

WSR 21-06-009
PROPOSED RULES
DEPARTMENT OF HEALTH
 [Filed February 18, 2021, 10:30 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-16-003.

Title of Rule and Other Identifying Information: WAC 246-930-010, 246-930-020, 246-930-030, 246-930-065, 246-930-075, 246-930-200, 246-930-220, 246-930-300, 246-930-301, 246-930-350, 246-930-431, and 246-930-990, regarding sex offender treatment providers (SOTP). The department of health (department) is proposing amendments updating the rules to align with recent legislation. Additionally, the department is proposing creation of a new WAC as well as the repeal of WAC 246-930-220 and 246-930-300.

Hearing Location(s): On April 7, 2021, at 9:30 a.m. In response to the coronavirus disease 2019 (COVID-19), the department of health will not provide a physical location for this hearing to promote social distancing and the safety of the citizens of Washington state. A virtual public hearing, without a physical meeting space, will be held instead. Please register at <https://attendee.gotowebinar.com/register/4919914725121992207>. After registering, you will receive a confirmation email containing information about joining the webinar. Participants can use their telephone or computer mic and speakers (VoIP), United States +1 (562) 247-8422.

Date of Intended Adoption: April 14, 2021.

Submit Written Comments to: Brandon Williams, Office of Health Professions, P.O. Box 47850, Olympia, WA 98504-7850, email <https://fortress.wa.gov/doh/policyreview>, fax 360-236-2901, brandon.williams@doh.wa.gov, by April 7, 2021.

Assistance for Persons with Disabilities: Contact Brandon Williams, phone 360-236-4611, fax 360-236-2901, TTY 711, email brandon.williams@doh.wa.gov, by March 31, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department has existing rules that regulate practitioners credentialed as SOTP and sex offender treatment provider affiliates. ESSB 6641 (chapter 266, Laws of 2020) made significant statutory changes to credential qualifications and ESHB 1551 (chapter 76, Laws of 2020) repealed statutory authority requiring AIDS training requirements for practitioners. The department is proposing rule amendments to align chapter 246-930 WAC with these statutory changes and to make other organizational changes.

To achieve the goals of ESSB 6641 to promote a healthy workforce and increase geographic distribution of SOTPs, the department is proposing the following amendments: (1) Expand the number of individuals that may be qualified to serve as supervisors for affiliates and allow individuals not credentialed by the department or other jurisdiction to serve as qualified supervisors; (2) permit practitioners without a qualifying underlying credential to continue practicing in the field, provided their underlying credential remains current and in good standing; (3) clarify that employees of state-run facilities and state-run treatment programs do not have to be credentialed by the department; (4) expand an alternate train-

ing path, which considers experience in state-run facilities and state-run treatment programs; (5) allow out-of-state applicants to receive consideration for certification based on having held a credential in another state or having work experience in a state-run facility or state-run treatment program, substantiated by an attestation; allow employees of a state-run facility or state-run treatment program to use work experience to qualify for certification, instead of becoming certified as an affiliate; and implement a fee waiver system for SOTPs contracted by the department of social and health services to provide treatment to persons on conditional release.

The proposed amendments also repeal AIDS education training requirements in support of the repeal of statutory training requirements by ESHB 1551.

The department is also proposing additional amendments, such as updating terminology and removing redundant language, as well as other appropriate organizational changes.

Reasons Supporting Proposal: Proposed amendments to chapter 246-930 WAC will: (1) Implement and support the intent of ESSB 6641 by promoting increased geographic distribution of SOTPs and reducing barriers to becoming credentialed; (2) implement ESHB 1551 by removing current requirements for AIDS trainings; and (3) make organizational changes to provide increased clarity for licensees and the public.

Statutory Authority for Adoption: RCW 18.155.040.

Statute Being Implemented: ESSB 6641 (chapter 266, Laws of 2020); and ESHB 1551 (chapter 76, Laws of 2020).

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Enforcement: Brandon Williams, 111 Israel Road S.E., Tumwater, WA 98504, 360-236-4611.

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

A cost-benefit analysis is not required under RCW 34.05.328. The agency did not complete a cost-benefit analysis under RCW 34.05.328. RCW 34.05.328 (5)(b)(iii) exempts rules that adopt or incorporate by reference without material change federal statutes or regulations, Washington state law, the rules of other Washington state agencies, or national consensus codes that generally establish industry standards.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. These rule amendments do not impact businesses; these rules pertain only to providers.

February 17, 2021
 Jessica Todorovich
 Chief of Staff
 for Umair A. Shah, MD, MPH
 Secretary

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

WAC 246-930-010 General definitions. ~~((In these rules, the following terms shall have the definition described below, unless another definition is stated:))~~ The definitions in this section apply throughout this chapter unless the context clearly requires otherwise:

(1) ~~"Certified affiliate sex offender treatment provider" or "affiliate" means an individual who ((has satisfactorily passed the examination, met the education requirements, and has been issued a certificate to evaluate and treat sex offenders under chapter 18.155 RCW, and under the supervision of a certified sex offender treatment provider in accordance with the supervision requirements set forth in WAC 246-930-075))~~ is a licensed psychologist, licensed marriage and family therapist, licensed social worker, licensed mental health counselor, or psychiatrist as defined in RCW 71.05.020, who is certified as an affiliate to examine and treat sex offenders pursuant to chapters 9.94A and 13.40 RCW and sexually violent predators under chapter 71.09 RCW under the supervision of a qualified supervisor.

(2) ~~"Certified sex offender treatment provider" or "provider" means an individual who ((has satisfactorily passed the examination, met the education and experience requirements, and has been issued a certificate by the department to evaluate and treat sex offenders under chapter 18.155))~~ is a licensed psychologist, licensed marriage and family therapist, licensed social worker, licensed mental health counselor, or psychiatrist as defined in RCW 71.05.020, who is certified as an affiliate to examine and treat sex offenders pursuant to chapters 9.94A and 13.40 RCW and sexually violent predators under chapter 71.09 RCW.

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

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

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

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

~~((7))~~ (5) "Credential" or its derivative means the process of licensing, registration, certification or the equivalent through which a person is legally recognized by a state agency as lawfully authorized to practice a health profession.

~~(((8))~~ (6) "Department" means the department of health.

~~(((9))~~ (7) "Evaluation" means a comprehensive assessment or examination of a client conducted by a provider ((or), affiliate, or employee of a state-run facility or state-run treatment program that examines the client's offending behavior. Evaluation results ((must be)) are detailed in a written report. Examples of evaluations include forensic, SSOSA, and SSODA evaluations. ((Standards for assessment and evaluation reports, and evaluation experience credit are located in WAC 246-930-320 and 246-930-340.

~~((10))~~ (8) "Parties" means the defendant, the prosecuting attorney, and the supervising officer.

~~(((11))~~ (9) "Qualified supervisor" means an individual recognized by the department to provide oversight to a certified affiliate sex offender treatment provider in accordance with WAC 246-930-075, based on the individual's certification, training, and life experience in the field, as set forth in RCW 18.155.020 and WAC 246-930-067.

~~((12))~~ (10) "Secretary" means the secretary of the department of health((, or designee)).

~~(((13))~~ (11) "SSODA" means special sex offender disposition alternative, authorized under RCW 13.40.160.

~~(((14))~~ (12) "SSOSA" means special sex offender sentencing alternative, authorized under RCW 9.94A.670.

~~(((15))~~ (13) "Supervising officer" is the designated representative of the agency having oversight responsibility for a client sentenced under SSOSA or SSODA, for example, a community corrections officer or a juvenile probation officer.

~~(((16))~~ (14) "Treatment" means face-to-face individual, group, or family therapy, provided by an affiliate or provider, to a client. Treatment is focused on the client's offending behavior.

~~(((17))~~ (15) "Treatment plan" means a written statement of intended care and services as documented in the evaluation that details how the client's treatment needs will be met while protecting the community during the course of treatment.

AMENDATORY SECTION (Amending WSR 05-12-014 [21-02-002], filed 5/20/05 [12/23/20], effective 6/20/05 [1/23/21])

WAC 246-930-020 Underlying credential ((as a health professional)) required. ~~(((1))~~ (2), only ((credentialed health professionals)) a person who is a licensed psychologist, licensed marriage and family therapist, licensed social worker, licensed mental health counselor, or psychiatrist as defined in RCW 71.05.020 may be certified as ((providers)) a provider.

(2) Under RCW 18.155.030(6), a person certified by the department as a provider prior to June 11, 2020, is considered to have met the requirement of holding an underlying health license or credential, provided the underlying license or credential remains active and in good standing.

(3) A person who is ((credentialed as a health professional)) a licensed psychologist, licensed marriage and family therapist, licensed social worker, licensed mental health counselor, or psychiatrist in a state or jurisdiction other than Washington may satisfy this requirement by submitting the following:

(a) A copy of the current ((nonexpired)) credential issued by the credentialing state meeting the requirements of RCW 18.155.080(3);

(b) A copy of the statute, administrative regulation, or other official document of the issuing state which sets forth the minimum requirements for the credential;

(c) A statement from the issuing authority:

(i) That the credential is in good standing;

(ii) That there is no disciplinary action currently pending; and

(iii) Listing any formal discipline actions taken by the issuing authority with regard to the credential;

(d) A statement signed by the applicant, on a form provided by the department, submitting to the jurisdiction of the Washington state courts for the purpose of any litigation involving his or her practice as a sex offender treatment provider; and

(e) A statement signed by the applicant on a form provided by the department, that the applicant does not intend to practice the health profession for which he or she is credentialed by another state within the state of Washington without first obtaining an appropriate credential to do so from the state of Washington, except as may be authorized by Washington state law(~~;~~and

~~(f) Applicants must complete four clock hours of AIDS education as required in chapter 246-12 WAC, Part 8).~~

~~((3))~~ (4) A person who has a comparable certification or has met work experience requirements in another state or jurisdiction under RCW 18.155.080(3) is considered for certification.

(5) Underlying registration, certification, or licensure shall be maintained in good standing. If an underlying registration, certification, or licensure is not renewed or is revoked, certification as a sex offender treatment provider or affiliate sex offender treatment provider is revoked. If an underlying registration, certificate or license is suspended, the sex offender treatment provider certification is suspended. If there is a stay of the suspension of an underlying registration, certificate or license the sex offender treatment provider program must independently evaluate the reasonableness of a stay for the sex offender treatment provider.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

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

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

WAC 246-930-030 Education required prior to certification as an affiliate or a provider. ~~((1))~~ An applicant shall have completed(~~;~~

~~(a) A master's or doctoral degree in social work, psychology, counseling, or educational psychology from a regionally accredited institution of higher education; or~~

~~(b) A medical doctor or doctor of osteopathy degree if the individual is a board certified/eligible psychiatrist; or~~

~~(c) A master's or doctoral degree in an equivalent field from a regionally accredited institution of higher education and documentation of thirty graduate semester hours or forty-five graduate quarter hours in approved subject content listed in subsection (2) of this section.~~

~~(2) Approved subject content includes at least five graduate semester hours or seven graduate quarter hours in counseling, psychotherapy, and personality theory, and five graduate semester hours or seven graduate quarter hours in at least two of the following content areas:~~

~~(a) Counseling and psychotherapy;~~

~~(b) Personality theory;~~

~~(c) Behavioral science and research;~~

~~(d) Psychopathology/personality disorders;~~

~~(e) Assessment/tests and measurement;~~

~~(f) Group therapy/family therapy;~~

~~(g) Human growth and development/sexuality; and~~

~~(h) Corrections/criminal justice.~~

~~(3) Transcripts of all education required under this section must be submitted to the department from the institution where the credits were earned)~~ all educational requirements necessary for the applicant's primary certification as a licensed psychologist, licensed marriage and family therapist, licensed social worker, licensed mental health counselor, psychiatrist as defined in RCW 71.05.020, or other health professional under WAC 246-930-020.

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

WAC 246-930-065 Requirements for certification.

(1) An applicant for certification must:

(a) Be credentialed (~~as a health professional~~) as provided in WAC 246-930-020. The credential must be in good standing without pending disciplinary action;

~~(b) ((Successfully complete an education program as required in WAC 246-930-030;~~

~~(c))~~ Successfully complete an examination;

~~((1))~~ (c) Be able to practice with reasonable skill and safety; and

~~((2))~~ (d) Have no sex offense convictions, as defined in RCW 9.94A.030 or convictions in any other jurisdiction of an offense that under Washington law would be classified as a sex offense as defined in RCW 9.94A.030.

(2) An applicant for certification as a provider must also complete treatment and evaluation experience required in WAC 246-930-040.

NEW SECTION

WAC 246-930-067 Requirements for qualified supervisors. (1) A qualified supervisor must be:

(a) Credentialed as a sex offender treatment provider under this chapter. The credential must be in good standing without pending disciplinary action; or

(b) A person who meets the requirements for certification as a sex offender treatment provider; or

(c) A person who meets a lifetime experience threshold under RCW 18.155.020 and who continues to maintain professional involvement in the field.

(2) A qualified supervisor not credentialed by the department as a sex offender treatment provider must sign and submit an attestation form provided by the department.

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

WAC 246-930-075 Supervision of affiliates. Supervision of affiliates by a qualified supervisor is considerably different than consultation with other professionals. Consultation is solely advisory; consultants do not assume responsi-

bility for those individuals with whom they consult. Supervision of affiliates requires that the ~~((provider))~~ qualified supervisor take full ethical and legal responsibility for the quality of work of the affiliate. A ~~((provider))~~ qualified supervisor may not supervise more than two affiliates.

- (1) Supervision includes, but is not limited to:
 - (a) Discussion of services provided by the affiliate;
 - (b) Case selection, treatment plan, and review of each case or work unit of the affiliate;
 - (c) Discussions regarding theory and practice of the work being conducted;
 - (d) Review of Washington laws, rules, and criminal justice procedures relevant to the work being conducted;
 - (e) Discussion of the standards of practice for providers and affiliates as adopted by the department and the ethical issues involved in providing professional services for sex offenders;
 - (f) Discussion regarding coordination of work with other professionals and parties;
 - (g) Discussion of relevant professional literature and research; and
 - (h) Periodic review of the contract.
- (2) The ~~((provider))~~ qualified supervisor shall:
 - (a) Avoid presenting himself or herself as having qualifications in areas that he or she does not have qualifications.
 - (b) Provide sufficient training and supervision to the affiliate to assure the health and safety of the client and community.
 - (c) Have expertise and knowledge to directly supervise affiliate work.
 - (d) Assure that the affiliate being supervised has sufficient and appropriate education, background, and preparation for the work he or she will be doing.
- (3) The ~~((provider))~~ qualified supervisor and affiliate must enter into a formal written contract that defines the parameters of the professional relationship. The contract must be submitted to the department for approval and shall include:
 - (a) Supervised areas of professional activity;
 - (b) Amount of supervision time and the frequency of supervisory meetings. This information may be presented as a ratio of supervisory time to clinical work conducted by the affiliate;
 - (c) Supervisory fees and business arrangements, when applicable;
 - (d) Nature of the supervisory relationship and the anticipated process of supervision;
 - (e) Selection and review of clinical cases;
 - (f) Methodology for recordkeeping, evaluation of the affiliate, and feedback; and
 - (g) How the affiliate will be represented to the public and the parties.
- (4) Supervision of affiliates shall involve regular, direct, face-to-face supervision.
 - (a) Depending on the affiliate's skill and experience levels, the ~~((provider's))~~ qualified supervisor's supervision shall include direct observation of the affiliate by:
 - (i) Sitting in sessions;
 - (ii) Audio tape recording;
 - (iii) Videotaping, etc.

(b) In some cases, such as geographic location or disability, more flexible supervision arrangements may be allowed. The ~~((provider))~~ qualified supervisor must submit requests for more flexible supervision arrangements to the department for approval.

(5) The qualified supervisor must assure that the affiliate is prepared to conduct professional work, and must assure adequate supervision of the affiliate. The ~~((provider))~~ qualified supervisor shall meet face-to-face with the affiliate a minimum of one hour for every ten hours of supervised professional work. Supervision meetings shall regularly occur at least every other week.

(6) A ~~((provider))~~ qualified supervisor may not undertake a contract that exceeds the ~~((provider's))~~ qualified supervisor's ability to comply with supervision standards.

(7) The department recognizes the needs of certain locales, particularly rural areas, and may allow a variance from the standards in subsections (3)(b) and (5) of this section. The supervisor must submit any variance request to the department for approval with the supervision contract. Variances will be granted or denied in writing within thirty days.

(8) The nature of the ~~((affiliate-provider))~~ affiliate-qualified supervisor relationship must be communicated to the public, other professionals, and all clients served.

(9) An affiliate may represent himself or herself as an affiliate only when performing clinical work supervised by the contracted ~~((provider))~~ qualified supervisor.

(10) The ~~((provider))~~ qualified supervisor must cosign all written reports and correspondence prepared by the affiliate. The written reports and correspondence must include a statement that indicates the work has been conducted by the affiliate acting under the ~~((provider's))~~ qualified supervisor's supervision.

(11) Both the ~~((provider))~~ qualified supervisor and affiliate shall maintain full documentation of the work done and supervision provided. The department may audit the ~~((provider's))~~ qualified supervisor's and affiliate's records to assure compliance with laws and rules.

(12) All work conducted by the affiliate is the responsibility of the ~~((provider))~~ qualified supervisor. The ~~((provider))~~ qualified supervisor shall have authority to direct the practice of the affiliate.

(13) It is the ~~((provider's))~~ qualified supervisor's responsibility to correct problems or end the supervision contract if the affiliate's work does not protect the interests of the clients and community. If the ~~((provider))~~ qualified supervisor ends the contract, he or she must notify the department in writing within thirty days of ending the contract. A ~~((provider))~~ qualified supervisor may only change or adjust a supervision contract after receiving written approval from the department.

(14) Supervision is a power relationship. The ~~((provider))~~ qualified supervisor must not use his or her position to take advantage of the affiliate. This subsection is not intended to prevent a provider from seeking reasonable compensation for supervisory services.

(15) A ~~((provider))~~ qualified supervisor must provide accurate and objective letters of reference and documentation of the affiliate's work at the affiliate's request.

(16) The ~~((provider))~~ qualified supervisor shall ensure that the affiliate has completed at least one thousand hours of

supervised evaluation and treatment experience before the affiliate is authorized to evaluate and treat Level III sex offenders. The ~~((provider))~~ qualified supervisor will submit to the department documentation that the affiliate has completed a minimum of one thousand hours within thirty days of completion of the experience.

AMENDATORY SECTION (Amending WSR 05-12-014, filed 5/20/05, effective 6/20/05)

WAC 246-930-200 Application and examination. (1)

In order to be certified to practice under this chapter as a provider or affiliate provider in the state of Washington all applicants shall pass an examination approved by the secretary.

(2) ~~In order to qualify to sit for the examination, an applicant shall ((meet all education, experience, and training requirements and)) hold a current ((health professional)) qualifying credential ((to qualify to sit for the examination)) and meet education, experience, and training requirements as described in WAC 246-930-030, 246-930-040, and 246-930-070.~~

(3) Examinations shall be given at a time and place determined by the secretary.

(4) An applicant shall submit to the department a completed application with the appropriate fee for certification ((shall be received in the office of the department,)) no later than sixty days prior to the examination date. ((AH)) Any supporting documentation ((shall)) must be ((received no later than twenty days prior to the scheduled examination date)) sent directly to the department by the primary or official source as set forth in WAC 246-12-020.

(5) Any applicant who fails to follow written or oral instructions relative to the conduct of the examination, is observed talking or attempting to give or receive information, or attempting to remove materials from the examination or using or attempting to use unauthorized materials during any portion of the examination shall be terminated from the examination and not permitted to complete it.

(6) The department shall approve the method of grading each examination, and apply the method uniformly to all applicants taking the examination.

(7) Applicants will be notified in writing of their examination scores.

(8) Applicant's examination scores are not disclosed to anyone other than the applicant, unless requested to do so in writing by the applicant.

(9) An applicant who fails to make the required grade in the first examination may take up to two additional examinations upon the payment of a reexamination fee for each subsequent examination. After failure of three examinations, the secretary may require remedial education before admission to future examinations.

AMENDATORY SECTION (Amending WSR 05-12-014, filed 5/20/05, effective 6/20/05)

WAC 246-930-301 Purpose—Professional standards and ethics. (1) Sex offender treatment providers are also credentialed health professionals, and are subject to the standards of practice of their primary field of practice. However, standards of practice vary from profession to profession, and

sex offender evaluation and treatment represents significant differences in practice from general mental health interventions.

(2) The standards set forth in WAC 246-930-301 through 246-930-340 apply to all sex offender treatment providers. ~~((Failure to comply with these standards may constitute unprofessional conduct pursuant to RCW 18.130.180(7).))~~

(3) Standards of practice specific to this area of specialization are necessary due to the unique characteristics of this area of practice, the degree of control that a provider exercises over the lives of clients, and the community protection issues inherent in this work.

(4) The mandatory reporting standards set forth in chapter 246-16 WAC apply to all sex offender treatment providers.

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

WAC 246-930-350 Evaluation and treatment experience credit. (1) Evaluation experience credit. The following can be counted for evaluation experience credit:

(a) Preparation of a written SSOSA, SSODA, self-referral or forensic evaluation;

(b) Primary or secondary responsibility for interviewing the client;

(c) Preparation of the written evaluation report;

(d) All contact with clients; and

(e) Preparation of limited assessments for the purpose of:

(i) Institution classification;

(ii) Treatment monitoring; and

(iii) Reporting.

(2) Treatment experience credit. The following can be counted for treatment experience credit:

(a) Face-to-face treatment hours performed by affiliates under the supervision of ~~((certified providers))~~ qualified supervisors;

(b) Time spent as a co-therapist. Both therapists must have formal responsibility for the group session; and

(c) Time spent maintaining collateral contacts and written case/progress notes.

AMENDATORY SECTION (Amending WSR 05-12-014, filed 5/20/05, effective 6/20/05)

WAC 246-930-431 ~~((Expired certification.))~~ Recertification. (1) If the certification has expired for three years or less, the ~~((practitioner))~~ provider must meet the requirements of chapter 246-12 WAC, Part 2.

(2) If the certification has expired for over three years or has been revoked or suspended, the practitioner must:

(a) Successfully pass the examination and achieve a passing score as provided in WAC 246-930-200;

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

(3) The secretary may require reexamination in any disciplinary order as a condition of reissuing a certificate or confirming recertification.

(4) Whenever reexamination is required, the applicant shall pay the examination fees set forth in WAC 246-930-990.

AMENDATORY SECTION (Amending WSR 08-15-014, filed 7/7/08, effective 7/7/08)

WAC 246-930-990 Sex offender treatment provider fees and renewal cycle. (1) Certificates must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC (~~Part 2. The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment~~)).

(2) The following nonrefundable fees will be charged for:

Title of Fee	Fee
Sex offender treatment provider:	
Application and examination	\$600.00
Reexamination	250.00
Initial certification	200.00
Renewal	1,000.00
Inactive status	300.00
Late renewal penalty	300.00
Expired certificate reissuance	300.00
Expired inactive certificate reissuance	150.00
Duplicate certificate	15.00
Verification of certification	15.00

(3) The following nonrefundable fees will be charged for affiliate treatment provider:

Title of Fee	Fee
Application and examination	400.00
Reexamination	250.00
Renewal	500.00
Inactive status	250.00
Late renewal penalty	250.00
Expired affiliate certificate reissuance	250.00
Expired inactive affiliate certificate reissuance	100.00
Duplicate certificate	15.00

(4) Under RCW 71.09.360, fees established in this section may be waived for sex offender treatment providers contracted to provide treatment services to persons on conditional release in underserved counties as determined by the department of social and health services.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 246-930-220 Reexamination.

WAC 246-930-300 Mandatory reporting.

WSR 21-06-013

**WITHDRAWAL OF PROPOSED RULES
HEALTH CARE AUTHORITY**

[Filed February 19, 2021, 9:06 a.m.]

The health care authority (HCA) is withdrawing the CR-102 WSR 21-05-037, Proposed rule making for WAC 182-501-0135 Patient review and coordination, published by the code reviser in WSR 21-05-037.

HCA plans to refile the proposed rule under issue 21-06 with the corrected text.

Wendy Barcus
Rules Coordinator

WSR 21-06-015

**PROPOSED RULES
CENTRALIA COLLEGE**

[Filed February 19, 2021, 11:06 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-23-032.

Title of Rule and Other Identifying Information: Student conduct code with Title IX update.

Hearing Location(s): On April 6, 2021, at 4:00-6:00 [p.m.], online through WebEx at <https://centralia.webex.com/meet/robert.cox>. Due to COVID[-19] this is an online public hearing.

Date of Intended Adoption: April 6, 2021.

Submit Written Comments to: Robert Cox, 600 Centralia College Boulevard, Centralia, WA 98531, email robert.cox@centralia.edu.

Assistance for Persons with Disabilities: Contact Michael Hoel, phone 360-623-8437, email michael.hoel@centralia.edu.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Changes will bring the college in compliance with federal law.

Reasons Supporting Proposal: On May 19, 2020, the Federal Register printed amendments to Title IX regulations (85 F.R. 30575). The new regulations address the grievance process for formal complaints of sexual harassment. The emergency WAC is currently in effect. This will permanently update the college's student conduct code to be compliant with federal regulations.

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.

Statute Being Implemented: New chapter 132L-351 WAC series; repeal chapter 132L-350 WAC series; and WAC 132L-300-015.

Rule is necessary because of federal law, Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Robert Cox, TAC, Centralia College Campus, 360-623-8385.

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

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

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

Is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Citation of the specific federal statute or regulation and description of the consequences to the state if the rule is not adopted: Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq.

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.

February 19, 2021

Robert Cox
Vice President of
Student Services

Chapter 132L-351 WAC

CENTRALIA COLLEGE—STUDENT RIGHTS AND RESPONSIBILITIES CODE

NEW SECTION

WAC 132L-351-005 Authority. The board of trustees, acting pursuant to RCW 28B.50.140(14), 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 of student services or their designee. Unless otherwise specified, the student conduct officer shall serve as the principal investigator and administrator for alleged violations of this code.

NEW SECTION

WAC 132L-351-010 Student responsibilities. Centralia College is a dynamic learning community that promotes growth and development by offering opportunities to gain knowledge, entrance skills, examine values, and pursue learning options. The college is committed to quality life-long learning through its values of respect, responsibility, and responsiveness. To that end, Centralia College maintains a strong commitment to providing a civil and nondisruptive learning environment. Students are reminded that they assume certain responsibilities of performance and conduct which have been reasonably established in order to accomplish Centralia College's education goals. Therefore, the college expects that students will conduct themselves as respon-

sible members of the college community, will comply with the rules and regulations of the college, will maintain high standards of integrity and honesty, and will respect the rights, privileges, and property of other members of the college community.

NEW SECTION

WAC 132L-351-015 Purpose. The purpose of these rules is to prescribe standards of conduct for students of Centralia College. Violations of these standards may be cause for disciplinary action as described in this code.

NEW SECTION

WAC 132L-351-020 Definitions. The following definitions shall apply for purpose of this student conduct code:

(1) "Student conduct officer" is a college administrator designated by the president to be responsible for implementing and enforcing the student conduct code.

(2) "Conduct review officer" is the vice president of 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.

(3) "President" is the president of the college. The president is authorized to:

(a) Delegate any of their responsibilities as set forth in this chapter as may be reasonably necessary; and

(b) Reassign any and all duties and 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) "Respondent" is the student against whom disciplinary action is initiated.

(7) "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) By 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.

(8) "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 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.

(9) "College premises" shall include 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.

(10) "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, persons who are not officially enrolled for a particular term but who have a continuing relationship with the college, and persons who have been notified of their acceptance for admission are considered "students" for purposes of this chapter.

(11) "Business day" means a weekday, excluding weekends and college holidays.

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

(13) "Sexual misconduct" has the meaning ascribed to this term in WAC 132L-351-130.

NEW SECTION

WAC 132L-351-025 Jurisdiction. The student conduct code shall apply to student conduct that occurs on college premises, to conduct that occurs at or in connection with college-sponsored activities, or to off-campus conduct that in the judgment of the college adversely affects the college community or the pursuit of its objectives. 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. 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. These standards shall apply to a student's conduct even if the student withdraws from college while a disciplinary matter is pending. The college 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.

NEW SECTION

WAC 132L-351-030 General policies. (1) Centralia College is an agency of the state of Washington and adheres to all local, state, and federal laws. The college is obligated to demonstrate respect for laws by cooperating in their enforcement.

(2) Centralia College cannot and will not establish regulations that would abridge constitutional rights.

(3) Proper procedures are established to maintain conditions helpful to the effective function of the college, to protect individual students from unfair penalties, and to assure

due process. Centralia College is granted the right by law to adopt rules to govern its operations.

(4) If these rules are broken, the college has the right and the obligation to take that action which is in the best interest of the entire college.

(5) Centralia College reserves the right to impose the provisions of this code and provide further sanctions before or after law enforcement agencies, courts, or other agencies have imposed penalties or otherwise disposed of a case. College hearings are not subject to challenge on the grounds that criminal or civil charges involving the same incident have been dismissed or reduced or in which the defendant has been found not guilty or otherwise not liable. In addition, the college reserves the right to refer incidents to the appropriate civilian authorities or law enforcement agencies.

(6) The ASCC has the right to participate in the formulation and review of all policies and rules pertaining to student conduct and in the enforcement of all such rules as provided by this chapter.

(7) This code will be printed and made available to students.

NEW SECTION

WAC 132L-351-035 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. 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 enumerated rights are guaranteed 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 guaranteed 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, subject to the limitations of RCW 28B.50.090 (3) (b).

(c) 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.

(d) 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.

(2) Due process.

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

(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 code of student conduct is entitled, upon request, to procedural due process as set forth in this chapter.

NEW SECTION

WAC 132L-351-040 Prohibited student 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, which include, but are 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 any attempt to give or obtain unauthorized assistance 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. Prohibited conduct may also 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 may also be referred to the student conduct officer for disciplinary action consistent with this chapter in addition to the academic consequences identified above.

(2) **Other dishonesty.** Any other acts of dishonesty. Such acts 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.** Conduct, not otherwise protected by law that interferes with, impedes, or otherwise unreasonably hinders:

(a) Instruction, research, administration, disciplinary proceeding, or other college activities, 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, whether or not actually conducted or sponsored by the college.

(4) **Assault, intimidation, harassment.** Unwanted touching, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, 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 code, "bullying" is defined as repeated or aggressive unwanted behavior, not otherwise protected by law that intentionally humiliates, harms, or intimidates the victim.

(5) **Cyber misconduct.** Cyberstalking, cyberbullying or online harassment. Use of electronic communications including, but not limited to, electronic mail, instant 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 identity, nonconsensual recording of sexual activity, and nonconsensual distribution of a recording of sexual activity.

(6) **Property violation.** Damage to, misappropriation of, unauthorized use or possession of, vandalism, or other nonaccidental damaging or destruction of college property or the property of another person. Property for purposes of this subsection includes computer passwords, access codes, identification cards, personal financial account numbers, other confidential personal information, intellectual property, and college trademarks.

(7) **Failure to comply with directive.** Failure to comply with the direction of a college officer or employee who is acting in the legitimate performance of his or her duties, including failure to properly identify oneself to such a person when requested to do so.

(8) **Weapons.** Carrying, exhibiting, displaying or drawing any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, or any other weapon apparently capable of producing bodily harm, in a manner, under circumstances, and at a time and place that either manifests an intent to intimidate another or that warrants alarm for the safety of other persons.

(9) **Hazing.** Hazing includes, but is not limited to, any initiation into 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.

(10) **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 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.

(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.** The use of tobacco, electronic cigarettes, and related products in any building owned, leased or operated by the college or in any location where such use is prohibited, including twenty-five feet from entrances, exits, windows that open, and ventilation intakes of any building owned, leased or operated by the college. The use of tobacco, electronic cigarettes, and related products on the college campus is restricted to designated smoking areas. "Related products" include, but are not limited to, cigarettes, pipes, bidi, clove cigarettes, water pipes, hookahs, chewing tobacco, vaporizers, and snuff.

(11) **Lewd conduct.** Conduct which is lewd or obscene that is not otherwise protected under the law.

(12) **Discriminatory conduct.** Conduct which harms or adversely affects any member of the college community because of her/his race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age; religion; creed; sexual orientation; gender identity; veteran's status; or any other legally protected classification.

(13) **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 132L-351-210.

(a) **Sexual harassment.** The term "sexual harassment" means unwelcome sexual or gender-based conduct, including unwelcome sexual advances, requests for sexual favors, quid pro quo harassment, and other verbal, nonverbal, or physical conduct of a sexual or a gendered nature that is sufficiently severe, persistent, or pervasive as to:

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

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

(iii) Create an intimidating, hostile, or offensive environment for other campus community members.

(b) **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.

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

(d) **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.

(e) **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.

(f) **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.

(g) **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.

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

(i) **Dating violence.** 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:

(A) The length of the relationship;

(B) The type of relationship; and

(C) The frequency of interaction between the persons involved in the relationship,

(j) **Stalking.** 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.

(k) For 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 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 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.

(14) **Harassment.** Unwelcome 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, that changes the terms or conditions of employment for a college employee, or that creates an intimidating or hostile 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; sexual orientation; gender identity; veteran's status; or any other legally protected classification. See "sexual misconduct" for the definition of "sexual harassment." Harassing conduct may include, but is not limited to, physical conduct, verbal, written, social media, and electronic communications.

(15) **Retaliation.** Harming, threatening, intimidating, coercing, or taking adverse action of any kind against a person because such 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.

(16) **Misuse of electronic resources.** Theft or other misuse of computer time or other electronic information resources of the college. Such misuse 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 such time or resources to interfere with someone else's work;
- (e) Use of such time or resources to send, display, or print an obscene or abusive message, text, or image;
- (f) Use of such time or resources to interfere with normal operation of the college's computing system or other electronic information resources;
- (g) Use of such time or resources in violation of applicable copyright or other law;
- (h) Adding to or otherwise altering the infrastructure of the college's electronic information resources without authorization; or
- (i) Failure to comply with the college's electronic use policy.

(17) **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.

(18) **Safety violations.** Safety violation includes any nonaccidental 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.

(19) **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.

(20) **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 an educational goal or major.

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 reserves the right to pursue student disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution.

NEW SECTION

WAC 132L-351-045 Disciplinary sanctions. (1) Administration of the disciplinary procedure is the responsibility of the student conduct officer. The student conduct officer shall serve as the principal investigator and prosecutor for alleged violations of this code.

(2) In situations of apparent misconduct or apparent unauthorized presence in a college facility, it may be necessary for properly identified college personnel to ask a person to produce evidence of being a currently enrolled student at the college. Failure to comply with a legitimate request for identification from properly identified college personnel is a violation of this code and may result in a disciplinary action if the person is found to be a student. In emergency situations, cases of misconduct, or where there is a substantial danger to the college community or college property, failure to produce identification by a student may result in the assumption by college personnel that the person questioned is not a student and may result in direct civil or criminal action.

(3) The instructor is responsible for conduct in the classroom or any course-related activity or event and is authorized to take such steps as are necessary when behavior of the student disrupts the normal classroom procedure. Instructors may remove a student for the single class session in which such disruptive behavior occurs. When such behavior results in expulsion from a class session, the instructor must report the infraction in writing to the student conduct officer at the earliest opportunity. The student is automatically permitted to return to the next class session pending the outcome of any investigation or disciplinary hearings by the student conduct officer. If the student repeats behavior in any class session that again disrupts the normal classroom procedure, the student may be removed again for that class session by the instructor who shall again report the infraction to the student conduct officer in writing. In all cases involving classroom disruption, the student conduct officer will proceed with the investigation and/or disciplinary hearings in the quickest possible time consistent with the procedural requirements established in this code.

(4) The person in charge of any college office, department, or facility is responsible for conduct in that office, department, or facility and is authorized to take such steps as are necessary when behavior of the student disrupts the normal office procedure. The person in charge may remove a

student for the single day in which such disruptive behavior occurs. When such behavior results in expulsion from an office, department, or facility, the person in charge must report the infraction in writing to the student conduct officer at the earliest opportunity. The student is automatically permitted to return the next day pending the outcome of any investigation or disciplinary hearings by the student conduct officer. If the student repeats behavior at any time in the future that again disrupts the normal office procedure, the student may be removed again for a single day by the person in charge who shall again report the infraction to the student conduct officer in writing. In all cases involving office disruption, the student conduct officer will proceed with the investigation and/or disciplinary hearings in the quickest possible time consistent with the procedural requirements established in this code.

(5) The student has the right to appeal any disciplinary action of an instructor or college employee to the student conduct officer in accordance with the procedures set forth in this code.

(6) A student formally charged or under investigation for a violation of this code may not excuse himself or herself from disciplinary hearings by withdrawing from the college.

(7) 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 shall proceed with student disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution.

NEW SECTION

WAC 132L-351-050 Disciplinary sanctions terms and conditions. (1) The following disciplinary sanctions may be imposed upon students found to have violated the student conduct code:

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

(b) **Written reprimand.** Notice in writing that the student has violated one or more terms of this code of conduct and that continuation or repetition of the same or similar may be cause for more severe disciplinary action. This sanction is not subject to appeal.

(c) **Disciplinary probation.** Formal action placing specific conditions and restrictions upon the student's continued attendance 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 at the college.

(d) **Summary suspension.** Immediate exclusion from classes and other privileges or activities in accordance with this code.

(e) **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 is taken.

(f) **Deferred suspension.** Notice of suspension from the college with the provision that the student may remain enrolled contingent on meeting any condition(s) specified. Not meeting the contingency shall immediately invoke the suspension for the period of time and under the conditions originally imposed.

(g) **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 action is taken.

(2) Disciplinary terms and conditions that may be imposed alone or in conjunction with the imposition of a disciplinary sanction 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 defined 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. If the evaluation indicates that the student is not capable of functioning within the college community, the student will remain suspended until future evaluation recommends that the student is capable of reentering the college and complying with the rules of conduct.

(c) **Not in good standing.** A student may be deemed "not in good standing" with the college. If so, the student shall be subject to the following restrictions:

(i) Ineligible to hold an office in any student organization recognized by the college or to hold any elected or appointed office of the college.

(ii) Ineligible to represent the college to anyone outside the college community in any way, including representing the college at any official function, or any form of intercollegiate competition or representation.

(d) **No contact 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.

(e) **Disqualification from athletics.** Any student found by the college to have violated this code related to the use, possession, sale, or delivery of legend drugs is subject to

additional sanctions, including disqualification from college-sponsored athletic events.

(f) **College or community service.** Assignment of labor or responsibilities to any student or student organization with the college or local community. May also include mandatory attendance at educational programs or courses or other assignments.

(g) **No contact 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.

NEW SECTION

WAC 132L-351-055 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 president 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 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) The student conduct officer, prior to taking disciplinary action in a case involving allegations of sexual misconduct, will make a reasonable effort to contact the complainant to discuss the results of the investigation and possible disciplinary sanctions and/or conditions, if any, that may be imposed upon the respondent if the allegations of sexual misconduct are found to have merit.

(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 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.

(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 132L-351-045.

(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.

(6) 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 that prompt notice of the protective disciplinary sanctions and/or conditions.

NEW SECTION

WAC 132L-351-060 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 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 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) 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 instructional 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 shall notify the complainant of the appeal and provide the complainant an opportunity to intervene as a party to the appeal.

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

NEW SECTION

WAC 132L-351-065 Brief adjudicative proceedings—Initial hearing. (1) Brief adjudicative proceedings shall be conducted by a conduct review officer. The conduct review officer 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.

(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 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 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.

NEW SECTION

WAC 132L-351-070 Brief adjudicative proceedings—Review of 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 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 view 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.

NEW SECTION

WAC 132L-351-075 Student conduct committee. (1) The student conduct committee shall consist of five members:

- (a) Two full-time students appointed by the student government;
- (b) Two faculty members appointed by the president;
- (c) One faculty member or administrator (other than an administrator serving as a student conduct or conduct review officer) appointed by the president at the beginning of the academic year.

(2) The faculty member or administrator appointed on a yearly basis shall serve as the chair of the committee and may take action on preliminary hearing matters prior to convening the committee. The chair shall receive annual training on protecting victims and promoting accountability in cases involving allegations of sexual misconduct.

(3) Hearings may be heard by a quorum of three members of the committee so long as one faculty member and one student are included on the hearing panel. Committee action may be taken upon a majority vote of all committee members attending the hearing.

(4) Members of the student conduct committee shall not participate in any case in which they are a party, complainant, or witness, in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity. Any party may petition for disqualification of a committee member pursuant to RCW 34.05.425(4).

NEW SECTION

WAC 132L-351-080 Conduct committee—Procedure and evidence. (1) Proceedings of the student conduct committee shall be governed by the Administrative Procedure Act, chapter 34.05 RCW.

(2) The student conduct committee chair shall serve all parties with written notice of the hearing not less than seven days in advance of the hearing. 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 and/or to make prehearing decisions concerning the extent and form of any discovery, issuance of protective decisions, and similar procedural matters.

(4) Upon request filed at least five days before the hearing by any party or at the direction of the committee chair, the parties shall exchange, no later than the third day prior to the hearing, 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 such a requested exchange may be cause for exclusion from the hearing of any witness or exhibit not disclosed, absent a showing of good cause for such failure.

(5) The committee chair may provide to the committee members in advance of the hearing copies of (a) the conduct officer's notification of imposition of discipline (or referral to the committee) and (b) the notice of appeal (or any response to referral) by the respondent. If doing so, however, the chair should remind the members that these "pleadings" are not evidence of any facts they may allege.

(6) The parties may agree before the hearing to designate specific exhibits as admissible without objection and, if they do so, whether the committee chair may provide copies of these admissible exhibits to the committee members before the hearing.

(7) The student conduct officer, upon request, shall provide reasonable assistance to the respondent in obtaining relevant and admissible evidence that is within the college's control.

(8) Communications between committee members and other hearing participants regarding any issue in the proceeding, other than procedural communications that are necessary to maintain an orderly process, are generally prohibited without notice and opportunity for all parties to participate, and any improper "ex parte" communication shall be placed on the record, as further provided in RCW 34.05.455.

(9) In cases heard by the committee, each party may be accompanied at the hearing by a nonattorney assistant of their choice. The respondent in all appeals before the committee, or a complainant in an appeal involving allegations of sexual misconduct before the committee, may elect to be represented by an attorney at their own cost, but will be deemed to

have waived that right unless, at least four business 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 will ordinarily be advised by an assistant attorney general. If the respondent and/or the complainant is represented by an attorney, the student conduct officer may also be represented by a second, appropriately screened assistant attorney general.

NEW SECTION

WAC 132L-351-085 Student conduct committee hearing procedures. (1) Upon the failure of any party to attend or participate in a hearing, the student conduct committee may either:

(a) Proceed with the hearing and issuance of its decision; or

(b) Serve a decision of default in accordance with RCW 34.05.440.

(2) The hearing will ordinarily be closed to the public. However, if all parties agree on the record that some or all of the proceedings be open, the chair shall determine any extent to which the hearing will be open. If any person disrupts the proceedings, the chair may exclude that person from the hearing room.

(3) The chair shall cause the hearing to be recorded by a method that he/she selects, in accordance with RCW 34.05.-449. That recording, or a copy, shall be made available to any party upon request. The chair shall assure maintenance of the record of the proceeding that is required by RCW 34.05.476, which shall also be available upon request for inspection and copying by any party. Other recording shall also be permitted, in accordance with WAC 10-08-190.

(4) 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.

(5) The student conduct officer (unless represented by an assistant attorney general) shall present the case for imposing disciplinary sanctions.

(6) All testimony shall be given under oath or affirmation. Evidence shall be admitted or excluded in accordance with RCW 34.05.452.

(7) In cases involving allegations of sexual misconduct, neither the complainant nor the respondent shall directly question or cross examine one another. Attorneys or advisors for the parties are also prohibited from questioning the opposing party absent express permission from the committee chair. Subject to this exception, all cross-examination questions shall be directed to the committee chair, who in their discretion shall pose the questions on the party's behalf.

NEW SECTION

WAC 132L-351-090 Student conduct committee—Initial decision. (1) At the conclusion of the hearing, the student conduct committee shall permit the parties to make closing arguments in whatever form it wishes to receive them. The committee also may permit each party to propose findings, conclusions, and/or a proposed decision for its consideration.

(2) Within twenty 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 shall include findings on all material issues of fact and conclusions on all material issues of law, including which, if any, provisions of the student conduct code were violated. Any findings based substantially on the credibility of evidence or the demeanor of witnesses shall be so identified.

(3) The committee's initial order shall also include a determination on appropriate discipline, if any. If the matter was referred to the committee by the student conduct officer, the committee shall identify and impose disciplinary sanction(s) or conditions, if any, as authorized in the student code. If the matter is an appeal by the respondent, the committee may affirm, reverse, or modify the disciplinary sanction and/or conditions imposed by the student conduct officer and/or impose additional disciplinary sanction(s) or conditions as authorized herein.

(4) 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 shall also promptly transmit a copy of the decision and the record of the committee's proceedings to the president.

(5) In cases involving allegations of sexual misconduct, the chair of the student conduct committee, 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, including suspension or dismissal of the respondent. Complainant may appeal the student conduct committee's initial decision to the president subject to the same procedures and deadlines applicable to other parties. The notice will also inform the complainant of their appeal rights.

NEW SECTION

WAC 132L-351-095 Appeal from student conduct committee initial decision. (1) A party who is aggrieved by the findings or conclusions issued by the student conduct committee may appeal the committee's initial decision to the president by filing a 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 shall be deemed final.

(2) The notice of appeal must identify the specific findings of fact and/or conclusions of law in the initial decision that are challenged and must contain argument why the appeal should be granted. If necessary to aid review, the president may ask for additional briefing from the parties on issues raised on appeal. The president's review shall be restricted to the hearing record made before the student conduct committee and will normally be limited to a review of those issues and arguments raised in the notice of appeal.

(3) The president shall provide a written decision to all parties within twenty days after receipt of the notice of

appeal. The president's decision shall be final and shall include a notice of any rights to request reconsideration and/or judicial review.

(4) In cases involving allegations of sexual misconduct, the president, on the same date that the final decision is served upon the respondent, shall serve a written notice informing the complainant of the final decision. This notice shall inform the complainant whether the sexual misconduct allegation was found to have merit and describe any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent.

(5) The president shall not engage in an ex parte communication with any of the parties regarding an appeal.

NEW SECTION

WAC 132L-351-100 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) The conduct review officer shall conduct a hearing on the summary suspension as soon as practicable after im-

sition of the summary suspension. At the hearing the review officer:

(a) Will determine 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) Provide the respondent the 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.

(6) 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.

(7) 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.

(8) 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.

(9) 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 132L-351-105 Readmission after dismissal. A student dismissed from the college may be readmitted only on written petition to the president. Petitions must indicate reasons that support reconsideration. The president may use whatever review procedures are at the president's disposal in consideration of readmission. The president shall convey a decision in writing to the student within thirty days after completion of the review process.

NEW SECTION

WAC 132L-351-110 Brief adjudicative proceedings—Authorized. Student conduct appeals involving the following disciplinary actions:

- (1) Suspensions of ten instructional days or less;
- (2) Disciplinary probation;
- (3) Written reprimands;
- (4) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions; and
- (5) Appeals by a complainant in student disciplinary proceedings involving allegations of sexual misconduct in which the student conduct officer:

(a) Dismisses disciplinary proceedings based upon a finding that the allegations of sexual misconduct have no merit; or

(b) Issues a verbal warning to respondent.

NEW SECTION

WAC 132L-351-115 Brief adjudicative proceedings—Agency record. The agency record for brief adjudicative proceedings shall consist of any documents regarding the matter that were considered or prepared by the presiding officer for the brief adjudicative proceeding or by the reviewing officer for any review. These records shall be maintained as the official record of the proceedings.

NEW SECTION

WAC 132L-351-120 Review of rules. These rules will be reviewed annually by the student conduct officer. The student conduct officer, upon determining a need to revise this code shall convene a review committee to make recommendations for change in the code.

SUPPLEMENTAL PROCEDURES FOR TITLE IX GRIEVANCES

NEW SECTION

WAC 132L-351-200 Title IX supplemental procedures—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 Centralia College's standard disciplinary procedures in WAC 132L-351-005 through 132L-351-095, these supplemental procedures shall take precedence.

NEW SECTION

WAC 132L-351-210 Prohibited conduct under Title IX. Pursuant to RCW 28B.50.140(13) and Title IX of the Education Amendments Act of 1972, 20 U.S.C. Sec. 1681, the Centralia College may impose disciplinary sanctions against a student who commits, attempts to commit, or aids, abets, incites, encourages, or assists another person to commit, an act(s) of "sexual harassment."

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

(1) Quid pro quo harassment. A Centralia College employee conditioning the provision of an aid, benefit, or service of Centralia 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 Centralia College's educational programs or activities, or employment.

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

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

tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.

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

(c) Incest. Sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either wholly or half related. Descendant includes stepchildren and adopted children under the age of eighteen.

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

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

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

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

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

(i) The length of the relationship;

(ii) The type of relationship; and

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

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

NEW SECTION

WAC 132L-351-220 Title IX jurisdiction. (1) This supplemental procedure applies only if the alleged misconduct:

(a) Occurred in the United States;

(b) Occurred during a Centralia 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 Centralia 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 Centralia 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 Centralia College from pursuing other disciplinary action based on allegations that the respondent violated other provisions of Centralia College's student conduct code, and this chapter.

(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 132L-351-230 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); and

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

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

(ii) An advisor may be an attorney; and

(iii) Centralia 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 132L-351-240 Prehearing procedures. (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 132L-351-080. 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 the college intends to offer the evidence at the hearing.

NEW SECTION

WAC 132L-351-250 Rights of parties. (1) The Centralia College's student conduct procedures, this chapter and this supplemental procedure shall apply equally to all parties.

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

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

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

NEW SECTION

WAC 132L-351-260 Evidence. The introduction and consideration of evidence during the hearing is subject to the following procedures and restrictions:

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

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

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

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

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

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

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

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

(a) Spousal/domestic partner privilege;

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

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

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

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

(f) Other legal privileges identified in RCW 5.60.060.

NEW SECTION

WAC 132L-351-270 Initial order. (1) In addition to complying with WAC 132L-351-090, the student conduct committee will be responsible for conferring and drafting an initial order that:

(a) Identifies the allegations of sexual harassment;

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

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

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

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

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

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

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

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

NEW SECTION

WAC 132L-351-280 Appeals. (1) The parties shall have the right to appeal from the initial order's determination of responsibility and/or dismissal of an allegation(s) of sexual harassment in a formal complaint. The right to appeal will be subject to the same procedures and time frames set forth in WAC 132L-351-095.

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

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

WSR 21-06-022A
WITHDRAWAL OF PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

[Filed February 26, 2021, 3:51 p.m.]

The economic services administration requests the withdrawal of Proposed rule making notice filed as WSR 20-20-072 on October 2, 2020 (WAC 388-484-0006), regarding TANF/SFA time limit extensions.

Katherine I. Vasquez
 Rules Coordinator

WSR 21-06-043
PROPOSED RULES
DEPARTMENT OF TRANSPORTATION

[Filed February 25, 2021, 8:11 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-10-035.

Title of Rule and Other Identifying Information: Enhancing Title VI Compliance to ameliorate discrimination on construction and consulting contracts.

Per Title VI, 42 U.S.C. § 2000d and Federal Highway Administration regulations 23 U.S.C. part 200, the Washington state department of transportation (WSDOT) has an obligation to ensure all of our programs and services are free from discrimination. Should the department have evidence of discrimination in the award and administration of state funded construction and consulting contracts, in the form of a disparity study, WSDOT shall require contractors and consultants to submit a nondiscrimination plan. This plan will demonstrate the actions the contractor or consultant shall take to ensure the contract they are working under is not discriminatory to firms owned by socially and economically disadvantaged individuals. Contractors and consultants shall supply a nondiscrimination plan with the bids and proposal.

If the provided nondiscrimination plan does not sufficiently demonstrate actions that the contractor or consultant will use to mitigate discrimination on their projects, then the bid or proposal will be considered nonresponsive. This rule will apply to WSDOT's contract and consulting award process to reduce and discourage discrimination in the department's public works contracting, including alternative public works, and professional service consulting.

Hearing Location(s): On April 13, 2021, at 9:30 [a.m.], virtual hearing. The hearing will be broadcast on [Microsoft] Teams.

Date of Intended Adoption: April 13, 2021.

Submit Written Comments to: Jackie Bayne, 310 Maple Park Avenue S.E., Olympia, WA 98501, email BayneJ@wsdot.wa.gov, fax 360-705-6801, work 360-705-7084, by April 6, 2021.

Assistance for Persons with Disabilities: Contact Jackie Bayne, phone 360-338-5783, fax 360-705-6801, TTY 711, email BayneJ@wsdot.wa.gov, 310 Maple Park Avenue S.E., Olympia, WA 98501, by April 6, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule is to reduce discrimination by requiring nondiscrimination plans on WSDOT contracts. Contractors and consultants will be required to provide a nondiscrimination plan along with all bids and proposals to demonstrate the actions they will take to ensure the contracts they are working under are free from discrimination. Anticipated effects of this rule on WSDOT state contracts include: More equitable contracting, mitigation of possible Title VI violations on state funded contracting and consulting, as well as decreased disparity ratios, which would result in an overall increase in participation of under-represented firms in department contracting.

This proposal will result in no changes to existing rules.

Reasons Supporting Proposal: Title VI requires WSDOT to ensure nondiscrimination based on race, sex, color, and national origin in all of the department's programs, services, activities and contracts.

WSDOT continues to receive disparity studies which note statistically significant disparity ratios in our contracting and consulting on state funded contracts. As long as these statistically significant disparity ratios exist, the agency has an obligation under Title VI to ensure equitable distribution and fairness in our contracting and consulting.

Statutory Authority for Adoption: RCW 47.01.101 and 47.01.260(1).

Rule is necessary because of federal law, [Title VI].

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: See WAC sections following.

Name of Proponent: WSDOT, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Jackie Bayne, Office of Equal Opportunity, Headquarters, 310 Maple Park Avenue S.E., Olympia, WA 98501, 360-705-7084.

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

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Jackie Bayne, 310 Maple Park Avenue S.E., Olympia, WA 98501, phone 360-705-7084, fax 360-705-6801, email BayneJ@wsdot.wa.gov.

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

Is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Citation of the specific federal statute or regulation and description of the consequences to the state if the rule is not adopted: Per Title VI, 42 U.S.C. § 2000d Federal Highway Administration regulations 23 U.S.C. part 200, WSDOT has an obligation to ensure all of our programs and services are free from discrimination. Should this rule not be adopted, WSDOT will continue to run the risk of Title VI violations on state funded contracting and consulting, due to disparity study evidence showing significant disparity ratios on state funded contracting which demonstrates discrimination in state funded contracting.

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

A copy of the detailed cost calculations may be obtained by contacting Jackie Bayne, 310 Maple Park Avenue S.E., Olympia, WA 98501, phone 360-705-7084, fax 360-705-6801, TTY 711, email BayneJ@wsdot.wa.gov.

February 25, 2021
Streator Johnson
for Shannon Gill
Administrative Risk Manager

Chapter 468-19 WAC

ENSURING NONDISCRIMINATION IN THE AWARD OF TRANSPORTATION CONSULTING AND CONSTRUCTION PROJECTS

NEW SECTION

WAC 468-19-010 Authority. RCW 47.01.101 provides that the Washington state department of transportation (WSDOT) may adopt rules that are subject to the adoption procedures contained in the state Administrative Procedure Act. RCW 47.01.260(1) provides that WSDOT "shall exercise all the powers and perform all the duties necessary" to managing the state's transportation systems.

NEW SECTION

WAC 468-19-020 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Department" means the Washington state department of transportation.

(2) "Discrimination" means an act (or action), or lack therefore, whether intentional or unintentional, through which a person in the United States, solely because of race, color, religion, sex, or national origin, has been otherwise subjected to unequal treatment under any program or activity.

(3) "Owned" means a firm that is at least fifty-one percent owned by one or more individuals who are socially disadvantaged or, in the case of a corporation, in which fifty-one percent of the stock is owned by one or more such individuals.

(4) "Socially disadvantaged individual" is a person evidenced as disadvantaged through certification by the Washington state office of minority and women's business enterprises.

NEW SECTION

WAC 468-19-030 Purpose. Per Title VI, 42 U.S.C. § 2000d and Federal Highway Administration (FHWA) regulations 23 C.F.R. Part 200, the department has an obligation to ensure all of our programs and services are free from discrimination. Should the department have evidence of discrimination in the award and administration of state-funded construction contracts, in the form of a disparity study conducted by WSDOT, WSDOT shall require contractors and consultants

bidding on contracts over the agency estimated cost of three hundred fifty thousand dollars to submit a nondiscrimination plan. These nondiscrimination plans will demonstrate the actions the contractor or consultant will take to ensure the contracts they are working under are free from discrimination.

Contractors and consultants shall supply a nondiscrimination plan with each bid or proposal. If the nondiscrimination plan, submitted with the bid or proposal, does not include the elements listed in WAC 468-19-040, then the bid or proposal will be considered nonresponsive and awarded to the second lowest responsive bidder, or most qualified consultant. This rule will apply to the department of transportation's contract award and consulting procurement processes to remedy discrimination in WSDOT's contracting.

NEW SECTION

WAC 468-19-040 Nondiscrimination plan contents.

For a nondiscrimination plan to sufficiently demonstrate the actions the contractor or consultant will use to ensure their contracts are free from discrimination, it must address the following areas and issues, as applicable, and include the following elements:

(1) A signed statement from the organization's chief executive officer, comparable position, or designee, noting their intent to ensure nondiscrimination in the execution of the agreement.

(2) A document detailing the strategies and approaches the contractor or consultant will undertake in order to mitigate discrimination in the administration of their contract, including:

(a) Review of opportunities traditionally self-performed by contractor or consultant:

(i) What types of work will be subcontracted to ensure equitable participation from businesses owned by socially disadvantaged individuals; and

(ii) What other activities will be undertaken to expand contracting access including, but not limited to: Frequency of payment, relaxing or eliminating retainage/bonding/insurance requirement, or unbundling.

(b) Review of work items that may be managed or performed without a bidding process.

(c) Review of internal processes for direct negotiation with subcontractors, including detailed approaches to eliminate discriminatory activities in contracting on:

(i) Competitively bid trade packages and scopes of work; and

(ii) Solicitation of bid packages and scopes of work.

(3) The contractor or consultant will document, in detail, how they will conduct outreach, with examples of how they have in the past, if relevant, and will currently increase bid access for firms owned by individuals determined to be socially disadvantaged.

(4) The contractor or consultant will update the plan in detail, as outlined below, describing how they will conduct oversight, monitoring, and reporting, with detailed progress made in expanding access to contracting opportunities, including:

(a) For contracts up to fifty million, quarterly progress reports will be submitted to the department detailing:

- (i) Documented outreach efforts to firms owned by socially disadvantaged individuals;
- (ii) Detailed utilization rates including individuals and firms designated as socially disadvantaged; and
- (iii) Adjustments implemented to increase outreach and reduce discrimination in contracting.

(b) For contracts over fifty million, monthly progress reports will be submitted to the department detailing:

- (i) Documented outreach efforts to firms owned by socially disadvantaged individuals;
- (ii) Detailed utilization rates, including individuals and firms designated as socially disadvantaged; and
- (iii) Adjustments implemented to increase outreach and reduce discrimination in contracting.

(5) The contractor or consultant will document, in detail, methods they will use to ensure their contracting processes are free of unnecessary burdens including, but not limited to, the following areas:

- (a) Prompt payment, to include "net 30" when feasible;
- (b) Timely return of retainage;
- (c) Dispute resolution process; and
- (d) Prime contractor prequalification processes for sub-contractors, if required.

WSR 21-06-048

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed February 25, 2021, 10:38 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-19-021.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-78A-2371 Investigations, and 388-78A-2360 Adult day services.

Hearing Location(s): On April 6, 2021, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington Street S.E., Olympia, WA 98501. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2>; or by Skype. Due to the COVID-19 pandemic, hearing may be held via Skype, see DSHS website for most up-to-date information.

Date of Intended Adoption: Not earlier than April 7, 2021.

Submit Written Comments to: DSHS, Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHS RPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., April 6, 2021.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, phone 360-664-6092, fax 360-664-6185, TTY 711 relay service, email Kildaja@dshs.wa.gov, by March 23, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed update of WAC 388-78A-2371 Investigations, corrects language that was brought to the agency's attention by stakeholders after the permanent rule was filed on December 31, 2019. The proposed update of WAC 388-78A-2360 Adult day services, corrects a cross-reference.

Reasons Supporting Proposal: This proposal is in response to stakeholder requests. WAC 388-78A-2371 was adopted on December 31, 2019. However, public review after the comment period ended noted a concern in the language that must be corrected. Without correction, WAC 388-78A-2371 may have moderate negative impact to stakeholders and the department. WAC 388-78A-2360 must also be amended to correct a cross-reference to WAC 388-78A-2371

Statutory Authority for Adoption: RCW 18.20.090.

Statute Being Implemented: Chapter 18.20 RCW; and chapter 74.34 RCW.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Debbie Hoeman, P.O. Box 45600, Olympia, WA 98504-5600, 360-725-3210.

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

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Debbie Hoeman, P.O. Box 45600, Olympia, WA 98504-5600, phone 360-725-3210, email Debra.Hoeman@dshs.wa.gov.

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

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The department analyzed the probable benefits and probable costs of the proposed rules and determined they will impose no new costs on small businesses as the proposed changes reduce the regulatory burden on assisted living facilities.

A copy of the detailed cost calculations may be obtained by contacting Debbie Hoeman, P.O. Box 45600, Olympia, WA 98504-5600, phone 360-725-3210, email Debra.Hoeman@dshs.wa.gov.

February 24, 2021
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-13-063, filed 6/18/13, effective 7/19/13)

WAC 388-78A-2360 Adult day services. (1) The assisted living facility may, but is not required to, provide an adult day services program for nonresidents.

(2) If adult day services are provided, the assisted living facility must:

(a) Ensure each adult day services client receives appropriate supervision and agreed upon care and services during the time spent in the day services program;

(b) Ensure the care and services provided to adult day services clients do not compromise the care and services provided to assisted living facility residents;

(c) Ensure the total number of residents plus adult day services clients does not exceed the assisted living facility's maximum facility capacity;

(d) Only accept adult day services clients who are appropriate for assisted living facility care and services, consistent with WAC 388-78A-2050;

(e) Provide sufficient furniture for the comfort of day services clients, in addition to furniture provided for residents;

(f) Notify appropriate individuals specified in the client's record and consistent with WAC 388-78A-2640 when there is a significant change in the condition of an adult day services client;

(g) Investigate and document incidents and accidents involving adult day services clients consistent with WAC ((388-78A-2700)) 388-78A-2371;

(h) Maintain a separate register of adult day services clients; and

(i) Maintain a record for each adult day services client.

AMENDATORY SECTION (Amending WSR 20-02-104, filed 12/31/19, effective 1/31/20)

WAC 388-78A-2371 Investigations. The assisted living facility must:

(1) ~~((Report to the local law enforcement agency and the department any individual threatening bodily harm or causing a disturbance, that threatens any individual's welfare and safety))~~ Investigate and document investigative actions and findings for any alleged or suspected abuse, neglect, or financial exploitation; or accident or incident jeopardizing or affecting a resident health or life;

(2) ~~((Identify, investigate, and report incidents involving residents according to department established assisted living facility guidelines))~~ Determine the circumstances of the event;

(3) ~~((Protect residents during the course of the investigation))~~ When necessary, institute and document appropriate measures to prevent similar future situations if the alleged incident is substantiated; and

(4) ~~((Comply with "whistle blower" laws as defined in chapter 74.34 RCW))~~ Protect residents during the course of the investigation.

WSR 21-06-049
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed February 25, 2021, 11:50 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-22-062.

Title of Rule and Other Identifying Information: The department is proposing adoption of WAC 388-434-0015 Extension of certification periods and waiver of eligibility reviews and mid-certification reviews during the COVID-19 pandemic.

Hearing Location(s): On April 6, 2021, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington Street S.E., Olympia, WA 98501. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2>; or by Skype. Due to the COVID-19 pandemic, hearing may be held via Skype, see DSHS website for most up-to-date information.

Date of Intended Adoption: Not earlier than April 7, 2021.

Submit Written Comments to: DSHS, Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHS RPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., April 6, 2021.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, phone 360-664-6092, fax 360-664-6185, TTY 711 relay services, email Kildaja@dshs.wa.gov, by March 23, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Proposed adoption of WAC 388-434-0015 will implement administrative flexibilities regarding certification periods and mid-certification reviews as allowed under H.R. 8337, Continuing Appropriations Act, 2021 and Other Extensions Act of 2020.

These adjustments to certification periods and mid-certification reviews have been in effect since November 2020 under emergency rule adoption filed as WSR 20-22-065.

Reasons Supporting Proposal: The proposed rule is necessary to administer flexibilities of the Continuing Appropriations Act, 2021 and Other Extensions Act of 2020 (H.R. 8337 Section 4603) related to the Supplemental Nutrition Assistance Program (SNAP), which support preservation of public health, safety, and general welfare through access to food assistance during the COVID-19 pandemic.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, and 74.08A.120.

Rule is necessary because of federal law, H.R. 8337 Section 4603.

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Ivette Dones-Figueroa, P.O. Box 45470, Olympia, WA 98504, 360-764-3812.

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

A cost-benefit analysis is not required under RCW 34.05.328. These rules are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in part, "[t]his section does not apply to ... rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents."

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

Is exempt under RCW 34.05.328 (5)(b)(vii).

Explanation of exemptions: These amendments do not impact small businesses. They only impact DSHS clients.

February 25, 2021
Katherine I. Vasquez
Rules Coordinator

NEW SECTION

WAC 388-434-0015 Extension of certification periods and waiver of eligibility reviews and mid-certification reviews during the COVID-19 pandemic. (1) Recertification requirements for food assistance under WAC 388-434-0010 are waived in the months listed below and your certification period will automatically be extended as follows:

(a) Certification periods ending in November 2020 and December 2020 will be automatically extended by two months;

(b) Certification periods ending in January 2021 and February 2021 will be automatically extended by four months, if not previously extended.

(2) Eligibility review requirements for cash assistance under WAC 388-434-0005 are waived as follows:

(a) All eligibility reviews due in November 2020 and December 2020;

(b) Eligibility reviews, not already extended, due in January 2021 and February 2021.

(3) If your cash assistance eligibility review is waived under subsection (2) of this section, the following programs are included:

- (a) Temporary assistance for needy families;
- (b) State family assistance;
- (c) Aged, blind or disabled cash assistance; and
- (d) Housing and essential needs referral.

(4) If your working family support certification period ends under WAC 388-493-0010, your certification period will be extended as described in subsection (1) of this section.

(5) Mid-certification review requirements for cash and food assistance under WAC 388-418-0011 are waived from November 1, 2020, to June 30, 2021.

(6) You are still required to report changes under WAC 388-418-0005.

(7) The department will review and act upon any new information we receive from you during this time under WAC 388-418-0020.

WSR 21-06-064
PROPOSED RULES
HEALTH CARE AUTHORITY
[Filed February 26, 2021, 3:43 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-22-041.

Title of Rule and Other Identifying Information: WAC 182-501-0135 Patient review and coordination.

Hearing Location(s): On April 6, 2021, at 10:00 a.m. As the governor's Safe Start plan progresses, it is yet unknown whether by the date of this public hearing restrictions of meeting in public places will be eased. To continue to be safe, this hearing is being scheduled as a virtual only hearing. This will not be an in-person hearing and there is not a physical location available. To attend, you must register prior to the virtual public hearing (April 6, 2021, 10:00 a.m. Pacific Time). Registration URL <https://attendee.gotowebinar.com/register/1443618498460852747>, Webinar ID 560-087-099. After registering, you will receive a confirmation email containing the information about joining the webinar.

Date of Intended Adoption: Not sooner than April 7, 2021.

Submit Written Comments to: Health Care Authority (HCA), Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by April 6, 2021.

Assistance for Persons with Disabilities: Contact Amber Lougheed, phone 360-725-1349, fax 360-586-9727, telecommunication[s] relay service 711, email amber.lougheed@hca.wa.gov, by March 19, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is revising this section to clarify that clients who have comprehensive, private medical insurance (not casualty) are not reviewed or placed into the patient review and coordination program.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Not applicable.

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Michael Williams, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1346; Implementation and Enforcement: Patti Raymond, P.O. Box 45530, Olympia, WA 98504-2716, 360-725-1239.

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

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

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's

analysis showing how costs were calculated. These rules do not impose a disproportionate cost impact on small businesses or nonprofits.

February 26, 2021
Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 18-08-075, filed 4/3/18, effective 5/4/18)

WAC 182-501-0135 Patient review and coordination (PRC). (1) **Patient review and coordination (PRC)** is a health and safety program that coordinates care and ensures clients enrolled in PRC use services appropriately and in accordance with agency rules and policies.

(a) PRC applies to medical assistance fee-for-service and managed care clients.

(b) PRC is authorized under federal medicaid law by 42 U.S.C. 1396n (a)(2) and 42 C.F.R. 431.54.

(2) **Definitions.** Definitions found in chapter 182-500 WAC and WAC 182-526-0010 apply to this section. The following definitions apply to this section only:

"Appropriate use" - Use of health care services that are safe and effective for a client's health care needs.

"Assigned provider" - An agency-enrolled health care provider or one participating with an agency-contracted managed care organization (MCO) who agrees to be assigned as a primary provider and coordinator of services for a fee-for-service or managed care client in the PRC program. Assigned providers can include a primary care provider (PCP), a pharmacy, a prescriber of controlled substances, and a hospital for nonemergency services.

"At-risk" - A term used to describe one or more of the following:

(a) A client with a medical history of:

- (i) Seeking and obtaining health care services at a frequency or amount that is not medically necessary; or
- (ii) Potential life-threatening events or life-threatening conditions that required or may require medical intervention.

(b) Behaviors or practices that could jeopardize a client's medical treatment or health including, but not limited to:

- (i) Indications of forging or altering prescriptions;
- (ii) Referrals from medical personnel, social services personnel, or MCO personnel about inappropriate behaviors or practices that place the client at risk;
- (iii) Noncompliance with medical or drug and alcohol treatment;
- (iv) Paying cash for medical services that result in a controlled substance prescription or paying cash for controlled substances;
- (v) Arrests for diverting controlled substance prescriptions;
- (vi) Positive urine drug screen for illicit street drugs or nonprescribed controlled substances;
- (vii) Negative urine drug screen for prescribed controlled substances; or
- (viii) Unauthorized use of a client's services card for an unauthorized purpose.

"Care management" - Services provided to clients with multiple health, behavioral, and social needs to improve

care coordination, client education, and client self-management skills.

"Conflicting" - Drugs or health care services that are incompatible or unsuitable for use together because of undesirable chemical or physiological effects.

"Contraindicated" - A medical treatment, procedure, or medication that is inadvisable or not recommended or warranted.

"Duplicative" - Applies to the use of the same or similar drugs and health care services without due medical justification. Example: A client receives health care services from two or more providers for the same or similar condition(s) in an overlapping time frame, or the client receives two or more similarly acting drugs in an overlapping time frame, which could result in a harmful drug interaction or an adverse reaction.

"Emergency department information exchange (EDIE)" - An internet-delivered service that enables health care providers to better identify and treat high users of the emergency department and special needs patients. When patients enter the emergency room, EDIE can proactively alert health care providers through different venues such as fax, phone, email, or integration with a facility's current electronic medical records.

"Emergency medical condition" - See WAC 182-500-0030.

"Emergency services" - See 42 C.F.R. ((447.53)) 438.114.

"Just cause" - A legitimate reason to justify the action taken, including but not limited to, protecting the health and safety of the client.

"Managed care client" - A medical assistance client enrolled in, and receiving health care services from, an agency-contracted managed care organization (MCO).

"Prescriber of controlled substances" - Any of the following health care professionals who, within their scope of professional practice, are licensed to prescribe and administer controlled substances (see chapter 69.50 RCW, Uniform Controlled Substance Act) for a legitimate medical purpose:

- (a) A physician under chapter 18.71 RCW;
- (b) A physician assistant under chapter 18.71A RCW;
- (c) An osteopathic physician under chapter 18.57 RCW;
- (d) An osteopathic physician assistant under chapter 18.57A RCW; and
- (e) An advanced registered nurse practitioner under chapter 18.79 RCW.

"Primary care provider" or "PCP" - A person licensed or certified under Title 18 RCW including, but not limited to, a physician, an advanced registered nurse practitioner (ARNP), or a physician assistant (PA) who supervises, coordinates, and provides health care services to a client, initiates referrals for specialty and ancillary care, and maintains the client's continuity of care.

(3) **Clients selected for PRC review.** The agency or MCO selects a client for PRC review when either or both of the following occur:

- (a) A usage review report indicates the client has not used health care services appropriately; or

(b) Medical providers, social service agencies, or other concerned parties have provided direct referrals to the agency or MCO.

(4) **Clients not selected for PRC review.** Clients who have comprehensive, private medical insurance (not casualty) are not reviewed or placed into the PRC program.

(5) **When a fee-for-service client is selected for PRC review,** the prior authorization process as defined in WAC 182-500-0085 may be required:

- (a) Prior to or during a PRC review; or
- (b) When the client is currently in the PRC program.

~~((5))~~ (6) **Review for placement in the PRC program.** When the agency or MCO selects a client for PRC review, the agency or MCO staff, with clinical oversight, reviews either the client's medical history or billing history, or both, to determine if the client has used health care services at a frequency or amount that is not medically necessary (42 C.F.R. 431.54(e)).

~~((6))~~ (7) **Usage guidelines for PRC placement.** Agency or MCO staff use the following usage guidelines to initiate review for PRC placement. A client may be placed in the PRC program when either the client's medical history or billing history, or both, documents any of the following:

(a) Any two or more of the following conditions occurred in a period of ninety consecutive calendar days in the previous twelve months. The client:

- (i) Received services from four or more different providers, including physicians, ARNPs, and PAs not located in the same clinic or practice;
- (ii) Had prescriptions filled by four or more different pharmacies;
- (iii) Received ten or more prescriptions;
- (iv) Had prescriptions written by four or more different prescribers not located in the same clinic or practice;
- (v) Received similar services in the same day not located in the same clinic or practice; or
- (vi) Had ten or more office visits;

(b) Any one of the following occurred within a period of ninety consecutive calendar days in the previous twelve months. The client:

- (i) Made two or more emergency department visits;
- (ii) Exhibits "at-risk" usage patterns;
- (iii) Made repeated and documented efforts to seek health care services that are not medically necessary; or
- (iv) Was counseled at least once by a health care provider, or an agency or MCO staff member with clinical oversight, about the appropriate use of health care services;

(c) The client received prescriptions for controlled substances from two or more different prescribers not located in the same clinic or practice in any one month within the ninety-day review period; or

(d) The client has either a medical history or billing history, or both, that demonstrates a pattern of the following at any time in the previous twelve months:

- (i) Using health care services in a manner that is duplicative, excessive, or contraindicated; or
- (ii) Seeking conflicting health care services, drugs, or supplies that are not within acceptable medical practice.

~~((7))~~ (8) **PRC review results.** As a result of the PRC review, the agency or MCO may take any of the following steps:

(a) Determine that no action is needed and close the client's file;

(b) Send the client and, if applicable, the client's authorized representative a one-time only written notice of concern with information on specific findings and notice of potential placement in the PRC program; or

(c) Determine that the usage guidelines for PRC placement establish that the client has used health care services at an amount or frequency that is not medically necessary, in which case the agency or MCO will take one or more of the following actions:

- (i) Refer the client for education on appropriate use of health care services;
- (ii) Refer the client to other support services or agencies; or

(iii) Place the client into the PRC program for an initial placement period of no less than twenty-four months. For clients younger than eighteen years of age, the MCO must get agency approval prior to placing the client into the PRC program.

~~((8))~~ (9) **Initial placement in the PRC program.** When a client is initially placed in the PRC program:

(a) The agency or MCO places the client for no less than twenty-four months with one or more of the following types of health care providers:

- (i) Primary care provider (PCP);
- (ii) Pharmacy for all prescriptions;
- (iii) Prescriber of controlled substances;
- (iv) Hospital for nonemergency services unless referred by the assigned PCP or a specialist. A client may receive covered emergency services from any hospital; or
- (v) Another qualified provider type, as determined by agency or MCO program staff on a case-by-case basis.

(b) The managed care client will remain in the same MCO for no less than twelve months unless:

- (i) The client moves to a residence outside the MCO's service area and the MCO is not available in the new location; or
- (ii) The client's assigned PCP no longer participates with the MCO and is available in another MCO, and the client wishes to remain with the current provider;
- (iii) The client is in a voluntary enrollment program or a voluntary enrollment county;

(iv) The client is in the address confidentiality program (ACP), indicated by P.O. Box 257, Olympia, WA 98507; or

(v) The client is an American Indian/Alaska native.

(c) A managed care client placed in the PRC program must remain in the PRC program for no less than twenty-four months regardless of whether the client changes MCOs or becomes a fee-for-service client.

~~((9))~~ (10) **Notifying the client about placement in the PRC program.** When the client is initially placed in the PRC program, the agency or the MCO sends the client and, if applicable, the client's authorized representative, a written notice that:

- (a) Informs the client of the reason for the PRC program placement;

(b) Directs the client to respond to the agency or MCO within ten calendar days of the date of the written notice;

(c) Directs the client to take the following actions:

(i) Select providers, subject to agency or MCO approval;

(ii) Submit additional health care information, justifying the client's use of health care services; or

(iii) Request assistance, if needed, from the agency or MCO program staff.

(d) Informs the client of administrative hearing or appeal rights (see subsection ~~((14))~~ (15) of this section).

(e) Informs the client that if a response is not received within ten calendar days of the date of the written notice, the client will be assigned a provider(s) by the agency or MCO.

~~((10))~~ (11) **Selection and role of assigned provider.** A client will have a limited choice of providers.

(a) The following providers are not available:

(i) A provider who is being reviewed by the agency or licensing authority regarding quality of care;

(ii) A provider who has been suspended or disqualified from participating as an agency-enrolled or MCO-contracted provider; or

(iii) A provider whose business license is suspended or revoked by the licensing authority.

(b) For a client placed in the PRC program, the assigned:

(i) Provider(s) must be located in the client's local geographic area, in the client's selected MCO, and be reasonably accessible to the client.

(ii) PCP supervises and coordinates health care services for the client, including continuity of care and referrals to specialists when necessary.

(A) The PCP:

(I) Provides the plan of care for clients that have documented use of the emergency department for a reason that is not deemed to be an emergency medical condition;

(II) Files the plan of care with each emergency department that the client is using or with the emergency department information exchange;

(III) Makes referrals to substance abuse treatment for clients who are using the emergency department for substance abuse issues; and

(IV) Makes referrals to mental health treatment for clients who are using the emergency department for mental health treatment issues.

(B) The assigned PCP must be one of the following:

(I) A physician;

(II) An advanced registered nurse practitioner (ARNP);

or

(III) A licensed physician assistant (PA), practicing with a supervising physician.

(iii) Prescriber of controlled substances prescribes all controlled substances for the client;

(iv) Pharmacy fills all prescriptions for the client; and

(v) Hospital provides all hospital nonemergency services.

(c) A client placed in the PRC program must remain with the assigned providers for twelve months after the assignments are made, unless:

(i) The client moves to a residence outside the provider's geographic area;

(ii) The provider moves out of the client's local geographic area and is no longer reasonably accessible to the client;

(iii) The provider refuses to continue to serve the client;

(iv) The client did not select the provider. The client may request to change an assigned provider once within thirty calendar days of the assignment;

(v) The client's assigned PCP no longer participates with the MCO. In this case, the client may select a new provider from the list of available providers in the MCO or follow the assigned provider to the new MCO; or

(vi) The client is in the address confidentiality program (ACP), indicated by P.O. Box 257, Olympia, WA 98507.

(d) When an assigned prescribing provider no longer contracts with the agency or the MCO:

(i) All prescriptions from the provider are invalid thirty calendar days following the date the contract ends;

(ii) All prescriptions from the provider are subject to applicable prescription drugs (outpatient) rules in chapter 182-530 WAC or appropriate MCO rules; and

(iii) The client must choose or be assigned another provider according to the requirements in this section.

~~((11))~~ (12) **PRC placement.**

(a) The initial PRC placement is no less than twenty-four consecutive months.

(b) The second PRC placement is no less than an additional thirty-six consecutive months.

(c) Each subsequent PRC placement is no less than seventy-two consecutive months.

~~((12))~~ (13) **Agency or MCO review of a PRC placement period.** The agency or MCO reviews a client's use of health care services prior to the end of each PRC placement period described in subsection ~~((11))~~ (12) of this section using the guidelines in subsection ~~((6))~~ (7) of this section.

(a) The agency or MCO assigns the next PRC placement if the usage guidelines for PRC placement in subsection ~~((6))~~ (7) of this section apply to the client.

(b) When the agency or MCO assigns a subsequent PRC placement, the agency or MCO sends the client and, if applicable, the client's authorized representative, a written notice informing the client:

(i) Of the reason for the subsequent PRC program placement;

(ii) Of the length of the subsequent PRC placement;

(iii) That the current providers assigned to the client continue to be assigned to the client during the subsequent PRC placement;

(iv) That all PRC program rules continue to apply;

(v) Of administrative hearing or appeal rights (see subsection ~~((14))~~ (15) of this section); and

(vi) Of the rules that support the decision.

(c) The agency may remove a client from PRC placement if the client:

(i) Successfully completes a treatment program that is provided by a ~~((chemical dependency))~~ substance use disorder (SUD) service provider certified by the agency under chapter ~~((388-805))~~ 182-538D WAC;

(ii) Submits documentation of completion of the approved treatment program to the agency; and

(iii) Maintains appropriate use of health care services within the usage guidelines described in subsection ~~((6))~~ (7) of this section for six consecutive months after the date the treatment ends.

(d) The agency or MCO determines the appropriate placement for a client who has been placed back into the program.

(e) A client will remain placed in the PRC program regardless of change in eligibility program type or change in address.

~~((13))~~ (14) **Client financial responsibility.** A client placed in the PRC program may be billed by a provider and held financially responsible for nonemergency health care services obtained from a nonpharmacy provider when the provider is not an assigned or appropriately referred provider as described in subsection ~~((10))~~ (11) of this section. See WAC 182-502-0160.

~~((14))~~ (15) **Right to administrative hearing or appeal.**

(a) A fee-for-service client who disagrees with an agency decision regarding placement or continued placement in the PRC program has the right to an administrative hearing regarding this placement. A client must request an administrative hearing from the agency within ninety days of the written notice of placement or continued placement to exercise this right.

(b) A managed care client who disagrees with an MCO decision regarding placement or continued placement in the PRC program has a right to appeal this decision in the same manner as an adverse benefit determination under WAC 182-538-110.

(i) An appeal must be filed with the MCO within sixty calendar days of the written notice of the MCO's decision.

(ii) A client must exhaust the right to appeal through the MCO prior to requesting an administrative hearing.

(iii) A client who disagrees with the resolution of the appeal by the MCO may request an administrative hearing.

(iv) A client may exercise the right to an administrative hearing by filing a request within one hundred twenty calendar days from the written notice of resolution of the appeal by the MCO.

(c) A client enrolled in an MCO cannot change MCOs until the MCO appeal and any administrative hearing process has been completed and a final order entered.

(d) The agency conducts an administrative hearing according to chapter 182-526 WAC.

(e) A client who requests an administrative hearing or appeal within ten calendar days from the date of the written notice of an initial PRC placement will not be placed in the PRC program until ordered by an administrative law judge (ALJ) or review judge.

(f) A client who requests an administrative hearing or appeal more than ten calendar days from the date of the written notice of initial PRC placement will remain placed in the PRC program until a final administrative order is entered that orders the client's removal from the program.

(g) A client who requests an administrative hearing or appeal in all other cases and who has already been assigned providers will remain placed in the PRC program unless a

final administrative order is entered that orders the client's removal from the program.

(h) An ALJ may rule the client be placed in the PRC program prior to the date the record is closed and prior to the date the initial order is issued based on a showing of just cause.

WSR 21-06-075
PROPOSED RULES
PARKS AND RECREATION
COMMISSION

[Filed March 1, 2021, 11:15 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-18-102A.

Title of Rule and Other Identifying Information: WAC 352-37-340 Small-scale beach prospecting and placer mining, the proposal would update seashore conservation area rules governing equipment and the transport of sand for mineral prospecting.

Hearing Location(s): On April 15, 2021, at 9:00 a.m., state parks and recreation commission meeting. Meeting will be held remotely. A link for public comment will be posted on the Washington state parks and recreation commission (WSPRC) website.

Date of Intended Adoption: April 15, 2021.

Submit Written Comments to: Lisa Lantz, 1111 Israel Road S.W., Olympia, WA, email lisa.lantz@parks.wa.gov, fax 360-586-6647, by April 8, 2021.

Assistance for Persons with Disabilities: Contact Becki Ellison, phone 360-902-8502, fax 360-586-0355, TTY 711, email becki.ellison@parks.wa.gov, by April 5, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule change would eliminate language in WAC 352-37-340 regarding allowable mineral prospecting equipment in the seashore conservation area and defer to equipment allowed by the Washington department of fish and wildlife in chapter 220-660 WAC. This change would eliminate any potential inconsistencies in equipment allowed by the two agencies. The proposed rule would also allow for the transport of ten gallons of sand per person per day, which would allow mineral prospectors to process material off-site. Current rule only permits the transport of concentrate.

Reasons Supporting Proposal: WAC 352-37-340 is being amended to incorporate requirements in ESHB 1261 (chapter 10, Laws of 2020), which made changes to the laws regulating motorized or gravity siphon mining. The proposal would update WAC-352-37-340 to align with these new statutory requirements, as well as revised hydraulic code rules under WAC 220-660-300 (Gold and Fish Pamphlet) that govern mineral prospecting.

Statutory Authority for Adoption: RCW 79A.05.030.

Statute Being Implemented: RCW 79A.05.165 and 79A.05.615.

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

Name of Proponent: WSPRC, governmental.

Name of Agency Personnel Responsible for Drafting: Lisa Lantz, Olympia, 360-902-8641; Implementation and Enforcement: Matt Niles, Olympia, 360-725-9761.

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

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 (5)(a)(i) does not identify the WSPRC as one of the agencies required to prepare a cost-benefit analysis.

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

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

March 1, 2021
Valeria Veasley
Management Analyst

AMENDATORY SECTION (Amending WSR 19-04-075, filed 2/1/19, effective 3/4/19)

WAC 352-37-020 Definitions. Whenever used in this chapter the terms below mean the following, unless the context clearly indicates otherwise:

"Access road" means a road designated by a city, county, or the state for the purpose of accessing the ocean beaches.

~~("Aggregate" means a mixture of minerals separable by mechanical or physical means.)~~

"Aircraft" means any machine designed to travel through the air, whether heavier or lighter than air; airplane, dirigible, balloon, helicopter, etc. The term aircraft does not include paraglider.

"Campfires" means any open flame from a wood source.

"Camping" means erecting a tent or shelter or arranging bedding, or both, between the hours of 11:00 p.m. and 6:00 a.m.; or parking a recreation vehicle or other vehicle for the purpose of remaining overnight.

"Commission" means the Washington state parks and recreation commission.

"Concentrate" means the valuable mineral content separated from aggregate.

~~("Concentrator" means a device used to physically or mechanically separate the valuable mineral content from aggregate.)~~

"Director" means the director of the Washington state parks and recreation commission or the director's designee.

"Driveable beach" means that area of the ocean beaches lying between the upper or landward limit of the hard sand area and the clam beds.

"Dry sand area" means that area lying above and to the landward side of the hard sand area as defined in this section.

"Excavation site" means the pit, furrow, or hole from which aggregate is removed to process and recover minerals or into which wastewater is discharged to settle out sediments.

"Fire" means any open flame from any source or device including, but not limited to, recreational fires, campfires, stoves, candles, torches, barbecues and charcoal.

"Fishtailing" means to swerve or skid from side to side.

~~("Ganged equipment" means two or more pieces of mineral prospecting equipment coupled together to increase efficiency. An example is adding a second sluice to a high banker.)~~

"Geocache" means geocaches, letterboxes, and related activities. Geocaching is an outdoor treasure hunting game in which participants (called geocachers) use a Global Positioning System receiver or other navigational techniques to hide and seek containers (called "geocaches" or "caches").

~~("Hand held mineral prospecting tools" means tools that are held by hand and are not powered by internal combustion, hydraulic, or pneumatics. Examples include metal detectors, shovels, picks, trowels, hammers, pry bars, hand-operated winches, and battery operated pumps specific to prospecting; and vac-pacs.)~~

"Hard sand area" means that area over which the tide ebbs and flows on a daily basis; and which is sufficiently hard or firm to support the weight of, and to provide unhindered traction for, an ordinary passenger vehicle.

~~("High banker" means a stationary concentrator that can be operated outside the wetted perimeter of the body of water from which the water is removed, using water supplied by hand or by pumping. A high banker consists of a sluice box, hopper, and water supply. Aggregate is supplied to the high banker by means other than suction dredging. This definition excludes rocker boxes.)~~

"Hovercraft" means a powered vehicle supported by a cushion of air capable of transporting persons.

"Intimidate" means to engage in conduct which would make a reasonable person fearful.

"Long Beach Peninsula" means that area of the ocean beaches as defined in this section lying between Cape Disappointment on the south and Leadbetter Point on the north.

"Mineral prospecting ~~(equipment)~~ tools" means any natural or manufactured device, implement, or animal (other than the human body) that can be used in any aspect of prospecting for or recovering minerals.

"Motor vehicle" means every vehicle that is self-propelled. For the purposes of this chapter, a motor vehicle must be approved for highway use in accordance with Title 46 RCW.

"North Beach" means that area of the ocean beaches as defined in this section lying between Damon Point on the south and Cape Flattery on the north.

"Obstruct pedestrian or vehicular traffic" means to walk, stand, sit, lie, or place an object in such a manner as to block passage by another person or a vehicle, or to require another person or a driver of a vehicle to take evasive action to avoid physical contact. Acts authorized as an exercise of one's constitutional right to picket or to legally protest, and acts autho-

ized by a permit issued pursuant to WAC 352-32-165 does not constitute obstruction of pedestrian or vehicular traffic.

"Ocean beaches" means all lands fronting on the Pacific Ocean between Cape Disappointment and Leadbetter Point; between Toke Point and the south jetty on Point Chehalis; and between Damon Point and the Makah Indian Reservation, and occupying the area between the line of ordinary high tide and the line of extreme low tide, as these lines now are or may hereafter be located, and, where applicable, between the Seashore Conservation Line, as established by survey of the commission and the line of extreme low tide, as these lines now are or may hereafter be located, or as defined in RCW 79A.05.605, provided, that the ocean beaches does not include any lands within the established boundaries of any Indian reservation.

~~("Pan" means an open metal or plastic dish that can be operated by hand to separate gold or other minerals from aggregate by washing the aggregate.)~~

"Parasail" means a parachute-type device attached to a rope pulled by a motor vehicle, resulting in the participant being lifted from the ground by the force of the wind.

"Person" means all natural persons, firms, partnerships, corporations, clubs, and all associations or combinations of persons whenever acting for themselves or by an agent, servant, or employee.

"Placer" means a glacial or alluvial deposit of gravel or sand containing eroded particles of minerals.

~~("Power sluice" means high banker.~~

~~"Power sluice/suction dredge combination" means a machine that can be used as a power sluice, or with minor modifications as a suction dredge.)~~

"Prospecting" means the exploration for minerals and mineral deposits.

~~("Riffle" means the bottom of a concentrator containing a series of interstices or grooves to catch and retain a mineral such as gold.~~

~~"Rocker box" means a nonmotorized concentrator consisting of a hopper attached to a cradle and a sluice box that can be operated with a rocking motion.)~~

"Seashore conservation area" means all lands now or hereafter under state ownership or control as defined in RCW 79A.05.605.

~~("Sluice" means a trough equipped with riffles across its bottom which can be used to recover gold and other minerals with the use of flowing water.)~~

"South Beach" means that area of the ocean beaches as defined in this section lying between Toke Point on the south and the south jetty on Point Chehalis on the north.

~~("Spiral wheel" means a hand-operated or battery-powered rotating pan that is used to recover gold and minerals with the use of water.~~

~~"Suction dredge" means a machine that is used to move submerged aggregate via hydraulic suction. Aggregate is processed through an attached sluice box for the recovery of gold and other minerals.~~

~~"Wetted perimeter" means the areas of a watercourse covered with flowing or nonflowing water.)~~

"Wind/sand sailer" means a wheeled, wind-driven recreational conveyance.

AMENDATORY SECTION (Amending WSR 11-19-015, filed 9/8/11, effective 10/9/11)

WAC 352-37-340 Small-scale beach prospecting and placer mining. (1) Small-scale beach prospecting and placer mining is allowed year-round in the seashore conservation area, except within fifty feet on either side of designated ocean beach access roads.

(2) The director may close specific areas to beach prospecting or placer mining when deemed necessary for wildlife protection or public safety.

(3) Only ~~((hand-held))~~ mineral prospecting tools ~~((and the following mineral prospecting equipment))~~ approved for use on ocean beaches by the Washington department of fish and wildlife in chapter 220-660 WAC may be used in the seashore conservation area(~~:~~

~~(a) Pans;~~

~~(b) Spiral wheels;~~

~~(c) Sluices, concentrators, rocker boxes, and high bankers with riffle areas totaling ten square feet or less, including ganged equipment;~~

~~(d) Suction dredges that have suction intake nozzles with inside diameters that should be five inches or less, but shall be no greater than five and one quarter inches to account for manufacturing tolerances and possible deformation of the nozzle. The inside diameter of the dredge hose attached to the nozzle may be no greater than one inch larger than the suction intake nozzle size;~~

~~(e) Power sluice/suction dredge combinations that have riffle areas totaling ten square feet or less, including ganged equipment, suction intake nozzles with inside diameters that should be five inches or less, but shall be no greater than five and one quarter inches to account for manufacturing tolerances and possible deformation of the nozzle, and pump intake hoses with inside diameters of four inches or less. The inside diameter of the dredge hose attached to the suction intake nozzle may be no greater than one inch larger than the suction intake nozzle size; and~~

~~(f) High bankers and power sluices that have riffle areas totaling ten square feet or less, including ganged equipment, and pump intake hoses with inside diameters of four inches or less.~~

~~(4) Upon request, other mineral prospecting equipment may be considered by the commission on a pilot basis).~~

~~((5)) (4)~~ All trenches, depressions, or holes created in the beach during mining activities must be back-filled before working another excavation site.

~~((6)) (5)~~ Setting up or using mining equipment or conducting mining activities in a manner and/or location that subjects people, personal property, or park resources to injury or damage or impedes traffic on the driveable portion of the beach is prohibited.

~~((7)) (6)~~ A person may possess or transport up to ten gallons of sand or concentrate per day.

~~((8)) (7)~~ Any violation of this section is an infraction under chapter 7.84 RCW.

WSR 21-06-077
PROPOSED RULES
PARKS AND RECREATION
COMMISSION

[Filed March 1, 2021, 11:18 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-18-085.

Title of Rule and Other Identifying Information: Chapter 352-28 WAC, Protection and conservation of state park natural resources, the proposal would update and consolidate definitions and clarify the agency approval process for resource sales.

Hearing Location(s): On April 15, 2021, at 9:00 a.m., state parks and recreation commission meeting. Meeting will be held remotely. A link for public comment will be posted on the Washington state parks and recreation commission (WSPRC) website.

Date of Intended Adoption: April 15, 2021.

Submit Written Comments to: Lisa Lantz, 1111 Israel Road S.W., Olympia, WA, email lisa.lantz@parks.wa.gov, fax 360-586-6647, by April 8, 2021.

Assistance for Persons with Disabilities: Contact Becki Ellison, phone 360-902-8502, fax 360-586-0355, TTY 711, email becki.ellison@parks.wa.gov, by April 5, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposal would update definitions and consolidate them into WAC 352-28-005. It would also clarify the agency approval process for resource sales by setting new measures and thresholds for approval of sales based on volume, rather than value of timber. Current rule requires WSPRC approval for sales with an appraised value over \$25,000 and director approval under that threshold. The proposed rule would require WSPRC approval for timber sales over one million board-feet, director approval for sales between one million and five thousand board-feet, and program manager approval for sales of five thousand board-feet or less. The proposal would also require WSPRC approval for timber sales, resulting from the conversion of forest land for the development of park facilities, where the appraised value of the timber is over \$25,000. The revision will clarify the agency's internal approval process, but it is not anticipated to affect the overall number or quantity of resource sales.

Reasons Supporting Proposal: The current rule has definitions in multiple sections. In addition, the existing rule on resource sales, which uses a dollar threshold for determining the approval process for sales, can be interpreted in different ways. The proposal would transition to a volume threshold, which clarifies the approval process, is more consistent with other state natural resource agencies, and more accurately represents the scale and significance of forest health treatments.

Statutory Authority for Adoption: RCW 79A.05.070.

Statute Being Implemented: RCW 79A.05.035.

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

Name of Proponent: WSPRC, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: David Cass, Olympia, 360-902-8606; Enforcement: Lisa Lantz, Olympia, 360-902-8641.

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

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 (5)(a)(i) does not identify WSPRC as one of the agencies required to prepare a cost-benefit analysis.

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

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

March 1, 2021
Valeria Veasley
Management Analyst

AMENDATORY SECTION (Amending WSR 10-15-024, filed 7/12/10, effective 8/12/10)

WAC 352-28-005 Definitions. When used in this chapter the following words and phrases shall have the meanings designated in this section unless a different meaning is expressly provided or unless the context clearly indicates otherwise.

(1) ~~("Catastrophic forest event" means a natural or accidental devastation of major proportions that results in drastic alteration of the natural environment by, but not limited to, wind, fire, insect infestation, forest disease, flooding, or landslide.~~

(2)) "Commission" means the Washington state parks and recreation commission.

~~((3))~~ (2) "Conservation" means the professional management of the agency's natural resources to ensure their long-term presence, function and enjoyment by the public.

(3) "Cruise" means a forest survey to locate and estimate the quantity of timber on a given area according to species, size, quality, possible products, or other characteristics.

(4) "Director" means the director of the Washington state parks and recreation commission.

(5) "Emergency tree" means any tree that has already failed, or that poses an imminent or probable likelihood of failure before the next inspection, based on the judgment of a professional forester, certified arborist, or staff member trained in tree risk rating and abatement techniques approved by the agency, and which due to its location, could impact a target.

(6) "Endangered species" means each plant, fungus and lichen species identified as endangered on the list of such species prepared by the department of natural resources Washington natural heritage program and each wildlife species identified as endangered by the Washington department of fish and wildlife in WAC ~~((232-12-014))~~ 220-610-010.

~~((6))~~ (7) "Natural resource(s)" includes biological organisms, their processes, dead or organic matter, soils, and geologic materials.

~~((7))~~ (8) "Resource conservation plan" means a plan that advances the stewardship of that resource. The plan may

address, although not be limited to, resource conservation, protection, restoration or mitigation.

~~((8))~~ (9) "Sensitive species" means each plant, fungus and lichen species identified as sensitive on the list of such species prepared by the department of natural resources Washington natural heritage program and each wildlife species identified as sensitive on the list of such species prepared by the Washington department of fish and wildlife.

~~((9))~~ (10) "Significant tree" means living and dead standing trees greater than 10 inches in diameter at breast height (4.5 feet above the ground).

(11) "Target" means a structure, facility, property, activity, or person that has the potential to be hit or impacted by a falling tree or tree part.

(12) "Threatened species" means each plant, fungus and lichen species identified as threatened on the list of such species prepared by the department of natural resources Washington natural heritage program and each wildlife species identified as threatened on the list of such species prepared by the Washington department of fish and wildlife.

(13) "Timber" means forest trees of commercial value.

AMENDATORY SECTION (Amending WSR 10-15-024, filed 7/12/10, effective 8/12/10)

WAC 352-28-010 Cutting, collection and removal of natural resources. (1) **Trees may be cut and removed subject to the following limitations:**

(a) **Significant trees:** (~~Significant trees means living and dead standing trees > 10 inches in diameter at breast height (4.5 feet above the ground);~~) Except in emergencies and when feasible, significant trees in any area under the jurisdiction and/or management of the commission shall be removed only after they have been evaluated, rated, appraised and marked by a professional forester, certified arborist, or staff member trained in agency-approved tree risk rating and abatement techniques. In addition, except where deemed an emergency tree, or in the event of wildfire, weather, or other natural emergencies, significant trees can be cut or removed only after compliance with (d) of this subsection and subsection (4) of this section, agency review through the tree activity worksheet process and upon the written approval of the director or the designee of the director.

(b) **Emergency trees:** (~~Emergency trees means any tree that has already failed (cracked, tipped, diseased, or standing dead) or that poses an imminent threat, based on the judgment of a professional forester, certified arborist, or staff member trained in tree risk rating and abatement techniques approved by the agency, and which due to its location, poses an imminent threat to a target. Imminent means likely to occur at any moment, and target means a structure, facility, or person that has the potential to be hit or impacted by a falling tree or tree part.)~~) The park manager or designee trained in tree risk rating and abatement techniques as prescribed by the agency forester or (~~arboriculture manager~~) certified arborist is authorized to immediately close the target area, and where the target cannot be relocated, cut or remove the emergency tree.

(c) **Worksheet:** The cutting or removal of any significant trees in landscapes classified recreation, heritage, or resource recreation by the commission shall, except in the case of emergency trees, occur only after agency review through the tree activity worksheet process and the written approval of the director or designee.

(d) **Consultation:** The cutting or removal of any significant trees in a natural area, natural forest area or natural area preserve shall, except in the case of emergency trees, be approved only by the director or designee and only after consultation with the Washington department of fish and wildlife and the department of natural resources Washington natural heritage program, the preparation of a resource conservation plan for affected natural resources, and a public hearing (~~on each such proposed cutting or removal conducted~~) in the county/counties in which the cutting or removal is to take place (~~as determined by the director. Prior notice of a hearing shall be published in a newspaper of general circulation in such county or by an alternative method prescribed by the commission deemed to yield equal or better public notice. Any person who requests notification of such proposed cutting or removal shall be sent prior notice of a hearing. A summary of the testimony presented at a hearing or received in writing shall be presented to the director~~).

(2) **Native plants, fungi, and dead organic matter:** The cutting or removal of natural resources, other than trees or those specified in WAC 352-32-350, 352-28-030 and 352-28-040, will only occur as a part of a resource conservation plan approved by the director or designee.

(3) **Protected species:** Natural resources may be cut and/or removed from areas supporting protected species, or for the purposes of enhancing habitat for protected species, under the following conditions:

(a) The cutting or removal of natural resources in any area known to be inhabited by endangered, threatened, or sensitive species shall, except in emergencies as defined in subsection (1)(b) of this section, follow requirements of the department of fish and wildlife and of the department of natural resources Washington natural heritage program and be approved only by the director or designee after consultation with those agencies, and the preparation of a mitigation plan for affected species.

(b) The cutting or removal of natural resources to enhance the habitat of a sensitive, threatened, or endangered species as defined in WAC 352-28-005, on lands managed by the commission or on other state lands, will only occur as a part of an interagency agreement or resource conservation plan that involves consultation with the Washington department of fish and wildlife, department of natural resources Washington natural heritage program, and as appropriate, other agencies and groups with expertise with these species, and is approved by the director or designee.

(4) **Land classification (chapter 352-16 WAC) criteria:** Natural resources may be cut and/or removed from the areas listed below for the following reasons only:

(a) Natural area preserves:

(i) Maintenance or construction of service roads, boundary fences, or trails, or modification of conditions only as may be required, and only where necessary, to meet park management goals and mitigated in a resource conservation

plan that involves consultation with the department of natural resources Washington natural heritage program, and as appropriate other agencies and is approved by the director or the designee of the director.

(ii) Maintain or restore a native plant community, species population, or ecological process as specified in a natural area preserve management plan prepared in consultation with the department of natural resources Washington natural heritage program.

(iii) Correction of conditions hazardous to persons, properties, and/or facilities on or adjacent to park land.

(iv) Control of diseases and insect infestations where adjacent lands are severely jeopardized or where a drastic alteration of the natural environment is expected to occur, after consultation with the department of natural resources Washington natural heritage program and other agencies and groups with expertise in ecosystem health as deemed appropriate by the director.

(v) Prevent the deterioration or loss of or facilitate the restoration of historical/cultural resources.

(vi) Maintenance or construction of fire lanes for abatement of fires.

(vii) Collection of specimens as specified in WAC 352-28-040, including consultation with the department of natural resources Washington natural heritage program.

(b) Natural areas and natural forest areas:

(i) Maintenance or construction of boundary fences, trails, trail structures, trail head facilities, interpretive sites, utility easements, or service roads only as may be required, and only where absolutely necessary to meet park management goals and mitigated in a resource conservation plan that involves consultation with the department of natural resources Washington natural heritage program, and as appropriate other agencies and is approved by the director or the designee of the director.

(ii) Maintain or restore a native plant community, species population, or ecological process as specified in a natural resource conservation plan prepared in consultation with the department of natural resources Washington natural heritage program, and as appropriate other agencies.

(iii) Correction of conditions hazardous to persons, properties, and/or facilities on or adjacent to park land.

(iv) Control of diseases and insect infestations where adjacent lands are severely jeopardized or where a drastic alteration of the natural environment is expected to occur, after consultation with the department of natural resources Washington natural heritage program and other agencies and groups with expertise in ecosystem health as deemed appropriate by the director or the designee of the director.

(v) Prevent the deterioration or loss of or facilitate the restoration of historical/cultural resources.

(vi) Maintenance or construction of fire lanes for abatement of fires.

(vii) Collection of edibles as specified in WAC 352-28-030 or specimens as specified in WAC 352-28-040.

(c) Recreation areas, resource recreation areas, and heritage areas:

(i) Area clearing necessary for park maintenance, and/or park development projects for day use and overnight recre-

ation facilities, road and utility easements, and administrative facilities.

(ii) Correction of conditions hazardous to persons, properties, and/or facilities on or adjacent to park land.

(iii) Cleanup of trees fallen, tipped, or damaged by the weather, fire, or other natural causes where they directly interfere with park management activities.

(iv) Creation of diverse native trees and other plants, coarse woody debris, and fungi sizes, ages, and species to achieve visual aspects that resemble a formal landscape, natural or historical setting, or to improve wildlife habitat.

(v) Maintenance or creation of a regenerating natural environment that will sustain low ground cover, shrubs, and understory and overstory trees to provide screening, wind, and sun protection.

(vi) Control of diseases and insect infestations where adjacent lands are severely jeopardized or where a drastic alteration of the natural environment is expected to occur.

(vii) Prevent the deterioration or loss of historical/cultural resources.

(viii) Maintenance or construction of fire lanes for abatement of fires.

(ix) Modification of conditions to maintain or restore a desired plant community, species population, or ecological process.

(x) Collection of edibles as specified in WAC 352-28-030 or specimens as specified in WAC 352-28-040.

(5) **Use of fallen trees:** When feasible, fallen trees shall be left on the ground when deemed environmentally beneficial or used for park purposes such as, but not limited to, approved building projects, trail mulching, and firewood, or where the tree has no economic values contributed to a state managed resource conservation effort. In natural area preserves, natural forest areas, natural areas, and resource recreation areas first consideration shall be given to leaving trees on the ground for natural purposes.

(6) **Parks use:** Subject to the guidelines of this section, the commission may authorize the use of natural resources within recreation areas, resource recreation areas, and heritage areas for park purposes.

AMENDATORY SECTION (Amending WSR 10-15-024, filed 7/12/10, effective 8/12/10)

WAC 352-28-020 Resource sales and leases. The following qualifications, procedures, and general provisions pertain to the sale of natural resources from commission owned or managed lands:

(1) Subject to the limitations set forth under WAC 352-28-010(4), the sale of natural resources will be undertaken only where they advance a commission approved development, are part of a resource conservation plan or interagency agreement approved by the director or designee, or are deemed by the director or designee to advance agency stewardship goals and are surplus to the ~~((parks))~~ park's needs.

(2) Prior to a sale of natural resources, qualified park personnel or their designated agent shall conduct an inventory or cruise of the materials, appraise the value of such materials, and establish a minimum acceptable bid, unless such natural

resources are for use by the park or qualify for direct sale under subsection ~~((4))~~ (5) of this section.

Where ~~((trees are))~~ timber is to be sold, such ~~((trees))~~ timber shall be cruised or appraised using methods consistent with those applied by the Washington department of natural resources or other applicable professional standards of forest land and timber appraisal. Complete records of the methods and assumptions used to make the cruise or timber appraisal and estimated minimum acceptable bids shall be maintained.

(3) Sales of timber where the ~~((appraised value))~~ cruised volume of the ~~((materials))~~ timber is in excess of ~~((twenty-five thousand dollars))~~ one million board-feet shall require approval by a majority of the commission.

(4) Sales of timber where the ~~((appraised value))~~ cruised volume of the ~~((materials))~~ timber is less than or equal to ~~((twenty-five thousand dollars))~~ one million board-feet and greater than five thousand board-feet shall require approval by the director or designee. In cases of heightened public controversy, the director may defer to approval by a majority of the commission.

(5) Sales of timber where the cruised volume of timber is less than or equal to five thousand board-feet shall require approval by the natural resources program manager.

(6) Sales of timber resulting from the conversion of forest land for the development of park facilities where the appraised value of the timber removed is in excess of twenty-five thousand dollars shall require approval by a majority of the commission.

(7) Sales of natural resources other than timber where the appraised value is in excess of twenty-five thousand dollars shall require approval by a majority of the commission.

(8) All sales shall be conducted pursuant to procedures approved by the commission.

WSR 21-06-078

WITHDRAWAL OF PROPOSED RULES EMPLOYMENT SECURITY DEPARTMENT

(By the Code Reviser's Office)

[Filed March 1, 2021, 12:01 p.m.]

WAC 192-140-200, 192-170-010, 192-170-020, 192-170-050, 192-170-070, 192-170-090, and 192-200-005, proposed by the employment security department in WSR 20-16-137, appearing in issue 20-16 of the Washington State Register, which was distributed on August 19, 2020, is withdrawn by the office of the code reviser under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Jennifer C. Meas, Editor
Washington State Register

WSR 21-06-079

WITHDRAWAL OF PROPOSED RULES EMPLOYMENT SECURITY DEPARTMENT

(By the Code Reviser's Office)

[Filed March 1, 2021, 12:01 p.m.]

WAC 192-170-010, 192-320-070, 192-320-075, 192-320-080, 192-320-081, 192-320-082, 192-320-083, and 192-320-084, proposed by the employment security department in WSR 20-16-104, appearing in issue 20-16 of the Washington State Register, which was distributed on August 19, 2020, is withdrawn by the office of the code reviser under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Jennifer C. Meas, Editor
Washington State Register

WSR 21-06-080

PROPOSED RULES WASHINGTON STATE LOTTERY

[Filed March 1, 2021, 2:12 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-23-055.

Title of Rule and Other Identifying Information: Washington's lottery is proposing to amend chapter 315-06 WAC, General lottery rules, in order to implement the voluntary self-exclusion program required by SHB 1302 (2019), codified as RCW 67.70.040(5).

Hearing Location(s): On April 22, 2021, at 8:30 a.m., virtual. In response to the COVID-19 public health emergency, the commission will not provide a physical location in order to promote social distancing. See walottery.com or call or email Kristi Weeks for details on how to participate virtually.

Date of Intended Adoption: April 22, 2021.

Submit Written Comments to: Kristi Weeks, P.O. Box 4300, Olympia, WA 98504-3000, email KWeeks@walottery.com, fax 360-515-0416, by April 21, 2021.

Assistance for Persons with Disabilities: Contact Debbie Robinson, phone 360-791-3045, fax 360-515-0416, TTY 360-586-0933, email DRobinson@walottery.com, by April 14, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Proposed changes to chapter 315-06 WAC would allow for the addition of a new rule outlining the voluntary self-exclusion program for persons suffering from problem gambling or a gambling disorder. This new program provides those suffering from problem gambling or gambling disorder the opportunity to exclude themselves from redeeming certain winning lottery tickets or participating in lottery promotions.

Reasons Supporting Proposal: Washington's lottery is required by legislature to adopt rules establishing a program that allows a person to voluntarily exclude themselves from lottery activities (SHB 1302 (2019)) no later than June 30, 2021.

Statutory Authority for Adoption: RCW 67.70.040 (1), (3), and (5).

Statute Being Implemented: RCW 67.70.040.

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

Name of Proponent: Washington's lottery, governmental.

Name of Agency Personnel Responsible for Drafting, implementation, and enforcement: Kristi Weeks, 814 4th Avenue East, Olympia, WA, 360-810-2881.

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

A cost-benefit analysis is not required under RCW 34.05.328. The lottery is not an agency listed in RCW 34.05.-328 (5)(a)(i). Further, the lottery does not voluntarily make that section applicable to the adoption of this rule pursuant to subsection (5)(a)(ii) and to date the joint administrative rules review committee has not made the section applicable to the adoption of this rule.

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

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; and rule content is explicitly and specifically dictated by statute.

March 1, 2021

Kristi Weeks

Director of Legal Services

NEW SECTION

WAC 315-06-220 Voluntary self-exclusion. (1) The voluntary self-exclusion program is established for the purpose of allowing persons to exclude themselves from lottery play and related activities. Each person who enrolls in the voluntary self-exclusion program acknowledges that it is their responsibility to refrain from engaging in lottery play and other related activities.

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

(a) "Director" means the director of the Washington state lottery commission.

(b) "Excluded prize" means: (i) Any monetary, promotional, or merchandise prize valued at more than \$600; and (ii) any monetary, promotional, or merchandise second chance drawing prize regardless of value.

(c) "Lottery" means the Washington state lottery commission, otherwise known as Washington's lottery.

(d) "Lottery play" means purchase, play, or redemption of lottery tickets or games.

(e) "Lottery related activities" or "related activities" include, but are not limited to: Promotions, second chance promotions or drawings, events, and participation in the lottery's loyalty program.

(f) "Merchandise prize" means a prize offered by the lottery that is a product, experience, or service other than a monetary prize. Merchandise prizes include gift cards.

(g) "Monetary prize" means a prize offered by the lottery that is payable as a check, bank transfer, or annuity.

(h) "Participant" means a person who has enrolled in the program.

(i) "Prize" means any award, financial or otherwise, awarded by the director. Prizes may include any monetary amount, merchandise item, or experience offered by the lottery.

(j) "Promotion" means a time-limited opportunity for a player to receive a prize or other benefit not typically offered by the lottery, the purpose of which is to promote a certain lottery product, activity, partnership, or event.

(k) "Second chance lottery promotion" or "second chance drawing" means a drawing or promotion wherein a player must submit a nonwinning lottery ticket in order to be eligible to win a prize.

(l) "Voluntary self-exclusion program" or "program" means the voluntary self-exclusion program authorized under RCW 67.70.040, and does not apply to any form of gambling other than the lottery.

(3) Enrollment. A person may enroll in the program in person or by mail.

(a) In person at a lottery office by:

(i) Submitting a completed application on a form provided by the lottery;

(ii) Providing proof of identity. Acceptable forms of identification are: A valid driver's license from any state; a government-issued identification card containing the person's name, photograph, and date of birth; or a valid United States or Canadian passport; and

(iii) Any other documentation required by the director.

(b) Through the mail by:

(i) Submitting a completed application on a form provided by the lottery. The form must be notarized;

(ii) Providing proof of identity. Acceptable forms of identification are a copy of: A valid driver's license from any state; a government-issued identification card containing the person's name, photograph, and date of birth; or a valid United States or Canadian passport; and

(iii) Any other documentation required by the director.

(4) Period of enrollment.

(a) At the time of enrollment, the participant shall select a one-, three-, or five-year period of voluntary self-exclusion.

(b) At the time of enrollment, the participant may select the effective date of participation. If no date is selected, the effective date shall be the next business day after enrollment.

(c) Once enrolled, the participant shall not change the effective date or term of enrollment, except to extend the period of enrollment pursuant to subsection (5) of this section.

(d) Once enrolled, the participant shall not exit the program prior to termination of the selected period of voluntary self-exclusion.

(5) Termination, extension, and renewal of enrollment. Upon expiration of the selected period of enrollment, the participant will be removed from the program. The participant may extend their current enrollment by submitting a new application as required in subsection (3) of this section at least thirty days prior to expiration of the current enrollment period. A participant may reenroll in the program at any time

following expiration of the current enrollment period by submitting a new application as required in subsection (3) of this section.

(6) Voluntary self-exclusion.

(a) During the period of enrollment, the participant acknowledges and agrees:

(i) The participant will not participate in lottery play or related activities;

(ii) The participant will not claim, redeem, or collect any excluded prize;

(iii) The participant will not create or maintain a lottery loyalty program account; and

(iv) Points or benefits accrued in the participant's existing loyalty program account, if any, will expire based on established expiry date(s) and no refund or replacement shall be provided by the lottery.

(b) Participants shall not be entitled to claim, redeem, or collect any excluded prize. In the event a participant attempts to claim, redeem, or collect an excluded prize during the period of enrollment, monetary prizes will be forfeited to the problem gambling account created in RCW 41.05.751 after payments of any debt under RCW 67.70.255. Taxes will be withheld and reported to the Internal Revenue Service for any portion of an excluded prize used to satisfy a debt. Merchandise prizes will be retained by the lottery.

(c) The lottery will take all reasonable steps to remove the participant from existing promotional mailing lists, electronic distribution lists, or other promotional listings.

(d) The program is intended to assist participants in controlling their gambling habits and promote responsible gambling. The lottery, its licensees, retailers, vendors, agents, contractors, and employees are not liable for damages in any civil action by any person based on:

(i) Compliance or noncompliance with this chapter;

(ii) An action or failure to act under this chapter;

(iii) Failure to withhold lottery privileges from an individual;

(iv) Permitting a participant to engage in lottery play or related activities; or

(v) Payment of a winning lottery prize to a participant.

(e) Information submitted by a participant related to the program is exempt from public inspection and copying pursuant to RCW 42.56.230. De-identified information may be released for statistical or research purposes. For purposes of this section, "de-identified" means captured personal information that cannot reasonably identify, relate to, describe, be capable of being associated with, or be linked, directly or indirectly, to a particular individual.

WSR 21-06-084
PROPOSED RULES
COMMUNITY COLLEGES
OF SPOKANE

[Filed March 2, 2021, 8:02 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-23-055.

Title of Rule and Other Identifying Information: New WAC 132Q-10-600, 132Q-10-601, 132Q-10-602, 132Q-10-603, 132Q-10-604, 132Q-10-605, 132Q-10-606, 132Q-10-607, and 132Q-10-608.

Hearing Location(s): On April 20, 2021, at 9:00 a.m., virtual meeting. Join Zoom meeting <https://ccs-spokane.zoom.us/j/85749477671?pwd=LzM0K0JMS1p6eG1WL2hTbm5xTXA5UT09>, Meeting ID 857 4947 7671, Passcode 503781, One tap mobile+12532158782,,85749477671#,,,,*503781# US (Tacoma), +16699006833,,85749477671#,,,,*503781# US (San Jose). The special meeting will take place in a virtual space to comply with government restrictions on public gatherings due to COVID-19 health risks. This link will be shared on the Spokane Community Colleges WAC rules process site, <https://ccs.spokane.edu/About-Us/Public-Disclosures#RuleMaking>.

Date of Intended Adoption: April 20, 2021.

Submit Written Comments to: John O'Rourke, 501 North Riverpoint Boulevard, Mailstop 1006, Spokane, WA 99217-6000, email john.orourke@ccs.spokane.edu, mobile 509-220-4200, by April 13, 2021.

Assistance for Persons with Disabilities: Contact John O'Rourke, phone 509-434-5185, fax 509-434-5279, TTY 509-434-5275, email john.orourke@ccs.spokane.edu, mobile 509-220-4200.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Community College of Spokane edited sections and created new sections to update current chapter 132Q-10 WAC, Student conduct code, in order to be in compliance with the new United States Department of Education (DOE) Title IX regulations that went into effect on August 14, 2020. This requires updates to the colleges' student conduct code to be compliant with federal regulations.

Reasons Supporting Proposal: On May 19, 2020, the Federal Register printed amendments to Title IX regulations (85 F.R. 30575). The new regulations address the grievance process for formal complaints of sexual harassment. This updates the college's student conduct code to be compliant with federal regulations. Agencies not in compliance would be at risk of losing federal funding.

Statutory Authority for Adoption: Chapter 34.05 RCW; and RCW 28B.50.140(13).

Statute Being Implemented: 34 C.F.R. Part 106.

Rule is necessary because of federal law, [no information supplied by agency].

Name of Proponent: Community Colleges of Spokane, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Keith Sayles and Glen Cosby, Spokane, Washington, 509-533-3603 and 509-533-7015.

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

A cost-benefit analysis is not required under RCW 34.05.328. Community Colleges of Spokane is not a listed agency under RCW 34.05.328 and is therefore exempt from this provision.

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

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute; and rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

March 1, 2021
John O'Rourke
WAC Coordinator

SUPPLEMENTAL TITLE IX STUDENT CONDUCT PROCEDURES

NEW SECTION

WAC 132Q-10-600 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 Community Colleges of Spokane's standard disciplinary procedures, WAC 132Q-10-101 through 132Q-10-503, these supplemental procedures shall take precedence.

NEW SECTION

WAC 132Q-10-601 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, the Community Colleges of Spokane may impose disciplinary sanctions against a student who commits, attempts to commit, or aids, abets, incites, encourages, or assists another person to commit, an act(s) of "sexual harassment."

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

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

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

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

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

(b) Nonconsensual sexual contact. Any actual or attempted sexual touching, however slight, with any body part or object, by a person upon another person that is without

consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

(c) Incest. Sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either wholly or half related. Descendant includes stepchildren and adopted children under the age of eighteen.

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

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

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

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

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

(i) The length of the relationship;

(ii) The type of relationship; and

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

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

NEW SECTION

WAC 132Q-10-602 Title IX jurisdiction. (1) This supplemental procedure applies only if the alleged misconduct:

(a) Occurred in the United States;

(b) Occurred during a Community Colleges of Spokane educational program or activity; and

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

(2) For purposes of this supplemental procedure, an "educational program or activity" is defined as locations, events, or circumstances over which the Community Colleges of Spokane 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 Community Colleges of Spokane.

(3) Proceedings under this supplemental procedure must be dismissed if one or all of the requirements of subsection (1)(a) through (c) of this section have not been met. Upon receipt of the formal complaint, the Title IX coordinator shall

make an initial inquiry into whether Title IX jurisdiction extends to the complaint. If the Title IX coordinator determines there is no Title IX jurisdiction, the Title IX coordinator will issue a notice of dismissal in whole or part explaining why some or all of the Title IX claims have been dismissed. Dismissal under this supplemental procedure does not prohibit the Community Colleges of Spokane from pursuing other disciplinary action based on allegations that the respondent violated other provisions of the Community Colleges of Spokane's student conduct code, WAC 132Q-10-101 through 132Q-10-503.

(4) After receipt of the investigation report, 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. Dismissal under this supplemental procedure does not prohibit the Community Colleges of Spokane from pursuing other disciplinary action based on allegations that the respondent violated other provisions of the Community Colleges of Spokane's student conduct code, WAC 132Q-10-101 through 132Q-10-503.

NEW SECTION

WAC 132Q-10-603 Initiation of discipline. (1) Upon receiving the Title IX investigation report from the Title IX coordinator or designee, 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 administrative panel and serving the notice on the respondent and the complainant, and their respective advisors. The notice must:

- (a) Set forth the basis for Title IX jurisdiction;
- (b) Identify the alleged Title IX violation(s);
- (c) Set forth the facts underlying the allegation(s);
- (d) Identify the range of possible sanctions that may be imposed if the respondent is found responsible for the alleged violation(s); and
- (e) Explain that the parties are entitled to be accompanied by their chosen advisors during the hearing and that:
 - (i) The advisors will be responsible for questioning all witnesses on the party's behalf;
 - (ii) An advisor may be an attorney; and
 - (iii) The Community Colleges of Spokane 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 132Q-10-604 Prehearing procedure. (1) Upon receiving the disciplinary notice, the chair of the student conduct administrative panel will send a hearing notice to all par-

ties, in compliance with WAC 132Q-10-315. In no event will the hearing date be set less than ten days after the Title IX coordinator or designee 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 the Community Colleges of Spokane intends to offer the evidence at the hearing.

NEW SECTION

WAC 132Q-10-605 Rights of parties. (1) The Community Colleges of Spokane's student conduct procedures, WAC 132Q-10-101 through 132Q-10-503, and this supplemental procedure shall apply equally to all parties.

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

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

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

NEW SECTION

WAC 132Q-10-606 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 132Q-10-607 Initial order. (1) In addition to complying with WAC 132Q-10-330, the student conduct administrative panel 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 student conduct administrative panel's determination of responsibility for each allegation;
- (f) Describes any disciplinary sanction or conditions imposed against the respondent, if any;
- (g) Describes to what extent, if any, complainant is entitled to remedies designed to restore or preserve complainant's equal access to the Community Colleges of Spokane's education programs or activities; and
- (h) Describes the process for appealing initial orders from Spokane Community College to Spokane Falls Community College's vice president of student affairs or initial orders from Spokane Falls Community College to the vice president of student services.

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

NEW SECTION

WAC 132Q-10-608 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 132Q-10-335.

(2) For appeals coming from Spokane Community College, the vice president of student affairs at Spokane Falls

Community College 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). For appeals coming from Spokane Falls Community College, the vice president of student services at Spokane Community College 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) The appropriate vice president of student affairs/services shall serve the final decision on the parties simultaneously.

WSR 21-06-086

PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed March 2, 2021, 8:25 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-20-105.

Title of Rule and Other Identifying Information: WAC 182-557-0500 Involuntary disenrollment from a health home.

Hearing Location(s): On April 6, 2021, at 10:00 a.m. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the agency will not provide a physical location for this hearing. This promotes social distancing and the safety of the citizens of Washington state. A virtual public hearing, without a physical meeting space, will be held instead. To attend the virtual public hearing, you must register at the following link <https://attendee.gotowebinar.com/register/1443618498460852747>, Webinar ID 560-087-099. After registering, you will receive a confirmation email containing the information about joining the webinar.

Date of Intended Adoption: Not sooner than April 7, 2021.

Submit Written Comments to: Health Care Authority (HCA), Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by April 6, 2021.

Assistance for Persons with Disabilities: Contact Amber Loughheed, phone 360-725-1349, fax 360-586-9727, telecommunication[s] relay service 711, email amber.loughheed@hca.wa.gov, by March 19, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is proposing a new rule regarding the disenrollment of health home enrollees for cause to align with agency policy.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Not applicable.

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Melinda Froud, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1408; Implementation and Enforcement: Glenda Crump, P.O. Box 45502, Olympia, WA 98504-5502, 360-725-1338.

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

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

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

March 2, 2021
Wendy Barcus
Rules Coordinator

NEW SECTION

WAC 182-557-0500 Involuntary disenrollment from a health home. (1) **Involuntary disenrollment for health and safety concerns.** If a qualified health home or care coordinator believes there are unresolved health or safety concerns with a health home client, the medicaid agency reviews the health home's written request for involuntary disenrollment of the client from the health home program.

(a) Concerns about health and safety include, but are not limited to:

- (i) Inappropriate or threatening behavior, such as inappropriate sexual or physical behavior;
- (ii) Illegal or criminal activity;
- (iii) Harassment; or
- (iv) Environmental hazards, such as methamphetamine laboratories, dangerous animals, poor sanitation, or an unsafe home structure.

(b) The agency does not approve requests to end enrollment that are solely due to uncooperative or disruptive behavior resulting from a client's special needs, disability, or behavioral health condition, except when continued enrollment in the health home seriously impairs the health home's ability to furnish services to the client or other clients.

(c) Health homes requesting disenrollment must provide documentation of any reasonable modifications attempted or made in light of a client's special needs, disability, or behavioral health condition.

(d) A client's involuntary disenrollment is for one year, beginning on the first day of the month following the date on the notice of involuntary disenrollment.

(2) **Disenrollment request.** The agency grants a request from a qualified health home to involuntarily disenroll a client when the request is submitted to the agency in writing and includes documentation for the agency to determine that the criteria under subsection (1) of this section is met.

(3) **Client notification and appeal rights.** The agency notifies the qualified health home of the agency's decision within ten business days. If the request is approved, the agency sends a written notice of involuntary disenrollment to the client. The notice includes:

(a) The client's administrative hearing rights as described in chapter 182-526 WAC;

(b) The specific factual basis for disenrolling the client;

(c) The applicable provision under subsection (1) of this section, and any other applicable rule on which the disenrollment is based; and

(d) Any other information required by WAC 182-518-0005.

(4) **Reenrollment.** The agency may reenroll a client with a qualified health home within one year if:

(a) All of the concerns that led to the involuntary disenrollment are resolved; and

(b) The client continues to meet the health home eligibility criteria in this chapter.

WSR 21-06-087
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed March 2, 2021, 9:03 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-20-112.

Title of Rule and Other Identifying Information: Third-party administrator (TPA) licensing and claims administrator certification; chapter 296-15 WAC, Workers' compensation self-insurance rules and regulations.

Proposing to amend WAC 295-15-001 Definitions, 296-15-350 Handling of claims, and 296-15-360 Communicating to injured workers during the course of the claim.

Proposing to create new WAC 296-15-520 Self-insured third-party administrator (TPA) licensing requirements, 296-15-530 Self-insured third-party administrator (TPA) licensing application requirements, 296-15-540 Self-insured third-party administrator (TPA) licensing renewal application requirements, 296-15-550 Self-insured third-party administrator (TPA) duties and performance requirements, 296-15-560 Self-insured third-party administrator (TPA) penalties, and 296-15-570 Self-insured third-party administrator (TPA) license suspension and revocation.

Hearing Location(s): On April 6, 2021, at 10:00 a.m. Pacific Time (U.S. and Canada). Join Zoom meeting <https://us02web.zoom.us/j/84156545645>, Meeting ID 841 5654 5645, Password 2409Hear! Join by phone +1 253-215-8782 US (Tacoma). Find your local number <https://us02web.zoom.us/j/84156545645>.

Date of Intended Adoption: May 18, 2021.

Submit Written Comments to: Anume Orukari, MPA, CDMS, P.O. Box 44890, Olympia, WA 98504-4890, email Anume.Orukari@Lni.wa.gov, fax 360-902-6977, by April 6, 2021, by 5:00 p.m. PST.

Assistance for Persons with Disabilities: Contact Anume Orukari, MPA, CDMS, phone 360-902-6917, fax 360-902-6977, email Anume.Orukari@Lni.wa.gov, by March 26, 2021, by 5:00 p.m. PST.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: SHB 2409 was enacted into law April 2020. RCW 51.14.170 requires TPAs who administer claims for self-insured employers to be licensed by labor and industries (L&I). It also requires all claim administrators managing self-insured claims to be certified; today, only about twenty-five percent of claims administrators are certified. This law also gives L&I the authority to penalize TPAs for rule violations. Rule making is necessary to align existing rule language with RCW 51.14.170 and to provide clarity on TPA licensing and claim administrator certification.

Reasons Supporting Proposal: RCW 51.14.170 mandated L&I to adopt rules for TPA licensing and claim administrator certification.

Statutory Authority for Adoption: RCW 51.04.020 and 51.32.190; chapter 277, Laws of 2020 (SHB 2409).

Statute Being Implemented: RCW 51.14.170.

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

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting: Anume Orukari, MPA, CDMS, Olympia, Washington, 360-902-6917; Implementation: Starla Treznoski, Olympia, Washington, 360-902-5668; and Enforcement: Mike Ratko, Tumwater, Washington, 360-902-6369.

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

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Anume Orukari, MPA, CDMS, P.O. Box 44890, Olympia, WA 98504-4890, phone 360-902-6917, fax 360-902-6977, email Anume.Orukari@Lni.wa.gov.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The implementation of these new rules would help improve the claims process and ensure quality claims management, which benefit affected employers, injured workers, and the department as well. The department estimates that the proposed changes will impose a new cost of less than \$3,000 on all affected parties. On the benefit side, the proposed requirements that apply to TPAs and claims administrators will help improve claims administration and the well-being of the affected Washington workers from the enhanced quality, consistency and efficiency of claims processing. While the majority of those benefits are qualitative in nature and difficult to quantify, the department estimates annual quantitative benefits of \$88,000 to \$445,000. Therefore, the probable benefits of these rule amendments are anticipated to outweigh the probable costs.

A copy of the detailed cost calculations may be obtained by contacting Anume Orukari, MPA, CDMS, P.O. Box 44890, Olympia, WA 98504-4890, phone 360-902-6917, fax 360-902-6977, email Anume.Orukari@Lni.wa.gov.

March 2, 2021

Joel Sacks
Director

AMENDATORY SECTION (Amending WSR 09-01-177, filed 12/23/08, effective 1/23/09)

WAC 296-15-001 Definitions. (1) "Self-insurance electronic data reporting system (SIEDRS)": SIEDRS is a computer system that collects claim data electronically from self-insurers. Effective July 1, 2008, all self-insurers must send timely and accurate claim data to SIEDRS in the required format.

(2) "Substantially similar":

(a) The text of the department's document has not been altered or deleted; and

(b) The self-insurer's document has the text:

(i) In approximately the same font size;

(ii) With the same emphasis (bolding, italics, underlining, etc.); and

(iii) In approximately the same location on the page as the department's document.

(3) "Third-party administrator (TPA)" (~~is an entity which contracts to administer workers' compensation claims for a self-insured employer~~) is a business entity that contracts with one or more self-insured employers to handle self-insured employer's claims under WAC 296-15-350. TPAs who handle Washington claims must be licensed by the department of labor and industries. A business entity that is majority owned by a self-insured employer it contracts to handle claims for will not be considered a TPA of that self-insured employer.

(4) "Claims management entity": All individuals designated by the self-insured employer to administer workers' compensation claims, including self-administered organizations and third-party administrators.

AMENDATORY SECTION (Amending WSR 19-01-095, filed 12/18/18, effective 7/1/19)

WAC 296-15-350 Handling of claims. What elements must a self-insurer or third-party administrator (TPA) have in place to ensure appropriate handling of claims?

Every self-insurer or TPA must:

(1) Establish procedures for securing the confidentiality of claim information.

(2) Have sufficient numbers of certified claims administrators to ensure uninterrupted administration of claims. In this regard:

(a) ~~((There must be at least one certified claims administrator involved in the daily management of the employer's claims.~~

~~((b) If claims are administered in more than one location, there must be at least one certified claims administrator in each location where claims are managed.))~~ Effective July 1, ~~((2020, to ensure consistent application and delivery of benefits pursuant to Washington laws))~~ 2021, every person making claim decisions ~~((outside the state of Washington))~~ must be a certified claims administrator ~~((and maintain core business office hours for Pacific Standard Time))~~ or in the process of getting their certification. For the purposes of this section, every person making claim decisions includes:

- (i) Those persons who manage claims directly; and
- (ii) Who request to allow or deny claims under WAC 296-15-420;
- (iii) Take action on claims under WAC 296-15-425; or
- (iv) Close claims under WAC 296-15-450.

~~((e))~~ (b) Excluded from the requirement of ~~((b))~~ (a) of this subsection are those persons who manage operations indirectly in support of claims administrators, such as, human resources, accounting, or executive management.

~~((e))~~ (c) When a new person is hired by the ~~((out-of-state))~~ employer or TPA to make claims decisions, if the new person is not already a certified claims administrator, then the new person, within six months of hire, must begin working toward achievement of certification through a comprehensive goal-oriented curriculum approved by the department to achieve certification within two years. While in process of meeting educational needs, the employer must ensure mentoring is provided by a Washington certified claims administrator ~~((and maintain a minimum of one Washington certified employee at each out-of-state location where claims are managed))~~. Providers of the comprehensive goal-oriented curriculum will conduct regular training courses to allow for a new person in the process of completing the training to successfully manage Washington claims and achieve Washington certification within two years. This will include considering online alternatives, when feasible.

~~((e))~~ (d) When a certified claims administrator leaves the hire of an employer or ~~((third-party administrator, whether in-state or out-of-state))~~ TPA, and this results in an employer or TPA temporarily not meeting the qualifications for a certified claims administrator, the employer may apply for a temporary waiver for up to six months pending hiring of a replacement.

(3) Designate one certified claims administrator as the department's primary contact person for claim issues.

(4) Designate one address for the mailing of all claims-related correspondence. The self-insurer is responsible for forwarding documents to the appropriate location if an employer's claims are managed by more than one organization.

(5) Establish procedures to answer questions and address concerns raised by workers, providers, or the department.

(6) Ensure claims management personnel are informed of new developments in workers' compensation due to changes in statute, case law, rule, or department policy.

(7) Include the department's claim number in all claim-related communications with workers, providers, and the department.

(8) Legibly date stamp or produce an imprint on incoming correspondence, identifying both the date received and the location or entity that received it.

(9) Ensure a means of communicating with all injured workers.

AMENDATORY SECTION (Amending WSR 19-01-095, filed 12/18/18, effective 7/1/19)

WAC 296-15-360 Qualifications of personnel—Certified claims administrators. (1) **What is a certified claims administrator?** An experienced adjudicator who has been

certified by the department to meet the requirements of WAC 296-15-350(2).

(2) How do I become a certified claims administrator for self-insured claims?

(a) Under the mentorship of a certified claims administrator, have a minimum of ~~((two))~~ one year~~((s))~~ of experience ~~((at least twenty hours per week,))~~ in the administration or oversight of ~~((time-loss))~~ claims under Title 51 RCW. The experience must have occurred within the five years immediately prior to your filing of the application to take the "self-insurance claims administrator" test.

(b) Have completed:

(i) A comprehensive goal-oriented curriculum approved by the department and resulting in a worker's compensation professional designation; or

(ii) An approved training program within the department.

(c) Take and pass the department's "self-insurance claims administrator" test. The department will provide annual reports to stakeholders. The department will report the results, identify and consider feasible alternative methods of test delivery, make any recommendations for improvements if appropriate and seek comments from stakeholders.

(i) If you have the requisite experience under (a) of this subsection, you may take the test without completing the training required under (b)(i) or (ii) of this subsection. ~~((If you do not pass the test, then you must wait a minimum of three months to retake the test at a date and time scheduled by the department.))~~ The provision to take the test for certification without completing the requisite training will expire ~~((two years from the effective date of this rule))~~ January 1, 2022.

(ii) If you have already passed the test and are a certified claims administrator, you will maintain your certified claims administrator designation without completing the training required under (b)(i) or (ii) of this subsection, and you will need to fulfill the continuing education credits under subsection (6) of this section.

After passing the test, you are designated a certified claims administrator. This is a lifetime certification, provided that continuing education requirements are met.

(3) How do I receive approval to take the test? To be approved to take the "self-insurance claims administrator" test, you must apply using the department's online database ~~((no less than forty-five days prior to the next scheduled test date))~~.

The department will review your application and determine if you meet the minimum requirements to take the test. The department will respond to your application no less than fourteen days prior to the next scheduled test date.

(4) What happens if I fail the test? You may retest ~~((six months))~~ after the failed test.

If you are a certified claims administrator and you fail the test, your certification will be terminated until you retest and pass.

(5) What must a department-approved comprehensive goal-oriented curriculum for a worker's compensation professional designation include? The curriculum must include:

(a) All phases of basic, intermediate, and advanced claim validity issues, including injury during the course of employment, occupational exposure and illness or disease, causal relationship of injury or illness, prima facie consideration, and submittal of claims to department;

(b) All phases of basic, intermediate, and advanced medical benefit management, including treatment authorization, surgery approval, aggravation of conditions, segregation of conditions, use of consultations and independent medical examinations (IMEs), and department medical guidelines;

(c) All phases of basic, intermediate, and advanced compensation management, including determining the wage as the basis of compensation, payment of temporary total disability payments, permanent partial disability payments, and loss of earning power compensation; and

(d) All phases of basic, intermediate, and advanced work disability prevention, including worker-centric return to work practices, modified or light duty jobs, other vocational recovery interventions, and medical provider collaboration on return to work, activity prescription forms, and job analyses.

(e) Training must include at least seventy-two credit hours as provided in subsection (6)(b) of this section.

(f) Curriculum submitters must provide their written core curriculum plan to the department with a table of contents listing the courses in the curriculum, and a detailed description of the content for each course. The curriculum advisory committee will review the submitters' proposed curriculum content and advise of any recommended adjustments, and the department will determine and provide notice of approval or denial within ninety days, or extend the time for approval or denial of the plan for another ninety days. The department may request additional materials, and require adjustments in the core curriculum plan prior to approval, as it deems necessary.

A department-approved curriculum must be reapproved every three years.

(6) How does a certified claims administrator maintain their certified status? A certified claims administrator may maintain certified status by earning the required continuing education credits as outlined in this subsection.

(a) You must earn forty-five credits every three years.

Credits earned within five years prior to the effective date of this rule may be carried forward and applied toward meeting the required continuing education credits for three years following the effective date of this rule up to a maximum of forty-five credits.

Credits may be earned in the following areas:

(i) Instruction on relevant workers' compensation subjects that help injured workers heal and return to work, and focus on areas of recovery such as, but not limited to, medical benefit management, payment of compensation, and vocational services;

(ii) Instruction on existing or historical workers' compensation statutes, case law, rule, or departmental policy, which may assist with managing claims, answering questions, and addressing concerns in accordance with WAC 296-15-350(5);

(iii) Instruction on new developments in workers' compensation such as, but not limited to, changes in statute, case law, rule, or departmental policy, which may assist claims

management personnel in remaining current in accordance with WAC 296-15-350(~~(6)~~) (5); or

(iv) Credits may also be earned in injury prevention and safety, in addition to credits for injury recovery and claims administration, but not to exceed five of the forty-five credits in three years.

The forty-five credits must include any training designated as mandatory by the department. All training must be specific to Washington law, or describe in detail how the training is relevant to administering Washington law. If you fail to earn sufficient continuing education credits, you will be required to retake the written test to maintain your certified status.

(b) Continuing education providers must submit a training plan with a detailed outline of each area of training to the department when courses are offered. The curriculum advisory committee will review the submitters' proposed training plan and advise of any recommended adjustments, and assignment of course credit will be determined by the department as follows: A maximum of one credit per hour of training will be awarded. Credit will be assigned based on 0.5 increments; no credit will be awarded for increments less than 0.5.

(c) Department-approved continuing education courses must be reapproved biannually (every two years).

(d) You must track and report earned credits at the department's online database. You must obtain and retain signed verification of courses attended. Verification of earned credits must be received by the department by the date the certified claims administrator's certification expires. Extensions will not be granted. If your certification lapses, you will not need to complete the comprehensive goal-oriented curriculum if you apply for reinstatement within two years of the lapse, and then take and pass the department's "self-insurance claims administrator" test.

(e) The department may audit the reported credits of any certified claims administrator at random, or "for cause." Falsification of reported credits will result in revocation of the individual's certified claims administrator status, and may result in the department's refusal of future applications to take the self-insurance claims administrator test.

(7) How often must certified claims administrators notify the department of changes to their contact information? Certified claims administrators must notify the department within thirty calendar days of the effective date of a change in mailing address, work location, or name. Changes must be reported using the department's online database.

NEW SECTION

WAC 296-15-520 Self-insured third-party administrator (TPA) licensing requirements. To be licensed as a TPA, a business entity must:

(1) Be licensed to do business in the state of Washington, as evidenced by holding a business license from the department of revenue;

(2) Demonstrate to the department's satisfaction that it can meet the requirements for handling claims under WAC

296-15-350 for the self-insured employers it contracts with; and

(3) Comply with the reporting requirements of these rules in accordance with Title 51 RCW.

NEW SECTION

WAC 296-15-530 Self-insured third-party administrator (TPA) licensing application requirements. (1) To apply for a TPA license, a business entity must:

(a) Submit to the department a department-developed application;

(b) Provide a list of the self-insured employers in Washington the TPA is under contract to handle claims for;

(c) Provide a list of their certified claims administrators; and

(d) Provide a list of their claims administrators in the process of obtaining their certification in accordance with WAC 296-15-360.

(2) Upon receipt of the required information above, the department will respond within thirty calendar days with the status of the TPA's license request.

NEW SECTION

WAC 296-15-540 Self-insured third-party administrator (TPA) licensing renewal application requirements.

(1) A TPA must apply annually to renew its license. To apply, the TPA must:

(a) Submit a department-developed renewal application to the department;

(b) Provide an updated list of the self-insured employers in the state of Washington the TPA handles claims for;

(c) Provide an updated list of their certified claims administrators; and

(d) Provide an updated list of their claims administrators in the process of obtaining their certification in accordance with WAC 296-15-360.

(2) The department will review the TPA's license to ensure the submitted materials together with other evidence demonstrates the TPA continues to meet the requirements of WAC 296-15-520 and 296-15-550.

(3) Provisional status may be added to a TPA's license who fails to renew license as required in accordance with 296-15-570.

NEW SECTION

WAC 296-15-550 Self-insured third-party administrator (TPA) duties and performance requirements. Every TPA must:

(1) Agree to be responsible for ensuring that claims are managed in accordance with Title 51 RCW, Washington Administrative Codes, L&I policies, L&I medical treatment guidelines, and medical aid fee schedule.

(2) Follow recognized claim processing practices to include:

(a) Promptly respond to inquiries from workers, L&I, ombuds office, and medical providers:

(i) Telephone inquiries within three business days; and

(ii) Written correspondence within fifteen business days, unless otherwise specified.

(b) Provide workers with a current contact name and phone number to address their questions and concerns.

(c) Provide the reason(s) for the examination in the worker's independent medical examination (IME) appointment letter.

(d) Keep and preserve the claim records of the contracting self-insured employer and make available to the department upon request.

(i) If the TPA discontinues managing claims, then the TPA must either transfer all claim records to the employer or a new TPA, whichever applies.

(ii) If the employer defaults, the TPA must ensure preservation of the claim records, and transfer of all open claims to the department within five business days and all closed claims to the department within thirty calendar days of the date of default.

(e) Demonstrate competent claims handling in all areas of the comprehensive core curriculum under WAC 296-15-360(5) as verified by standard department performance-based audits.

(i) Audits may include, but are not limited to, review of timeliness, accuracy, entitlement to benefits, complaint-based audits or issue-based audits.

(ii) Workers or their representatives, providers, or the ombuds, may submit a complaint in writing or electronically.

(f) Promptly remediate any repeat audit deficiencies in accordance with WAC 296-15-560.

(g) Provide automatic deposit of benefit checks to workers or their representatives. The TPA may not electronically reverse the benefit payment deposited in an account, but must instead pursue any payment adjustments as provided in RCW 51.32.240.

NEW SECTION

WAC 296-15-560 Self-insured third-party administrator (TPA) penalties. (1) A TPA may be penalized under RCW 51.48.080 for deficiencies involving, but not limited to:

(a) Failure to maintain the requirements under WAC 296-15-425, 296-15-520, or 296-15-550. The penalty for the initial violation is five hundred dollars. The department may increase the amount up to one thousand dollars if the violation is a reoccurring problem.

(b) The department will not assess additional penalties under RCW 51.48.017 when a TPA:

(i) Promptly self-assesses;

(ii) Correctly calculates the amount of the penalty;

(iii) Reports to the department; and

(iv) Pays to the worker a penalty not to exceed the greater of one thousand dollars or twenty-five percent upon discovery of the delayed payment, unless the department determines there is a reoccurring issue or establishes additional benefits have been delayed.

(2) A TPA may be directed to obtain training when reoccurring problems are identified. A TPA who refuses to obtain the training for their staff may be penalized when their failure

to obtain training results in subsequent rule or statutory violations.

NEW SECTION

WAC 296-15-570 Self-insured third-party administrator (TPA) license suspension and revocation. A TPA's license may become provisional, suspended, or revoked if:

(1) Demonstrates a continuing practice of failure to maintain requirements or correct deficiencies. The department may consider issuing a directive listing the specific areas of noncompliance and requiring correction within time frames established by the department; and

(2) If the corrections are not made timely, then the department may issue an order of suspension or revocation in accordance with RCW 51.52.050.

WSR 21-06-088
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed March 2, 2021, 9:05 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-01-191.

Title of Rule and Other Identifying Information: Medical aid rules—Conversion factors and maximum daily fees: WAC 296-20-135, 296-23-220, and 296-23-230.

Hearing Location(s): On April 6, 2021, at 1:00 p.m., Zoom audio/visual meeting/hearing only. To join Zoom meeting please see following information: Access <https://us02web.zoom.us/j/89516882547>, Meeting ID 895 1688 2547, Passcode Public&123, or dial by your location +1 253 215 8782 US (Tacoma), Meeting ID 895 1688 2547, Passcode 0669415361. Find your local number <https://us02web.zoom.us/j/krw6qQQzP>. The Zoom meeting/hearing starts at 1:00 p.m. and will continue until all oral comments are received.

Date of Intended Adoption: May 18, 2021.

Submit Written Comments to: Emily Stinson, P.O. Box 44322, Olympia, WA 98504-4322, email Emily.Stinson@Lni.wa.gov, fax 360-902-4249, by 5:00 p.m., on April 6, 2021.

Assistance for Persons with Disabilities: Contact Emily Stinson, phone 360-902-5974, fax 360-902-4249, email Emily.Stinson@Lni.wa.gov, by March 30, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule making will (1) change the conversion factor used to calculate payment for anesthesia services; and (2) increase the maximum daily payment for physical and occupational therapy.

WAC 296-20-135(3): Decrease the resource based relative value scale (RBRVS) conversion factor from \$64.74 to \$57.90 and increase the anesthesia conversion factor from \$3.57 to \$3.64.

WAC 296-23-220 and 296-23-230: Increase the maximum daily rate for physical and occupational therapy services from \$131.48 to \$136.74.

Reasons Supporting Proposal: This rule will provide medical aid updates regarding rate setting for some professional health care services for injured workers.

Statutory Authority for Adoption: RCW 51.04.020(1) and 51.04.030.

Statute Being Implemented: RCW 51.36.080.

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

Name of Proponent: Department of labor and industries, governmental.

Name of Agency Personnel Responsible for Drafting: Emily Stinson, Tumwater, 360-902-5974; Implementation and Enforcement: Vickie Kennedy, Tumwater, 360-902-4997.

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

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply because the content of this rule is explicitly dictated by statute and fits within the exceptions listed in RCW 34.05.328 (5)(b)(vi).

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

Is exempt under RCW 19.85.025(3) as the rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

March 2, 2021

Joel Sacks

Director

AMENDATORY SECTION (Amending WSR 20-17-116, filed 8/18/20, effective 10/1/20)

WAC 296-20-135 Conversion factors. (1) Conversion factors are used to calculate payment levels for services reimbursed under the Washington resource based relative value scale (RBRVS), and for anesthesia services payable with base and time units.

(2) **Washington RBRVS** services have a conversion factor of (~~(\$64.74)~~) \$57.90. The fee schedules list the reimbursement levels for these services.

(3) **Anesthesia services** that are paid with base and time units have a conversion factor of (~~(\$3.57)~~) \$3.64 per minute, which is equivalent to (~~(\$53.55)~~) \$54.60 per 15 minutes. The base units and payment policies can be found in the fee schedules.

AMENDATORY SECTION (Amending WSR 20-17-116, filed 8/18/20, effective 10/1/20)

WAC 296-23-220 Physical therapy rules. Practitioners should refer to WAC 296-20-010 through 296-20-125 for general information and rules pertaining to the care of workers.

Refer to WAC 296-20-132 and 296-20-135 regarding the use of conversion factors.

All supplies and materials must be billed using HCPCS Level II codes. Refer to chapter 296-21 WAC for additional information. HCPCS codes are listed in the fee schedules.

Refer to chapter 296-20 WAC (WAC 296-20-125) and to the department's billing instructions for additional information.

Physical therapy treatment will be reimbursed only when ordered by the worker's attending doctor and rendered by a licensed physical therapist, a physical therapist assistant serving under the direction of a licensed physical therapist as required in RCW 18.74.180 (3)(a), or a licensed athletic trainer serving under the direction of a licensed physical therapist as required in RCW 18.250.010 (4)(a)(v). In addition, physician assistants may order physical therapy under these rules for the attending doctor. Doctors rendering physical therapy should refer to WAC 296-21-290.

The department or self-insurer will review the quality and medical necessity of physical therapy services provided to workers. Practitioners should refer to WAC 296-20-01002 for the department's rules regarding medical necessity and to WAC 296-20-024 for the department's rules regarding utilization review and quality assurance.

The department or self-insurer will pay for a maximum of one physical therapy visit per day. When multiple treatments (different billing codes) are performed on one day, the department or self-insurer will pay either the sum of the individual fee maximums, the provider's usual and customary charge, or ((~~\$131.48~~)) \$136.74 whichever is less. These limits will not apply to physical therapy that is rendered as part of a physical capacities evaluation, work hardening program, or pain management program, provided a qualified representative of the department or self-insurer has authorized the service.

The department will publish specific billing instructions, utilization review guidelines, and reporting requirements for physical therapists who render care to workers.

Use of diapulse or similar machines on workers is not authorized. See WAC 296-20-03002 for further information.

A physical therapy progress report must be submitted to the attending doctor and the department or the self-insurer following twelve treatment visits or one month, whichever occurs first. Physical therapy treatment beyond initial twelve treatments will be authorized only upon substantiation of improvement in the worker's condition. An outline of the proposed treatment program, the expected restoration goals, and the expected length of treatment will be required.

Physical therapy services rendered in the home and/or places other than the practitioner's usual and customary office, clinic, or business facilities will be allowed only upon prior authorization by the department or self-insurer.

No inpatient physical therapy treatment will be allowed when such treatment constitutes the only or major treatment received by the worker. See WAC 296-20-030 for further information.

The department may discount maximum fees for treatment performed on a group basis in cases where the treatment provided consists of a nonindividualized course of therapy (e.g., pool therapy; group aerobics; and back classes).

Biofeedback treatment may be rendered on doctor's orders only. The extent of biofeedback treatment is limited to

those procedures allowed within the scope of practice of a licensed physical therapist. See chapter 296-21 WAC for rules pertaining to conditions authorized and report requirements.

Billing codes and reimbursement levels are listed in the fee schedules.

AMENDATORY SECTION (Amending WSR 20-17-116, filed 8/18/20, effective 10/1/20)

WAC 296-23-230 Occupational therapy rules. Practitioners should refer to WAC 296-20-010 through 296-20-125 for general information and rules pertaining to the care of workers.

Refer to WAC 296-20-132 and 296-20-135 for information regarding the conversion factors.

All supplies and materials must be billed using HCPCS Level II codes, refer to the department's billing instructions for additional information.

Occupational therapy treatment will be reimbursed only when ordered by the worker's attending doctor and rendered by a licensed occupational therapist or an occupational therapist assistant serving under the direction of a licensed occupational therapist. In addition, physician assistants may order occupational therapy under these rules for the attending doctor. Vocational counselors assigned to injured workers by the department or self-insurer may request an occupational therapy evaluation. However, occupational therapy treatment must be ordered by the worker's attending doctor or by the physician assistant.

An occupational therapy progress report must be submitted to the attending doctor and the department or self-insurer following twelve treatment visits or one month, whichever occurs first. Occupational therapy treatment beyond the initial twelve treatments will be authorized only upon substantiation of improvement in the worker's condition. An outline of the proposed treatment program, the expected restoration goals, and the expected length of treatment will be required.

The department or self-insurer will review the quality and medical necessity of occupational therapy services. Practitioners should refer to WAC 296-20-01002 for the department's definition of medically necessary and to WAC 296-20-024 for the department's rules regarding utilization review and quality assurance.

The department will pay for a maximum of one occupational therapy visit per day. When multiple treatments (different billing codes) are performed on one day, the department or self-insurer will pay either the sum of the individual fee maximums, the provider's usual and customary charge, or ((~~\$131.48~~)) \$136.74 whichever is less. These limits will not apply to occupational therapy which is rendered as part of a physical capacities evaluation, work hardening program, or pain management program, provided a qualified representative of the department or self-insurer has authorized the service.

The department will publish specific billing instructions, utilization review guidelines, and reporting requirements for occupational therapists who render care to workers.

Occupational therapy services rendered in the worker's home and/or places other than the practitioner's usual and

customary office, clinic, or business facility will be allowed only upon prior authorization by the department or self-insurer.

No inpatient occupational therapy treatment will be allowed when such treatment constitutes the only or major treatment received by the worker. See WAC 296-20-030 for further information.

The department may discount maximum fees for treatment performed on a group basis in cases where the treatment provided consists of a nonindividualized course of therapy (e.g., pool therapy; group aerobics; and back classes).

Billing codes, reimbursement levels, and supporting policies for occupational therapy services are listed in the fee schedules.

WSR 21-06-092
PROPOSED RULES
DEPARTMENT OF
CHILDREN, YOUTH, AND FAMILIES

[Filed March 2, 2021, 10:48 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-24-033.

Title of Rule and Other Identifying Information: New WAC 110-301-0001 Intent and authority, 110-301-0005 Definitions, 110-301-0010 License required, 110-301-0015 Program director and site director simultaneous absence, 110-301-0106 Inactive status—Voluntary and temporary closure, 110-301-0020 Unlicensed programs, 110-301-0025 Certified and exempt programs, 110-301-0030 Nondiscrimination, 110-301-0085 Family partnerships and communication, 110-301-0100 General staff qualifications, 110-301-0105 Preservice requirements, 110-301-0106 Training requirements, 110-301-0107 In-service training, 110-301-0110 Program based staff policies and training, 110-301-0111 Staff oversight, 110-301-0115 Staff records, 110-301-0120 Providing for personal, professional, and health needs of staff, 110-301-0130 Indoor school-age program space, 110-301-0135 Routine care, play, learning, relaxation, and comfort, 110-301-0140 Room arrangement, child-related displays, private space, and belongings, 110-301-0145 Outdoor school-age program space, 110-301-0146 Equipment and surfaces in outdoor school-age program space, 110-301-0147 Weather conditions and outdoor hazards, 110-301-0148 Gardens in outdoor school-age program space, 110-301-0150 Program and activities, 110-301-0155 Use of television, video, and computers, 110-301-0160 Promoting acceptance of diversity, 110-301-0165 Safety requirements, 110-301-0166 Emergency preparation and exiting, 110-301-0170 Fire safety, 110-301-0175 Water hazards and swimming pools, 110-301-0180 Meal and snack schedule, 110-301-0185 Menus, milk, and food, 110-301-0186 Food allergies and special dietary needs, 110-301-0190 Parent or guardian provided food and written food plans, 110-301-0195 Food service, equipment, and practices, 110-301-0196 Food sources, 110-301-0197 Safe food practices, 110-301-0198 Food preparation areas, 110-301-0200 Handwashing and hand san-

itizer, 110-301-0205 Child and staff illness, 110-301-0210 Immunizations and exempt children, 110-301-0215 Medication, 110-301-0220 Bathroom space, 110-301-0225 Pets and animals, 110-301-0230 First aid—CPR certification and supplies, 110-301-0235 Safe water sources, 110-301-0236 Safe drinking water, 110-301-0240 Clean and healthy environment, 110-301-0241 Cleaning schedules, 110-301-0245 Laundry and equipment, 110-301-0250 Private septic systems, 110-301-0255 Pest control, 110-301-0260 Storage of hazardous and maintenance supplies, 110-301-0300 Individual care plan, 110-301-0305 Program philosophy and planning, 110-301-0310 Concept development and feedback quality, 110-301-0315 Communication modeling and reasoning, 110-301-0320 Facilitating child interests, learning, perspective, and productivity, 110-301-0325 Creating a climate for healthy child development, 110-301-0330 Positive relationships and child guidance, 110-301-0331 Prohibited behavior, discipline, and physical removal of children, 110-301-0335 Physical restraint, 110-301-0340 Expulsion, 110-301-0345 Supervising children, 110-301-0350 Supervising children during water activities, 110-301-0354 Indoor school-age program space capacity, 110-301-0356 School-age capacity, ratio, and group size, 110-301-0360 Program and daily schedule, 110-301-0400 Application materials, 110-301-0401 License fees, 110-301-0402, Changing school-age program space or location, 110-301-0410 License and program location, 110-301-0411 License transfer, 110-301-0415 Zoning, codes, and ordinances, 110-301-0420 Prohibited substances, 110-301-0425 Initial, nonexpiring, dual licenses, and license modification, 110-301-0435 Waiver from department rules—WAC, 110-301-0436 Variance from department rules—WAC, 110-301-0440 Facility licensing compliance agreements, nonreferral status, probationary license, and provider rights, 110-301-0443 Enforcement actions, notice, and appeal, 110-301-0450 Parent or guardian handbook and related policies, 110-301-0455 Attendance records, 110-301-0460 Child records, 110-301-0465 Retaining facility and program records, 110-301-0470 Emergency preparedness plan, 110-301-0475 Duty to protect children and report incidents, 110-301-0480 Transportation and off-site activity policy, 110-301-0485 Termination of services policy, 110-301-0486 Expulsion policy, 110-301-0490 Child restraint policy, 110-301-0495 Consistent care policy, 110-301-0500 Health policy, and 110-301-0505 Postings.

Repealing WAC 110-305-0001 Authority, 110-305-0005 Intent, 110-305-0010 Definitions, 110-305-0050 Special needs accommodations, 110-305-1000 License required, 110-305-1001 License transfers, 110-305-1035 Fire inspection/certification, 110-305-1050 The licensee, 110-305-1075 Child care subsidy, 110-305-1100 Tribal or military regulated or operated child care—Certification for payment, 110-305-1125 Orientation required, 110-305-1200 Background checks, 110-305-1250 Licensing process—Application materials and fees, 110-305-1275 Licensing process—Application processing, 110-305-1325 Background check fees, 110-305-1350 Liability insurance coverage, 110-305-1360 Lead and arsenic hazards—Tacoma smelter plume, 110-305-1370 Safe water sources, 110-305-1410 Department inspection, 110-305-1430 Initial license, 110-305-1450 Nonexpiring license, 110-305-1525 Change in circumstances, 110-

305-1625 Exception to rule, 110-305-1710 Program director, 110-305-1715 Site coordinator, 110-305-1720 Lead teachers, 110-305-1730 Program assistants, 110-305-1735 Volunteers, 110-305-1745 Staff meetings, 110-305-1750 Tuberculosis, 110-305-1775 Basic STARS training, 110-305-1800 Ongoing training, 110-305-1820 Program provided training, 110-305-1825 First-aid and cardiopulmonary resuscitation (CPR) certification, 110-305-1850 HIV/AIDS training—Blood-borne pathogens plan, 110-305-1925 Assistants and volunteers—Supervision, 110-305-2000 Recordkeeping—Records available to the department, 110-305-2025 Child records—Confidentiality, 110-305-2050 Child records—Contents, 110-305-2075 Staff records, 110-305-2125 Child attendance records—Staff-to-child ratio records, 110-305-2150 Facility records, 110-305-2175 Materials that must be posted, 110-305-2200 Reporting incidents to 911 (emergency services), 110-305-2225 Reporting incidents to Washington poison center, 110-305-2250 Reporting incidents to a child's parent or guardian and the department, 110-305-2275 Other incident reporting to the department, 110-305-2300 Reporting to DSHS children's administration intake, 110-305-2325 Notifiable conditions, 110-305-2350 Policies, 110-305-2375 Parent/guardian policies (handbook), 110-305-2400 Program/operations policies, 110-305-2425 Staff policies, 110-305-2450 Off-site activity policy, 110-305-2575 Combustible and flammable materials, 110-305-2600 Furnaces, other heating devices and appliances with hot surfaces, 110-305-2625 Electrical motors, 110-305-2675 Open flame devices, candles, matches and lighters, 110-305-2700 Emergency flashlight, 110-305-2725 Portable heaters and generators, 110-305-2775 Telephone, 110-305-2825 Fire evacuation plan, 110-305-2850 Disaster plan, 110-305-2875 Fire, disaster training for staff and volunteers, 110-305-2900 Emergency drills, 110-305-2925 Record of emergency drills, 110-305-2975 Additional method to sound alarm, 110-305-3000 Fire extinguishers, 110-305-3200 Health plan, 110-305-3210 Contagious disease procedure, 110-305-3250 Immunization tracking, 110-305-3275 Accepting a child who does not have current immunizations, 110-305-3300 Immunizations—Exemption, 110-305-3315 Medication management, 110-305-3325 Medication storage, 110-305-3375 Medication permission, 110-305-3425 Medication requirements, 110-305-3450 Sedating a child prohibited, 110-305-3475 Prescription medication, 110-305-3525 Nonprescription medications, 110-305-3550 Children taking their own medication, 110-305-3575 Injuries requiring first aid only, 110-305-3600 Injuries or illness requiring professional medical treatment, 110-305-3625 Handwashing procedure, 110-305-3635 When handwashing is required, 110-305-3650 Hand sanitizers, 110-305-3700 Carpets, 110-305-3850 Cleaning laundry, 110-305-3875 Cleaning and sanitizing toys, 110-305-3925 Cleaning, sanitizing, and disinfecting table, 110-305-3950 Pest control, 110-305-4000 Lead, asbestos, arsenic and other hazards, 110-305-4025 Drugs and alcohol, 110-305-4050 No smoking, 110-305-4075 First-aid kit, 110-305-4100 Poisons, chemicals and other substances, 110-305-4200 Toys, equipment, and recalled items, 110-305-4225 Indoor licensed space—Minimum space, 110-305-4250 Indoor temperature, 110-305-4275 Fans, air conditioning or cross ventilation, 110-305-4300 Window coverings, 110-305-4350 Electrical

outlets, cords and power strips, 110-305-4360 Area lighting, 110-305-4375 Lighting safety, 110-305-4475 Emergency exit pathways, 110-305-4550 Windows, 110-305-4625 Toileting facility, 110-305-4635 Handwashing sinks, 110-305-4650 Bathroom floors, 110-305-4700 Water temperature, 110-305-4725 Guns and other weapons, 110-305-4750 Storage for each child's belongings, 110-305-4800 Pet and other animal policy, 110-305-4850 Pet and other animal health and safety, 110-305-4875 Pets and other animals interacting with children, 110-305-4900 Pet and other animal wastes, 110-305-4925 Licensed outdoor space, 110-305-4950 Playground equipment—Ground cover—Fall zones, 110-305-5000 Play equipment, 110-305-5050 Bouncing equipment prohibited, 110-305-5100 Outdoor supervision, 110-305-5125 Outdoor areas and daily physical activities, 110-305-5150 Water safety and activity, 110-305-5175 Wading pools—Defined—Supervision, 110-305-5200 Swimming pools defined—Barriers and supervision, 110-305-5225 Bodies of water or water hazards on the licensed premises, 110-305-5250 Bodies of water outside and near licensed space, 110-305-5600 Staff-to-child ratio, 110-305-5625 Capacity, 110-305-5725 Groups, 110-305-5750 Supervising children, 110-305-5800 Orientation for staff, 110-305-6000 Interactions with children, 110-305-6025 Prohibited interactions, 110-305-6050 Guidance and discipline, 110-305-6075 Positive options for discipline, 110-305-6100 Separating a child from the group, 110-305-6125 Preventing harmful or aggressive acts, 110-305-6150 Prohibited actions, 110-305-6175 Using alternate methods before using physical restraint, 110-305-6200 Physical restraint—Prohibited use or methods, 110-305-6225 Physical restraint—Holding method allowed, 110-305-6250 Notice and documenting use of physical restraint, 110-305-6275 Abuse and neglect—Protection and training, 110-305-6400 Off-site activities—Parent or guardian permission, 110-305-6425 Off-site activity supervision, 110-305-6450 Off-site activity—Emergency information and supplies, 110-305-6475 Transportation, 110-305-6500 Using public transportation, 110-305-6550 Typical daily schedule, 110-305-6575 Activities to promote child growth and development, 110-305-6600 Equipment and play materials, 110-305-6625 Art materials, 110-305-6650 Screen time, 110-305-6675 Screen time—Limitations, 110-305-6775 Diversity, 110-305-7500 Food and milk must meet USDA guidelines, 110-305-7515 Menus and dietary restrictions, 110-305-7525 Parent or guardian-provided food, 110-305-7530 Food sources, 110-305-7575 Drinking water, 110-305-7580 Drinking fountains, 110-305-7625 Meal and snack schedule, 110-305-7650 Serving foods, 110-305-7675 Food worker card, 110-305-7680 Safe food handling, 110-305-7700 Washing dishes, 110-305-7725 Food containers and utensils, 110-305-7750 Food preparation area, 110-305-7800 Food storage, 110-305-7825 Satellite kitchens, 110-305-8000 Facility licensing compliance agreements, 110-305-8010 Nonreferral status, 110-305-8025 Time period for correcting a violation, 110-305-8050 Civil monetary penalties, 110-305-8060 When fines are levied, 110-305-8075 Fines—Payment period, 110-305-8100 Notice of fine—Posting, 110-305-8125 Failure to pay a fine—Department action, 110-305-8150 Denial, suspension, revocation, modification or noncontinuation of a license, 110-305-8175 Violations—Enforcement action, 110-305-

8225 Notice of license denial, suspension, revocation, or modification, 110-305-8250 Probationary license, 110-305-8275 Probationary license—Cause, 110-305-8300 Issuing a probationary license, 110-305-8325 Refusing a FLCA or probationary license, 110-305-8350 Providing unlicensed care—Notice, 110-305-8375 Unlicensed care—Fines and other penalties, and 110-305-8400 Hearing process.

Hearing Location(s): On April 6, 2021, telephonic. Oral comments may be made by calling 360-902-8084 and leaving a voicemail that includes the comment and an email or physical mailing address where department of children, youth, and families (DCYF) will send its response. Comments received through and including April 6, 2021 will be considered.

Date of Intended Adoption: April 12, 2021.

Submit Written Comments to: DCYF, Rules Coordinator, P.O. Box 40975, Olympia, WA 98504-0975, email rulescoordinator@dcyf.wa.gov, submit comments online at <https://dcyf.wa.gov/practice/policy-laws-rules/rule-making/participate/online>, by April 6, 2021.

Assistance for Persons with Disabilities: Contact DCYF, rules coordinator, phone 360-902-7956, email dcyf.rulescoordinator@dcyf.wa.gov, by April 2, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: **Licensing—Early learning standards for school-age programs:** Proposed rules move the requirements codified at chapter 110-305 WAC to new chapter 110-301 WAC for school-age child care programs that serve only children aged five through twelve who attend school when school is not in session and repeal chapter 110-305 WAC.

The proposed rules make these changes to current licensing requirements for school-age early learning programs:

- A written plan is required for the simultaneous absence of the program and site directors when the program remains open - new;
- Programs must notify DCYF and change its status to inactive during temporary closures expected to last more than thirty days that are inconsistent with their regular schedules - new;
- Nondiscrimination is prohibited - new;
- Programs must form family partnerships intended to promote care based on a child's developmental, behavioral, health, linguistic, cultural and social information and encourage enrolled children's families to introduce their language and culture to enrolled children - new;
- Program and site directors' preservice requirements are made less restrictive by lowering the minimum age from twenty-one to eighteen, eliminating high school diploma requirements, splitting current forty-five hour preservice education credit requirement into twelve credits at time of hire and completion of remaining thirty-three hours within five years of hire, allowing any one hundred-level or above college-level coursework instead of department-approved subjects, and removing requirement that staff must possess the understanding, ability, physical health, emotional stability, and good judgement to care for children;
- Lead teachers must complete twelve credits of one hundred-level or above college-level coursework - new;
- Minimum age for aides and volunteers is lowered from sixteen to fourteen;
- Program and site directors must have completed or be registered for the department's orientation at the time of hire instead of having three months from time of hire to complete;
- School-age providers must complete the following training: Medication management and administration if caring for children requiring medication, emergency preparedness, homelessness, and preventing exposure to blood and body fluids - new;
- Affirmation that programs must comply with the Americans with Disabilities Act;
- Indoor program space must be arranged so that children in care can engage in different activities, move freely, have privacy, and independently access materials and equipment - new
- Programs must provide extra clothing for children in care who need a change of clothing - new;
- Programs must ensure children in attendance have space to store and access their belongings - new;
- Frequency of outdoor play equipment inspections is increased from weekly to daily;
- DCYF no longer approves route to outside play areas that are not adjacent to licensed facility;
- Programs must ensure children in care are dressed appropriately for outdoor activities and take appropriate action to safeguard children from extreme weather conditions and outdoor hazards such as local or state ordered air quality emergencies, and public safety authority ordered lockdowns - new
- For programs that choose to garden in licensed space, safeguards are established to reduce risk of animal cross-contamination, use of contaminated soil and water, use of hazardous materials for the construction of raised garden beds, and children's exposure to herbicides and pesticides - new;
- Children's allowed screen time is increased from one to two and one-half hours per week;
- The dated menu requirement remains unchanged, but the proposed rules do not dictate what must be included and posting is no longer required;
- Enrolled children are allowed to carry and self-administer prescribed asthma, anaphylaxis, and insulin medications if parent or guardian and health care provider gives written authorization;
- Reptiles, amphibians, chickens, and ducks are allowed in licensed space with safeguards; and
- Private septic systems serving programs not on school grounds must be designed, constructed, and maintained in accordance with state and local health jurisdiction standards and undergo regular, routine inspections.

Reasons Supporting Proposal: DCYF licenses child care providers in Washington state. At the direction of the legislature, a single set of licensing standards was developed for child care and the early childhood education and assistance program. Those standards, codified at chapter 110-300 WAC, were adopted in 2018 and took effect August 1, 2019, for child cares serving children from birth to twelve years of age. Proposed chapter 110-301 WAC is the final piece align-

ing licensing standards; it aligns the standards for school-age child care programs with those adopted in 2018. The proposed rules address critical health and safety needs of enrolled children, ensure licensed programs meet federal requirements, and promote cultural diversity.

Recodification to a new chapter allows consistent section numbers for chapters 110-300 and 110-301 WAC, which makes navigating and comparing the two chapters easier for the regulated community and DCYF licensing staff.

Statutory Authority for Adoption: RCW 43.216.055 and 43.216.065.

Statute Being Implemented: RCW 43.216.255.

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

Name of Proponent: DCYF, governmental.

Name of Agency Personnel Responsible for Drafting: Tyler Farmer, 360-628-2151; Implementation and Enforcement: DCYF, statewide.

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

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

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

Small Business Economic Impact Statement

1. Describe the proposed rule, including:

- A brief history of the issue.
- An explanation of why the proposed rule is needed.
- A brief description of the probable compliance requirements and the kinds of professional services that a small

business is likely to need in order to comply with the proposed rule.

DCYF licenses child care providers in Washington state. At the direction of the legislature, a single set of licensing standards was developed for child care and the early childhood education and assistance program. Those standards were adopted in 2018 and took effect August 1, 2019, for child cares serving children from birth to twelve years of age. Proposed chapter 110-301 WAC is the final piece of the [that] aligns the standards for school-age child care programs with those adopted in 2018. School-age child care programs serve only children aged five through twelve who attend school when school is not in session. The proposed rules address critical health and safety needs of enrolled children, meet federal requirements, and promote cultural diversity.

School-age programs are currently regulated by chapter 110-305 WAC. That chapter will be repealed effective the date proposed chapter 110-301 WAC takes effect. The majority of the requirements in chapter 110-305 WAC are unchanged in chapter 110-301 WAC and result in no additional cost for programs on the date the new chapter takes effect. Regardless, the cost of compliance for all requirements, changed and unchanged, are included here since compliance with new chapter 110-301 WAC exceeds the minor cost threshold.

Professional services needed to comply with chapter 110-301 WAC are continuing and higher education, certified water testing labs, and for programs served by private wells that do not operate in school buildings, septic system inspectors.

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

NAICS code (4, 5 or 6 digit)	NAICS business description	# of businesses in WA	Minor-cost threshold = 1% of average annual payroll	Minor-cost threshold = 0.3% of average annual receipts
624410	Child day care, before or after school, separate from schools	586	\$2,853.66	\$1,163.71

3. Analyze the probable cost of compliance: Identify the probable costs to comply with the proposed rule, including: Cost of equipment, supplies, labor, professional services and increased administrative costs. Based on input, describe how compliance with the rule may cause lost sales or revenue.

TRAINING AND PROFESSIONAL DEVELOPMENT: Per person preemployment or licensing requirements - costs are likely paid by the individual rather than a small business:

Description	Probable Cost	Notes
Preservice: Background check	\$44.75 fingerprinting, \$12 electronic application fee	Cost of paper application is \$24

Description	Probable Cost	Notes
Preservice: TB test	\$30	

Per person training requirements - costs may be paid by the individual rather than a small business employer. Costs may vary depending upon the city or county where the training is received and, for in-service training, the courses selected. Stated costs are believed to be the maximum that would be paid in high-cost areas of the state:

Description	Probable Cost	Notes
Training requirements: School-age basics	\$150	

Description	Probable Cost	Notes
Training requirements: CPR/First Aid/blood borne pathogens	\$120	Renewed biennially
In-service training	\$250	Ten hours annually

Education requirements by position - costs are likely paid by the individual rather than a small business employer:

Role	Hiring Requirement	Full Education (must complete within 5 years of rules' effective date)
Program director	12 credits = \$1,320	12 + 33 additional credits (\$3,630) = 45 credits total (\$4,950)
Site director	12 credits = \$1,320	12 + 18 additional credits (\$1,980) = 30 credits total (\$3,300)
Lead teacher		12 credits = \$1,320

PHYSICAL ENVIRONMENT: DCYF assumes that before applying for a license, an applicant will find a suitable structure with floors, walls, windows, a septic system that complies with state and local health jurisdiction requirements, and is ADA compliant. The cost of such a structure, its maintenance, and utilities are not included here.

For programs operating in the same facilities used by public or private schools, DCYF does not regulate the physical facility, including outdoor playgrounds. In the following table, a '*' indicates the cost is borne only by programs not operating in school buildings.

Office Equipment	Probable Cost	Notes
Telephone	\$30	Monthly charge
Storage for program records	\$200	4-drawer file cabinet, alternatives may be used

The average enrollment for current licensed school-age programs is fifty-five children:

For enrolled children's use:	Probable Cost	Notes
Child sized furniture: 30"x60" table	\$259/table	Ten tables are needed for fifty-five children
Child sized furniture: chair	\$62/chair	Twenty-five chairs are needed for fifty-five children

For enrolled children's use:	Probable Cost	Notes
Extra children's clothes	\$50	
Storage space for children's belongings	\$90/10 bins	Alternatives, such as backpacks, may be used
Outdoor play equipment	\$2,000	*

Safety	Probable Cost	Notes
Fencing for outdoor play area	\$3,000 6'H x 200 linear'	*
Playground surface	\$8.24/sq. ft.	*
Barrier to keep animals out of gardens	\$3.50/ft. chicken wire	Gardening is optional
Garden soil free from contaminants	\$8/2 cubic yds	Gardening is optional
Organic soil if gardening in raised beds	\$8/2 cubic yds	Gardening is optional
Handrails (only necessary for stairs)	\$20/8 feet	*
Window stoppers	\$15/each	*
Guardrails (only necessary for decks with a drop zone >18")	\$136/5'	*
Ground fault circuit interrupter - electrical outlets near sinks	\$20	*
Flashlight	\$20	
Smoke detector	\$25	*
Carbon monoxide detector	\$20	*
Back up alarm to alert people of fire	\$5	Whistle or alternative alarm
Fire extinguisher rated 2A:10BC	\$50	*
Physical barrier and lock for water hazards	Up to \$3,000	*
Alarm on door or gate that leads to a pool	\$25	*

Food and Food Area	Probable Cost	Notes
Meals and snacks	\$7/child per day	Two meals and two snacks or three snacks and one meal at the most
Food worker card	\$10/person	Renewed annually
Plates, bowls, forks, spoons, glasses	\$7/child	
Napkins	\$5/500	
Serving utensils	\$50	
Leftover food storage containers	\$50	
Refrigerator, freezer, or combo	\$2,000	*
Range and exhaust fan (optional if food is prepared off site)	\$1,050	*
Colander	\$10	
Method to sanitize dishes, etc. in food prep area (dishwasher or other automated alternative)	\$600	*
3-compartment sink for manually sanitizing (if automated method is not available)	\$300	*
Bleach for sanitizing	\$4/gallon	
Sponges	\$10/12	
Mop and bucket	\$50	Commercial grade
Broom and dust pan	\$25	

Other	Probable Cost	Notes
Paper or single-use cloth towels	\$5/70	
Medication storage cabinet	\$40	
Exhaust fan in bathroom	\$150	Not required if the bathroom has an operable window
First-aid kit	\$50	

Other	Probable Cost	Notes
Water test for lead and copper	\$50	Required at time of licensing an[d] every six years thereafter
Remediation if test results exceed EPA action level	Indeterminable	
Well water testing for E. coli and nitrates	\$200	Annual
Alternate water source if E. coli present or excessive nitrates	Indeterminable	
24" moisture resistant, cleanable material around plumbed fixtures	\$1/sq. ft.	Vinyl flooring or similar alternative
Making dangerous substances inaccessible to children	\$0 - \$100	There are various options for compliance with drastically different costs. Some examples are storing substances in an area where enrolled children are not allowed, installing a lock on a cupboard or closet where substances are stored, or purchasing a freestanding, locking cabinet.
Annual licensing fee	\$125 for first 12 children + \$12/each add'l child	
"No smoking or vaping" sign	\$15	

Other	Probable Cost	Notes
Vehicle - optional	Indeterminate	If a program chooses to offer transportation, the vehicle must be in good repair and safe operating condition, licensed, equipped with emergency signals, insured, suitable for the number of occupants, and driven by a licensed driver with a safe driving record for the last five years.
Display board for postings	\$10	

Probable costs do not include sales tax, delivery, or installation charges.

Lost sales or revenue is not anticipated. Stakeholders were engaged in drafting to ensure that the requirements were manageable and sustainable.

4. Explain how you determined the rule may impose more-than-minor costs on businesses in the industry: Using the average enrollment of fifty-five children, just the ongoing cost of providing meals and snacks to children exceeds the minor cost threshold on an annual basis.

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

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

Nearly all licensed school-age child care programs are small businesses, so there is no comparison to make.

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

- (a) Reducing, modifying, or eliminating substantive regulatory requirements.
- (b) Simplifying, reducing, or eliminating recordkeeping and reporting requirements.
- (c) Reducing the frequency of inspections.
- (d) Delaying compliance timetables.
- (e) Reducing or modifying fine schedules for noncompliance.
- (f) Any other mitigation techniques suggested by small businesses or their advocates.

If the costs cannot be reduced, provide a clear explanation of why.

(a) The requirements in the proposed chapter are the minimum requirements necessary to ensure the health and safety of children in care, so reducing, modifying, or eliminating substantive regulatory requirements is not an option. DCYF is committed to reducing the cost of compliance and continually explores options for doing so. Work is underway now to record as many of the required trainings as possible to offer the regulated [regulated] community more free, convenient on-demand training options.

(b) The required recordkeeping and reporting is the minimum necessary to alleviate more frequent in-person licensing inspections, which would be more invasive to licensed programs and likely more time consuming than the recordkeeping and reporting.

(c) DCYF performs only annual inspection as required by statute, unless there is cause for more frequent inspections.

(d) The proposed rules allow five years to complete the education requirements, unlike the current rules which require program and site directors to have completed the same amount of credits at the time of hire. Unlike the current state, the proposed rules allow any concentration of study. The proposed rules impose a new, 12-credit education requirement for lead teachers, but allow five years to comply.

(e) DCYF recently revamped its approach to regulation in a comprehensive way that is intended to lessen costs for school-age and other providers and the families they serve. The new approach allows for waivers and variances as long as the program maintains a high standard of health and safety protections, extends compliance timelines so that providers have a longer period of time to correct deficiencies, and emphasizes technical assistance over penalties. Only after technical assistance and only if a child's health and safety is jeopardized are appropriate penalties considered. In some cases, assessed penalties may be reduced or suspended, conditioned upon the provider correcting the deficiency.

(f) School-age child care programs may participate in the United States Department of Agriculture's food subsidy program, which reduces the cost of providing meals and snacks.

7. Describe how small businesses were involved in the development of the proposed rule: DCYF partnered with School's Out Washington (SOWA)* who coordinated a council of school-age programs from across the state. The council represented the state's licensed school-age programs and consulted with them throughout the drafting process. Over several months, the council met monthly with a DCYF representative to develop the proposed chapter. As sections of the updated WAC were developed, the council reviewed the drafts and provided feedback. DCYF responded by either making the recommended changes or explaining why information was remaining in WAC. When drafting was finished, the chapter was submitted to the council for final review - and again, responses were provided to either change the draft or explain why it was not. SOWA coordinated and continues to coordinate efforts to keep all school-age providers informed.

*SOWA is a nonprofit organization that provides services and guidance for organizations to ensure all young people have safe places to learn and grow when not in school. SOWA is dedicated to building community systems

to support quality afterschool, youth development, and summer programs for Washington's children and youth ages five through young adulthood. SOWA's expertise is in strengthening the expanded learning field - the afterschool and out-of-school time programs that engage young people in high quality enrichment, academic support, and social-emotional development. (Source: www.schoolsoutwashington.org.)

8. Identify the estimated number of jobs that will be created or lost as the result of compliance with the proposed rule: DCYF does not anticipate the proposed rules will cause school-age program closures or otherwise create or eliminate jobs.

9. Summarize the results of the analysis, including the determination if costs are disproportionate: By reducing the education requirements for new hires and allowing any concentration of study, the proposed rules increase the pool of potential employees for school-age programs. The only new education requirement will impact lead teachers and it is unknown how many individuals currently working in these positions do not meet the new requirement. Also, it is likely that individuals will pay their own tuition costs rather than their small business employers.

Many of the other requirements are program dependent, such as costs related to optional gardening and water programs.

The proposed safety- and food preparation-related rules will have little impact on the large number of school-age programs that operate in the same buildings used by schools.

A copy of the statement may be obtained by contacting DCYF, Rules Coordinator, P.O. Box 40975, Olympia, WA 98504-0975, phone 360-902-7956, email dcyf.rulescoordinator@dcyf.wa.gov, <https://dcyf.wa.gov/practice/policy-laws-rules/rule-making/filings>.

March 2, 2021
Brenda Villarreal
Rules Coordinator

Chapter 110-301 WAC

FOUNDATIONAL QUALITY STANDARDS FOR SCHOOL-AGE PROGRAMS

SECTION I

INTENT AND AUTHORITY

NEW SECTION

WAC 110-301-0001 Intent and authority. (1) The department of children, youth, and families was established under chapter 6, Laws of 2017. Chapter 43.216 RCW establishes the department's responsibility and authority to set and enforce licensing requirements, including the authority to adopt rules to implement chapter 43.216 RCW.

(2) This chapter reflects the department's commitment to:

- (a) Promoting the health, safety, and well-being of children;
- (b) Expanding access to high quality school-age programs to improve outcomes for children;

- (c) Supporting strong school success; and
- (d) Recognizing parents and guardians as a child's primary teacher and advocate.

(3) Pursuant to this chapter, the department will periodically monitor and assess school-age programs to determine compliance with these foundational quality standards.

(4) Pursuant to RCW 43.216.250 (2)(b), the provisions of this chapter governing the physical facility, including buildings and other physical structures attached to buildings and premises, do not apply to licensed school-age programs that operate in facilities used by public or private schools. The department regulates only health, safety, and quality standards that do not relate to the physical facility for programs operating in facilities used by public or private schools.

NEW SECTION

WAC 110-301-0005 Definitions. The following definitions apply to this chapter:

"Accessible to children" means items, areas, or materials of a school-age program that a child can reasonably reach, enter, use, or get to on their own.

"Accommodations" means program activities, spaces, and materials that have been adapted to help children and adults with special needs function within their surroundings.

"Active supervision" or **"actively supervise"** means a heightened standard of care beyond supervision. This standard requires a school-age provider to see and hear the children they are responsible for during higher risk activities. The provider must be able to prevent or instantly respond to unsafe or harmful events.

"ADA" refers to the Americans with Disabilities Act.

"Aide" is a person who offers support to the school-age program staff.

"Allergy" or **"allergies"** refers to an overreaction of the immune system to a substance that is harmless to most people. During an allergic reaction, the body's immune system treats the substance or "allergen" as an invader. The body overreacts by releasing chemicals that may cause symptoms ranging from mildly annoying to life threatening. Common allergens include certain foods (milk, eggs, fish, shellfish, common tree nuts, peanuts, wheat, and soybeans), pollen, mold, or medication.

"Annual" or **"annually"** means an event that occurs each calendar year, not to exceed three hundred sixty-five days between occurrences.

"Applicant" means an individual who has made a formal request for a child care license, certification, exemption, or portable background check.

"Appropriate" when used to refer to program or educational materials means that the materials will interest and challenge children in terms of their ages and abilities.

"Appropriately" means correct or properly suited for a particular situation.

"Assistant teacher" is a person whose work is to assist a lead teacher, site director, or program director in providing instructional supports to children and implementing a developmentally appropriate program. The assistant teacher must

carry out assigned tasks under the supervision of a lead teacher, site director, or program director.

"**ASTM**" refers to the American Society for Testing and Materials.

"**Bathroom**" means a room containing a built-in, flush-type toilet.

"**Bias**" means a tendency to believe that some people or ideas are better than others that usually results in treating some people unfairly.

"**Body of water**" or "**bodies of water**" is a natural area or human-made area or device that contains or holds a depth of more than two inches of water. Examples include swimming pools, ditches, canals, fish ponds, water retention areas, excavations, and quarries.

"**CACFP**" means the Child and Adult Care Food Program established by Congress and funded by the United States Department of Agriculture (USDA).

"**Cannabis**" (also known as "marijuana") refers to all parts of the cannabis plant, whether growing or not, the seeds thereof, the resin or concentrate extracted from any part of the plant and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin.

"**Capacity**" means the maximum number of children a school-age program is authorized by the department to have in care at any given time. This includes any children on-site at the school-age program and any children in transit to or from the program or other activities such as field trips while the children are signed in to the care of the program.

"**Certificate of exemption (COE)**" means a form that is approved by the DOH and consistent with the requirements of WAC 246-105-050, or an immunization form produced by the state immunization information system.

"**Certificate of immunization status (child)**" means a form that is approved by the DOH and consistent with the requirements of WAC 246-105-050, or an immunization form produced by the state immunization information system.

"**Certification**" means, as applied to the licensing process, department approval of a person, home, or facility that is exempt from licensing but requests evidence that the program meets these foundational licensing standards.

"**Child**" means an individual who is five years of age through twelve years of age and is attending a public or private school or is receiving home-based instruction under chapter 28A.200 RCW.

"**Child abuse**" or "**neglect**" means the physical abuse, sexual abuse, sexual exploitation, abandonment, negligent treatment or maltreatment of a child by any person as defined in RCW 26.44.020.

"**Child care**" refers to supervision of children outside the child's home for periods of less than twenty-four hours a day.

"**Chromated copper arsenate**" or "**CCA**" is a wood preservative and insecticide that contains roughly twenty-two percent arsenic, a known carcinogen. The United States restricted the use of CCA on residential lumber in 2003, but it can still be found on older decks and playground equipment. Information about the health hazards of arsenic can be found on the DOH's website.

"**Clean**" or "**cleaning**" means to remove dirt and debris from a surface by scrubbing and washing with a detergent solution and rinsing with water. This process must be accomplished before sanitizing or disinfecting a surface.

"**Confidential**" means the protection of personal information, such as the child's records, from individuals who are not authorized to see or hear the information.

"**Consistent care**" means providing steady opportunities for children to build emotionally secure relationships by primarily interacting with a limited number of school-age program staff.

"**Contagious disease**" means an illness caused by an infectious agent of public health concern which can be transmitted from one person, animal, or object to another person by direct or indirect means including transmission through an intermediate host or vector, food, water, or air. Contagious diseases pertinent to this chapter are described in WAC 246-110-010.

"**Continuous**" means without interruptions, gaps, or stopping.

"**Core competencies**" are standards required by the department that detail what school-age providers need to know and are able to do to provide quality care and education for children and their families.

"**CPSC**" means the United States Consumer Product Safety Commission.

"**Cultural**" or "**culturally**" means in a way that relates to the ideas, customs, and social behavior of different societies.

"**Department of children, youth, and families**," "**DCYF**," or "**the department**" refers to the Washington state department of children, youth, and families.

"**Developmentally appropriate**" means:

- (a) A school-age provider interacts with each child in a way that recognizes and respects the child's chronological and developmental age;
- (b) Knowledge about how children grow and learn;
- (c) Reflects the developmental level of the individual child; and
- (d) Interactions and activities are planned with the developmental needs of the individual child in mind.

"**Disability**" or "**disabilities**" has the same meaning in this chapter as in RCW 49.60.040(7), the Washington law against discrimination.

"**Disaster**" means a sudden event, such as an accident or natural catastrophe, that causes great damage or loss of life.

"**Discipline**" means a method used to redirect a child in order to achieve a desired behavior.

"**Disinfect**" means to eliminate virtually all germs from an inanimate surface by the process of cleaning and rinsing, followed by:

- (a) The application of a fragrance-free chlorine bleach and water solution following the DOH's current guidelines for mixing bleach solutions for child care and similar environments; or
- (b) The application of other disinfectant products registered with the EPA, if used strictly according to the manufacturer's label instructions including, but not limited to, quantity, time the product must be left in place, adequate time to allow the product to dry or rinsing if applicable, and appro-

priateness for use on the surface to be disinfected. Any disinfectant used on food contact surfaces or toys must be labeled "safe for food contact surfaces."

"Disinfectant" means a chemical or physical process that kills bacteria and viruses.

"DOD" means the United States Department of Defense.

"DOH" refers to the Washington state department of health.

"Drinking water" or **"potable water"** is water suitable for drinking by the public as determined by the DOH or a local health jurisdiction.

"Dual language learners" refers to children who are learning two or more languages at the same time. This term includes children who learn two or more languages from birth, and children who are still mastering their home language when they are introduced to and start learning a second language. (Source: *The Washington State Early Learning and Development Guidelines*.)

"Electronic record" means a record generated, communicated, received or stored by electronic means for use in an information system or for transmission from one information system to another.

"Electronic signature" means a signature in electronic form attached to or logically associated with an electronic record including, but not limited to, a digital signature. An electronic signature is a paperless way to sign a document using an electronic sound, symbol, or process, attached to or logically associated with a record, and executed or adopted by a person with the intent to sign the record.

"Electronic workforce registry" refers to the Washington state department of children, youth, and families' current database of professional records of individual school-age providers.

"Emergency preparedness" means a continuous cycle of planning, organizing, training, equipping, exercising, evaluating, and taking corrective action in an effort to ensure effective coordination in case of emergencies or during incident response.

"Enforcement action" means denial, suspension, revocation, modification, or nonrenewal of a license pursuant to RCW 43.216.325. A school-age provider may contest enforcement actions and seek an adjudicative proceeding pursuant to chapter 110-03 WAC.

"EPA" means the United States Environmental Protection Agency.

"Exempt" or **"exemption"** means, as applied to immunizations, a type of immunization status where a child has not been fully immunized against one or more vaccine preventable diseases required by chapter 246-105 WAC for full immunization due to medical, religious, philosophical or personal reasons. Under chapter 362, Laws of 2019, if a child plans on attending or is attending a school-age program, a philosophical or personal objection may not be used to exempt a child from the measles, mumps, and rubella vaccine.

"Expel" or **"expulsion"** means to end a child's enrollment in a school-age program. A school-age provider will end a child's enrollment if the provider is unable to meet a child's needs due to the child's challenging behavior.

"Facility Licensing Compliance Agreement (FLCA)" means an agreement issued by the department in lieu of the department taking enforcement action against a school-age provider.

"FDA" means the United States Food and Drug Administration.

"Food worker card" means a food and beverage service worker's permit as required under chapter 69.06 RCW.

"Foundational quality standards" refers to the administrative and regulatory requirements contained within this chapter. These standards are designed to promote the development, health, and safety of children enrolled in school-age programs. The department uses these standards to equitably serve children, families, and school-age providers throughout Washington state.

"Good repair" means about eighty percent of materials and components are unbroken, have all their pieces, and can be used by children as intended by the manufacturer or builder.

"Health care provider" means a person who is licensed, certified, registered, or otherwise authorized by the law of Washington state to provide health care in the ordinary course of business or practice of a profession.

"Immunization" is the process of administering a vaccine to make a person immune or resistant to an infectious disease.

"Inaccessible to children" means a method to prevent a child from reaching, entering, using, or getting to items, areas, or materials of a school-age program.

"Inactive" when used by the department to indicate a licensing status, means school-age providers who have requested and have been approved to temporarily cease caring for children and close their school-age program.

"Individual care plan" means a specific plan to meet the individual needs of a child with a food allergy, special dietary requirement due to a health condition, other special needs, or circumstances.

"In-service training" means professional development requirements for continuing education delivered or approved by the department to maintain staff standards and qualifications while employed as a school-age provider.

"Inspection report" refers to a written or digital record developed by the department that identifies violations of licensing standards.

"Internal review process" has the same meaning in this chapter as in RCW 43.216.395.

"Lead teacher" means a school-age provider who works as the lead staff person in charge of a child or group of children and implements activity programs.

"License" means a permit issued by the department legally authorizing an applicant to operate a school-age program.

"Licensed space" means the indoor and outdoor space on the premises approved by the department for the purpose of providing licensed child care in school-age programs.

"Licensee" means an individual or legal entity listed on a license issued by the department, authorized to provide child care in a school-age program.

"Lockdown" means restricted to an interior room with few or no windows while the facility or building is secured from a threat.

"Locking mechanism" means a lock that requires a key, tumbler, dial, passcode, touchpad, or similar device or method to lock and unlock.

"Modification" when used in reference to a school-age provider's licensing status, means an enforcement action by the department to change the conditions identified on a licensee's current license.

"Nonexpiring license" means a license that is issued to a school-age provider following the initial licensing period, pursuant to chapter 43.216 RCW.

"Operating hours" means the hours listed in a school-age program parent handbook when the program is open and providing care and services to children.

"OSPI" means the Washington state office of superintendent of public instruction.

"Parent" or **"guardian"** means birth parent, custodial parent, foster parent, legal guardian or those authorized by the parent or entity legally responsible for the welfare of the child.

"Peer interaction" refers to relationships children have with one another, which includes how children play together, communicate, and whether they fight or get along.

"Personal needs" means a school-age provider's toileting or medication needs. Personal needs do not include smoking or use of tobacco products, illegal drug use or misuse or prescription drugs, conducting business or related activities, sleeping or napping, screen time, or leaving children in care unattended.

"Pest" means an animal, plant, or insect that has a harmful effect on humans, food, or living conditions.

"Pesticide" refers to chemicals used to kill pests.

"Pet" means a domestic or tamed animal or bird kept for companionship or pleasure.

"Physical barrier" means a nonclimbable fence or a wall that is at least five feet tall and has no openings greater than two inches or a gate or door that allows entry to and exit from a body of water and has the following requirements in addition to those already listed: A locking mechanism, a self-closing or self-latching device, and a device used to open the locks which is inaccessible to children but readily available to staff.

"Physical restraint" means holding a child as gently as possible for the minimum amount of time necessary to control a situation where that child's safety or the safety of others is threatened.

"Poison" includes, but is not limited to, substances, chemicals, chemical compounds (other than naturally occurring compounds such as water or salt), or similar items that, even in small quantities, are likely to cause injury or illness if it is swallowed or comes into contact with a child's skin, eyes, mouth, or mucus membranes.

"Premises" means the licensed and unlicensed space at the licensed address including, but not limited to, buildings, land, and residences.

"Preservice training" means professional development standards or requirements for school-age program staff prior

to hiring or within a department specified time frame and delivered or approved by the department.

"Private septic system" means a septic system as defined in chapter 246-272A WAC that is not connected to a public sewer system or a large on-site sewage system as defined in chapter 246-272B WAC. A private septic system includes, but is not limited to, the septic system's drain field and tanks.

"Probationary license" has the same meaning as in RCW 43.216.010(23).

"Professional development support plan" is a formal means by which an individual who is supervising staff sets out the goals, strategies, and outcomes of learning and training.

"Program director" means the person responsible for the overall management of a school-age program including the facility and operation. The program director is not responsible for being on-site at the program, unless the program director is filling in for an on-site role.

"Program philosophy" means a written statement of principles developed by a school-age provider to form the basis of the program's activities in relation to a child's development.

"RCW" means the Revised Code of Washington.

"Readily available" means able to be used or obtained quickly and easily.

"Revocation" or **"revoke"** when used in reference to a school-age provider's licensing status, means an enforcement action by the department to close a school-age program and permanently remove the license.

"Routine care" means typical or usual care provided to a child during the time the child is enrolled in the school-age program (for example: Feeding, toileting, playing, and learning).

"Safe route" means a way or course taken to get from a starting point to a destination that is protected from danger or risk.

"Safety plan" means a written plan to implement program changes to bring a school-age program into compliance with this chapter and chapter 43.216 RCW.

Safety plans are developed at meetings involving at least a school-age provider and a department licensor and supervisor. Safety plans detail changes the provider needs to make to mitigate the risk of direct and indirect harm to children enrolled in the school-age program. Program changes must be agreed to in writing and signed by all participants at the meeting.

Safety plans expire thirty calendar days after being signed by all parties. Safety plans may only be extended for an additional thirty days and extensions may only be authorized by a department supervisor.

"Sanitize" means to reduce the number of microorganisms on a surface by the process of:

(a) Cleaning and rinsing with water at a high temperature pursuant to this chapter; or

(b) Cleaning and rinsing, followed by using:

(i) A fragrance-free chlorine bleach and water solution following the DOH's current guidelines for mixing bleach solutions for child care and similar environments; or

(ii) Other sanitizer product if it is registered with the EPA and used strictly according to manufacturer's label instructions including, but not limited to, quantity used, time the product must be left in place, adequate time to allow the product to dry, and appropriateness for use on the surface to be sanitized. If used on food contact surfaces or toys, a sanitizer product must be labeled as "safe for food contact surfaces."

"School-age basics" means curriculum designed to meet the initial basic training requirement for school-age program staff working in licensed or certified school-age child care programs in Washington state.

"School-age child" means a child who is five years of age through twelve years of age and is attending a public or private school or is receiving home-based instruction under chapter 28A.200 RCW.

"School-age program" refers to regularly scheduled care for a group of children, five years of age through twelve years of age, who are attending public or private school or receiving home-based instruction under chapter 28A.200 RCW, for periods of less than twenty-four hours, licensed by the department.

"School-age program licensee" or **"school-age licensee"** means an entity licensed and authorized by the department to operate a school-age child care program.

"School-age program space" means the licensed indoor and outdoor space on the premises approved by the department for the purpose of providing licensed child care in a school-age program.

"School-age program staff" refers to all persons who work, substitute, or volunteer in a school-age program during hours when children are or may be present, excluding licensees.

"School-age provider" or **"provider"** refers to a licensee or designee who works in a school-age program during hours when children are or may be present. Designees include program directors, site directors, lead teachers, assistant teachers, aides, and volunteers.

"Screen time" means watching, using, or playing television, computer, video games, video or DVD players, mobile communication devices, or similar devices.

"Serious injury" means:

- (a) An injury resulting in an overnight hospital stay;
- (b) A severe neck or head injury;
- (c) Choking or serious unexpected breathing problems;
- (d) Severe bleeding;
- (e) Shock or an acute confused state;
- (f) Sudden unconsciousness;
- (g) Dangerous chemicals in eyes, on skin, or ingested;
- (h) Near drowning;
- (i) One or more broken bones;
- (j) A severe burn requiring professional medical care;
- (k) Poisoning; or
- (l) An overdose of a chemical substance.

"Shelter in place" means staff and children staying at the facility due to an external threat such as a storm, chemical or gas leak or explosion, or other event that prohibits the occupants from safely leaving the facility.

"Sign" means an individual formally placing their name or legal mark on a document by physical signature or electronic signature.

"Site director" means the school-age provider responsible for planning and implementing the school-age program services under the oversight of the program director. The site director is responsible for being on-site during the program's operating hours and providing regular supervision of staff and volunteers.

"Special needs" is a term used for children who require assistance due to learning difficulties, physical disability, or emotional and behavioral difficulties and who have documentation in the form of an individual educational plan (IEP), individual health plan (IHP), 504 plan, or an individualized family service plan (IFSP).

"Staff" means any school-age provider providing care in the school-age program.

"Supervise" or **"supervision"** means a school-age provider must be able to see or hear the children they are responsible for at all times. School-age providers must use their knowledge of each child's development and behavior to anticipate what may occur to prevent unsafe or unhealthy events or conduct, or to intervene in such circumstances as soon as possible. School-age providers must also reposition themselves or the children to be aware of where children are and what they are doing during care. A school-age provider must reassess and adjust their supervision each time program activities change. See "active supervision" for a heightened standard of care.

"Suspend" when used in reference to a school-age provider's licensing status, means an enforcement action by the department to temporarily stop a license in order to protect the health, safety, or welfare of enrolled children or the public.

"Swimming pool" means a pool that has a water depth greater than two feet (twenty-four inches).

"Technical assistance" means a service provided to school-age providers by department staff or a contracted third party. The goal of technical assistance is to offer guidance, information, and resources to help a provider fully comply with the licensing requirements of this chapter and chapter 43.216 RCW.

"Transition" is the process or period of time to change from one activity or place to another.

"Unlicensed space" means the indoor and outdoor areas of the premises not approved by the department as licensed space that the school-age provider must make inaccessible to the children during program hours.

"Unsupervised access" as used throughout this chapter has the same meaning as in WAC 110-06-0020.

"Usable space" means the areas that are available at all times for use by children in a school-age program and meets licensing requirements.

"USDA" means the United States Department of Agriculture.

"Vapor product" means any:

- (a) Device that employs a battery or other mechanism to heat a solution or substance to produce a vapor or aerosol intended for inhalation;

(b) Cartridge or container of a solution or substance intended to be used with or in such a device or to refill such a device; or

(c) Solution or substance intended for use in such a device including, but not limited to, concentrated nicotine, nonnicotine substances, or supplemental flavorings. This includes any electronic cigarettes, electronic nicotine delivery systems, electronic cigars, electronic cigarillos, electronic pipes, hookahs, steam stones, vape pens, or similar products or devices, as well as any parts that can be used to build such products or services. "Vapor product" does not include any drug, device, or combination product approved for sale by the FDA that is marketed and sold for such approved purpose.

"**Variance**" is an official approval by the department to allow a school-age program to achieve the outcome of a rule or rules in this chapter in an alternative way than described due to the needs of a unique or specific program approach or methodology. The department may grant a request for variance if the proposed alternative provides clear and convincing evidence that the health, welfare, and safety of all enrolled children is not jeopardized. A school-age provider does not have the right to appeal the department's disapproval of request for variance under chapter 110-03 WAC. The provider may challenge a variance disapproval on a department form.

"**Volunteer**" includes any person who provides labor or services to a school-age provider but is not compensated with employment pay or benefits. A volunteer must never have unsupervised access to a child unless the volunteer is the parent or guardian of that child or is an authorized person pursuant to WAC 110-301-0345. "Unsupervised access" has the same meaning here as in WAC 110-06-0020.

"**WAC**" means the Washington Administrative Code.

"**Wading pool**" means a pool that has a water depth of less than two feet (twenty-four inches).

"**Waiver**" is an official approval by the department allowing a school-age provider not to meet or satisfy a rule in this chapter due to specific needs of the program or an enrolled child. The department may grant a request for waiver if the proposed waiver provides clear and convincing evidence that the health, welfare, and safety of all enrolled children is not jeopardized. A school-age provider does not have the right to appeal the department's disapproval of a waiver request under chapter 110-03 WAC. The provider may challenge a waiver disapproval on a department form.

"**Washington state early learning and development guidelines**" refers to guidelines published by the department, OSPI, and thrive Washington for children birth through third grade that outlines what children know and are able to do at different stages of their development.

"**Water activities**" means school-age program activities in which enrolled children swim or play in a body of water that poses a risk of drowning for children. Water activities do not include using sensory tables.

"**Weapon**" means an instrument or device of any kind that is used or designed to be used to inflict harm including, but not limited to, rifles, handguns, shotguns, antique firearms, knives, swords, bows and arrows, BB guns, pellet guns, air rifles, electronic or other stun devices, or fighting implements.

"**Written food plan**" is a document designed to give alternative food to a child in care because of a child's medical needs or special diet, or to accommodate a religious, cultural, or family preference. A parent or guardian and the school-age provider must sign a written food plan.

NEW SECTION

WAC 110-301-0010 License required. (1) An individual or entity that operates a school-age program must be licensed by the department as a school-age program, pursuant to RCW 43.216.295, unless exempt under RCW 43.216.-010(2) and WAC 110-301-0025.

(2) The department must not license a department employee or a member of the employee's household if the employee is involved directly, or in an administrative or supervisory capacity, in the:

- (a) Licensing process;
- (b) Placement of a child in a licensed school-age program; or
- (c) Authorization of payment for the child in care.

NEW SECTION

WAC 110-301-0015 Program director and site director simultaneous absence. (1) The licensee must have a written plan for when the program director and site director will be simultaneously absent but the program remains open for the care of children. If the program director and site director are simultaneously absent for more than ten consecutive operating days, a school-age provider must submit a written notification to the department and each child's parent or guardian at least two business days prior to the planned absence.

(2) A written notification under this section must include the following information:

- (a) The time period of the absence;
- (b) Emergency contact information for the absent school-age provider; and
- (c) A written plan for program staff to follow that includes:
 - (i) A staffing plan that meets child-to-staff ratios;
 - (ii) Identification of a lead teacher to be present and in charge;
 - (iii) School-age program staff roles and responsibilities;
 - (iv) How each child's needs will be met during the absence; and
 - (v) The responsibility for meeting licensing requirements.

(3) If a school-age program fails to comply with licensing regulations during an absence described in this section, the school-age provider must:

- (a) Retrain school-age program staff on the requirements of the rules noted on the inspection report; and
- (b) Document that the retraining occurred.

NEW SECTION

WAC 110-301-0016 Inactive status—Voluntary and temporary closure. (1) If a school-age licensee plans to temporarily close their school-age program for more than

thirty calendar days, and this closure is a departure from the program's regular schedule, a school-age provider must submit a notification to go on inactive status to the department at least two business days prior to the planned closure. Notifications for inactive status must include:

(a) The date the school-age program will cease operating;

(b) The reasons why the licensee is going on inactive status; and

(c) A projected date the school-age program will reopen.

(2) The requirements of this section do not apply to licensed school-age programs that have temporary closures beyond thirty calendar days as part of their regular schedule, such as programs based on the school year or seasonal occupation.

(3) A licensee may not request inactive status during their first initial licensing period (six months) unless for an emergency.

(4) A school-age provider must inform parents and guardians that the program will temporarily close.

(5) A school-age provider is responsible for notifying the department of changes to program status including voluntary closures, new staff, or other program changes. Program status updates must also be completed in the department's electronic system.

(6) Background check rules in chapter 110-06 WAC, including allegations of child abuse or neglect, will remain in effect during inactive status.

(7) After receiving a notice of inactive status, the department will:

(a) Place the license on inactive status;

(b) Inform the licensee that the license is inactive; and

(c) Notify the following programs of the inactive status:

(i) The department's child care subsidy programs;

(ii) CACFP; and

(iii) Child care aware of Washington.

(8) A licensee is still responsible for maintaining annual compliance requirements during inactive status pursuant to RCW 43.216.305.

(9) If inactive status exceeds six months within a twelve-month period, the department must close the license for failing to comply with RCW 43.216.305(2). The licensee must reapply for licensing pursuant to RCW 43.216.305(3).

(10) The department may pursue enforcement actions after three failed attempts to monitor a school-age program if the:

(a) School-age provider has not been available to permit the monitoring visits;

(b) Monitoring visits were attempted within a three-month time period; and

(c) Department attempted to contact the provider by phone during the third attempted visit while still on the school-age program premises.

(11) When a licensee is ready to reopen after a temporary closure, the licensee must notify the department in writing. After receiving notice of the intent to reopen, the department will:

(a) Conduct a health and safety visit of the school-age program within ten business days to determine that the provider is in compliance with this chapter;

(b) Activate the license and inform the licensee that the license is active; and

(c) Notify the following programs of the active status:

(i) The department's child care subsidy programs;

(ii) CACFP; and

(iii) Child care aware of Washington.

NEW SECTION

WAC 110-301-0020 Unlicensed programs. (1) If the department suspects that an individual or agency is operating an unlicensed school-age program, the department must follow the requirements of RCW 43.216.360.

(2) If an individual or agency decides to obtain a license, within thirty calendar days from the date of the department's notice in subsection (1) of this section, the individual or agency must submit a written agreement on a department form stating they agree to:

(a) Attend and participate in the next available department licensing orientation; and

(b) Submit a licensing application after completing orientation.

(3) The department's written notice under subsection (1) of this section must inform the individual or agency operating an unlicensed school-age program:

(a) That the individual or agency must stop operating an unlicensed school-age program, pursuant to RCW 43.216-360;

(b) How to respond to the department;

(c) How to apply for a license;

(d) How a fine, if issued, may be suspended or withdrawn if the individual applies for a license;

(e) That the individual has a right to request an adjudicative proceeding (hearing) if a fine is assessed; and

(f) How to ask for a hearing, under chapter 34.05 RCW (Administrative Procedure Act), chapter 43.216 RCW, and chapter 110-03 WAC (department hearing rules).

(4) If an individual or agency operating an unlicensed school-age program does not submit an agreement to obtain a license as provided in subsection (2) of this section within thirty calendar days from the date of the department's written notice, the department will post information on its website that the individual is operating a school-age program without a license.

(5) An individual operating an unlicensed school-age program:

(a) Will be guilty of a misdemeanor pursuant to RCW 43.216.365; and

(b) May be subject to an injunction pursuant to RCW 43.216.355.

NEW SECTION

WAC 110-301-0025 Certified and exempt programs. (1) The department must not license a school-age program that is legally exempt from licensing pursuant to RCW 43.216.010(2). However, if a school-age program requests to become certified by the department, the department must apply all licensing rules to the otherwise exempt program. In such a case, the department must apply licensing rules equally to licensed and certified school-age programs.

(2) The department may certify an otherwise exempt school-age program for subsidy payment without further inspection if the program is:

(a) Licensed by an Indian tribe, band, nation, or other organized community of Indians, including an Alaska native village as defined in 43 U.S.C. Sec. 1602(c), recognized as eligible for services by the United States Secretary of the Interior;

(b) Certified by the DOD; or

(c) Approved by the OSPI.

(3) A school-age program exempt from licensing pursuant to RCW 43.216.010(2) must use the department's form to submit their exempt status.

(4) A school-age program requesting certification must be located on the premises over which the tribe, DOD, or OSPI has jurisdiction.

(5) A school-age program regulated by a tribe, the DOD, or OSPI may request certification:

(a) For subsidy payment only; or

(b) As meeting foundational quality standards of this chapter.

(6) The department must not certify a department employee or a member of their household when the employee is involved directly, or in an administrative or supervisory capacity, in the:

(a) Certification process;

(b) Placement of a child in a certified program; or

(c) Authorization of payment for the child in care.

NEW SECTION

WAC 110-301-0030 Nondiscrimination. (1) School-age programs are defined by state law as places of public accommodation that must:

(a) Not discriminate in employment practices or client services based on race, creed, color, national origin, sex, honorably discharged veteran or military status, marital status, gender, sexual orientation, age, religion, or ability; and

(b) Comply with the requirements of the Washington law against discrimination (chapter 49.60 RCW) and the ADA.

(2) A school-age program must have a written nondiscrimination policy addressing at least the factors listed in subsection (1) of this section.

NEW SECTION

WAC 110-301-0035 Department access to agency premises, records, programs, and staff. (1) Pursuant to RCW 43.216.250(8), an applicant or school-age program must grant reasonable access to the department during the program's hours of operation for the purpose of announced or unannounced inspections.

(a) Applicants, licensees, and school-age program staff must allow the department's authorized staff to inspect the indoor and outdoor licensed space and any adjacent enclosures, areas, spaces, substances, machinery, or devices that may directly impact the health, safety, or well-being of enrolled children to verify compliance with the requirements of this chapter and chapter 43.216 RCW. However, under RCW 43.216.250 (2)(b), department licensors are authorized to inspect only health, safety, and quality standards that do

not relate to the physical facility for school-age programs operating in facilities used by public or private schools.

(b) For the purposes of this chapter "hours of operation" means the hours of the day that a licensee offers school-age program services as reported to the department on the license application or modification paperwork, or as indicated in the parent or guardian handbook.

(2) The department may deny, suspend, revoke, or not continue a license when an applicant, licensee, or program staff refuses to allow the department's authorized staff access to any of the following:

(a) Information relevant to the school-age program;

(b) The agency's premises pursuant to subsection (1) of this section;

(c) Child, staff, or program records or files;

(d) Staff members; or

(e) Children in care.

SECTION II

FAMILY ENGAGEMENT AND PARTNERSHIPS

NEW SECTION

WAC 110-301-0085 Family partnerships and communication. (1) A school-age provider must attempt to obtain information from each child's family about that child's developmental, behavioral, health, linguistic, cultural, social, and other relevant information. The provider must make this attempt upon that child's enrollment and annually thereafter.

(2) A school-age provider must determine how the program can best accommodate each child's individual characteristics, strengths, and needs. The provider must utilize the information in subsection (1) of this section and seek input from family members and staff familiar with a child's behavior, developmental, and learning patterns.

(3) A school-age provider must:

(a) Attempt to discuss with parents or guardians information including, but not limited to:

(i) A child's strength in areas of development, health issues, special needs, and other concerns.

(ii) Family routines or events, approaches to parenting, family beliefs, culture, language, and child rearing practices;

(iii) Internal transitions within the school-age program and transitions to external services or programs, as necessary;

(iv) Collaboration between the provider and the parent or guardian in behavior management; and

(b) Give parents or guardians the school-age program's contact information for questions or concerns;

(c) Give families opportunities to share their language and culture in the school-age program;

(d) Arrange a confidential time and space for individual conversations regarding children, as needed;

(e) Allow parents or guardians access to their child during normal hours of operation, except as excluded by a court order; and

(f) Communicate verbally or in writing:

(i) Changes in drop-off and pickup arrangements as needed; and

(ii) Daily activities.

SECTION III

PROFESSIONAL DEVELOPMENT, TRAINING, AND REQUIREMENTS

NEW SECTION

WAC 110-301-0100 General staff qualifications. All school-age providers must meet the following requirements prior to working:

(1) **School-age program licensees** must meet the requirements of a program director listed in subsection (2) of this section or hire a program director who meets the qualifications prior to being granted an initial license. School-age program licensees who fulfill the role of program director in their school-age program must complete all trainings and requirements for program director.

(2) **Program directors** manage the overall school-age program operations and facilities and set appropriate program and staff expectations. The program director is not responsible for being on-site at the program, unless the program director is filling in for an on-site role.

(a) A program director must meet the following qualifications:

(i) Be at least eighteen years old;

(ii) Complete forty-five college credits in any one hundred-level or above college coursework as approved and verified in the electronic workforce registry by the department as follows:

(A) A program director working at the time this chapter becomes effective must have completed at least twelve college credits in any one hundred-level or above college coursework and complete an additional thirty-three college credits in any one hundred-level or above college coursework within five years of the date this section becomes effective.

(B) A program director hired or promoted after this chapter becomes effective must have completed twelve college credits in any one hundred-level or above coursework prior to being hired or promoted, and complete an additional thirty-three college credits in any one hundred-level or above coursework within five years of the time of hire or promotion.

(iii) Complete the applicable preservice requirements, pursuant to WAC 110-301-0105; and

(iv) Have their continued professional development progress documented annually.

(b) A program director must provide the following services:

(i) A program director may fill in as a site director or teacher if acting in this role does not interfere with the responsibilities of managing the school-age program;

(ii) Comply with foundational quality standards;

(iii) Develop a program philosophy, communicate the philosophy to all school-age program staff, parents, and guardians, and train staff to ensure the philosophy serves all children in the program (or designate a site director with this responsibility);

(iv) Have knowledge of community resources available to families, including resources for children with special

needs and be able to share these resources with families (or designate a site director with this responsibility); and

(v) Oversee professional development plans for school-age program staff including, but not limited to:

(A) Providing support to staff for creating and maintaining staff records;

(B) Setting educational goals with staff and locating or coordinating state-approved training opportunities for staff; and

(C) Mentoring the site director.

(3) **Site directors** plan and implement the school-age program services under the oversight of a program director. The site director is responsible for being on-site during the program's operating hours.

(a) A site director must meet the following qualifications:

(i) Be at least eighteen years old;

(ii) Complete thirty college credits in any one hundred-level or above college coursework as approved and verified in the electronic workforce registry by the department as follows:

(A) A site director working at the time this chapter becomes effective must have completed at least twelve college credits in any one hundred-level or above college coursework and complete an additional eighteen college credits in any one hundred-level or above coursework within five years of the date this section becomes effective;

(B) A site director hired or promoted after this chapter becomes effective must have completed twelve college credits in any one hundred-level or above coursework prior to being hired or promoted, and complete eighteen college credits in any one hundred-level or above coursework within five years of the time of hire or promotion.

(ii) Complete the applicable preservice requirements, pursuant to WAC 110-301-0105; and

(iv) Have their continued professional development progress documented annually.

(b) A site director performs the following duties:

(i) Plan and implement curriculum and environmental design of the school-age program;

(ii) Be on-site providing regular supervision of staff and volunteers;

(iii) Comply with foundational quality standards;

(iv) Act as a teacher as long as it does not interfere with the site director's primary responsibilities; and

(v) Observe and mentor staff.

(c) One person may be the program director and the site director when qualified for both positions, provided that all requirements of subsection (2)(a) of this section are met.

(d) For program continuity, a lead teacher can fill in for a site director up to two weeks. If longer than two weeks, the licensee or program director must notify the department with a plan for how the site director's responsibilities will be managed during the site director's absence.

(4) **Lead teachers** are responsible for implementing the school-age program. Lead teachers develop and provide a nurturing and responsive environment that meets the needs of enrolled children. A lead teacher must meet the following qualifications:

(a) Be at least eighteen years old;

(b) Have a high school diploma or equivalent;

(c) Have completed twelve college credits in any one hundred-level or above college coursework as approved and verified in the electronic workforce registry by the department within five years of the date this section becomes effective, or five years from being employed or promoted into this position at any licensed school-age program, whichever comes later;

(d) Complete the applicable preservice requirements, pursuant to WAC 110-301-0105; and

(e) Have their professional development progress documented annually.

(5) **Assistant teachers** help a lead teacher provide instructional support to children and implement developmentally appropriate programming.

(a) An assistant teacher must meet the following qualifications:

(i) Be at least eighteen years old;

(ii) Have a high school diploma or equivalent; and

(iii) Complete the applicable preservice requirements, pursuant to WAC 110-301-0105.

(b) Assistant teachers may work alone with children with regular, scheduled, and documented oversight and on-the-job training from the lead teacher who is primarily responsible for the care of the same group of children for the majority of their day.

(c) For continuity of care, assistant teachers can act as a substitute lead teacher up to two weeks. If longer than two weeks, the program director or site director must notify the department with a plan for how the lead teacher's responsibilities will be managed during the lead teacher's absence.

(6) **Aides** provide classroom support to an assistant teacher, lead teacher, site director, or program director. Aides must meet the following qualifications:

(a) Be at least fourteen years old;

(b) Have a high school diploma or equivalent, or be currently enrolled in high school or an equivalent education program;

(c) Complete the applicable preservice requirements, pursuant to WAC 110-301-0105; and

(d) Aides may be counted in the staff-to-child ratio if they are working under the continuous supervision of a lead teacher, site director, or program director.

(7) **Other personnel** who do not directly care for children and are not listed in subsections (1) through (6) of this section must meet the following qualifications:

(a) Complete and pass a background check, pursuant to chapter 110-06 WAC;

(b) Have a negative TB test, pursuant to WAC 110-301-0105; and

(c) Complete program based staff policies and training, pursuant to WAC 110-301-0110.

(8) **Volunteers** help at school-age programs. Volunteers must meet the following qualifications:

(a) Be at least fourteen years old and have written permission to volunteer from their parent or guardian if under eighteen years old;

(b) Work under the continuous supervision of a lead teacher, site director, or program director;

(c) Regular, ongoing volunteers may count in staff-to-child ratio if they:

(i) Complete and pass a background check, pursuant to chapter 110-06 WAC;

(ii) Complete a TB test, pursuant to WAC 110-301-0105;

(iii) Complete the training requirements, pursuant to WAC 110-301-0106; and

(iv) Complete program-based staff policies and training, pursuant to WAC 110-301-0110.

(d) Occasional volunteers must comply with (a) and (b) of this subsection and cannot count in staff-to-child ratio. Occasional volunteers may include, but are not limited to, a parent or guardian helping on a field trip, special guest presenters, or a parent or guardian, family member, or community member helping with a cultural celebration.

NEW SECTION

WAC 110-301-0105 Preservice requirements. (1) All applicants, co-applicants, program directors, and site directors must complete a department provided orientation for school-age programs. Prior to being in charge of the school-age program, those newly promoted or assuming a role of one of the roles listed here must complete or be registered in a department provided orientation training.

(2) School-age providers must complete a department background check, pursuant to chapter 110-06 WAC.

(3) School-age providers, including volunteers must provide documentation signed within the last twelve months by a licensed health care professional of tuberculosis (TB) testing or treatment consisting of:

(a) A negative TB symptom screen and negative TB risk assessment;

(b) A previous positive FDA-approved TB test and a current negative chest radiograph and documentation of clearance to safely work in a school-age program; or

(c) A positive symptom screening or a positive risk assessment with documentation of:

(i) A current negative FDA-approved TB test;

(ii) A previous or current positive FDA-approved TB test; and

(iii) A current negative chest radiograph and documentation of clearance to safely work in a school-age program.

(4) Upon notification of TB exposure, school-age providers may be required to be retested for TB as directed by the local health jurisdiction.

NEW SECTION

WAC 110-301-0106 Training requirements. (1) School-age providers licensed, working, or volunteering in a school-age program before the date this section becomes effective must complete the applicable training requirements of this section within three months of the date this section becomes effective unless otherwise indicated. State or federal rules may require health and safety training described under this chapter to be renewed annually. School-age providers hired after the date this section becomes effective must complete the training requirements of subsections (4) through (8)

of this section within three months of the date of hire and prior to working in an unsupervised capacity with children.

(2) License applicants and school-age providers must register with the electronic workforce registry prior to being granted an initial license or working with children in an unsupervised capacity.

(3) License applicants, program directors, site directors, lead teachers, and assistant teachers must complete the school-age basics training as approved or offered by the department:

- (a) Prior to being granted a license;
- (b) Prior to working unsupervised with children; or
- (c) Within three months of the date this section becomes effective if already employed or being promoted to a new role.

(4) School-age providers must complete the recognizing and reporting suspected child abuse, neglect, and exploitation training as approved or offered by the department according to subsection (1) of this section. Training must include the prevention of child abuse and neglect as defined in RCW 26.44.020 and mandatory reporting requirements under RCW 26.44.030.

(5) School-age providers must complete the emergency preparedness training as approved or offered by the department according to subsection (1) of this section.

(6) School-age providers must complete the serving children experiencing homelessness training as approved or offered by the department according to subsection (1) of this section.

(7) Program directors, site directors, and lead teachers must complete the medication management and administration training as approved or offered by the department prior to giving medication to an enrolled child, or as indicated in subsection (1) of this section.

(8) School-age providers who directly care for children must complete the prevention of exposure to blood and bodily fluids training that meets Washington state department of labor and industries' requirements prior to being granted a license or working with children. This training must be repeated pursuant to Washington state department of labor and industries regulations.

(9) Program directors, site directors, lead teachers, assistant teachers and any other school-age providers counted in staff-to-child ratio, or who could potentially be counted in ratio, must be trained in first-aid and cardiopulmonary resuscitation (CPR).

(a) Proof of training can be shown with a certification card, certificate, or instructor letter.

(b) The first-aid and CPR training and certification must:

- (i) Be delivered in person and include a hands-on component for first aid and CPR demonstrated in front of an instructor certified by the American Red Cross, American Heart Association, American Safety and Health Institute, or other nationally recognized certification program; and
- (ii) Include child and adult first aid and CPR.

(10) School-age providers who prepare or serve food to children at a school-age program must obtain a current food worker card prior to preparing or serving food. Food worker cards must:

- (a) Be obtained through the local health jurisdiction, in-person or online; and
- (b) Be renewed prior to expiring.

NEW SECTION

WAC 110-301-0107 In-service training. (1) Program directors, site directors, lead teachers, and assistant teachers must complete ten hours of annual in-service training after twelve months of cumulative employment.

(a) Every thirty-six months, program directors and site directors must complete a minimum of ten hours of in-service training on "leadership practices."

(b) Leadership practices training includes the following Washington state core competencies: Program planning and development, and professional development and leadership.

(2) In-service training requirements of this chapter may be met by completing college courses that align with the Washington state core competencies. These courses must be delivered by a postsecondary institution and approved by the department.

(3) Only five in-service training hours that exceed the requirements of subsection (1) of this section may be carried over from one calendar year to the next calendar year.

NEW SECTION

WAC 110-301-0110 Program based staff policies and training. (1) A school-age provider must have and follow written policies for school-age program staff. Staff policies must include those listed in subsections (2) and (3) of this section and must be reviewed and approved by the department prior to issuing a provider's initial license. Providers must notify the department when substantial changes are made.

(2) School-age program staff policies must include, but are not limited to:

- (a) All of the information in the parent or guardian handbook except fees;
- (b) Job descriptions, pay dates, and benefits;
- (c) Professional development expectations and plans;
- (d) Expectations for attendance and conduct;
- (e) School-age program staff responsibilities for:
 - (i) Child supervision requirements, including preventing children's access to unlicensed space;
 - (ii) Child growth and development;
 - (iii) Developmentally appropriate curriculum and activities;
 - (iv) Teacher-child interaction;
 - (v) Child protection, guidance, and discipline techniques;
 - (vi) Food service practices;
 - (vii) Off-site field trips, if applicable;
 - (viii) Transporting children, if applicable;
 - (ix) Health, safety, and sanitization procedures;
 - (x) Medication management procedures;
 - (xi) Medical emergencies, fire, disaster evacuation and emergency preparedness plans;
 - (xii) Mandatory reporting of suspected child abuse, neglect, and exploitation, pursuant to RCW 26.44.020 and 26.44.030 and all other reporting requirements;

- (xiii) Implementation of child's individual health care or special needs plan;
- (xiv) Following nonsmoking, vaping, alcohol and drug regulations;
- (xv) Religious, equity, and cultural responsiveness;
- (xvi) Nondiscrimination;
- (xvii) Planned daily activities and routines.
- (f) Staff responsibilities if the program director or site director is absent from the school-age program;
- (g) A plan that includes how both administrative and child caretaking duties are met when a job requires such dual responsibilities; and
- (h) Observation, evaluation, and feedback policies.
- (3) A school-age provider must have and follow written policies requiring staff working, transitioning, or covering breaks with the same classroom or group of children to share applicable information with each other on a daily basis regarding:
 - (a) A child's health needs, allergies, and medication;
 - (b) Any change in a child's daily schedule;
 - (c) Significant educational or developmental information;
 - (d) Any communications from the family; and
 - (e) Information to be shared with the family.
- (4) A school-age provider must develop, deliver, and document the delivery of school-age staff training specific to the school-age program and premises.
 - (a) Training topics must include:
 - (i) Staff policies listed in subsections (2) and (3) of this section;
 - (ii) Chapter 43.216 RCW; and
 - (iii) Chapters 110-301 and 110-06 WAC.
 - (b) Training must be updated with changes in program policies and state or federal regulations.

NEW SECTION

- WAC 110-301-0111 Staff oversight.** (1) A school-age provider who oversees staff must:
- (a) Establish a work plan with clear expectations;
 - (b) Be aware of what staff members are doing; and
 - (c) Be available and able to respond in an emergency as needed to protect the health and safety of children in care.
- (2) When the program director, site director, lead teacher, or assistant teacher is the only staff supervising an aide or volunteer, the aide or volunteer may be out of the supervisor's visual and auditory range only when the aide, volunteer, or supervisor is attending to personal needs.

NEW SECTION

- WAC 110-301-0115 Staff records.** (1) A school-age provider must establish a records system for themselves, staff, and volunteers that complies with the requirements of this chapter. School-age program staff records must be:
- (a) Verified by the licensee, program director or site director;
 - (b) Entered and maintained in the electronic workforce registry, if applicable. Paper records may be discarded once entered into the electronic workforce registry and confirmed by the department;

- (c) Updated to delete staff names from the electronic workforce registry when they are no longer employed at the school-age program; and
- (d) Kept on-site or in the program's administrative office in a manner that allows the department to review the records.
- (2) Records for each school-age provider and staff member must include:
 - (a) First and last name;
 - (b) Date of birth;
 - (c) Job title;
 - (d) First and last day of employment, if applicable; and
 - (e) Proof of professional credentials, requirements, and training for each school-age staff member, pursuant to WAC 110-301-0100 through 110-301-0110.
- (3) A licensee, program director, or site director must maintain the following records for each school-age provider and program staff in a confidential manner. These records must be reviewable by the department and must include at a minimum:
 - (a) A copy of current government issued photo identification;
 - (b) Emergency contact information;
 - (c) Completed employment application or resume;
 - (d) Annual observation, evaluation, and feedback information;
 - (e) The licensee's Social Security number, federal employer identification number, or a written document stating the licensee does not possess either; and
 - (f) Immunization records including exemption documents.

NEW SECTION

- WAC 110-301-0120 Providing for personal, professional, and health needs of staff.** (1) A licensee must provide for the personal and professional needs of staff by:
- (a) Having a place to store personal belongings that is inaccessible to children;
 - (b) Having a readily accessible phone to use for emergency calls or to contact the parents and guardians of enrolled children; and
 - (c) Providing file and storage space for professional materials.
- (2) A school-age provider must be excluded from the school-age premises when that provider's illness or condition poses a risk of spreading a harmful disease or compromising the health and safety of others. The illnesses and conditions that require a staff member to be excluded are pursuant to WAC 110-301-0205.
- (3) If a staff person has not been vaccinated, or shown documented immunity to a vaccine preventable disease, that person may be required by the local health jurisdiction or the department to remain off-site during an outbreak of a contagious disease described in WAC 246-110-010. A school-age program staff person or volunteer who has not been vaccinated against measles, mumps, and rubella or shown proof of immunity from measles must not be allowed on the school-age premises except as provided in (a) and (b) of this subsection.

(a) A school-age program may allow a person to be employed or volunteer on the school-age premises for up to thirty calendar days if the person signs a written attestation that the employee or volunteer has received the measles, mumps, and rubella vaccine, or is immune from measles, but requires additional time to obtain and provide their immunization records. The required records must include immunization records indicating the employee or volunteer has received the measles, mumps, and rubella vaccine; or records that show proof of immunity from measles through documentation of laboratory evidence of antibody titer or a health care provider's attestation of the person's history of measles sufficient to provide immunity against measles.

(b) A school-age program may allow a person to be employed or volunteer on the school-age premises if the person provides the school-age program with a written certification signed by a health care practitioner, as defined in RCW 28A.210.090(3), that the measles, mumps, and rubella vaccine is, in the practitioner's judgment, not advisable for the person. Subdivision (b) of this subsection does not apply if a person's health care practitioner determines that the measles, mumps, and rubella vaccine is no longer contraindicated.

(4) A school-age program's health policy, pursuant to WAC 110-301-0500, must include provisions for excluding or separating staff with a contagious disease described in WAC 246-110-010.

SECTION IV

SPACE AND FURNISHINGS

NEW SECTION

WAC 110-301-0130 Indoor school-age program space. (1) School-age program space, ramps, and handrails must comply with, be accessible to, and accommodate children and adults with disabilities as required by the Washington law against discrimination (chapter 49.60 RCW) and the ADA.

(2) School-age program space must allow children to move between areas without disrupting another child's work or play.

NEW SECTION

WAC 110-301-0135 Routine care, play, learning, relaxation, and comfort. (1) A school-age provider must have accessible and child-size furniture and equipment in sufficient quantity.

(2) Furniture and equipment must be:

- (a) Maintained in a safe working condition;
- (b) Developmentally and age appropriate;
- (c) Visually inspected at least weekly for hazards, broken parts, or damage. All equipment with hazardous, broken parts, or damage must be repaired as soon as possible and must be inaccessible to children until repairs are made according to the manufacturer's instructions, if available;
- (d) Arranged in a way that does not interfere with other play equipment;
- (e) Installed and assembled according to manufacturer's specifications;

(f) Stored in a manner to prevent injury; and

(g) Accessible to a child's height so that children can find, use, and return materials independently.

NEW SECTION

WAC 110-301-0140 Room arrangement, child-related displays, private space, and belongings. (1) School-age materials and equipment must be visible, accessible to children in care, and arranged to promote and encourage independent access by children.

(2) A school-age provider must display age and developmentally appropriate school-age materials. Materials must be related to current activities and located so a child can find, use, and return materials independently.

(3) A school-age provider must offer, or allow a child to create, a place for privacy. This space must:

- (a) Allow the provider to supervise children; and
- (b) Include an area accessible to children who seek or need time alone or in small groups.

(4) A school-age provider must have extra clothing available for children who wet, soil, or have a need to change clothes.

(5) A school-age provider must ensure children have individual storage space for each child's belongings while in attendance. This may include, but is not limited to, a child's personal backpack or individual storage bins provided by the program. At a minimum, the space must be:

- (a) Accessible to the child; and
- (b) Large enough and spaced sufficiently apart from other storage space to:
 - (i) Store the child's personal articles and clothing; and
 - (ii) Promote or encourage children to organize their possessions.

(6) Child usable and accessible areas must be arranged to provide sufficient space for routine care, child play, and learning activities. These areas must be designed to:

- (a) Allow the provider to supervise or actively supervise the children, depending on the nature of the activities;
- (b) Allow children to move freely; and
- (c) Allow for different types of activities at the same time, such as manipulatives, language and literary materials, art materials, table games, music, or dramatic play.

NEW SECTION

WAC 110-301-0145 Outdoor school-age program space. (1) A school-age provider must visually inspect outdoor program space and equipment daily to ensure outdoor areas and equipment are free of hazards.

(2) Outdoor play space must contain a minimum of seventy-five square feet of licensed usable space per child accessing the play space at any given time. A school-age provider may develop an alternate plan if a school-age program does not have enough outdoor play space to accommodate all enrolled children at once (for example, rotating groups of children to play outdoors or using an off-site play area). The department must approve alternate plans to use off-site play spaces.

(3) A school-age program must have shaded areas in outdoor play space provided by trees, buildings, or shade structures.

(4) Outdoor play space must promote a variety of age and developmentally appropriate active play areas for children in care. Activities must encourage and promote both moderate and vigorous physical activity such as running, jumping, skipping, throwing, pedaling, pushing, pulling, kicking, and climbing.

Bouncing equipment including, but not limited to, trampolines, rebounders, and inflatable equipment must be inaccessible and locked. This requirement does not apply to bounce balls designed to be used by individual children.

(5) When the licensed outdoor play space is not immediately adjacent to the school-age program site, a school-age provider must use a safe route when moving to and from the licensed outdoor play space.

(6) For any program that does not operate on public or private school premises, licensed outdoor play areas must be enclosed with a fence or barrier that is intended to prevent children from exiting and discourages climbing. If the outdoor play area is enclosed by a barrier that is not a fence, the barrier may be a wall constructed with brick, stone, or a similar material.

(7) For any program that does not operate on public or private school premises, licensed outdoor play areas must be enclosed to deter people without permission from entering the area.

(8) For any program that does not operate on public or private school premises, fences, barriers, and gates must be in good condition, have no gap through which a sphere with a diameter of three and one-half inches can pass, and have a minimum height of forty-eight inches or conform to applicable local codes.

(9) For any program that does not operate on public or private school premises, the opening between a fence post and gate or fence post and building must have no gap through which a sphere with a diameter of three and one-half inches can pass.

(10) For any program that does not operate on public or private school premises, a school-age provider must not install any wooden fence, playground structure, or furniture if it contains chromated copper arsenate (CCA), creosote or pentachlorophenol. If wooden fences, structures, and furniture are suspected of having CCA, they must be tested. If CCA is present, fences, structures, and furniture must be removed or sealed with an oil-based outdoor sealant annually or as needed within six months of the date this section becomes effective.

(11) Within six months of the date this section becomes effective or prior to licensing, any program that does not operate on public or private school premises must have exiting mechanisms on gates from a licensed outdoor play area to unlicensed space that are equipped with a self-closing and self-latching mechanism (shuts automatically when released from an individual's control). A gate that is not an emergency exit must be locked or self-closing and self-latching.

(12) For any program that does not operate on public or private school premises, outdoor play areas must have two

exits that must not be partially or entirely blocked, with at least one exit located away from the building.

NEW SECTION

WAC 110-301-0146 Equipment and surfaces in outdoor school-age program space. This section is applicable to any program that does not operate on public or private school premises.

(1) Playground equipment and surfacing used by a school-age provider must comply with applicable CPSC guidelines including, but not limited to, installing, arranging, designing, constructing, and maintaining outdoor play equipment and surfacing.

(a) Climbing play equipment must not be placed on or above concrete, asphalt, packed soil, lumber, or similar hard surfaces; and

(b) The ground under swings and play equipment must be covered by a shock absorbing material (grass alone is not acceptable) such as:

(i) Pea gravel at least nine inches deep;

(ii) Playground wood chips at least nine inches deep;

(iii) Shredded recycled rubber at least six inches deep; or

(iv) Any material that has a certificate of compliance, label, or documentation stating it meets ASTM standards F1292-13 and F2223-10.

(2) Permanently anchored outdoor play equipment must not be placed over septic tank areas or drain fields, and must be installed according to the manufacturer's directions.

(3) Handmade playground equipment must be maintained for safety or removed when no longer safe. Prior to construction of new handmade playground equipment, the provider must notify the department and have plans and a materials list available upon request.

NEW SECTION

WAC 110-301-0147 Weather conditions and outdoor hazards. (1) A school-age provider must observe weather conditions and other possible hazards to take appropriate action for child health and safety. Conditions that pose a health or safety risk may include, but are not limited to:

(a) Heat in excess of 100 degrees Fahrenheit or pursuant to advice of the local authority;

(b) Cold less than 20 degrees Fahrenheit, or pursuant to advice of the local authority;

(c) Lightning storm, tornado, hurricane, or flooding if there is immediate or likely danger;

(d) Earthquake;

(e) Air quality emergency ordered by a local or state authority on air quality or public health;

(f) Lockdown notification ordered by a public safety authority; and

(g) Other similar incidents.

(2) A school-age provider must ensure children are dressed for weather conditions during outdoor play time.

NEW SECTION

WAC 110-301-0148 Gardens in outdoor school-age program space. (1) A garden in a school-age program space must:

- (a) Have safeguards in place to minimize risk of cross-contamination by animals;
 - (b) Use soil free from agricultural or industrial contaminants such as lead or arsenic if gardening directly in the ground;
 - (c) If gardening in raised beds use:
 - (i) New soil that is labeled "organic" or "safe for children" and was obtained from a gardening supply store or other retail store; or
 - (ii) Composted soil made from material that is safe according to the Washington State University's extension master gardener composting guidelines; and
 - (d) Use water that comes from a private well approved by the local health jurisdiction or from a public water system. A school-age provider must make water for gardens inaccessible to children if the provider uses irrigation water.
- (2) Garden beds must be made of materials that will not leach chemicals into the soil including, but not limited to, wood treated with chromated copper arsenate, creosote or pentachlorophenol, reclaimed railroad ties, or tires.
- (3) Any herbicide or pesticide must be applied pursuant to the product manufacturer's directions. The product must not be applied while children are present. Children must not apply the product or have access to the garden during the manufacturer's prescribed waiting period following application.

SECTION V**ACTIVITIES**NEW SECTION

WAC 110-301-0150 Program and activities. (1) A school-age provider must supply children in care with a variety of school-age materials that are age and developmentally appropriate and meet children's individual and cultural needs. School-age materials must be:

- (a) Clean;
 - (b) Washable or disposable;
 - (c) Accommodating to a range of abilities of children in care;
 - (d) Available to children in care appropriate to a child's age and developmental level;
 - (e) Nonpoisonous and free of toxins. If a school-age provider is using prepackaged art materials, the materials must be labeled "non-toxic" and meet ASTM standard D-4236 as described in 16 C.F.R. 1500.14 (b)(8)(i);
 - (f) In good and safe working condition;
 - (g) Accommodating to special needs of children in care; and
 - (h) Removed from the school-age program space once an item has been recalled by CPSC.
- (2) A school-age provider must ensure a sufficient quantity and variety of materials to engage children in the school-age program such as arts and crafts supplies, construction

materials, manipulative materials, music and sound devices, table games, books, social living equipment, and gross motor materials such as balls and jump ropes. Materials must:

- (a) Encourage both active physical play and quiet play activities;
- (b) Promote imagination and creativity;
- (c) Promote communication and literacy skills;
- (d) Encourage social skill development;
- (e) Promote numeracy, math, and spatial ability;
- (f) Encourage discovery, exploration, and reasoning; and
- (g) Promote learning skills.

NEW SECTION

WAC 110-301-0155 Use of television, video, and computers. If a school-age provider offers screen time to children in care:

- (1) The screen time available for each child:
 - (a) Must be educational, developmentally and age appropriate, nonviolent, and culturally sensitive; and
 - (b) Should be interactive with staff.
- (2) Children must not be required to participate in screen time activities. Alternative activities must be provided to children in care when screen time is offered.
- (3) Screen time must not occur during meals or snacks.
- (4) Screen time must be limited to two and one-half hours per week for each child unless computer use is required for homework or a part of curriculum.

NEW SECTION

WAC 110-301-0160 Promoting acceptance of diversity. (1) A school-age provider must provide culturally and racially diverse learning opportunities. Diverse learning opportunities must be demonstrated by the provider's activities and materials that represent all children, families, and staff. A provider must use equipment and materials that include, but are not limited to:

- (a) Diverse dolls, books, pictures, games, or materials that do not reinforce stereotypes;
 - (b) Diverse music from many cultures in children's primary languages; and
 - (c) A balance of different ethnic and cultural groups, ages, abilities, family styles, and genders.
- (2) A school-age provider must intervene appropriately to stop biased behavior displayed by children or adults including, but not limited to:
- (a) Redirecting an inappropriate conversation or behavior;
 - (b) Being aware of situations that may involve bias and responding appropriately; and
 - (c) Refusing to ignore bias.

SECTION VI**SAFETY**NEW SECTION

WAC 110-301-0165 Safety requirements. (1) A school-age provider must keep indoor and outdoor school-

age program space, materials, and equipment free from hazards and in safe working condition. Equipment and toys purchased and used must be compliant with CPSC guidelines or ASTM standards. For any program that does not operate on public or private school premises, playground equipment and surfaces must meet the requirements of WAC 110-301-0146.

(2) A school-age provider must take steps to prevent hazards to children including, but not limited to:

(a) Ensuring firearms, guns, weapons, and ammunition are not on the premises of a school-age program; and

(b) For any program that does not operate on public or private school premises, eliminating and not using in the licensed space, pursuant to RCW 43.216.380, any window blinds or other window coverings with pull cords or inner cords capable of forming a loop and posing risk of strangulation to children.

(i) Window blinds and other window coverings that have been manufactured or properly retrofitted in a manner that eliminates the formation of loops posing a risk of strangulation are allowed; and

(ii) A window covering must not be secured to the frame of a window or door used as an emergency exit in a way that would prevent the window or door from opening easily.

(3) A school-age provider must take measures intended to prevent other hazards to children in care in school-age program space including, but not limited to:

(a) **Cuts, abrasions, and punctures.** Equipment, materials, and other objects on the premises that have splintered edges, sharp edges, points, protruding nails, bolts, or other dangers must be repaired, removed, or made inaccessible to children;

(b) **Burns.** Equipment, materials, or products that may be hot enough to injure a child must be made inaccessible to children;

(c) **Sheering, crushing, or pinching.** Broken or cracked equipment, materials, and objects must be repaired, removed, or made inaccessible to children;

(d) **Entrapment.** Spare or secondary freezers and refrigerators, washers, dryers, compost bins, and other entrapment dangers must be inaccessible to children unless being actively supervised;

(e) **Tripping.** Tripping hazards must be eliminated. For any program that does not operate on public or private school premises, uneven walkways and damaged flooring or carpeting, or other tripping hazards must be removed or repaired;

(f) **Falling objects.** Large objects that pose a risk of falling or tipping must be securely anchored. Large objects include, but are not limited to, televisions, dressers, bookshelves, wall cabinets, sideboards or hutches, and wall units; and

(g) **Equipment in poor condition.** Equipment in poor condition (loose parts, rusty parts, flaking paint, or other dangers) must be repaired, removed, or made inaccessible to children.

(4) To ensure a safe environment for children in care, a school-age provider must comply with the following requirements:

(a) **Safe noise levels.** Noise levels must be maintained at a level in which a normal conversation may occur, except when children are engaged in gross motor activities;

(b) **Stairway safety.**

(i) There must not be clutter or obstructions in the stairway;

(ii) For any program that does not operate on public or private school premises, all stairways (indoor and outdoor), not including play structures, must meet local building codes pursuant to RCW 43.216.340.

(A) Open stairways with no walls on either side must have handrails with slats (balusters) that prevent a child from falling off either side of the stairway.

(B) Stairways with a wall on only one side must have a handrail with slats (balusters) on the side without the wall that prevents a child from falling off the stairway.

(C) Stairways with a wall on both sides must have a handrail no higher than thirty-eight inches on at least one side of the stairway.

(c) **Indoor temperatures for the premises.** For any program that does not operate on public or private school premises, the temperature of indoor school-age licensed space must be between 68 and 82 degrees Fahrenheit. If indoor licensed space is colder than 68 or hotter than 82 degrees Fahrenheit, a school-age provider must use climate control devices that are inaccessible to children to bring the temperature within the required range;

(d) **Window openings.** For any program that does not operate on public or private school premises, windows within the reach of children must only open up to three and one-half inches or have some barrier or preventative measure to discourage children from exiting through the window;

(e) **Licensed space lighting.** For any program that does not operate on public or private school premises, school-age program space must have natural or artificial light that provides appropriate illumination for school-age program activities and supervision. A provider must comply with all light fixture manufacturers' installation and use requirements. A provider must also ensure compliance with the following requirements:

(i) Light fixtures must have shatter-resistant covers or light bulbs;

(ii) Lights or light fixtures used indoors must be designed for indoor use only;

(iii) Free standing lamps must be attached or secured to prevent tipping; and

(iv) Halogen lamps and bulbs are prohibited.

(f) **Safe water temperature.** For any program that does not operate on public or private school premises, all water accessible to enrolled children must not be hotter than 120 degrees Fahrenheit; and

(g) **Platforms and decks.** For any program that does not operate on public or private school premises, all platforms and decks used for school-age program activities must meet local building codes pursuant to RCW 43.216.340. This does not include play equipment. All platforms and decks with a drop zone of more than eighteen inches must have guardrails in sections without steps.

(5) To ensure a safe environment for children in care, a school-age provider must comply with the following electrical requirements:

(a) Electrical cords must be in good working condition, not torn or frayed, and not have any exposed wires;

(b) Electrical cords must be plugged directly into a wall outlet or a power strip with surge protector;

(c) Extension cords may only be used for a brief, temporary purpose and must not replace direct wiring;

(d) Electrical devices accessible to children must not be plugged into an electrical outlet near a water source such as a sink, tub, water table, or swimming pool; and

(e) For any program that does not operate on public or private school premises, outlets near sinks, tubs, toilets, or other water sources must be inaccessible to children or be tamper-resistant and equipped with a ground fault circuit interrupter (GFCI) outlet type.

NEW SECTION

WAC 110-301-0166 Emergency preparation and exiting. (1) To be properly prepared for an emergency, a school-age program must have an emergency preparedness plan pursuant to WAC 110-301-0470.

(2) A school-age provider must have the following in case of an emergency:

(a) A working flashlight or other emergency lighting device must be available for use as an emergency light source. Battery powered flashlights must have an extra set of batteries easily available; and

(b) A working telephone must be available for use with sufficient backup power to function in an emergency.

(3) To ensure a safe exit from the premises during an emergency, the school-age provider must comply with the following requirements:

(a) Exit doors must not be partially or entirely blocked;

(b) For any program that does not operate on public or private school premises, emergency exit doors must remain unlocked from the inside, but may be locked from the outside while the school-age program is open. The door handle must be of the type that can be opened from the inside without the use of a key, tools, or special knowledge, and must automatically unlock when the knob or handle is turned; and

(c) Exit doors that are not designated as an emergency exit door may be locked during operating hours. For any program that does not operate on public or private school premises, locking interior doors in school-age program space must be designed to be unlocked from either side. An unlocking device must be readily available.

NEW SECTION

WAC 110-301-0170 Fire safety. (1) A school-age provider must comply with the state building code, pursuant to RCW 19.27.031.

(2) For any program that does not operate on public or private school premises, a school-age provider must arrange for a fire safety inspection annually. A provider must arrange a fire safety inspection with a local government agency. If a local government agency is not available to conduct a fire safety inspection, a provider must inspect for fire safety using the state fire marshal form.

(3) To ensure a safe environment for children in care, a school-age provider must comply with the following fire safety requirements:

(a) **Combustible materials.** For any program that does not operate on public or private school premises, combustible materials:

(i) Must be properly discarded pursuant to local jurisdictions, removed from the premises, or properly stored in closed plastic or metal containers specifically designed to hold such combustible materials;

(ii) Stored in a closed plastic or metal container must be inaccessible to children in care; and

(iii) Include, but are not limited to, lint, gasoline, natural gas, diesel, fuel, propane, rags soaked in combustible materials, oils, chemicals, or solvents.

(b) **Furnaces and other heating devices.**

(i) An appliance or heating device that has a surface capable of burning a child or reaching 110 degrees Fahrenheit must be inaccessible to children in care unless a program activity involves such an appliance or device and children are being actively supervised;

(ii) For any program that does not operate on public or private school premises, paper, rubbish, or other combustible materials must be at least three feet from furnaces, fireplaces, or other heating devices; and

(iii) For any program that does not operate on public or private school premises, furnaces and other heating devices must be inaccessible to children in care.

(c) **Electrical motors.** For any program that does not operate on public or private school premises, electrical motor fans and appliances must be regularly cleaned to prevent accumulation of dust or lint.

(d) **Open flame devices, candles, matches, and lighters.**

(i) Except for the use of a gas kitchen range, open flame devices must not be used in school-age program space or any other space accessible to children in care during operating hours;

(ii) Candles must not be used during operating hours;

(iii) Matches and lighters must be inaccessible to children.

(e) **Portable heaters and generators.** Portable heaters or fuel powered generators must not be used inside school-age program space during operating hours.

(i) In case of an emergency, a generator may be used but must be placed at least twenty feet from buildings, windows, doors, ventilation intakes, or other places where exhaust fumes may be vented into the premises or school-age program space; and

(ii) Appliances must be plugged directly into a generator or into a heavy duty outdoor-rated extension cord that is plugged into a generator.

(f) **Fire alarms and smoke and carbon monoxide detectors.**

(i) For any program that does not operate on public or private school premises, a school-age program must have and maintain at least one smoke detector per floor. Pursuant to the state building code, school-age providers must comply with WAC 51-50-0907; and

(ii) For any program that does not operate on public or private school premises, a school-age program must have and maintain carbon monoxide detectors. Pursuant to the state

building code, school-age programs must comply with WAC 51-50-0915.

(g) **Backup method to sound an alarm.** In addition to working smoke detectors, a school-age provider must have another method to alert all staff and enrolled children of a fire, emergency situation, or drill.

(h) **Extinguishers.** For any program that does not operate on public or private school premises, a school-age provider must have and maintain working fire extinguishers that are marked with a minimum rating of 2A:10 BC.

(i) Fire extinguishers must be located pursuant to the state building code chapter 51-54A WAC, and must be readily available for use in case of an emergency;

(ii) Fire extinguishers must be located on each level of the school-age program space used by children and mounted within seventy-five feet of an exit next to the path of the exit; and

(iii) If a fire extinguisher is mounted in a closet, there must be a sign indicating the location of the extinguisher and obstructions must not block access to the closet.

(i) **Monthly inspections.** For any program that does not operate on public or private school premises, a school-age provider must involve staff responsible for different groups of children or individual classrooms during monthly inspections. At least once per month, a provider must inspect the premises to identify possible fire hazards and eliminate any hazards found including, but not limited to:

- (i) Fire extinguishers;
- (ii) Smoke detectors;
- (iii) Alternate alarms; and
- (iv) Emergency lighting.

NEW SECTION

WAC 110-301-0175 Water hazards and swimming pools. To prevent injury or drowning and ensure the health and safety of children, a school-age provider must comply with the requirements described in this section.

(1) Filtered wading pools must be inaccessible to children when not in use. Wading pools that do not have a filtering system are not permitted in the school-age program space.

(2) Bodies of water not located in school-age program space, but that are in close proximity, must be made inaccessible to children in care, and the school-age program must have a written plan approved by the department.

(3) If a school-age provider uses water tables or similar containers, the tables or containers must be emptied and sanitized daily, or more often if necessary.

(4) For any program that does not operate on public or private school premises, the following bodies of water must be inaccessible to children in care by using a physical barrier with a locking mechanism in compliance with WAC 246-260-031(4):

- (a) Swimming pools when not being used as part of the school-age program;
- (b) Ponds, lakes, storm retention ponds, ditches, fountains, fish ponds, landscape pools, or similar bodies of water; and

(c) Uncovered wells, septic tanks, wastewater, wastewater tanks, below grade storage tanks, farm manure ponds or other similar hazards.

(5) Hot tubs, spas, jet tubs, and similar spa equipment must have locked covers when enrolled children are present.

(6) A school-age provider must comply with the supervision requirements of WAC 110-301-0350 when using a swimming pool as part of the school-age program.

(7) For any program that does not operate on public or private school premises, a school-age provider must comply with the following requirements when using a swimming pool on the premises as part of the school-age program:

(a) Audible alarms must be on all doors, screens, and gates in licensed areas that lead to a swimming pool. The alarm must be sufficient to warn staff when children enter the outdoor area and could access the swimming pool;

(b) Swimming pools must be maintained according to manufacturer specifications;

(c) Swimming pools must be cleaned and sanitized according to manufacturer instructions, chapter 246-260 WAC, and the DOH or local health jurisdiction guidelines; and

(d) A swimming pool must not be used if the main drain cover is missing.

SECTION VII

FOOD AND NUTRITION

NEW SECTION

WAC 110-301-0180 Meal and snack schedule. A school-age provider must ensure meals and snacks meet the following requirements:

(1) Meals and snacks must be served not less than two hours and not more than three hours apart;

(2) Children in care for five to nine hours:

- (a) At least one meal and two snacks; or
- (b) Two meals and one snack.

(3) Children in care for more than nine hours:

- (a) Two meals and two snacks; or
- (b) Three snacks and one meal.

(4) A snack must be provided for children in care for one to three hours after school; and

(5) A breakfast or morning snack must be made available to children in care either by the school-age program or the school.

NEW SECTION

WAC 110-301-0185 Menus, milk, and food. To ensure proper nutrition of children in care, a school-age provider must comply with the child nutrition requirements described in this section.

(1) Meals, snack foods, and beverages provided to children in care must comply with the requirements contained in the most current edition of the CACFP standards, or the *USDA National School Lunch and School Breakfast Program* standards.

- (a) A school-age provider must have dated menus.

(b) Food and beverage substitutions to a scheduled menu must be of equal nutritional value.

(c) A school-age provider must only serve water, unflavored milk, or one hundred percent fruit or vegetable juice.

(d) A school-age provider must limit the consumption of one hundred percent fruit juice to no more than four to six ounces per day for children five and six years old, and eight to twelve ounces per day for children seven through twelve years old.

(2) A school-age provider must serve a fruit or vegetable during at least one snack per day. The fruit or vegetable serving may count as one of the two required snack components or be a third snack component.

NEW SECTION

WAC 110-301-0186 Food allergies and special dietary needs. (1) A school-age provider must obtain written instructions (the individual care plan) from the child's health care provider and parent or guardian when caring for a child with a known food allergy or special dietary requirement due to a health condition. The individual care plan pursuant to WAC 110-301-0300 must:

(a) Identify foods that must not be consumed by the child and steps to take in the case of an unintended allergic reaction;

(b) Identify foods that can substitute for allergenic foods; and

(c) Provide a specific treatment plan for the school-age provider to follow in response to an allergic reaction. The specific treatment plan must include the:

(i) Names of all medication to be administered;

(ii) Directions for how to administer the medication;

(iii) Directions related to medication dosage amounts; and

(iv) Description of allergic reactions and symptoms associated with the child's particular allergies.

(2) A school-age provider must arrange with the parents or guardians of a child in care to ensure the school-age program has the necessary medication, training, and equipment to properly manage a child's food allergies.

(3) If a child suffers from an allergic reaction, the school-age provider must immediately:

(a) Administer medication pursuant to the instructions in that child's individual care plan;

(b) Contact 911 whenever epinephrine or other lifesaving medication has been administered; and

(c) Notify the parents or guardians of a child if it is suspected or appears that any of the following occurred, or is occurring:

(i) The child is having an allergic reaction; or

(ii) The child consumed or came in contact with a food identified by the parents or guardians that must not be consumed by the child, even if the child is not having or did not have an allergic reaction.

(4) School-age providers must review each child's individual care plan information for food allergies prior to serving food to children.

NEW SECTION

WAC 110-301-0190 Parent or guardian provided food and written food plans. (1) A written food plan must be developed by the provider and a child's parent or guardian, signed by all parties, and followed when accommodating a child's:

(a) Special feeding needs;

(b) Special diets;

(c) Religious or cultural preferences;

(d) Family preferences; or

(e) Other needs.

(2) A school-age provider may allow or require parents or guardians to bring food for their child.

(3) If a parent or guardian provides meals for their child, a school-age provider must:

(a) Notify the parent or guardian in writing of the USDA CACFP requirements for each meal; and

(b) Supplement a child's meal that does not satisfy USDA CACFP requirements if necessary.

(4) On special occasions, such as birthdays, a school-age provider may allow parents or guardians to bring in snacks that may not satisfy the nutritional requirements for all children. The snacks provided must be limited to:

(a) Store purchased fruits and vegetables (uncut);

(b) Foods prepackaged in the original manufacturer containers; or

(c) Snacks prepared, cooked, or baked at home by parents or guardians of a child in care. Prior to serving, a school-age provider must receive written permission from each child's parent or guardian stating their child may consume food prepared, cooked, or baked by another child's parent or guardian.

NEW SECTION

WAC 110-301-0195 Food service, equipment, and practices. (1) A school-age provider preparing or serving food must comply with the current DOH *Washington State Food and Beverage Workers' Manual* and supervise services that prepare or deliver food to the school-age program.

(2) Snacks and meals must be prepared and served by a school-age provider who possesses a valid and current food worker card pursuant to WAC 110-301-0106(10).

(3) A school-age provider must:

(a) Supply durable and developmentally appropriate individual eating and drinking equipment, or developmentally appropriate single use disposable items;

(b) Clean and sanitize eating and drinking equipment after each use. Water bottles or cups designated for a single child must be cleaned and sanitized daily;

(c) Ensure plastic eating and drinking equipment does not contain BPA (a chemical used in hard plastic bottles and as a protective lining in food and beverage cans) or have cracks or chips;

(d) Use gloves, utensils, or tongs to serve food;

(e) Serve meals or snacks on plates, dishware, containers, trays, or napkins or paper towels, if appropriate. Food should not be served directly on the eating surface; and

(f) Be respectful of each child's cultural food practices.

(4) A school-age provider must:

- (a) Serve each child individually or serve family style dining, allowing each child the opportunity to practice skills such as passing shared serving bowls and serving themselves; and
- (b) Sit with children during meals, when possible.

NEW SECTION

WAC 110-301-0196 Food sources. (1) Food prepared and served from a school-age program must not be tampered with or spoiled.

(2) Food prepared and served from a school-age program must be obtained from an approved source licensed and inspected by the local health jurisdiction, the Washington state department of agriculture (WSDA), or the USDA. Food items not approved to be served to children in care include:

- (a) Meat, fish, poultry, eggs, or milk that has not been inspected by the USDA or WSDA;
- (b) Home canned food;
- (c) Game meat or other meat that has not been inspected by the WSDA or USDA;
- (d) Leftover food that was previously served from outside of the school-age program; or
- (e) Food from roadside stands selling without a permit.

(3) Food not prepared on-site by a school-age provider, pursuant to WAC 110-301-0195(2), must be provided by:

- (a) A licensed food establishment, kitchen, or catering business that meets food service requirements (chapter 246-215 WAC) and is regularly inspected by a local health jurisdiction;
 - (b) Parents or guardians for their own children; or
 - (c) A manufacturer of prepackaged food.
- (4) Fruits and vegetables (produce) grown on-site in a garden as part of a school-age program may be served to children as part of a meal or snack. Prior to preparing and serving:

- (a) The produce must be thoroughly washed and scrubbed in running cold water to remove soil and other contaminants;
- (b) Damaged or bruised areas on the produce must be removed; and
- (c) Produce that shows signs of rotting must be discarded.

NEW SECTION

WAC 110-301-0197 Safe food practices. (1) School-age providers must wash their hands, pursuant to WAC 110-301-0200.

(2) School-age providers must store, prepare, cook, hold food, and wash dishes, pursuant to WAC 110-301-0195.

(3) For all foods offered by the provider or given to an enrolled child by a parent or guardian, the provider must:

- (a) Provide appropriate refrigeration to preserve foods from spoiling. Foods that may be subject to spoiling include, but are not limited to, meats, cooked potatoes, cooked legumes, cooked rice, sprouts, cut melons, cut cantaloupes, milk, and cheese; and
- (b) Refrigerate foods requiring refrigeration at 41 degrees Fahrenheit or less and freeze foods required to be frozen at 10 degrees Fahrenheit or less.

(4) Food must be stored as follows:

- (a) In original containers or in clean, labeled, dated, and airtight food grade containers, if appropriate;
- (b) Food not required to be refrigerated or frozen must not be stored directly on the floor;
- (c) In a manner that prevents contamination;
- (d) Food and food service items (such as utensils, napkins, and dishes) must not be stored in an area with toxic materials (such as cleaning supplies, paint, or pesticides);
- (e) Food that is past the manufacturer's expiration or "best served by" date must not be served to enrolled children; and

(f) Raw meat must be stored in the refrigerator or freezer below cooked or ready to eat foods.

(5) For food requiring temperature control, a school-age program must maintain a food temperature log by using a calibrated and working metal stem-type or digital food thermometer.

(6) Prior to storing leftover food in a refrigerator or freezer, a school-age provider must label the food with the date the leftover food was opened or cooked.

(7) A school-age provider may serve leftover food that originated from the school-age program if the leftover food was not previously served and:

- (a) Refrigerated leftover food must be stored and then served again within forty-eight hours of originally being prepared; or
 - (b) Frozen leftover food must be promptly served after thawing and being cooked.
- (8) Frozen food must be thawed by one of the following methods:
- (a) In a refrigerator;
 - (b) Under cool running water inside a pan placed in a sink with the drain plug removed; or
 - (c) In a microwave if the food is to be cooked as part of the continuous cooking process.

NEW SECTION

WAC 110-301-0198 Food preparation areas. (1) School-age providers must clean and sanitize food preparation areas and eating surfaces before and after each use, pursuant to WAC 110-301-0241(1).

(2) For any program that does not operate on public or private school premises, the school-age program's food preparation area or kitchen must have:

- (a) Walls, counter tops, floors, cabinets, and shelves that are:
 - (i) Maintained in good repair including, but not limited to, being properly sealed without chips, cracks, or tears; and
 - (ii) Moisture resistant.
- (b) A properly maintained and vented range hood, exhaust fan, or operable window, if applicable; and
- (c) A properly maintained and working refrigerator, freezer, or a combination refrigerator and freezer with sufficient space for proper storage and cooling of food.

(3) A school-age provider must:

- (a) Clean and sanitize a sink immediately before using it to prepare food to be served to children in care;

(b) Use a colander or other method to prevent food and kitchen utensils from touching the sink basin; and

(c) Clean dishes, pans, and kitchen utensils as follows:

(i) Clean and sanitize with an automatic dishwasher that uses heat or chemicals to sanitize; or

(ii) Handwash, rinse, sanitize, and allow to air dry.

(4) Any program that does not operate on public or private school premises licensed after the date this chapter becomes effective must have:

(a) A handwashing sink separate from dishwashing facilities;

(b) A food preparation sink located in the food preparation area; and

(c) A method to clean and sanitize dishes, pans, kitchen utensils, and equipment in the food preparation area using:

(i) A two-compartment sink and an automatic dishwasher that sanitizes with heat or chemicals; or

(ii) A three-compartment sink method (sink one is used to wash, sink two is used to rinse, sink three contains a sanitizer, and the dishes are allowed to air dry).

(5) A school-age provider may use the kitchen for actively supervised cooking or food preparation activities with children in care.

SECTION VIII

HEALTH PRACTICES

NEW SECTION

WAC 110-301-0200 Handwashing and hand sanitizer. (1) School-age providers must comply with the following handwashing procedures or those defined by the United States Center for Disease Control and Prevention, and children should strongly be encouraged to:

(a) Wet hands with warm water;

(b) Apply soap to the hands;

(c) Rub hands together to wash for at least twenty seconds;

(d) Thoroughly rinse hands with water;

(e) Dry hands with a paper towel, single-use cloth towel, or air hand dryer;

(f) Turn water faucet off using a paper towel or single-use cloth towel unless it turns off automatically; and

(g) Properly discard paper single-use towels after each use.

(2) A school-age provider must wash and sanitize cloth towels after a single use. Soiled and used towels must be inaccessible to children.

(3) For any program that does not operate on public or private school premises, air hand dryers must have a heat guard (barrier that prevents user from touching heating element) and turn off automatically.

(4) School-age providers must wash their hands following the handwashing procedures listed above:

(a) When arriving at work;

(b) After assisting with toileting;

(c) After personal toileting;

(d) After attending to an ill child;

(e) Before and after preparing, serving, or eating food;

(f) After handling raw or undercooked meat, poultry, or fish;

(g) Before and after giving medication or applying topical ointment;

(h) After handling or feeding animals, handling an animal's toys or equipment, or cleaning up after animals;

(i) After handling bodily fluids;

(j) After using tobacco or vapor products;

(k) After being outdoors;

(l) After gardening activities;

(m) After handling garbage and garbage receptacles; and

(n) As needed or required by the circumstances.

(5) School-age providers must direct, assist, teach, and coach, children to wash their hands, using the steps listed above:

(a) When arriving at the school-age premises;

(b) After using the toilet;

(c) After outdoor play;

(d) After gardening activities;

(e) After playing with animals;

(f) After touching bodily fluids such as blood or after nose blowing or sneezing;

(g) Before and after eating or participating in food activities including table setting; and

(h) As needed or required by the circumstances.

(6) Hand sanitizers or hand wipes with alcohol may be used for adults and children under the following conditions:

(a) When proper handwashing facilities are not available; and

(b) Hands are not visibly soiled or dirty.

(7) Children must be actively supervised when using hand sanitizers to avoid ingestion or contact with eyes, nose, or mouths.

(a) Hand sanitizer must not be used in place of proper handwashing.

(b) An alcohol-based hand sanitizer must contain sixty to ninety percent alcohol to be effective.

NEW SECTION

WAC 110-301-0205 Child and staff illness. (1) A school-age provider must observe all children for signs of illness when they arrive at the school-age program and throughout the day. Parents or guardians of a child should be notified, as soon as possible, if the child develops signs or symptoms of illness.

(2) If a school-age provider becomes ill, a licensee, program director, or site director must determine whether that person should be required to leave the licensed school-age space.

(3) When a child becomes ill, a school-age provider (or school nurse, if applicable) must determine whether the child should be sent home or separated from others. A provider must supervise the child to reasonably prevent contact between the ill child and healthy children.

(4) An ill child must be sent home or reasonably separated from other children if:

(a) The illness or condition prevents the child from participating in normal activities;

(b) The illness or condition requires more care and attention than the school-age provider can give;

(c) The required amount of care for the ill child compromises or places at risk the health and safety of other children in care; or

(d) There is a risk that the child's illness or condition will spread to other children or individuals.

(5) Unless covered by an individual care plan or protected by the ADA, an ill child, staff member, or other individual must be sent home or isolated from children in care if the ill individual has:

(a) A fever 101 degrees Fahrenheit by any method, and behavior change or other signs and symptoms of illness (including sore throat, earache, headache, rash, vomiting, diarrhea);

(b) Vomited two or more times in the previous twenty-four hours;

(c) Diarrhea where stool frequency exceeds two stools above normal per twenty-four hours for that individual or whose stool contains more than a drop of blood or mucus;

(d) A rash not associated with heat or an allergic reaction;

(e) Open sores or wounds discharging bodily fluids that cannot be adequately covered with a waterproof dressing or mouth sores with drooling; or

(f) A child who appears severely ill, which may include lethargy, persistent crying, difficulty breathing, or a significant change in behavior or activity level indicative of illness.

(6) At the first opportunity, but in no case longer than twenty-four hours of learning that an enrolled child, staff member, or volunteer has been diagnosed by a health care professional with a contagious disease pursuant to WAC 246-110-010(3), a school-age provider must provide written notice to the department, the local health jurisdiction, and the parents or guardians of the enrolled children.

(7) A school-age provider must not take ear or rectal temperatures to determine a child's body temperature.

(a) Oral temperatures may be taken for children if single-use covers are used to prevent cross contamination; and

(b) Glass thermometers containing mercury must not be used.

(8) A school-age provider may readmit a child, staff member, or volunteer into the school-age program area with written permission of a health care provider or health jurisdiction stating the individual may safely return after being diagnosed with a contagious disease pursuant to WAC 246-110-010(3).

NEW SECTION

WAC 110-301-0210 Immunizations and exempt children. (1) Before attending a school-age program, a child must be vaccinated against or show proof of acquired immunity for the vaccine-preventable disease, pursuant to chapter 246-105 WAC. A school-age provider may accept children without proof of vaccinations or immunity as otherwise indicated in this section.

(2) Pursuant to WAC 246-105-050, a school-age provider must receive for each enrolled child:

(a) A current and complete DOH-approved certificate of immunization status (CIS) form or an alternative in lieu of CIS pursuant to WAC 246-105-050(3);

(b) A department-approved certificate of exemption (COE) form, if applicable; or

(c) A current immunization record from the Washington state immunization information system (WA IIS).

(3) To accept a child who is not current with their immunizations, a school-age provider must give written notice to that child's parent or guardian stating the child may be accepted if the immunizations are completed consistent with chapter 246-105 WAC and:

(a) Prior to enrollment the parent or guardian provides written proof the child is scheduled to be immunized; or

(b) The parent or guardian provides a signed and dated statement detailing when the child's immunizations will be brought up to date.

(4) A school-age provider must maintain and update each child's records relating to immunizations or exemptions, or plans to bring immunizations current. These records must be available in the licensed space or easily accessible for review by department licensors, health specialists, and health consultants.

(5) A school-age provider may accept homeless or foster children into care without the records listed in this section if the child's parent or guardian, caseworker, or health care provider offers written proof that they are in the process of obtaining the child's immunization records.

(6) A school-age provider must exclude a child from care according to the criteria listed in WAC 246-105-080.

(7) If an outbreak of a vaccine-preventable disease occurs within a school-age program, a school-age provider must notify the parents or guardians of children exempt from immunization for that disease and children without vaccination documents. A provider may exclude the child from the school-age program premises for the duration of the outbreak of that vaccine-preventable disease.

(8) A school-age provider may have a written policy stating children exempted from immunization by their parent or guardian will not be accepted into care unless that exemption is due to an illness protected by the ADA or WLAD or by a completed and signed COE.

NEW SECTION

WAC 110-301-0215 Medication. (1) **Managing medication.** A medication management policy must include, but is not limited to, safe medication storage, reasonable accommodations for giving medication, mandatory medication documentation, and forms pursuant to WAC 110-301-0500.

(2) **Medication training.** A school-age provider must not give medication to a child if the provider has not successfully completed:

(a) An orientation about the school-age program's medication policies and procedures;

(b) The department standardized training course in medication administration that includes a competency assessment pursuant to WAC 110-301-0106(7) or equivalent training; and

(c) If applicable, a training from a child's parent or guardian (or an appointed designee) for special medical procedures that are part of a child's individual care plan. This training must be documented and signed by the provider and the child's parent or guardian (or designee).

(3) **Medication administration.** A school-age provider must not give medication to any child without written and signed consent from that child's parent or guardian, must administer medication pursuant to directions on the medication label, and must use cleaned and sanitized medication measuring devices.

(a) A school-age provider must administer medication to children in care as follows:

(i) **Prescription medication.** Prescription medication must only be given to the child named on the prescription. Prescription medication must be prescribed by a health care professional with prescriptive authority for a specific child. Prescription medication must be accompanied with medication authorization form that has the medical need and the possible side effects of the medication. Prescription medication must be labeled with:

- (A) A child's first and last name;
- (B) The date the prescription was filled;
- (C) The name and contact information of the prescribing health professional;
- (D) The expiration date, dosage amount, and length of time to give the medication; and
- (E) Instructions for administration and storage.

(ii) **Nonprescription oral medication.** Nonprescription (over-the-counter) oral medication brought to the school-age program by a parent or guardian must be in the original packaging.

(A) Nonprescription (over-the-counter) medication needs to be labeled with child's first and last name and accompanied with medication authorization form that has the expiration date, medical need, dosage amount, age, and length of time to give the medication. School-age providers must follow the instructions on the label or the parent or guardian must provide a medical professional's note; and

(B) Nonprescription medication must only be given to the child named on the label provided by the parent or guardian.

(iii) **Other nonprescription medication.** A school-age provider must receive written authorization from a child's parent or guardian and health care provider with prescriptive authority prior to administering if the item does not include age, expiration date, dosage amount, and length of time to give the medication:

- (A) Vitamins;
- (B) Herbal supplements;
- (C) Fluoride supplements; and
- (D) Homeopathic or naturopathic medication.

(iv) **Nonmedical items.** A parent or guardian must annually authorize a school-age provider to administer the following nonmedical items:

- (A) Sunscreen (aerosol sunscreen is prohibited); and
- (B) Hand sanitizers or hand wipes with alcohol.
- (v) A school-age provider may allow children to take their own medication (including nonmedical items) with parent or guardian authorization. A school-age staff member

must observe and document that the child took the medication (excluding nonmedical items).

(A) School-age children with a valid prescription from a health care provider may be allowed to carry and self-administer asthma medication (inhaler), anaphylaxis medication (epinephrine auto-injector), or insulin (insulin pump) with signed authorization from the child's parent or guardian and health care provider. The authorization form must attest that the child has the skill level and knowledge necessary to use the medication and device as prescribed.

(B) The school-age program must have an individual care plan on-site for each child who self-carries asthma or anaphylaxis medication or insulin in the event of an asthma, anaphylaxis, or diabetes emergency.

(C) School-age program staff must intervene if they observe a child misusing asthma or anaphylaxis medication or insulin, or if a child possesses another child's medication.

(vi) A school-age provider must not give or permit another to give any medication to a child for the purpose of sedating the child unless the medication has been prescribed for a specific child for that particular purpose by a qualified health care professional.

(b) Medication documentation (excluding nonmedical items). A school-age provider must keep a current written medication log that includes:

- (i) A child's first and last name;
- (ii) The name of the medication that was given to the child;
- (iii) The dose amount that was given to the child;
- (iv) Notes about any side effects exhibited by the child;
- (v) The date and time of each medication given or reasons that a particular medication was not given; and
- (vi) The name and signature of the person that gave the medication.

(c) Medication must be stored and maintained as directed on the packaging or prescription label, including applicable refrigeration requirements. A school-age provider must comply with the following additional medication storage requirements:

- (i) Medication must be inaccessible to children except as provided for in this subsection (3)(a)(v)(A) of this section;
- (ii) Controlled substances must be locked in a container or cabinet which is inaccessible to children;
- (iii) Medication must be kept away from food in a separate, sealed container; and
- (iv) External medication (designed to be applied to the outside of the body) must be stored to provide separation from internal medication (designed to be swallowed or injected) to prevent cross contamination.

(d) A school-age provider must return a child's unused medication to that child's parent or guardian. If this is not possible, a provider must follow the FDA recommendations for medication disposal.

(e) A school-age provider must not accept or give to a child homemade medication, such as sunscreen.

NEW SECTION

WAC 110-301-0220 Bathroom space. (1) For any program that does not operate on public or private school prem-

ises, a school-age provider must provide at least one indoor bathroom in the licensed space that has the following:

(a) A school-age program must have one working flush toilet for every thirty children and staff. One-third of the toilets may be replaced by a urinal.

Toilets for staff may be located outside of licensed space on the premises.

(b) A school-age program must have one working sink and faucet for every thirty children and staff.

(i) A faucet used for handwashing must provide warm running water.

(ii) Sinks and faucets must be located inside the bathroom or immediately outside the bathroom.

(iii) Sinks and faucets for staff may be outside of licensed space on the school-age premises.

(iv) Water controls on bathroom sinks must be accessible for the intended user.

(v) Bathroom sinks must not be used as a drinking source or for food preparation.

(c) A means of providing privacy for children who demonstrate the need for privacy while toileting;

(d) A toilet paper dispenser for each toilet that is appropriate for the height and size of children;

(e) An operable window or exhaust fan; and

(f) An easily cleanable floor.

(i) Floors must have a washable surface; and

(ii) Be resistant to moisture.

(2) Bathroom floors must be cleaned and disinfected daily, or more often as needed.

NEW SECTION

WAC 110-301-0225 Pets and animals. (1) A school-age provider may have pets or other animals on the school-age program premises.

(2) If a school-age provider keeps pets or animals on the school-age program premises:

(a) The provider must have and follow a pet and animal policy that describes how children will access pets and be kept safe around them, tracks pet immunizations, and gives instructions for handling of pet waste; and

(b) Provide written notice to children's parents and guardians that the program has a pet.

(3) Pets or other animals that have contact with children must:

(a) Have all required vaccinations, pursuant to local and county regulations;

(b) Show no signs of illness, disease, worms, or parasites. If these symptoms appear, the pet or animal must be removed from the licensed space until appropriately treated for the condition; and

(c) Be nonaggressive. If the pet or animal exhibits aggressive behavior, the pet or animal must be removed from the licensed space.

(4) A school-age provider must:

(a) Make reptiles and amphibians that are not part of the school-age program or activities inaccessible to enrolled children due to the risk of salmonella or other diseases;

(b) Require that chickens, ducks, turkeys, doves, pigeons, or other birds are caged, cooped, or penned outside

school-age program space when children are in care, at a distance that prevents children from having direct access to the enclosures or waste;

(c) Cage indoor birds;

(d) Prevent debris from spilling out of a container or cage used for pets and animals, if applicable;

(e) Not allow pets and animals in the kitchen during food preparation and ensure pets and animals do not come into contact with food, food preparation, or serving areas while food is served;

(f) Not use a sink that is used for cleaning food or utensils to clean pet supplies; and

(g) Store pet and animal medication separate from human medication.

(5) A school-age provider must require:

(a) Animals and pets to go to the bathroom outdoors if the animals do not have a designated indoor litter area. The designated outdoor area must be inaccessible to children in care;

(b) Pet containers and cages to be cleaned and disinfected at least weekly, or more often if needed;

(c) Litter boxes to be kept inaccessible to children and cleaned daily;

(d) Animal waste and litter to be disposed of as soon as possible and the area disinfected;

(e) Indoor and outdoor play space to be cleaned and disinfected where animal or bird waste or vomit is present. This must be done as soon as possible or prior to access by children. Alternatively, animal waste must be inaccessible to children;

(f) Animal waste to be disposed of in a manner that prevents children from coming into contact with the waste material; and

(g) Animal waste, including fish tank water, must be disposed of in unlicensed space or toilets or custodial sinks. Toilets and custodial sink areas must be washed, rinsed, and disinfected after disposal.

NEW SECTION

WAC 110-301-0230 First aid—CPR certification and supplies. (1) School-age program directors, site directors, lead teachers, assistant teachers, and any other school-age providers counted in staff-to-child ratio, or who could potentially be counted in ratio, must have a current pediatric and adult first aid and CPR certificate, pursuant to WAC 110-301-0106.

(2) A school-age provider must keep a complete first-aid kit in the licensed space, on any off-site trip, and in a vehicle used to transport children in care. A first-aid kit must:

(a) Be stored in a location that is easily accessible to staff;

(b) Be inaccessible to children;

(c) Be separate from food or chemicals;

(d) Be kept clean and sanitary;

(e) Be stored in a manner that prevents contamination; and

(f) Have sufficient supplies for the number of enrolled children and staff consistent with the school-age program's

licensed capacity, or sufficient supplies for each room in the licensed space.

- (3) A first-aid kit must include:
- (a) Disposable nonporous protective nonlatex gloves;
 - (b) Adhesive bandages of various sizes;
 - (c) Small scissors;
 - (d) Tweezers;
 - (e) An elastic wrapping bandage;
 - (f) Sterile gauze pads;
 - (g) Ice packs;
 - (h) A disposable or mercury free thermometer that uses disposable sleeves, or is cleaned and sanitized after each use;
 - (i) A sling, or a large triangle bandage;
 - (j) Adhesive tape;
 - (k) A CPR barrier with a one-way valve or both an adult and pediatric CPR mask with a one-way valve;
 - (l) A current first-aid manual; and
 - (m) Hand sanitizer.

NEW SECTION

WAC 110-301-0235 Safe water sources. (1) Hot and cold running water must be directly plumbed to the school-age premises.

(2) A licensee for a program that does not operate on public or private school premises must use a Washington state certified water laboratory accredited by the department of ecology to test the program water supply for lead and copper.

(a) All fixtures used to obtain water for preparing food, drinking, or cooking must be tested prior to licensing approval and at least once every six years;

(b) Testing must be done pursuant to the current EPA standards; and

(c) A copy of the water testing results must be kept on the licensed premises or in the program's administrative office.

(3) If the test results are at or above the current EPA lead action level, a school-age provider must do the following within twenty-four hours:

(a) Consult with the DOH for technical assistance;

(b) Close the school-age program to prevent children from using or consuming water or supply bottled or packaged water to meet the requirements of this chapter;

(c) Notify all parents and guardians of enrolled children of the test results;

(d) Notify the department of the water test results and steps taken to protect the enrolled children; and

(e) Notify the department once lead and copper levels are below the current EPA action level.

(4) If a school-age program space receives water from a private well, the well must comply with chapter 173-160 WAC, Minimum standards for construction and maintenance of wells.

(a) Well water must be tested at least once every twelve months for *E. coli* bacteria and nitrates by a Washington state certified laboratory accredited by the department of ecology to analyze drinking water. To achieve desirable results the test must indicate:

(i) No presence of *E. coli* bacteria; and

(ii) The presence of less than ten parts per million (ppm) for nitrates. If test results for nitrates are greater than five but less than ten ppm, the water must be retested within six months.

(b) If well water tests positive for *E. coli* bacteria, or greater than ten ppm for nitrates, the provider must:

(i) Stop using the well water in the school-age program premises within twenty-four hours;

(ii) Inform the local health jurisdiction, the DOH, and the department of the positive test results; and

(iii) If directed to do so by the department, discontinue school-age program operations until repairs are made to the water system and water tests indicate desirable results pursuant to (a) of this subsection.

(c) If the department determines that school-age program operations may continue while an unsafe water system is being repaired or while the provider installs treatment, the provider must:

(i) Provide an alternate source of water, approved by the department; and

(ii) Retest until water tests indicate desirable results pursuant to (a) of this subsection.

(5) A school-age provider must notify the department within four hours of when the water connection to a school-age program space is interrupted for more than one hour or the water source becomes contaminated.

(a) The department may require the school-age provider to temporarily close until the water connection is restored or the water source is no longer contaminated; or

(b) The school-age provider must obtain an alternative source of potable water such as bottled or packaged water. The amount of the alternative source of potable water must be sufficient to ensure compliance with the requirements of this chapter for safe drinking water, handwashing, sanitizing, dishwashing, and cooking.

NEW SECTION

WAC 110-301-0236 Safe drinking water. (1) A school-age program's drinking water must:

(a) Be offered multiple times throughout the day and be readily available to children at all times;

(b) Be offered in outdoor play areas and in each classroom;

(c) Be served in a manner that prevents contamination;

(d) Not be obtained from a handwashing sink used with toileting; and

(e) Be served fresh daily or more often as needed.

(2) For any program that does not operate on public or private school premises, drinking fountains at a school-age program must:

(a) Not be attached to handwashing sinks or disabled;

(b) Not be located in bathrooms;

(c) Not be a "bubble type" fountain (the water flow must form an arch);

(d) Be cleaned and sanitized daily or more often as needed; and

(e) Be located above water impervious flooring.

SECTION IX

CLEANING AND SANITATION

NEW SECTION**WAC 110-301-0240 Clean and healthy environment.**

(1) School-age program premises and program equipment must be clean and sanitary.

(2) For any program that does not operate on public or private school premises, hard surfaces in school-age programs including, but not limited to, floors (excluding carpet), walls, counters, bookshelves, and tables must be smooth and easily cleanable.

(a) A cleanable surface must be:

- (i) Designed to be cleaned frequently and made of sealed wood, linoleum, tile, plastic, or other solid surface materials;
- (ii) Moisture resistant; and
- (iii) Free of chips, cracks, and tears.

(b) A school-age provider must have at least twenty-four inches of moisture resistant and cleanable material or barrier around sinks, drinking fountains, and toilets.

(3) A school-age provider must clean all surfaces before sanitizing or disinfecting.

(a) Surfaces must be cleaned with a soap and water solution or spray cleaner and rinsed. If using a spray cleaner, directions on the label must be followed.

(b) Aerosol sprays and air fresheners must not be used during school-age program hours.

(c) If a bleach solution is used for sanitizing or disinfecting, a school-age provider must use one that is fragrance-free and follow the DOH's current guidelines for mixing bleach solutions for child care and similar environments.

(d) If a school-age provider uses a product other than bleach, including wipes, to sanitize or disinfect, the product must be:

- (i) Approved by the department prior to use;
- (ii) Used by trained staff only;
- (iii) Registered with the EPA and have safety data sheets (SDSs) available;
- (iv) Used in accordance with the manufacturer's label, which must include:

(A) Directions for use;

(B) A description of the safety precautions, procedures, and equipment that must be used for mixing the substitute product concentration, if applicable;

(C) A description of the safety precautions and procedures if the substitute product contacts skin or is inhaled, if applicable; and

(D) A description of the procedures and safety precautions for rinsing cleaned areas and cleaning equipment, if applicable.

(v) Labeled as safe to use on food surfaces if the product will be used to sanitize:

(A) Food contact surfaces; or

(B) Items such as eating utensils or toys used by the child or put into the child's mouth; and

(vi) Fragrance-free.

NEW SECTION

WAC 110-301-0241 Cleaning schedules. (1) A school-age provider must develop and follow a cleaning schedule that includes:

(a) Food preparation areas, tables and chairs, and food service counters, which must be cleaned and sanitized before and after each meal and snack with single use paper towels or one-time use wiping cloths;

(b) Eating utensils, drinking equipment, and dishes, which must be cleaned and sanitized after each use;

(c) Furniture and equipment, which must be cleaned monthly or more often as needed;

(d) Toys, which must be cleaned and sanitized as follows:

(i) Weekly or more often as needed; and

(ii) When a toy comes into contact with a child's mouth or bodily fluids it must be removed from use until it can be cleaned and sanitized prior to reuse;

(e) For any program that does not operate on public or private school premises, appliances used to prepare food, which must be cleaned after each use and sanitized daily or more often as needed;

(f) For any program that does not operate on public or private school premises, refrigerators, which must be cleaned and sanitized monthly or more often as needed; and

(g) For any program that does not operate on public or private school premises, freezers, which must be cleaned and sanitized quarterly or more often as needed.

(2) Machine washable clothes provided by the school-age program must be laundered as needed.

(3) Sinks that are not used for handwashing after toileting or food preparation must be cleaned and sanitized daily or more often as needed.

(4) Toileting areas including, but not limited to, toilets, counters, sinks, and floors must be cleaned and disinfected daily or more often as needed.

(5) Garbage cans and receptacles must be emptied on a daily basis and cleaned and disinfected as needed.

(6) Floors must be cleaned by either sweeping or vacuuming at least once per day or more often as needed. Moisture resistant flooring must be cleaned and sanitized at least once per day or more often as needed. Bathroom flooring must be cleaned, pursuant to WAC 110-301-0220.

(7) For any school-age program that does not operate on public or private school premises, large area rugs or installed carpet must be cleaned at least once every six months, or when visible dirt or stains are present, using a carpet shampoo machine, steam cleaner, or other method that minimizes the exposure of children in care to pathogens and allergens.

A school-age provider must not use dry shampoos or dry chemical sanitizers or disinfectants, unless approved by the department.

(8) Small area rugs must be shaken outdoors or vacuumed daily, and laundered as needed.

(9) Carpets or area rugs soiled with bodily fluids must be cleaned and disinfected with high heat or an EPA registered product. A school-age provider must limit exposure to blood and bodily fluids during cleanup.

(10) Children must not:

(a) Be present when carpets are cleaned or vacuumed unless the provider is spot vacuuming, the vacuum has a HEPA filter, and children are not within the immediate area; or

(b) Use or play on or near carpet areas until dry.

NEW SECTION

WAC 110-301-0245 Laundry and equipment. (1) Laundry and laundry equipment at a school-age program must be inaccessible to children and separated from areas where food is prepared to prevent cross contamination.

(2) Dirty or soiled laundry must be:

(a) Kept separate from clean laundry;

(b) Cleaned with laundry soap or detergent;

(c) Rinsed; and

(d) Sanitized:

(i) With bleach or a similar sanitizer registered by the EPA; or

(ii) By using a "sanitize" setting on a washing machine or dryer that reaches at least 140 degrees Fahrenheit.

(3) A dryer must be vented to the outside of the building or following the manufacturer's specifications.

NEW SECTION

WAC 110-301-0250 Private septic systems. (1) For any program that does not operate on public or private school premises, and is served by a private septic system, the septic system must be designed, constructed, and maintained in accordance with state and local health jurisdiction requirements.

(a) A private septic system must be inspected by a septic system maintenance service provider approved by the local health jurisdiction and monitored on a routine basis. Any deficiencies noted in an inspection report must be corrected with the necessary permits and inspections.

(b) The most recent private septic system pumping and inspection records must be kept on the licensed premises or in the program's administrative office.

(c) If a school-age provider does not have the documentation described in (b) of this subsection, the provider must obtain from the state, local health jurisdiction, or a department approved private company such documentation within six months of the date this section becomes effective.

(d) A school-age provider must notify the department and local health jurisdiction if there is a problem, concern, or malfunction with a private septic system.

(e) If a private septic system problem, concern, or malfunction interferes with the proper care of children and an approved alternative is not available, the state, local health jurisdiction, or department may require a school-age program to close until the system is inspected, repaired, and approved by the local health jurisdiction.

(2) For any program that does not operate on public or private school premises, pursuant to WAC 110-301-0146(2), playground design must not:

(a) Interfere with access to or the operation of a private septic system, including a private septic system's drain field and tanks; or

(b) Be located or placed in a way that impacts the private septic system's drain field or tanks as determined by local officials.

NEW SECTION

WAC 110-301-0255 Pest control. (1) A school-age provider must have a pest control policy that emphasizes prevention and natural, nonchemical, low-toxicity methods where pesticides or herbicides are used as a last resort (i.e., integrated pest management). In areas where local pest control policies are already in place, such as a school district, a school-age program may adopt or amend such policies when developing their own policy.

(2) For any school-age program that does not operate on public or private school premises, a provider must take appropriate steps to safely prevent or control pests that pose a risk to the health and safety of adults and children in and around the licensed space. Pest control steps must include:

(a) **Prevention.** A provider must take steps to prevent attracting pests including, but not limited to, identifying and removing food and water sources that attract pests.

(b) **Inspection.** Indoor and outdoor areas in and around the licensed space must be inspected for evidence of pests. A provider must document the date and location if evidence is found.

(c) **Identification.** Pests found in the licensed space must be identified and documented so the pest may be properly removed or exterminated.

(d) **Management.** A provider must document steps taken to remove or exterminate pests found in the licensed space.

(e) **Notification.** If pesticides are used, the school-age provider must notify the parents or guardians of enrolled children what pesticide will be applied and where it will be applied no less than forty-eight hours before application, unless in cases of emergency (such as a wasp nest).

(f) **Application.** Pesticide must be applied to school-age program space when children are not present. When pesticide is applied, the school-age provider must comply with chapter 17.21 RCW.

NEW SECTION

WAC 110-301-0260 Storage of hazardous and maintenance supplies. (1) A school-age provider must ensure all poisonous or dangerous substances including, but not limited to, fuels, solvents, oils, laundry, dishwasher, other detergents, sanitizing products, disinfectants, and items labeled "keep out of reach of children" are stored:

(a) In a location that is inaccessible to children;

(b) Separate and apart from food preparation areas, food items, and food supplies;

(c) In their original containers or clearly labeled with the name of the product and the word "poison" or "toxic" if not in the original container; and

(d) In compliance with the manufacturer's directions (including, not storing products near heat sources).

(2) Saws, power tools, lawn mowers, toilet plungers, toilet brushes, and other maintenance and janitorial equipment must be inaccessible to children.

(3) Storage areas and storage rooms must be inaccessible to children.

(4) For any program that does not operate on public or private school premises, storage areas and storage rooms must:

- (a) Have moisture resistant and easily cleanable floors;
- (b) Have a designated maintenance or janitorial utility sink, or another method to dispose of wastewater (kitchen sinks must not be used for disposal of wastewater); and
- (c) Be kept clean and sanitary.

(5) For any program that does not operate on public or private school premises, storage areas and rooms that contain chemicals, utility sinks, or wet mops must be ventilated to the outdoors with an exterior window or mechanical ventilation to prevent the buildup of odors, fumes, or other hazards.

SECTION X

LEARNING SUPPORTS

NEW SECTION

WAC 110-301-0300 Individual care plan. (1) A school-age provider must develop an individual care plan for each child with special needs. Plans and documentation required under this section must:

- (a) Meet the requirements of this section;
- (b) Be available for department review;
- (c) Have written permission from a child's parent or guardian stating that a visiting health professional may provide services to the child at the school-age program, if applicable;
- (d) Have verification that school-age program staff involved with a particular child has been trained on implementing the individual care plan for that child, if applicable;
- (e) Be updated annually or when there is a change in the child's special needs; and
- (f) Be kept in the child's file.

(2) The individual care plan must be signed by the parent or guardian and may be developed using a department provided template.

- (a) The individual care plan must contain:
 - (i) The child's diagnosis, if known;
 - (ii) Contact information for the primary health care provider or other relevant specialist;
 - (iii) A list of medications to be administered at scheduled times, or during an emergency along with descriptions of symptoms that would trigger emergency medication;
 - (iv) Directions on how to administer medication;
 - (v) Allergies;
 - (vi) Food allergy and dietary needs, pursuant to WAC 110-301-0186;
 - (vii) Activity, behavioral, or environmental modifications for the child;
 - (viii) Known symptoms and triggers;
 - (ix) Emergency response plans and what procedures to perform; and
 - (x) Suggested special skills training, and education for school-age program staff, including specific pediatric first aid and CPR for special health care needs.

(b) A school-age provider must have supporting documentation of the child's special needs provided by the child's licensed or certified:

- (i) Physician or physician's assistant;
 - (ii) Mental health professional;
 - (iii) Education professional;
 - (iv) Social worker with a bachelor's degree or higher with a specialization in the individual child's needs; or
 - (v) Registered nurse or advanced registered nurse practitioner.
- (3) A school-age provider's written plan and documentation for accommodations must be informed by any existing:
- (a) Individual education plan (IEP);
 - (b) Individual health plan (IHP);
 - (c) 504 Plan; or
 - (d) Individualized family service plan (IFSP).

NEW SECTION

WAC 110-301-0305 Program philosophy and planning. (1) A school-age provider must have a written program philosophy that describes the program of planned daily activities related to child development.

(2) The program philosophy must address all age groups being served and may include:

- (a) How children develop emotionally, socially, cognitively, and physically;
 - (b) What school-age programming looks like or areas of focus within the program;
 - (c) How the provider will meet cultural, dual language learner, and special needs of children attending the school-age program;
 - (d) How to guide learning and social interactions; and
 - (e) The importance of play to a child's learning process.
- (3) Staff must be trained on the program philosophy.
- (4) Program staff responsible for program and activity planning must be given regularly scheduled time to plan and develop the program and activities.

NEW SECTION

WAC 110-301-0310 Concept development and feedback quality. (1) A school-age provider must facilitate activities to support child learning and understanding.

(2) A school-age provider may facilitate child learning and understanding through a variety of techniques such as:

- (a) Using a variety of teaching strategies (different techniques, curricula, or styles) and materials to address different learning styles, abilities, developmental levels, and temperament;
- (b) Helping children enter into and sustain play;
- (c) Encouraging children to participate by asking questions and providing guidance;
- (d) Providing opportunities for children's creativity;
- (e) Linking concepts and activities to one another and to the children's lives and interests;
- (f) Noticing and responding to teachable moments;
- (g) Clarifying and expanding children's understanding;
- (h) Describing and discussing children's learning processes;
- (i) Encouraging children's efforts and persistence;

- (j) Showing tolerance for mistakes;
- (k) Using diverse vocabulary;
- (l) Leading discussions and activities;
- (m) Providing materials during the day, including daily routines such as meals and transitions, to encourage communication in English and children's home languages when possible; and
- (n) Use scaffolding methods to gradually move children toward stronger understanding and greater independence in the learning process.

NEW SECTION

WAC 110-301-0315 Communication modeling and reasoning. (1) A school-age provider must be aware of and responsive to children's developmental, linguistic, cultural, and learning needs.

(2) A school-age provider must be aware of and responsive to children's needs by engaging in activities such as:

(a) Asking developmentally appropriate questions for the age group and allow children to answer without interruption from the provider;

(b) Circulating among the children during free choice activities and talking with children about what they are doing;

(c) A school-age provider must use language to develop and encourage children's reasoning skills by using techniques such as:

(i) Talking about logical relationships or concepts during the day including, but not limited to, the daily schedule, the differences and similarities between objects, or people in the program;

(ii) Introducing concepts using guiding questions that encourage children to figure out cause and effect relationships;

(iii) Providing opportunities for reading and writing activities; and

(iv) Asking open-ended questions to help children improve skills and acquire knowledge.

(d) A school-age provider working with non-English speaking children must encourage language development and acquisition by using techniques such as:

(i) Using words in various languages to talk about the program routines;

(ii) Reading books out loud or using audio books; and

(iii) Playing games in different languages.

NEW SECTION

WAC 110-301-0320 Facilitating child interests, learning, perspective, and productivity. (1) A school-age provider must work to maximize children's interests, engagement with developmentally and culturally responsive activities, and ability to learn from play.

(2) A school-age provider must maximize children's interests, engagement, and abilities by using techniques such as:

(a) Maximizing learning time with learning materials and products, limiting disruptions during activities, and offering additional choices when activities are completed;

(b) Giving clear instructions and directions; and

(c) Making opportunities for children to learn during transitions by clearly communicating expectations and keeping transitions to a duration that is developmentally appropriate.

(3) A school-age provider must offer developmentally and culturally responsive activities that offer a range of auditory, visual, and movement opportunities by using techniques such as:

(a) Encourage child engagement;

(b) Promote each child's self-help and social skills;

(c) Organized around child interests and ideas;

(d) Allow choice, exploration, and experimentation;

(e) Promote active and play-based learning experiences;

(f) Allow children freedom to move during activities;

(g) Ensure child expression;

(h) Utilize interesting and creative materials;

(i) Offer hands-on opportunities for children;

(j) Provide opportunity for children to direct their own learning and problem solving rather than teacher-directed activities; and

(k) Orient and guide children toward learning objectives.

SECTION XI

EMOTIONAL SUPPORT AND CLASSROOM ORGANIZATION

NEW SECTION

WAC 110-301-0325 Creating a climate for healthy child development. (1) When communicating or interacting with children, a school-age provider must maintain a climate for healthy, culturally responsive child development such as:

(a) Using a calm and respectful tone of voice;

(b) Using positive language to explain what children can do and give descriptive feedback;

(c) Having relaxed conversations with children by listening and responding to what they say. Adult conversations must not dominate the overall sound of the group;

(d) Greeting children upon arrival and departure at the school-age program;

(e) Using facial expressions such as smiling, laughing, and enthusiasm to match a child's mood;

(f) Using physical proximity in a culturally responsive way to speak to children at their eye level and with warm physical contact including, but not limited to, gently touching a hand or shoulder, and sitting next to a child while communicating;

(g) Validating children's feelings and show tolerance for mistakes;

(h) Being responsive and listening to children's requests and questions, encouraging children to share experiences, ideas, and feelings;

(i) Observing children in order to learn about their families, cultures, individual interests, ideas, questions, and theories;

(j) Modeling and teaching emotional skills such as recognizing feelings, expressing them appropriately, accepting others' feelings, and controlling impulses to act out feelings;

(k) Representing the diversity found in the school-age program and society, including gender, age, language, and abilities, while being respectful of cultural traditions, values, religion, and beliefs of enrolled families; and

(l) Interacting with staff and other adults in a positive, respectful manner.

(2) A school-age provider must encourage positive interactions between and among children with techniques such as:

(a) Giving children several chances a day to interact with each other while playing or completing routine tasks;

(b) Modeling social skills;

(c) Encouraging socially isolated children to find friends;

(d) Helping children understand feelings of others; and

(e) Including children with special needs to play with others.

NEW SECTION

WAC 110-301-0330 Positive relationships and child guidance. (1) A school-age provider must work to maintain positive relationships with children by using consistent guidance techniques to help children learn. Guidance techniques must adapt a school-age program's environment, routines, and activities to a child's strengths, age and developmental level, abilities, culture, community, and relate to the child's behavior.

(2) Guidance techniques may include:

(a) Coaching behavior;

(b) Modeling and teaching social skills such as taking turns, cooperation, waiting, self-control, respect for the rights of others, treating others kindly, and conflict resolution;

(c) Offering choices;

(d) Distracting;

(e) Redirecting or helping a child change their focus to something appropriate to achieve their goal;

(f) Planning ahead to prevent problems and letting children know what events will happen next;

(g) Explaining consistent, clear rules and involving children in defining simple, clear limits;

(h) Involving children in solving problems; and

(i) Explaining to children the natural and logical consequences related to the child's behavior in a reasonable and developmentally appropriate manner.

NEW SECTION

WAC 110-301-0331 Prohibited behavior, discipline, and physical removal of children. (1) A school-age provider must take steps to prevent and, once aware of, must not tolerate:

(a) Profanity, obscene language, "put downs," or cultural or racial slurs;

(b) Angry or hostile interactions;

(c) Threats of physical harm or inappropriate discipline such as, but not limited to, spanking, biting, jerking, kicking, hitting, slapping, grabbing, shaking, pulling hair, pushing, shoving, throwing a child, or inflicting pain or humiliation as a punishment;

(d) Intimidation, gestures, or verbal abuse including sarcasm, name calling, shaming, humiliation, teasing, derogatory remarks about a child or the child's family;

(e) Emotional abuse including victimizing, bullying, rejecting, terrorizing, extensive ignoring, or corrupting a child;

(f) Prevent a child from or punish a child for exercising religious rights; or

(g) Anyone to:

(i) Restrict a child's breathing;

(ii) Bind or restrict a child's movement unless permitted under WAC 110-301-0335;

(iii) Tape a child's nose, mouth, or other body part;

(iv) Deprive a child of sleep, food, clothing, shelter, physical activity, first aid, or regular or emergency medical or dental care;

(v) Force a child to ingest something as punishment such as hot sauce or soap;

(vi) Interfere with a child's ability to take care of their own hygiene and toileting needs;

(vii) Withhold hygiene care, toileting care, or diaper changing from any child unable to provide such care for themselves;

(viii) Expose a child to extreme temperatures as punishment;

(ix) Demand excessive physical exercise or strenuous postures. Excessive physical exercise includes, but is not limited to, running laps around the yard until overly tired, an extensive number of push-ups, standing on one foot for an uncomfortable amount of time, or holding out one's arms until tired or painful;

(x) Place the separated child in a closet, bathroom, locked room, outside, or in an unlicensed space; and

(xi) Use a confining space or equipment to punish a child or restrict movement.

(2) A school-age provider must supervise to protect children from the harmful acts of other children. A provider must immediately intervene when they become aware that a child or children are teasing, fighting, bullying, intimidating, or becoming physically aggressive.

(3) A school-age provider may separate a child from other children when that child needs to regain control of themselves.

(a) During separation time, the child must remain under the appropriate level of supervision of a licensee, program director, site director, lead teacher or an assistant teacher.

(b) Separation time should be minimized and appropriate to the needs of the individual child.

(4) If a child is separated from other children, a school-age provider must:

(a) Consider the child's developmental level, language skills, individual and special needs, and ability to understand the consequences of their actions; and

(b) Communicate to the child the reason for being separated from the other children.

(5) If a school-age provider follows all strategies in this section, and a child continues to behave in an unsafe manner, only a licensee, program director, site director, lead teacher, or an assistant teacher may physically remove the child to a

less stimulating environment. Staff must remain calm and use a calm voice when directing or removing the child.

NEW SECTION

WAC 110-301-0335 Physical restraint. (1) A school-age provider must have written physical restraint protocols pursuant to WAC 110-301-0490 and implement such protocols only when appropriate and after complying with all requirements of WAC 110-301-0330 and 110-301-0331.

(2) Physical restraint must only be used if a child's safety or the safety of others is threatened and must be:

(a) Limited to holding a child as gently as possible to accomplish restraint;

(b) Limited to the minimum amount of time necessary to control the situation;

(c) Developmentally appropriate; and

(d) Only performed by school-age providers trained in the program's child restraint policy, pursuant to WAC 110-301-0490.

(3) No person may use bonds, ties, blankets, straps, or heavy weights (including an adult sitting on a child) to physically restrain children.

(4) Licensees, program directors, site directors, and lead teachers or trained staff must remove themselves from a situation if they sense a loss of their own self-control and concern for the child when using a restraint technique if another school-age provider is present. If a school-age provider observes another staff using inappropriate restraint techniques, the staff must intervene.

(5) If physical restraint is used, staff must:

(a) Report the use of physical restraint, pursuant to WAC 110-301-0475 (2)(f);

(b) Assess any incident of physical restraint to determine if the decision to use physical restraint and its application were appropriate;

(c) Document the incident in the child's file, including the date, time, school-age program staff involved, duration, and what happened before, during, and after the child was restrained;

(d) Develop a written plan with input from the child's primary care or mental health provider, and the parents or guardians, to address underlying issues and reduce need for further physical restraint if:

(i) Physical restraint has been used more than once; and

(ii) A plan is not already a part of the child's individual care plan.

(e) Notify the department when a written plan has been developed.

NEW SECTION

WAC 110-301-0340 Expulsion. (1) To promote consistent care and maximize opportunities for child development and learning, a school-age provider must develop and follow expulsion policies and practices, pursuant to WAC 110-301-0486.

(2) A school-age provider may expel a child only if the:

(a) Child exhibits behavior that presents a serious safety concern for that child or others; and

(b) Program is not able to reduce or eliminate the safety concern through reasonable modifications.

(3) If a child is expelled, a school-age provider must:

(a) Review the program's expulsion policy with the parent or guardian of the child;

(b) Provide a record to the parent or guardian about the expulsion and the steps that were taken to avoid expulsion. The record must include the date, time, school-age program staff involved, and details of each incident that led to expulsion; and

(c) Provide information to the parent or guardian of the child that includes, but is not limited to, community-based resources that may benefit the child.

(4) The school-age provider must report to the department when children are expelled. The information must include:

(a) Child demographic data including, but not limited to, the age, race, ethnicity, and gender of the child;

(b) The reason the child was expelled; and

(c) The resources that were provided to the parent or guardian of the child.

SECTION XII

PROGRAM STRUCTURE AND ORGANIZATION

NEW SECTION

WAC 110-301-0345 Supervising children. (1) A school-age provider must only allow the following persons to have unsupervised access to a child in care:

(a) That child's own parent or guardian;

(b) Licensees or school-age program staff authorized by the department in chapter 110-06 WAC;

(c) A government representative including an emergency responder who has specific and verifiable authority for access, supported by documentation; and

(d) A person authorized in writing or over the phone by that child's parent or guardian such as a family member, family friend, or the child's therapist or health care provider.

(2) A school-age provider must meet capacity, group size, and staff-to-child ratios while children are in care. This includes, but is not limited to:

(a) Indoor and outdoor play activities;

(b) Off-site activities;

(c) During transportation;

(d) Meal times;

(e) When children are on different floor levels of the school-age program.

(3) A school-age provider must supervise children in care by:

(a) Scanning the environment looking and listening for both verbal and nonverbal cues to anticipate problems and plan accordingly;

(b) Visibly checking children on many occasions with little time in between;

(c) Positioning themselves to supervise all areas accessible to children;

(d) Attending to children and being aware of what children are doing at all times;

(e) Being available and able to promptly assist or redirect a child as necessary; and

(f) Considering the following when deciding whether increased supervision is needed:

- (i) Ages of children;
- (ii) Individual differences and abilities of children;
- (iii) Layout of the indoor and outdoor licensed space and play area;

(iv) The risk associated with the activities children are engaged in; and

(v) Any nearby hazards including those in the licensed or unlicensed space.

(4) A school-age program staff member may undertake other activities for a temporary time period when not required to be providing active supervision required under subsection (5)(c) of this section. Such activities include, but are not limited to, cleaning up after an activity or preparing items for a new activity. This school-age staff member must remain in visual or auditory range, and be available and able to respond if needed.

(5) A school-age provider must:

- (a) Not use devices such as audio monitors, video monitors, or mirrors in place of supervision;
- (b) Be able to hear when doors in the immediate area are opened to prevent children from leaving unsupervised;
- (c) Actively supervise children when the children:
 - (i) Interact with pets or animals;
 - (ii) Engage in water or sand play;
 - (iii) Play in an area in close proximity to a body of water;
 - (iv) Use a safe route to access an outdoor play area not immediately adjacent to the school-age program;
 - (v) Engage in planned activities in the kitchen;
 - (vi) Ride on public transportation;
 - (vii) Engage in outdoor play; and
 - (viii) During field trips.

NEW SECTION

WAC 110-301-0350 Supervising children during water activities. (1) During water activities, a school-age provider must meet all supervision requirements of this section and WAC 110-301-0345.

(2) During water activities, a school-age provider must hold or have continuous touch of children with special needs as required.

(3) A school-age provider must have written permission for water activities from each child's parent or guardian.

(4) For water activities on or off the school-age program premises, where the water is more than twenty-four inches deep, a school-age provider must ensure:

- (a) A certified lifeguard is present and on duty; and
- (b) At least one additional staff member than would otherwise be required is present to help actively supervise the children.

(5) A school-age provider must have life-saving equipment readily accessible during water activities if a pool is six feet or more in any direction and two feet or more in depth. Life-saving equipment may include a ring buoy and rope, a rescue tube, or a throwing line and a shepherd's hook that will not conduct electricity.

(6) If a school-age provider takes children off-site to an area with an accessible body of water more than four inches deep (for example, a park with a lake or stream) but children are not engaging in a water activity, there must be:

- (a) At least one more staff person than required in the staff-to-child ratio; and
- (b) At least one attending staff person must be able to swim.

NEW SECTION

WAC 110-301-0354 Indoor school-age program space capacity. (1) To define capacity, licensed indoor school-age program space must have a minimum of thirty-five square feet per child in attendance and further comply with the requirements of this chapter.

(a) Floor space under tables, desks, chairs, and other equipment used as part of children's activities must be included in the overall capacity.

(b) Office or kitchen space that is inaccessible to children and not intended for their use must not be included in the overall capacity.

(2) The following indoor space must not be counted in the overall capacity:

- (a) Unlicensed space;
- (b) Hallway space that is used for emergency evacuation or is not approved to be used for program activities;
- (c) Bathrooms and handwashing sinks;
- (d) Laundry areas;
- (e) Closets;
- (f) Stairways; and
- (g) Floor space occupied by shelves, built-in cabinets, file cabinets, desks, or other office equipment not intended to be accessible to children.

(3) A large, licensed indoor gross motor activity space may be used to supplement the requirements of outdoor program space, pursuant to WAC 110-301-0145, if:

(a) The space provides seventy-five square feet per child for the maximum number of children listed on the license or the provider rotates groups of children; and

(b) The space is safe and appropriate for activities otherwise performed in an outdoor play space.

(4) A program may request additional space, such as a library or computer lab, to be licensed without counting in that program's capacity.

NEW SECTION

WAC 110-301-0356 School-age capacity, ratio, and group size. (1) The department issues initial or nonexpiring school-age program licenses. The department will not issue a school-age license to care for more children than permitted by the rules in this chapter. The department may issue a license to care for fewer than the maximum allowable enrolled children. For each school-age program, licenses state the:

- (a) Maximum number of children that may be in care at any one time (total capacity);
- (b) Licensed capacity for each space within the school-age program licensed for use by children; and
- (c) Age range of children allowed in care.

(2) The department determines capacity for a school-age program after considering:

- (a) Square footage of the school-age program;
- (b) A provider's education and ongoing training;
- (c) The age range of children requested or approved by the department;
- (d) The amount of developmentally appropriate equipment, materials, and toys a school-age program can provide children to use;
- (e) A provider's licensing history with the department; and
- (f) The number of qualified staff available to meet staff-to-child ratios.

(3) A licensee must not exceed the total capacity or age range stated on the school-age program license at any time except as provided in this section. All children on the premises, signed in to the school-age program, on an off-site trip from the school-age program, or being transported by the school-age program staff are counted in capacity including the children of staff.

(a) A licensee must receive department approval to care for a child with special needs, pursuant to WAC 110-301-0300, if the child is older than the maximum age identified on the license. A child with documented special needs may be in care up to age nineteen and must be counted in capacity and staff-to-child ratio.

(b) A child with special needs who requires individualized supervision pursuant to WAC 110-301-0300 counts toward capacity but does not count in the staff-to-child ratio.

(c) A child who turns thirteen years old permitted by chapter 110-15 WAC must be counted in both capacity and staff-to-child ratio.

(4) A licensee must provide qualified staff to fulfill staffing requirements, staff-to-child ratios, and group size during operating hours, including off-site activities or when transporting children in care.

(5) In each classroom or well-defined space, the maximum group size of thirty children and ratio of 1:15 staff members to children, including children related to staff or the licensee, must be met.

Group size may exceed thirty children only for special events such as assemblies or performances.

(6) A licensee must conduct activities for each group of children in a specific room or other defined space within a larger area.

(7) A licensee must provide additional staff as described in WAC 110-301-0350 when children are participating in water activities or activities near water.

(8) When only one staff is required to care for the only group of children on-site for up to an hour at the beginning or end of the day, the licensee must ensure:

- (a) The staff member provides an appropriate level of supervision at all times to the children in care;
- (b) The staff member is free of all other duties while providing care to children; and
- (c) A second individual with a cleared background check is on-site and readily available to respond if needed, or the department approves an alternate plan.

NEW SECTION

WAC 110-301-0360 Program and daily schedule. (1) A school-age provider must have an established program and daily schedule that is familiar to children.

(2) A schedule must be designed to meet enrolled children's developmental, cultural, and special needs. The daily schedule must:

- (a) Offer a variety of activities to meet children's needs, pursuant to WAC 110-301-0150;
- (b) Meet the following daily morning or afternoon active outdoor play time requirements:
 - (i) Ten minutes for each one hour of programming for children; and
 - (ii) Programs that operate more than six hours a day must provide ninety minutes of active play for children (thirty minutes of which may be moderate to vigorous indoor activities).
- (c) Include scheduled and consistent times for meal service; and
- (d) Include routine transportation times, if applicable.

SECTION XIII

LICENSING PROCESS

NEW SECTION

WAC 110-301-0400 Application materials. (1) After completing a department orientation, an applicant must submit a complete license application packet, pursuant to chapter 43.216 RCW. A complete license application packet includes:

- (a) Professional and background information about the applicant:
 - (i) A completed department application form for a school-age program;
 - (ii) A copy of the applicant's orientation certificate (orientation must be taken within twelve months of license application);
 - (iii) A Washington state business license or a tribal, county, or city business or occupation license, if applicable;
 - (iv) Liability insurance;
 - (v) Certificate of incorporation, partnership agreement, or similar business organization document, if applicable;
 - (vi) The license fee;
 - (vii) A copy of current government issued photo identification;
 - (viii) A copy of Social Security card or sworn declaration stating that the applicant does not have one;
 - (ix) Employer identification number (EIN) if applicant plans to hire staff; and
 - (x) Employment and education verification. For example: Diploma, transcripts, or a sworn declaration stating that the applicant cannot verify education requirements.
- (b) Information about the facility to be licensed:
 - (i) A floor plan, including use of proposed licensed and unlicensed space, with identified emergency exits and emergency exit pathways;
 - (ii) Certificate of occupancy for any program that is not located on public or private school premises;

(iii) For any program that is not located on public or private school premises, documentation, no more than three years old, from a licensed inspector, septic designer, or engineer that states the septic system and drain field are maintained and in working order, if applicable;

(iv) *E. coli* bacteria and nitrate testing results for well water that is no more than twelve months old, if applicable;

(v) A lead or arsenic evaluation agreement for any program that is not located on public or private school premises and is located in the Tacoma smelter plume (counties of King, Pierce, and Thurston); and

(vi) For any program that is not located on public or private school premises, lead and copper test results for drinking water.

(c) Program days and hours of operation, including closure dates and holiday observances; and

(d) Information about school-age program staff:

(i) List of applicant, and if applicable and known, staff persons and volunteers required to complete the background check process as outlined in chapter 110-06 WAC; and

(ii) Resume for applicant, program director, and site director, if applicable.

(2) An applicant must include the following policy documents with the application, which will be reviewed by the department and returned to the applicant:

(a) Parent and program policies;

(b) Staff policies;

(c) An emergency preparedness plan; and

(d) Health policies.

(3) An applicant must submit the completed application packet at least ninety calendar days prior to the planned opening of the school-age program. The department will inspect the school-age program space and approve all application submissions required in this chapter prior to issuing a license.

(a) The ninety calendar days begins when the department receives a complete application packet.

(b) Incomplete application packets will be returned to the applicant for completion.

(c) An applicant who is unable to successfully complete the application and licensing process within ninety days may withdraw the application and reapply when the applicant is able to meet the licensing requirements. If the applicant has completed the steps of the application process within ninety days but an external barrier out of the applicant's control exists, the reapplication fee will be waived one time.

(d) An applicant who is unable to meet the application requirements and has not withdrawn their application will be denied a license, pursuant to RCW 43.216.325.

NEW SECTION

WAC 110-301-0401 License fees. (1) The rules establishing licensing fees within this chapter are adopted pursuant to RCW 43.216.300.

(2) The license fee is nonrefundable and is due:

(a) With the applicant's initial license application packet; and

(b) Annually thereafter, thirty calendar days prior to the anniversary date of the license.

(3) Payment must be in the form of a check, credit or debit card, or money order.

(4) The annual licensing fee for school-age programs is one hundred twenty-five dollars for the first twelve children plus twelve dollars for each additional child, or as otherwise set by the legislature.

NEW SECTION

WAC 110-301-0402 Changing school-age program space or location. (1) A school-age provider must notify the department prior to making a change to school-age program space or unlicensed space that may impact the health, safety, or welfare of enrolled children. Such changes include, but are not limited to:

(a)(i) Moving the school-age program to a new physical address;

(ii) A school-age provider must submit a complete application, pursuant to WAC 110-301-0400, as soon as the provider plans to move and has an identified new physical address, but not more than ninety calendar days before moving;

(b) Moving the school-age program to a different space or building on the same premises;

(c) A school-age program altering a planned use of space;

(d) Modifying facilities in a way that requires a permit under the Washington state building code or by a local jurisdiction, such as remodeling or renovating school-age program space; and

(e) For any program that does not operate on public or private school premises, changing outdoor play areas, such as adding or altering the type of surface or altering stationary climbing or play equipment.

(2) A school-age provider must submit to the department the new proposed floor plan prior to making changes under subsection (1)(a) through (d) of this section.

(3) A school-age provider planning a change under subsection (1)(a) and (b) of this section, must not move a school-age program until the department has first inspected the new location and determines it meets the requirements in this chapter and RCW 43.216.305.

NEW SECTION

WAC 110-301-0410 License and program location. (1) An applicant for a license under this chapter must be at least eighteen years old.

(2) A licensee refers to the individual or organization:

(a) Whose name appears on a license issued by the department;

(b) Who is responsible for complying with the standards in this chapter, chapter 43.216 RCW, chapter 110-06 WAC, and other applicable laws and rules; and

(c) Who is responsible for training school-age program staff on the foundational quality standards in this chapter.

(3) School-age program space must be located:

(a) On a site free from known environmental hazards;

(b) In an area where nonemergency services and utilities can serve the school-age program space; and

(c) In an area served by emergency fire, medical, and police during the hours the school-age program provides care to children.

(4) For any program that does not operate on public or private school premises, a school-age provider must prevent enrolled children from being exposed to the following known hazards within and around the licensed premises:

- (a) Lead based paint;
- (b) Plumbing and fixtures containing lead or lead solders;
- (c) Asbestos;
- (d) Arsenic, lead, or copper in the soil or drinking water;
- (e) Toxic mold; and
- (f) Other identified toxins or hazards.

(5) A school-age provider must place address numbers or signage on the outside of the building that contains the school-age program space. The numbers or signage must be legible and plainly visible from the street or road serving the premises.

(6) A license applicant planning to open a school-age program in the designated Tacoma smelter plume (counties of King, Pierce, and Thurston) and not on public or private school premises must contact the state department of ecology (DOE), and complete and sign an access agreement with DOE to evaluate the applicant's property for possible arsenic and lead soil contamination.

NEW SECTION

WAC 110-301-0411 License transfer. (1) Pursuant to RCW 43.216.305(1) and subject to this chapter, a full license issued under chapter 43.216 RCW may be transferred to a new licensee in the event of a transfer of ownership of a child care operation. A current licensee or applicant must apply to transfer a license using forms and methods determined by the department.

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

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

(b) Department determines before the license transfer the new licensee's child care operation is substantially similar to or an improvement of the originally licensed child care operation.

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

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

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

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

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

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

(4) The department will determine and disclose to the current licensee and new licensee whether the license is in good standing prior to transferring the license.

(5) At the request of the current licensee or the new licensee, the department will disclose the following license information from the last four years to one or both parties:

(a) A description of any valid complaints;

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

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

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

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

(6) The current licensee or new licensee has the right to appeal the department's denial of a license transfer application by requesting an adjudicative proceeding (or "hearing") pursuant to the hearing rules detailed in chapter 110-03 WAC.

NEW SECTION

WAC 110-301-0415 Zoning, codes, and ordinances.

(1) The department adopts and incorporates by reference the Washington state building code (chapter 19.27 RCW).

(2) School-age program space must comply with the Washington state building code or local building code as enacted at the time of licensure. Facility modifications must comply with WAC 110-301-0402.

(3) Prior to licensing, an applicant whose school-age program does not operate on public or private school premises must contact state, city, and local agencies that regulate the school-age program. A school-age provider must obtain regulations and comply with the direction given by such agencies. These agencies may include, but are not limited to, the Washington state department of labor and industries, the Washington state fire marshal, the Washington state DOH, and local health jurisdictions.

(4) Prior to licensing, an applicant whose school-age program does not operate on public or private school premises must:

(a) Have a certificate of occupancy issued by the local building, planning, or zoning department, or a local equivalent if locality does not have the certificate of occupancy; and

(b) Be inspected and approved by the state fire marshal.

NEW SECTION

WAC 110-301-0420 Prohibited substances. (1) Chapter 70.160 RCW prohibits smoking in public places and places of employment.

(2) Pursuant to RCW 70.160.050, a school-age provider must:

(a) Prohibit smoking, vaping, or similar activities in licensed indoor space, even during nonbusiness hours;

(b) Prohibit smoking, vaping, or similar activities in licensed outdoor space unless:

(i) Smoking, vaping, or similar activities occurs during nonbusiness hours; or

(ii) In an area for smoking or vaping tobacco products that is not a "public place" or "place of employment," as defined in RCW 70.160.020.

(c) Prohibit smoking, vaping, or similar activities in motor vehicles used to transport enrolled children;

(d) Prohibit smoking, vaping, or similar activities by any provider who is supervising children, including during field trips;

(e) Prohibit smoking, vaping, or similar activities within twenty-five feet from entrances, exits, operable windows, and vents, pursuant to RCW 70.160.075; and

(f) For school-age programs not located on public or private school premises, post "no smoking or vaping" signs. Signs must be clearly visible and located at each building entrance used as part of the school-age program.

(3) A school-age provider must:

(a) Prohibit any person from consuming or being under the influence of alcohol on licensed space during business hours;

(b) Prohibit any person within licensed space from consuming or being under the influence of illegal drugs or prescription drugs to the extent that it interferes with the care of children as required by this chapter;

(c) Store any tobacco or vapor products, or the packaging of tobacco or vapor products in a space that is inaccessible to children;

(d) Prohibit children from accessing cigarette or cigar butts or ashes;

(e) Store any cannabis or associated paraphernalia out of the licensed space and in a space that is inaccessible to children; and

(f) Store alcohol in a space that is inaccessible to children (both opened and closed containers).

(4) A school-age provider must prohibit any person from using, consuming, or being under the influence of cannabis in any form on licensed space.

NEW SECTION

WAC 110-301-0425 Initial, nonexpiring, dual licenses, and license modification. (1) The department may issue an initial license when a school-age program applicant demonstrates compliance with health and safety requirements of this chapter but may not be in full compliance with all requirements, pursuant to RCW 43.216.315.

(a) An initial license is valid for six months from the date issued.

(b) At the department's discretion, an initial license may be extended for up to three additional six-month periods, not to exceed a total of two years.

(c) The department must evaluate the school-age provider's ability to follow requirements contained in this chapter during the initial license period.

(2) The department may issue a nonexpiring license to a licensee operating under an initial license who demonstrates compliance with the requirements of this chapter during the period of initial licensure, pursuant to RCW 43.216.305.

(3) A licensee must submit annual compliance documents, and must do so at least thirty calendar days prior to that provider's licensing anniversary date. A provider's anni-

versary date is the date the first initial license was issued. The required annual compliance documents are:

(a) The annual nonrefundable license fee; and

(b) A declaration on the department's form indicating:

(i) The intent to continue operating a licensed school-age program;

(ii) The intent to cease operation as a licensed school-age program;

(iii) A change in the school-age program's operational hours or dates; and

(iv) The intent to comply with all licensing rules.

(c) Documentation of completed background check applications as determined by the department's established schedule, pursuant to RCW 43.216.270; and

(d) For each individual required to have a background check clearance, the school-age provider must verify current background checks or require the individual to submit a background check application at least thirty calendar days prior to the anniversary date.

(4) If a licensee fails to meet the requirements for continuing a nonexpiring license by their anniversary date, the licensee's current license expires. The school-age provider must submit a new application for licensure, pursuant to RCW 43.216.305(3).

(5) Nothing about the nonexpiring license process in this section may interfere with the department's established monitoring practices, pursuant to RCW 43.216.305 (4)(a).

(6) A licensee has no right to an adjudicative proceeding (hearing) to appeal the expiration, nonrenewal, or noncontinuation of a nonexpiring license resulting from a failure to comply with the requirements of this section.

(7) A licensee must have department approval to hold dual licenses (for example: A school-age program license and another care giving license, certification, or similar authorization).

(8) If the department determines that a licensee is not meeting all applicable requirements and regulations the:

(a) Department and licensee may agree to modify the school-age program license;

(b) Licensee may give up one of the licenses, certifications, or authorizations; or

(c) Department may suspend, deny, or revoke the school-age license, pursuant to RCW 43.216.325.

(9) A school-age provider must report within twenty-four hours:

(a) To the department and local authorities: A fire or other structural damage to the school-age program space or other parts of the premises;

(b) To the department:

(i) A retirement, termination, death, incapacity, or change of the program director or site director, or change of ownership or incorporation of a provider;

(ii) When a provider becomes aware of a charge or conviction against themselves, a staff person, or applicable household member, pursuant to WAC 110-06-0043;

(iii) When a provider becomes aware of an allegation or finding of abuse, neglect, maltreatment, or exploitation of a child or vulnerable adult made against themselves or a staff person; and

(iv) Any changes in the school-age program hours of operation to include closure dates.

(10) Prior to increasing capacity of a school-age program, the licensee, program director, or site director must request and be approved to increase capacity by the department.

(11) The licensee, program director, or site director must have state fire marshal or department approval and comply with local building ordinances following a significant change under WAC 110-301-0402 (1)(a) through (d), if applicable.

(12) The licensee, program director, or site director must notify the department within thirty calendar days when liability insurance coverage under RCW 43.216.700 has lapsed or been terminated.

NEW SECTION

WAC 110-301-0435 Waiver from department rules—WAC. (1) The department cannot waive a requirement of state law (RCW) or federal law.

(2) Pursuant to RCW 43.216.065, the department may approve a waiver from a rule in this chapter if it does not jeopardize the health, safety, or welfare of the children in care.

(3) A school-age provider's request for a waiver from a rule in this chapter must be:

- (a) Submitted in writing to the department;
- (b) Approved in writing by the department secretary or the secretary's designee prior to the school-age provider implementing the waiver from the rule; and
- (c) For a specific program need or child.

(4) A granted waiver may be time specific or may remain in effect for as long as the school-age provider continues to comply with the conditions of the waiver. If the waiver from the rule is time limited, the provider must not exceed the time frame established by the department.

(5) The department may revoke a granted waiver if a licensing rule which was considered in granting the waiver is materially altered or amended.

NEW SECTION

WAC 110-301-0436 Variance from department rules—WAC. (1) The department cannot provide variance from a requirement in state (RCW) or federal law.

(2) Upon written request of an applicant, licensee, program director, or site director the department may grant a variance from a rule in this chapter if the proposed program alternative does not jeopardize the health, safety, or welfare of the children in care.

(3) A request for variance from a rule in this chapter must be:

- (a) Submitted in writing to the department;
- (b) Approved in writing by the department secretary or the secretary's designee prior to the school-age provider implementing the variance from the rule; and
- (c) For a specific program approach or methodology.

(4) A granted variance may be time specific or may remain in effect for as long as the school-age provider continues to comply with the conditions of the variance. If the vari-

ance from the rule is time limited, the provider must not exceed the time frame established by the department.

(5) The department may revoke a granted variance if a licensing rule which was considered in granting the variance is materially altered or amended.

NEW SECTION

WAC 110-301-0440 Facility licensing compliance agreements, nonreferral status, probationary license, and provider rights. (1) At the department's discretion, when a school-age provider is in violation of this chapter or chapter 43.216 RCW, a facility licensing compliance agreement (FLCA) may be issued in lieu of the department taking enforcement action. The FLCA must contain:

(a) A description of the violation and the law or rule that was violated;

(b) A proposed plan from the provider or a designee to comply with the law or rule;

(c) The date the violation must be corrected, determined by:

- (i) The seriousness of the violation;
- (ii) The potential threat to the health, safety, and well-being of the children in care; and
- (iii) The number of times the school-age program has violated rules in this chapter or under chapter 43.216 RCW.

(d) Information regarding other licensing action that may be imposed if compliance does not occur by the required date; and

(e) The signature of the department licenser and the licensee.

(2) A school-age provider must return a copy of the completed FLCA to the department after corrective action has been completed and by the date indicated.

(3) A school-age provider may request an internal review process regarding the violation of department rules pursuant to RCW 43.216.395.

(4) In an enforcement action against a school-age program or provider, the provider has the right to refuse to:

- (a) Accept or sign a FLCA.
 - (b) Agree to a probationary license.
- (5) If a school-age provider refuses a FLCA or probationary license, this may result in any of the following enforcement actions:

- (a) Modification of the license;
- (b) Noncontinuation of a nonexpiring license;
- (c) Suspension of the license;
- (d) Revocation of the license; or
- (e) Civil penalties.

(6) The department may place a school-age provider on nonreferral status, pursuant to RCW 43.216.325(4), in addition to or in lieu of an enforcement action under this chapter.

(7) A probationary license may be issued to a school-age provider or program operating under a nonexpiring license as part of a corrective action plan. Prior to issuing a probationary license, the department must refer the program or provider for technical assistance, pursuant to RCW 43.216.320 (2).

(8) A department decision to issue a probationary license is based on a school-age program or provider's:

- (a) Negligent or intentional noncompliance with the licensing rules;
 - (b) History of noncompliance with licensing rules;
 - (c) Current noncompliance with licensing rules;
 - (d) Fire safety inspection or health and sanitation inspection report that failed to gain approval;
 - (e) Use of unauthorized space for the school-age program;
 - (f) Inadequate supervision of children;
 - (g) Understaffing for the number of children in care;
 - (h) Noncompliance with requirements addressing children's health, proper nutrition, discipline, emergency medical plan, sanitation or personal hygiene practices; and
 - (i) Any other factors relevant to the specific situation and consistent with the intent or purpose of chapter 43.216 RCW.
- (9) When the department issues a probationary license, the school-age provider must:
- (a) Provide notice of the probationary license and a copy of the department's probationary licensing agreement to the parents or guardians of enrolled children within five business days of receiving the probationary license;
 - (b) Provide documentation to the department that parents or guardians of enrolled children have been notified within ten business days of receiving the probationary license;
 - (c) Inform new parents or guardians of the probationary status before enrolling their children into care;
 - (d) Return the school-age program's nonexpiring license to the department; and
 - (e) Post documentation of the approved written probationary license as required by RCW 43.216.687.
- (10) Pursuant to RCW 43.216.689, a school-age provider must have inspection reports and notices of enforcement actions for the past three years readily available for review by the department, parents, guardians, and the public.

NEW SECTION

WAC 110-301-0443 Enforcement actions, notice, and appeal. (1) Pursuant to RCW 43.216.325, the department is authorized to take enforcement actions when a school-age provider fails to comply with this chapter or chapter 43.216 RCW. Enforcement actions are taken pursuant to RCW 43.216.020, 43.216.065, and 43.216.250. Enforcement actions include civil monetary penalties (fines) and the denial, suspension, revocation, modification, or nonrenewal of a license.

(2) A school-age provider subject to an enforcement action has the right to appeal by requesting an adjudicative proceeding (or "hearing") pursuant to chapter 110-03 WAC, DCYF hearing rules.

(3) The department must issue a notice of violation to a school-age provider when taking enforcement actions. A notice of violation must be sent by certified mail or personal service and must include:

- (a) The reason why the department is taking the action;
- (b) The rules the provider failed to comply with;
- (c) The provider's right to appeal enforcement actions; and
- (d) How the provider may appeal and request a hearing.

(4) Fines must not exceed two hundred fifty dollars per day per violation for school-age programs, or as otherwise set by the legislature. Fines may be:

- (a) Assessed and collected with interest for each day a violation occurs;
- (b) Imposed in addition to other enforcement actions; and
- (c) Withdrawn or reduced if a school-age provider comes into compliance during the notification period.

(5) A school-age provider must pay fines within twenty-eight calendar days after receiving a notice of violation unless:

- (a) The office of financial recovery establishes a payment plan for the provider; or
- (b) A later due date is specified on the notice of violation, pursuant to RCW 43.216.335(2); or
- (c) The provider requests a hearing, pursuant to chapter 110-03 WAC, DCYF hearing rules and RCW 43.216.335(3).

(6) The department may suspend or revoke a license if a school-age provider fails to pay a fine within twenty-eight calendar days or becomes delinquent in making payments, pursuant to RCW 43.216.327 and 43.216.335. If a provider's license is due for annual compliance, the department may elect not to continue the license for failure to pay a fine.

SECTION XIV

RECORDS, POLICIES, REPORTING AND POSTING

NEW SECTION

WAC 110-301-0450 Parent or guardian handbook and related policies. (1) A school-age provider must supply to each parent or guardian written policies regarding the school-age program. Each enrolled child's record must have signed documentation stating the parent or guardian reviewed the handbook and school-age program policies.

(2) A school-age provider must have and follow formal written policies in either paper or electronic format, including:

- (a) A nondiscrimination statement;
- (b) A family engagement and partnership communication plan;
- (c) A parent or guardian's permission for photography, videotaping, or surveillance of their child;
- (d) Alcohol, tobacco, cannabis use and prohibition of illegal drugs;
- (e) Program philosophy pursuant to WAC 110-301-0305, and how this philosophy is implemented;
- (f) Child guidance plan, which includes restraint policies and forbidding corporal punishment;
- (g) Expulsion policy;
- (h) School-age program staff-to-child ratios and classroom or age grouping types offered, if applicable;
- (i) If the school-age program offers any of the following, they must include a policy for each that applies to their program:
 - (i) Care for children with specific or special needs;
 - (ii) Dual language learning;

- (iii) Religious and cultural activities, including how holidays will be celebrated;
- (iv) Transportation and off-site field trips; and
- (v) Water activities.
- (j) Program days and hours of operation, including closure dates and observed holidays;
- (k) Enrollment and disenrollment requirements;
- (l) Fees and payment plans;
- (m) Sign-in and sign-out requirements;
- (n) Information required for the child's record, including:
 - (i) The importance and plan for keeping the information current;
 - (ii) A plan to keep the child's information confidential; and
 - (iii) Who may legally access the child's information.
 - (o) What parents or guardians must supply for their child, if applicable (for example: Extra clothing);
 - (p) Permission for a parent or guardian's access to areas of the school-age program during business hours;
 - (q) Termination of services policy;
 - (r) Emergency preparedness plan;
 - (s) The school-age provider and program staff's duty to report incidents including reporting suspected child abuse, neglect, sexual abuse, or maltreatment;
 - (t) Description of where the parent or guardian may find and review the school-age program's:
 - (i) Health policy;
 - (ii) Staff policies;
 - (iii) Consistent care policy;
 - (iv) Menus;
 - (v) Liability insurance;
 - (vi) Inspection reports and notices of enforcement actions, if applicable; and
 - (vii) Other relevant program policies.

NEW SECTION

WAC 110-301-0455 Attendance records. (1) A school-age provider may keep a child in care up to a maximum of ten hours each day. If needed, the maximum time may be extended based upon the parent or guardian's work, an agreed upon alternate schedule, or travel to and from the school-age program.

(2) A school-age provider must keep daily child attendance records, either in paper or electronic format, for each child (including the children of staff in the program). These records must be easily accessible and kept on-site or in the program's administrative office for department review. These records must clearly document:

- (a) The name of the child;
- (b) The date of care;
- (c) Child arrival and departure times from the school-age program;
- (d) Signature or electronic signature of parent, guardian or other authorized person at the time of arrival and departure; and
- (e) A staff signature when a child leaves the school-age program to attend school or participate in off-site activities not offered by the school-age program.

(3) A school-age provider must keep daily staff attendance records for each classroom or group of children. These attendance records must be on paper or in an electronic format and clearly document:

- (a) The name of each staff member (including staff assigned to care for children with special needs and one-on-one care) and volunteers;
- (b) The number of children in each classroom or with each group of children;
- (c) The staff-to-child ratio;
- (d) The date; and
- (e) Start and end times of the assigned staff or volunteers.

(4) If the attendance records are kept electronically, the electronic system must:

(a) Record either an electronic signature, swipecard, personal identification number (PIN), biometric reader, or similar action by the parent, guardian, or authorized person when signing the child in or out of care (or staff notation of who picked up or dropped off along with time in and out if authorized person does not have electronic signature, swipe card, PIN, biometric reader or similar action);

(b) Ensure the authenticity, confidentiality, integrity, security, accessibility, and protection against disproof of the electronic records;

(c) Be able to produce an authentic, verifiable and uniquely identified written record for each transaction;

(d) Be able to authenticate (prove the identity of) the sender of the record and ensure that the electronic record has not been altered;

(e) Be able to capture an electronic record for each transaction conducted;

(f) Be able to retain the electronic record in an accessible form for their legal minimum retention period;

(g) Be able to search and retrieve electronic records in the normal course of business; and

(h) Be able to perform in an accurate, reliable, and consistent manner in the normal course of business.

(5) Electronic attendance records must contain information necessary to reproduce the entire electronic record and associated signatures in a form that permits a person viewing or printing the entire electronic record to verify the:

- (a) Contents of the electronic record;
- (b) Person signing the electronic record; and
- (c) Date signatures were executed.

NEW SECTION

WAC 110-301-0460 Child records. (1) A school-age provider must keep current individualized enrollment and health records for all enrolled children, including children of staff, updated annually or more often as health records are updated.

(a) A child's record must be kept in a confidential manner but in an area easily accessible to staff.

(b) A child's parent or guardian must be allowed access to all of their own child's records.

(2) Each child's enrollment record must include the following:

- (a) The child's birth date;

(b) An enrolled child's parent or guardian's phone number, address, and contact information for reaching the family while the child is in care;

(c) Emergency contact information. If no emergency contact is available, a written and signed emergency contact plan may be accepted;

(d) Names and phone numbers of persons authorized to pick up enrolled children;

(e) A plan for special or individual needs of the child, if applicable, including parent or guardian signature, pursuant to WAC 110-301-0300;

(f) Signed parent or guardian permissions, pursuant to WAC 110-301-0450 as applicable for:

(i) Field trips;

(ii) Transportation;

(iii) Water activities including swimming pools or other bodies of water; and

(iv) Photo, video, or surveillance activity.

(g) The beginning and end enrollment date for children no longer in the school-age program's care;

(h) Physical restraint documentation pursuant to WAC 110-301-0335, if applicable;

(i) Expulsion information, documentation, and steps taken to avoid expulsion; and

(j) Termination of services documentation and communication.

(3) Each child's health record and the information described in subsection (2)(a) through (e) of this section must be available to staff for medical administration or emergencies.

(4) A health record is required for every child who is enrolled and counted in a school-age program's capacity. A health record must include:

(a) An immunization record, pursuant to WAC 110-301-0210;

(b) The child's health history including any known health conditions and the child's individual care plan, if applicable;

(c) A medication authorization and administration log, pursuant to WAC 110-301-0215, if applicable;

(d) Documentation of special medical procedure training by parent or guardian, if applicable;

(e) Medical and dental care provider names and contact information or what facility the parent or guardian would prefer for treatment;

(f) Dates of the child's last physical exam and dental exam, if available;

(g) Consent to seek medical care and treatment of the child in the event of injury or illness, signed by the child's parent or guardian;

(h) Signed parent or guardian permission for visiting health professionals who provide direct services to children at the school-age program;

(i) An incident or injury report, pursuant to 110-301-0475, that includes:

(i) The date and description of the child's incident or injury;

(ii) Treatment provided to the child while in care;

(iii) The names of the school-age program staff providing the treatment; and

(iv) Evidence that a copy of the incident or injury report was given to the child's parent or guardian.

(j) Documentation that a provider reported food poisoning or contagious diseases to the local health jurisdiction or the DOH, if applicable.

NEW SECTION

WAC 110-301-0465 Retaining facility and program records. (1) A school-age provider must keep the records required in this chapter for a minimum of three years unless otherwise indicated.

(2) Attendance records must be kept for a minimum of five years.

(3) Facility and program records from the previous twelve months must be easily accessible and kept on-site or in the program's administrative office for department or other state agency's review.

(4) Records older than twelve months must be provided within two weeks of a written request by the department.

(5) A school-age provider must keep the following records available for department review:

(a) The parent or guardian handbook;

(b) Food temperature logs pursuant to CACFP, if applicable;

(c) Child incident and illness logs;

(d) Vaccination records for pets or animals that are housed in the school-age program, accessible to children during program operating hours, or both;

(e) Car insurance policy, if applicable;

(f) Program planning schedule;

(g) Documents from department visits (inspections, monitoring, compliance agreements, and safety plans); and

(h) Waivers or variances from department rules, if applicable.

(6) For any program that does not operate on public or private school premises, a school-age provider must keep the following records available for department review:

(a) Furniture and play equipment forms and specifications;

(b) Chromated copper arsenate test results, if applicable;

(c) Annual fire inspection by qualified fire professional, if applicable;

(d) Monthly inspection to identify fire hazards and elimination of such hazards;

(e) Monthly testing of smoke and carbon monoxide detectors;

(f) Monthly fire extinguisher inspection and annual maintenance;

(g) Lead and copper testing results;

(h) Private well and septic systems inspection and testing results, if applicable;

(i) Cleaning log for large area rugs or carpets;

(j) Pesticide use (seven years); and

(k) Tacoma smelter inspection results.

NEW SECTION

WAC 110-301-0470 Emergency preparedness plan. (1) A school-age provider must have and follow a written emergency preparedness plan. The plan must be reviewed

and approved by the department prior to when significant changes are made. Emergency preparedness plans must:

(a) Be designed to respond to fire, natural disasters, and other emergencies that might affect the school-age program;

(b) Be specific to the school-age program and able to be implemented during hours of operation;

(c) Address what the provider would do if the provider has an emergency and children may be left unsupervised;

(d) Address what the school-age program must do if parents or guardians are not able to get to their children for up to three days;

(e) Must follow requirements in chapter 212-12 WAC, Fire marshal standards, and the state fire marshal's office requirements;

(f) Be reviewed at program orientation, annually with all school-age program staff with documented signatures, and when the plan is updated; and

(g) Be reviewed with parents or guardians when a child is enrolled and when the plan is updated.

(2) The written emergency preparedness plan must cover at a minimum:

(a) Disaster plans, including fires that may require evacuation:

(i) An evacuation floor plan that identifies room numbers or names of rooms, emergency exit pathways, and emergency exit doors;

(ii) Methods to be used for sounding an alarm and calling 911;

(iii) Actions to be taken by a person discovering an emergency;

(iv) How the school-age provider will evacuate children, especially those who cannot walk independently. This may include children with disabilities, functional needs requirements, or other special needs;

(v) Where the alternate evacuation location is;

(vi) What to take when evacuating children, including:

(A) First-aid kits;

(B) Copies of emergency contact information;

(C) Child medication records; and

(D) Individual children's medication, if applicable.

(vii) How the provider will maintain the required staff-to-child ratio and account for all children;

(viii) How parents or guardians will be able to contact the school-age program; and

(ix) How children will be reunited with their parents or guardians after the event.

(b) Earthquake procedures including:

(i) What a provider will do during an earthquake;

(ii) How a provider will account for all children; and

(iii) For any program not located on public or private school premises, how a provider will coordinate with local or state officials to determine if the licensed space is safe for children after an earthquake.

(c) Public safety related lockdown scenarios where an individual at or near a school-age program is harming or attempting to harm others with or without a weapon. This plan must include lockdown of the school-age program or shelter-in-place steps including:

(i) How doors and windows will be secured to prevent access, if needed; and

(ii) Where children will safely stay inside the school-age program.

(d) How parents or guardians will be contacted after the emergency ends.

(3) A school-age provider must keep on the premises a three-day supply of food, water, and life-sustaining medication for the licensed capacity of children and current staff for use in case of an emergency. If a program is located in a public or private school building with an existing three-day supply of food and water that would sustain the school-age program's licensed capacity of children and staff, the school-age provider may submit to the department documentation from the school verifying the school agrees to allow the school-age program to access and use the three-day supply of food and water in an emergency.

(4) A school-age provider must practice and record emergency drills with staff and children as follows:

(a) Fire and evacuation drill once each calendar month;

(b) Earthquake, lockdown, or shelter-in-place drill once every three calendar months;

(c) Emergency drills must be conducted with a variety of staff and at different times of the day; and

(d) Drills must be recorded on a department form and include:

(i) The date and time of the drill;

(ii) The number of children and staff who participated;

(iii) The length of the drill; and

(iv) Notes about how the drill went and how it may be improved.

(5) In areas where local emergency plans are already in place, such as school districts, a school-age program may adopt or amend such procedures when developing their own plan.

NEW SECTION

WAC 110-301-0475 Duty to protect children and report incidents. (1) Pursuant to RCW 26.44.030, when a school-age provider has reasonable cause to believe that a child has suffered abuse or neglect, that provider must report such incident, or cause a report to be made, to the proper law enforcement agency or the department. "Abuse or neglect" has the same meaning here as in RCW 26.44.020.

(2) A school-age provider must report by telephone to the listed individuals, department, and other government agencies when the provider knows or has reason to know of an act, event, or occurrence described in (a) through (f) of this subsection.

(a) Law enforcement or the department at the first opportunity, but in no case longer than forty-eight hours:

(i) The death of a child while in the school-age program's care or the death from injury or illness that may have occurred while the child was in care;

(ii) A child's attempted suicide or talk about attempting suicide;

(iii) Any suspected physical, sexual or emotional child abuse;

(iv) Any suspected child neglect, child endangerment, or child exploitation;

(v) A child's disclosure of sexual or physical abuse; or

(vi) Inappropriate sexual contact between two or more children.

(b) Emergency services (911) immediately, and to the department within twenty-four hours:

(i) A child missing from care, triggered as soon as staff realizes the child is missing;

(ii) A medical emergency that requires immediate professional medical care;

(iii) A child who is given too much of any oral, inhaled, or injected medication;

(iv) A child who took or received another child's medication;

(v) A fire or other emergency;

(vi) Poisoning or suspected poisoning; or

(vii) Other dangers or incidents requiring emergency response.

(c) Washington poison center immediately after calling 911, and to the department within twenty-four hours:

(i) A poisoning or suspected poisoning;

(ii) A child who is given too much of any oral, inhaled, or injected medication;

(iii) A child who took or received another child's medication; or

(iv) The provider must follow any directions provided by Washington poison center.

(d) The local health jurisdiction or the DOH immediately, and to the department within twenty-four hours about an occurrence of food poisoning or reportable contagious disease as defined in chapter 246-110 WAC;

(e) The department at the first opportunity, but in no case longer than twenty-four hours, upon knowledge of any person required by chapter 110-06 WAC to have a change in their background check history due to:

(i) A pending charge or conviction for a crime listed in chapter 110-06 WAC;

(ii) An allegation or finding of child abuse, neglect, maltreatment, or exploitation under chapter 26.44 RCW or chapter 110-30 WAC;

(iii) An allegation or finding of abuse or neglect of a vulnerable adult under chapter 74.34 RCW; or

(iv) A pending charge or conviction of a crime listed in the secretary's list in chapter 110-06 WAC from outside Washington state, or a "negative action" as defined in RCW 43.216.010.

(f) A child's parent or guardian as soon as possible, but no later than the release of the child at the end of the day, and to the department within twenty-four hours, about using physical restraint on a child as described in WAC 110-301-0335.

(3) In addition to reporting to the department by phone or email, a school-age provider must submit a written incident report of the following on a department form within twenty-four hours:

(a) Situations that required an emergency response from emergency services (911), Washington poison center, or the DOH;

(b) Situations that occur while children are in care that may put children at risk including, but not limited to, inappropriate sexual touching, neglect, physical abuse, maltreatment, or exploitation; and

(c) A serious injury to a child in care.

(4) A school-age provider must immediately report to the parent or guardian:

(a) Their child's death, serious injury, need for emergency or poison services; or

(b) An incident involving their child that was reported to the local health jurisdiction or the DOH.

NEW SECTION

WAC 110-301-0480 Transportation and off-site activity policy. (1) A school-age provider must have and follow a transportation and off-site activity policy for personal or public transportation service, or nonmotorized travel offered to children in care.

(a) The transportation and off-site activity policy must include routine trips, which must not exceed two hours in a vehicle per day for any individual child.

(b) Written parent or guardian authorization to transport the parent or guardian's child. The written authorization must be:

(i) A specific event, date, and anticipated travel time;

(ii) A specific type of trip (for example, transporting to and from school, or transporting to and from a field trip); or

(iii) A full range of trips a child may take while in the school-age provider's care.

(c) Written notices to parents or guardians, to be given at least twenty-four hours before field trips are taken.

(2) During travel to an off-site activity, a school-age provider must:

(a) Have the health history, appropriate medication (if applicable), emergency information, and emergency medical authorization forms accessible for each child being transported;

(b) Have a phone to call for emergency help;

(c) Have a complete first-aid kit;

(d) Maintain the staff-to-child ratio and active supervision requirements;

(e) Have current first aid and CPR certification pursuant to WAC 110-301-0106(9);

(f) Take attendance using a roll call or other method that assures all children are accounted for each time children begin and end travel to an off-site activity, and every time children enter and exit a vehicle; and

(g) Never leave children unattended in the vehicle.

(3) When a school-age provider supplies the vehicle to transport children in care, the program and provider must:

(a) Follow chapter 46.61 RCW, Rules of the road, and other applicable laws regarding child restraints and car seats;

(b) Assure that the number of passengers does not exceed the seating capacity of the vehicle;

(c) Maintain the vehicle in good repair and safe operating condition;

(d) Maintain the vehicle temperature at a comfortable level to children;

(e) Assure the vehicle has a current license and registration as required by Washington state transportation laws;

(f) Assure the vehicle has emergency reflective triangles or other devices to alert other drivers of an emergency;

(g) Assure the driver has a valid driver's license for the type of vehicle being driven and a safe driving record for at least the last five years;

(h) Prevent any driver with a known condition that would compromise driving, supervision, or evacuation capabilities from operating program vehicles; and

(i) Have a current insurance policy that covers the driver, the vehicle, and all occupants.

NEW SECTION

WAC 110-301-0485 Termination of services policy.

(1) A school-age provider must have and follow a termination of services policy.

(2) A school-age provider may terminate a child's services due to that child's parent or guardian's inability to meet the expectations and requirements of the school-age program. Expectations and requirements of the program may include unpaid bills, continual late arrivals, or a parent, guardian or family member's inappropriate or unsafe behavior in or near school-age program space.

NEW SECTION

WAC 110-301-0486 Expulsion policy. (1) A school-age provider must have and follow an expulsion policy, pursuant to WAC 110-301-0340.

(2) An expulsion policy must:

(a) Provide examples of behavior that could lead to expulsion from the school-age program;

(b) Detail steps the provider takes to avoid expelling a child including, but not limited to, environmental and staffing changes;

(c) Detail how the provider communicates to the parent or guardian of a child the steps taken under (b) of this subsection; and

(d) Include information that may benefit an expelled child including, but not limited to, community based resources.

NEW SECTION

WAC 110-301-0490 Child restraint policy. (1) A school-age provider must have and follow a child restraint policy that contains behavior management and practices, pursuant to WAC 110-301-0335.

(2) A restraint policy must be:

(a) Appropriate for children's developmental level, abilities, and language skills;

(b) Directly related to the child's behavior; and

(c) Designed to be consistent, fair, and positive.

(3) Program directors, site directors, lead teachers and other appropriate staff members must be trained annually in the program's child restraint policy.

(4) Only trained staff may restrain a child in care in accordance with WAC 110-301-0335.

NEW SECTION

WAC 110-301-0495 Consistent care policy. A school-age program must have and follow a policy that promotes the

consistent care of children with a goal of building long-term, trusting relationships.

NEW SECTION

WAC 110-301-0500 Health policy. (1) A school-age provider must have and follow a written health policy reviewed and approved by the department that includes the topics listed in subsection (2) of this section. The health policy must be reviewed and approved by the department when changes are made, and as otherwise necessary.

(2) A school-age program's health policy must meet the requirements of this chapter including, but not limited to:

(a) A prevention of exposure to blood and bodily fluids plan;

(b) Meals, snacks, and food services including guidelines for food allergies and food brought from home;

(c) Handwashing and hand sanitizer use;

(d) Observing children for signs of illness daily;

(e) Exclusion and return of ill children, staff, or any other person in the program space;

(f) Contagious disease notification;

(g) Medical emergencies, injury treatment and reporting;

(h) Immunization tracking;

(i) Medication management, storage, administration and documentation;

(j) Care for pets and animals that have access to licensed space and the health risks of interacting with pets and animals;

(k) How general cleaning will be provided and how areas such as food contact surfaces, kitchen equipment, toys, toileting equipment, and laundry will be cleaned, sanitized and disinfected;

(l) Pest control policies; and

(m) Caring for children with special needs or health needs, including allergies, as listed in the child's record.

NEW SECTION

WAC 110-301-0505 Postings. (1) Postings listed in subsection (2) of this section that are part of a school-age program must be clearly visible to parents, guardians, and school-age program staff.

(2) Postings on school-age premises must include:

(a) The school-age program license, pursuant to WAC 110-301-0010;

(b) Floor plan with emergency routes and exits identified in each school-age program area, pursuant to WAC 110-301-0400 (1)(b)(i) and 110-301-0470 (2)(a)(i);

(c) Dietary restrictions, known allergies, and nutrition requirements, if applicable, in a location easily accessible for staff but not available to those who are not parents or guardians of the enrolled child, pursuant to WAC 110-301-0186 (1);

(d) Handwashing practices at each handwashing sink, pursuant to WAC 110-301-0200(1);

(e) Pesticide treatment, if applicable, pursuant to RCW 43.216.280 and 17.21.410 (1)(d);

(f) Emergency numbers and information including, but not limited to:

(i) 911 or emergency services number;

- (ii) Name, address, and directions from the nearest arterial street or nearest cross street to the facility;
- (iii) The department's toll-free number;
- (iv) Washington poison center toll-free number; and
- (v) The department's child protective services.
- (g) The location of emergency medical information for children and staff;
- (h) A notice of any current or pending enforcement action, including probationary licenses pursuant to RCW 43.216.687. Notice must be posted:
 - (i) Immediately upon receipt; and
 - (ii) For at least two weeks or until the violation causing the enforcement action is corrected, whichever is longer.
- (i) "No smoking" and "no vaping" signs, pursuant to WAC 110-301-0420 (2)(f);
- (j) A copy of a department approved waiver or variance from a rule of this chapter, if applicable. Waivers or variances must be posted for parent or guardian view when related to the overall program (not related to any specific child), and as long as the waiver or variance is approved;
- (k) Notice that insurance coverage has lapsed or been terminated, if applicable, pursuant to RCW 43.216.700; and
- (l) Any other information listed in RCW 43.216.687.

- WAC 110-305-1430
- WAC 110-305-1450
- WAC 110-305-1525
- WAC 110-305-1625
- WAC 110-305-1710
- WAC 110-305-1715
- WAC 110-305-1720
- WAC 110-305-1730
- WAC 110-305-1735
- WAC 110-305-1745
- WAC 110-305-1750
- WAC 110-305-1775
- WAC 110-305-1800
- WAC 110-305-1820
- WAC 110-305-1825
- WAC 110-305-1850
- WAC 110-305-1925
- WAC 110-305-2000
- WAC 110-305-2025
- WAC 110-305-2050
- WAC 110-305-2075
- WAC 110-305-2125
- WAC 110-305-2150
- WAC 110-305-2175
- WAC 110-305-2200
- WAC 110-305-2225
- WAC 110-305-2250
- WAC 110-305-2275
- WAC 110-305-2300
- WAC 110-305-2325
- WAC 110-305-2350
- WAC 110-305-2375
- WAC 110-305-2400
- WAC 110-305-2425

- Initial license.
- Nonexpiring license.
- Change in circumstances.
- Exception to rule.
- Program director.
- Site coordinator.
- Lead teachers.
- Program assistants.
- Volunteers.
- Staff meetings.
- Tuberculosis.
- Basic STARS training.
- Ongoing training.
- Program provided training.
- First-aid and cardiopulmonary resuscitation (CPR) certification.
- HIV/AIDS training—Bloodborne pathogens plan.
- Assistants and volunteers—Supervision.
- Recordkeeping—Records available to the department.
- Child records—Confidentiality.
- Child records—Contents.
- Staff records.
- Child attendance records—Staff-to-child ratio records.
- Facility records.
- Materials that must be posted.
- Reporting incidents to 911 (emergency services).
- Reporting incidents to Washington poison center.
- Reporting incidents to a child's parent or guardian and the department.
- Other incident reporting to the department.
- Reporting to DSHS children's administration intake.
- Notifiable conditions.
- Policies.
- Parent/guardian policies (handbook).
- Program/operations policies.
- Staff policies.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

- WAC 110-305-0001 Authority.
- WAC 110-305-0005 Intent.
- WAC 110-305-0010 Definitions.
- WAC 110-305-0050 Special needs accommodations.
- WAC 110-305-1000 License required.
- WAC 110-305-1001 License transfers.
- WAC 110-305-1035 Fire inspection/certification.
- WAC 110-305-1050 The licensee.
- WAC 110-305-1075 Child care subsidy.
- WAC 110-305-1100 Tribal or military regulated or operated child care—Certification for payment.
- WAC 110-305-1125 Orientation required.
- WAC 110-305-1200 Background checks.
- WAC 110-305-1250 Licensing process—Application materials and fees.
- WAC 110-305-1275 Licensing process—Application processing.
- WAC 110-305-1325 Background check fees.
- WAC 110-305-1350 Liability insurance coverage.
- WAC 110-305-1360 Lead and arsenic hazards—Tacoma smelter plume.
- WAC 110-305-1370 Safe water sources.
- WAC 110-305-1410 Department inspection.

WAC 110-305-2450	Off-site activity policy.	WAC 110-305-3950	Pest control.
WAC 110-305-2575	Combustible and flammable materials.	WAC 110-305-4000	Lead, asbestos, arsenic and other hazards.
WAC 110-305-2600	Furnaces, other heating devices and appliances with hot surfaces.	WAC 110-305-4025	Drugs and alcohol.
WAC 110-305-2625	Electrical motors.	WAC 110-305-4050	No smoking.
WAC 110-305-2675	Open flame devices, candles, matches and lighters.	WAC 110-305-4075	First-aid kit.
WAC 110-305-2700	Emergency flashlight.	WAC 110-305-4100	Poisons, chemicals and other substances.
WAC 110-305-2725	Portable heaters and generators.	WAC 110-305-4200	Toys, equipment, and recalled items.
WAC 110-305-2775	Telephone.	WAC 110-305-4225	Indoor licensed space—Minimum space.
WAC 110-305-2825	Fire evacuation plan.	WAC 110-305-4250	Indoor temperature.
WAC 110-305-2850	Disaster plan.	WAC 110-305-4275	Fans, air conditioning or cross ventilation.
WAC 110-305-2875	Fire, disaster training for staff and volunteers.	WAC 110-305-4300	Window coverings.
WAC 110-305-2900	Emergency drills.	WAC 110-305-4350	Electrical outlets, cords and power strips.
WAC 110-305-2925	Record of emergency drills.	WAC 110-305-4360	Area lighting.
WAC 110-305-2975	Additional method to sound an alarm.	WAC 110-305-4375	Lighting safety.
WAC 110-305-3000	Fire extinguishers.	WAC 110-305-4475	Emergency exit pathways.
WAC 110-305-3200	Health plan.	WAC 110-305-4550	Windows.
WAC 110-305-3210	Contagious disease procedure.	WAC 110-305-4625	Toileting facility.
WAC 110-305-3250	Immunization tracking.	WAC 110-305-4635	Handwashing sinks.
WAC 110-305-3275	Accepting a child who does not have current immunizations.	WAC 110-305-4650	Bathroom floors.
WAC 110-305-3300	Immunizations—Exemption.	WAC 110-305-4700	Water temperature.
WAC 110-305-3315	Medication management.	WAC 110-305-4725	Guns and other weapons.
WAC 110-305-3325	Medication storage.	WAC 110-305-4750	Storage for each child's belongings.
WAC 110-305-3375	Medication permission.	WAC 110-305-4800	Pet and other animal policy.
WAC 110-305-3425	Medication requirements.	WAC 110-305-4850	Pet and other animal health and safety.
WAC 110-305-3450	Sedating a child prohibited.	WAC 110-305-4875	Pets and other animals interacting with children.
WAC 110-305-3475	Prescription medication.	WAC 110-305-4900	Pet and other animal wastes.
WAC 110-305-3525	Nonprescription medications.	WAC 110-305-4925	Licensed outdoor space.
WAC 110-305-3550	Children taking their own medication.	WAC 110-305-4950	Playground equipment—Ground cover—Fall zones.
WAC 110-305-3575	Injuries requiring first aid only.	WAC 110-305-5000	Play equipment.
WAC 110-305-3600	Injuries or illness requiring professional medical treatment.	WAC 110-305-5050	Bouncing equipment prohibited.
WAC 110-305-3625	Handwashing procedure.	WAC 110-305-5100	Outdoor supervision.
WAC 110-305-3635	When handwashing is required.	WAC 110-305-5125	Outdoor areas and daily physical activities.
WAC 110-305-3650	Hand sanitizers.	WAC 110-305-5150	Water safety and activity.
WAC 110-305-3700	Carpets.	WAC 110-305-5175	Wading pools—Defined—Supervision.
WAC 110-305-3850	Cleaning laundry.		
WAC 110-305-3875	Cleaning and sanitizing toys.		
WAC 110-305-3925	Cleaning, sanitizing, and disinfecting table.		

WAC 110-305-5200	Swimming pools defined—Barriers and supervision.	WAC 110-305-7525	Parent or guardian-provided food.
WAC 110-305-5225	Bodies of water or water hazards on the licensed premises.	WAC 110-305-7530	Food sources.
WAC 110-305-5250	Bodies of water outside and near licensed space.	WAC 110-305-7575	Drinking water.
WAC 110-305-5600	Staff-to-child ratio.	WAC 110-305-7580	Drinking fountains.
WAC 110-305-5625	Capacity.	WAC 110-305-7625	Meal and snack schedule.
WAC 110-305-5725	Groups.	WAC 110-305-7650	Serving foods.
WAC 110-305-5750	Supervising children.	WAC 110-305-7675	Food worker card.
WAC 110-305-5800	Orientation for staff.	WAC 110-305-7680	Safe food handling.
WAC 110-305-6000	Interactions with children.	WAC 110-305-7700	Washing dishes.
WAC 110-305-6025	Prohibited interactions.	WAC 110-305-7725	Food containers and utensils.
WAC 110-305-6050	Guidance and discipline.	WAC 110-305-7750	Food preparation area.
WAC 110-305-6075	Positive options for discipline.	WAC 110-305-7800	Food storage.
WAC 110-305-6100	Separating a child from the group.	WAC 110-305-7825	Satellite kitchens.
WAC 110-305-6125	Preventing harmful or aggressive acts.	WAC 110-305-8000	Facility licensing compliance agreements.
WAC 110-305-6150	Prohibited actions.	WAC 110-305-8010	Nonreferral status.
WAC 110-305-6175	Using alternate methods before using physical restraint.	WAC 110-305-8025	Time period for correcting a violation.
WAC 110-305-6200	Physical restraint—Prohibited uses or methods.	WAC 110-305-8050	Civil monetary penalties (fines).
WAC 110-305-6225	Physical restraint—Holding method allowed.	WAC 110-305-8060	When fines are levied.
WAC 110-305-6250	Notice and documenting use of physical restraint.	WAC 110-305-8075	Fines—Payment period.
WAC 110-305-6275	Abuse and neglect—Protection and training.	WAC 110-305-8100	Notice of fine—Posting.
WAC 110-305-6400	Off-site activities—Parent or guardian permission.	WAC 110-305-8125	Failure to pay a fine—Department action.
WAC 110-305-6425	Off-site activity supervision.	WAC 110-305-8150	Denial, suspension, revocation, modification or noncontinuation of a license.
WAC 110-305-6450	Off-site activity—Emergency information and supplies.	WAC 110-305-8175	Violations—Enforcement action.
WAC 110-305-6475	Transportation.	WAC 110-305-8225	Notice of license denial, suspension, revocation, or modification.
WAC 110-305-6500	Using public transportation.	WAC 110-305-8250	Probationary license.
WAC 110-305-6550	Typical daily schedule.	WAC 110-305-8275	Probationary license—Cause.
WAC 110-305-6575	Activities to promote child growth and development.	WAC 110-305-8300	Issuing a probationary license.
WAC 110-305-6600	Equipment and play materials.	WAC 110-305-8325	Refusing a FLCA or probationary license.
WAC 110-305-6625	Art materials.	WAC 110-305-8350	Providing unlicensed care—Notice.
WAC 110-305-6650	Screen time.	WAC 110-305-8375	Unlicensed care—Fines and other penalties.
WAC 110-305-6675	Screen time—Limitations.	WAC 110-305-8400	Hearing process.
WAC 110-305-6775	Diversity.		
WAC 110-305-7500	Food and milk must meet USDA guidelines.		
WAC 110-305-7515	Menus and dietary restrictions.		

WSR 21-06-097
PROPOSED RULES
HEALTH CARE AUTHORITY

[Filed March 2, 2021, 1:22 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-11-040.

Title of Rule and Other Identifying Information: WAC 182-530-1080 Requirements for prescribing and dispensing controlled substances—Prescription monitoring program (PMP).

Hearing Location(s): On April 6, 2021, at 10:00 a.m. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the agency will not provide a physical location for this hearing. This promotes social distancing and the safety of the citizens of Washington state. A virtual public hearing, without a physical meeting space, will be held instead.

To attend the virtual public hearing, you must register at the following link <https://attendee.gotowebinar.com/register/1443618498460852747>, Webinar ID 560-087-099. After registering, you will receive a confirmation email containing the information about joining the webinar.

Date of Intended Adoption: Not sooner than April 7, 2021.

Submit Written Comments to: Health Care Authority (HCA), Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by April 6, 2021.

Assistance for Persons with Disabilities: Contact Amber Lougheed, phone 360-725-1349, fax 360-586-9727, telecommunication[s] relay service 711, email amber.lougheed@hca.wa.gov, by March 19, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is establishing rules regarding prescriber and pharmacist use of the qualified prescription drug monitoring program, as required by Section 5042 of the SUPPORT for Patients and Communities Act (Public Law 115-271), prior to prescribing or dispensing scheduled drugs.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

Rule is necessary because of federal law, Public Law 115-271, Section 5042.

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Melinda Froud, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1408; Implementation and Enforcement: Amy Irwin, P.O. Box 45502, Olympia, WA 98504-5502, 360-725-1673.

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

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

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

Is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Citation of the specific federal statute or regulation and descrip-

tion of the consequences to the state if the rule is not adopted: Public Law 115-271, Section 5042; this rule making is required to maintain the agency's federal funding.

March 2, 2021
Wendy Barcus
Rules Coordinator

NEW SECTION

WAC 182-530-1080 Requirements for prescribing and dispensing controlled substances—Prescription monitoring program (PMP). This section identifies the steps prescribers and pharmacists must take to check an apple health client's prescription drug history in the prescription monitoring program (PMP) described in chapter 246-470 WAC, prior to prescribing a controlled substance or dispensing a controlled substance from an outpatient pharmacy.

(1) **PMP review required.** Except as identified in subsection (4) of this section, a prescriber or pharmacist must check all of a client's current prescriptions in the PMP, including any prescriptions not paid for by apple health, before prescribing or dispensing a controlled substance.

(2) **Retrieval by delegates allowed.** A prescriber or pharmacist may delegate the retrieval of the client's PMP information to anyone in their practice setting with authorization to access the PMP, so long as the prescriber or pharmacist reviews all of the client's current prescriptions in the PMP before prescribing or dispensing a controlled substance.

(3) **Documentation.** The prescriber or pharmacist must document in the client's record the date and time of the:

- (a) Retrieval of information from the PMP; and
- (b) Review of information from the PMP.

(4) **Good faith effort exception.**

(a) A prescriber, pharmacist, or their delegate must make a good faith effort to review a client's prescription drug history in the PMP.

(b) If a prescriber, pharmacist, or their delegate is unable to access the client's record in the PMP after a good faith effort, that attempt must be documented in the client's record.

(c) A prescriber or pharmacist must document the reason or reasons they were unable to conduct the check.

WSR 21-06-099
PROPOSED RULES
HEALTH CARE AUTHORITY

[Filed March 2, 2021, 3:04 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-22-098.

Title of Rule and Other Identifying Information: WAC 182-51-0100 Definitions, 182-51-0600 Manufacturers—Data and price reporting, and 182-51-0900 Data confidentiality.

Hearing Location(s): On April 6, 2021, at 10:00 a.m. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the agency will not provide a physical

location for this hearing. This promotes social distancing and the safety of the citizens of Washington state. A virtual public hearing, without a physical meeting space, will be held instead. To attend the virtual public hearing, you must register at the following link <https://attendee.gotowebinar.com/register/1443618498460852747>, Webinar ID 560-087-099. After registering, you will receive a confirmation email containing the information about joining the webinar.

Date of Intended Adoption: Not sooner than April 7, 2021.

Submit Written Comments to: Health Care Authority (HCA), Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by April 6, 2021.

Assistance for Persons with Disabilities: Contact Amber Loughheed, phone 360-725-1349, fax 360-586-9727, telecommunication[s] relay service 711, email amber.loughheed@hca.wa.gov, by March 19, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HCA is amending these rules to change the timeframe manufacturers have to report to HCA new covered drugs being introduced to market in Washington and to add the contents of the prescription drug pricing transparency program's nondisclosure agreement.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160, and 43.71C.110.

Statute Being Implemented: RCW 41.05.021, 41.05.160, 43.71C.010, 43.71C.050, and 43.71C.100.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Not applicable.

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Jason Crabbe, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-9563; Implementation and Enforcement: Donna Sullivan, P.O. Box 45502, Olympia, WA 98504-5502, 360-725-1564.

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

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

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

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.

March 2, 2021
Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 20-19-079, filed 9/15/20, effective 10/16/20)

WAC 182-51-0100 Definitions. For the purposes of this chapter:

- (1) "Authority" means the health care authority.
- (2) "Calendar days" means the same as in WAC 182-526-0010.
- (3) "Calendar year" means the period from January 1st to December 31st of each year.
- (4) "Confidential information" means information collected by the authority according to RCW 43.71C.020 through 43.71C.080, which is not subject to public disclosure under chapter 42.56 RCW and must be held confidential by all data recipients, according to WAC 182-51-0900.
- (5) "Covered drug" means any prescription drug that:
 - (a) A covered manufacturer intends to introduce to the market in Washington state at a wholesale acquisition cost of ten thousand dollars or more for a course of treatment lasting less than one month or a thirty-day supply, whichever period is longer; or
 - (b) Meets all of the following:
 - (i) Is currently on the market in Washington state;
 - (ii) Is manufactured by a covered manufacturer; and
 - (iii) Has a wholesale acquisition cost of more than one hundred dollars for a course of treatment lasting less than one month or a thirty-day supply, and, taking into account only price increases that take effect on or after ((July 28)) October 1, 2019, the manufacturer increases the wholesale acquisition cost such that:
 - (A) The new wholesale acquisition cost is twenty percent higher than the wholesale acquisition cost on the same day of the month, twelve months before the date of the proposed increase; or
 - (B) The new wholesale acquisition cost is fifty percent higher than the wholesale acquisition cost on the same day of the month, thirty-six months before the date of the proposed increase.
- ~~((5))~~ (6) "Covered manufacturer" means a person, corporation or other entity engaged in the manufacture of prescription drugs sold in or into Washington state. "Covered manufacturer" does not include a private label distributor or retail pharmacy that sells a drug under the retail pharmacy's store label, or a prescription drug repackager.
- ~~((6))~~ (7) "Data" means all data provided to the authority under RCW 43.71C.020 through 43.71C.080 and any analysis prepared by the authority.
- ~~((7))~~ (8) "Data recipient" means an individual or entity authorized to receive data under RCW 43.71C.100.
- ~~((8))~~ (9) "Data submission guide" means the document that identifies the data required under chapter 43.71C RCW, and provides instructions for submitting this data to the authority, including guidance on required format for reporting, for each reporting entity.
- ~~((9))~~ (10) "Food and drug administration (FDA) approval date" means the deadline for the FDA to review applications for new drugs or new biologics after the new drug application or biologic application is accepted by the FDA as complete in accordance with the Prescription Drug User Fee Act of 1992 (106 Stat. 4491; P.L. 102-571).

~~((10))~~ (11) "Health plan," "health carrier," and "carrier" mean the same as in RCW 48.43.005.

~~((11))~~ (12) "Introduced to market" means marketed in Washington state.

~~((12))~~ (13) "Pharmacy benefit manager" means the same as defined in RCW 19.340.010.

~~((13))~~ (14) "Pharmacy services administrative organization" means an entity that:

(a) Contracts with a pharmacy to act as the pharmacy's agent with respect to matters involving a pharmacy benefit manager, third-party payor, or other entities, including negotiating, executing, or administering contracts with the pharmacy benefit manager, third-party payor, or other entities; and

(b) Provides administrative services to pharmacies.

~~((14))~~ (15) "Pipeline drug" means a drug or biologic product containing a new molecular entity, not yet approved by the Food and Drug Administration, for which a manufacturer intends to seek initial approval from the Food and Drug Administration under an original new drug application under 21 U.S.C. Sec. 355(b) or under a biologics license application under 42 U.S.C. Sec. 262 to be marketed in Washington state.

~~((15))~~ (16) "Prescription drug" means a drug regulated under chapter 69.41 or 69.50 RCW that is prescribed for outpatient use and distributed in a retail setting, including generic, brand name, specialty drugs, and biological products.

~~((16))~~ (17) "Private label distributor" means a firm that does not participate in the manufacture or processing of a drug but instead markets and distributes under its own trade name, and labels a drug product made by someone else.

~~((17))~~ (18) "Qualifying price increase" means a price increase described in subsection (3)(b) of this section.

~~((18))~~ (19) "Rebate" means negotiated price concessions, discounts, however characterized, that accrue directly or indirectly to a reporting entity in connection with utilization of prescription drugs by reporting entity members including, but not limited to, rebates, administrative fees, market share rebates, price protection rebates, performance-based price concessions, volume-related rebates, other credits, and any other negotiated price concessions or discounts that are reasonably anticipated to be passed through to a reporting entity during a coverage year, and any other form of price concession prearranged with a covered manufacturer, dispensing pharmacy, pharmacy benefit manager, rebate aggregator, group purchasing organization, or other party which are paid to a reporting entity and are directly attributable to the utilization of certain drugs by reporting entity members.

~~((19))~~ (20) "Reporting entity" means carriers, covered manufacturers, health carriers, health plans, pharmacy benefit managers, and pharmacy services administrative organizations, which are required to or voluntarily submit data according to chapter 43.71C RCW.

~~((20))~~ (21) "Wholesale acquisition cost" means, with respect to a prescription drug, the manufacturer's list price for the drug to wholesalers or direct purchasers in the United States, excluding any discounts, rebates, or reductions in price, for the most recent month for which the information is

available, as reported in wholesale acquisition cost guides or other publications of prescription drug pricing.

AMENDATORY SECTION (Amending WSR 20-19-079, filed 9/15/20, effective 10/16/20)

WAC 182-51-0600 Manufacturers—Data and price reporting. (1) On or before December 31, 2020, a covered manufacturer must submit to the authority all data specified in RCW 43.71C.050 and 43.71C.070, ~~((the))~~ following the guidelines set in the authority's applicable data submission guide for each covered drug ~~((as the drug existed between and including July 28, 2019, and August 17))~~ introduced to market, or a covered drug that had a qualifying price increase between and including October 1, 2019, and October 15, 2020.

(2) Beginning October 16, 2020, a covered manufacturer must submit to the authority all data specified in RCW 43.71C.050 and 43.71C.070, following the guidelines set in the authority's applicable data submission guide, for each covered drug as follows:

(a) Sixty days in advance of a qualifying prices increase for a covered drug marketed in Washington state; or

(b) Within thirty days ~~((in advance))~~ of a new covered ~~((drug's introduction))~~ drug introduced to market in Washington state.

(3) For any drug approved under section 505(j) of the federal Food, Drug, and Cosmetic Act as it existed on August 18, 2020, or a biosimilar approved under section 351(k) of the federal Public Health Service Act as it existed on August 18, 2020, if submitting data in accordance with subsection (2)(a) of this section is not possible sixty days before the price increase ~~((; or if submitting data in accordance with subsection (2)(b) of this section is not possible thirty days before the introduction to market))~~, that submission must be made as soon as known but no later than the date of the price increase ~~((or introduction to market)).~~

(4) The information submitted according to this section is not subject to public disclosure under chapter 42.56 RCW.

(5) The authority may assess fines for not complying with the requirements in this section. See WAC 182-51-1100.

AMENDATORY SECTION (Amending WSR 20-19-079, filed 9/15/20, effective 10/16/20)

WAC 182-51-0900 Data confidentiality. (1) The authority provides data only after the data recipient, as defined by this chapter, has signed a nondisclosure agreement. The authority may prohibit access to or use of the data by a data recipient who violates the nondisclosure agreement.

(2) Data recipients must keep data confidential by:

(a) Accessing, using, and disclosing information only in accordance with this section and consistent with applicable statutes, regulations, and policies;

(b) Having a public policy purpose to access and use the confidential information according to chapter 43.71C RCW;

(c) Protecting all confidential information against unauthorized use, access, disclosure, or loss by employing reasonable security measures, including physically securing any computers, documents, or other media containing confiden-

tial information and viewing confidential information only on secure workstations in nonpublic areas;

(d) Destroying all confidential information when it is no longer needed to perform authorized activities; and

(e) Adhering to the confidentiality requirements in this section after the data recipient is no longer an authorized data recipient under RCW 43.71C.100.

(3) Data recipients must not:

(a) Disclose any confidential information, as defined by WAC 182-51-0100, or otherwise publicly release the confidential information;

(b) Use or disclose any confidential information for any commercial or personal purpose, or any other purpose that is not authorized in chapter 43.17C RCW;

(c) Attempt to identify people who are the subject of the confidential information;

(d) Discuss confidential information in public spaces in a manner in which unauthorized individuals could overhear;

(e) Discuss confidential information with unauthorized individuals, including spouses, domestic partners, family members, or friends;

(f) Have any conflicts of interests under the ethics in public service act that would prevent the data recipient from accessing or using confidential information; and

(g) Share information with any person, including a legislator or legislative staff member, who either is not authorized to receive confidential information or has not signed a non-disclosure agreement with the authority.

WSR 21-06-100

PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed March 2, 2021, 3:15 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-11-075.

Title of Rule and Other Identifying Information: WAC 182-543-0500 Medical equipment, supplies, and appliances—General, and 182-551-2040 Home health services—Face-to-face encounter requirements.

Hearing Location(s): On April 6, 2021, at 10:00 a.m. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the agency will not provide a physical location for this hearing. This promotes social distancing and the safety of the citizens of Washington state. A virtual public hearing, without a physical meeting space, will be held instead. To attend the virtual public hearing, you must register at the following link <https://attendee.gotowebinar.com/register/1443618498460852747>, Webinar ID 560-087-099. After registering, you will receive a confirmation email containing the information about joining the webinar.

Date of Intended Adoption: Not sooner than August 7, 2021.

Submit Written Comments to: Health Care Authority (HCA), Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by April 6, 2021.

Assistance for Persons with Disabilities: Amber Lougheed, phone 360-725-1349, fax 360-586-9727, telecommunication[s] relay service 711, email amber.lougheed@hca.wa.gov, by March 19, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is amending WAC 182-543-0500 and 182-551-2040 to allow ordering of home health services, including medical supplies, by certain nonphysician practitioners.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160; and 42 C.F.R. § 440.70.

Rule is necessary because of federal law, 42 C.F.R. § 440.70.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Not applicable.

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Jason Crabbe, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-9563; Implementation and Enforcement: Cynde Rivers, P.O. Box 45506, Olympia, WA 98504-5506, 360-725-5282.

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

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

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

Is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Citation of the specific federal statute or regulation and description of the consequences to the state if the rule is not adopted: 42 C.F.R. § 440.70, Home health services. Federal funding would be at risk for noncompliance.

March 2, 2021

Wendy Barcus

Rules Coordinator

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

WAC 182-543-0500 General. (1) The federal government considers medical equipment, supplies, and appliances, which the medicaid agency refers to throughout this chapter as medical equipment, services under the medicaid program.

(2) The agency pays for medical equipment, including modifications, accessories, and repairs, according to agency rules and subject to the limitations and requirements in this chapter when the medical equipment is:

(a) Medically necessary, as defined in WAC 182-500-0070;

(b) Authorized, as required within this chapter, chapters 182-501 and 182-502 WAC, and the agency's published billing instructions and provider notices; and

(c) Billed according to this chapter, chapters 182-501 and 182-502 WAC, and the agency's published billing instructions and provider notices.

(3) For the initiation of medical equipment under WAC 182-551-2122, the face-to-face encounter must be related to the primary reason the client requires medical equipment and must occur no later than six months prior to the start of services.

(4) The face-to-face encounter (~~((must))~~ may be conducted by ~~((the ordering))~~;

~~((a) A physician((, a nonphysician practitioner as described in WAC 182-500-0075,));~~

(b) A nurse practitioner;

(c) A clinical nurse specialist;

(d) A certified nurse midwife under 42 C.F.R. 440.70 when furnished by a home health agency that meets the conditions of participation for medicare;

(e) A physician assistant; or

(f) The attending acute, or post-acute physician, for beneficiaries admitted to home health immediately after an acute or post-acute stay.

~~((5) ((If a nonphysician practitioner as described in WAC 182-500-0075 (or the attending physician when a client is discharged from an acute hospital stay) performs the face-to-face encounter, the nonphysician practitioner (or attending physician) must communicate the clinical findings of that face-to-face encounter to the ordering physician. Those clinical findings must be incorporated into a written or electronic document included in the client's medical record.)) Services may be ordered by:~~

~~((a) Physicians;~~

~~((b) Nurse practitioners;~~

~~((c) Clinical nurse specialists; or~~

~~((d) Physician assistants.~~

(6) The agency requires prior authorization for covered medical equipment when the clinical criteria set forth in this chapter are not met, including the criteria associated with the expedited prior authorization process.

(a) The agency evaluates requests requiring prior authorization on a case-by-case basis to determine medical necessity as defined in WAC 182-500-0070, according to the process found in WAC 182-501-0165.

(b) Refer to WAC 182-543-7000, 182-543-7100, 182-543-7200, and 182-543-7300 for specific details regarding authorization.

(7) The agency bases its determination about which medical equipment requires prior authorization (PA) or expedited prior authorization (EPA) on utilization criteria (see WAC 182-543-7100 for PA and WAC 182-543-7300 for EPA). The agency considers all of the following when establishing utilization criteria:

(a) Cost;

(b) The potential for utilization abuse;

(c) A narrow therapeutic indication; and

(d) Safety.

(8) The agency evaluates a request for equipment that does not meet the definition of medical equipment or that is

determined not medically necessary under the provisions of WAC 182-501-0160. When early and periodic screening, diagnosis and treatment (EPSDT) applies, the agency evaluates a noncovered service, equipment, or supply according to the process in WAC 182-501-0165 to determine if it is medically necessary, safe, effective, and not experimental (see WAC 182-543-0100 for EPSDT rules).

(9) The agency may terminate a provider's participation with the agency according to WAC 182-502-0030 and 182-502-0040.

(10) The agency evaluates a request for a service that meets the definition of medical equipment but has been determined to be experimental or investigational, under the provisions of WAC 182-501-0165.

(11) If the agency denies a requested service, the agency notifies the client in writing that the client may request an administrative hearing under chapter 182-526 WAC. (For MCO enrollees, see WAC 182-538-110.)

AMENDATORY SECTION (Amending WSR 18-24-023, filed 11/27/18, effective 1/1/19)

WAC 182-551-2040 Face-to-face encounter requirements. (1) The face-to-face encounter requirements of this section may be met using telemedicine or telehealth services. See WAC 182-551-2125.

(2) The medicaid agency pays for home health services provided under this chapter only when the face-to-face encounter requirements in this section are met.

~~((2))~~ (3) For initiation of home health services, with the exception of medical equipment under WAC 182-551-2122, the face-to-face encounter must be related to the primary reason the client requires home health services and must occur within ninety days before or within the thirty days after the start of the services.

~~((3))~~ (4) For the initiation of medical equipment under WAC 182-551-2122, the face-to-face encounter must be related to the primary reason the client requires medical equipment and must occur no later than six months prior to the start of services.

~~((4))~~ (5) The face-to-face encounter may be conducted by ~~((the ordering))~~;

~~((a) A physician((, a nonphysician practitioner as described in WAC 182-500-0075,));~~

(b) A nurse practitioner;

(c) A clinical nurse specialist;

(d) A certified nurse midwife under 42 C.F.R. 440.70 when furnished by a home health agency that meets the conditions of participation for medicare;

(e) A physician assistant; or

(f) The attending acute, or post-acute physician, for beneficiaries admitted to home health immediately after an acute or post-acute stay.

~~((5) If a nonphysician practitioner as described in WAC 182-500-0075 (or the attending physician when a client is discharged from an acute hospital stay) performs the face-to-face encounter, the nonphysician practitioner (or attending physician) must communicate the clinical findings of that face-to-face encounter to the ordering physician. Those clinical~~

ical findings must be incorporated into a written or electronic document included in the client's medical record.)

(6) Services may be ordered by:

(a) Physicians;

(b) Nurse practitioners;

(c) Clinical nurse specialists; or

(d) Physician assistants.

(7) For all home health services except medical equipment under WAC 182-551-2122, the physician, nurse practitioner, clinical nurse specialist, or physician assistant responsible for ordering the services must:

(a) Document that the face-to-face encounter, which is related to the primary reason the client requires home health services, occurred within the required time frames described in subsection ~~((2))~~ (3) of this section prior to the start of home health services; and

(b) Indicate the practitioner who conducted the encounter, and the date of the encounter.

~~((7))~~ (8) For medical equipment under WAC 182-551-2122, except as provided in (b) of this subsection, an ordering physician, ~~((a nonphysician practitioner as described in WAC 182-500-0075, except for certified nurse midwives))~~ nurse practitioner, clinical nurse specialist, physician assistant, or the attending physician when a client is discharged from an acute hospital stay, must:

(a) Document that the face-to-face encounter, which is related to the primary reason the client requires home health services, occurred within the required time frames described in subsection ~~((3))~~ (4) of this section prior to the start of home health services; and

(b) Indicate the practitioner who conducted the encounter, and the date of the encounter.

~~((8) The face to face encounter may occur through telemedicine. See WAC 182-551-2125.)~~

WSR 21-06-101

WITHDRAWAL OF PROPOSED RULES DEPARTMENT OF LICENSING

(By the Code Reviser's Office)

[Filed March 2, 2021, 3:33 p.m.]

WAC 36-12-195, 36-13-010, 36-14-110, 308-11-030, 308-14-200, 308-17-150, 308-18-150, 308-19-130, 308-20-210, 308-22-050, 308-29-045, 308-30-060, 308-33-105, 308-124A-775, 308-127-160, 308-129-110, 308-312-060, 308-320-050, 308-320-060, 308-408A-090, and 308-420-240, proposed by the department of licensing in WSR 20-17-145, appearing in issue 20-17 of the Washington State Register, which was distributed on September 2, 2020, is withdrawn by the office of the code reviser under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Jennifer C. Meas, Editor
Washington State Register

WSR 21-06-102

WITHDRAWAL OF PROPOSED RULES DEPARTMENT OF SOCIAL AND HEALTH SERVICES

(By the Code Reviser's Office)

[Filed March 2, 2021, 3:42 p.m.]

WAC 388-106-0010 and 388-106-0130, proposed by the department of social and health services in WSR 20-16-094, appearing in issue 20-17 of the Washington State Register, which was distributed on September 2, 2020, is withdrawn by the office of the code reviser under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Jennifer C. Meas, Editor
Washington State Register

WSR 21-06-103

WITHDRAWAL OF PROPOSED RULES DEPARTMENT OF COMMERCE

(By the Code Reviser's Office)

[Filed March 2, 2021, 3:47 p.m.]

WAC 194-24-180, proposed by the department of commerce in WSR 20-17-130, appearing in issue 20-17 of the Washington State Register, which was distributed on September 2, 2020, is withdrawn by the office of the code reviser under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Jennifer C. Meas, Editor
Washington State Register

WSR 21-06-105

PROPOSED RULES DEPARTMENT OF HEALTH (Dental Quality Assurance Commission)

[Filed March 3, 2021, 8:18 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-23-124.

Title of Rule and Other Identifying Information: WAC 246-817-420 Specialty representation, the dental quality assurance commission (commission) is proposing rule amendments for specialty representation by licensed dentists.

Hearing Location(s): On April 30, 2021, at 8:35 a.m. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the dental quality assurance commission will not provide a physical location for this hearing to promote social distancing and the safety of the citizens of Washington state. A virtual public hearing, without physical meeting space, will be held instead. To access the meeting: Please join meeting from your computer, tablet, or smartphone. Please register for dental quality assurance commission business meeting April 30, 2021, 8:30 a.m. PDT at <https://atten>

dee.gotowebinar.com/register/3729077660833645840. After registering, you will receive a confirmation email containing information about joining the webinar.

Date of Intended Adoption: April 30, 2021.

Submit Written Comments to: Jennifer Santiago, P.O. Box 47852, Olympia, WA 98504, email <https://fortress.wa.gov/doh/policyreview>, fax 360-236-2901, by April 23, 2021.

Assistance for Persons with Disabilities: Contact Jennifer Santiago, phone 360-236-4893, fax 360-236-2901, TTY 711, email jennifer.santiago@doh.wa.gov, dental@doh.wa.gov, by April 23, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule amendments clarify dental specialty areas of practice and requirements for those who want to represent themselves as a specialist. The proposed rule offers two options to obtain recognized specialty designation including approval by the National Commission on Recognition of Dental Specialties and Certifying Boards or programs approved by the United States Department of Education (USDOE).

The proposed rule will also require a licensed dentist in a group practice that includes two or more dentists to identify themselves as a general dentist or a specialist. If the provider is a specialist, the proposed rule then requires the provider to include the area of their specialty. In addition, the proposed rule clarifies the licensed dentist must now provide qualifications of specialty to a patient if requested.

Reasons Supporting Proposal: The commission received a petition for rule making in July 2017 requesting the commission recognize American Board of Dental Specialties (ABDS) boards/areas of practice specialty in WAC 246-817-420. The current rule lists American Dental Association recognized specialties only. The commission recognizes there are additional specialty areas in dentistry that could be considered.

Rule amendments will provide the public with information to prevent fraud or deceiving advertisements related to the skills or method of practice of the dentist. Advertising of dental specialty provides the public with perception related to the education and skill of the dentist. Clear standards will assist in ensuring the public is not deceived through representation and advertising.

Statutory Authority for Adoption: RCW 18.32.0365 and 18.32.665.

Statute Being Implemented: RCW 18.32.002.

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

Name of Proponent: Dental quality assurance commission, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Jennifer Santiago, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4893.

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

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Jennifer Santiago, P.O. Box 47852, Olympia, WA 98504, phone 360-236-4893, fax 360-236-2901, TTY 711, email jennifer.santiago@doh.wa.gov, dental@doh.wa.gov.

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

1. Description of the proposed rule, including: A brief history of the issue; an explanation of why the proposed rule is needed; and a brief description of the probable compliance requirements and the kinds of professional services that a small business is likely to need in order to comply with the proposed rule: The dental quality assurance commission (commission) is proposing amendments to specialty representation for dentists. The proposed rule amendments clarify dental specialty areas of practice and requirements for those who want to represent themselves as a specialist. The proposed rule offers two options to obtain recognized specialty designation and provides requirements for representation of themselves.

The commission received a petition for rule making in July 2017 requesting the commission recognize ABDS boards/areas of practice specialty in WAC 246-817-420. The current rule lists American Dental Association recognized specialties only. The commission determined ABDS certifying criteria did not meet minimum education and training standards nationally recognized by the National Commission on Recognition of Dental Specialties and Certifying Boards. Although the commission did not add ABDS to the proposed rule, the commission recognizes there are additional specialty areas in dentistry that could be considered. The proposed rule offers additional methods to obtain specialty training by completing a Commission on Dental Accreditation advanced educational program or program of any other accreditors recognized by the USDOE which is at least two years in length in a special interest area of dentistry not recognized by the National Commission on Recognition of Dental Specialties and Certifying Boards.

To ensure proper representation, effective July 1, 2022, the proposed rule will also require a licensed dentist in a group practice that includes two or more dentists to identify themselves as a general dentist or a specialist. If the provider is a specialist, the proposed rule then requires the provider to include the area of their specialty. In addition, the proposed rule clarifies the licensed dentist must now provide qualifications of specialty to a patient if requested.

Rule amendments will provide the public with information to prevent fraud or deceiving advertisements related to the skills or method of practice of the dentist. Advertising of dental specialty provides the public with perception related to the education and skill of the dentist.

2. Businesses required to comply with the proposed rule using the North American Industry Classification System (NAICS) codes and what the minor cost thresholds [are]:

NAICS Code: 621210.

NAICS Business Description: Offices of Dentists.

Number of Businesses in WA: 3551.

Minor Cost Threshold (1% of Average Annual Payroll): $[(1,212,689 * 1000) / 3551] * (0.01) = \$3,415$.

3. Analysis of the probable cost of compliance with the proposed rule, including: Cost of equipment, supplies, labor, professional services and increased administrative costs; and whether compliance with the proposed rule will cause businesses to lose sales or revenue: There are no probable costs associated with the proposed changes that expand the training

and education options to obtain specialty recognition. There are costs to complete training and education to become a specialist in an area of dentist [dentistry]; however the training and education are not a direct cost related to this rule and a licensed dentist will represent themselves as a general dentist if they have not completed such training.

There is also no cost for licensed dentists to comply with this proposed rule if they practice in a solo practice.

There are costs associated to the proposed rule for all dentists who work with two or more dentists in one practice whether a specialist or general dentist. The proposed rule requires these dentists to represent themselves as a general dentist or a specialist and requires the dentist to identify themselves as such when advertising. The rule clarifies when a dentist is actually a specialist in the state of Washington. To assist with costs, the commission included a delayed implementation to this section of July 1, 2022.

Costs range depending on the type of advertising that must be replaced or changed. Business cards, prescription pads, stationary [stationery], signage, and web modifications were considered. Estimated costs were determined by surveying a small sample of commission members and online research. Estimated costs range from \$420 to \$7600.

Business Cards: \$20-\$100.

Stationary [Stationery]: \$0-\$100.

Envelopes [Envelopes]: \$0-\$200.

Prescription Pads: \$50-\$100.

Door/Window Signage: \$0-\$100.

Web/Electronic Updates: \$200-\$1000.

Outdoor Property Signage: \$150-\$6000.

Totals: \$420 - \$7600.

Although there are costs associated with the proposed rule, compliance with the proposed rule will not cause businesses to lose sales or revenue.

4. Analysis of whether the proposed rule may impose more-than-minor costs on businesses in the industry: The commission has determined that the probably [probable] costs of the proposed rules, which range from \$420-\$7,600, for some practices may exceed [the] minor cost threshold as calculated above as \$3,415.

5. Determination of whether the proposed rule may have a disproportionate impact on small businesses as compared to the ten percent of businesses that are the largest businesses required to comply with the proposed rule: The proposed rule does not have a disproportionate impact on small businesses versus big businesses. A licensed dentist practicing in an independent practice setting will incur no costs versus a larger group or clinic.

Licensed dentists work in many settings: Independent practice, partnerships, group practices, community clinics, general dental clinics, and universities. There are 6,659 licensed dentists as of June 30, 2019. We are unable to determine how many licensed dentists work in each different practice setting. Dentists that are part of larger group practices will be able to share in the costs to comply with the proposed rule. Dentists that work for community clinics, general dental clinics, or universities will most likely incur no costs to comply with the proposed rules. As business models differ so does the expectation of who will cover the costs to comply with the proposed rule. Ultimately, the licensed dentist needs

to ensure all requirements have been met everywhere they provide dentistry.

6. Disproportionate impact on small businesses: Although it has been determined that the proposed rule does not have a disproportionate impact on small businesses, the commission is delaying the implementation of the rules that relate to dentists in groups of two or more to identify themselves as general or specialist dentist[s] to July 1, 2022, to help reduce the initial impact of the proposed rule.

7. Description of how small businesses were involved in the development of the proposed rule: The commission worked closely with stakeholders and other constituents to minimize the burden of this rule. The commission offered stakeholders many opportunities to participate in rule-making meetings and to provide suggested rule changes and comments. During open public rules meetings, several versions of the rules were discussed. After careful consideration, some of the suggested changes were accepted while others were rejected. Mutual interests were identified and considered through deliberations.

The commission's public participation process encouraged interested individuals to: Identify burdensome areas of the existing rule and proposed rule; propose initial or draft rule changes; and refine those changes.

The proposed rule amendments went through several stages of edits, review, and discussion and then further refinement before arriving at the final proposal. The end result of this process are proposed changes that will provide increased rule clarity, guidance and will ultimately be less burdensome than the original rule.

8. Estimated number of jobs that will be created or lost as the result of compliance with the proposed rule: The commission does not anticipate any jobs created or lost as a result of compliance with the proposed rule.

A copy of the statement may be obtained by contacting Jennifer Santiago, P.O. Box 47852, Olympia, WA 98504, phone 360-236-4893, fax 360-236-2901, TTY 711, email jennifer.santiago@doh.wa.gov, www.doh.wa.gov/dental.

March 3, 2021

Aaron Stevens, D.M.D., Chairperson
Dental Quality Assurance Commission

AMENDATORY SECTION (Amending WSR 95-21-041, filed 10/10/95, effective 11/10/95)

WAC 246-817-420 Specialty representation. ~~(((1)) It shall be misleading, deceptive or improper conduct for a dentist to represent or imply that he/she is a specialist or use any of the terms to designate a dental specialty such as:~~

- ~~(a) Endodontist~~
- ~~(b) Oral or maxillofacial surgeon~~
- ~~(c) Oral pathologist~~
- ~~(d) Orthodontist~~
- ~~(e) Pediatric dentist~~
- ~~(f) Periodontist~~
- ~~(g) Prosthodontist~~
- ~~(h) Public health~~

~~or any derivation of these specialties unless he/she is entitled to such specialty designation under the guidelines or requirements for specialties approved by the Commission on Dental~~

Accreditation and the Council on Dental Education of the American Dental Association, or such guidelines or requirements as subsequently amended and approved by the DQAC, or other such organization recognized by the DQAC.

(2) A dentist not currently entitled to such specialty designation shall not represent that his/her practice is limited to providing services in a specialty area without clearly disclosing in the representation that he/she is a general dentist. A specialist who represents services in areas other than his/her specialty is considered a general dentist.) In order to protect the public from inherently misleading claims of specialty expertise by dentists who are not adequately trained and experienced, a licensed dentist must comply with the requirements in this section to avoid deception of the public with accurate advertising and representation.

(1) A licensed dentist has the legal authority to practice in all areas of dentistry as defined in RCW 18.32.020 and also the authority to confine their practice in areas within the scope of their education, training, and experience and in accordance with chapters 18.32 RCW and 246-817 WAC.

(2) A licensed dentist may advertise or represent themselves as a specialist if the dentist meets the standards listed in subsection (4) of this section.

(3) A licensed dentist who does not meet the standards listed in subsection (4) of this section is considered a general dentist. A general dentist is permitted to render specialty services but shall not advertise or represent themselves as a specialist in the areas listed in subsection (4) of this section.

(4) A licensed dentist must comply with one of the following requirements before advertising or representing themselves as a specialist in Washington:

(a) Successfully complete a Commission on Dental Accreditation postdoctoral education program at least two years in length, and is recognized by the National Commission on Recognition of Dental Specialties and Certifying Boards in one of the following specialty areas:

- (i) Dental anesthesiology;
- (ii) Dental public health;
- (iii) Endodontics;
- (iv) Oral and maxillofacial pathology;
- (v) Oral and maxillofacial radiology;
- (vi) Oral and maxillofacial surgery;
- (vii) Oral medicine;
- (viii) Orofacial pain;
- (ix) Orthodontics and dentofacial orthopedics;
- (x) Pediatric dentistry;
- (xi) Periodontics; or
- (xii) Prosthodontics.

(b) Successfully complete a Commission on Dental Accreditation advanced educational program or program of any other accreditors recognized by the United States Department of Education which is at least two years in length in a special interest area of dentistry not listed in (a) of this subsection.

(5) It is misleading, deceptive, or unprofessional conduct for a licensed dentist to advertise or represent themselves by adopting or using any title to the public as a dental specialist, expert, board certified, or diplomate practicing in an area when they have not successfully completed the requirements

specified for the dental specialty listed in subsection (4) of this section.

(a) Effective July 1, 2022, a licensed dentist in a group practice that includes two or more dentists must be identified as a general dentist or a specialist as listed in subsection (4) of this section.

(b) A licensed dentist in a group practice who meets the standards listed in subsection (4) of this section shall include the area of their specialty.

(c) Qualifications of any licensed dentist must be made available to the public upon request.

WSR 21-06-108

PROPOSED RULES

HIGHLINE COLLEGE

[Filed March 3, 2021, 9:02 a.m.]

Original Notice.

Preproposal Statement of Inquiry was filed as WSR [20-02-022].

Title of Rule and Other Identifying Information: Highline College's Title IX Policy and Procedures; WAC 1321-300-010 [132I-300-010] and 1321-300-020 [132I-300-020].

Hearing Location(s): On April 7, 2021, at 11 a.m., via Zoom <https://highline.zoom.us/j/84576631022>.

Date of Intended Adoption: May 4, 2021.

Submit Written Comments to: Summer Korst, 2400 South 240th [Street], Des Moines, WA 98198-9800, email skorst@highline.edu, fax 206-870-3773, 206-592-3320, by April 5, 2021.

Assistance for Persons with Disabilities: Contact Summer Korst, phone 206-592-3320, fax 206-870-3773, email skorst@highline.edu, dslota@highline.edu, by April 1, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: On May 19, 2020, the Federal Register printed amendments to Title IX regulations (85 F.R. 30575). The new regulations address the grievance process for formal complaints of sexual harassment and took effect on August 14, 2020. This required emergency repeal of the college's Title IX policy and procedures to be compliant with federal regulations. We request to permanently repeal the existing WAC because the language no longer aligns with the new regulations. The college is currently completing the process for permanent rule making. Updated Title IX policy and procedures have been adopted locally.

Reasons Supporting Proposal: Repealing the Title IX policy and procedures is necessary because the current WAC does not align with the current federal regulations. Updated Title IX policy and procedures have been adopted locally.

Statutory Authority for Adoption: RCW 28B.50.140.

Statute Being Implemented: RCW 28B.50.140.

Rule is necessary because of federal law, 85 F.R. 30575.

Name of Proponent: Highline College, public.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Summer Korst, Executive Director of Human Resources and Title IX Coordinator, 2400 South 240th [Street], Des Moines, WA 98198-9800, 206-592-3320.

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

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis is not required under RCW 34.05.328 and does not apply to college rules.

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

Is exempt under RCW 19.85.025(3) as the rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

March 2, 2021
Summer Korst
Executive Director of
Human Resources

AMENDATORY SECTION (Amending WSR 12-16-111, filed 8/1/12, effective 9/1/12)

WAC 132I-300-010 Statement of policy. ((The college provides equal opportunity in education and employment and does not discriminate on the basis of race, color, national origin, age, disability, sex, sexual orientation, marital status, creed, religion, or status as a veteran of war as required by Title IX of the Educational Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, RCW 49.60.030 and their implementing regulations. Prohibited sex discrimination includes sexual harassment (unwelcome sexual conduct of various types).

Sexual harassment is a form of sex discrimination. It occurs in a variety of situations which share a common element: The inappropriate introduction of sexual activities or comments into the work or learning situation, the creation of relationships of unequal power and/or elements of coercion, such as requests for sexual favors as a criterion for granting work, study, or grading benefits. Sexual harassment may also involve relationships among peers of repeated sexual advances or demeaning verbal behavior resulting in a harmful effect on a person's ability to study or work in the academic setting. In addition, third parties may submit claims if a sexual relationship unfairly confers preferential treatment to participant(s) in the relationship.)) (1) Highline College recognizes its responsibility to investigate, resolve, implement corrective measures, and monitor the educational environment and workplace to stop, remediate, and prevent discrimination on the basis of sex, as required by Title IX of the Educational Amendments Act of 1972, Title VII of the Civil Rights Act of 1964, the Violence Against Women Reauthorization Act, and Washington state's law against discrimination, and their implementing regulations. To this end, Highline College has enacted and adopted the Title IX grievance procedure for receiving and investigating sexual harassment allegations arising during education programs and activities. Any individual found responsible for violating Highline College's Title IX policy is subject to disciplinary action up to and including dismissal from the Highline College educa-

tional programs and activities and/or termination of employment.

(2) Application of this Title IX grievance procedure WAC 132I-300-020 is restricted to allegations of "sexual harassment," as that term is defined in 34 C.F.R. Part 106.30. Nothing in this procedure limits or otherwise restricts Highline College's ability to investigate and pursue discipline based on alleged violations of other federal, state, and local laws, their implementing regulations, and other college policies prohibiting gender discrimination through processes set forth in Highline College's code of student conduct, employment contracts, employee handbooks, and collective bargaining agreements.

(3) Any employee, student, applicant, or visitor who believes that they have been the subject of sexual harassment should report the incident or incidents to Highline College's Title IX coordinator identified below. If the complaint is against that Title IX coordinator, the complainant should report the matter to the president's office for referral to an alternate designee.

(4) Complaints may be submitted in writing or verbally. For complainants who wish to submit a written complaint, a formal complaint form is available online at incident reporting form.

TITLE IX/EEO Coordinator

Title: Title IX Coordinator

Office: Human Resources, Building 99, Room 200

Phone: 206-592-3812

(5) The responsibilities of the Title IX/EEO coordinator or designee include:

(a) Accepting and processing all Title IX reports, referrals, and formal complaints.

(b) Executing and submitting a formal complaint when appropriate and necessary.

(c) Handling requests for confidentiality.

(d) Determining during the grievance procedure:

(i) Whether a formal complaint should be dismissed either in whole or in part, and if so;

(ii) Providing notice to both parties about why dismissal was necessary or desirable; and

(iii) Referring the complaint to the appropriate disciplinary authority for proceedings outside the jurisdiction of Title IX.

(e) Maintaining accurate records of all complaints, reports, and referrals, and retaining investigation files, complaints, reports, and referrals in compliance with the applicable records retention schedules or federal or state law, whichever is longer.

(f) Assigning and overseeing investigations.

(g) Engaging in an interactive process with both parties to identify and provide supportive measures that ensure during the investigation and disciplinary processes that the parties have equitable access to education programs and activities and are protected from further discrimination or retaliation.

(h) Upon completion of an investigation, issuing or overseeing the issuance of a final investigation report to the parties and the appropriate disciplinary authority in compliance with this grievance procedure.

(i) Recommending nondisciplinary corrective measures to stop, remediate, and/or prevent recurrence of discriminatory conduct to disciplinary authorities and other college administrators.

(6) Individuals experiencing harassment or discrimination also have the right to file a formal grievance with government authorities:

Equal Employment Opportunity Commission
909 First Avenue, Suite 400
Seattle, WA 98104-1061
www.eeoc.gov

Washington State Human Rights Commission
1511 Third Avenue, Suite 921
Seattle, WA 98101
www.hum.wa.gov

Office for Civil Rights
U.S. Department of Education
915 Second Avenue
Seattle, WA 98171-1099
www.ed.gov

(7) In the event that an incident involves alleged misconduct by the Title IX/EEO coordinator, reports should be made directly to the vice president of human resources.

AMENDATORY SECTION (Amending WSR 12-16-111, filed 8/1/12, effective 9/1/12)

WAC 1321-300-020 Discrimination and sexual harassments complaints—Procedure. ~~((1) Any student or employee who believes that he or she has been the subject of discrimination or sexual harassment, should report the incident or incidents to the chief human resources officer, the administrator so designated by the college president, hereafter referred to as the CHRO. If the complaint is against that official, the complainant should report the matter to the president's office for referral to an alternate designee. The college encourages the timely reporting of any incident(s) of discrimination or sexual harassment.~~

~~(2) All reports of incident(s) will be forwarded to the CHRO for coordination and a determination on how to process the complaint.~~

~~(3) The student or employee who files a complaint alleging discrimination or sexual harassment (the complainant) may submit a brief written statement of allegations to the CHRO. If the complainant does not submit a written statement, the CHRO shall prepare a statement of facts which is approved by the complainant. That statement will be forwarded as well to the subject of the complaint, who may choose to submit a response.~~

~~(4) The CHRO shall appoint a college employee to investigate the complaint. The CHRO shall inform the complainant and respondent(s) of the appointment.~~

~~(5) The college representative shall conduct an investigation based upon the written statement submitted by the complainant and, if applicable, respondent(s). If the complainant did not file a written statement, the representative shall conduct an investigation based upon the statement prepared by the CHRO.~~

~~(6) The college representative shall conduct a thorough investigation. The investigation shall include, but is not limited to, providing the complainant and the respondent the opportunity to state their positions, interviewing witness, and reviewing relevant documents. The investigation shall be concluded within a reasonable time, normally thirty days.~~

~~(7) At the conclusion of the investigation the college representative shall set forth his or her findings and recommendations in writing. The representative shall send a copy of the findings and recommendations to the CHRO.~~

~~(8) The CHRO shall consider the findings and recommendations of the representative. The CHRO shall determine whether disciplinary action may be appropriate. If the CHRO so recommends, he or she will consult with the respondent's appointing authority regarding possible personnel action. These options may include voluntary training/counseling, development of a remediation plan, or formal discipline. The CHRO shall advise the complainant and respondent of the college's decision.~~

~~(9) If the CHRO and respondent's appointing authority determine that disciplinary actions should be instituted against an employee the applicable provisions of employee rights and responsibilities shall be followed. These provisions include but are not limited to, state and federal constitutional and statutory provisions, rules Washington office of financial management, collective bargaining agreements, and college policies.~~

~~(10) If the CHRO determines that disciplinary action should be instituted against a student, the applicable provisions of the college student code shall be followed.~~

~~(11) If the CHRO determines that disciplinary action is not appropriate and the complainant disagrees, the complainant may appeal, in writing, to the president.~~

~~(12) The procedures regarding complaints of discrimination shall be published and distributed as determined by the president or president's designee. Any person who believes he or she has been subjected to sexual harassment will be provided a copy of this policy and procedure.)) (1) Purpose.~~

Highline College recognizes its responsibility to investigate, resolve, implement corrective measures, and monitor the educational environment and workplace to stop, remediate, and prevent discrimination on the basis of sex, as required by Title IX of the Education Amendments Act of 1972, Title VII of the Civil Rights Act of 1964, the Violence Against Women Reauthorization Act, and Washington state's law against discrimination, and their implementing regulations. To this end, Highline College has enacted the Highline College Policy XXXX - Discrimination, Harassment and Retaliation and adopted the following Title IX grievance procedure for receiving and investigating sexual harassment allegations arising during educational programs and activities. Any individual found responsible for violating the college's Title IX policy is subject to disciplinary action up to and including dismissal from the college's educational programs and activities and/or termination of employment.

Application of this Title IX grievance procedure is restricted to allegations of "sexual harassment," as that term is defined in 34 C.F.R. Part 106.30. Nothing in this procedure limits or otherwise restricts the college's ability to investigate and pursue discipline based on alleged violations of other

federal, state and local laws, their implementing regulations, and other college policies prohibiting gender discrimination through processes set forth in the college's code of student conduct, employment contracts, discrimination, harassment and retaliation policy, and collective bargaining agreements.

(2) Definitions.

For purposes of this Title IX grievance procedure, the following terms are defined as follows:

(a) **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 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 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.

(b) **Complainant** - An individual who is alleged to be the victim of conduct that could constitute sexual harassment.

(c) **Respondent** - An individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

(d) **Formal complaint** - A writing submitted by the complainant or signed by the Title IX coordinator alleging sexual harassment against a respondent and requesting that the college conduct an investigation.

(e) **Educational program or activity** includes locations, events, or circumstances over which the college exercised substantial control over both the respondent and the context in which the alleged sexual harassment occurred. It also includes any building owned or controlled by a student organization officially recognized by the college.

(f) **Grievance procedure** - The process the college uses to initiate, informally resolve, and/or investigate allegations that an employee or student has violated Title IX provisions prohibiting sexual harassment.

(g) **Supportive measures** are nondisciplinary, nonpunitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent regardless of whether the complainant or the Title IX coordinator has filed a formal complaint. Supportive measures restore or preserve a party's access to the college's educational programs and activities without unreasonably burdening the other party, as determined through an interactive process between the Title IX coordinator and the party. Supportive measures include measures designed to protect the safety of all parties and/or the college's educational environment and/or to deter sexual harassment or retaliation. Supportive measures may include, but are not limited to: (i) Counseling and other medical assistance; (ii) extensions of deadlines or other course-related adjustments; (iii) modifications of work or class schedules; (iv) leaves of

absence; (v) increased security or monitoring of certain areas of campus; and (vi) imposition of orders prohibiting the parties from initiating contact with one another in housing or work situations at Highline College as well as at college-sponsored events or activities. Determinations about whether to impose a one-way no contact order must be made on a case-by-case basis. If supportive measures are not provided, the Title IX coordinator must document in writing why this was clearly reasonable under the circumstances.

(h) **Summary suspension** means an emergency suspension of a student respondent pending investigation and resolution of disciplinary proceedings pursuant to the procedure and standards set forth in WAC 132I-125-350.

(i) **Sexual harassment** - For purposes of these Title IX grievance procedures, sexual harassment occurs when a respondent engages in the following discriminatory conduct on the basis of sex:

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

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

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

family violence laws of the state of Washington, RCW 26.50.010.

(F) Dating violence. 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. 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.

(j) **Title IX administrators** are the Title IX coordinator, Title IX investigators, the student conduct manager, student conduct committee members, deputy Title IX coordinator, deputy safety coordinator, hearing officer, employee disciplinary officer, and college-provided advisors assigned to the parties by the college during Title IX disciplinary proceedings.

(k) **Title IX coordinator** is responsible for processing Title IX complaints and conducting and/or overseeing formal investigations and informal resolution processes under this grievance procedure. Among other things, the Title IX coordinator is responsible for:

(i) Accepting and processing all Title IX reports, referrals, and formal complaints.

(ii) Executing and submitting a formal complaint when appropriate and necessary.

(iii) Handling requests for confidentiality.

(iv) Determining during the grievance procedure:

(A) Whether a formal complaint should be dismissed in whole or in part, and if so;

(B) Providing notice to both parties about why dismissal was necessary or desirable; and

(C) Referring the complaint to the appropriate disciplinary authority for proceedings outside the jurisdiction of Title IX.

(v) Maintaining accurate records of all complaints, reports, and referrals, and retaining investigation files, complaints, reports, and referrals in compliance with the applicable records retention schedules or federal or state law, whichever is longer.

(vi) Assigning and overseeing investigations.

(vii) Engaging in an interactive process with both parties to identify and provide supportive measures that ensure during the investigation and disciplinary processes that the parties have equitable access to educational programs and activities and are protected from further discrimination or retaliation.

(viii) Upon completion of an investigation, issuing or overseeing the issuance of a final investigation report to the parties and the appropriate disciplinary authority in compliance with this grievance procedure.

(ix) Recommending nondisciplinary corrective measures to stop, remediate, and/or prevent recurrence of discrimina-

tory conduct to disciplinary authorities and other college administrators.

(3) Principles for Title IX grievance procedure.

(a) Respondent shall be presumed not responsible for the alleged conduct unless or until a determination of responsibility is reached after completion of the grievance and disciplinary processes.

(b) Before imposing discipline, the college is responsible for gathering and presenting evidence to a neutral and unbiased decision maker establishing responsibility for a Title IX violation by a preponderance of the evidence.

(c) The college shall treat both the complainant and respondent equitably by providing complainant with remedies against respondent who has been found responsible for sexual harassment through application of the institution's Title IX grievance and applicable Title IX disciplinary procedures and by providing respondent with Title IX procedural safeguards contained in this Title IX grievance procedures and in the applicable Title IX disciplinary procedures.

(d) The investigator shall base investigation results on all relevant evidence, including both exculpatory and inculpatory evidence.

(e) Formal and informal resolutions will be pursued within reasonably prompt time frames with allowances for temporary delays and extensions for good cause shown. The Title IX coordinator or designee will respond to reports of sexual harassment within three business days. It is expected that complaints addressed through an informal process will be resolved within ninety days. It is expected that complaints addressed through the formal investigation and hearing process will be resolved in one hundred five days. Grounds for temporary delay include, but are not limited to, breaks in the academic calendar, unusual circumstances where employees are unable to work on campus, weather conditions, a natural disaster, or lack of participation from the complainant or respondent. Good cause supporting a request for an extension includes, but is not limited to: A college party, a party's advisor or a witness being unavailable, concurrent law enforcement activity, the need for language assistance or accommodation of disabilities, or unforeseen circumstances causing the Title IX coordinator to be unavailable for more than three business days during the grievance process. Both parties will receive written notice of any temporary delay or extension for good cause with an explanation of why the action was necessary.

(f) A respondent found responsible for engaging in sexual harassment may receive discipline up to and including dismissal from the college. A description of other possible disciplinary sanctions and conditions that may be imposed against students can be found in WAC 132-125-125.

An employee found responsible for sexual harassment may receive discipline up to and including dismissal from employment. A description of possible disciplinary sanctions and conditions that may be imposed against employees can be found at Supplemental Title IX Employee Disciplinary Hearing Procedures, Article 806 of the Highline College Education Association (HCEA) Bargaining Agreement, and Article 27 of the Washington public employees association (WPEA) bargaining agreement.

In proceedings against an employee respondent, the parties may appeal the employee disciplinary decision to the president pursuant to the Supplemental Title IX Employee Disciplinary Procedures.

(g) Title IX administrators may not require, allow, rely upon, or otherwise use questions or evidence that seeks disclosure of privileged communications, unless the privilege has been effectively waived by the holder. This provision applies, but is not limited to, information subject to the following:

(i) Spousal/domestic partner privilege;

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

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

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

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

(vi) Other legal privileges identified in RCW 5.60.060.

(4) Title IX administrators - Free from bias - Training requirements.

(a) Title IX administrators shall perform their duties free from bias or conflicts.

(b) Title IX administrators shall undergo training on the following topics:

(i) The definition of sexual harassment under these procedures;

(ii) The scope of the college's educational programs and activities;

(iii) How to conduct an investigation;

(iv) How to serve impartially without prejudgment of facts, conflicts of interest or bias;

(v) Use of technology used during any investigation or hearing;

(vi) The relevance of evidence and questions; and

(vii) Effective report writing.

(c) All Title IX administrator training materials shall be available on the college's Title IX web page.

(5) Filing a complaint.

Any employee, student, applicant, or visitor who believes that they have been the subject of sexual harassment should report the incident or incidents to the college's Title IX coordinator identified below. If the complaint is against that Title IX coordinator, the complainant should report the matter to the president's office for referral to an alternate designee.

Complaints may be submitted in writing or verbally. For complainants who wish to submit a written complaint, a formal complaint form is available online at incident reporting form.

Name: Summer Korst

Title: Title IX Coordinator

Office: Human Resources, Building 99, Room 200

Email: skorst@highline.edu

Phone: 206-592-3812

(6) Confidentiality.

(a) The college will seek to protect the privacy of the complainant to the fullest extent possible, consistent with the

legal obligation to investigate, take appropriate remedial and/or disciplinary action, and comply with the federal and state law, as well as college policies and procedures. 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.

(b) The Title IX coordinator will inform and attempt to obtain consent from the complainant before commencing an investigation of alleged 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).

(c) 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.

(d) 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.

(7) Complaint resolution.

The Title IX resolution processes are initiated when the Title IX coordinator's office receives a written complaint alleging that a respondent(s) sexually harassed a complainant and requesting that the college initiate an investigation (a formal complaint). A formal complaint must be either submitted by the complainant or signed by the Title IX coordinator on behalf of the complainant. Formal complaints submitted to the Title IX coordinator may be resolved through either informal or formal resolution processes. The college will not pro-

ceed with either resolution process without a formal complaint.

For purposes of this Title IX grievance procedure, the complainant must be participating in or attempting to participate in a college education program or activity at the time the formal complaint is filed.

(a) Informal resolution.

Under appropriate circumstances and if the impacted and responding parties agree, they may voluntarily pursue informal resolution during the investigation of a concern. Informal resolution is not appropriate when the allegations involve a mandatory reporting situation, an immediate threat to the health, safety or welfare of a member of the college community, or in cases where an employee is alleged to have sexually harassed a student.

If an informal resolution is appropriate, the impacted party and the responding party may explore remedies or resolution through:

(i) Guided conversations or communications conducted by the Title IX coordinator/HRO representative or a mutually agreed upon third party;

(ii) Structured resolution process conducted by a trained mediator; or

(iii) Voluntarily agreed on alterations to either or both of the parties' work or class schedules or student housing arrangements.

If the parties agree to an informal resolution process, the college will commence the process within ten days after the parties agree to this option and conclude within ninety days of beginning that process, subject to reasonable delays and extensions for good cause shown. The informal process is voluntary. Either the impacted or responding party may withdraw from the informal resolution process at any time, at which point the formal investigation process will resume.

If the impacted and responding party voluntarily resolve a report, the college will record the terms of the resolution in a written agreement signed by both parties and provide written notice to both parties that the report has been closed.

(b) Formal resolution.

Formal resolution means that the complainant's allegations of sexual harassment will be subjected to a formal investigation by an impartial and unbiased investigator. The investigator will issue a report of the investigation findings. Upon completion of the investigation, the investigator will submit the final investigation report to the appropriate disciplinary authority to determine whether disciplinary proceedings are warranted.

(8) Emergency removal.

If a student respondent poses an immediate threat to the health and safety of the college community or an immediate threat of significant disruption to college operations, the college's student conduct officer may summarily suspend a respondent pursuant to WAC 132-125-350, pending final resolution of the allegations. Nothing in this grievance procedure prohibits the college from placing nonstudent employees on administrative leave pending final resolution of the allegations.

(9) Investigation notices.

Upon receiving a formal complaint and determining that allegations comport with Title IX claims, the college will

provide the parties with the following notices containing the following information:

(a) Notice of formal and informal resolution processes. A description of the college's grievance resolution procedures, including the informal resolution procedure.

(b) The investigator will serve the respondent and the complainant with a notice of investigation in advance of the initial interview with the respondent to allow the respondent sufficient time to prepare a response to the allegations and to inform the complainant that the college has commenced an investigation. The investigation notice will:

(i) Include the identities of the parties (if known), a description of the conduct alleged constituting Title IX sexual harassment, and the time and location of the incident (if known).

(ii) Confirm that the respondent is presumed not responsible for the alleged conduct and that the college will not make a final determination of responsibility until after the grievance and disciplinary processes have been completed.

(iii) Inform parties that they are both entitled to have an advisor of their own choosing, who may be an attorney.

(iv) Inform parties they have a right to review and inspect evidence.

(v) Inform parties about student conduct code provisions and employment policies that prohibit students and employees from knowingly submitting false information during the grievance and disciplinary processes.

(c) Amended investigation notice. If during the course of the investigation, the college decides to investigate Title IX sexual harassment allegations about the complainant or respondent that are not included in the investigation notice, the college will issue an amended notice of investigation to both parties that includes this additional information.

(d) Interview and meeting notices. Before any interviewing or meeting with a party about Title IX allegations, the college shall provide the party with a written notice identifying the date, time, location, participants, and purpose of the interview or meeting with sufficient time, at least five days, for the party to prepare for the interview or meeting.

(10) Investigation process - Dismissal.

(a) Mandatory dismissal - The Title IX coordinator will dismiss the Title IX allegations, if during the course of a formal investigation under the Title IX grievance process, the investigator determines that the alleged misconduct in the formal complaint:

(i) Does not meet the definition of sexual harassment under Title IX, even if proved; or

(ii) Did not occur in the context of a college educational program or activity; or

(iii) Occurred outside the United States.

(b) Discretionary dismissal - The college may dismiss a Title IX claim in whole or in part, if:

(i) The complainant notifies the Title IX coordinator in writing that they would like to withdraw the formal complaint in whole or in part;

(ii) Respondent is no longer enrolled with or employed by the college; or

(iii) Specific circumstances prevent the college from gathering evidence sufficient to complete the investigation of the Title IX allegations in whole or in part.

(c) The Title IX coordinator will provide both parties written notice if Title IX allegations are dismissed with an explanation for the dismissal.

(d) Mandatory or discretionary dismissal of a Title IX claim does not preclude the college from investigating and pursuing discipline based on allegations that a respondent violated other federal or state laws and regulations, college conduct policies, and/or other codes and contractual provisions governing student and employee conduct.

(11) Investigation process - Consolidation of formal complaints.

When multiple sexual harassment allegations by or against different parties arise out of the same facts or circumstances, the college may consolidate the investigation of formal complaints, provided consolidation can be accomplished in compliance with confidentiality protections imposed by the Family Educational Records and Privacy Act (FERPA). This includes instances in which complainant and respondent have lodged formal complaints against one another or when allegations of sexual assault are lodged by a single complainant against multiple respondents, or when multiple complainants lodge sexual assault complaints against single or multiple respondents.

(12) Investigation process - Required procedures.

During the investigation, the investigator:

(a) Will provide the parties with equal opportunity to present relevant statements, and other evidence in the form of fact or expert witnesses and inculpatory or exculpatory evidence.

(b) Will not restrict the ability of either party to discuss the allegations under investigation or gather and present relevant evidence, except when a no contact order has been imposed based on an individualized and fact specific determination that a party poses a threat to the health, safety or welfare of another party and/or witnesses or when contact with a party and/or witness is prohibited by court order. A college-imposed no contact shall be no broader than is necessary to protect the threatened party or witness and must provide the impacted party or their advisor with alternative means of gathering and presenting relevant evidence from the protected witness and/or party.

(c) Will allow each party to be accompanied by an advisor of their choosing, who may be an attorney, to any grievance related meeting or interview. Advisors' roles during the investigation meetings or interviews will be limited to providing support and advice to the party. Advisors will not represent or otherwise advocate on behalf of the parties during the investigation process. An attorney representing a party must enter a notice of appearance with the Title IX coordinator and the investigator at least five days before the initial interview or meeting they plan to attend, so that the college can secure its own legal representation, if necessary.

(d) The investigator will provide both parties and their respective advisors with an equal opportunity to review the draft investigation report and to inspect and review any evidence obtained during the investigation that is directly related to the allegations raised in the formal complaint, including inculpatory or exculpatory evidence, regardless of its source, as well as evidence the investigator does not intend to rely in the final investigation report. After disclosure, each party will

receive ten days in which to submit a written response, which the investigator will consider prior to completion of the investigation report. If a party fails to submit a written response within ten days, the party will be deemed to have waived their right to submit comments and the investigator will finalize the report without this information.

(e) The investigator will forward the final report to the Title IX coordinator, who distributes the report and evidence to the parties, as well as the disciplinary authority responsible for determining whether pursuing disciplinary action is warranted.

WSR 21-06-109

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed March 3, 2021, 9:30 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-18-089.

Title of Rule and Other Identifying Information: The department is proposing to repeal and recodify WAC 388-71-0100 through 388-71-01281 to a new chapter 388-103 WAC. The department is also proposing to modify the definition of "willful" under WAC 388-71-0105 in response to *Crosswhite v. DSHS*, 389 P.3d 731, 197 Wn. App. 539 (2017). In addition, the department is proposing to create new WAC sections to memorialize a petition process for certified nursing assistants (CNAs), and update existing WAC sections to make other changes in grammar and structure for improved rule consistency.

Hearing Location(s): On April 27, 2021, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington Street S.E., Olympia, WA 98501. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2>; or by Skype. Due to the COVID-19 pandemic, hearing may be held via Skype, see DSHS website for most up-to-date information.

Date of Intended Adoption: No earlier than April 28, 2021.

Submit Written Comments to: DSHS, Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHS RPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., April 27, 2021.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, phone 360-664-6092, fax 360-664-6185, TTY 711 relay service, email kildaja@dshs.wa.gov, by April 13, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposal is to create a new WAC chapter containing all DSHS adult protective services (APS) regulatory subject matter. The effect of this change is to ensure that it is clear that APS is a division within aging and long-term support administration (AL TSA), and to ensure that it is clear what

division is responsible for the chapter. In addition, the purpose of the proposal is to adapt and respond to the *Crosswhite* decision where a previous APS WAC definition was found to exceed the agency's statutory authority. The anticipated effect of this proposal is to adapt the commonly understood meaning of "willful" observed in *Crosswhite*. The purpose of a further proposal is to memorialize a petition process for CNAs. The effects of this are to create a process for CNAs to petition APS for their removal from the CNA registry regarding an instance of neglect. Finally, other purposes of this proposal are to clarify meanings, update grammar, and improve consistency within APS WAC and also between APS WAC and other WAC. The effect would be having WAC that is clearer, easier to understand, and consistent with other chapters of DSHS WAC.

Reasons Supporting Proposal: APS became a new division with AL TSA in 2019, and removing APS rules from home and community services rules ensures there is no confusion as to what division is responsible for the APS rules. Since the *Crosswhite* decision in 2017, there has been no explicit meaning of "willful" in regards to abuse in WAC (where abuse is defined in RCW 74.34.020). It will be defined as it was observed in *Crosswhite*. Although APS does have a process for CNA petitions, having the process in rule better articulates the rights and responsibilities of the petitioners and APS. Finally, some substance in APS WAC is redundant, inconsistent with itself and other DSHS rules, and needs technical corrections.

Statutory Authority for Adoption: RCW 74.34.068, 74.34.165; 42 U.S.C. Sec. 1396r (g)(1)(D), Sec. 1395i-3 (g)(1)(D).

Statute Being Implemented: RCW 74.34.068, 74.34.165; 42 U.S.C. Sec. 1396r (g)(1)(D), Sec. 1395i-3 (g)(1)(D).

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Will Reeves, P.O. Box 45600, Olympia, WA 98504, 360-485-3715.

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

A cost-benefit analysis is not required under RCW 34.05.328. All proposals do the following: Adopt or incorporate by reference without material change federal statutes or regulations or Washington state statutes; clarify language of a rule without changing its effect; or are interpretive rules. The following are incorporated without material change: RCW 74.34.020; 42 C.F.R. 488.301; RCW 74.34.005, 74.34.063, 74.34.068; Part IV of chapter 34.05 RCW; RCW 74.34.095, 74.349A.056; 42 U.S.C. 1396r, 42 U.S.C. 1395i-3.

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

Is exempt under RCW 19.85.030.

Explanation of exemptions: The proposed rules will not impose more-than-minor costs on any business or industry, as APS investigates and makes findings regarding individuals, not entities.

February 25, 2021

Katherine I. Vasquez
Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 21-07 issue of the Register.

WSR 21-06-110

PROPOSED RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed March 3, 2021, 9:40 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-14-086.

Title of Rule and Other Identifying Information: Long-term services and supports trust program, adding chapter 192-905 WAC, Exemptions; WAC 192-905-005 Eligibility requirements for an employee to receive an exemption from the long-term services and supports trust program, 192-905-010 How and when can an employee apply for an exemption from the long-term services and supports trust program?, 192-905-015 What happens after an employee's exemption application is processed, and 192-905-020 Is an exempt employee entitled to a refund of premiums?

Hearing Location(s): On April 6, 2021, at 9:00 a.m., call-in number 360-407-3780, Pin 474082#. Hearing will be held by conference call due to COVID-19.

Date of Intended Adoption: On or after April 13, 2021.

Submit Written Comments to: April Amundson, Employment Security Department (ESD), P.O. Box 9046, Olympia, WA 98507-9046, email rules@esd.wa.gov, by April 6, 2021.

Assistance for Persons with Disabilities: Contact Teresa Eckstein, state EO officer, phone 360-480-5708, TTY 711, email Teckstein@esd.wa.gov, by March 30, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules are the first of three phases of rules to implement portions of the long-term services and supports trust program (Title 50B RCW) under ESD's authority. The proposed rules address exemptions from participation in the program and include rules related to eligibility and application requirements, employee and employer responsibilities, and refunds of premiums.

Reasons Supporting Proposal: The proposed rules are necessary to implement portions of the long-term services and supports trust program and provide guidance to employees and employers regarding exemptions from the program.

Statutory Authority for Adoption: RCW 50B.04.020, 50B.04.085.

Statute Being Implemented: RCW 50B.04.050, 50B.04.-085.

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

Name of Proponent: ESD, leave and care division, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: April Amundson, Lacey, Washington, 360-485-2816.

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

A cost-benefit analysis is not required under RCW 34.05.328. WAC 192-905-005, 192-905-010, and 192-905-015 are exempt under RCW 34.05.328 (5)(b)(v) and (c)(i) (C). The rules are explicitly and specifically dictated by statute (RCW 50B.04.085) and are procedural rules that adopt policy pertaining to the internal operations of the department. Procedural rules are not significant legislative rules under RCW 34.05.328 (5)(c)(iii).

WAC 192-905-020 is exempt under RCW 34.05.328 (5)(b)(v). The rule is explicitly and specifically dictated by statute (RCW 50B.04.085).

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

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; and rule content is explicitly and specifically dictated by statute.

Explanation of exemptions: WAC 192-905-005 Eligibility requirements for an employee to receive an exemption from the long-term services and supports trust program, 192-905-010 How and when can an employee apply for an exemption from the long-term services and supports trust program?, and 192-905-015 What happens after an employee's exemption application is processed?, the rules are exempt under RCW 34.05.310 (4)(b) and (e) because the rules are related to internal operations of the department and are specifically dictated by statute (RCW 50B.04.085).

WAC 192-905-020 Is an exempt employee entitled to a refund of premiums?, the rule is exempt under RCW 34.05.-310 (4)(e) because the rule is specifically dictated by statute (RCW 50B.04.085).

March 3, 2021
April Amundson
Policy and Rules Manager
Leave and Care Division

Chapter 192-905 WAC

NEW SECTION

WAC 192-905-005 Eligibility requirements for an employee to receive an exemption from the long-term services and supports trust program. (1) An employee who has long-term care insurance as defined in RCW 48.83.020 and attests to this, may apply for an exemption from the premium assessment under RCW 50B.04.080.

(2) Only an employee who is eighteen years of age or older on the date of application may apply for an exemption.

(3) The employee must provide identification that verifies their age at the time of application.

(4) The department may verify an employee's long-term care insurance coverage and may request additional information from the employee.

NEW SECTION

WAC 192-905-010 How and when can an employee apply for an exemption from the long-term services and supports trust program? (1) Applications for exemption from the long-term services and supports trust program will be accepted by the department only from October 1, 2021, through December 31, 2022, per RCW 50B.04.085.

(2) If approved by the department, an employee's exemption will be effective the quarter immediately following approval.

(3) Applications for exemption will be available on the department's website or in another format approved by the department.

NEW SECTION

WAC 192-905-015 What happens after an employee's exemption application is processed? (1) After an employee's exemption application is processed, the department will send the employee either:

(a) An approval letter stating the employee is exempt from the program; or

(b) A denial letter stating the reason for the denial.

(2) A determination made by the department may be appealed in accordance with RCW 50B.04.120(2).

(3) An employee who is approved for an exemption must notify any current or future employer of their exempt status by providing a copy of their approval letter to the employer.

(4) The employer must maintain a copy of the approval letter provided by the employee.

NEW SECTION

WAC 192-905-020 Is an exempt employee entitled to a refund of premiums? (1) If an exempt employee fails to notify an employer of their exemption, the exempt employee is not entitled to a refund of any premium deductions made before notification was provided.

(2) Any premium deductions made before notification was provided to the employer remain with the employer.

(3) If an employer deducts premiums after the employee provides notification of the employee's exempt status, the employer must refund the deducted premiums to the employee.

WSR 21-06-111

PROPOSED RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed March 3, 2021, 9:48 a.m.]

Supplemental Notice to WSR 21-02-088.

Preproposal statement of inquiry was filed as WSR 20-16-151.

Title of Rule and Other Identifying Information: Amending WAC 192-510-050 How will the department assess the size of new employers?, 192-560-010 Which businesses are eligible for small business assistance grants?, 192-620-020 What information will the department request from an

employee when filing for weekly benefits? (amended section title), 192-620-035 When will a weekly benefit amount be prorated? and 192-800-045 Can an appeal be withdrawn? (amended section title); and adding WAC 192-610-090 What is an "illegal act" for the purposes of benefit disqualification?, 192-700-006 What hours are considered "worked" for the purposes of employment restoration?, 192-700-007 Employment restoration requirements for predecessor and successor employers, and 192-800-155 When are proceedings open to the public, and what information from a proceeding before the appeal tribunal or commissioner is publicly disclosable?

Hearing Location(s): On April 7, 2021, at 9:00 a.m., call in number 360-407-3780, Pin 474082#. Hearing will be held by conference call due to COVID-19.

Date of Intended Adoption: On or after April 14, 2021.

Submit Written Comments to: April Amundson, Employment Security Department (ESD), P.O. Box 9046, Olympia, WA 98507-9046, email rules@esd.wa.gov, by April 7, 2021.

Assistance for Persons with Disabilities: Contact Teresa Eckstein, state EO officer, phone 360-480-5708, TTY 711, email Teckstein@esd.wa.gov, by March 31, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed amendments and new rules implement a number of changes which include: Technical changes to ensure the rules are consistent with Title 50A RCW and other paid leave rules under Title 192 WAC; technical and grammatical changes for clarification; adding a definition of "illegal act" for the purposes of benefit disqualification under RCW 50A.15.060; clarifying employment restoration requirements for successor and predecessor employers to align with federal requirements; clarifying what hours are considered "worked" for the purposes of employment restoration to align with federal requirements; clarifying requirements for small business assistance grants; adding language for withdrawal of an appeal when a redetermination has been made in the appellant's favor; and adding a requirement that hearings be closed to the public unless an open hearing is agreed upon by all parties.

Reasons Supporting Proposal: The proposed rules are necessary to clarify requirements, make technical corrections, streamline the hearing process, and align language with statute and other paid family and medical leave rules. The proposed rules will provide clear and usable guidance to the public regarding program operations.

A public hearing was held on February 9, 2021, regarding the initial proposed rules published as WSR 21-02-088. Based on comments received on the initial proposed rules, the department made revisions that require an additional public hearing.

Statutory Authority for Adoption: RCW 50A.05.060, 50A.25.030.

Statute Being Implemented: RCW 50A.05.010, 50A.10.030, 50A.15.060, 50A.24.010; chapter 50A.25 RCW; RCW 50A.50.010, 50A.50.030, 50A.50.050, 50A.50.070.

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

Name of Proponent: ESD, paid family and medical leave division, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: April Amundson, Lacey, Washington, 360-485-2816.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting April Amundson, ESD, P.O. Box 9046, Olympia, WA 98507-9046, phone 360-485-2816, email rules@esd.wa.gov. A cost-benefit analysis is required for WAC 192-610-090.

The following rules do not require a cost-benefit analysis: WAC 192-510-050 is exempt under RCW 34.05.328 (5)(b)(iv) and (v) because the rule clarifies language without changing its effect and is explicitly and specifically dictated by statute (RCW 50A.10.030).

WAC 192-560-010 is exempt under RCW 34.05.328 (5)(c)(i)(C) because it is a procedural rule that adopts a policy pertaining to the internal operations of the department. Procedural rules are not significant legislative rules under RCW 34.05.328 (5)(c)(iii) and (a)(i). The rule is also exempt under RCW 34.05.328 (5)(b)(iv) and (v) because the rule clarifies language without changing its effect and is explicitly and specifically dictated by statute (RCW 50A.24.010).

WAC 192-620-020 and 192-620-035 are exempt under RCW 34.05.328 (5)(b)(iv) because the rules clarify language without changing their effect.

WAC 192-700-006 and 192-700-007 are exempt under RCW 34.05.328 (5)(b)(iii) because the rules adopt or incorporate by reference federal regulations without material change.

WAC 192-800-045 and 192-800-155 are exempt under RCW 34.05.328 (5)(c)(i)(A) because they are procedural rules related to agency hearings. Procedural rules are not significant legislative rules under RCW 34.05.328 (5)(c)(iii) and (a)(i).

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

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; rule content is explicitly and specifically dictated by statute; and rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a fil-

ing or related process requirement for applying to an agency for a license or permit.

Explanation of exemptions: WAC 192-510-050 How will the department assess the size of new employers?, the rule is exempt under RCW 34.05.310 (4)(d) and (e) because the rule clarifies language without changing its effect, and the rule is explicitly and specifically dictated by statute.

WAC 192-560-010 Which businesses are eligible for small business assistance grants?, the rule is exempt under RCW 34.05.310 (4)(b), (d), and (e) because the rule is related to the internal operations of the department, clarifies language without changing its effect, and is explicitly and specifically dictated by statute.

WAC 192-620-020 What information will the department request from an employee when filing for weekly benefits?, the rule is exempt under RCW 34.05.310 (4)(d) because the rule clarifies language without changing its effect.

WAC 192-620-035 When will a weekly benefit amount be prorated?, the rule is exempt under RCW 34.05.310 (4)(d) because the rule clarifies language without changing its effect.

WAC 192-700-006 What hours are considered "worked" for the purposes of employment restoration?, the rule is exempt under RCW 34.05.310 (4)(c) because the rule adopts or incorporates by reference federal regulations without material change.

WAC 192-700-007 Employment restoration requirements for predecessor and successor employers, the rule is exempt under RCW 34.05.310 (4)(c) because the rule adopts or incorporates by reference federal regulations without material change.

WAC 192-800-045 Can an appeal be withdrawn?, the rule is exempt under RCW 34.05.310 (4)(g)(i) because the amendment outlines a procedure, practice, or requirement relating to agency hearings.

WAC 192-800-155 When are proceedings open to the public and what information from a proceeding before the appeal tribunal or commissioner is publicly disclosable?, the rule is exempt under RCW 34.05.310 (4)(g)(i) because the amendment outlines a procedure, practice, or requirement relating to agency hearings.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The following rule does not impact businesses because it pertains to individuals applying for paid family or medical leave benefits: WAC 192-610-090 What is an "illegal act" for the purposes of benefit disqualification?

March 3, 2021
April Amundson
Policy and Rules Manager
Leave and Care Division

AMENDATORY SECTION (Amending WSR 20-01-087, filed 12/12/19, effective 1/12/20)

WAC 192-510-050 How will the department assess the size of new employers? An employer that has not been in business in Washington long enough to report four calendar quarters by September 30th will have its size calculated after

the second quarter of reporting is due by averaging the number of employees reported over the quarters for which reporting exists. Premium assessment based on this determination will begin on this reporting date. This size determination remains in effect ~~((until))~~ for the following ~~((September 30th pursuant to))~~ calendar year under RCW 50A.10.030 ~~((8(e)))~~.

AMENDATORY SECTION (Amending WSR 19-23-090, filed 11/19/19, effective 12/20/19)

WAC 192-560-010 Which businesses are eligible for small business assistance grants? (1) An employer ~~((s))~~ determined to have one hundred fifty or fewer employees in the state that ~~((are))~~ is assessed the employer share of the premiums ~~((are))~~ is eligible to apply for small business assistance grants.

(2) An employer ~~((s))~~ determined to have fewer than fifty employees ~~((are))~~ is only eligible for a small business assistance grant if ~~((those))~~ the employer ~~((s))~~ opts to pay the employer share of the premiums. ~~((Such))~~

(a) The employer ~~((s))~~ will be assessed the employer share of the premiums for a minimum of ~~((three years))~~ twelve consecutive calendar quarters beginning with the first calendar quarter after ~~((any))~~ the most recent grant is ~~((received))~~ approved. ~~((An))~~

(b) The employer may provide notice ~~((for opting out after the three-year period))~~ at any time after the approval of the grant to opt out of paying the employer share of the premiums.

(i) If the twelfth consecutive quarter following approval of the grant has ended, the opt-out will become effective on the first day of the following quarter.

(ii) If the twelfth consecutive quarter following approval of the grant has not ended, the opt-out will become effective on the first day of the thirteenth quarter following approval of the grant.

(3) An employer is not eligible for a small business assistance grant if, at the time of application, the employer has outstanding and delinquent reports, outstanding and delinquent payments, or due and owing penalties or interest under Title 50A RCW.

(4) An employer may request only one grant per year for each employee who takes paid family or medical leave under this title. Submissions under (a) and (b) of this subsection do not qualify as grant applications and therefore do not count against the employer's limit of ten applications per year.

(a) An employer that qualifies for a grant under RCW 50A.24.010 ~~((3(b)))~~ for an amount that is less than one thousand dollars may submit documentation of significant additional wage-related costs incurred after filing the initial grant application in an attempt to qualify for additional grant funds.

(b) An employer may submit a revised application for a grant under RCW 50A.24.010 ~~((3(e)))~~ in an attempt to qualify for additional grant funds.

(5) An employer must apply for ~~((the))~~ any grant no later than four months following the last day of the employee's paid family or medical leave.

NEW SECTION

WAC 192-610-090 What is an illegal act for the purposes of benefit disqualification? (1) Under RCW 50A.15.060, an employee is not entitled to paid family or medical leave benefits for any absence resulting from any injury or illness sustained in the perpetration by the employee of an illegal act.

(2) For purposes of benefit disqualification the following definitions apply:

(a) An "illegal act" is any unlawful action punishable as a felony or gross misdemeanor of which the individual has been convicted or has admitted committing to a competent authority.

(b) A "competent authority" is:

(i) A court (including magistrate or court commissioner), prosecuting attorney, or law enforcement agency; or

(ii) An administrative law judge; or

(iii) A regulatory agency or professional association charged by law with maintaining professional standards or codes of conduct; or

(iv) Any other person or body, other than your employer, with authority to administer disciplinary action against you.

(3) An admission to your employer or to an employee of the department that you have committed a criminal act is not considered an admission to a competent authority for the purposes of RCW 50A.15.060.

AMENDATORY SECTION (Amending WSR 19-13-001, filed 6/5/19, effective 7/6/19)

WAC 192-620-020 What information will the department request from an employee(s) when filing for weekly benefits? (1) The department must determine if an employee qualifies for benefits when the employee files a weekly claim for the payment of benefits. For the week that the employee is claiming, the department will ask if the employee:

(a) Worked for wages during the week, and for the hours associated with that work;

(b) Received any paid leave such as vacation leave, sick leave, or other paid time off that was not considered a supplemental benefit payment provided by the employer, and the hours associated with that leave;

(c) Received any benefit that may disqualify the employee for paid family or medical leave, such as unemployment insurance; and

(d) Experienced a change in the qualifying event that affects the eligibility for, or duration of, paid family or medical leave benefits.

(2) The employee may be asked to provide additional information.

AMENDATORY SECTION (Amending WSR 20-20-073, filed 10/2/20, effective 11/2/20)

WAC 192-620-035 When will a weekly benefit amount be prorated? (1) For an employee on paid family or medical leave, a weekly benefit amount is prorated when:

(a) The employee reports hours worked for wages;

(b) The employee reports hours for paid sick leave, paid vacation leave, or other paid time off that is not considered a supplemental benefit payment as defined in WAC 192-500-180; or

(c) The employee files a weekly application for benefits that contains a day or days for which the employee did not claim paid family or medical leave.

(2) If an employee reports hours under subsection (1)(a) or (b) of this section, proration will be calculated as specified by RCW 50A.15.020(2).

(3) If an employee claims part of a week under subsection (1)(c) of this section, proration will be calculated by dividing the employee's typical workweek hours and weekly benefit amount for that week by sevenths, then multiplying by the number of days for which the employee claimed paid family or medical leave for that week. The remainder of the week will be calculated as specified by RCW 50A.15.020(2) and subsection (1)(a) and (b) of this section.

Example 1: An employee has already served a waiting period in the claim year and files a claim for a week of paid medical leave. The employee typically works forty hours a week at eight hours per day. In the week for which the employee is claiming, the employee claimed one day of paid medical leave and worked the other four days. This employee's weekly benefit is usually eight hundred dollars. The weekly benefit would then be prorated by the hours on paid medical leave (eight hours) relative to the typical workweek hours (forty hours). Eight hours is twenty percent of forty hours. The employee's weekly benefit would be prorated to twenty percent for a total of one hundred sixty dollars.

Example 2: An employee files a claim for eight hours of paid family (~~and~~) or medical leave and takes sick leave from the employer for the same day. The employer does not offer the sick leave as a supplemental benefit payment. The sick leave is considered hours worked by the employee. The employee is being paid for the same hours claimed on paid family (~~and~~) or medical leave. This employee is not eligible for benefits for this week.

Example 3: The employee's typical workweek hours are forty hours per week, and the weekly benefit amount is one thousand dollars. The employee files a claim for leave that starts on a Tuesday. Because the employee's claim did not include Sunday or Monday of that week, the employee's typical workweek hours and weekly benefit amount for that week will be prorated by two-sevenths, or two days of the seven days in the week. For that week only, the employee's typical workweek hours will be twenty-eight (five-sevenths of forty, rounded down to the nearest hour) and the weekly benefit amount will be seven hundred fourteen dollars (five-sevenths of one thousand dollars, rounded down to the nearest dollar).

NEW SECTION

WAC 192-700-006 What hours are considered worked for the purposes of an employee's eligibility for employment restoration? For the purposes of employment restoration under Title 50A RCW, the number of hours worked is determined in accordance with 29 C.F.R. Sec.

825.110(c) and any subsequent amendments to that regulation.

NEW SECTION

WAC 192-700-007 Employment restoration requirements for predecessor and successor employers. For the purposes of employment restoration under Title 50A RCW, hours worked for a predecessor employer will be considered worked for the successor employer as described in 29 C.F.R. Sec. 825.107 and any subsequent amendments to that regulation.

Example: An employee works at a florist called ABC Flower Shop. The business is sold to another entity and is renamed XYZ Flower Shop. The new owner applies for a new universal business identifier and is considered a new employer. The employee is retained and continues to work in a similar job function for the new employer. According to 29 C.F.R. Sec. 825.107 of the federal Family and Medical Leave Act, XYZ Flower Shop is considered a "successor in interest" of ABC Flower Shop. As such, the hours worked by the employee for ABC Flower Shop should be included when considering whether or not employment restoration rights apply to a period of leave taken from XYZ Flower Shop.

AMENDATORY SECTION (Amending WSR 20-20-073, filed 10/2/20, effective 11/2/20)

WAC 192-800-045 (~~When~~) Can an appeal be withdrawn? (1) An aggrieved party may withdraw their appeal or petition for review upon approval by the office of administrative hearings or the commissioner's review office, respectively, at any time prior to the decision(~~(, in which case)~~). When an appeal or petition for review is withdrawn, the determination, redetermination, order and notice of assessment of premiums or penalties, or other decision that was appealed, (~~shall be~~) is final in accordance with the provisions of Title 50A RCW.

(2) If an appeal is filed and a determination or redetermination of the decision has been made in the aggrieved party's favor, the appeal will be considered withdrawn unless the aggrieved party contests the withdrawal of the appeal in writing within thirty days of the date of redetermination.

NEW SECTION

WAC 192-800-155 When are proceedings open to the public, and what information from a proceeding before the appeal tribunal or commissioner is publicly disclosable? To maintain confidentiality of records under chapter 50A.25 RCW:

- (1) All proceedings will be closed to the public unless otherwise agreed upon by all parties appearing for hearing;
- (2) All proceeding records will be sealed for hearings closed to the public and are not publicly disclosable; and
- (3) All personal identifying information concerning an individual or employer will be redacted from the record if the hearing is open to the public.

WSR 21-06-114

PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed March 3, 2021, 10:17 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-24-086.

Title of Rule and Other Identifying Information: WAC 182-543-2200 Proof of delivery.

Hearing Location(s): On April 6, 2021, at 10:00 a.m. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the agency will not provide a physical location for this hearing. This promotes social distancing and the safety of the citizens of Washington state. A virtual public hearing, without a physical meeting space, will be held instead. To attend the virtual public hearing, you must register at the following link <https://attendee.gotowebinar.com/register/1443618498460852747>, Webinar ID 560-087-099. After registering, you will receive a confirmation email containing the information about joining the webinar.

Date of Intended Adoption: Not sooner than April 7, 2021.

Submit Written Comments to: Health Care Authority (HCA), Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by April 6, 2021.

Assistance for Persons with Disabilities: Contact Amber Loughheed, phone 360-725-1349, fax 360-586-9727, telecommunication[s] relay services 711, email amber.loughheed@hca.wa.gov, by March 19, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HCA is revising this section to eliminate the requirement for date and signature from the medicaid client or the client's designee upon delivery of medical equipment and supplies in order to avoid contact between the client and delivery person. HCA currently has emergency rules, filed under WSR 20-23-038, striking this requirement. Once the public health emergency ends, the agency will conduct rule making to add this requirement back into the rule.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Not applicable.

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Valerie Freudenstein, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1344; Implementation and Enforcement: Erin Mayo, P.O. Box 45506, Olympia, WA 98504-5506, 360-725-1729.

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

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules

unless requested by the joint administrative rules review committee or applied voluntarily.

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

March 3, 2021
Wendy Barcus
Rules Coordinator

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

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

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

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

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

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

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

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

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

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

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

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

(ii) The delivery service package identification number; and

(iii) The delivery address.

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

(i) The client's name;

(ii) The shipping service package identification number;

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

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

(c) When billing the agency, use:

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

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

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

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

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

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

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

WSR 21-06-115

PROPOSED RULES

SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed March 3, 2021, 10:26 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-02-085.

Title of Rule and Other Identifying Information: WAC 392-132-075 Nonhigh school district capital fund payment schedules.

Hearing Location(s): On April 6, 2021, at 1:00 p.m., webinar via Zoom (call-in option will be available). Due to the public health emergency related to the COVID-19 virus pandemic, this public hearing will take place by webinar via Zoom (with a call-in option). There will be no physical location for the hearing. For information on registering and participating, please visit OSPI's website at <https://www.k12.wa.us/policyfunding/ospi-rulemaking-activity>. For questions, please email kristin.murphy@k12.wa.us.

Date of Intended Adoption: April 9, 2021.

Submit Written Comments to: Scott Black, School Facilities, Office of Superintendent of Public Instruction (OSPI), P.O. Box 47200, Olympia, WA 98504, email schoolfacilities.rules@k12.wa.us, by April 6, 2021.

Assistance for Persons with Disabilities: Contact Kristin Murphy, phone 360-725-6133, fax 360-754-4201, TTY 360-664-3631, email kristin.murphy@k12.wa.us, by March 30, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposed rule change is to address capital construction agreements entered into by host and nonhigh school districts. Amending the rule, by adding a new section, would provide nonhigh districts (districts with no high school) with basic

protections and ensure the host districts are able to secure financing of capital construction projects.

Reasons Supporting Proposal: Current rules could cause nonhigh school districts to be vulnerable to dissolution if the district and host high school district cannot agree to terms of capital construction financing. Amending the rule would provide nonhigh districts with basic protections and ensure host districts are able to secure necessary financing of capital construction projects.

Statutory Authority for Adoption: RCW 28A.525.020.

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

Name of Agency Personnel Responsible for Drafting and Implementation: Scott Black, OSPI, 600 South Washington Street, Olympia, WA, 360-742-4028; Enforcement: Randy Newman, OSPI, 600 South Washington Street, Olympia, WA, 360-725-6268.

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

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

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

Is exempt under RCW 19.85.030.

Explanation of exemptions: No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendment does not have an impact on small business and therefore does not meet the requirements for a statement under RCW 19.85.030 (1) or (2).

March 3, 2021
Chris P. S. Reykdal
State Superintendent
of Public Instruction

NEW SECTION

WAC 392-132-075 Nonhigh school district capital fund payment schedules. When determining a nonhigh school district's capital fund payments to a serving high school district, a serving high school district may not:

(1) Bill the nonhigh school district an amount which is greater than the sum of the calculation determined by the superintendent of public instruction under WAC 392-132-040;

(2) Collect capital funds payments from a nonhigh school district using an expedited payment schedule which would require the nonhigh school district to make capital fund payments on a more accelerated or condensed payment schedule than that of the serving high school district.

WSR 21-06-117
PROPOSED RULES
HIGHLINE COLLEGE
[Filed March 3, 2021, 11:19 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-22-022.

Title of Rule and Other Identifying Information: Supplemental Title IX Student Conduct Procedures: Repealing chapter 132I-125 WAC; and new chapter 132I-126 WAC.

Hearing Location(s): On April 7, 2021, at 11:00 a.m. - 12:00 p.m., join Zoom meeting <https://highline.zoom.us/j/84576631022>, or Meeting ID 845 7663 1022, One tap mobile +12532158782,,84576631022# US (Tacoma), +1346248 7799,,84576631022# US (Houston), Dial by your location +1 253 215 8782 US (Tacoma), +1 346 248 7799 US. Please contact Aaron Reader, vice president for student services, at 206-592-3351 as soon as possible for accommodation requests.

Date of Intended Adoption: June 22, 2021.

Submit Written Comments to: Aaron Reader, 2400 South 240th Street, Des Moines, WA 98198, email areader@highline.edu, by close of business April 9, 2021.

Assistance for Persons with Disabilities: Aaron Reader, vice president for student services, phone 206-592-3351, email areader@highline.edu.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The updated rules incorporate new Title IX student conduct code requirements at Highline College to be in alignment and compliant with updated DOE requirements.

Reasons Supporting Proposal: The updated rules incorporate new Title IX student conduct code requirements at Highline College to be in alignment and compliant with updated DOE requirements.

Statutory Authority for Adoption: RCW 28B.50.140.

Statute Being Implemented: RCW 28B.50.140.

Rule is necessary because of federal law, 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq.

Name of Proponent: Highline College, public.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Aaron Reader, 2400 South 240th Street, Des Moines, WA 98198, 206-592-3351.

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

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis is not required under RCW 34.05.328 and does not apply to college rules.

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

Is exempt under RCW 19.85.025(3) as the rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

March 3, 2021
Aaron Reader
Vice President
for Student Services

Chapter 132I-126 WAC

HIGHLINE COLLEGE STUDENT CONDUCT CODE

NEW SECTION

WAC 132I-126-010 Statement of jurisdiction. The student conduct code applies to student conduct that occurs on college premises, to conduct that occurs at or in connection with college-sponsored activities, or to off-campus conduct that in the judgment of the college adversely affects the college community or the pursuit of its objectives. 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. Students are responsible for their conduct from the date of 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. These standards shall apply to a student's conduct even if the student withdraws from college while a disciplinary matter is pending. The college 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.

NEW SECTION

WAC 132I-126-020 General policies. (1) Highline College is an agency of the state of Washington and adheres to all local, state, and federal laws. The college is obligated to demonstrate respect for the laws by cooperating in their enforcement.

(2) Highline College cannot and will not establish regulations which would abridge constitutional rights.

(3) Proper procedures are established to maintain conditions conducive to the effective performance of the function of the college, to protect students from unfair imposition of penalties and to assure due process. Highline College is granted the right by law to adopt rules deemed necessary to govern its operations.

(4) If these rules are broken, the college has the right and the obligation to take action that is in the best interest of the college and that is commensurate with the constitutional rights of the individual.

(5) Highline College reserves the right to impose the provisions of this chapter and provide further sanctions before or after law enforcement agencies, courts or other agencies have imposed penalties or otherwise disposed of a case. College proceedings are not subject to challenge on the ground that criminal or civil charges involving the same incident have been dismissed or reduced or in which the defendant has been found not guilty or not liable. In addition, the college reserves the right to refer incidents to the appropriate civilian authorities or law enforcement agencies.

(6) The associated students of Highline College have the right to participate in the formulation and review of all poli-

cies pertaining to student rights and responsibilities and its enforcement as described in the student code of conduct.

(7) Rules of conduct and procedures of enforcement shall be made available to all students via the internet.

NEW SECTION

WAC 132I-126-030 Authority. The board of trustees, acting pursuant to RCW 28B.50.140(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 of student affairs or their designee. Unless otherwise specified, the student conduct officer or designee shall serve as the principal investigator and administrator for alleged violations of this code.

(1) The administrator or delegate in charge of any college office, department or facility is responsible for student conduct that takes place in that area, but outside a classroom setting. The administrator or delegate may remove a student from the area within their control if they reasonably believe that the student conduct substantially and materially disrupts college operations and such removal is necessary to protect the learning environment and/or to ensure the safety and well-being of members of the college community and/or to protect property or facilities belonging to the college or members of the college community. Staff directing the removal of a student must report the student's conduct to their administrator in charge at the earliest opportunity. The administrator in charge must report the incident in writing to the student conduct officer at the earliest opportunity.

(2) The instructor or advisor is responsible for student conduct in the classroom or at any college-related activity or event. The instructor or advisor is authorized to remove the student from a single class or college-sponsored event in which the student's conduct materially and substantially disrupts the educational environment. When such behavior results in removal, the instructor or advisor must report the student's conduct in writing to the student conduct officer at the earliest opportunity.

(3) In all cases involving disruption, the student conduct officer or designee will proceed with the investigation and/or disciplinary proceedings at the earliest opportunity consistent with the procedural requirements established in this chapter.

NEW SECTION

WAC 132I-126-040 Statement of 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. 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 enumerated rights are guaranteed 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 guaranteed 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, subject to the limitations of RCW 28B.50.090 (3)(b).

(c) 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.

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.

(2) Due process.

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

(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 code of student conduct is entitled, upon request, to procedural due process as set forth in this chapter.

NEW SECTION

WAC 1321-126-050 Definitions. The following definitions shall apply for the purpose of this student conduct code:

(1) "Business day" means a weekday, excluding weekends and college holidays.

(2) "College premises" shall include 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 designee who is 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 from a dismissal are heard by the student conduct committee. Appeals of all other appealable disciplinary action are reviewed through brief adjudicative proceedings, unless the case is referred to the committee by the student conduct officer or the conduct review officer.

(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 either intercampus mail or 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) "Respondent" is the student against whom disciplinary action is initiated.

(8) "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.

(9) "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 admitted for admission are considered "students."

(10) "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.

(11) "The president" is the president of the college. The president is authorized to delegate any of his or her responsibilities as set forth in this chapter as may be reasonably necessary.

NEW SECTION

WAC 1321-126-100 Prohibited student 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 which include, but are 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 any attempt to give or obtain unauthorized assistance 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. Prohibited conduct may also 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) Collusion includes assisting another to commit an act of academic dishonesty, such as paying or bribing someone to acquire a test or assignment, or to increase the score on a test or assignment; taking a test or doing an assignment for someone else; allowing someone to do these things for one's own benefit.

(e) Academic misconduct includes intentionally violating college policies, such as altering grades, misrepresenting one's identity failing to report known incident of academic dishonesty or participating in obtaining or distributing any part of the test or any information about a test.

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 may also be referred to the student conduct officer for disciplinary action consistent with this chapter in addition to the academic consequences identified above.

(2) **Other dishonesty.** Any other acts of dishonesty. Such acts 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) **Obstructive or disruptive conduct.** Conduct, not otherwise protected by law, that interferes with, impedes, or otherwise unreasonably hinders.

(a) Any instruction, research, administration, disciplinary proceeding, or other college activities, 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, whether or not actually conducted or sponsored by the college.

(4) **Assault, intimidation, harassment.** Unwanted touching, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, 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 code, "bullying" is defined as repeated or aggressive unwanted behavior, not otherwise protected by law that intentionally humiliates, harms, or intimidates the victims.

(5) **Cyber misconduct.** Cyberstalking, cyberbullying or online harassment. Use of electronic communications including, but not limited to, electronic mail, instant 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 identity, nonconsensual recording of sexual activity, and nonconsensual distribution of a recording of sexual activity.

(6) **Property violation.** Damage to, misappropriation of, unauthorized use or possession of, vandalism or other nonaccidental damaging or destruction of college property or the property of another person. Property for purposes of this subsection includes computer passwords, access codes, identification cards, personal financial account numbers, other confidential personal information, intellectual property and college trademarks.

(7) **Failure to comply with directive.** Failure to comply with the directive of a college officer or employee who is acting in the legitimate performance of his or her duties, including failure to properly identify oneself to such a person when requested to do so.

(8) **Weapons violation.** Possession, holding, wearing, transporting, storage or presence 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 is prohibited on the college campus, subject to the following exceptions:

(a) Commissioned law enforcement personnel, legally authorized military personnel, or approved contractors, while in performance of their duties;

(b) A student with a valid concealed weapons permit may store a pistol in his or her 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

(c) The president or designee 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 permission.

This policy does not apply to the possession and/or use of disabling and/or self-defense sprays when possessed and/or used for self-defense.

(9) **Hazing.** Hazing includes, but is not limited to, any initiation into 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.

(10) **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, or sale of marijuana or the psychoactive compounds found in marijuana intended for human consumption, regardless of form, or being observably under the influence of marijuana or the psychoactive compounds found in marijuana. While state law permits the recreational use of marijuana, federal law prohibits such use on college premises or in connection with 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.** The use of tobacco, electronic cigarettes, and related products in any building owned, leased or operated by the college or in any location where such use is prohibited, including twenty-five feet from entrances, exits, windows that open, and ventilation intakes of any building owned, leased or operated by the college. The use of tobacco, electronic cigarettes, and related products on the college campus is restricted to designated smoking areas. "Related products" include, but are not limited to, cigarettes, pipes, bidi, clove cigarettes, waterpipes, hookahs, chewing tobacco, vaporizers, and snuff.

(11) **Lewd conduct.** Conduct which is lewd or obscene that is not otherwise protected under the law.

(12) **Discriminatory conduct.** Conduct which harms or adversely affects any member of the college community because of her/his race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age; religion; creed; sexual orientation; gender identity; veteran's status; or any other legally protected classification.

(13) **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 132I-126-505 through 132I-126-585 (supplemental Title IX student conduct procedures).

(a) **Sexual harassment.** The term "sexual harassment" means unwelcome sexual or gender-based conduct, including unwelcome sexual advances, requests for sexual favors, quid pro quo harassment, and other verbal, nonverbal, or physical conduct of a sexual or a gendered nature that is sufficiently severe, persistent, or pervasive as to:

- (i) Deny or limit the ability of a student to participate in or benefit from the college's educational program;
- (ii) Alter the terms or conditions of employment for a college employee(s); and/or
- (iii) Create an intimidating, hostile, or offensive environment for other campus community members.

(b) **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.

(c) **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.

(i) 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.

(ii) 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.

(iii) 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.

(iv) 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.

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

(vi) 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.

(vii) 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.

(d) For 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 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 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.

(14) **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, that changes the terms or conditions of employment for a college employee, 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; sexual orientation; gender identity; veteran's status; or any other legally protected classification. See "sexual misconduct" for the definition of "sexual harassment." Harassing conduct may include, but is not limited to, physical conduct, verbal, written, social media, and electronic communications.

(15) **Retaliation.** Harming, threatening, intimidating, coercing, or taking adverse action of any kind against a person because such 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.

(16) **Misuse of electronic resources.** Theft or other misuse of computer time or other electronic information resources of the college. Such misuse 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 such time or resources to interfere with someone else's work;
- (e) Use of such time or resources to send, display, or print an obscene or abusive message, text, or image;
- (f) Use of such time or resources to interfere with normal operation of the college's computing system or other electronic information resources;
- (g) Use of such time or resources in violation of applicable copyright or other law;
- (h) Adding to or otherwise altering the infrastructure of the college's electronic information resources without authorization; or
- (i) Failure to comply with the college's electronic use policy.

(17) **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.

(18) **Safety violations.** Nonaccidental 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.

(19) **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.

(20) **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 an educational goal or major.

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 reserves the right to pursue student disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution.

NEW SECTION

WAC 1321-126-125 Disciplinary sanctions and terms and conditions. (1) The following disciplinary sanctions may be imposed upon students found to have violated the student conduct code.

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

(b) **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.

(c) **Disciplinary probation.** Formal action placing specific conditions and restrictions upon the student's continued attendance 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 at the college.

(d) **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 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 action is taken.

(2) Disciplinary terms and conditions that may be imposed alone or in conjunction with the imposition of a disciplinary sanction 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 defined 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. If the evaluation indicates that the student is not capable of functioning within the college community, the student will remain suspended until future evaluation recommends that the student is capable of reentering the college and complying with the rules of conduct.

(c) **Not in good standing.** A student may be deemed "not in good standing" with the college. If so, the student shall be subject to the following restrictions:

(i) Ineligible to hold an office in any student organization recognized by the college or to hold any elected or appointed office of the college.

(ii) Ineligible to represent the college to anyone outside the college community in any way, including representing the college at any official function, or any forms of intercollegiate competition or representation.

(d) **No contact 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.

(e) **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.

NEW SECTION

WAC 132I-126-200 Initiation of disciplinary action.

(1) All disciplinary action 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 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 business 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 sup-

porting his or her decision, the specific student conduct code provisions found to have been violated, the sanctions 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.

(b) Impose disciplinary sanction(s) outlined in this chapter.

(c) Impose disciplinary terms and conditions alone or in conjunction with a disciplinary sanction including, but not limited to, disciplinary terms and conditions identified in WAC 132I-126-125(2).

(d) 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.

NEW SECTION

WAC 132I-126-220 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 the 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) Discipline cases referred to the committee by the student conduct officer or the conduct review officer.

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

(a) Suspensions of ten instructional days or less;

(b) Disciplinary probation;

(c) Written reprimands; and

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

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

NEW SECTION

WAC 132I-126-230 Brief adjudicative proceedings—Initial hearing. (1) Brief adjudicative proceedings shall be conducted by a conduct review officer. The conduct review officer 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.

(2) 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 within ten business 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 days of service of the initial decision, the initial decision shall be deemed the final decision.

(4) 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.

NEW SECTION

WAC 132I-126-240 Brief adjudicative proceedings—Review of an initial decision. (1) An initial decision is subject to review by the vice president for student services or designee, provided the respondent files a written request for review with the conduct review officer within twenty-one days of service of the initial decision.

(2) The vice president for student services or designee 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 vice president for student services or designee shall give each party an opportunity to file written responses explaining their view 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 vice president for student services or

designee does not make a disposition of the matter within twenty days after the request is submitted.

(5) If the vice president for student services or designee 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.

NEW SECTION

WAC 132I-126-260 Student conduct committee. (1) The student conduct committee shall consist of five members:

(a) Two full-time students appointed by the student government;

(b) Two faculty members appointed by the faculty senate;

(c) One faculty member or administrator (other than an administrator serving as a student conduct or conduct review officer) appointed by the vice president for student services at the beginning of the academic year.

(2) The faculty member or administrator appointed on a yearly basis shall serve as the chair of the committee and may take action on preliminary hearing matters prior to convening the committee. The chair shall receive annual training on protecting victims and promoting accountability in cases involving allegations of sexual misconduct.

(3) Hearings may be heard by a quorum of three members of the committee so long as one faculty member and one student are included on the hearing panel. Committee action may be taken upon a majority vote of all committee members attending the hearing.

(4) Members of the student conduct committee shall not participate in any case in which they are a party, complainant, or witness, in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity. Any party may petition for disqualification of a committee member pursuant to RCW 34.05.425(4).

NEW SECTION

WAC 132I-126-270 Appeals to the student conduct committee. (1) Proceedings of the student conduct committee shall be governed by the Administrative Procedure Act, chapter 34.05 RCW, and by the model rules of procedure, chapter 10-08 WAC. To the extent there is a conflict between these rules and chapter 10-08 WAC, these rules shall control.

(2) The student conduct committee chair shall serve all parties with written notice of the hearing not less than seven business days in advance of the hearing date, as further specified in RCW 34.05.434 and WAC 10-08-040 and 10-08-045. 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 and/or to make prehearing decisions concerning the extent and form of any discovery, issuance of protective decisions, and similar procedural matters.

(4) Upon request filed at least five business days before the hearing by any party or at the direction of the committee

chair, the parties shall exchange, no later than the third business day prior to the hearing, 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 such a requested exchange may be cause for exclusion from the hearing of any witness or exhibit not disclosed, absent a showing of good cause for such failure.

(5) The committee chair may provide to the committee members in advance of the hearing copies of:

(a) The conduct officer's notification of imposition of discipline (or referral to the committee); and

(b) The notice of appeal (or any response to 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) The parties may agree before the hearing to designate specific exhibits as admissible without objection and if they do so, whether the committee chair may provide copies of these admissible exhibits to the committee members before the hearing.

(7) The student conduct officer, upon request, shall provide reasonable assistance to the respondent in obtaining relevant and admissible evidence that is within the college's control.

(8) Communications between committee members and other hearing participants regarding any issue in the proceeding, other than procedural communications that are necessary to maintain an orderly process, are generally prohibited without notice and opportunity for all parties to participate, and any improper "ex parte" communication shall 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 his/her choice. A respondent may elect to be represented by an attorney at his or her own cost, but will be deemed to have waived that right unless, at least four business 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 will ordinarily be advised by an assistant attorney general. If the respondent is represented by an attorney, the student conduct officer may also be represented by a second, appropriately screened assistant attorney general.

NEW SECTION

WAC 132I-126-280 Student conduct committee hearings—Presentations of evidence. (1) Upon the failure of any party to attend or participate in a hearing, the student conduct committee may either:

(a) With the hearing and issuance of its decision; or

(b) Serve a decision of default in accordance with RCW 34.05.440.

(2) The hearing will ordinarily be closed to the public. However, if all parties agree on the record that some or all of the proceedings be open, the chair shall determine any extent to which the hearing will be open. If any person disrupts the proceedings, the chair may exclude that person from the hearing room.

(3) The chair shall cause the hearing to be recorded by a method that he/she selects, in accordance with RCW 34.05.-449. That recording, or a copy, shall be made available to any party upon request. The chair shall assure maintenance of the record of the proceeding that is required by RCW 34.05.476, which shall also be available upon request for inspection and copying by any party. Other recording shall also be permitted in accordance with WAC 10-08-190.

(4) 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.

(5) The student conduct officer (unless represented by an assistant attorney general) shall present the case for imposing disciplinary sanctions.

(6) All testimony shall be given under oath or affirmation. Evidence shall be admitted or excluded in accordance with RCW 34.05.452.

NEW SECTION

WAC 132I-126-290 Student conduct committee—Initial decision. (1) At the conclusion of the hearing, the student conduct committee shall permit the parties to make closing arguments in whatever form it wishes to receive them. The committee also may permit each party to propose findings, conclusions and/or a proposed decision for its consideration.

(2) Within twenty-one days following the latter 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 shall include findings on all material issues of fact and conclusions on all material issues of law including which, if any, provisions of the student conduct code were violated. Any findings based substantially on the credibility of evidence or the demeanor of witnesses shall be so identified.

(3) The committee's initial order shall also include a determination on appropriate discipline, if any. If the matter was referred to the committee by the student conduct officer, the committee shall identify and impose disciplinary sanction(s) or conditions, if any, as authorized in the student code. If the matter is an appeal by the respondent, the committee may affirm, reverse, or modify the disciplinary sanction and/or conditions imposed by the student conduct officer and/or impose additional disciplinary sanction(s) or conditions as authorized herein.

(4) 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 shall also promptly transmit a copy of the decision and the record of the committee's proceedings to the vice president for student services.

NEW SECTION

WAC 132I-126-300 Appeal from student conduct committee initial decision. (1) A respondent who is aggrieved by the findings or conclusions issued by the student conduct committee may appeal the committee's initial decision to the president by filing a notice of appeal with the president's office within twenty-one 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 shall be deemed final.

(2) The notice of appeal must identify the specific findings of fact and/or conclusions of law in the initial decision that are challenged and must contain argument why the appeal should be granted. If necessary to aid review, the president may ask for additional briefing from the parties on issues raised on appeal. The president's review shall be restricted to the hearing record made before the student conduct committee and will normally be limited to a review of those issues and arguments raised in the notice of appeal.

(3) The president shall provide a written decision to all parties within forty-five days after receipt of the notice of appeal. The president's decision shall be final.

(4) The president shall not engage in an ex parte communication with any of the parties regarding an appeal.

NEW SECTION

WAC 132I-126-350 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 procedure is 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) 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.

(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.

NEW SECTION

WAC 132I-126-400 Supplemental sexual misconduct procedures. (1) Both the respondent and the complainant in cases involving allegations of sexual misconduct shall 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 any disciplinary decision.

(2) Application of the following procedures is limited to student conduct code proceedings involving allegations of sexual misconduct by a student. In such cases, these procedures shall supplement the student disciplinary procedures in WAC 132I-126-010 through 132I-126-300. In the event of conflict between the sexual misconduct procedures and the student disciplinary procedures, the sexual misconduct procedures shall prevail.

NEW SECTION

WAC 132I-126-410 Supplemental definitions. The following supplemental definitions shall apply for purposes of student conduct code proceedings involving allegations of sexual misconduct by a student:

(1) A "complainant" is an alleged victim of sexual misconduct, as defined in subsection (2) of this section.

(2) "Sexual misconduct" has the meaning ascribed to this term in WAC 132I-126-100(13).

NEW SECTION

WAC 132I-126-420 Supplemental complaint process. The following supplemental procedures shall apply with respect to complaints or other reports of alleged sexual misconduct by a student.

(1) The college's Title IX coordinator or designee shall investigate complaints or other reports of alleged sexual misconduct by a student. Investigations will be completed in a timely manner and the findings of the investigation shall be reported to the student conduct officer within sixty days.

(2) Informal dispute resolution shall not be used to resolve sexual misconduct 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.

(3) College personnel will honor requests to keep sexual misconduct complaints confidential to the extent this can be done without unreasonably risking the health, safety and welfare of the complainant or other members of the college community or compromising the college's duty to investigate and process sexual harassment and sexual violence complaints.

(4) The student conduct officer, prior to initiating disciplinary action, will make a reasonable effort to contact the complainant to discuss the results of the investigation and possible disciplinary sanctions and/or conditions, if any, that may be imposed upon the respondent if the allegations of sexual misconduct are found to have merit.

(5) 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 his or her 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.

NEW SECTION

WAC 1321-126-430 Supplemental appeal rights. (1)

The following actions by the student conduct officer may be appealed by the complainant:

- (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.

(2) A complainant may appeal a disciplinary decision by filing a notice of appeal with the conduct review officer within twenty-one days of service of the notice of the discipline decision provided for in WAC 1321-126-420(5). The notice of appeal may include a written statement setting forth the grounds of appeal. Failure to file a timely notice of appeal constitutes a waiver of this right and the disciplinary decision shall be deemed final.

(3) 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.

(4) Except as otherwise specified in this supplemental procedure, 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.

(5) An appeal by a complainant from the following disciplinary actions involving allegations of sexual misconduct against a student shall be handled as a brief adjudicative proceeding:

- (a) Exoneration and dismissal of the proceedings;
- (b) Disciplinary warning;
- (c) Written reprimand;
- (d) Disciplinary probation;
- (e) Suspensions of ten instructional days or less; and/or
- (f) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions.

(6) An appeal by a complainant from disciplinary action imposing a suspension in excess of ten instructional days or an expulsion shall be reviewed by the student conduct committee.

(7) In proceedings before the student conduct committee, respondent and complainant shall have the right to be accompanied by a nonattorney assistant of their choosing during the appeal process. Complainant may choose to be represented at the hearing by an attorney at his or her own expense, but will be deemed to have waived that right unless, at least four business days before the hearing, he or she files a written notice of the attorney's identity and participation with the committee chair, and with copies to the respondent and the student conduct officer.

(8) In proceedings before the student conduct committee, complainant and respondent shall not directly question or cross examine one another. All questions shall be directed to the committee chair, who will act as an intermediary and pose questions on the parties' behalf.

(9) Student conduct hearings involving sexual misconduct allegations shall be closed to the public, unless respondent and complainant both waive this requirement in writing and request that the hearing be open to the public. Complainant, respondent and their respective nonattorney assistants and/or attorneys may attend portions of the hearing where argument, testimony and/or evidence are presented to the student conduct committee.

(10) The chair of the student conduct committee, on the same date as the initial decision is served on the respondent, will serve a written notice upon 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 his or her appeal rights.

(11) Complainant may appeal the student conduct committee's initial decision to the president subject to the same procedures and deadlines applicable to other parties.

(12) The president, on the same date that the final decision is served upon the respondent, shall serve a written notice informing the complainant of the final decision. This notice shall inform the complainant whether the sexual misconduct allegation was found to have merit and describe any

disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent.

**SUPPLEMENTAL DISCIPLINE PROCEDURES FOR
CASES INVOLVING TITLE IX SEXUAL
HARASSMENT**

NEW SECTION

WAC 132I-126-505 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 college's standard disciplinary procedures, WAC 132I-126-010 through 132I-126-300, these supplemental procedures shall take precedence.

NEW SECTION

WAC 132I-126-515 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, the college may impose disciplinary sanctions against a student who commits, attempts to commit, or aids, abets, incites, encourages, or assists another person to commit, an act(s) of "sexual harassment."

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

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

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

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

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

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

(c) Incest. Sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either wholly or half related. Descendant includes stepchildren and adopted children under the age of eighteen.

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

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

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

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

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

(i) The length of the relationship;

(ii) The type of relationship; and

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

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

NEW SECTION

WAC 132I-126-525 Title IX jurisdiction. (1) This supplemental procedure applies only if the alleged misconduct:

(a) Occurred in the United States;

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

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

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

(3) Proceedings under this supplemental procedure must be dismissed if the decision maker determines that one or all of the requirements of subsection (1)(a) through (c) of this section have not been met. Dismissal under this supplemental procedure does not prohibit the college from pursuing other disciplinary action based on allegations that the respondent violated other provisions of the college's student conduct code, chapter 132I-126 WAC.

(4) If the student conduct officer determines the facts in the investigation report are not sufficient to support Title IX jurisdiction and/or pursuit of a Title IX violation, the 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 132I-126-535 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) The college will appoint the party an advisor of the college's choosing at no cost to the party, if the party fails to do so; and
- (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 132I-126-545 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 132I-126-270. 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 the college intends to offer the evidence at the hearing.

NEW SECTION

WAC 132I-126-555 Rights of parties. (1) The college's student conduct procedures, WAC 132I-126-200, and this supplemental procedure shall apply equally to all parties.

(2) The college bears the burden of offering and presenting sufficient testimony and evidence to establish that the

respondent is responsible for a Title IX violation by a preponderance of the evidence.

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

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

NEW SECTION

WAC 132I-126-565 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 132I-126-575 Initial order. (1) In addition to complying with WAC 132I-126-290, the student conduct committee will be responsible for conferring and drafting an initial order that:

- (a) Identifies the allegations of sexual harassment;

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

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

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

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

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

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

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

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

WAC 132I-125-240

WAC 132I-125-260

WAC 132I-125-270

WAC 132I-125-280

WAC 132I-125-290

WAC 132I-125-300

WAC 132I-125-350

WAC 132I-125-400

WAC 132I-125-410

WAC 132I-125-420

WAC 132I-125-430

Brief adjudicative proceedings—
Review of an initial decision.

Student conduct committee.

Appeals to the student conduct
committee.

Student conduct committee hear-
ings—Presentations of evidence.

Student conduct committee—Ini-
tial decision.

Appeal from student conduct com-
mittee initial decision.

Summary suspension.

Supplemental sexual misconduct
procedures.

Supplemental definitions.

Supplemental complaint process.

Supplemental appeal rights.

NEW SECTION

WAC 132I-126-585 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 132I-126-300.

(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 chapter of the Washington Administrative Code is repealed:

WAC 132I-125-010	Statement of jurisdiction.
WAC 132I-125-020	General policies.
WAC 132I-125-030	Authority and responsibility for discipline.
WAC 132I-125-050	Definitions.
WAC 132I-125-100	Prohibited student conduct.
WAC 132I-125-125	Disciplinary sanctions and terms and conditions.
WAC 132I-125-200	Initiation of disciplinary action.
WAC 132I-125-220	Appeal from disciplinary action.
WAC 132I-125-230	Brief adjudicative proceedings— Initial hearing.