claim has been paid or the appeals process has been exhausted.

(a) Upon request of the provider or facility, a carrier or its designated or contracted representative must remit to the provider or facility written acknowledgment of receipt of each document submitted by a provider or facility during the processing of a prior authorization request.

(b) When information is transmitted telephonically, a carrier or its designated or contracted representative must provide written acknowledgment of the information communicated by the provider or facility.

(9) A carrier or its designated or contracted representative must have written policies and procedures to assure that prior authorization determinations for a participating provider or facility are made within the appropriate time frames.

(a) Time frames must be appropriate to the severity of the enrollee condition and the urgency of the need for treatment, as documented in the prior authorization request.

(b) If the request from the participating provider or facility is not accompanied by all necessary information, the carrier or its designated or contracted representative must inform the provider or facility what additional information is needed and the deadline for its submission as set forth in this section.

(10) The time frames for carrier prior authorization determination and notification to a participating provider or facility are as follows:

(a) For standard prior authorization requests:

(i) The carrier or its designated or contracted representative must make a decision and provide notification within five calendar days.

(ii) If insufficient information has been provided to a carrier or its designated or contracted representative to make a decision, the carrier or its designated or contracted representative has five calendar days to request additional information from the provider or facility.

(A) The carrier or its designated or contracted representative must give a provider or facility five calendar days to give the necessary information to the carrier or its designated or contracted representative.

(B) The carrier or its designated or contracted representative must then make a decision and give notification within four calendar days of the receipt of the information or the deadline for receiving information, whichever is sooner.

(b) For expedited prior authorization requests:

(i) The carrier or its designated or contracted representative must make a decision and provide notification within two calendar days.

(ii) If insufficient information has been provided to a carrier or its designated or contracted representative to make a decision, the carrier or its designated or contracted representative has one calendar day to request additional information from the provider or facility.

(A) The carrier or its designated or contracted representative must give a provider or facility two calendar days to give the necessary information to the carrier or its designated or contracted representative.

(B) The carrier or its designated or contracted representative must then make a decision and give notification within two calendar days of the receipt of the information or the deadline for receiving information, whichever is sooner.

(iii) If the time frames for the approval of an expedited prior authorization are insufficient for a provider or facility to receive approval prior to the preferred delivery of the service, the prior authorization should be considered an extenuating circumstance as defined in WAC 284-43-2060.

(11) A carrier or its designated or contracted representative when conducting prior authorization must:

(a) Accept any evidence-based information from a provider or facility that will assist in the authorization process;

(b) Collect only the information necessary to authorize the service and maintain a process for the provider or facility to submit such records;

(c) If medical records are requested, require only the section(s) of the medical record necessary in that specific case to determine medical necessity or appropriateness of the service to be delivered, to include admission or extension of stay, frequency or duration of service; and

(d) Base review determinations on the medical information in the enrollee's records and obtained by the carrier up to the time of the review determination.

(12) When a provider or facility makes a request for the prior authorization, the response from the carrier or its designated or contracted representative must state if it is approved or denied. If the request is denied, the response must give the specific reason for the denial in clear and simple language. If the reason for the denial is based on clinical review criteria, the criteria must be provided. Written notice of the decision

must be communicated to the provider or facility, and the enrollee. A decision may be provided orally, but subsequent written notice must also be provided. A denial must include the department and credentials of the individual who has the authorizing authority to approve or deny the request. A denial must also include a phone number to contact the authorizing authority and a notice regarding the enrollee's appeal rights and process.

Whenever the prior authorization relates to a protected individual, as defined in RCW 48.43.005, the health carrier must follow RCW 48.43.505.

(13) A prior authorization approval notification for all services must inform the requesting provider or facility, and the enrollee, whether the prior authorization is for a specific provider or facility. The notification must also state if the authorized service may be delivered by an out-of-network provider or facility and if so, disclose to the enrollee the financial implications for receiving services from an out-of-network provider or facility.

Whenever the notification relates to a protected individual, as defined in RCW 48.43.005, the health carrier must follow RCW 48.43.505.

(14) A provider or facility may appeal a prior authorization denial to the carrier or its designated or contracted representative.

(15) Prior authorization determinations shall expire no sooner than forty-five days from date of approval. This requirement does not supersede RCW 48.43.039.

(16) In limited circumstances when an enrollee has to change plans due to a carrier's market withdrawal as defined in RCW 48.43.035 (4)(d) and 48.43.038 (3)(d), the subsequent carrier or its designated or contracted representative must recognize the prior authorization of the previous carrier until the new carrier's prior authorization process has been completed and its authorized treatment plan has been initiated. The subsequent carrier or its designated or contracted representative must ensure that the enrollee receives the previously authorized initial service as an in-network service. Enrollees must present proof of the prior authorization.

(a) For medical services, a carrier or its designated or contracted representative must recognize a prior authorization for at least thirty days or the expiration date of the original prior authorization, whichever is shorter.

(b) For pharmacy services, a carrier or its designated or contracted representative must recognize a prior authorization for the initial fill, or until the prior authorization process of the new carrier or its designated or contracted representative has been completed.

(17) Prior authorization for a facility-to-facility transport that requires prior authorization can be performed after the service is delivered. Authorization can only be based on information available to the carrier or its designated or contracted representative at the time of the prior authorization request.

(18) A carrier or its designated or contracted representative must have a prior authorization process that allows specialists the ability to request a prior authorization for a diagnostic or laboratory service based upon a review of medical records in advance of seeing the enrollee.

(19) A carrier or its designated or contracted representative must have a method that allows an enrollee, provider or facility to make a predetermination request when provided for by the plan.

(20) Predetermination notices must clearly disclose to the enrollee and requesting provider or facility, that the determination is not a prior authorization and does not guarantee services will be covered. The notice must state "A predetermination notice is not a prior authorization and does not guarantee services will be covered." Predetermination notices must be delivered within five calendar days of receipt of the request. Predetermination notices will disclose to a provider or facility for an enrollee's plan:

- (a) If a service is a benefit;
- (b) If a prior authorization request is necessary;
- (c) If any preservice requirements apply; ~~((and))~~
- (d) If a prior authorization request is necessary or if a medical necessity review will be performed after the service has been delivered, the following information:

(i) The clinical review criteria used to evaluate the request; and

- (ii) Any required documentation.

(e) Whenever a predetermination notice relates to a protected individual, as defined in RCW 48.43.005, the health carrier must follow RCW 48.43.505.

AMENDATORY SECTION (Amending WSR 16-01-081, filed 12/14/15, effective 12/14/15)

WAC 284-43-3070 Notice and explanation of adverse benefit determination—General requirements. (1) A carrier must notify enrollees of an adverse benefit determination either electronically or by U.S. mail. The notification must be provided:

- (a) To an appellant or their authorized representative; ~~((and))~~
- (b) To the provider if the adverse benefit determination involves the preservice denial of treatment or procedure prescribed by the provider; and

(c) Whenever an adverse benefit determination relates to a protected individual, as defined in RCW 48.43.005, the health carrier must follow RCW 48.43.505.

(2) A carrier or health plan's notice must include the following information, worded in plain language:

- (a) The specific reasons for the adverse benefit determination;
- (b) The specific health plan policy or contract sections on which the determination is based, including references to the provisions;
- (c) The plan's review procedures, including the appellant's right to a copy of the carrier and health plan's records related to the adverse benefit determination;
- (d) The time limits applicable to the review; and
- (e) The right of appellants and their providers to present evidence as part of a review of an adverse benefit determination.

(3) If an adverse benefit determination is based on medical necessity, decisions related to experimental treatment, or a similar exclusion or limit involving the exercise of professional judgment, the notification must contain either an

explanation of the scientific or clinical basis for the determination, the manner in which the terms of the health plan were applied to the appellant's medical circumstances, or a statement that such explanation is available free of charge upon request.

(4) If an internal rule, guideline, protocol, or other similar criterion was relied on in making the adverse benefit determination, the notice must contain either the specific rule, guideline, protocol, or other similar criterion; or a statement that a copy of the rule, guideline, protocol, or other criterion will be provided free of charge to the appellant on request.

(5) The notice of an adverse benefit determination must include an explanation of the right to review the records of relevant information, including evidence used by the carrier or the carrier's representative that influenced or supported the decision to make the adverse benefit determination.

(a) For purposes of this subsection, "relevant information" means information relied on in making the determination, or that was submitted, considered, or generated in the course of making the determination, regardless of whether the document, record, or information was relied on in making the determination.

(b) Relevant information includes any statement of policy, procedure, or administrative process concerning the denied treatment or benefit, regardless of whether it was relied on in making the determination.

(6) If the carrier and health plan determine that additional information is necessary to perfect the denied claim, the carrier and health plan must provide a description of the additional material or information that they require, with an explanation of why it is necessary, as soon as the need is identified.

(7) An enrollee or covered person may request that a carrier identify the medical, vocational, or other experts whose advice was obtained in connection with the adverse benefit determination, even if the advice was not relied on in making the determination. The carrier may satisfy this requirement by providing the job title, a statement as to whether the expert is affiliated with the carrier as an employee, and the expert's specialty, board certification status, or other criteria related to the expert's qualification without providing the expert's name or address. The carrier must be able to identify for the commissioner upon request the name of each expert whose advice was obtained in connection with the adverse benefit determination.

(8) The notice must include language substantially similar to the following:

"If you request a review of this adverse benefit determination, (Company name) will continue to provide coverage for the disputed benefit pending outcome of the review if you are currently receiving services or supplies under the disputed benefit. If (Company name) prevails in the appeal, you may be responsible for the cost of coverage received during the review period. The decision at the external review level is binding unless other remedies are available under state or federal law."

AMENDATORY SECTION (Amending WSR 16-23-168, filed 11/23/16, effective 1/1/17)

WAC 284-43-4040 Procedures for review and appeal of adverse determinations. (1) An enrollee or the enrollee's representative, including the treating provider (regardless of whether the provider is affiliated with the carrier) acting on behalf of the enrollee may appeal an adverse determination in writing. The carrier must reconsider the adverse determination and notify the enrollee of its decision within fourteen days of receipt of the appeal unless the carrier notifies the enrollee that an extension is necessary to complete the appeal; however, the extension cannot delay the decision beyond thirty days of the request for appeal, without the informed, written consent of the enrollee.

Whenever an adverse determination relates to a protected individual, as defined in RCW 48.43.005, the health carrier must follow RCW 48.43.505.

(2) Whenever a health carrier makes an adverse determination and delay would jeopardize the enrollee's life or materially jeopardize the enrollee's health, the carrier shall expedite and process either a written or an oral appeal and issue a decision no later than seventy-two hours after receipt of the appeal. If the treating health care provider determines that delay could jeopardize the enrollee's health or ability to regain maximum function, the carrier shall presume the need for expeditious review, including the need for an expeditious determination in any independent review under WAC 284-43-4040 and 284-43A-150.

(3) A carrier may not take or threaten to take any punitive action against a provider acting on behalf or in support of an enrollee appealing an adverse determination.

(4) Appeals of adverse determinations shall be evaluated by health care providers who were not involved in the initial decision and who have appropriate expertise in the field of medicine that encompasses the enrollee's condition or disease.

(5) All appeals must include a review of all relevant information submitted by the enrollee or a provider acting on behalf of the enrollee.

(6) The carrier shall issue to affected parties and to any provider acting on behalf of the enrollee a written notification of the adverse determination that includes the actual reasons for the determination, the instructions for obtaining an appeal of the carrier's decision, a written statement of the clinical rationale for the decision, and instructions for obtaining the clinical review criteria used to make the determination.

Whenever an adverse determination notification relates to a protected individual, as defined in RCW 48.43.005, the health carrier must follow RCW 48.43.505.

WSR 20-24-123

PERMANENT RULES

OFFICE OF THE

INSURANCE COMMISSIONER

[Filed December 2, 2020, 9:06 a.m., effective January 2, 2021]

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

Purpose: The rule clarifies solvency and financial requirements of service contract providers and protection product guarantee providers, forms of a parental guarantee, the filings these entities submit to the commissioner, and the correction of outdated statutory citations.

Citation of Rules Affected by this Order: New WAC 284-110-010, 284-110-020 and 284-110-030; and amending WAC 284-20C-005.

Statutory Authority for Adoption: RCW 48.02.060 and 48.110.150.

Adopted under notice filed as WSR 20-21-079 on October 19, 2020.

A final cost-benefit analysis is available by contacting Tabba Alam, P.O. Box 40260, Olympia, WA 98504-0260, phone 360-725-7170, fax 360-586-3109, TTY 360-586-0241 or 360-725-7087, email rulescoordinator@oic.wa.gov, website www.insurance.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 3, 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 3, Amended 1, Repealed 0.

Date Adopted: December 2, 2020.

Mike Kreidler
Insurance Commissioner

AMENDATORY SECTION (Amending WSR 13-12-038, filed 5/30/13, effective 7/1/13)

WAC 284-20C-005 Definitions that apply to this chapter. The definitions in this section apply throughout this chapter:

(1) "Complete filing" means a package of information containing motor vehicle service contracts, supporting information, documents and exhibits.

(2) "Contract" means a service contract covering motor vehicles, as described in chapter 48.110 RCW. Under this definition:

(a) "Motor vehicle" means the same as in RCW 48.110-020(7), and only includes vehicles that are self-propelled by a motor; and

(b) "Service contract" means the same as in RCW 48.110.020(~~((17))~~) (18).

(3) "Date filed" means the date a complete motor vehicle service contract filing has been received and accepted by the commissioner.

(4) "Filer" means a person, organization or other entity that files motor vehicle service contracts with the commissioner.

(5) "Objection letter" means correspondence sent by the commissioner to the filer that:

(a) Requests clarification, documentation or other information;

(b) Explains errors or omissions in the filing; or

(c) Disapproves a motor vehicle service contract under RCW 48.110.073.

(6) "SERFF" means the System for Electronic Rate and Form Filing. SERFF is a proprietary National Association of Insurance Commissioners (NAIC) computer-based application that allows filers to create and submit rate, rule and form filings electronically to the commissioner.

(7) "Service contract provider" or "provider" means the same as in RCW 48.110.020(~~((19))~~) (20).

(8) "Type of insurance" means a specific type of insurance listed in the *Uniform Property and Casualty Product Coding Matrix* published by the NAIC and available at www.naic.org.

Chapter 284-110 WAC

SERVICE CONTRACTS AND PROTECTION PRODUCT GUARANTEES

NEW SECTION

WAC 284-110-010 Definitions. The definitions in this section apply throughout this chapter.

(1) "Most recent financial statements" means a partial fiscal year financial statement to include year-end totals, if available. For start-up applicants, formed less than one fiscal year, partial fiscal year financial statements shall include the months from formation to current.

(2) "Statutory accounting principles" means the current year accounting practices and procedures manual as adopted by the national association of insurance commissioners. Service contract providers and protection product guarantee providers must follow all statement of statutory accounting principles with a type of issue of "common area" and "property and casualty." Any permitted accounting practices from a domiciliary state regulator shall not be used in determining minimum net worth. Only service contract providers relying on RCW 48.110.050 (2)(a) or 48.110.075 (2)(a) may elect to use statutory accounting principles.

(3) "Material changes or additions" as referred to in RCW 48.110.030(6) and 48.110.055(7) means the following:

(a) Any financial condition where the registrant, or its parent company if applicable, fails to maintain the net worth requirements under RCW 48.110.030 (2)(c)(i) and (ii) and 48.110.055 (3)(e).

(b) The information referred to in RCW 48.110.030 (2)(a) and (b).

(c) Change of financial responsibility or faithful performance requirements under RCW 48.110.050 (2)(a) through (c).

(d) The information referred to in RCW 48.110.055 (2) (b) through (3)(d).

NEW SECTION

WAC 284-110-020 Certified financial statement. (1) RCW 48.110.030 and 48.110.055 permit service contract providers and protection product guarantee providers to submit financial statements certified as accurate by two or more officers of the service contract provider or protection product guarantee provider in lieu of audited financial statements in certain circumstances. Certified financial statements must include all the financial statements, notes, and information that accurately present the financial position of the provider at the report date. Management is responsible for the preparation and fair presentation of these financial statements in conformity with the accounting practices prescribed or permitted under chapter 48.110 RCW and this chapter.

(2) Only service contract providers and protection product guarantee providers filing certified financial statements must use the prescribed certification of financial statements form that is available on the commissioner's website.

NEW SECTION

WAC 284-110-030 Parental guarantee. Service contract providers relying on RCW 48.110.050 (2)(c) to demonstrate financial responsibility or assure faithful performance must use the prescribed parental guarantee form that is available on the commissioner's website.