

WSR 21-11-001
PERMANENT RULES
DEPARTMENT OF HEALTH

(Board of Nursing Home Administrators)
 [Filed May 6, 2021, 10:28 a.m., effective June 6, 2021]

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

Purpose: WAC 246-843-162 AIDS prevention and information education requirements, for nursing home administrators. The board of nursing home administrators (board) has repealed WAC 246-843-162 in response to ESHB 1551 (chapter 76, Laws of 2020). ESHB 1551 repealed RCW 70.24.270 regarding AIDS education and training requirements for health professionals. As a result, the board has repealed the requirement for AIDS training in WAC.

Citation of Rules Affected by this Order: Repealing WAC 246-843-162.

Statutory Authority for Adoption: RCW 18.52.061.

Adopted under notice filed as WSR 21-02-052 on January 4, 2021.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 1.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 1.

Date Adopted: May 5, 2021.

Carl Christensen, Ph.D., R.N.I.
 Chair

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 246-843-162 AIDS prevention and information education requirements.

WSR 21-11-006
PERMANENT RULES
DEPARTMENT OF HEALTH

(Board of Physical Therapy)
 [Filed May 7, 2021, 10:11 a.m., effective May 7, 2021]

Effective Date of Rule: May 7, 2021.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: RCW 34.05.380 (3)(b) states a rule may become effective immediately upon its filing with the code reviser if the agency estab-

lishes that effective date adopting order and finds that "[t]he rule only delays the effective date of another rule that is not yet effective ..." RCW 18.74.500, Article IX(2) mandates the board of physical therapy to adopt the physical therapy compact commission rules in order for physical therapists to participate in the compact. The commission adopted rules October 25, 2020. Immediate adoption is necessary so as to not further delay participation with the compact commission.

Purpose: WAC 246-915A-010 board of physical therapy compact rules. The board of physical therapy (board) has updated WAC 246-915A-010 to comply with RCW 18.74.500, Article IX(2), which mandates that in order to participate in the physical therapy compact in the state of Washington, the board must adopt compact rules. The physical therapy compact commission made minor amendments to the compact rules. The compact commission held a public rules hearing where the amendments were adopted and became effective on October 25, 2020. The adopted rule complies with the statute by incorporating by reference to the compact commission's rules as of October 25, 2020.

Citation of Rules Affected by this Order: Amending WAC 246-915A-010.

Statutory Authority for Adoption: RCW 18.74.023 and 18.74.500, Article IX(2).

Adopted under notice filed as WSR 21-04-115 on February 1, 2021.

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

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

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

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

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

Date Adopted: April 5, 2021.

Kathryn Dale, PT
 Board Chair

AMENDATORY SECTION (Amending WSR 20-11-063, filed 5/19/20, effective 6/19/20)

WAC 246-915A-010 Physical therapy licensure compact—Compact commission rules. (1) The physical therapy licensure compact (compact) is established in Washington under RCW 18.74.500. Its purpose is to facilitate interstate practice of physical therapy with the goal of improving public access to physical therapy services.

(2) The rules of the physical therapy compact commission, in effect as of October ((27, 2019)) 25, 2020, are adopted and incorporated by reference.

(3) A copy of the rules is available for public inspection from the department of health at <https://www.doh.wa.gov/>

LicensesPermitsandCertificates/ProfessionsNewReneworUpdate/PhysicalTherapyLicensureCompact/RulesinProgress or by calling the department of health's office of customer service at 360-236-4700.

(4) A licensee may exercise a compact privilege as provided in RCW 18.74.500, Article IV. Applicable fees are set forth in WAC 246-915A-990.

WSR 21-11-009

PERMANENT RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed May 7, 2021, 10:54 a.m., effective June 7, 2021]

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

Purpose: The adopted rules implement several changes to Title 192 WAC and 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.

Citation of Rules Affected by this Order: New 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 What information from a proceeding before the appeal tribunal or commissioner is publicly disclosable?; and 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?, 192-620-035 When will a weekly benefit amount be prorated?, and 192-800-045 Can an appeal be withdrawn?

Statutory Authority for Adoption: RCW 50A.05.060, 50A.25.030.

Adopted under notice filed as WSR 21-06-111 on March 3, 2021.

A final cost-benefit analysis is available by contacting April Amundson, Employment Security Department, P.O. Box 9046, Olympia, WA 98507-9046, phone 360-485-2816, TTY Washington relay 711 (contact Teresa Eckstein at 360-507-9890 for accommodations), email rules@esd.wa.gov, website <https://paidleave.wa.gov/rulemaking/>.

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

Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted on the Agency's own Initiative: New 4, Amended 5, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 4, Amended 5, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 4, Amended 5, Repealed 0.

Date Adopted: May 7, 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 21-11-013

PERMANENT RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed May 7, 2021, 1:32 p.m., effective June 7, 2021]

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

Purpose: The adopted rules are the first of three phases of rules to implement portions of the long-term services and supports trust program in Title 50B RCW under the employment security department's (ESD) authority. The 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.

Citation of Rules Affected by this Order: New 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?

Statutory Authority for Adoption: RCW 50B.04.020, 50B.04.085.

Adopted under notice filed as WSR 21-06-110 on March 3, 2021.

Changes Other than Editing from Proposed to Adopted Version: WAC 192-500-005 [192-905-005](1) was restructured to add a reference to a relevant section of statute and for ease of readability.

Original proposal: (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.

Adopted rule: (1) An employee who as [has] long-term care insurance as outlined in RCW 50B.04.085 and attests to this, may apply for an exemption from the premium assessment under RCW 50B.04.080. "Long-term care insurance" has the meaning provided in RCW 48.83.020.

A final cost-benefit analysis is available by contacting April Amundson, ESD, P.O. Box 9046 Olympia, WA 98507-9046, phone 360-485-2816, Washington relay 711 (contact Teresa Eckstein at 360-507-9890 for accommodations), email rules@esd.wa.gov, website <https://esd.wa.gov/newsroom/rulemaking/ltss>.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 4, Amended 0, Repealed 0.

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

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 4, Amended 0, Repealed 0.

Date Adopted: May 7, 2021.

April Amundson
Policy and Rules Manager
Leave and Care Division

Chapter 192-905 WAC

EXEMPTIONS

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 outlined in RCW 50B.04.085 and attests to this, may apply for an exemption from the premium assessment under RCW 50B.04.080. "Long-term care insurance" has the meaning provided in RCW 48.83.020.

(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 21-11-020

PERMANENT RULES ARTS COMMISSION

[Filed May 11, 2021, 9:42 a.m., effective June 11, 2021]

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

Purpose: WAC 30-02-015 Grants, the grants program is increasing the amount the executive director can approve for individual grant awards.

Citation of Rules Affected by this Order: Amending 1.

Statutory Authority for Adoption: RCW 43.46.040.

Other Authority: RCW 43.46.090 through 43.46.095.

Adopted under notice filed as WSR 21-08-050 on April 2, 2021.

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

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

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

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

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

Date Adopted: May 11, 2021.

Karen Hanan
Executive Director

AMENDATORY SECTION (Amending WSR 19-07-001, filed 3/6/19, effective 4/6/19)

WAC 30-12-015 Grants. (1) The commission provides grants through a competitive process to organizations or indi-

viduals for the purpose of developing, sponsoring, and promoting the growth and development of the arts and arts education in the state of Washington.

(2) Staff create and publish applications, application cycles, forms and documents, guidelines, eligibility requirements, review criteria, and select review panelists.

(3) Staff manage the application process. Panelists evaluate and score applications and offer recommendations to the board. See also WAC 30-12-017 (Applications) and WAC 30-12-030 (Panels).

(4) The board reviews panel recommendations and approves grants, except as noted below.

(a) The executive director may approve grants that do not exceed ~~((three))~~ five thousand dollars. Grants approved by the executive director are subject to ratification by the board at the next board meeting.

(b) The board may delegate to the executive director approval of grants that exceed ~~((three))~~ five thousand dollars. Grants approved by the executive director are subject to ratification by the board at the next board meeting.

WSR 21-11-030

PERMANENT RULES

HEALTH CARE AUTHORITY

[Filed May 12, 2021, 8:25 a.m., effective June 12, 2021]

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

Purpose: The new rule establishes when the agency disenrolls health home enrollees for cause and aligns with agency policy.

Citation of Rules Affected by this Order: New WAC 182-557-0500.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 21-06-086 on March 2, 2021.

Changes Other than Editing from Proposed to Adopted Version:

Proposed/Adopted	WAC Subsection	Reason
WAC 182-557-0500 (1)(c)		
Proposed	(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.	The rule now requires a client's assessment and more detail about what must be considered for reasonable modifications.
Adopted	(c) Health homes requesting disenrollment must provide a client's assessment with any reasonable modifications attempted or made of policies, practices, procedures, or the provision of auxiliary aids or services, based on available evidence, in light of a client's special needs, disability, or behavioral health condition.	The agency made these revisions to clarify the standard of review it uses to permit involuntary disenrollment.

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

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

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

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

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

Date Adopted: May 12, 2021.

Wendy Barcus
Rules Coordinator

(b) The client continues to meet the health home eligibility criteria in this chapter.

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 a client's assessment with any reasonable modifications attempted or made of policies, practices, procedures, or the provision of auxiliary aids or services, based on available evidence, 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

WSR 21-11-032

PERMANENT RULES

DEPARTMENT OF HEALTH

(Nursing Care Quality Assurance Commission)

[Filed May 12, 2021, 9:19 a.m., effective June 12, 2021]

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

Purpose: WAC 246-840-111, 246-840-120, 246-840-125, and 246-840-210 through 246-840-260, the nursing care quality assurance commission (commission) is adopting amendments to the continuing competency rules and requirements for active, inactive, expired, and retired active credential statuses. This reduces the continuing education hours from forty-five hours to eight hours, the active practice hours from five hundred thirty-one [hours] to ninety-six hours, and the reporting period from a three year cycle to an annual cycle. These changes are applied to the retired active rule, the active credential rule, the reactivation from expired rule, and the reactivation from inactive rule. The changes reduce the number of hours needed and the reporting period based on research showing that the excess hours do not equate to improvements in competency or patient care.

The commission also adopted changes that now allow the commission to choose to audit licensees based on a random audit, or as part of the disciplinary process and the language for extensions is removed as it is no longer needed.

Citation of Rules Affected by this Order: Repealing WAC 246-840-240; and amending WAC 246-840-111, 246-840-120, 246-840-125, 246-840-210, 246-840-220, 246-840-230, 246-840-250, and 246-840-260.

Statutory Authority for Adoption: RCW 18.79.010 and 18.79.110.

Adopted under notice filed as WSR 21-04-096 on February 1, 2021.

Changes Other than Editing from Proposed to Adopted Version: Changes to the citations in chapter 246-12 WAC resulted in the need to update reference citations in this rule adoption.

A final cost-benefit analysis is available by contacting Shad Bell, P.O. Box 47864, Olympia, WA 98504-7864, phone 360-236-4711, fax 360-236-4738, TTY 711, email Shad.Bell@doh.wa.gov.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 8, Repealed 1.

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 8, Repealed 1.

Date Adopted: March 12, 2021.

Paula R. Meyer, MSN, RN, FRE
Executive Director
Nursing Care Quality
Assurance Commission

AMENDATORY SECTION (Amending WSR 10-24-047, filed 11/24/10, effective 1/1/11)

WAC 246-840-111 Expired license. (1) If the license has expired for three years or less, the practitioner must meet the requirements ~~((of chapter 246-12 WAC, Part 2))~~ in WAC 246-12-020 through 246-12-051.

(2) If the license has expired for more than three years and the practitioner has been in active practice in another United States jurisdiction, the practitioner must:

(a) Submit verification of active practice from any other United States jurisdiction;

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

~~(c) Meet the continuing competency requirements of WAC 246-840-201 through 246-840-207))~~ in WAC 246-12-020 through 246-12-051.

(3) If the license has expired for more than three years and the practitioner has not been in active practice in another United States jurisdiction, the practitioner must:

(a) Successfully complete a commission approved refresher course. The practitioner will be issued a limited educational license to enroll in the refresher course. The limited educational license is valid only while working under the direct supervision of a preceptor and is not valid for employment as a licensed practical or registered nurse;

(b) Meet the requirements ~~((of chapter 246-12 WAC, Part 2))~~ in WAC 246-12-020 through 246-12-051.

AMENDATORY SECTION (Amending WSR 10-24-047, filed 11/24/10, effective 1/1/11)

WAC 246-840-120 Inactive credential. (1) A practitioner may obtain an inactive credential. Refer to the requirements ~~((of chapter 246-12 WAC, Part 4))~~ in WAC 246-12-090 through 246-12-110.

(2) Practitioners with an inactive credential for three years or less who wish to return to active status must meet the requirements ~~((of chapter 246-12 WAC, Part 4 and WAC 246-840-204))~~ in WAC 246-12-090 through 246-12-110.

(3) Practitioners with an inactive credential for more than three years, who have been in active practice in another United States jurisdiction, and wish to return to active status must:

(a) Submit verification of active practice from any other United States jurisdiction;

(b) Meet the requirements ~~((of chapter 246-12 WAC, Part 4;~~

~~(c) Meet the requirements of WAC 246-840-201 through 246-840-207))~~ in WAC 246-12-090 through 246-12-110.

(4) Practitioners with an inactive credential for more than three years, who have not been in active practice in another United States jurisdiction, and wish to return to active status must:

(a) Successfully complete a commission approved refresher course. The practitioner will be issued a limited educational license to enroll in the refresher course. The limited educational license is valid only while working under the direct supervision of a preceptor and is not valid for employment as a licensed practical or registered nurse;

(b) Meet the requirements ~~((of chapter 246-12 WAC, Part 4))~~ in WAC 246-12-090 through 246-12-110.

AMENDATORY SECTION (Amending WSR 16-04-097, filed 2/1/16, effective 3/3/16)

WAC 246-840-125 Retired active credential. (1) A registered or licensed practical nurse may place their credential in "retired active" status by meeting the requirements of this section.

(2) A registered or licensed practical nurse who holds a retired active credential may only practice in intermittent or emergent circumstances.

(a) Intermittent means the registered or licensed practical nurse will practice no more than ninety days a year.

(b) Emergent means the registered or licensed practical nurse will practice only in emergency circumstances such as earthquakes, floods, times of declared war, or other states of emergency.

(3) To obtain a retired active credential a registered or a licensed practical nurse must:

(a) Meet the requirements in WAC 246-12-120.

(b) Pay the appropriate fee in WAC 246-840-990.

(4) To renew a retired active credential the registered nurse or licensed practical nurse must:

(a) Meet the requirements in WAC 246-12-130. The retired active credential fee is in WAC 246-840-990.

(b) Have completed ~~((forty five))~~ eight hours of continuing nursing education ~~((every three years))~~ within a twelve-month period prior to the renewal of licensure in compliance with WAC 246-840-220 (2)(b). Education may include CPR and first aid.

(c) Demonstrate they have practiced at least ~~((ninety six hours every three years))~~ twenty-four hours within a twelve-month period prior to the renewal of licensure. Practice may be paid or volunteer, but must require nursing knowledge or a nursing license.

(d) Renew their retired active credential every year on their birthday.

(5) To return to active status the registered or licensed practical nurse must(=

~~(a))~~ meet the requirements in WAC 246-12-140. The active renewal fee is in WAC 246-840-990.

~~((b) Meet the continuing competency requirements in WAC 246-840-230 (5)(d).))~~

(6) A registered or licensed practical nurse who holds a retired active credential is subject to a continuing competency audit as outlined in WAC 246-840-220(=) and 246-840-230(= ~~and 246-840-240)).~~

AMENDATORY SECTION (Amending WSR 16-04-097, filed 2/1/16, effective 3/3/16)

WAC 246-840-210 Continuing competency definitions. The definitions in this section apply throughout WAC 246-840-200 through 246-840-260 unless the context clearly requires otherwise.

(1) **"Active nursing practice"** means engagement in paid, unpaid, or volunteer activity performing acts requiring substantial nursing knowledge, judgment, and skills described under RCW 18.79.040, 18.79.050, and 18.79.060. Active nursing practice may include, but is not limited to, working as an administrator, quality manager, policy officer, public health nurse, parish nurse, home health nurse, educator, consultant, regulator, and investigator or case manager.

(2) **"Advanced nursing degree"** means education preparation beyond one's initial education for nurse licensure.

(3) **"Attestation"** means the affirmation by signature of the nurse indicating compliance with the standards and terms of the continuing competency requirements.

(4) **"Compliance audit"** means a review of documents to determine whether the nurse has fulfilled the requirements in WAC 246-840-220 through 246-840-260.

(5) **"Continuing competency"** is the ongoing ability of a nurse to maintain, update and demonstrate sufficient knowledge, skills, judgment, and qualifications necessary to practice safely and ethically in a designated role and setting in accordance with the scope of nursing practice. A nurse achieves continuing competency through active practice and continuing nursing education.

(6) **"Continuing nursing education"** refers to systematic professional learning experiences obtained after initial licensure and designed to augment the knowledge, skills, and judgment of nurses and enrich nurses' contributions to quality health care and the pursuit of professional career goals, related to a nurse's area of professional practice, growth and development.

(7) **"Nurse"** means a registered nurse and licensed practical nurse.

(8) **"Review period"** is ~~((three))~~ one full licensing renewal cycle~~((s))~~. For purposes of a compliance audit, the review period will be the ~~((three))~~ one year~~((s))~~ preceding the audit due date.

(9) **"Technical assistance"** means guidance provided by commission staff to help the nurse comply with laws and rules.

AMENDATORY SECTION (Amending WSR 16-04-097, filed 2/1/16, effective 3/3/16)

WAC 246-840-220 Continuing competency requirements—Active status. (1) ~~((At the end of the three-year continuing competency cycle,))~~ Upon license renewal a nurse must attest on a form provided by the department of health declaring completion of the required active nursing practice hours and continuing nursing education hours.

(2) ~~((The))~~ A nurse must complete~~((;))~~ within ~~((each three-year review period))~~ a twelve-month period prior to the renewal of licensure:

(a) A minimum of ~~((five hundred thirty-one))~~ ninety-six hours of active nursing practice; and

(b) A minimum of ~~((forty-five))~~ eight hours of continuing nursing education.

(3) ~~((A nurse will have a full three years to meet the requirements in subsections (1) and (2) of this section. The hours may be accumulated at any time throughout the three-year review period. The review period begins on the licensee's first birthday after receiving the initial license.~~

~~((4))~~ Nurses must complete a qualified suicide prevention training as follows:

(a) ~~((Beginning January 1, 2016,))~~ A registered nurse~~((s))~~, except for registered nurses holding an active certified registered nurse anesthetist license, and licensed practical nurses must complete a one-time, six hour training in suicide assessment, treatment, and management from a qualified suicide prevention training program. The training must be completed by the end of the first full ~~((continuing competency reporting period after or during the first full continuing competency reporting period after initial licensure, whichever is later))~~ year of practice.

(b) ~~((Beginning July 1, 2017,))~~ A qualified suicide training program must be on the model list, required under RCW 43.70.442, to be accepted.

~~((c))~~ ~~((A qualified suicide prevention training program must be an empirically supported training including assessment treatment and management, and must be at least six hours in length which may be provided in one or more sessions.~~

~~((d))~~ The hours spent completing a qualified training program in suicide assessment, treatment, and management under this section counts toward continuing competency requirements in subsection (2)(b) of this section.

~~((e))~~ (4) Nurses who are enrolled in, or have completed prerequisite classes for, an advanced nursing education program are exempt from the continuing competency requirements during their current review period. ~~((A final transcript or transcript of classes documenting current progress towards an advanced degree will be required by the commission for approval of the exemption.))~~

AMENDATORY SECTION (Amending WSR 16-04-097, filed 2/1/16, effective 3/3/16)

WAC 246-840-230 Continuing competency audit process and compliance. (1) The commission ~~((shall))~~ may conduct a compliance audit:

(a) ~~((On all late renewals if continuing competency requirements under WAC 246-840-220(2) are due;~~

~~((b))~~ Through random selection; and

~~((c))~~ (b) At the discretion of the commission, on nurses under the disciplinary process.

(2) The commission will notify a nurse selected for compliance audit at the address on record with the department. ~~((For a nurse selected randomly, notification will be sent with the renewal notice.))~~

(3) The nurse must submit continuing education in clock hours.

(4) ~~((When the nurse is unable to document compliance with WAC 246-840-220, technical assistance may be provided.~~

~~(5) If the nurse is unable to provide the required documentation of compliance with WAC 246-840-220, the nurse may elect to:~~

~~(a) Place his or her license on inactive status as outlined in WAC 246-840-120;~~

~~(b) Let his or her license expire;~~

~~(c) Request an extension under WAC 246-840-240;~~

~~(d) Enter into an agreement, on a form provided by the commission, to complete a minimum of one hundred seventy-seven hours of active nursing practice and fifteen hours of continuing nursing education within one year. A compliance audit will be conducted at the end of the year to ensure compliance with the agreement.~~

~~(6)) Failure to complete the required hours and provide the required documentation(~~(-or intentional deceit, fraud, or misconduct in reporting continuing competency may result in discipline for unprofessional conduct under))~~ may be considered an aggravating factor per WAC 246-16-890 in any disciplinary action for a violation of RCW 18.130.180.~~

AMENDATORY SECTION (Amending WSR 16-04-097, filed 2/1/16, effective 3/3/16)

WAC 246-840-250 Continuing competency requirements—Reactivation from expired status. (1) All nurses applying for reactivation must meet the requirements of ~~((chapter 246-12 WAC, Part 2))~~ WAC 246-12-020 through 246-12-051 and ~~((WAC))~~ 246-840-111.

(2) If a license is expired for more than one year, and the nurse has not held an active nursing license in any United States jurisdiction, the nurse must ~~((provide evidence of five hundred thirty-one))~~ complete ninety-six hours of active nursing practice ~~((in any United States jurisdiction, and forty-five))~~ and eight hours of continuing nursing education ~~((in the last three years.~~

~~(3) If the nurse cannot provide the evidence required in subsection (2) of this section, the nurse shall agree, on the form provided by the commission, to complete a minimum of one hundred seventy-seven hours of active nursing practice and fifteen hours of continuing nursing education within the first year following reactivation. The commission will conduct an audit at the end of the year to ensure compliance with the agreement.~~

~~(4) If the practice hours and continuing nursing education hours required in this section are not completed within one year of reactivation, the commission will refer the nurse for disciplinary action))~~ within one year of reactivation.

AMENDATORY SECTION (Amending WSR 16-04-097, filed 2/1/16, effective 3/3/16)

WAC 246-840-260 Continuing competency requirements—Reactivation from inactive status. (1) All nurses applying for reactivation must meet the requirements of ~~((chapter 246-12 WAC, Part 4))~~ WAC 246-12-090 through 246-12-110 and ~~((WAC))~~ 246-840-120.

(2) If a license is inactive for more than one year, and the nurse has not held an active nursing license in any United States jurisdiction, the nurse must ~~((provide evidence of five hundred thirty-one))~~ complete ninety-six hours of active nursing practice ~~((in any United States jurisdiction, and forty-~~

~~five))~~ and eight hours of continuing nursing education ~~((in the last three years.~~

~~(3) If the licensee cannot provide the evidence required in subsection (2) of this section, the nurse shall agree, on a form provided by the commission, to complete a minimum of one hundred seventy-seven hours of active nursing practice and fifteen hours of continuing nursing education within the first year following reactivation. The commission will conduct an audit at the end of the year to ensure compliance with the agreement.~~

~~(4) If the active nursing practice hours and continuing nursing education hours required in this section are not completed within one year of reactivation, the commission will refer the nurse for disciplinary action))~~ within one year of reactivation.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 246-840-240 Extension.

WSR 21-11-034 PERMANENT RULES LIQUOR AND CANNABIS BOARD

[Filed May 12, 2021, 10:43 a.m., effective June 12, 2021]

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

Purpose: The Washington state liquor and cannabis board (board) has adopted new rule sections and revised existing rule sections in chapters 314-28 and 314-29 WAC to implement the law as established by E2SSB 5549 (chapter 238, Laws of 2020), related to distilleries.

Citation of Rules Affected by this Order: New WAC 314-28-065, 314-28-066, 314-28-067, 314-28-300, 314-28-310, 313-28-320 and 314-29-035; repealing WAC 314-28-095; and amending WAC 314-28-005, 314-28-030, and 314-28-050.

Statutory Authority for Adoption: RCW 66.24.148, 66.24.1471, and 66.08.030.

Other Authority: RCW 66.24.140, 66.24.145, 66.24.146, 66.24.1471, 66.24.1472, 66.24.1473, and 66.24.1474.

Adopted under notice filed as WSR 21-07-078 on March 17, 2021.

A final cost-benefit analysis is available by contacting Audrey Vasek, 1025 Union Avenue S.E., Olympia, WA 98501, phone 360-664-1758, fax 360-704-5027, email rules@lcb.wa.gov, website www.lcb.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 6, Amended 4, Repealed 1.

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

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 6, Amended 4, Repealed 1.

Date Adopted: May 12, 2021.

David Postman
Chair

AMENDATORY SECTION (Amending WSR 14-20-047, filed 9/24/14, effective 10/25/14)

WAC 314-28-005 Definitions. The ~~((following definition applies to distilleries))~~ definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Craft distillery" means any distillery licensed under RCW 66.24.145 and located in the state of Washington.

(2) "Domestic distillery" means any distillery licensed under RCW 66.24.140 and located in the state of Washington.

(3) "Off-site tasting room" means an off-site tasting room licensed under RCW 66.24.146.

(4) "Tasting room" includes both off-site tasting rooms operated by, and on-site tasting rooms operated at, a licensed distillery or craft distillery premises.

AMENDATORY SECTION (Amending WSR 18-02-006, filed 12/20/17, effective 1/20/18)

WAC 314-28-030 ~~((What does a))~~ Distillery license ~~((allow?))~~ (1) A distillery license allows the licensee to(~~(~~

~~(a) Sell spirits of their own production directly to a licensed spirits distributor in the state of Washington and to a licensed spirits retailer in the state of Washington;~~

~~(b) Sell spirits of its own production for consumption off the premises. A distiller selling spirits under this subsection must comply with the applicable laws and rules relating to retailers;~~

~~(c) Provide free or for a charge one half ounce or less samples of spirits of its own production to persons on the premises of the distillery under the following conditions:~~

~~(i) Samples may be altered with nonalcoholic mixers, mixers with alcohol of the distiller's own production, ice, and/or water.~~

~~(ii) The maximum amount of alcohol per person per day is two ounces.~~

~~(iii) Every person who participates in any manner in the service of samples must obtain a class 12 alcohol server permit.~~

~~(d) Contract distilled spirits for, and sell contract distilled spirits to, holders of distillers' or manufacturers' licenses, including licenses issued under RCW 66.24.520, or for export)) engage in activities authorized in RCW 66.24.140.~~

(2) A distillery licensee must comply with all applicable laws and rules including, but not limited to, the sampling, service, and sales requirements in WAC 314-28-065, the tasting

room age restrictions in WAC 314-28-066, and the food offerings requirements in WAC 314-28-067. For information on local city or county requirements, licensees need to contact their local government offices.

~~(3)(a)~~ Contract production is when one distillery, referred to as the "contractor," produces distilled spirits for and sells contract distilled spirits to holders of a distillery license, or manufacturers' license including licenses issued under RCW 66.24.520, referred to as "contractee," and for export from the state. This distilled spirit is referred to as the "product."

~~((a))~~ ~~(i)~~ The contractee is the product owner. The contractee may handle the product under its license as the Revised Code of Washington and the Washington Administrative Code allow.

~~((b))~~ ~~(ii)~~ The contractor is required to physically transport all contracted product to the contractee. The contractor is not allowed to distribute or retail the product.

~~((c))~~ ~~(b)~~ The contractor must submit a copy of the contract to the board prior to production. Any changes in the contract must also be submitted to the board prior to subsequent production. The board may require additional information.

~~((d))~~ ~~(c)~~ The contractor and contractee are required to obtain any federal approvals.

(4) Consistent with RCW 66.24.1474, a distillery licensee may add a spirits, beer, and wine restaurant license as authorized in RCW 66.24.400 at the distillery premises. The licensee must complete an application and submit the application and applicable fees to the board for processing. For more information about spirits, beer, and wine restaurant license requirements, see WAC 314-02-015.

AMENDATORY SECTION (Amending WSR 18-02-006, filed 12/20/17, effective 1/20/18)

WAC 314-28-050 ~~((What does a))~~ Craft distillery license ~~((allow?))~~ (1) A craft distillery license allows a licensee to(~~(~~

~~(a))~~ engage in activities authorized in RCW 66.24.145.

~~(2) A craft distillery licensee must comply with all applicable laws and rules including, but not limited to, the sampling, service, and sales requirements in WAC 314-28-065, the tasting room age restrictions in WAC 314-28-066, and the food offerings requirements in WAC 314-28-067. For information on local city or county requirements, licensees need to contact their local government offices.~~

~~(3) Consistent with RCW 66.24.140, a craft distillery licensee may produce one hundred fifty thousand proof gallons or less of spirits per calendar year. A "proof gallon" is one liquid gallon of spirits that is fifty percent alcohol at sixty degrees Fahrenheit((~~

~~(b) Sell spirits of its own production directly to a customer for off premises consumption, provided that the sale occurs when the customer is physically present on the licensed premises. A craft distiller may not sell liquor products of someone else's production;~~

~~(c) Sell spirits of its own production to a licensed spirits distributor;~~

~~(d) Sell spirits of its own production to a licensed spirits retailer in the state of Washington;~~

~~(e) Sell to out-of-state entities;~~

~~(f) Provide, free or for a charge, samples of spirits of its own production to persons on the distillery premises subject to the following conditions:~~

~~(i) The maximum amount of alcohol per person per day is two ounces.~~

~~(ii) Samples may be altered with nonalcoholic mixers, mixers with alcohol of the distiller's own production, ice, and/or water.~~

~~(iii) Anyone involved in the serving of such samples must have a valid Class 12 alcohol server permit.~~

~~(iv) Samples must be in compliance with RCW 66.28.040;~~

~~(g) Provide samples of spirits of its own production to retailers. Samples must be unaltered, and in compliance with RCW 66.28.040, 66.24.310 and WAC 314-64-08001. Samples are considered sales and are subject to taxes;~~

~~(h) Contract produce spirits for holders of a distiller or manufacturer license).~~

~~((2)) (4) Consistent with RCW 66.24.1474, a craft distillery licensee may add a spirits, beer, and wine restaurant license as authorized in RCW 66.24.400 at the craft distillery premises. The licensee must complete an application and submit the application and applicable fees to the board for processing. For more information about spirits, beer, and wine restaurant license requirements, see WAC 314-02-015.~~

NEW SECTION

WAC 314-28-065 Sampling, service, and sales requirements for distillery and craft distillery licensees—Annual report on revenue from tasting room sales of adulterated spirits for on-premises consumption. Consistent with RCW 66.24.140 and 66.24.145:

(1) Distillery and craft distillery licensees may engage in the following sampling, service, and sales activities:

(a) Sell, for off-premises consumption:

(i) Spirits of their own production;

(ii) Spirits produced by another distillery or craft distillery licensed in Washington, subject to the alcohol stock-keeping unit requirements in subsection (2) of this section; and

(iii) Vermouth and sparkling wine produced by a licensee in Washington, subject to the alcohol stock-keeping unit requirements in subsection (2) of this section.

(b) Serve or sell, for on-premises consumption, samples of spirits of their own production or samples of spirits produced by another distillery or craft distillery licensed in Washington, subject to the alcohol stock-keeping unit requirements in subsection (2) of this section and the following requirements:

(i) Samples may be free or for a charge;

(ii) Each sample must be one-half ounce or less of spirits;

(iii) Spirits samples may be adulterated with water, ice, other alcohol allowed to be sold on-site, or nonalcoholic mixers; and

(iv) A licensee may not allow an individual person to receive more than a cumulative total of two ounces of unadulterated spirits for on-premises consumption. Additional spir-

its purchased for on-premises consumption must be adulterated.

(c) Sell, for on-premises consumption, servings of spirits of their own production or servings of spirits produced by another distillery or craft distillery licensed in Washington, subject to the alcohol stock-keeping unit requirements in subsection (2) of this section and the following requirements:

(i) Servings must be adulterated with water, ice, other alcohol permitted to be sold at the location, or nonalcoholic mixers; and

(ii)(A) The revenue derived from the sale of adulterated spirits for on-premises consumption under (c) of this subsection must not comprise more than thirty percent of the overall gross revenue earned in the tasting room during the calendar year.

(B) The thirty percent limit described in this subsection is an annual limit. As long as the thirty percent limit is not exceeded on an annual basis, revenue that exceeds the thirty percent limit in any one month does not violate the limit.

(C) Consistent with RCW 66.24.140 (2)(c)(ii) and 66.24.145 (3)(b), distilleries and craft distilleries that sell adulterated spirits for on-premises consumption under (c) of this subsection must file an annual report summarizing their revenue sources. The annual report on revenue from tasting room sales of adulterated spirits for on-premises consumption must be filed on a form furnished by the board or in a format approved by the board. The annual report must be submitted to the board by January 25th following the end of the calendar year for the reporting period. (For example, an annual report listing revenue sources for 2021 is due by January 25, 2022.)

(d) Sell, for on-premises consumption, servings of vermouth or sparkling wine produced by a licensee in this state, subject to the alcohol stock-keeping unit requirements in subsection (2) of this section.

(e) Sell nonalcoholic products at retail.

(2) A distillery or craft distillery licensee that provides or sells, for on-premises or off-premises consumption, spirits, sparkling wine, or vermouth produced by another licensee in this state, must meet the following alcohol stock-keeping unit requirements:

(a) Except as provided in (b) of this subsection, at any one time no more than twenty-five percent of a distillery or craft distillery licensee's total alcohol stock-keeping units, offered or sold at the distillery or craft distillery premises and at any off-site tasting rooms, may be vermouth, sparkling wine, or spirits produced by another licensee in this state.

(b) If a distillery or craft distillery licensee sells fewer than twenty different alcohol stock-keeping units of its own production at any one time, it may sell up to five alcohol stock-keeping units of vermouth, sparkling wine, or spirits that are produced by another licensee in this state.

(3) Any person serving or selling spirits or other alcohol authorized to be served or sold by a distillery or craft distillery licensee must obtain a class 12 alcohol server permit.

NEW SECTION

WAC 314-28-066 Tasting room age restrictions for distillery and craft distillery licensees. Consistent with RCW 66.24.140 and 66.24.145:

(1) A distillery or craft distillery licensee must not allow any person under the age of twenty-one to enter a tasting room unless they are accompanied by their parent or legal guardian.

(2)(a) Every tasting room must include a designated area where persons under the age of twenty-one are allowed to enter.

(b) The designated area may be in a separate room or within the tasting room.

(c) The designated area must be separated from the remainder of the tasting room space by a clear demarcation. "Demarcation" has the same meaning and options as provided in WAC 314-02-025(3).

(3) Persons under the age of twenty-one are not allowed on the premises of a licensed distillery, craft distillery, or off-site tasting room past 9:00 p.m., unless:

(a) They are on the premises during an event where a private party has secured a banquet permit (see chapter 314-18 WAC); or

(b) They are the children of owners, operators, or managers of the licensed distillery, craft distillery, or off-site tasting room, and they are under direct supervision of their parent or legal guardian while on the premises.

NEW SECTION

WAC 314-28-067 Food offerings requirements. (1) Consistent with RCW 66.24.1471, licensed distilleries, craft distilleries, and off-site tasting rooms must comply with the food offerings requirements in this section. "Food offerings" has the same meaning as provided in RCW 66.24.1471.

(a) Food offerings may be prepackaged for individual sale and consumption.

(b) Food offerings may be preprepared off-site for plating for the customer.

(c) Food offerings are not required to be warmed, cooked, or heated off-site or on-site prior to service.

(d) Food heating devices or preparation apparatuses are not required to be installed, maintained, or used to prepare any food offerings.

(2) In addition to the food offerings requirements in this section, licensed distilleries, craft distilleries, and off-site tasting rooms must comply with all applicable requirements in RCW 66.24.1471 including, but not limited to, requirements related to posting lists of local restaurants or food trucks and any local city or county health requirements. For information on local city or county health requirements, licensees need to contact their local health department.

NEW SECTION

WAC 314-28-300 Off-site tasting room license. (1) Distillery and craft distillery licensees may apply for an off-site tasting room license as authorized in RCW 66.24.146.

(2) Consistent with RCW 66.24.146:

(a) A distillery or craft distillery licensee is eligible for up to two off-site tasting room licenses located in this state, subject to the limit on the total number of off-site tasting room licenses under RCW 66.24.1473.

(b) Off-site tasting rooms may be indoors, outdoors, or a combined indoor and outdoor area. For requirements related to outside alcohol service, see WAC 314-03-200.

(c) The fee for each off-site tasting room license is two thousand dollars per year.

(3) An off-site tasting room must comply with all applicable requirements in RCW 66.24.146 and any other applicable laws and rules including, but not limited to, the sampling, service, and sales requirements in WAC 314-28-065, the tasting room age restrictions in WAC 314-28-066, and the food offerings requirements in WAC 314-28-067. For information on local city or county requirements, licensees need to contact their local government offices.

(4) RCW 66.24.146 allows an off-site tasting room to have a section identified and separated as a federally bonded space for the storage of bulk or packaged spirits, and allows products of the licensee's own production to be bottled or packaged in the space. A licensee engaging in this activity at an off-site tasting room must comply with all applicable federal laws and regulations and obtain any required federal approvals.

(5) Consistent with RCW 66.24.1474, an off-site tasting room licensee may add a spirits, beer, and wine restaurant license as authorized in RCW 66.24.400 at the off-site tasting room premises. The licensee must complete an application and submit the application and applicable fees to the board for processing. For more information about spirits, beer, and wine restaurant license requirements, see WAC 314-02-015.

NEW SECTION

WAC 314-28-310 Jointly operated off-site tasting rooms. (1) Jointly operated off-site tasting rooms are allowed as authorized in RCW 66.24.1472. Consistent with RCW 66.24.1472:

(a) Any licensed distillery, craft distillery, or domestic winery, or any combination of these licensees, may jointly occupy and co-operate up to two off-site tasting room locations described in WAC 314-28-300. The limit of four winery additional locations in WAC 314-24-161 and RCW 66.24.-170 does not apply to the two jointly operated off-site tasting room locations allowed under this section.

(b)(i) At a jointly operated off-site tasting room, distillery and craft distillery licensees may sample, serve, and sell products subject to the requirements in WAC 314-28-065, and domestic winery licensees may sample, serve, and sell products subject to the requirements in chapter 314-24 WAC.

(ii) Consistent with RCW 66.24.140 and 66.24.145, a licensee may not allow an individual person to receive more than a cumulative total of two ounces of unadulterated spirits for on-premises consumption at a jointly operated off-site tasting room, regardless of the number of licensees operating at a jointly operated off-site tasting room.

(c) At a jointly operated off-site tasting room, licensees must:

(i) Maintain separate storage of products and separate financial records. If licensees share any point of sale system, the licensees must keep complete documentation and records for the shared point of sale system showing clear separation as to what sales items and categories belong to each respective licensee;

(ii) Comply with the applicable laws and rules relating to retailers; and

(iii) Share staffing resources under a written plan. The written plan should demonstrate in general how responsibility for staffing the premises is shared among the licensees. Licensees are not required to submit the written plan to the board at the time of application or alteration but must keep documentation of an up-to-date written plan available for inspection on premises.

(2) In addition to the requirements in this section, jointly operated off-site tasting rooms must comply with all applicable requirements in RCW 66.24.1472 and any other applicable laws and rules including, but not limited to, the tasting room age restrictions in WAC 314-28-066 and the food offerings requirements in WAC 314-28-067. For information on local city or county requirements, licensees need to contact their local government offices.

(3) Responsibility for violations or enforcement issues will be determined consistent with RCW 66.24.1472(5).

NEW SECTION

WAC 314-28-320 Jointly operated conjoined consumption areas. (1) Jointly operated conjoined consumption areas are allowed as authorized in RCW 66.24.1472. Consistent with RCW 66.24.1472:

(a) Any domestic brewery, microbrewery, domestic winery, distillery, or craft distillery, or any combination of these licensees, whose property parcels or buildings are located in direct physical proximity to one another may share a jointly operated conjoined consumption area. "Direct physical proximity" means that the property parcels or buildings are physically connected or touching each other along a boundary or at a point.

(b) The jointly operated conjoined consumption area may be a standing or seated tasting area for patrons to use, which may be indoors, outdoors, or a combined indoor and outdoor area. For requirements related to outside alcohol service, see WAC 314-03-200.

(c)(i) Each licensee may sample, serve, and sell products as authorized under the terms of their respective licenses for on-premises consumption in the jointly operated conjoined consumption area. For the requirements applicable to:

(A) Distillery and craft distillery licensees, see WAC 314-28-065.

(B) Domestic winery licensees, see chapter 314-24 WAC.

(C) Domestic brewery and microbrewery licensees, see chapter 314-20 WAC.

(ii) Consistent with RCW 66.24.140 and 66.24.145, a licensee may not allow an individual person to receive more than a cumulative total of two ounces of unadulterated spirits for on-premises consumption at a jointly operated conjoined consumption area, regardless of the number of licensees operating at a jointly operated conjoined consumption area.

(iii) Consistent with WAC 314-11-065, a licensee may not permit the removal of liquor in an open container from the jointly operated conjoined consumption area, except to reenter the licensed premises where the liquor was purchased. Signage prohibiting the removal of liquor in an open container must be visible to patrons in the jointly operated conjoined consumption area.

(d) In a jointly operated conjoined consumption area, licensees must:

(i) Maintain separate storage of products and separate financial records. If licensees share any point of sale system, the licensees must keep complete documentation and records for the shared point of sale system showing clear separation as to what sales items and categories belong to each respective licensee;

(ii) Use distinctly marked glassware or serving containers to identify the source of any product being consumed. The distinctive markings may be either permanent or temporary. Any temporary markings must remain on the glassware or serving containers through the duration of use by the customer;

(iii) Comply with the applicable laws and rules relating to retailers; and

(iv) Share staffing resources under a written plan. The written plan should demonstrate in general how responsibility for staffing the premises is shared among the licensees. Licensees are not required to submit the written plan to the board at the time of application or alteration but must keep documentation of an up-to-date written plan available for inspection on premises.

(2) In addition to the requirements in this section, licensees at jointly operated conjoined consumption areas must comply with all requirements in RCW 66.24.1472 and any other applicable laws and rules including, but not limited to:

(a) For distillery and craft distillery licensees, the tasting room age restrictions in WAC 314-28-066 and the food offerings requirements in WAC 314-28-067.

(b) For domestic winery licensees, see chapter 314-24 WAC.

(c) For domestic brewery and microbrewery licensees, see chapter 314-20 WAC.

(d) For information on local city or county requirements, licensees need to contact their local government offices.

(3) Responsibility for violations or enforcement issues will be determined consistent with RCW 66.24.1472(5).

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 314-28-095 Farmer's market spirits sales.

AMENDATORY SECTION (Amending WSR 09-21-050, filed 10/14/09, effective 11/14/09)

WAC 314-29-035 Group 4 nonretail violations. Group 4 violations are violations involving the manufacture, supply, and/or distribution of liquor by nonretail licensees and prohibited practices between a nonretail licensee and a retail licensee.

Violation type	1st Violation	2nd Violation in a two-year window	3rd Violation in a two-year window	4th Violation in a two-year window
Providing credit to a retail licensee. RCW 66.28.010 WAC 314-12-140 WAC 314-12-145 WAC 314-13-015 WAC 314-13-020	3 day suspension or \$500 monetary option	5 day suspension or \$2,500 monetary option	10 day suspension or \$5,000 monetary option	20 day suspension or \$10,000 monetary option
Quantity discount. RCW 66.28.170 RCW 66.28.180	3 day suspension or \$500 monetary option	5 day suspension or \$2,500 monetary option	10 day suspension or \$5,000 monetary option	20 day suspension or \$10,000 monetary option
Giving away liquor in violation of liquor law or rule. RCW 66.28.040 WAC 314-64-080 WAC 314-64-08001	3 day suspension or \$500 monetary option	5 day suspension or \$2,500 monetary option	10 day suspension or \$5,000 monetary option	20 day suspension or \$10,000 monetary option
Consignment sales/return of product in violation of liquor law or rule. RCW 66.28.010 WAC 314-12-140 WAC 314-13-015 WAC 314-20-070 WAC 314-20-090 WAC 314-24-210	3 day suspension or \$500 monetary option	5 day suspension or \$2,500 monetary option	10 day suspension or \$5,000 monetary option	20 day suspension or \$10,000 monetary option
Advertising violations involving prohibited practices between a nonretail and a retail licensee. RCW 66.28.010 RCW 66.24.570 WAC 314-05-030 WAC 314-52-040 WAC 314-52-070 WAC 314-52-080 WAC 314-52-090 WAC 314-52-113	3 day suspension or \$500 monetary option	5 day suspension or \$2,500 monetary option	10 day suspension or \$5,000 monetary option	20 day suspension or \$10,000 monetary option

Violation type	1st Violation	2nd Violation in a two-year window	3rd Violation in a two-year window	4th Violation in a two-year window
<p>Price lists/labeling/ packaging violations. RCW 66.24.145 RCW 66.28.100 RCW 66.28.110 RCW 66.28.120 RCW 66.28.180 WAC 314-20-020 WAC 314-20-030 WAC 314-20-100 WAC 314-20-130 WAC 314-24-003 WAC 314-24-006 WAC 314-24-040 WAC 314-24-080 WAC 314-24-090 WAC 314-24-190 WAC 314-28-090</p>	<p>3 day suspension or \$500 monetary option</p>	<p>5 day suspension or \$2,500 monetary option</p>	<p>10 day suspension or \$5,000 monetary option</p>	<p>20 day suspension or \$10,000 monetary option</p>
<p>Agents violations: Nonretail licensee employing an unlicensed agent. RCW 66.24.310 RCW 66.28.050 WAC 314-44-005</p>	<p>3 day suspension or \$500 monetary option</p>	<p>5 day suspension or \$2,500 monetary option</p>	<p>10 day suspension or \$5,000 monetary option</p>	<p>20 day suspension or \$10,000 monetary option</p>
<p>Unauthorized product/unapproved storage or delivery. RCW 66.24.140 RCW 66.24.160 RCW 66.24.170 RCW 66.24.185 RCW 66.24.200 RCW 66.24.203 RCW 66.24.206 RCW 66.24.240 RCW 66.24.244 RCW 66.24.250 RCW 66.24.261 RCW 66.24.395 RCW 66.28.010 RCW 66.44.140 RCW 66.44.150 RCW 66.44.160 RCW 66.44.170 WAC 314-20-015 WAC 314-20-017</p>	<p>3 day suspension or \$500 monetary option</p>	<p>5 day suspension or \$2,500 monetary option</p>	<p>10 day suspension or \$5,000 monetary option</p>	<p>20 day suspension or \$10,000 monetary option</p>

Violation type	1st Violation	2nd Violation in a two-year window	3rd Violation in a two-year window	4th Violation in a two-year window
WAC 314-20-055 WAC 314-20-095 WAC 314-20-120 WAC 314-20-160 WAC 314-20-170 WAC 314-24-070 WAC 314-24-115 WAC 314-24-120 WAC 314-24-140 WAC 314-24-160 ((WAC 312-24-161 {WAC 314-24-161})) WAC 314-24-161 WAC 314-24-220 WAC 314-25-020 WAC 314-25-030 WAC 314-25-040 WAC 314-28-050				
Sampling/tasting/food offerings violations. RCW 66.20.010 <u>RCW 66.24.140</u> RCW 66.24.145 <u>RCW 66.24.1471</u> RCW 66.24.170 RCW 66.28.040 RCW 66.28.150 WAC 314-20-015 WAC 314-24-160 <u>WAC 314-28-065</u> <u>WAC 314-28-067</u> WAC 314-45-010 Chapter 314-64 WAC	3 day suspension or \$500 monetary option	5 day suspension or \$2,500 monetary option	10 day suspension or \$5,000 monetary option	20 day suspension or \$10,000 monetary option
Entertainment/instruction/meeting/trade show violations. RCW 66.20.010 RCW 66.28.010 RCW 66.28.042 RCW 66.28.043 RCW 66.28.150 RCW 66.28.155 WAC 314-45-010	3 day suspension or \$500 monetary option	5 day suspension or \$2,500 monetary option	10 day suspension or \$5,000 monetary option	20 day suspension or \$10,000 monetary option
Providing/accepting money or money's worth: Goods or services worth up to \$1,500. RCW 66.28.010 WAC 314-12-140 WAC 314-44-005	3 day suspension or \$500 monetary option	5 day suspension or \$2,500 monetary option	10 day suspension or \$5,000 monetary option	20 day suspension or \$10,000 monetary option

Violation type	1st Violation	2nd Violation in a two-year window	3rd Violation in a two-year window	4th Violation in a two-year window
Providing/accepting money or money's worth: Goods or services worth over \$1,500. RCW 66.28.010 WAC 314-12-140 WAC 314-44-005	Cost of item or service provided plus: 3 day suspension or \$1,000 monetary option	Cost of item or service provided plus: 5 day suspension or \$2,500 monetary option	Cost of item or service provided plus: 10 day suspension or \$5,000 monetary option	Cost of item or service provided plus: 20 day suspension or \$10,000 monetary option
Providing/accepting exclusive or contingency agreements. RCW 66.28.010 RCW 66.24.570 WAC 314-12-140 WAC 314-05-030	3 day suspension or \$1,000 monetary option	10 day suspension or \$6,000 monetary option	20 day suspension or \$12,000 monetary option	30 day suspension or \$20,000 monetary option
Unauthorized interest or ownership in retail license. RCW 66.28.010 WAC 314-12-030	3 day suspension or \$1,000 monetary option	30 day suspension or \$20,000 monetary option	Cancellation of license	
<u>Failure to follow stock-keeping unit requirements.</u> <u>RCW 66.24.140</u> <u>RCW 66.24.145</u> <u>WAC 314-28-065</u>	<u>3 day suspension or \$500 monetary option</u>	<u>5 day suspension or \$2,500 monetary option</u>	<u>10 day suspension or \$5,000 monetary option</u>	<u>20 day suspension or \$10,000 monetary option</u>
<u>Failure to file annual report on revenue from tasting room sales of adulterated spirits for on-premises consumption.</u> <u>RCW 66.24.140</u> <u>RCW 66.24.145</u> <u>WAC 314-28-065</u>	<u>3 day suspension or \$250 monetary option</u>	<u>5 day suspension or \$500 monetary option</u>	<u>10 day suspension or \$1,000 monetary option</u>	
<u>Failure to maintain 30% annual limit on overall gross revenue per tasting room derived from sales of adulterated spirits for on-premises consumption.</u> <u>RCW 66.24.140</u> <u>RCW 66.24.145</u> <u>WAC 314-28-065</u>	<u>3 day suspension or monetary option of \$100 per percentage point over the 30% limit</u>	<u>5 day suspension or monetary option of \$200 per percentage point over the 30% limit</u>	<u>10 day suspension or monetary option of \$300 per percentage point over the 30% limit</u>	
Failure to obtain surety bond/savings account, if required by the board. RCW 66.24.210 RCW 66.24.290 WAC 314-19-020	Immediate suspension of license until surety bond has been obtained and all missing reports are filed and late taxes are paid.			

Violation type	1st Violation	2nd Violation in a two-year window	3rd Violation in a two-year window	4th Violation in a two-year window
Failure to file tax/shipment report. RCW 66.24.210 RCW 66.24.290 WAC 314-19-005 WAC 314-19-010 WAC 314-19-020	3 day suspension or \$250 monetary option	5 day suspension or \$500 monetary option	10 day suspension or \$1,000 monetary option	20 day suspension or \$2,000 monetary option
Certificate of approval (COA) and/or authorized representative violations. RCW 66.24.206 WAC 314-19-005 WAC 314-19-010 WAC 314-19-020	15 day suspension or \$100 monetary option	30 day suspension or \$500 monetary option	180 day suspension or \$1,000 monetary option	Cancellation of license

WSR 21-11-038
PERMANENT RULES
SPOKANE REGIONAL
CLEAN AIR AGENCY

[Filed May 12, 2021, 2:55 p.m., effective June 21, 2021]

Effective Date of Rule: June 21, 2021.

Purpose: Amend Spokane Regional Clean Air Agency (SRCAA) Regulation I, Article VI, Section 6.13; and Article X, Section 10.08. The amendments clarify requirements, align the twenty-five year old surface coating regulation with the federal regulations adopted in 2008 and local new source review (NSR) regulations adopted in July 2020. The amendments will close the loop with the NSR regulations by including a low usage threshold in the surface coating regulation. Small, low usage operations below the threshold will be exempt from enclosure and control requirements, reducing the regulatory burden for the small business and help to conserve agency resources by focusing on sources with the potential to have increased emissions or nuisance concerns. The amendments will not change fees or add new requirements for businesses to meet.

Citation of Rules Affected by this Order: Amending SRCAA Regulation I, Article VI, Section 6.13; and Article X, Section 10.08.

Statutory Authority for Adoption: RCW 70A.15.2040.

Adopted under notice filed as WSR 21-07-075 on March 17, 2021.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

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

Date Adopted: May 6, 2021.

Margee Chambers
 Rule Writer
 SIP Planner

AMMENDATORY SECTION
SECTION 6.13 ((GENERAL)) SURFACE COATING

(A) Purpose. SRCAA Regulation I, Article VI, Section 6.13 establishes controls on surface coating operations in Spokane County ((in order)) to:

- (1) Reduce particulate emissions from coating over-spray;
- (2) Reduce public exposure to Toxic Air Pollutants as listed in Chapter 173-460 WAC;
- (3) Reduce emissions of precursors to the formation of tropospheric ozone and other photochemical oxidants; and
- (4) Encourage pollution prevention.

(B) Applicability. Section 6.13 applies to all commercial surface coating operations in Spokane County. Section 6.13 includes all surface preparation, surface coating, cleanup, and disposal associated with ((general)) commercial surface coating operations in Spokane County, unless specifically exempted.

(C) Definitions. Unless a different meaning is clearly required by context, words, and phrases used in Section 6.13, the following definitions apply to Section 6.13: ((shall have the following meaning:))

(1) *Airless Spray* means a spraying system that uses hydraulic atomization instead of air atomization. The coating is supplied to the gun under high fluid pressure between

1,000 and 3,000 psig and the coating is forced through a small orifice.

(2) *Air-Assisted Airless Spray* means a spraying system that combines air and airless features. An airless type fluid tip atomizes the paint and shapes the fan pattern at fluid pressures between 300 and 1,000 psig. Lower pressure air from 10 to 30 psig combines at the spray cap to adjust the fan shape to eliminate heavy edges (tails).

(3) *Automated* means the technique, method, or system of operating or controlling a process by mechanical, electrical, hydraulic, or electronic means independent of human intervention.

(4) *Brush Coat Application* means manual application of coatings by use of a paint brush.

(5) *Coating* means a material or formulation of materials that is applied to or impregnated into a surface in order to beautify, protect, enhance the function, or otherwise cover the surface.

(6) *Commercial Surface Coating* means surface coaters related to or engaged in commerce; excluding non-commercial hobbyist surface coaters where coating is performed by either the owner or current household members on their own property or residence, coating an object they own, e.g. cabinet, motor vehicle, motor vehicle components.

(7) *Container* means the individual receptacle that holds a coating or coating component for storage and distribution.

(8) *Dip Coat Application* means application of coatings in which the surface to be coated is immersed in a solution (or dispersion) containing the coating material and withdrawn.

(9) *Electrostatic Application* means application of coatings where an electrostatic potential is created between the part to be coated and the paint particles.

(10) *Exempt Solvent* means a solvent, or solvent component, that is not a volatile organic compound (VOC).

(11) *Flow Coat Application* means application of coatings by flowing the coating over the surface to be coated and draining the excess coating to a collection system.

(12) *General Surface Coating* means any application of coatings to substrates, other than motor vehicle and/or motor vehicle component surface coating.

(13) *High Volume, Low Pressure (HVLP) or Low Volume, Low Pressure (LVLP) coating system* means equipment used to apply coatings by means of a spray gun which operates between 0.1 and 10.0 psig air pressure measured at the nozzle and that exhibits a minimum transfer efficiency of 65%, as applied.

(14) *Light Duty Vehicle* means a passenger car, truck, van, or other motor vehicle which has a gross vehicle weight of eight thousand-five hundred (8,500) pounds or less, or components thereof.

(15) *Motor Vehicle and Motor Vehicle Component Surface Coating* means the application of coatings to assembled motor vehicles, motor vehicle parts and components, and mobile equipment, including but not limited to any device that may be towed or driven on a roadway: light duty vehicles, golf carts, vans, motorcycles, heavy-duty trucks, truck trailers, fleet delivery trucks, buses, mobile cranes, bulldozers, construction equipment, agricultural equipment, street

cleaners, motor homes, and other recreational vehicles (including camping trailers and fifth wheels).

(16) *Multi-Coat System* means a coating system where more than one product or coat is sequentially applied to the same surface and generally consists of a pigmented base coat, one or more semi-transparent mid-coats, and a transparent clear coat. The VOC content for a multi-coat system shall be calculated as follows:

$$VOC_{TM} = \frac{VOC_{BC} + VOC_{X1} + VOC_{X2} + \dots + VOC_{Xn} + 2VOC_{CC}}{n+3}$$

where:

VOC_{TM} is the average sum of the VOC content, as applied to the surface, in a multi-coat system; ((and))

VOC_{BC} is the VOC content, as applied to the surface, of the base coat; ((and))

VOC_{X} is the VOC content, as applied to the surface, of each sequentially applied mid-coat; ((and))

VOC_{CC} is the VOC content, as applied to the surface, of the clear coat (Two coats are applied); and

n is the total number of coats applied to the primer coat(s) surface.

(17) *Non-Spray Application* means coatings that are applied using an application method other than spray application, including, but not limited to, flow coat, roll coat, dip coat, and brush coat methods.

(18) *Portable Surface Coating* means an operation that travels with coating equipment and moves between customer locations to apply coatings to motor vehicles, motor vehicle components, and mobile equipment. The site where the coating takes place is not used by the coating operator as a fixed operating location.

(19) *Potential-to-Emit (PTE)* means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the stationary source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is enforceable. Secondary emissions are not included in determining the PTE of a stationary source.

(20) *Pre-packaged Aerosol Can Application* means application of coatings from cans which are sold by the coating supplier as non-reusable, hand-held pressurized containers. The coating is expelled as a finely divided spray when a valve on the container is depressed.

(21) *Primer* means any coating that is applied to a surface to enhance corrosion resistance, protection from the environment, functional fluid resistance, and adhesion of subsequently applied coatings.

(22) *Reducer* means any solvent added to a coating which has the effect of reducing the viscosity of the coating or shortening the drying time.

(23) *Refinishing* means reapplying coating to a surface to repair, restore, or alter the finish.

(24) *Roll Coat Application* means manual application of coatings by the use of a paint roller.

~~((19))~~(25) *Solvent Consumption* means the volume of solvent purchased or otherwise procured, less the volume recycled or disposed. In the absence of records which document the transfer of solvent to an authorized recycler or waste hauler, solvent consumption means the volume of solvent purchased or otherwise procured.

(26) Spray Application means coatings that are applied using a device that creates an atomized mist of coating and deposits the coating on a substrate.

~~((20))~~(27) Standard Engineering Practices means that accepted, peer reviewed sets of criteria are used in designing equipment (i.e. Uniform Building, Electrical, and Fire Codes, recommendations of the American Conference of Governmental Industrial Hygienists, guidelines of the Department of Labor and Industry, etc.).

~~((21))~~(28) Surface Coating means the application of coating to a surface.

~~((22))~~(29) VOC Content means pounds of VOC per gallon of coating (Lb/Gal) or grams of VOC per liter of coating (G/L), minus water and exempt solvents. The VOC content is calculated as follows:

$$VOC_{CT} = \frac{W_V}{V_M - V_W - V_{ES}}$$

where:

VOCCT is the VOC content of the coating, as applied to the surface; and

WV is the weight of VOC per unit volume of coating, as applied to the surface; ~~((and))~~

VM is the unit volume of coating, as applied to the surface; ~~((and))~~

VW is the volume of water per unit volume of coating, as applied to the surface; and

VES is the volume of exempt solvents per unit volume of coating, as applied to the surface.

~~((23))~~(30) Wash Solvent means any solution, solvent, suspension, compound, or other material, excluding water, which is used to clean spray equipment, spray equipment lines, containers, and any other equipment associated with the application of coatings.

~~((24))~~(31) Wipe-Down Agent means any solution, solvent, suspension, compound, or other material that is applied to a surface exclusively for cleaning the surface or preparing the surface for coating.

(D) Prohibitions on Emissions.

(1) No person shall cause or allow the application of any coating which contains greater than 0.1% by weight of one or more compounds of lead or hexavalent chromium.

(2) Light duty vehicle refinishing - prohibitions on VOC content. ~~((Except as provided in Section 6.13(F), n))~~ No person shall cause or allow the application of any coating or other agent to any light duty vehicle or ~~((light duty))~~ motor vehicle components, with a VOC content in excess of the limits listed in 40 CFR Part 59, Subpart B, Table 1 - EPA National Volatile Organic Compound Emission Standards for Automobile Refinish Coatings, except as provided in Section 6.13(F).

(E) Requirements. All persons subject to the requirements of Section 6.13 ~~((shall))~~ must comply with all of the following, unless exempted under Section 6.13(F).

(1) Enclosure and ~~((E))~~ controls. Spray application ~~((shall))~~ must be conducted in a booth or area which is vented to ~~((an))~~ a properly operating particulate control system. The particulate control system, including filtration, ducting, and fan ~~((shall))~~ must be installed and sized according to standard engineering practices and operated and maintained according to the manufacturer's recommendations and operating manuals.

(a) Acceptable filtration methods include:

~~((a))~~1. Filter banks supplied with filter media designed for spray booth applications.

~~((b))~~2. Water baths where the inlet air flow to the water bath is submerged.

~~((c))~~3. Water wall systems that form a continuous water curtain through which the particulate flow stream must pass.

~~((d))~~4. Other filtration methods that have received the prior written approval of the Control Officer.

~~((+))~~(b) The control system ~~((shall))~~ must be equipped with a fan which is capable of capturing all visible overspray.

(c) Emissions ~~((from the booth/area shall))~~ must be vented to the atmosphere through a vertical stack. The top of the exhaust stack ~~((vent shall))~~ must be at least six (6) feet above the penetration point of the roof, or if the exhaust stack ~~((vent))~~ exits horizontally out the side of the building, then the exhaust stack ~~((vent shall))~~ must vent vertically at least six (6) feet above the eaves of the roof. A higher stack ~~((vent))~~ may be required if the Agency determines that it is necessary for compliance with Article VI, Section 6.04. ~~((There shall be no f))~~ Flow obstructions (elbows, tees, or stack caps) are prohibited inside of, or at the top of, the stack that will impede upward vertical flow of the exhausted air.

~~((2-))~~(d) It ~~((shall be))~~ is the owner ~~((+))~~ and operator's responsibility to comply with other applicable federal, state, and local regulations for the stack ~~((vent))~~.

(2) Visible ~~((E))~~ emissions. Visible emissions from the stack ~~((shall))~~ must not exceed 10% opacity averaged over any six (6) minute period, as determined by EPA Method 9.

(3) Application ~~((M))~~ methods. Except as provided in Section 6.13(F), no person shall cause or allow the application of any coating or other agent containing VOC unless the coating or agent is applied by one of the following methods:

(a) High Volume, Low Pressure coating system;

(b) Low Volume, Low Pressure coating system;

(c) Wet or Dry electrostatic application;

(d) Flow coat application;

(e) Dip coat application;

(f) Brush coat application;

(g) Pre-packaged aerosol can application;

(h) Roll coat application;

(i) A spraying technique that when tested, using the methodology presented in ASTM Standard D 5327-92, or when test documentation, provided to and approved by the Agency, exhibits that the spraying technique has a transfer efficiency of at least 65%; or

(j) Alternate application methods that have received the written approval of the Control Officer. Such alternate methods may be used, provided that the owner or operator makes a written request to use an alternate method and the Control Officer grants written approval. These methods include but

are not limited to the following application methods and circumstances:

1. Airless and Air-Assisted Airless Spray systems may be used under any of the following circumstances:

a. ~~((w))~~ When the volatile organic compound (VOC) emissions are determined by the Control Officer to be no more than VOC emissions that would be generated by a spray application with a transfer efficiency of 65%;

b. ~~((w))~~ When the spraying operation is automated;

c. ~~((w))~~ When spray painting structural steel members where the coating, as formulated by the coating manufacturer, does not require addition of reducers to spray, and is delivered under high pressure (greater than 1,000 psig for airless, or greater than 300 psig for air-assisted airless) to the application system; or

d. ~~((w))~~ Where the Control Officer has determined that the coating cannot be feasibly applied with a method that has a minimum transfer efficiency of 65%.

(4) ~~((Equipment))~~ Cleanup.

(a) Spray guns and paint equipment must be cleaned in an enclosed gun cleaner/washer; or if not using an enclosed gun cleaner, after wash solvent has made contact with the equipment being cleaned, the wash solvent must be immediately drained into a container that is kept closed. ((Equipment cleanup and any other use of wash solvent shall be totally enclosed during washing, rinsing, and draining; or wash solvent, after making contact with the equipment being cleaned, shall be immediately drained to a closed sump which is an integral part of the cleaning system.))

~~((5))~~ General Clean-up.)

~~((a))~~ (b) All ((unused or partially used)) containers of coatings, wipe-down agents, wash solvents, reducers, and waste materials containing VOC ((shall)) must be kept closed, except when ((in use)) materials are being added, mixed, or removed. ((- when being filled or emptied.)) Empty containers as defined in WAC 173-303-160 are exempt.

~~((b))~~ (c) Spills must be cleaned up upon discovery. ((and t)) The cleaned up materials and collected waste ((shall)) must be stored in closed metal containers.

~~((e))~~ (d) All disposable materials which contain VOCs associated with wipe-down or application of coatings and other agents, ((shall)) must be stored in closed metal containers for disposal.

~~((6))~~ (5) Recordkeeping. All persons subject to Section 6.13 ((shall)) must maintain the following records for the previous twenty-four (24) month period at the place of business where surface coating is performed:

(a) The most current ~~((material))~~ safety data sheets ~~((M))~~ SDS or other data sheets which clearly indicate the VOC content of the product and of any multi-coat system ~~((:))~~;

(b) Records of purchases or usage, including but not limited to primers, top coats, clear coats, coating additives, reducers, wipe-down agents, wash solvents, and other materials containing volatile organic compounds or volatile toxic air pollutants; and ((unused materials returned to the supplier)).

(1. Light duty vehicle refinishing. Annual purchases or usage of total primers, total top coats, total clear coats, and

total gun cleaner. Usage shall be reported "as applied", i.e. after reducing and catalyzing, if applicable.

2. Other surface coating facilities. Annual purchases or usage of individual coatings, coating additives, wipe down agents, wash solvents, reducers, and other materials containing volatile organic compounds or volatile toxic air pollutants.))

(c) ~~((:))~~ Waste materials disposal records, including volume of waste solvents and coatings transferred in sealed containers to authorized waste haulers.

(F) ~~((Exceptions))~~ Exemptions. Exceptions to all or parts of Article VI, Section 6.13; ((shall be made as follows:))

~~((1))~~ Noncommercial exemption. Nothing in Section 6.13 shall apply to surface coating operations conducted solely for personal, noncommercial purposes if, on a facility-wide basis, less than five (5) gallons of surface coatings are applied per year.))

~~((2))~~ (1) Coating process exemptions. Nothing in Section 6.13 ((shall)) applies to the following coating processes:

(a) The application of architectural coatings to stationary structures and their appurtenances, to mobile homes, to pavements, or to curbs;

(b) Fiberglass resin application operations;

(c) Gel coating operations;

(d) The application of asphaltic or plastic liners ~~((:))~~, including ((This includes)) undercoating, sound deadening coating, and spray on bed lining for trucks;

(e) Spray plasma plating operations; ~~((e))~~

(f) Application of coatings to farming equipment ~~((:))~~; and

(g) Powder coating operations that do not exhaust outside.

~~((3))~~ (2) Low usage exemption. ((Nothing in)) Section ~~((s))~~ 6.13 (E)(1) ~~((3 and 4))~~ does not ((shall)) apply to low usage surface coating operations with PTE emissions less than one hundred (100) pounds per year, except as follows:

(a) If the Agency documents nuisance odors or emissions from a spray coating operation; or

(b) If total PTE toxic air pollutant emissions from the surface coating operation exceed any small quantity emission rate (SQER) given in Chapter 173-460 WAC.

((which, on a facility-wide basis, apply less than ten (10) gallons per year of surface coatings.))

~~((4))~~ (3) Large object exemption. ((Exemption for large objects. Nothing in)) Section 6.13 (E)(1) ((shall)) does not apply to the infrequent outdoor surface coating of large objects, where the Control Officer determines that it is impractical to totally enclose the object inside a booth or vented area. The request for this exemption must be made in writing to the Control Officer and the approval must be in writing. Infrequent means outdoor spray surface coating that amounts to 10% or less of the total annual gallons of paint applied at the facility in the previous twelve (12) months. Annual records must be kept of the number of gallons of paint that are sprayed outdoors. In such case, a temporary enclosure (tarps) ((shall)) must be maintained around the object during the surface coating operation, sufficient at all

times to prevent overspray from remaining airborne beyond the property line of the facility.

(4) Stack exemption. The stack requirements in Section 6.13 (E)(1) does not apply to surface coating operations where the owner or operator can demonstrate to the satisfaction of the Control Officer that emissions of Toxic Air Pollutants (TAP) will not exceed the Acceptable Source Impact Levels (ASIL) as defined in WAC 173-460-150 & 160 and emissions will not create a nuisance.

(5) Application exemption. Section 6.13 (E)(1) does not apply to the non-spray and pre-packaged aerosol can application of any coating.

(6) Enclosure and/or particulate control exemption. Section 6.13 (E)(1) does not apply to:

(a) A portable surface coating operation that has obtained a General Order of Approval (GOA) from the Agency and complies with GOA conditions; or

(b) A surface coating operation where the Control Officer determines that such requirements would be ineffective or unreasonable in capturing or controlling particulate or volatile organic compound emissions from the facility.

~~((5) Wash solvent exemption. Nothing in Section 6.13 (E)(4) shall apply to:~~

~~(a) The use of wash solvents with composite vapor pressure of organic compounds less than 45 mm Hg at 20oC as determined by ASTM Method D-2306-81; or~~

~~(b) Wash solvent operations if total wash solvent consumption does not exceed ten (10) gallons per year.~~

~~(6) Stack exemption. The stack/vent requirements in Section 6.13 (E)(1) shall not apply to surface coating operations where the owner or operator can demonstrate to the satisfaction of the Control Officer that emissions of toxic air pollutants will not exceed the Acceptable Source Impact Levels as defined in WAC 173-460-150 & 160 and emissions will not create a nuisance.~~

~~(7) Non-spray and aerosol can application exemption. Nothing in Section 6.13 (E)(1) shall apply to the application of any coating or other agent from pre-packaged aerosol cans, flow coat, dip coat, brush coat, or roll-coat applications.))~~

~~((8))(7) Low VOC content exemption. ((Nothing in)) Section 6.13 (E)(3) ((shall)) does not apply to the application of coatings where the VOC content does not exceed 2.1 Lb/Gal or 250 G/L.~~

(8) Wash solvent exemption. Section 6.13 (E)(4) does not apply to surface coating operations that:

(a) Use wash solvents with composite vapor pressure of organic compounds less than 45 mm Hg at 20oC as determined by ASTM Method D-2306-81; or

(b) Have wash solvent operations with a total wash solvent consumption of ten (10) gallons or less per year.

(9) Lead or ((H))hexavalent Chrome exemption. The prohibition in Section 6.13 (D)(1) ((shall)) does not apply to a surface coating operation where the Control Officer determines that no practical alternative coating is available.

~~((10) Enclosure and/or particulate control exemption. The enclosure and/or particulate control requirements of Section 6.13 (E)(1) shall not apply to a surface coating operation where the Control Officer determines that such requirements would be ineffective, or unreasonable in capturing or con-~~

~~trolling particulate or volatile organic compounds emissions from the facility.~~

~~(11) Inside exhaust exemption. If the Department of Labor & Industries or another agency of jurisdiction determines that the emissions from a surface coating operation to an inside work area are below the threshold where an exhaust system is required and the Fire Department or District of jurisdiction has no objection, then the Control Officer may grant an exemption to Section 6.13 (E)(1-))~~

~~(G) Compliance with ((e))Other ((h))Laws and ((f))Regulations. Compliance with Section 6.13 or qualifying for an exemption in Section 6.13(F) does not ((necessarily mean that the surface coating operation complies with fire protection, waste disposal, or)) constitute an exemption from compliance with SRCAA Regulation I, or other federal, state, or local ((applicable)) laws or regulations.~~

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

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

AMENDATORY SECTION
SECTION 10.08 MISCELLANEOUS FEES

(A) Miscellaneous Fees.

(1) Emission Reduction Credit Fee.

(a) Review of emission reduction credits per WAC 173-400-131 shall require the applicant to pay an emission reduction credit fee per the Consolidated Fee Schedule.

(b) The fee is calculated by multiplying the total staff time spent reviewing and processing the request, rounded-up to the nearest half-hour, by the hourly rate, per the Consolidated Fee Schedule.

(c) Hourly Rate. The hourly rate is calculated by:

$$\text{Hourly Rate} = \frac{\text{Total NOC and PSP Program Costs}}{\text{Total NOC and PSP Program Hours}}$$

(d) Hourly Rate Revision. Revisions to the hourly rate are based on a three (3) year average of the three (3) most representative fiscal years out of the four (4) preceding fiscal years, rounded-up to the nearest one (1) dollar.

(2) Variance Request Fee.

(a) Processing a variance request per RCW 70.94.181 or SRCAA Regulation I, Article III, shall require the applicant to pay a variance request fee per the Consolidated Fee Schedule. The fee will be assessed each time a request is submitted and will be invoiced to the applicant with the final determination.

(b) The variance request fee is calculated by adding all of the applicable fees described below:

1. Filing fee per the Consolidated Fee Schedule.
2. Agency legal fees related to the variance request.
3. Public notice fees.

4. Hourly fee. The hourly fee is calculated by multiplying the total staff time spent in reviewing and processing the request, rounded-up to the nearest half-hour, by the hourly rate, as listed in the Consolidated Fee Schedule.

(c) Fee Determination.

1. The hourly rate is calculated by:

$$\text{Hourly Rate} = \frac{\text{Total Program Costs}}{\text{Total Program Hours}}$$

2. Revisions to the hourly rate are based on a three (3) year average of the three (3) most representative fiscal years out of the four (4) preceding fiscal years, rounded-up to the nearest one (1) dollar.

(3) Alternate Opacity Fee.

(a) Review of an alternate opacity limit per RCW 70.94.331(2)(c) shall require the applicant to pay an alternate opacity fee per the Consolidated Fee Schedule.

(b) The fee is calculated by multiplying the total staff time spent in reviewing and processing the request, rounded-up to the nearest half-hour, by the hourly rate, as listed in the Consolidated Fee Schedule.

(c) Hourly Rate. The hourly rate is determined by:

$$\text{Hourly Rate} = \frac{\text{Total NOC and PSP Program Costs}}{\text{Total NOC and PSP Program Hours}}$$

(d) Hourly Rate Revision. Revisions to the hourly rate are based on a three (3) year average of the three (3) most representative fiscal years out of the four (4) preceding fiscal years, rounded-up to the nearest one (1) dollar.

(4) Other Services Fee.

(a) Applicants of other services including:

1. Requests under the following sections of Regulation I, Article VI, Sections 6.13 (E)(3)(j); ~~6.13 (F)(3)~~; 6.13 (F)(4); 6.13 (F)(6) (~~((6.13 (F)10))~~) and 6.13 (F)(9) (~~((6.13 (F)11))~~).

2. Registration exemption requests.

3. Other.

(b) Applicants shall pay a fee per the Consolidated Fee Schedule.

(c) The fee is calculated by multiplying the total staff time spent in reviewing and processing the request, rounded-up to the nearest half-hour, by the hourly rate, as listed in the Fee Schedule.

(d) Hourly Rate. The hourly rate is calculated by:

$$\text{Hourly Rate} = \frac{\text{Total NOC and PSP Program Costs}}{\text{Total NOC and PSP Program Hours}}$$

(e) Hourly Rate Revision. Revisions to the hourly rate are based on a three (3) year average of the three (3) most representative fiscal years out of the four (4) preceding fiscal years, rounded-up to the nearest one (1) dollar.

(B) Payment of Fees. The Agency will invoice the owner, operator, or both, for all applicable fees. The fees shall be paid without regard to whether the request(s) associated with Article X, Section 10.08 (A)(1), (2), (3) and (4) are approved or denied; except Section 10.08 (A)(2) as provided in Article III, Section 3.02.B.

WSR 21-11-039

PERMANENT RULES

HEALTH CARE AUTHORITY

[Filed May 12, 2021, 2:58 p.m., effective June 12, 2021]

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

Purpose: The health care authority (HCA) began rule making under WSR 20-11-072 on May 20, 2020, to amend WAC 182-526-0005 Purpose and scope, to include chapter 182-70 WAC, All payer health care claims database; and chapter 182-51 WAC, Washington prescription drug pricing transparency program, as chapters that this section applies to. HCA also intended to clarify in WAC 182-526-0005 that rules in chapter 182-526 WAC do not apply to the school benefits board found in chapter 182-32 WAC. During the course of the review, HCA identified additional sections in chapters 182-51 and 182-70 WAC that needed related changes. Consistency is needed between chapters 182-51, 182-70, and 182-526 WAC regarding hearings and appeals. HCA filed an additional CR-101 under WSR 21-01-158 on December 18, 2020, to solicit stakeholder participation for these additional rule sections.

Citation of Rules Affected by this Order: New WAC 182-526-0203, 182-526-0205 and 182-526-0206; repealing WAC 182-70-660; and amending WAC 182-51-1800, 182-70-110, 182-70-655, 182-526-0005, and 182-526-0195.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160, 43.71C.110; and ESSHB [E2SHB] 1224, chapter 334, Laws of 2019.

Adopted under notice filed as WSR 21-08-062 on April 5, 2021.

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

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

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 9, Repealed 0.

Date Adopted: May 12, 2021.

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 20-19-079, filed 9/15/20, effective 10/16/20)

WAC 182-51-1800 Administrative hearing (formal appeal) right. ~~((+))~~ A reporting entity has a right to an administrative hearing (formal appeal), and any resulting appeals process available under chapters 34.05 RCW and 182-526 WAC, if the authority assesses a final notice of violation and fine(s) against the reporting entity under any section of chapter 43.71C RCW and this chapter. ~~((To the extent that there may be a conflict between the general provisions contained in chapter 182-526 WAC and this chapter, the more specific provisions in this chapter apply.~~

(2) A reporting entity may appeal both the assessed violation(s) and the amount of the fine(s) assessed in the final notice of violation and fine(s).

(3) A reporting entity must submit a request for formal hearing to the authority in writing, in a manner that provides proof of receipt, within twenty-eight calendar days after receipt of the final notice of violation and fine(s) under WAC 182-51-1700.

(4) Requests should specify:

(a) The name of the reporting entity requesting the hearing and the reporting entity's, or representative's, mailing address, telephone number, and email address (if available);

(b) The items, facts, or conclusions in the final notice of violation being contested; and

(c) The basis for contesting the authority's action, including any mitigating factors upon which the reporting entity relies and the outcome the reporting entity is seeking.

(5) At the administrative hearing and on appeal, the reporting entity bears the burden of proving by a preponderance of the evidence that it has complied with applicable laws, rules, regulations, and agreements.

(6) The administrative hearing process is governed by chapters 34.05 RCW and 182-526 WAC.

(7) The authority does not begin the collection process until a decision in the administrative hearing is issued and all levels of appeal have been exhausted.

(8) Interest on owed and outstanding fines continues to accrue at the rate of one percent per month or portion of a month, but it is not collected until a decision in the administrative hearing is issued and all levels of appeal have been exhausted.) See WAC 182-526-0203.

AMENDATORY SECTION (Amending WSR 20-08-059, filed 3/25/20, effective 4/25/20)

WAC 182-70-110 Appeals. ((+)) A data supplier may request an appeal of a denial of its administrative review conducted in accordance with WAC ((182-75-100.

(2) Request for an appeal must be submitted in writing to the authority within fifteen calendar days after receipt of written notification of denial of its administrative review.

(3) Within ten business days of receipt of a written notice of appeal, the authority will transmit the request to the office of administrative hearings (OAH).

(a) **Scheduling.** OAH will assign an administrative law judge (ALJ) to handle the appeal. The ALJ will notify parties of the time when any additional documents or arguments must be submitted. If a party fails to comply with a scheduling letter or established timelines, the ALJ may decline to consider arguments or documents submitted after the scheduled timelines. A status conference in complex cases may be scheduled to provide for the orderly resolution of the case and to narrow issues and arguments for hearing.

(b) **Hearings.** Hearings may be by telephone or in person. The ALJ may decide the case without a hearing if legal or factual issues are not in dispute, the appellant does not request a hearing, or the appellant fails to appear at a scheduled hearing or otherwise fails to respond to inquiries. The ALJ will notify the appellant by mail whether a hearing will be held, whether the hearing will be in person or by tele-

phone, the location of any in-person hearing, and the date and time for any hearing in the case. The date and time for a hearing may be continued at the ALJ's discretion. Other authority employees may attend a hearing, and the ALJ will notify the appellant when other authority employees are attending. The appellant may appear in person or may be represented by an attorney.

(c) **Decisions.** The decision of the ALJ shall be considered a final decision. Either party or both may file a petition for review of the final decision to superior court. If neither party files an appeal within the time period set by RCW 34.05.542, the decision is conclusive and binding on all parties. The appeal must be filed within thirty days from service of the final decision)) 182-70-100. See WAC 182-526-0205.

AMENDATORY SECTION (Amending WSR 20-08-059, filed 3/25/20, effective 4/25/20)

WAC 182-70-655 Hearing and final order. ((+)) The director may conduct the hearing or delegate to an individual within the authority or to an administrative law judge pursuant to chapter 34.12 RCW the authority to conduct the hearing and prepare a proposed decision. The WA-APCD program director, on behalf of the authority, shall be the petitioner in the hearing, and the requestor shall be the respondent.

(2) The WA-APCD program director shall have the burden of proving the basis for the finding of a violation and the penalty as set forth in the notice of violation and recommended penalty.

(3) The hearing shall be conducted in accordance with the Administrative Procedure Act, chapter 34.05 RCW and to the extent not covered in this chapter, by the uniform procedural rules in chapter 10-08 WAC.

(4) If the director presides over the hearing, the director shall issue a final written decision that includes findings of fact, conclusions of law, and if appropriate, the penalty. The director shall cause service of the final decision on all parties.

(5) If the director's designee or an administrative law judge presides over the hearing, she or he shall issue a proposed decision that includes findings of fact, conclusions of law and if appropriate the penalty. The proposed decision shall also include instructions on how to file objections and written arguments or briefs with the director. Objections and written arguments and briefs must be filed within twenty days from the date of receipt of the proposed decision.) For penalties imposed under WAC 182-70-600, the WA-APCD program director or the director's designee conducts a hearing and prepares a final order in accordance with WAC 182-526-0206.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 182-70-660 Final decision.

AMENDATORY SECTION (Amending WSR 17-05-066, filed 2/13/17, effective 3/16/17)

WAC 182-526-0005 Purpose and scope. (1) This chapter:

(a) Describes the general hearing rules and procedures that apply to:

(i) The resolution of disputes between an appellant and medical services programs established under chapter 74.09 RCW including, but not limited to, managed care in chapters 182-538, 182-538A, and 182-538B WAC, and crisis and non-crisis services in chapter 182-538C WAC; and

(ii) The resolution of disputes between an appellant and the health care authority (HCA) arising from the prescription drug pricing transparency program in chapter 182-51 WAC and the all payer health care claims data base rules in chapter 182-70 WAC.

(b) Supplements the Administrative Procedure Act (APA), chapter 34.05 RCW, and the model rules, chapter 10-08 WAC, adopted by the office of administrative hearings (OAH).

(c) Establishes rules encouraging informal dispute resolution between ~~((the health care authority (HCA)))~~ HCA, its authorized agents, or an HCA-contracted managed care organization (MCO), and people or entities who disagree with its actions.

(d) Regulates all hearings involving medical services programs established under chapter 74.09 RCW including, but not limited to, managed care in chapters 182-538, 182-538A, and 182-538B WAC, and crisis and noncrisis services in chapter 182-538C WAC, unless specifically excluded by this chapter or program rules.

(2) Nothing in this chapter is intended to affect the constitutional rights of any person or to limit or change additional requirements imposed by statute or other rule. Other laws or rules determine if a hearing right exists, including the APA and program rules or laws.

(3) If there is a conflict between this chapter and specific program rules, the specific program rules prevail. HCA's hearing rules and program rules prevail over the model hearing rules in chapter 10-08 WAC.

(4) The hearing rules in this chapter do not apply to the public employees benefits board or the school employees benefits board programs (see chapters 182-16 and 182-32 WAC).

AMENDATORY SECTION (Amending WSR 17-05-066, filed 2/13/17, effective 3/16/17)

WAC 182-526-0195 Prehearing conferences. (1) Unlike a prehearing meeting, a prehearing conference is a formal proceeding conducted on the record by an administrative law judge (ALJ) to address issues and prepare for a hearing.

(a) The ALJ must make an audio record of the prehearing conference.

(b) An ALJ may conduct the prehearing conference in person, by telephone, or in any other manner acceptable to the parties.

(2) All parties must attend the prehearing conference. If the party who requested the hearing does not attend the pre-

hearing conference, the ALJ may enter an order of default and an order dismissing the hearing.

(3) The ALJ may require a prehearing conference. Any party may request a prehearing conference.

(4) The ALJ must grant the first request for a prehearing conference if it is filed with the office of administrative hearings (OAH) at least seven business days before the scheduled hearing date.

(5) When the ALJ grants a party's request for a prehearing conference, the ALJ must continue the previously scheduled hearing when necessary to comply with notice requirements in this section.

(6) The ALJ may grant additional requests for prehearing conferences.

(7) The office of administrative hearings (OAH) must schedule prehearing conferences for all cases which concern:

(a) ~~((The department's division of residential care services under Title XIX of the federal Social Security Act.~~

~~(b)))~~ Provider and vendor overpayment hearings.

~~((c)))~~ (b) Estate recovery and predeath liens.

(c) Notice of violation disputes under chapter 182-51 WAC.

(d) Notice of violation disputes under chapter 182-70 WAC.

(8) During a prehearing conference the parties and the ALJ may:

(a) Simplify or clarify the issues to be decided during the hearing;

(b) Agree to the date, time, and place of the hearing;

(c) Identify any accommodation or safety issues;

(d) Agree to postpone the hearing;

(e) Allow the parties to make changes in their own documents, including the notice or the hearing request;

(f) Agree to facts and documents to be entered during the hearing;

(g) Set a deadline to exchange names and phone numbers of witnesses and documents before the hearing;

(h) Schedule additional prehearing conferences;

(i) Resolve the dispute;

(j) Consider granting a stay if authorized by law or program rule; or

(k) Rule on any procedural issues and substantive motions raised by any party.

(9) After the prehearing conference, the ALJ must enter a written order describing:

(a) The actions taken at the prehearing conference;

(b) Any changes to the documents;

(c) A statement of the issue or issues identified for the hearing;

(d) Any agreements reached; and

(e) Any ruling of the ALJ.

(10) OAH must serve the prehearing order on the parties at least fourteen calendar days before the scheduled hearing.

(11) A party may object to the prehearing order by notifying OAH in writing within ten calendar days after the mailing date of the order. The ALJ must issue a ruling on the objection within five days from the date a party files an objection.

(12) If no objection is made to the prehearing order, the order determines how the hearing is conducted, including

whether the hearing will be in person or held by telephone conference or other means, unless the ALJ changes the order for good cause.

(13) The ALJ may take further appropriate actions to address other concerns raised by the parties.

NEW SECTION

WAC 182-526-0203 Administrative reviews requested by a reporting entity to the prescription drug pricing transparency program. (1)(a) A reporting entity as defined in WAC 182-51-0100, seeking administrative review of a fine or other appealable action of the authority taken under chapter 182-51 WAC or chapter 43.71C RCW, must file a written request for administrative review at the address provided in the authority's notice within twenty-eight calendar days after receiving the notice.

(b) When the authority has sent written notice by United States mail, it considers the reporting entity to have received the notice five calendar days after the date of the notification letter, unless actual proof of the date of receipt of the authority's notification letter exists. If such proof exists, the authority uses the actual date of receipt to determine timeliness of the reporting entity's request for administrative review. When the authority has electronically mailed (email) written notice, the date the authority's notification email was sent is considered to be the date of receipt by the reporting entity, irrespective of when the reporting entity reads the email.

(c) The reporting entity's request for administrative review must:

- (i) Be signed by a partner, officer, or authorized employee of the reporting entity;
- (ii) State the particular issues raised; and
- (iii) Include supporting documentation or other information.

(2) After receiving a request for administrative review, the authority either directly schedules the requested administrative hearing or causes the scheduling of the hearing with the office of administrative hearings (OAH). The hearing may be conducted by telephone.

(3) At least five calendar days before the scheduled date of the administrative hearing, the reporting entity must supply to the authority or OAH any additional or supporting documentation or information upon which they intend to rely in presenting its case. In addition, at any time before issuing the initial order, the authority or OAH may request any documentation or information needed to decide the issue raised, and the reporting entity must comply with such a request within five calendar days after it is received. The authority or OAH may extend this period up to fourteen additional calendar days for good cause shown if the reporting entity requests an extension in writing and it is received by the authority or OAH before the initial five-day period expires. The authority or OAH may dismiss issues that cannot be decided or resolved due to a reporting entity's failure to provide requested documentation or information within the required period.

(4) Within sixty calendar days after conclusion of the hearing conducted as part of the administrative review, the authority or OAH renders an initial order in writing, address-

ing the issues raised. If the authority or OAH is waiting for additional documentation or information promised by or requested from the reporting entity, the sixty-day period does not begin until the authority or OAH receives the documentation or information or until expiration of the time allowed to provide it. The initial order includes a notice of dismissal of all issues which cannot be decided due to a reporting entity's failure to provide documentation or information promised or requested.

(5) Additional review of a determination.

(a) A reporting entity seeking further review of an initial order issued according to subsection (4) of this section, must file a written application for an adjudicative proceeding signed by one of the individuals authorized by subsection (1) of this section with the authority's board of appeals within twenty-one calendar days after receiving the authority's initial order.

(b) When the authority or OAH has sent the initial order by United States mail, the authority considers the reporting entity to have received the initial order five calendar days after the date of the order, unless proof of the date of receipt of the letter exists. If such proof exists, the authority or OAH uses the actual date of receipt to determine timeliness of the reporting entity's application for an adjudicative proceeding. When the authority or OAH has electronically mailed (email) the initial order, the date of authority's email containing the initial order was sent is considered to be the date of receipt by the reporting entity, irrespective of when the contractor reads the email.

(c) The reporting entity must attach the authority's or OAH's initial order to its application for an adjudicative proceeding. When the authority or OAH delivered the initial order by email, either in the body of the email or as an attachment to the email, the reporting entity must include a copy of the email with the application for an adjudicative proceeding. The application for an adjudicative proceeding must be addressed to the authority's board of appeals. The authority uses the board of appeals date received stamp on the application for an administrative proceeding to determine whether the application is timely. When the application for adjudicative proceeding is filed by fax, the authority uses the date stamped on the application received by fax to determine timeliness.

(6) A review judge employed by the authority's board of appeals conducts a review of any appealed initial order. The scope of any review is generally limited to the issues specifically raised by the reporting entity at the initial hearing and addressed on the merits in the authority's or OAH's initial order. The authority or OAH considers the reporting entity to have waived all issues or claims that could have been raised to challenge the authority's or OAH's action, but which were not previously pursued at the hearing and not addressed in the initial order. The reporting entity must specify its issues in its request for an adjudicative proceeding, or as soon as practicable.

(7) Any party dissatisfied with an order of the board of appeals may file a petition for reconsideration within ten calendar days after the order is served on the party. The petition must state the specific grounds upon which relief is sought. The review judge may extend the time for seeking reconsid-

eration for good cause upon motion of either party if the extension request is made within ten calendar days after the order was entered. The review judge rules on a petition for reconsideration and may seek additional argument, briefing, testimony, or other evidence as considered necessary. Filing a petition for reconsideration is not a requisite for seeking judicial review; however, if either party files a reconsideration petition, the authority's order is not considered final until the review judge makes a ruling.

(8) The authority's board of appeals assigns a review judge to conduct the review and render the final agency order. A reporting entity dissatisfied with a board of appeals' order may file a petition for judicial review under RCW 34.05.570(3) or other applicable authority.

NEW SECTION

WAC 182-526-0205 Appeals requested by a data supplier to the Washington all payer health care claims database (WA-APCD). (1) **Appeal.** A data supplier may request an appeal of a denial of its administrative review conducted in accordance with WAC 182-70-100.

(a) Request for an appeal must be submitted in writing to the health care authority (HCA) within fifteen calendar days after receipt of written notification of denial of its administrative review.

(b) An appeal request must contain:

(i) The requestor's name;

(ii) The requestor's mailing address;

(iii) The requestor's telephone number;

(iv) A description of HCA's action being contested;

(v) A brief explanation of why the person or entity disagrees with HCA's action; and

(vi) Any accommodation to help the requestor fully participate in the hearing, if applicable.

(c) Within ten business days of receipt of a written notice of appeal, HCA transmits the request to the office of administrative hearings (OAH).

(2) **Scheduling.**

(a) OAH will assign an administrative law judge (ALJ) to handle the appeal.

(b) The ALJ will notify parties of the time when any additional documents or arguments must be submitted.

(c) If a party fails to comply with a scheduling letter or established timelines, the ALJ may decline to consider arguments or documents submitted after the scheduled timelines.

(d) A status conference in complex cases may be scheduled to provide for the orderly resolution of the case and to narrow issues and arguments for hearing.

(3) **Hearings.**

(a) The hearing must be conducted in accordance with the Administrative Procedure Act, chapter 34.05 RCW, and this chapter. To the extent that there may be a conflict between the general provisions contained in this chapter and this section, the more specific provisions in this section apply.

(b) Hearings may be by telephone or in person.

(c) The ALJ may decide the case without a hearing if legal or factual issues are not in dispute, the appellant does

not request a hearing, or the appellant fails to appear at a scheduled hearing or otherwise fails to respond to inquiries.

(d) The ALJ will notify the appellant by mail whether a hearing will be held, whether the hearing will be in person or by telephone, the location of any in-person hearing, and the date and time for any hearing in the case.

(e) The date and time for a hearing may be continued at the ALJ's discretion.

(f) Other authority employees may attend a hearing, and the ALJ notifies the appellant when other authority employees are attending. The appellant may appear in person or may be represented by an attorney.

NEW SECTION

WAC 182-526-0206 Hearing and final order for penalties imposed under WAC 182-70-600. (1) For penalties imposed under WAC 182-70-600, the Washington all payer health care claims database (WA-APCD) program director or the director's designee conducts a hearing and prepares a final order.

(2) The hearing must be conducted in accordance with this chapter and the Administrative Procedure Act, chapter 34.05 RCW.

(3) The WA-APCD program director, on behalf of the health care authority, must be the petitioner in the hearing, and the requestor must be the respondent.

(4) The WA-APCD program director has the burden of proving the basis for the finding of a violation and the penalty as set forth in the notice of violation and recommended penalty.

(5) The WA-APCD program director or the director's delegate issues a final written order that includes findings of fact, conclusions of law, and if appropriate, the penalty.

(6) If the order finds a violation and assesses monetary penalties, the order must include notice that payment must be made no later than forty-five days after service of the order or the period to appeal has expired, whichever is later.

(7) The WA-APCD program director must cause service of the final order on all parties.

(8) Any party to whom a violation is found may file a petition for review of the final order to superior court.

(9) If an appeal is not filed within the period set by RCW 34.05.542, the WA-APCD program director's order is conclusive and binding on all parties.

WSR 21-11-040

PERMANENT RULES

DEPARTMENT OF HEALTH

STATE BOARD OF HEALTH

[Filed May 12, 2021, 3:31 p.m., effective January 31, 2022]

Effective Date of Rule: January 31, 2022.

Purpose: Chapter 246-101 WAC, Notifiable conditions, the purpose of the chapter is to provide critical information to public health authorities to aid them in protecting and improving public health through prevention and control of infectious and noninfectious conditions as required under law. Public health authorities use the information gathered

under this chapter to take appropriate action, including, but not limited to: Treating ill people; providing preventive therapies for individuals who came into contact with infectious agents; investigating and halting outbreaks; removing harmful health exposures from the environment; assessing broader health-related patterns, including historical trends, geographic clustering, and risk factors; and redirecting program activities and developing policies based on broader health-related patterns. The chapter establishes notification requirements and standards for conditions that pose a threat to public health consistent with this purpose and the authorizing statutes it is adopted under.

The rules, prior to this revision, require health care providers, health care facilities, laboratories, veterinarians, food service establishments, child care facilities, and schools to notify public health authorities of cases of notifiable conditions identified in this chapter, cooperate with public health authorities when conducting case investigations, and follow infection control measures when necessary to control the spread of disease.

The revised rules significantly amend notification requirements applicable to health care providers, health care facilities, laboratories, local health jurisdictions and veterinarians; create notification requirements for the Washington state department of agriculture; and clarify requirements for food service establishments, schools, child care facilities, and the general public. Changes to the rules include: (1) Adding or revising notification and specimen submission requirements for seventy-four new or existing conditions; (2) eliminating three categories of conditions (other rare diseases of public health significance, emerging conditions with outbreak potential and disease of suspected bioterrorism origin); (3) eliminating notification requirements for veterinarians and clarifying requirements for veterinarians to cooperate with public health authorities during case investigations; (4) establishing notification requirements for the Washington state department of agriculture; (5) including enhanced service facilities licensed under chapter 70.97 RCW to the definition of a public health facility; (6) updating local health jurisdiction duties to reflect current technology used for notifying the department, clarifying existing and establishing new notification timelines, and clarifying notification, case report, and outbreak report content requirements; (7) adding preferred language, race, and ethnicity to the list of data components required to be reported with each case a notifiable condition, as well as defined reporting categories for each; (8) updating reference to the Security and Confidentiality Guidelines developed by the Centers for Disease Control and Prevention; (9) updating statutory references throughout the chapter as well as editorial revisions consistent with ESHB 1551 (chapter 76, Laws of 2020); and (10) improving overall clarity and usability of the chapter by merging health care provider and facility rules, repealing unnecessary rules, clarifying requirements for suspected cases of notifiable conditions, and revising language consistent with clear rule writing standards.

Citation of Rules Affected by this Order: New WAC 246-101-011, 246-101-200, 246-101-513, 246-101-805 and 246-101-810; repealing WAC 246-101-001, 246-101-301, 246-101-305, 246-101-310, 246-101-315, 246-101-320, 246-

101-401, 246-101-501, 246-101-601, 246-101-620, 246-101-625, 246-101-701, 246-101-720 and 246-101-725; and amending WAC 246-101-005, 246-101-010, 246-101-015, 246-101-101, 246-101-105, 246-101-110, 246-101-115, 246-101-120, 246-101-201, 246-101-205, 246-101-210, 246-101-215, 246-101-220, 246-101-225, 246-101-230, 246-101-405, 246-101-410, 246-101-415, 246-101-420, 246-101-425, 246-101-505, 246-101-510, 246-101-515, 246-101-520, 246-101-525, 246-101-605, 246-101-610, 246-101-615, 246-101-630, 246-101-635, 246-101-640, 246-101-705, 246-101-710, 246-101-715, and 246-101-730.

Statutory Authority for Adoption:

WAC Section	Authority(ies) RCW(s)
246-101-001 (Repealed)	43.20.050 70.28.032 70.104.055 43.70.545 70.24.130
246-101-005	43.20.050 70.28.032 70.104.055 43.70.545 70.24.130
246-101-010	43.20.050 70.28.032 70.104.055 43.70.545 70.24.130
246-101-011	43.20.050 70.28.032 70.104.055 43.70.545 70.24.130
246-101-015	43.20.050
246-101-101	43.20.050 70.28.032 70.104.055 43.70.545 70.24.130
246-101-105	43.20.050 70.28.032 70.104.055 43.70.545 70.24.130
246-101-110	43.20.050 70.28.032 70.104.055 43.70.545 70.24.130

WAC Section	Authority(ies) RCW(s)
246-101-115	43.20.050 70.28.032 70.104.055 43.70.545 70.24.130
246-101-120	43.20.050
246-101-200	43.20.050 70.24.130
246-101-201	43.20.050 70.28.032 70.24.130
246-101-205	43.20.050 70.28.032 70.24.130
246-101-210	43.20.050 70.28.032 70.24.130
246-101-215	43.20.050 70.28.032 70.24.130
246-101-220	43.20.050 70.28.032 70.24.130
246-101-225	43.20.050 70.28.032 70.24.130
246-101-230	43.20.050
246-101-301 (Repealed)	43.20.050 70.28.032 70.104.055 43.70.545 70.24.130
246-101-305 (Repealed)	43.20.050 70.28.032 70.104.055 43.70.545 70.24.130
246-101-310 (Repealed)	43.20.050 70.28.032 70.104.055 43.70.545 70.24.130
246-101-315 (Repealed)	43.20.050 70.28.032 70.104.055 43.70.545 70.24.130
246-101-320 (Repealed)	43.20.050
246-101-401 (Repealed)	43.20.050

WAC Section	Authority(ies) RCW(s)
246-101-405	43.20.050
246-101-410	43.20.050
246-101-415	43.20.050
246-101-420	43.20.050
246-101-425	43.20.050
246-101-501 (Repealed)	43.20.050
246-101-505	43.20.050 70.28.032 70.24.130
246-101-510	43.20.050 70.28.032 70.24.130
246-101-513	43.20.050 70.28.032 70.24.130
246-101-515	43.20.050
246-101-520	43.20.050 70.24.130
246-101-525	43.20.050
246-101-601 (Repealed)	43.20.050
246-101-605	43.20.050
246-101-610	43.20.050
246-101-615	43.20.050
246-101-620	43.20.050
246-101-625	43.20.050
246-101-630	43.20.050
246-101-635	43.20.050 70.24.130
246-101-640	43.20.050
246-101-701 (Repealed)	43.20.050
246-101-705	43.20.050
246-101-710	43.20.050
246-101-715	43.20.050
246-101-720 (Repealed)	43.20.050
246-101-725	43.20.050
246-101-730	43.20.050
246-101-805	43.20.050
246-101-810	43.20.050

Adopted under notice filed as WSR 21-04-136 on February 2, 2021.

Changes Other than Editing from Proposed to Adopted Version: The following nonsubstantive changes were incorporated: (1) Adjusted the terminology from "hospital" to "health care facility" in the definition of "health care-associated infection" in WAC 246-101-10 [246-101-010](14). The

term "health care facility" is an accurate description of settings in which the notifiable conditions chapter applies.

(2) Adjusted the spelling of "amoebic" to "amebic" in WAC 246-101-101 and 246-101-201 to be consistent with the Centers for Disease Control and Prevention.

(3) Changed the tense of "report" in WAC 246-101-635 (2)(b) from present to past, so that the subsection reads: "Referral of the individual tested, diagnosed, or reported with HIV to social and medical services." The revision is consistent with other changes in WAC 246-101-635.

A final cost-benefit analysis is available by contacting Kaitlyn Donahoe, P.O. Box 47990, Olympia, WA 98504-7990, phone 360-584-6737, TTY 711, email kaitlyn.donaheo@sboh.wa.gov.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 5, Amended 35, Repealed 14.

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 5, Amended 35, Repealed 14.

Date Adopted: March 10, 2021.

Michelle A. Davis
and Jessica Todorovich
SBOH Executive Director
and Chief of Staff
for Umair A. Shah, MD, MPH
Secretary

PART I: GENERAL PROVISIONS

AMENDATORY SECTION (Amending WSR 00-23-120, filed 11/22/00, effective 12/23/00)

WAC 246-101-005 Purpose ~~((of notifiable conditions reporting))~~ and scope. ~~(1) The purpose of ((notifiable conditions reporting)) this chapter is to provide ((the information necessary for public health officials to protect the public's health by tracking communicable diseases and other conditions. These data are critical to local health departments and the departments of health and labor and industries in their efforts to prevent and control the spread of diseases and other conditions. Public health officials take steps to protect the public, based on these notifications. Treating persons already ill, providing preventive therapies for individuals who came into contact with infectious agents, investigating and halting outbreaks, and removing harmful health exposures are key ways public health officials protect the public. Public health workers also use these data to assess broader patterns, including historical trends and geographic clustering. By analyzing the broader picture, officials are able to take appropriate~~

~~actions, including outbreak investigation, redirection of program activities, or policy development))~~ critical information to public health authorities to aid them in protecting and improving the public's health through prevention and control of infectious and noninfectious conditions. Public health authorities use the information gathered under this chapter to take appropriate action including, but not limited to:

(a) Treating ill persons;

(b) Providing preventive therapies for individuals who came into contact with infectious agents;

(c) Investigating and halting outbreaks;

(d) Removing harmful health exposures from the environment;

(e) Assessing broader health-related patterns, including historical trends, geographic clustering, and risk factors; and

(f) Redirecting program activities and developing policies based on broader health-related patterns.

(2) This chapter establishes notification requirements and standards for conditions that pose a threat to public health consistent with the purpose as established in this section.

AMENDATORY SECTION (Amending WSR 14-11-009, filed 5/8/14, effective 6/8/14)

WAC 246-101-010 Definitions ~~((within the notifiable conditions regulations)), abbreviations, and acronyms.~~ ~~The ((following)) definitions, abbreviations, and acronyms in this section apply ((in the interpretation and enforcement of)) throughout this chapter unless the context clearly requires otherwise:~~

(1) "Animal case" means an animal, alive or dead, with a diagnosis or suspected diagnosis of a notifiable condition in Table Agriculture-1 of WAC 246-101-805 made by a veterinarian licensed under chapter 18.92 RCW, veterinary medical facility licensed under chapter 18.92 RCW, or veterinary laboratory as defined under chapter 16.70 RCW based on clinical criteria, or laboratory criteria, or both.

(2) "Animal case report" means the data and other supporting information submitted by the Washington state department of agriculture to the department under WAC 246-101-810 for an individual animal with a notifiable condition.

(3) "Associated death" means a death resulting directly or indirectly from ~~((the confirmed condition of influenza or varicella. There should be))~~ a case of the specified condition, with no period of complete recovery between the ~~((illness))~~ onset of the condition and death.

~~((2))~~ (4) "Blood lead level" means a measurement of lead content in whole blood.

~~((3))~~ (5) "Board" means the Washington state board of health.

~~((4))~~ (6) "Business day" means any day that the department is open for business.

(7) "Carrier" means a person harboring a specific infectious agent without developing symptoms and serving as a potential source of infection to others.

~~((5))~~ (8) "Case" means a person, alive or dead, ~~((diagnosed))~~ with a ~~((particular disease or))~~ diagnosis or suspected diagnosis of a condition made by a health care provider ~~((with diagnosis)), health care facility, or laboratory based on clinical criteria, or laboratory criteria, or both, such as the~~

Centers for Disease Control and Prevention, National Notifiable Diseases Surveillance System, Council of State and Territorial Epidemiologists case definitions.

~~((6))~~ "Child day care facility" means an agency regularly providing care for a group of children for less than twenty-four hours a day and subject to licensing under chapter 74.15 RCW.

~~(7) "Condition notifiable within three business days" means a notifiable condition that must be reported to the local health officer or the department within three business days following date of diagnosis. For example, if a condition notifiable within three business days is diagnosed on a Friday afternoon, the report must be submitted by the following Wednesday)~~ (9) "Case report" means the data and other supporting information submitted by a health care provider or health care facility to public health authorities under WAC 246-101-115 for an individual patient with a notifiable condition.

~~((8))~~ (10) "Communicable disease" means ((a)) an infectious disease ((caused by an infectious agent)) that can be transmitted from ((one)) a person, animal, or object to ((another)) a person by direct or indirect means including, but not limited to, transmission through an intermediate host or vector, food, water, or air.

~~((9) "Contact" means a person exposed to an infected person, animal, or contaminated environment that may lead to infection.~~

~~((10))~~ (11) "Condition" means an infectious or noninfectious condition as these terms are defined in this chapter.

(12) "Department" or "DOH" means the Washington state department of health.

~~((11) "Disease of suspected bioterrorism origin" means a disease caused by viruses, bacteria, fungi, or toxins from living organisms that are used to produce death or disease in humans, animals, or plants. Many of these diseases may have nonspecific presenting symptoms. The following situations could represent a possible bioterrorism event and should be reported immediately to the local health department:~~

~~(a) A single diagnosed or strongly suspected case of disease caused by an uncommon agent or a potential agent of bioterrorism occurring in a patient with no known risk factors;~~

~~(b) A cluster of patients presenting with a similar syndrome that includes unusual disease characteristics or unusually high morbidity or mortality without obvious etiology; or~~

~~(c) Unexplained increase in a common syndrome above seasonally expected levels.~~

~~(12) "Elevated blood lead level" means blood lead levels equal to or greater than 10 micrograms per deciliter for persons aged fifteen years or older, or equal to or greater than 5 micrograms per deciliter in children less than fifteen years of age.~~

~~(13) "Emerging condition with outbreak potential" means a newly identified condition with potential for person-to-person transmission.~~

~~(14) "Food service establishment" means a place, location, operation, site, or facility where food is manufactured, prepared, processed, packaged, dispensed, distributed, sold, served, or offered to the consumer regardless of whether or not compensation for food occurs.~~

~~((15))~~ (13) "Health care-associated infection" means ((an infection acquired in a health care facility)) a localized or systemic condition that results from adverse reaction to the presence of an infectious agent or its toxins and that was not present or incubating at the time of admission to the health care facility.

~~((16))~~ (14) "Health care facility" means:

~~((Any))~~ (a) Assisted living ((facility)) facilities licensed under chapter 18.20 RCW;

(b) Birthing centers licensed under chapter 18.46 RCW;

(c) Nursing homes licensed under chapter 18.51 RCW;

(d) Hospitals licensed under chapter 70.41 RCW;

(e) Adult family homes licensed under chapter 70.128 RCW;

(f) Ambulatory surgical ((facility)) facilities licensed under chapter 70.230 RCW; ((or))

(g) Private establishments licensed under chapter 71.12 RCW;

~~((b))~~ (h) Enhanced service facilities licensed under chapter 70.97 RCW;

(i) Clinics, or other settings where one or more health care providers practice; and

~~((or))~~ (j) In reference to a sexually transmitted ((disease)) infection, other settings as defined in chapter 70.24 RCW.

~~((17))~~ (15) "Health care provider" means any person having direct or supervisory responsibility for the delivery of health care whose scope of practice allows for diagnosis and treatment of notifiable conditions and who is:

(a) Licensed or certified in this state under Title 18 RCW; or

(b) Military personnel providing health care within the state regardless of licensure.

~~((18) "Health care services to the patient" means treatment, consultation, or intervention for patient care.~~

~~(19) "Health carrier" means a disability insurer regulated under chapter 48.20 or 48.21 RCW, a health care service contractor as defined in RCW 48.44.010, or a health maintenance organization as defined in RCW 48.46.020.~~

~~(20) "HIV testing" means conducting a laboratory test or sequence of tests to detect the human immunodeficiency virus (HIV) or antibodies to HIV performed in accordance with requirements to WAC 246-100-207. To assure that the protection, including, but not limited to, pre- and post-test counseling, consent, and confidentiality afforded to HIV testing as described in chapter 246-100 WAC also applies to the enumeration of CD4 + (T4) lymphocyte counts (CD4 + counts) and CD4 + (T4) percents of total lymphocytes (CD4 + percents) when used to diagnose HIV infection, CD4 + counts and CD4 + percents will be presumed HIV testing except when shown by clear and convincing evidence to be for use in the following circumstances:~~

~~(a) Monitoring previously diagnosed infection with HIV;~~

~~(b) Monitoring organ or bone marrow transplants;~~

~~(c) Monitoring chemotherapy;~~

~~(d) Medical research; or~~

~~(e) Diagnosis or monitoring of congenital immunodeficiency states or autoimmune states not related to HIV.~~

The burden of proving the existence of one or more of the circumstances identified in (a) through (e) of this subsection shall be on the person asserting the existence.

~~((21))~~ (16) "Immediately (~~(notifiable condition)~~)" means ~~((a notifiable condition of urgent public health importance, a case or suspected case of which must be reported to the local health officer or the department))~~ without delay, twenty-four hours a day, seven days a week.

(a) For health care providers and health care facilities, immediately means at the time ((of diagnosis or suspected diagnosis, twenty-four hours a day, seven days a week)) a case is identified;

(b) For laboratories, immediately means upon receiving a presumptive or final test result; or

(c) For state agencies and local health jurisdictions, immediately means upon receiving notification of a case.

~~((22))~~ (17) "Infection control measures" means the management of an infected person((s)), or of a person suspected to be infected, and others in a manner to prevent transmission of the infectious agent. Infection control measures include, but are not limited to, isolation and quarantine.

(18) "Infectious condition" means a disease caused by a pathogenic organism such as bacteria, virus, fungus, parasite, or infectious agent, and includes communicable disease and zoonotic disease.

(19) "Influenza, novel" or "influenza virus, novel" means a human infection with an influenza A virus subtype that is different from currently circulating human influenza subtypes. Novel subtypes include, but are not limited to, H2, H5, H7, and H9 subtypes.

~~((23))~~ (20) "Institutional review board" ~~((means any board, committee, or other group formally designated by an institution, or authorized under federal or state law, to review, approve the initiation of, or conduct periodic review of research programs to assure the protection of the rights and welfare of human research subjects))~~ has the same meaning as defined in RCW 70.02.010.

~~((24))~~ (21) "Investigation report" means the data and other supporting information submitted by a local health jurisdiction to the department under WAC 246-101-513(2) for an individual patient with a notifiable condition.

(22) "Isolation" means the separation ~~((or restriction of activities of infected individuals, or of persons suspected to be infected, from other persons to prevent transmission of the infectious agent))~~ of infected or contaminated persons or animals from others to prevent or limit the transmission of the infectious agent or contaminant from those infected or contaminated to those who are susceptible to disease or who may spread the infectious agent or contaminant to others.

~~((25))~~ (23) "Laboratory" means any facility licensed as a test site or medical test site under chapter 70.42 RCW and chapter 246-338 WAC, including any laboratory that is granted a Clinical Laboratory Improvement Amendment (CLIA)-Waiver.

~~((26))~~ (24) "Laboratory director" means the ~~((director or manager,))~~ person, or person's designee, by whatever title known, having the administrative responsibility ((in any licensed medical test site)) for a laboratory.

~~((27))~~ (25) "Laboratory report" means the data and other supporting information submitted by a laboratory direc-

tor to public health authorities under WAC 246-101-225 for an individual patient with a notifiable condition.

~~(26)~~ "Local health ~~((department"~~ means the city, town, county, or district agency providing public health services to persons within the area, established under chapters 70.05, 70.08, and 70.46 RCW)) jurisdiction" or "LHJ" means a county health department under chapter 70.05 RCW, city-county health department under chapter 70.08 RCW, or health district under chapter 70.46 RCW.

~~((28))~~ (27) "Local health officer" means the ~~((individual having been appointed under chapter 70.05 RCW as the health officer for the local health department, or having been appointed under chapter 70.08 RCW as the director of public health of a combined city-county health department.~~

(29) "Member of the general public" means any person present within the boundary of the state of Washington.

(30) "Monthly notifiable condition" means a notifiable condition which must be reported to the local health officer or the department within one month of diagnosis.

~~(31))~~ legally qualified physician who has been appointed as the health officer for the local health jurisdiction under chapter 70.05 RCW, or their designee.

(28) "MERS" means Middle East respiratory syndrome.

(29) "Noninfectious condition" means a disease or health concern that may lead to disease caused by nonpathogenic factors.

(30) "Notifiable condition" means a ~~((disease or))~~ condition ~~((of public health importance))~~ identified in Table HC-1 of WAC 246-101-101, Table Lab-1 of WAC 246-101-201, or Table Agriculture-1 of WAC 246-101-805, a case of which ~~((; and for certain diseases, a suspected case of which, must be brought to the attention of the local health officer or the state health officer.~~

(32) "Other rare diseases of public health significance" means a disease or condition, of general or international public health concern, which is occasionally or not ordinarily seen in the state of Washington including, but not limited to, spotted fever rickettsiosis, babesiosis, tick paralysis, anaplasmosis, and other tick borne diseases. This also includes public health events of international concern and communicable diseases that would be of general public concern if detected in Washington.

~~(33))~~ requires notification to public health authorities under this chapter; or a condition designated by the local health officer as notifiable within their jurisdiction under WAC 246-101-505 (4)(d). Notifiable condition does not include provisional conditions as defined under WAC 246-101-015.

(31) "Outbreak" means the occurrence ~~((of cases or suspected cases))~~ of a ~~((disease or))~~ condition in ~~((any))~~ an area over a given period of time in excess of the expected number of ((cases)) occurrences including, but not limited to, food-borne disease, waterborne disease, and health care-associated infection.

~~((34)~~ "Patient" means a case, suspected case, or contact.

~~(35))~~ (32) "Outbreak report" means the data and other supporting information about an outbreak that local health jurisdictions submit to the department under WAC 246-101-513(3) following investigation of an outbreak.

(33) "PCR" means polymerase chain reaction.

(34) "Pesticide poisoning" means the disturbance of function, damage to structure, or illness in humans resulting from the inhalation, absorption, ingestion of, or contact with any pesticide.

~~((36))~~ (35) "Presumptive" means a preliminary test result that has not yet been confirmed as a definitive result.

(36) "Principal health care provider" means the attending health care provider recognized as primarily responsible for diagnosis or treatment of a patient, or in the absence of such, the health care provider initiating diagnostic testing or treatment for the patient.

(37) "Provisional condition" means a condition the department has requested be reported under WAC 246-101-015.

(38) "Public health authorities" ~~((means))~~ includes local health ~~((departments))~~ jurisdictions, the ~~((state health))~~ department, ~~((and))~~ the department of labor and industries ~~((personnel charged with administering provisions of this chapter.~~

~~((38))),~~ the department of agriculture, sovereign tribal nations, and tribal epidemiology centers.

(39) "Quarantine" means the ~~((separation or restriction on activities of an individual having been exposed to or infected with an infectious agent, to prevent disease transmission.~~

~~((39)))~~ limitation of freedom of movement of persons or domestic animals that have been exposed to, or are suspected to have been exposed to, an infectious agent:

(a) For a period of time not longer than the longest usual incubation period of the infectious agent; and

(b) In a way to prevent effective contact with those not exposed.

(40) "Rapid screening test" or "RST" means a U.S. Food and Drug Administration-approved or authorized test that provides same day results and is suitable for obtaining presumptive test results. RST includes point-of-care testing.

(41) "Reference laboratory" means a laboratory licensed inside or outside of Washington state that receives a specimen from another licensed laboratory and performs one or more tests on that specimen.

(42) "School" ~~((means a facility for programs of education as defined))~~ has the same meaning as in RCW 28A.210-070 ~~((preschool and kindergarten through grade twelve)).~~

~~((40))~~ (43) "SARS" means severe acute respiratory syndrome.

(44) "Secretary" means the secretary of the Washington state department of health.

(45) "Secure electronic data transmission" means electronic communication and accounts developed and maintained to prevent unauthorized access, loss, or compromise of sensitive information including, but not limited to, secure file transfer, secure email, secure facsimile, a health information exchange authorized under RCW 41.05.039, and secure electronic disease surveillance system.

(46) "Secure electronic disease surveillance system" means the secure electronic data transmission system maintained by the department and used by local health jurisdictions to submit notifications, investigation reports, and outbreak reports under this chapter.

(47) "Sexually transmitted disease ~~((STD))~~" or "sexually transmitted infection" means a bacterial, viral, fungal, or parasitic disease or condition which is usually transmitted through sexual contact, including:

(a) Acute pelvic inflammatory disease;

(b) Chancroid;

(c) *Chlamydia trachomatis* infection;

(d) Genital and neonatal Herpes simplex;

(e) Genital human papilloma virus infection;

(f) Gonorrhea;

(g) Granuloma inguinale;

(h) Hepatitis B infection;

(i) Human immunodeficiency virus (HIV) infection ~~((and acquired immunodeficiency syndrome (AIDS)));~~

(j) Lymphogranuloma venereum;

(k) Nongonococcal urethritis (NGU); and

(l) Syphilis.

~~((41))~~ (48) "Specimen" means material associated or suspected to be associated with a notifiable condition including, but not limited to, isolates, blood, serum, stool, urine, tissue, respiratory secretions, swab, other body fluid, or an environmental sample.

(49) "State health officer" means the person ~~((designated))~~ appointed by the secretary ~~((of the department))~~ under RCW 43.70.020 to serve as statewide health officer, or, in the absence of ~~((this designation, the person having primary responsibility for public health matters in the state.~~

(42) "Suspected case" means a person whose diagnosis is thought likely to be a particular disease or condition with suspected diagnosis based on signs and symptoms, laboratory evidence, or both.

(43) "Third-party payor" means an insurer regulated under Title 48 RCW authorized to transact business in this state or other jurisdiction including a health care service contractor and health maintenance organization, an employee welfare benefit plan, or a state or federal health benefit program as defined in RCW 70.02.010.

(44) "Unexplained critical illness or death" means cases of illness or death with infectious hallmarks but no known etiology, in previously healthy persons one to forty nine years of age excluding those with chronic medical conditions (e.g., malignancy, diabetes, AIDS, cirrhosis) such appointment, the secretary.

~~((45))~~ (50) "Veterinarian" means an individual licensed and practicing under provisions of chapter 18.92 RCW ~~((Veterinary medicine, surgery, and dentistry)).~~

(51) "Zoonotic disease" means an infectious condition of animals that can cause disease when transmitted to humans.

NEW SECTION

WAC 246-101-011 Reporting of patient ethnicity, race, and preferred language information. (1) Health care providers and health care facilities shall include the patient's ethnicity as defined in subsection (4) of this section, the patient's race as defined in subsection (5) of this section, and the patient's preferred language as defined in subsection (6) of this section when:

(a) Ordering a laboratory test for a notifiable condition under WAC 246-101-105 (6)(a); and

(b) Submitting a case report under WAC 246-101-115.

(2) Laboratory directors shall include the patient's ethnicity as defined in subsection (4) of this section, the patient's race as defined in subsection (5) of this section, and the patient's preferred language as defined in subsection (6) of this section when:

(a) Referring a specimen of a notifiable condition to a reference laboratory for testing under WAC 246-101-205; and

(b) Submitting a specimen to the Washington state public health laboratories under WAC 246-101-215; and

(c) Submitting a laboratory report under WAC 246-101-225.

(3) A local health officer shall include the patient's ethnicity as defined in subsection (4) of this section, the patient's race as defined in subsection (5) of this section, and the patient's preferred language as defined in subsection (6) of this section when submitting an investigation report under WAC 246-101-513.

(4) Patient's ethnicity shall be identified by the patient and reported using one of the following categories:

(a) Hispanic, Latino/a, Latinx;

(b) Non-Hispanic, Latino/a, Latinx;

(c) Patient declined to respond; or

(d) Unknown.

(5) Patient's race shall be identified by the patient and reported using one or more of the following categories; if the patient self-identifies as more than one race, each race shall be reported:

(a) Afghan;

(b) Afro-Caribbean;

(c) Alaska Native;

(d) American Indian;

(e) Arab;

(f) Asian;

(g) Asian Indian;

(h) Bamar/Burman/Burmese;

(i) Bangladeshi;

(j) Bhutanese;

(k) Black or African American;

(l) Central American;

(m) Cham;

(n) Chicano/a or Chicanx;

(o) Chinese;

(p) Congolese;

(q) Cuban;

(r) Dominican;

(s) Egyptian;

(t) Eritrean;

(u) Ethiopian;

(v) Fijian;

(w) Filipino;

(x) First Nations;

(y) Guamanian or Chamorro;

(z) Hmong/Mong;

(aa) Indigenous-Latino/a or Indigenous-Latinx;

(bb) Indonesian;

(cc) Iranian;

(dd) Iraqi;

(ee) Japanese;

(ff) Jordanian;

(gg) Karen;

(hh) Kenyan;

(ii) Khmer/Cambodian;

(jj) Korean;

(kk) Kuwaiti;

(ll) Lao;

(mm) Lebanese;

(nn) Malaysian;

(oo) Marshallese;

(pp) Mestizo;

(qq) Mexican/Mexican American;

(rr) Middle Eastern;

(ss) Mien;

(tt) Moroccan;

(uu) Native Hawaiian;

(vv) Nepalese;

(ww) North African;

(xx) Oromo;

(yy) Pacific Islander;

(zz) Pakistani;

(aaa) Puerto Rican;

(bbb) Romanian/Rumanian;

(ccc) Russian;

(ddd) Samoan;

(eee) Saudi Arabian;

(fff) Somali;

(ggg) South African;

(hhh) South American;

(iii) Syrian;

(jjj) Taiwanese;

(kkk) Thai;

(lll) Tongan;

(mmm) Ugandan;

(nnn) Ukrainian;

(ooo) Vietnamese;

(ppp) White;

(qqq) Yemeni;

(rrr) Other race;

(sss) Patient declined to respond; and

(ttt) Unknown.

(6) Patient's preferred language shall be identified by the patient and reported using one of the following categories:

(a) Amharic;

(b) Arabic;

(c) Balochi/Baluchi;

(d) Burmese;

(e) Cantonese;

(f) Chinese (unspecified);

(g) Chamorro;

(h) Chuukese;

(i) Dari;

(j) English;

(k) Farsi/Persian;

(l) Fijian;

(m) Filipino/Pilipino;

(n) French;

(o) German;

(p) Hindi;

(q) Hmong;

- (r) Japanese;
- (s) Karen;
- (t) Khmer/Cambodian;
- (u) Kinyarwanda;
- (v) Korean;
- (w) Kosraean;
- (x) Lao;
- (y) Mandarin;
- (z) Marshallese;
- (aa) Mixteco;
- (bb) Nepali;
- (cc) Oromo;
- (dd) Panjabi/Punjabi;
- (ee) Pashto;
- (ff) Portuguese;
- (gg) Romanian/Rumanian;
- (hh) Russian;
- (ii) Samoan;
- (jj) Sign languages;
- (kk) Somali;
- (ll) Spanish/Castilian;
- (mm) Swahili/Kiswahili;
- (nn) Tagalog;
- (oo) Tamil;
- (pp) Telugu;
- (qq) Thai;
- (rr) Tigrinya;
- (ss) Ukrainian;
- (tt) Urdu;
- (uu) Vietnamese;
- (vv) Other language;
- (ww) Patient declined to respond; or
- (xx) Unknown.

AMENDATORY SECTION (Amending WSR 11-02-065, filed 1/4/11, effective 2/4/11)

WAC 246-101-015 Requests for additional information or provisional ((condition)) notification and submission of specimen. ((This section describes how conditions can become notifiable; what period of time conditions are provisionally notifiable; what analyses must be accomplished during provisional notification status; the transition from provisionally notifiable condition to permanently notifiable condition or deletion of notification requirements. The department's goal for provisionally notifiable conditions is to collect enough information to determine whether requiring notification improves public health.

(1) The state health officer may:

(a) Request reporting of cases and suspected cases of disease and conditions in addition to those required in Tables HC-1 of WAC 246-101-101, Lab-1 of WAC 246-101-201, and HF-1 of WAC 246-101-301 on a provisional basis for a period of time less than forty-eight months when:

(i) The disease or condition is newly recognized or recently acknowledged as a public health concern;

(ii) Epidemiological investigation based on notification of cases may contribute to understanding of the disease or condition;

(iii) There is reason to expect that the information acquired through notification will assist the state and/or local health department to design or implement intervention strategies that will result in an improvement in public health; and

(iv) Written notification is provided to all local health officers regarding:

(A) Additional reporting requirements; and

(B) Rationale or justification for specifying the disease or condition as notifiable.

(b) Request laboratories to submit specimens indicative of infections in addition to those required in Table Lab-1 of WAC 246-101-201 on a provisional basis for a period of time less than forty-eight months, if:

(i) The infection is of public health concern;

(ii) The department has a plan for using data gathered from the specimens; and

(iii) Written notification is provided to all local health officers and all laboratory directors explaining:

(A) Actions required; and

(B) Reason for the addition.

(2) Within forty months of the state health officer's designation of a condition as provisionally notifiable in subsection (1)(a) of this section, or requests for laboratories to submit specimens indicative of infections in subsection (1)(b) of this section, the department will conduct an evaluation for the notification requirement that:

(a) Estimates the societal cost resulting from the provisionally notifiable condition;

(i) Determine the prevalence of the provisional notifiable condition; and

(ii) Identify the quantifiable costs resulting from the provisionally notifiable condition; and

(iii) Discuss the qualitative costs resulting from the provisionally notifiable condition.

(b) Describes how the information was used and how it will continue to be used to design and implement intervention strategies aimed at combating the provisionally notifiable condition;

(c) Verifies the effectiveness of previous intervention strategies at reducing the incidence, morbidity, or mortality of the provisionally notifiable condition;

(d) Identifies the quantitative and qualitative costs of the provisional notification requirement;

(e) Compares the costs of the provisional notification requirement with the estimated cost savings resulting from the intervention based on the information provided through the provisional notification requirement;

(f) Describes the effectiveness and utility of using the notifiable conditions process as a mechanism to collect these data; and

(g) Describes that a less burdensome data collection system (example: Biennial surveys) would not provide the information needed to effectively establish and maintain the intervention strategies.

(3) Based upon the evaluation in subsection (2) of this section, the board will assess results of the evaluation after the particular condition is notifiable or the requirement for laboratories to submit specimens indicative of infections has been in place for no longer than forty months. The board will determine based upon the results of the evaluation whether

~~the provisionally notifiable condition or the requirement for laboratories to submit specimens indicative of infections should be:~~

~~(a) Permanently notifiable in the same manner as the provisional notification requirement;~~

~~(b) Permanently notifiable in a manner that would use the evaluation results to redesign the notification requirements; or~~

~~(c) Deleted from the notifiable conditions system.~~

~~(4) The department shall have the authority to declare an emergency and institute notification requirements under the provisions of RCW 34.05.350.)~~ (1) For notifiable conditions in this chapter, the state health officer may request additional data components to be submitted with each case report, laboratory report, specimen submittal, investigation report, outbreak report, or animal case report; submission of additional laboratory test results; and submission of additional specimens.

(2) For a condition the state health officer determines should be provisionally reported, the state health officer may request submission of case reports, laboratory reports, investigation reports, outbreak reports, and animal case reports; and submission of specimens.

(3) The state health officer may request information under subsection (1) or (2) of this section when they:

(a) Determine additional information in case reports, laboratory reports, specimen submittals, investigation reports, outbreak reports, or animal case reports, or additional submission of specimens for a notifiable condition is needed in order to properly prevent and control the condition; or

(b) Determine that provisional submission of case reports, laboratory reports, investigation reports, outbreak reports, animal case reports, or specimens for a condition other than a notifiable condition is likely to contribute to understanding the condition, provide information necessary to prevent and control the condition, and improve public health.

(4) The state health officer shall notify the board and local health officers of their request and, as applicable, health care providers, laboratory directors, health care facilities, and the department of agriculture of the request. The notification must include the:

(a) Determination required under subsection (3) of this section including documentation supporting the determination; and

(b) As applicable, the requested:

(i) Test results;

(ii) Timeline for notification;

(iii) Public health authority to be notified;

(iv) Content of notification;

(v) Means of notification;

(vi) Specimen submission;

(vii) Timeline for specimen submission; and

(viii) Specimen submittal documentation for the condition.

(5) Within forty months of the state health officer's designation of a provisional condition or additional information for a notifiable condition, the state health officer shall:

(a) Discontinue the request made under subsection (1) or (2) of this section; or

(b) Request that the board consider revising this chapter to make the request made under subsection (1) or (2) of this section a rule requirement, and provide an estimate of the probable benefits and probable costs.

(6) If the state health officer chooses to discontinue their request, the state health officer shall notify the board and local health officers and, as applicable, health care providers, laboratory directors, health care facilities, and the department of agriculture that the applicable provisional condition or requested additions to the notifiable condition have been discontinued.

(7) If the state health officer makes a request to the board under subsection (5)(b) of this section and the board determines that it will not revise this chapter, the state health officer's request for additional information, specimen submittal, or provisional notification under subsection (4) of this section is automatically discontinued and the board or state health officer shall provide notice to local health officers and, as applicable, health care providers, laboratory directors, health care facilities, and the department of agriculture that the applicable provisional condition or requested additions to the notifiable condition has been discontinued.

PART II: NOTIFIABLE CONDITIONS—HEALTH CARE PROVIDERS AND HEALTH CARE FACILITIES

AMENDATORY SECTION (Amending WSR 11-02-065, filed 1/4/11, effective 2/4/11)

WAC 246-101-101 Notifiable conditions ~~((and the))~~—Health care providers and health care facilities. ~~((This section describes the conditions that Washington's health care providers must notify public health authorities of on a statewide basis. The board finds that the conditions in Table HC 1 of this section are notifiable for the prevention and control of communicable and noninfectious diseases and conditions in Washington.~~

~~(1) Principal health care providers shall notify public health authorities of the conditions identified in Table HC 1 of this section as individual case reports following the requirements in WAC 246-101-105, 246-101-110, 246-101-115, and 246-101-120.~~

~~(2) Other health care providers in attendance, other than the principal health care provider, shall notify public health authorities of the conditions identified in Table HC 1 of this section unless the condition notification has already been made.~~

~~(3) Local health officers may require additional conditions to be notifiable within the local health officer's jurisdiction.~~

Table HC-1 (Conditions Notifiable by Health Care Providers)

Notifiable Condition	Time Frame for Notification	Notifiable to Local Health Department	Notifiable to State Department of Health
Acquired Immunodeficiency Syndrome (AIDS)	Within 3 business days	✓	
Animal Bites (when human exposure to rabies is suspected)	Immediately	✓	
Anthrax	Immediately	✓	
Arboviral Disease (acute disease only including, but not limited to, West Nile virus, eastern and western equine encephalitis, dengue, St. Louis encephalitis, La Crosse encephalitis, Japanese encephalitis, and Powassan)	Within 3 business days	✓	
Asthma, occupational	Monthly		✓
Birth Defects – Autism Spectrum Disorders	Monthly		✓
Birth Defects – Cerebral Palsy	Monthly		✓
Birth Defects – Alcohol Related Birth Defects	Monthly		✓
Botulism (foodborne, infant, and wound)	Immediately	✓	
Brucellosis (<i>Brucella</i> species)	Within 24 hours	✓	
<i>Burkholderia mallei</i> (Glanders) and <i>pseudomallei</i> (Meliodiosis)	Immediately	✓	
Campylobacteriosis	Within 3 business days	✓	
Chaneroid	Within 3 business days	✓	
<i>Chlamydia trachomatis</i> infection	Within 3 business days	✓	
Cholera	Immediately	✓	
Cryptosporidiosis	Within 3 business days	✓	
Cyclosporiasis	Within 3 business days	✓	
Diphtheria	Immediately	✓	
Disease of suspected bioterrorism origin	Immediately	✓	
Domoic acid poisoning	Immediately	✓	
<i>E. coli</i> – Refer to "Shiga toxin-producing <i>E. coli</i> "	Immediately	✓	
Emerging condition with outbreak potential	Immediately	✓	
Giardiasis	Within 3 business days	✓	
Gonorrhea	Within 3 business days	✓	
Granuloma inguinale	Within 3 business days	✓	
<i>Haemophilus influenzae</i> (invasive disease, children under age 5)	Immediately	✓	
Hantavirus pulmonary syndrome	Within 24 hours	✓	
Hepatitis A (acute infection)	Within 24 hours	✓	
Hepatitis B (acute infection)	Within 24 hours	✓	
Hepatitis B surface antigen + pregnant women	Within 3 business days	✓	
Hepatitis B (chronic infection) – Initial diagnosis, and previously unreported prevalent cases	Monthly	✓	
Hepatitis C (acute infection)	Within 3 business days	✓	
Hepatitis C (chronic infection)	Monthly	✓	
Hepatitis D (acute and chronic infection)	Within 3 business days	✓	
Hepatitis E (acute infection)	Within 24 hours	✓	

Notifiable Condition	Time Frame for Notification	Notifiable to Local Health Department	Notifiable to State Department of Health
Herpes simplex, neonatal and genital (initial infection only)	Within 3 business days	✓	
Human immunodeficiency virus (HIV) infection	Within 3 business days	✓	
Influenza, novel or unsubtypeable strain	Immediately	✓	
Influenza-associated death (lab confirmed)	Within 3 business days	✓	
Legionellosis	Within 24 hours	✓	
Leptospirosis	Within 24 hours	✓	
Listeriosis	Within 24 hours	✓	
Lyme Disease	Within 3 business days	✓	
Lymphogranuloma venereum	Within 3 business days	✓	
Malaria	Within 3 business days	✓	
Measles (rubeola) - Acute disease only	Immediately	✓	
Meningococcal disease (invasive)	Immediately	✓	
Monkeypox	Immediately	✓	
Mumps (acute disease only)	Within 24 hours	✓	
Outbreaks of suspected foodborne origin	Immediately	✓	
Outbreaks of suspected waterborne origin	Immediately	✓	
Paralytic shellfish poisoning	Immediately	✓	
Pertussis	Within 24 hours	✓	
Pesticide poisoning (hospitalized, fatal, or cluster)	Immediately		✓
Pesticide poisoning (all other)	Within 3 business days		✓
Plague	Immediately	✓	
Poliomyelitis	Immediately	✓	
Prion disease	Within 3 business days	✓	
Psittacosis	Within 24 hours	✓	
Q Fever	Within 24 hours	✓	
Rabies (Confirmed Human or Animal)	Immediately	✓	
Rabies, suspected human exposure (suspected human rabies exposures due to a bite from or other exposure to an animal that is suspected of being infected with rabies)	Immediately	✓	
Relapsing fever (borreliosis)	Within 24 hours	✓	
Rubella (including congenital rubella syndrome) (acute disease only)	Immediately	✓	
Salmonellosis	Within 24 hours	✓	
SARS	Immediately	✓	
Serious adverse reactions to immunizations	Within 3 business days	✓	
Shiga toxin-producing <i>E. coli</i> infections (enterohemorrhagic <i>E. coli</i> including, but not limited to, <i>E. coli</i> O157:H7)	Immediately	✓	
Shigellosis	Within 24 hours	✓	
Smallpox	Immediately	✓	
Syphilis	Within 3 business days	✓	
Tetanus	Within 3 business days	✓	

Notifiable Condition	Time Frame for Notification	Notifiable to Local Health Department	Notifiable to State Department of Health
Trichinosis	Within 3 business days	✓	
Tuberculosis	Immediately	✓	
Tularemia	Immediately	✓	
Vaccinia transmission	Immediately	✓	
Vancomycin-resistant <i>Staphylococcus aureus</i> (not to include vancomycin intermediate)	Within 24 hours	✓	
Varicella-associated death	Within 3 business days	✓	
Vibriosis	Within 24 hours	✓	
Viral hemorrhagic fever	Immediately	✓	
Yellow fever	Immediately	✓	
Yersiniosis	Within 24 hours	✓	
Other rare diseases of public health significance	Within 24 hours	✓	
Unexplained critical illness or death	Within 24 hours	✓	

(✓) Indicates which agency should receive case and suspected case reports.))

(1) For the purposes of this section:

(a) "Local health jurisdiction" means where the patient resides, or, in the event the patient's residence cannot be determined, the local health jurisdiction in which the patient received treatment.

(b) "Unexplained critical illness or death" means a severe illness or death with infectious hallmarks, but no known etiology, in a previously healthy person one to forty-nine years of age excluding those with chronic medical conditions such as malignancy, diabetes, AIDS, or cirrhosis.

(2) The conditions identified in Table HC-1 are notifiable to public health authorities under this table and this chapter.

Table HC-1 (Conditions Notifiable by Health Care Providers and Health Care Facilities)

<u>Notifiable Condition (Agent)</u>	<u>Laboratory Confirmation Required Before Submitting Case Report</u>	<u>Time Frame for Notification from Identification of a Case</u>	<u>Who Must Be Notified</u>	<u>Who Must Report: Health Care Providers (Providers) or Health Care Facilities (Facilities)</u>
<u>Acquired immunodeficiency syndrome (AIDS)</u>		<u>Within 3 business days</u>	<u>DOH (for facilities) and LHJ (for providers)</u>	<u>Both</u>
<u>Amebic meningitis</u>		<u>Immediately</u>	<u>LHJ</u>	<u>Both</u>
<u>Anaplasmosis</u>		<u>Within 3 business days</u>	<u>LHJ</u>	<u>Both</u>
<u>Anthrax (<i>Bacillus anthracis</i> and confirmed <i>Bacillus cereus</i> biovar <i>anthracis</i> only - Do not report all <i>Bacillus cereus</i>)</u>	<u>Yes</u>	<u>Immediately</u>	<u>LHJ</u>	<u>Both</u>

<u>Notifiable Condition (Agent)</u>	<u>Laboratory Confirmation Required Before Submitting Case Report</u>	<u>Time Frame for Notification from Identification of a Case</u>	<u>Who Must Be Notified</u>	<u>Who Must Report: Health Care Providers (Providers) or Health Care Facilities (Facilities)</u>
<u>Arboviral disease (acute disease only) including, but not limited to:</u> <u>Chikungunya</u> <u>Dengue</u> <u>Eastern and western equine encephalitis</u> <u>Japanese encephalitis</u> <u>La Crosse encephalitis</u> <u>Powassan virus infection</u> <u>St. Louis encephalitis</u> <u>West Nile virus infection</u> <u>Zika virus infection</u> See also "Yellow fever"		<u>Within 3 business days</u>	<u>LHJ</u>	<u>Both</u>
<u>Asthma, occupational</u>		<u>Within 30 days</u>	<u>Washington state department of labor and industries (L&I)</u>	<u>Both</u>
<u>Babesiosis</u>		<u>Within 3 business days</u>	<u>LHJ</u>	<u>Both</u>
<u>Baylisascariasis</u>		<u>Within 24 hours</u>	<u>LHJ</u>	<u>Both</u>
<u>Birth defects - Abdominal wall defects (inclusive of gastroschisis and omphalocele)</u>		<u>Within 30 days</u>	<u>DOH</u>	<u>Facilities</u>
<u>Birth defects - Autism spectrum disorders</u>		<u>Within 30 days</u>	<u>DOH</u>	<u>Both</u>
<u>Birth defects - Cerebral palsy</u>		<u>Within 30 days</u>	<u>DOH</u>	<u>Both</u>
<u>Birth defects - Down syndrome</u>		<u>Within 30 days</u>	<u>DOH</u>	<u>Facilities</u>
<u>Birth defects - Alcohol related birth defects</u>		<u>Within 30 days</u>	<u>DOH</u>	<u>Both</u>
<u>Birth defects - Hypospadias</u>		<u>Within 30 days</u>	<u>DOH</u>	<u>Facilities</u>
<u>Birth defects - Limb reductions</u>		<u>Within 30 days</u>	<u>DOH</u>	<u>Facilities</u>
<u>Birth defects - Neural tube defects (inclusive of anencephaly and spina bifida)</u>		<u>Within 30 days</u>	<u>DOH</u>	<u>Facilities</u>
<u>Birth defects - Oral clefts (inclusive of cleft lip with/without cleft palate)</u>		<u>Within 30 days</u>	<u>DOH</u>	<u>Facilities</u>
<u>Blood lead level RST results (See WAC 246-101-200)</u>		<u>Providers and facilities performing blood lead level RST shall report as a laboratory and comply with the requirements of WAC 246-101-201 through 246-101-230.</u>		
<u>Botulism, foodborne, infant, and wound</u>		<u>Immediately</u>	<u>LHJ</u>	<u>Both</u>
<u>Brucellosis</u>		<u>Within 24 hours</u>	<u>LHJ</u>	<u>Both</u>
<u>Campylobacteriosis</u>		<u>Within 3 business days</u>	<u>LHJ</u>	<u>Both</u>
<u>Cancer (See chapter 246-102 WAC)</u>				

<u>Notifiable Condition (Agent)</u>	<u>Laboratory Confirmation Required Before Submitting Case Report</u>	<u>Time Frame for Notification from Identification of a Case</u>	<u>Who Must Be Notified</u>	<u>Who Must Report: Health Care Providers (Providers) or Health Care Facilities (Facilities)</u>
<u>Candida auris</u> infection or colonization		<u>Within 24 hours</u>	<u>LHJ</u>	<u>Both</u>
Carbapenem-resistant Enterobacteriaceae infections limited to: <u>Klebsiella</u> species <u>E. coli</u> <u>Enterobacter</u> species	<u>Yes</u>	<u>Within 3 business days</u>	<u>LHJ</u>	<u>Both</u>
<u>Chagas disease</u>		<u>Within 3 business days</u>	<u>LHJ</u>	<u>Both</u>
<u>Chancroid</u>		<u>Within 3 business days</u>	<u>LHJ</u>	<u>Both</u>
<u>Chlamydia trachomatis</u> infection	<u>Yes</u>	<u>Within 3 business days</u>	<u>LHJ</u>	<u>Both</u>
<u>Cholera (Vibrio cholerae O1 or O139)</u>	<u>Yes</u>	<u>Immediately</u>	<u>LHJ</u>	<u>Both</u>
<u>Coccidioidomycosis</u>		<u>Within 3 business days</u>	<u>LHJ</u>	<u>Both</u>
Coronavirus infection (severe communicable) SARS-associated coronavirus MERS-associated coronavirus Novel coronavirus (COVID-19)	<u>Yes</u>	<u>Immediately</u>	<u>LHJ</u>	<u>Both</u>
Coronavirus infection (severe communicable) Novel coronavirus (COVID-19) RST results (See WAC 246-101-200)		<u>Providers and facilities performing Novel coronavirus (COVID-19) RST shall report as a laboratory and comply with the requirements of WAC 246-101-201 through 246-101-230.</u>		
<u>Cryptococcus gattii</u> or undifferentiated <u>Cryptococcus</u> species (i.e., <u>Cryptococcus</u> not identified as <u>C. neoformans</u>)	<u>Yes</u>	<u>Within 3 business days</u>	<u>LHJ</u>	<u>Both</u>
<u>Cryptosporidiosis</u>		<u>Within 3 business days</u>	<u>LHJ</u>	<u>Both</u>
<u>Cyclosporiasis</u>		<u>Within 3 business days</u>	<u>LHJ</u>	<u>Both</u>
<u>Cysticercosis</u>		<u>Within 3 business days</u>	<u>LHJ</u>	<u>Both</u>
<u>Diphtheria</u>		<u>Immediately</u>	<u>LHJ</u>	<u>Both</u>
<u>Domoic acid poisoning</u>		<u>Immediately</u>	<u>LHJ</u>	<u>Both</u>
<u>E. coli</u> (See " <u>Shiga toxin-producing E. coli</u> ")				
<u>Echinococcosis</u>		<u>Within 3 business days</u>	<u>LHJ</u>	<u>Both</u>
<u>Ehrlichiosis</u>		<u>Within 3 business days</u>	<u>LHJ</u>	<u>Both</u>

<u>Notifiable Condition (Agent)</u>	<u>Laboratory Confirmation Required Before Submitting Case Report</u>	<u>Time Frame for Notification from Identification of a Case</u>	<u>Who Must Be Notified</u>	<u>Who Must Report: Health Care Providers (Providers) or Health Care Facilities (Facilities)</u>
<u>Giardiasis</u>		<u>Within 3 business days</u>	<u>LHJ</u>	<u>Both</u>
<u>Glanders (<i>Burkholderia mallei</i>)</u>	<u>Yes</u>	<u>Immediately</u>	<u>LHJ</u>	<u>Both</u>
<u>Gonorrhea</u>		<u>Within 3 business days</u>	<u>LHJ</u>	<u>Both</u>
<u>Granuloma inguinale</u>		<u>Within 3 business days</u>	<u>LHJ</u>	<u>Both</u>
<u>Gunshot wounds (nonfatal)</u>		<u>Within 30 days</u>	<u>DOH</u>	<u>Facilities</u>
<u><i>Haemophilus influenzae</i> (invasive disease, children under 5 years of age)</u>	<u>Yes</u>	<u>Immediately</u>	<u>LHJ</u>	<u>Both</u>
<u>Hantaviral infection</u>		<u>Within 24 hours</u>	<u>LHJ</u>	<u>Both</u>
<u>Hepatitis A (acute infection)</u>	<u>Yes</u>	<u>Within 24 hours</u>	<u>LHJ</u>	<u>Both</u>
<u>Hepatitis B (acute infection)</u>	<u>Yes</u>	<u>Within 24 hours</u>	<u>LHJ</u>	<u>Both</u>
<u>Hepatitis B, report pregnancy in hepatitis B virus infected patients (including carriers)</u>	<u>Yes</u>	<u>Within 3 business days</u>	<u>LHJ</u>	<u>Both</u>
<u>Hepatitis B (chronic infection) - Initial diagnosis, and previously unreported prevalent cases</u>	<u>Yes</u>	<u>Within 3 business days</u>	<u>LHJ</u>	<u>Both</u>
<u>Hepatitis B (perinatal) - Initial diagnosis, and previously unreported cases</u>	<u>Yes</u>	<u>Within 3 business days</u>	<u>LHJ</u>	<u>Both</u>
<u>Hepatitis C (acute infection)</u>	<u>Yes</u>	<u>Within 24 hours</u>	<u>LHJ</u>	<u>Both</u>
<u>Hepatitis C (acute infection) RST results (See WAC 246-101-200)</u>		<u>Providers and facilities performing hepatitis C (acute infection) RST shall report as a laboratory and comply with the requirements of WAC 246-101-201 through 246-101-230.</u>		
<u>Hepatitis C (chronic infection)</u>	<u>Yes</u>	<u>Within 3 business days</u>	<u>LHJ</u>	<u>Both</u>
<u>Hepatitis C (perinatal) - Initial diagnosis, and previously unreported cases</u>	<u>Yes</u>	<u>Within 24 hours</u>	<u>LHJ</u>	<u>Both</u>
<u>Hepatitis C (chronic infection) RST results (See WAC 246-101-200)</u>		<u>Providers and facilities performing hepatitis C (chronic infection) RST shall report as a laboratory and comply with the requirements of WAC 246-101-201 through 246-101-230.</u>		
<u>Hepatitis D (acute and chronic infection)</u>	<u>Yes</u>	<u>Within 24 hours</u>	<u>LHJ</u>	<u>Both</u>
<u>Hepatitis E (acute infection)</u>	<u>Yes</u>	<u>Within 24 hours</u>	<u>LHJ</u>	<u>Both</u>
<u>Herpes simplex, neonatal and genital (initial infection only)</u>		<u>Within 3 business days</u>	<u>LHJ</u>	<u>Providers</u>
<u>Histoplasmosis</u>		<u>Within 3 business days</u>	<u>LHJ</u>	<u>Both</u>
<u>Human immunodeficiency virus (HIV) infection</u>		<u>Within 3 business days</u>	<u>LHJ</u>	<u>Both</u>

<u>Notifiable Condition (Agent)</u>	<u>Laboratory Confirmation Required Before Submitting Case Report</u>	<u>Time Frame for Notification from Identification of a Case</u>	<u>Who Must Be Notified</u>	<u>Who Must Report: Health Care Providers (Providers) or Health Care Facilities (Facilities)</u>
<u>Human immunodeficiency virus (HIV) infection</u> RST results (See WAC 246-101-200)		<u>Providers and facilities performing HIV infection RST shall report as a laboratory and comply with the requirements of WAC 246-101-201 through 246-101-230.</u>		
<u>Human prion disease</u>		<u>Within 3 business days</u>	<u>LHJ</u>	<u>Both</u>
<u>Hypersensitivity pneumonitis, occupational</u>		<u>Within 30 days</u>	<u>L&I</u>	<u>Both</u>
<u>Influenza, novel or unsubtypeable strain</u>		<u>Immediately</u>	<u>LHJ</u>	<u>Both</u>
<u>Influenza-associated death (laboratory confirmed)</u>	<u>Yes</u>	<u>Within 3 business days</u>	<u>LHJ</u>	<u>Both</u>
<u>Legionellosis</u>		<u>Within 24 hours</u>	<u>LHJ</u>	<u>Both</u>
<u>Leptospirosis</u>		<u>Within 24 hours</u>	<u>LHJ</u>	<u>Both</u>
<u>Listeriosis</u>		<u>Within 24 hours</u>	<u>LHJ</u>	<u>Both</u>
<u>Lyme disease</u>		<u>Within 3 business days</u>	<u>LHJ</u>	<u>Both</u>
<u>Lymphogranuloma venereum</u>		<u>Within 3 business days</u>	<u>LHJ</u>	<u>Both</u>
<u>Malaria</u>		<u>Within 3 business days</u>	<u>LHJ</u>	<u>Both</u>
<u>Measles (rubeola) - Acute disease only</u>		<u>Immediately</u>	<u>LHJ</u>	<u>Both</u>
<u>Melioidosis (<i>Burkholderia pseudomallei</i>)</u>	<u>Yes</u>	<u>Immediately</u>	<u>LHJ</u>	<u>Both</u>
<u>Meningococcal disease, invasive</u>		<u>Immediately</u>	<u>LHJ</u>	<u>Both</u>
<u>Monkeypox</u>		<u>Immediately</u>	<u>LHJ</u>	<u>Both</u>
<u>Mumps, acute disease only</u>		<u>Within 24 hours</u>	<u>LHJ</u>	<u>Both</u>
<u>Outbreaks and suspected outbreaks</u>		<u>Immediately</u>	<u>LHJ</u>	<u>Both</u>
<u>Paralytic shellfish poisoning</u>		<u>Immediately</u>	<u>LHJ</u>	<u>Both</u>
<u>Pertussis</u>		<u>Within 24 hours</u>	<u>LHJ</u>	<u>Both</u>
<u>Pesticide poisoning (hospitalized, fatal, or cluster)</u>		<u>Immediately</u>	<u>DOH</u>	<u>Both</u>
<u>Pesticide poisoning (all other)</u>		<u>Within 3 business days</u>	<u>DOH</u>	<u>Both</u>
<u>Plague</u>		<u>Immediately</u>	<u>LHJ</u>	<u>Both</u>
<u>Poliomyelitis</u>		<u>Immediately</u>	<u>LHJ</u>	<u>Both</u>
<u>Pregnancy in patient with hepatitis B virus</u>		<u>See "Hepatitis B, report pregnancy in hepatitis B virus infected patients (including carriers)"</u>		
<u>Psittacosis</u>		<u>Within 24 hours</u>	<u>LHJ</u>	<u>Both</u>
<u>Q fever</u>		<u>Within 24 hours</u>	<u>LHJ</u>	<u>Both</u>

<u>Notifiable Condition (Agent)</u>	<u>Laboratory Confirmation Required Before Submitting Case Report</u>	<u>Time Frame for Notification from Identification of a Case</u>	<u>Who Must Be Notified</u>	<u>Who Must Report: Health Care Providers (Providers) or Health Care Facilities (Facilities)</u>
<u>Rabies (suspect or laboratory confirmed human cases and laboratory confirmed animal cases)</u>	<u>Yes for animal cases</u>	<u>Immediately</u>	<u>LHJ</u>	<u>Both</u>
<u>Rabies, suspected human exposure (suspected human rabies exposures due to a bite from or other exposure to an animal that is suspected of being infected with rabies)</u>		<u>Immediately</u>	<u>LHJ</u>	<u>Both</u>
<u>Relapsing fever (borreliosis)</u>		<u>Within 3 business days</u>	<u>LHJ</u>	<u>Both</u>
<u>Rickettsia infection</u>		<u>Within 3 business days</u>	<u>LHJ</u>	<u>Both</u>
<u>Rubella, acute disease only (including congenital rubella syndrome)</u>		<u>Immediately</u>	<u>LHJ</u>	<u>Both</u>
<u>Salmonellosis</u>		<u>Within 24 hours</u>	<u>LHJ</u>	<u>Both</u>
<u>Serious adverse reactions to immunizations</u>		<u>Within 3 business days</u>	<u>LHJ</u>	<u>Both</u>
<u>Shiga toxin-producing <i>E. coli</i> (STEC) infections/enterohemorrhagic <i>E. coli</i> infections</u>	<u>Yes</u>	<u>Immediately</u>	<u>LHJ</u>	<u>Both</u>
<u>Shigellosis</u>		<u>Within 24 hours</u>	<u>LHJ</u>	<u>Both</u>
<u>Silicosis</u>		<u>Within 30 days</u>	<u>L&I</u>	<u>Both</u>
<u>Smallpox</u>		<u>Immediately</u>	<u>LHJ</u>	<u>Both</u>
<u>Syphilis</u>		<u>Within 3 business days</u>	<u>LHJ</u>	<u>Both</u>
<u>Taeniasis</u>		<u>Within 3 business days</u>	<u>LHJ</u>	<u>Both</u>
<u>Tetanus</u>		<u>Within 3 business days</u>	<u>LHJ</u>	<u>Both</u>
<u>Tick paralysis</u>		<u>Within 3 business days</u>	<u>LHJ</u>	<u>Both</u>
<u>Trichinosis</u>		<u>Within 3 business days</u>	<u>LHJ</u>	<u>Both</u>
<u>Tuberculosis disease (confirmed or highly suspicious, i.e., initiation of empiric treatment)</u>		<u>Within 24 hours</u>	<u>LHJ</u>	<u>Both</u>
<u>Tularemia</u>		<u>Immediately</u>	<u>LHJ</u>	<u>Both</u>
<u>Typhus</u>		<u>Within 3 business days</u>	<u>LHJ</u>	<u>Both</u>
<u>Vaccinia transmission</u>		<u>Immediately</u>	<u>LHJ</u>	<u>Both</u>
<u>Vancomycin-resistant <i>Staphylococcus aureus</i> (not to include vancomycin-intermediate)</u>	<u>Yes</u>	<u>Within 24 hours</u>	<u>LHJ</u>	<u>Both</u>

<u>Notifiable Condition (Agent)</u>	<u>Laboratory Confirmation Required Before Submitting Case Report</u>	<u>Time Frame for Notification from Identification of a Case</u>	<u>Who Must Be Notified</u>	<u>Who Must Report: Health Care Providers (Providers) or Health Care Facilities (Facilities)</u>
<u>Varicella-associated death</u>		<u>Within 3 business days</u>	<u>LHJ</u>	<u>Both</u>
<u>Vibriosis (<i>Vibrio</i> species not including <i>Vibrio cholerae</i> O1 or O139) See Cholera (<i>Vibrio cholerae</i> O1 or O139)</u>	<u>Yes</u>	<u>Within 24 hours</u>	<u>LHJ</u>	<u>Both</u>
<u>Viral hemorrhagic fever</u>		<u>Immediately</u>	<u>LHJ</u>	<u>Both</u>
<u>Yellow fever</u>		<u>Immediately</u>	<u>LHJ</u>	<u>Both</u>
<u>Yersiniosis</u>		<u>Within 24 hours</u>	<u>LHJ</u>	<u>Both</u>
<u>Unexplained critical illness or death</u>		<u>Within 24 hours</u>	<u>LHJ</u>	<u>Both</u>

AMENDATORY SECTION (Amending WSR 11-02-065, filed 1/4/11, effective 2/4/11)

WAC 246-101-105 Duties ~~((of the))~~—Health care providers and health care facilities. ((Health care providers shall:

- (1) Notify the local health department where the patient resides, or, in the event that patient residence cannot be determined, the local health department in which the health care providers practice, regarding:
 - (a) Cases or suspected cases of notifiable conditions specified as notifiable to local health departments in Table HC-1 of WAC 246-101-101;
 - (b) Cases of conditions designated as notifiable by the local health officer within that health officer's jurisdiction;
 - (c) Outbreaks or suspected outbreaks of disease including, but not limited to, suspected or confirmed outbreaks of varicella, influenza, viral meningitis, health care-associated infection suspected due to contaminated food products or devices, or environmentally related disease;
 - (d) Known barriers which might impede or prevent compliance with orders for infection control or quarantine; and
 - (e) Name, address, and other pertinent information for any case, suspected case or carrier refusing to comply with prescribed infection control measures.
- (2) Notify the department of conditions designated as notifiable to the local health department when:
 - (a) A local health department is closed or representatives of the local health department are unavailable at the time a case or suspected case of an immediately notifiable condition occurs;
 - (b) A local health department is closed or representatives of the local health department are unavailable at the time an outbreak or suspected outbreak of communicable disease occurs.
- (3) Notify the department of pesticide poisoning that is fatal, causes hospitalization or occurs in a cluster.
- (4) Notify the department regarding cases of notifiable conditions specified as notifiable to the department in Table HC-1 of WAC 246-101-101.

(5) Assure that positive preliminary test results and positive final test results for notifiable conditions of specimens referred to laboratories outside of Washington for testing are correctly notified to the local health department of the patient's residence or the department as specified in Table Lab 1 of WAC 246-101-201. This requirement can be satisfied by:

- (a) Arranging for the referral laboratory to notify either the local health department, the department, or both; or
- (b) Forwarding the notification of) (1) Unless a health care facility has assumed the notification duties of the principal health care provider under subsection (4) of this section, the principal health care provider shall submit case reports:
 - (a) To the required public health authority under Table HC-1 of WAC 246-101-101 and the requirements of WAC 246-101-110 and 246-101-115, and this section;
 - (b) To the local health jurisdiction as required by the local health officer within that health officer's jurisdiction under WAC 246-101-505 (4)(d).
- (2) A health care facility shall submit case reports:
 - (a) To the required public health authority under Table HC-1 of WAC 246-101-101 and the requirements of WAC 246-101-110 and 246-101-115, and this section that occur or are treated in their facilities.
 - (b) To the local health jurisdiction as required by the local health officer within that health officer's jurisdiction under WAC 246-101-505 (4)(d).
- (3) This section does not require a health care provider or a health care facility to confirm the absence of cases of conditions listed in Table HC-1 of WAC 246-101-101.
- (4) A health care facility may assume the notification requirements established in this chapter for a health care provider practicing within the health care facility.
- (5) A health care facility shall not assume the notification requirements established in this chapter for a laboratory that is a component of the health care facility.
- (6) Health care providers and health care facilities shall:
 - (a) Provide the laboratory with the following information for each test ordered for a notifiable condition:

- (i) Patient's first and last name;
- (ii) Patient's physical address including zip code;
- (iii) Patient's date of birth;
- (iv) Patient's sex;
- (v) Patient's ethnicity, as required in WAC 246-101-011(4);
- (vi) Patient's race, as required in WAC 246-101-011(5);
- (vii) Patient's preferred language, as required in WAC 246-101-011(6);
- (viii) For hepatitis B tests, pregnancy status (pregnant/not pregnant/unknown) of patients twelve to fifty years of age;
- (ix) Patient's best contact telephone number;
- (x) For blood lead level tests, medicaid status of patients less than seventy-two months of age;
- (xi) Requesting health care provider's name;
- (xii) Requesting health care provider's phone number;
- (xiii) Address where patient received care;
- (xiv) Specimen type;
- (xv) Specimen collection date; and
- (xvi) Condition being tested for.

(b) For specimens associated with a notifiable condition sent to a laboratory outside of Washington state, provide the laboratory with the information under (a) of this subsection, Table Lab-1 of WAC 246-101-201, 246-101-220, and 246-101-225.

If the presumptive or final test results from an out-of-state laboratory are consistent with Table Lab-1 of WAC 246-101-201, the health care provider or health care facility shall either:

(i) Confirm the laboratory submitted the laboratory report consistent with WAC 246-101-220 and 246-101-225;
or

(ii) Submit the ((test result)) presumptive and final test results from the ((referral)) out-of-state laboratory ((to the local health department, the department, or both.

(6)) with the case report according to the requirements of this chapter.

(c) Cooperate with public health authorities during investigation of:

((a) Circumstances of a case or suspected) (i) A case of a notifiable condition ((or other communicable disease)); and
((b)) (ii) An outbreak or suspected outbreak ((of disease)).

((7)) (d) Maintain an infection control program as described in WAC 246-320-176 for hospitals and WAC 246-330-176 for ambulatory surgical facilities;

(e) Provide adequate and understandable instruction in disease control measures to each patient who has been diagnosed with a case of a communicable disease, and to contacts who may have been exposed to the disease((-

(8) Maintain responsibility for deciding date of discharge for hospitalized tuberculosis patients.

(9) Notify the local health officer of intended discharge of tuberculosis patients in order to assure appropriate outpatient arrangements are arranged.

(10) By July 1, 2011, when ordering a laboratory test for a notifiable condition as identified in Table HC-1 of WAC 246-101-101, providers must provide the laboratory with the following information for each test order:

- (a) Patient name;
- (b) Patient address including zip code;
- (c) Patient date of birth;
- (d) Patient sex;
- (e) Name of the principal health care provider;
- (f) Telephone number of the principal health care provider;
- (g) Type of test requested;
- (h) Type of specimen;
- (i) Date of ordering specimen collection; and
- (f) Notify the local health jurisdiction of:
 - (i) Known barriers that might impede or prevent compliance with disease control measures; and
 - (ii) Name, address, and other pertinent information for any case or carrier refusing to comply with disease control measures.

(7) Health care providers and health care facilities may provide health information, demographic information, or infectious or noninfectious condition information in addition to the information required under this chapter when the provider or facility determines that the additional information will aid the public health authority in protecting and improving the public's health through prevention and control of infectious and noninfectious conditions.

(8) When a health care provider or health care facility submits information under subsection (7) of this section, they shall submit the information under the requirements of WAC 246-101-110.

AMENDATORY SECTION (Amending WSR 11-02-065, filed 1/4/11, effective 2/4/11)

WAC 246-101-110 Means of notification—Health care providers and health care facilities. Health care providers ~~((shall adhere to the following timelines and procedures:~~

~~(1) Conditions designated as immediately notifiable must be reported to the local health officer or the department, as specified in Table HC-1 of WAC 246-101-101, immediately as the time of diagnosis or suspected diagnosis. This applies twenty-four hours a day, seven days a week. Each local health jurisdiction, as well as the department, maintains after-hours emergency phone contacts for this purpose. A party sending a report by secure facsimile copy or secure electronic transmission during normal business hours must confirm immediate receipt by a live person.~~

~~(2) Conditions designated as notifiable within twenty-four hours must be reported to the local health officer or the department, as specified in Table HC-1 of WAC 246-101-101, within twenty-four hours of diagnosis or suspected diagnosis, seven days a week. Reports during normal public health business hours may be sent by secure electronic transmission, telephone, or secure facsimile copy of a case report. A party sending a report outside of normal public health business hours must use the after-hours emergency phone contact for the appropriate jurisdiction.~~

~~(3) Conditions designated as notifiable within three business days must be reported to the local health officer or department, as specified in Table HC-1 of WAC 246-101-101, within three business days. Notification may be sent by~~

written case report, secure electronic transmission, telephone, or secure facsimile copy of a case report; and

(4) ~~Conditions designated as notifiable on a monthly basis must be reported to the local health officer or the department, as specified in Table HC-1 of WAC 246-101-101, on a monthly basis. Notification may be sent by written case report, secure electronic transmission, telephone, or secure facsimile copy of a case report)~~ and health care facilities shall:

(1) Submit a case report for each case under Table HC-1 of WAC 246-101-101, 246-101-115, and this section by secure electronic data transmission;

(2) Submit a case report to the department instead of the local health jurisdiction when:

(a) The local health jurisdiction is closed or representatives of the local health jurisdiction are unavailable;

(i) For immediately notifiable conditions; or

(ii) At the time an outbreak or suspected outbreak of a communicable disease occurs.

(b) The patient who is the subject of the case report resides outside Washington state and is a visitor to Washington state;

(3) Call the public health authority designated for the condition in Table HC-1 of WAC 246-101-101 immediately and confirm receipt of a case report for conditions designated as:

(a) Immediately notifiable; or

(b) Notifiable within twenty-four hours if the case report is submitted outside of the local health jurisdiction's normal business hours.

AMENDATORY SECTION (Amending WSR 11-02-065, filed 1/4/11, effective 2/4/11)

WAC 246-101-115 Content of ((~~notifications~~) case reports—Health care providers and health care facilities.

(1) ~~((For each condition listed in Table HC-1 of WAC 246-101-101,))~~ Health care providers and health care facilities shall provide the following information ((~~for~~) in each case ((~~or suspected case~~) report:

(a) Patient's first and last name;

(b) Patient's physical address including zip code;

(c) ~~((Patient telephone number;~~

~~(d)))~~ Patient's date of birth;

~~((e)))~~ (d) Patient's sex;

(e) Patient's ethnicity, as required in WAC 246-101-011

(4);

(f) Patient's race, as required in WAC 246-101-011(5);

(g) Patient's preferred language, as required in WAC 246-101-011(6);

(h) For hepatitis B acute or chronic infection case reports, pregnancy status (pregnant/not pregnant/unknown) of patients twelve to fifty years of age;

(i) Patient's best contact telephone number;

(j) Name of the principal health care provider;

(k) Telephone number of the principal health care provider;

(l) Address where patient received care;

(m) Name of the person providing the report;

(n) Telephone number of the person providing the report;

~~((o))~~ (o) Diagnosis or suspected diagnosis of ((~~disease or~~) the condition; and

~~((g))~~ (p) Pertinent laboratory ((data)) results, if available(;

(h) Name of the principal health care provider;

(i) Telephone number of the principal health care provider;

(j) Address of the principal health care provider;

(k) Name and telephone number of the person providing the report; and

(l) Other information as the department may require on forms generated by the department).

(2) Both the local health officer ((~~or~~) and the state health officer may ((require other)) request additional information of epidemiological or public health value when conducting a case investigation or to otherwise prevent and control a specific notifiable condition.

AMENDATORY SECTION (Amending WSR 11-02-065, filed 1/4/11, effective 2/4/11)

WAC 246-101-120 Handling ((~~of case reports and medical~~) confidential information—Health care providers and health care facilities. ~~((1) All records and specimens containing or accompanied by patient identifying information are confidential.~~

(2) Health care providers who know of a person with a notifiable condition, other than a sexually transmitted disease, shall release identifying information only to other individuals responsible for protecting the health and well-being of the public through control of disease, including the local health department.

(3) Health care providers with knowledge of a person with sexually transmitted disease, and following the basic principles of health care providers, which respect the human dignity and confidentiality of patients:

(a) May disclose the identity of a person or release identifying information only as specified in RCW 70.24.105; and

(b) Shall under RCW 70.24.105(6), use only the following customary methods for exchange of medical information:

(i) Health care providers may exchange medical information related to HIV testing, HIV test results, and confirmed HIV or confirmed STD diagnosis and treatment in order to provide health care services to the patient. This means that information shared impacts the care or treatment decisions concerning the patient; and the health care provider requires the information for the patient's benefit.

(ii) Health care providers responsible for office management are authorized to permit access to a patient's medical information and medical record by medical staff or office staff to carry out duties required for care and treatment of a patient and the management of medical information and the patient's medical record.

~~((e) Health care providers))~~ (1) Health care providers, health care facilities, and health care facility personnel shall maintain the confidentiality of patient health care information consistent with chapter 70.02 RCW and any other applicable confidentiality laws.

(2) Health care providers and health care facilities shall:

(a) Establish and implement policies and procedures to maintain confidentiality of health care information.

(b) When conducting a clinical HIV research project ((shall)), report the identity of an individual participating in the project unless:

(i) The project has been approved by an institutional review board; and

(ii) The project has a system in place to remind referring health care providers of ((their reporting obligations)) notification requirements under this chapter.

~~((4) Health care providers shall establish and implement policies and procedures to maintain confidentiality related to a patient's medical information.))~~

**PART III: NOTIFIABLE CONDITIONS—
LABORATORIES AND LABORATORY DIRECTORS**

NEW SECTION

WAC 246-101-200 Rapid screening testing. An individual or entity including, but not limited to, health care providers and health care facilities, that conduct an RST for any of the following conditions, meets the definition of a laboratory under this chapter, and shall comply with WAC 246-101-201 through 246-101-230:

- (1) Blood lead level testing;
- (2) Hepatitis C (acute infection);
- (3) Hepatitis C (chronic infection);
- (4) HIV infection; or
- (5) Novel coronavirus (COVID-19).

AMENDATORY SECTION (Amending WSR 11-02-065, filed 1/4/11, effective 2/4/11)

WAC 246-101-201 Notifiable conditions ((and))—Laboratories. ~~((This section describes the conditions about which Washington's laboratories must notify public health authorities of on a statewide basis. The board finds that the conditions in Table Lab-1 of this section are notifiable for the prevention and control of communicable and noninfectious diseases and conditions in Washington. The board also finds that submission of specimens for many of these conditions will further prevent the spread of disease.~~

~~(1) Laboratory directors shall notify public health authorities of positive preliminary test results and positive final test results of the conditions identified in Table Lab-1 of this section as individual case reports and provide specimen submissions following the requirements in WAC 246-101-205, 246-101-210, 246-101-215, 246-101-220, 246-101-225, and 246-101-230.~~

~~(2) Local health officers may require additional conditions to be notifiable within the local health officer's jurisdiction.~~

Table Lab-1 (Conditions Notifiable by Laboratory Directors)

Notifiable Condition	Time Frame for Notification	Notifiable to Local Health Department	Notifiable to Department of Health	Specimen Submission to Department of Health (Type & Timing)
Arboviruses (West Nile virus, eastern and western equine encephalitis, dengue, St. Louis encephalitis, La Crosse encephalitis, Japanese encephalitis, Powassan, California serogroup, Chikungunya) Acute: IgM positivity PCR positivity Viral isolation	2 business days	✓		On request
<i>Bacillus anthracis</i> (Anthrax)	Immediately	✓		Culture (2 business days)
Blood Lead Level	Elevated Levels—2 business days Nonelevated Levels—Monthly		✓	
<i>Bordetella pertussis</i> (Pertussis)	Within 24 hours	✓		Culture, when available (2 business days)
<i>Borrelia burgdorferi</i> (Lyme disease)	2 business days	✓		On request

Notifiable Condition	Time Frame for Notification	Notifiable to Local Health Department	Notifiable to Department of Health	Specimen Submission to Department of Health (Type & Timing)
<i>Borrelia hermsii</i> or <i>recurrentis</i> (Relapsing fever, tick- or louse-borne)	Within 24 hours	√		On request
<i>Brucella</i> species (Brucellosis)	Within 24 hours	√		Cultures (2 business days)
<i>Burkholderia mallei</i> and <i>pseudomallei</i>	Immediately	√		Culture (2 business days); additional specimens when available
<i>Campylobacter</i> species (Campylobacteriosis)	2 business days	√		On request
CD4 + (T4) lymphocyte counts and/or CD4 + (T4) (patients aged thirteen or older)	Monthly	Only when the local health department is designated by the Department of Health	√ (Except King County)	
<i>Chlamydophila psittaci</i> (Psittacosis)	Within 24 hours	√		On request
<i>Chlamydia trachomatis</i>	2 business days	√		
<i>Clostridium botulinum</i> (Botulism)	Immediately	√		Serum and/or stool; any other specimens available (i.e., foods submitted for suspected food-borne case; debrided tissue submitted for suspected wound botulism) (2 business days)
<i>Corynebacterium diphtheriae</i> (Diphtheria)	Immediately	√		Culture (2 business days)
<i>Coxiella burnetii</i> (Q fever)	Within 24 hours	√		Culture (2 business days)
<i>Cryptococcus non v. neoformans</i>	N/A	N/A		Culture (2 business days) or other specimens upon request
<i>Cryptosporidium</i> (Cryptosporidiosis)	2 business days	√		On request
<i>Cyclospora cayetanensis</i> (Cyclosporiasis)	2 business days	√		Specimen (2 business days)
<i>E. coli</i> – Refer to "Shiga toxin-producing <i>E. coli</i> "	Immediately	√		
<i>Francisella tularensis</i> (Tularemia)	Immediately	√		Culture or other appropriate clinical material (2 business days)
<i>Giardia lamblia</i> (Giardiasis)	2 business days	√		On request
<i>Haemophilus influenzae</i> (children < 5 years of age)	Immediately	√		Culture, from sterile sites only, when type is unknown (2 business days)

Notifiable Condition	Time Frame for Notification	Notifiable to Local Health Department	Notifiable to Department of Health	Specimen Submission to Department of Health (Type & Timing)
Hantavirus-	Within 24 hours	√		On request
Hepatitis A virus (acute) by IgM-positivity (Hepatocellular enzyme levels to accompany report)	Within 24 hours	√		On request
Hepatitis B virus (acute) by IgM-positivity	Within 24 hours	√		On request
Hepatitis B virus -HBsAg (Surface antigen) -HBeAg (E antigen) -HBV DNA	Monthly	√		
Hepatitis C virus	Monthly	√		
Hepatitis D virus-	2 business days	√		On request
Hepatitis E virus-	Within 24 hours	√		On request
Human immunodeficiency virus (HIV) infection (for example, positive Western Blot assays, P24 antigen or viral culture tests)	2 business days	Only when the local health department is designated by the Department of Health	√ (Except King County)	
Human immunodeficiency virus (HIV) infection (II viral load detection test results – detectable and undetectable)	Monthly	Only when the local health department is designated by the Department of Health	√ (Except King County)	
Influenza virus, novel or unsubtypeable strain	Immediately	√		Isolate or clinical specimen (2 business days)
<i>Legionella</i> species (Legionellosis)	Within 24 hours	√		Culture (2 business days)
<i>Leptospira</i> species (Leptospirosis)	Within 24 hours	√		On request
<i>Listeria monocytogenes</i> (Listeriosis)	Within 24 hours	√		Culture (2 business days)
Measles virus (rubeola) Acute: IgM positivity PCR positivity	Immediately	√		Isolate or clinical specimen associated with positive result (2 business days)
Mumps virus Acute: IgM positivity PCR positivity	Within 24 hours	√		Isolate or clinical specimen associated with positive result (2 business days)
<i>Mycobacterium tuberculosis</i> (Tuberculosis)	2 business days		√	Culture (2 business days)
<i>Mycobacterium tuberculosis</i> (Tuberculosis) (Antibiotic sensitivity for first isolates)	2 business days		√	
<i>Neisseria gonorrhoeae</i> (Gonorrhea)	2 business days	√		

Notifiable Condition	Time Frame for Notification	Notifiable to Local Health Department	Notifiable to Department of Health	Specimen Submission to Department of Health (Type & Timing)
<i>Neisseria meningitidis</i> (Meningococcal disease)	Immediately	✓		Culture (from sterile sites only) (2 business days)
<i>Plasmodium</i> species (Malaria)	2 business days	✓		On request
Poliovirus Acute: IgM positivity PCR positivity	Immediately	✓		Isolate or clinical specimen associated with positive result (2 business days)
Rabies virus (human or animal)	Immediately	✓ (Pathology Report Only)		Clinical specimen associated with positive result (2 business days)
<i>Salmonella</i> species (Salmonellosis)	Within 24 hours	✓		Culture (2 business days)
SARS-associated coronavirus	Immediately	✓		Isolate or clinical specimen associated with positive result (2 business days)
Shiga toxin-producing <i>E. coli</i> (enterohemorrhagic <i>E. coli</i> including, but not limited to, <i>E. coli</i> O157:H7)	Immediately	✓		Culture (2 business days) or specimen if no culture is available
<i>Shigella</i> species (Shigellosis)	Within 24 hours	✓		Culture (2 business days)
<i>Treponema pallidum</i> (Syphilis)	2 business days	✓		Serum (2 business days)
<i>Trichinella</i> species	2 business days	✓		On request
Vancomycin-resistant <i>Staphylococcus aureus</i>	Within 24 hours	✓		Culture (2 business days)
Variola virus (smallpox)	Immediately	✓		Isolate or clinical specimen associated with positive result (2 business days)
<i>Vibrio cholerae</i> O1 or O139 (Cholera)	Immediately	✓		Culture (2 business days)
<i>Vibrio</i> species (Vibriosis)	Within 24 hours	✓		Culture (2 business days)
Viral hemorrhagic fever: Arenaviruses Bunyaviruses Filoviruses Flaviviruses	Immediately	✓		Isolate or clinical specimen associated with positive result (2 business days)
Yellow fever virus	Immediately	✓		Serum (2 business days)
<i>Yersinia enterocolitica</i> or <i>pseudotuberculosis</i>	Within 24 hours	✓		On request

Notifiable Condition	Time Frame for Notification	Notifiable to Local Health Department	Notifiable to Department of Health	Specimen Submission to Department of Health (Type & Timing)
<i>Yersinia pestis</i> (Plague)	Immediately	√		Culture or other appropriate clinical material (2 business days)

(√) Indicates which agency should receive case and suspected case reports.

(3) The local health department may request laboratory reporting of additional test results pertinent to an investigation of a notifiable condition (e.g., hepatocellular enzyme levels for hepatitis or negative stool test results on salmonellosis rescreening).

(4) Laboratory directors may notify the local health department, the department, or both of other laboratory results: (1) For the purposes of Table Lab-1:

(a) "At least annually" means deidentified negative screening results may be submitted in a single report no less than once per year, but may be submitted more frequently as a single report or as individual screening results.

(b) "Deidentified negative screening result" means an initial test result that indicates the absence of disease, and that has personally identifiable information removed from it using the Health Insurance Portability and Accountability Act of 1996 Safe Harbor method defined in 45 C.F.R. 164.514. A deidentified negative screening result does not include a negative test result associated with a previous positive test result, such as a negative nucleic acid or viral load test that is performed after a positive antibody or antigen test.

(c) "LHJ" means where the patient resides, or, in the event that patient residence cannot be determined, the local health jurisdiction in which the ordering health care provider practices, or the local health jurisdiction in which the laboratory operates.

(d) "Within two business days" means specimens must be in transit to the Washington state public health laboratories within two business days of:

(i) Completing a test and the specimen being ready for packaging; or

(ii) Receiving a request from a local health jurisdiction or the department, provided the specimen is still available at the time of the request.

(2) This chapter does not require a laboratory to:

(a) Test for agents (conditions) or speculate if the laboratory does not perform the test as part of its normal work. A laboratory director shall only report a condition if it is identified as part of their normal testing protocols; or

(b) Retain specimens indefinitely in anticipation of a request from a local health jurisdiction or the department.

(3) The agents (conditions) in Table Lab-1 are notifiable by a laboratory director as indicated in Table Lab-1 and this chapter.

Table Lab-1 (Conditions Notifiable by Laboratory Directors)

Agent (Condition)	Notification of Results		Specimen Submission to the Washington State Public Health Laboratories	
	What to Submit in a Laboratory Report	When and Whom to Notify Upon Receiving Presumptive or Final Test Result	What to Submit	When to Submit
<u><i>Amebic meningitis</i></u>	Positive result by any method	Immediately to LHJ	Specimen associated with positive result, if available	Within 2 business days
<u><i>Anaplasma species</i> (Anaplasmosis)</u>	Positive result by any method	Within 2 business days to LHJ	Specimen associated with positive result, if available	Within 2 business days of request by LHJ or DOH
<u><i>Babesia species</i> (Babesiosis)</u>	Positive result by any method	Within 2 business days to LHJ	Specimen associated with positive result, if available	Within 2 business days of request by LHJ or DOH
<u><i>Bacillus anthracis</i> (Anthrax)</u>	Positive result by any method	Immediately to LHJ	Presumptive positive isolate If no isolate available, specimen associated with presumptive positive result	Within 2 business days

<u>Agent (Condition)</u>	<u>Notification of Results</u>		<u>Specimen Submission to the Washington State Public Health Laboratories</u>	
	<u>What to Submit in a Laboratory Report</u>	<u>When and Whom to Notify Upon Receiving Presumptive or Final Test Result</u>	<u>What to Submit</u>	<u>When to Submit</u>
<u><i>Bacillus cereus</i>, biovar <i>anthracis</i> only</u>	<u>Confirmed positive result by any method</u>	<u>Immediately to LHJ</u>	<u>Do not ship specimen</u>	<u>Do not ship specimen</u>
<u><i>Baylisascaris</i> (Baylisascariasis)</u>	<u>Positive result by any method</u>	<u>Within 24 hours to LHJ</u>	<u>Specimen associated with positive result, if available</u>	<u>Within 2 business days</u>
<u>Blood lead level</u>	<u>Results equal to or greater than 5 micrograms per deciliter for: RST Venous</u>	<u>Within 2 business days to DOH</u>	<u>N/A</u>	<u>N/A</u>
	<u>Results less than 5 micrograms per deciliter for: RST Venous</u>	<u>Within 30 days to DOH</u>		
<u><i>Bordetella pertussis</i> (Pertussis)</u>	<u>Positive results by: Culture or Nucleic acid detection ((nucleic acid testing (NAT)) or (nucleic acid amplification testing (NAAT))</u>	<u>Within 24 hours to LHJ</u>	<u>Isolate</u> <u>If no isolate available, specimen associated with positive result</u>	<u>Within 2 business days</u> <u>Within 2 business days of request by LHJ or DOH</u>
<u><i>Borrelia burgdorferi</i> or <i>Borrelia mayonii</i> (Lyme disease)</u>	<u>Positive result by any method</u>	<u>Within 2 business days to LHJ</u>	<u>Specimen associated with positive result</u>	<u>Within 2 business days of request by LHJ or DOH</u>
<u><i>Borrelia hermsii</i>, <i>parkeri</i>, <i>turicatae</i>, <i>miyamotoi</i>, or <i>recurrentis</i> (Relapsing fever, tick- or louse-borne)</u>	<u>Positive result by any method</u>	<u>Within 2 business days to LHJ</u>	<u>Specimen associated with positive result</u>	<u>Within 2 business days of request by LHJ or DOH</u>
<u><i>Brucella</i> species (Brucellosis)</u>	<u>Positive result by any method excluding Immunoglobulin G (IgG)</u>	<u>Within 24 hours to LHJ</u>	<u>Isolate, excluding confirmed positive <i>B. melitensis</i>, <i>B. abortus</i>, or <i>B. suis</i></u> <u>If no isolate available, specimen associated with positive result</u>	<u>Within 2 business days</u>
<u><i>Burkholderia mallei</i> (Glanders)</u>	<u>Positive result by any method excluding IgG</u>	<u>Immediately to LHJ</u>	<u>Presumptive positive isolate</u> <u>If no isolate available, specimen associated with presumptive positive result</u>	<u>Within 2 business days</u>
<u><i>Burkholderia pseudo-mallei</i> (Meliodosis)</u>	<u>Positive result by any method excluding IgG</u>	<u>Immediately to LHJ</u>	<u>Presumptive positive isolate</u>	<u>Within 2 business days</u>

<u>Agent (Condition)</u>	<u>Notification of Results</u>		<u>Specimen Submission to the Washington State Public Health Laboratories</u>	
	<u>What to Submit in a Laboratory Report</u>	<u>When and Whom to Notify Upon Receiving Presumptive or Final Test Result</u>	<u>What to Submit</u>	<u>When to Submit</u>
			<u>If no isolate available, specimen associated with presumptive positive result</u>	
<u>California serogroup viruses, acute (Arbovirus)</u>	<u>Positive result by any method excluding IgG</u>	<u>Within 2 business days to LHJ</u>	<u>Specimen associated with positive result</u>	<u>Within 2 business days of request by LHJ or DOH</u>
<u>Campylobacter species (Campylobacteriosis)</u>	<u>Positive result by: Culture, Nucleic acid detection (NAT or NAAT), or Antigen detection</u>	<u>Within 2 business days to LHJ</u>	<u>Isolate</u> <u>If no isolate available, specimen associated with positive result</u>	<u>Within 2 business days of request by LHJ or DOH</u>
<u>Candida auris</u>	<u>Positive result by any method</u>	<u>Within 24 hours to LHJ</u>	<u>Isolate</u> <u>If no isolate available, specimen associated with positive result</u>	<u>Within 2 business days</u>
<u>Carbapenem-resistant Enterobacteriaceae: Klebsiella species E. coli Enterobacter species</u>	<u>Positive for known carbapenemase resistance gene (including, but not limited to, KPC, NDM, VIM, IMP, OXA-48) demonstrated by nucleic acid detection (NAT or NAAT), or whole genome sequencing</u> <u>Positive on a phenotypic test for carbapenemase production including, but not limited to, Metallo-B-lactamase test, modified Hodge test (MHT) (for E. coli and Klebsiella species only), CarbaNP, Carbapenem Inactivation Method (CIM) or modified CIM (mCIM)</u> <u>Resistant to any carbapenem including, but not limited to, doripenem, ertapenem, imipenem or meropenem</u>	<u>Within 2 business days to LHJ</u>	<u>Isolate</u> <u>If no isolate available, specimen associated with positive result</u>	<u>Within 2 business days</u>

<u>Agent (Condition)</u>	<u>Notification of Results</u>		<u>Specimen Submission to the Washington State Public Health Laboratories</u>	
	<u>What to Submit in a Laboratory Report</u>	<u>When and Whom to Notify Upon Receiving Presumptive or Final Test Result</u>	<u>What to Submit</u>	<u>When to Submit</u>
<u>CD4 + counts¹, or CD4 + percents², or both (patients aged thirteen or older)</u>	<u>All results</u>	<u>Within 30 days to DOH except in King County where this is notifiable to the LHJ</u>	<u>N/A</u>	<u>N/A</u>
<u>Chikungunya virus, acute (Arbovirus)</u>	<u>Positive result by any method excluding Immunoglobulin G (IgG)</u>	<u>Within 2 business days to LHJ</u>	<u>Specimen associated with positive result</u>	<u>Within 2 business days of request by LHJ or DOH</u>
<u>Chlamydia psittaci (Psittacosis)</u>	<u>Positive result by any method excluding IgG</u>	<u>Within 24 hours to LHJ</u>	<u>Specimen associated with positive result</u>	<u>Within 2 business days of request by LHJ or DOH</u>
<u>Chlamydia trachomatis</u>	<u>Positive and indeterminate result by any method</u>	<u>Within 2 business days to LHJ</u>	<u>N/A</u>	<u>N/A</u>
<u>Chlamydia trachomatis</u>	<u>Deidentified negative screening result</u>	<u>At least annually to DOH</u>	<u>N/A</u>	<u>N/A</u>
<u>Clostridium botulinum (Botulism)</u>	<u>Positive result by any method</u>	<u>Immediately to LHJ</u>	<u>Presumptive positive isolate If no isolate available, specimen associated with presumptive positive result</u>	<u>Within 2 business days</u>
<u>Coccidioides (Coccidioidomycosis)</u>	<u>Positive result by any method</u>	<u>Within 2 business days to LHJ</u>	<u>Isolate If no isolate available, specimen associated with positive result</u>	<u>Within 2 business days of request by LHJ or DOH</u>
<u>Coronavirus SARS-associated coronavirus MERS-associated coronavirus Novel coronavirus (SARS-CoV-2)</u>	<u>Positive result by any method</u>	<u>Immediately to LHJ</u>	<u>Presumptive positive isolate If no isolate available, specimen associated with presumptive positive result</u>	<u>Within 2 business days of request by LHJ or DOH</u>
<u>Corynebacterium diphtheriae (Diphtheria)</u>	<u>Positive result by: Culture or Nucleic acid detection (NAT or NAAT)</u>	<u>Immediately to LHJ</u>	<u>Isolate If no isolate available, specimen associated with positive result</u>	<u>Within 2 business days of request by LHJ or DOH</u>
<u>Coxiella burnetii (Q fever)</u>	<u>Positive result by any method</u>	<u>Within 24 hours LHJ</u>	<u>Specimen associated with presumptive positive result</u>	<u>Within 2 business days</u>

<u>Agent (Condition)</u>	<u>Notification of Results</u>		<u>Specimen Submission to the Washington State Public Health Laboratories</u>	
	<u>What to Submit in a Laboratory Report</u>	<u>When and Whom to Notify Upon Receiving Presumptive or Final Test Result</u>	<u>What to Submit</u>	<u>When to Submit</u>
<u>Crimean-Congo hemorrhagic fever virus (Viral hemorrhagic fever)</u>	<u>Positive result by any method</u>	<u>Immediately to LHJ</u>	<u>Presumptive positive isolate</u> <u>If no isolate available, specimen associated with presumptive positive result</u>	<u>Within 2 business days</u>
<u>Cryptococcus gattii or undifferentiated Cryptococcus species (i.e., Cryptococcus not identified as C. neoformans)</u>	<u>Positive results by any method excluding cryptococcal antigen</u>	<u>Within 2 business days to LHJ</u>	<u>Isolate</u> <u>If no isolate available, specimen associated with positive result (excluding serum)</u>	<u>Within 2 business days</u>
			<u>Serum</u>	<u>Within 2 business days of request by LHJ or DOH</u>
<u>Cryptosporidium (Cryptosporidiosis)</u>	<u>Positive result by any method</u>	<u>Within 2 business days to LHJ</u>	<u>Specimen associated with positive result</u>	<u>Within 2 business days of request by LHJ or DOH</u>
<u>Cyclospora cayentanensis (Cyclosporiasis)</u>	<u>Positive result by any method</u>	<u>Within 2 business days to LHJ</u>	<u>Specimen associated with positive result</u>	<u>Within 2 business days of request by LHJ or DOH</u>
<u>Dengue virus, acute (Arbovirus)</u>	<u>Positive result by any method excluding IgG</u>	<u>Within 2 business days to LHJ</u>	<u>Specimen associated with positive result</u>	<u>Within 2 business days of request by LHJ or DOH</u>
<u>E. coli - Refer to "Shiga toxin-producing E. coli"</u>				
<u>Eastern and western equine encephalitis virus, acute (Arbovirus)</u>	<u>Positive result by any method excluding IgG</u>	<u>Within 2 business days to LHJ</u>	<u>Specimen associated with positive result excluding specimens from viral culture</u>	<u>Within 2 business days of request by LHJ or DOH</u>
<u>Ebola virus (Viral hemorrhagic fever)</u>	<u>Positive result by any method</u>	<u>Immediately to LHJ</u>	<u>Presumptive positive specimen</u>	<u>Within 2 business days</u>
<u>Echinococcus granulosus or E. multilocularis (Echinococcosis)</u>	<u>Positive result by any method</u>	<u>Within 2 business days to LHJ</u>	<u>Specimen associated with positive result</u>	<u>Within 2 business days of request by LHJ or DOH</u>
<u>Ehrlichia species (Ehrlichiosis)</u>	<u>Positive result by any method</u>	<u>Within 2 business days to LHJ</u>	<u>Specimen associated with positive result</u>	<u>Within 2 business days of request by LHJ or DOH</u>
<u>Francisella tularensis (Tularemia)</u>	<u>Positive result by any method</u>	<u>Immediately to LHJ</u>	<u>Presumptive positive isolate</u> <u>If no isolate available, specimen associated with presumptive positive result</u>	<u>Within 2 business days</u>

<u>Agent (Condition)</u>	<u>Notification of Results</u>		<u>Specimen Submission to the Washington State Public Health Laboratories</u>	
	<u>What to Submit in a Laboratory Report</u>	<u>When and Whom to Notify Upon Receiving Presumptive or Final Test Result</u>	<u>What to Submit</u>	<u>When to Submit</u>
<u>Giardia duodenalis, G. lamblia, G. intestinalis (Giardiasis)</u>	<u>Positive result by any method</u>	<u>Within 2 business days to LHJ</u>	<u>Specimen associated with positive result</u>	<u>Within 2 business days of request by LHJ or DOH</u>
<u>Guanarito virus (Viral hemorrhagic fever)</u>	<u>Positive result by any method</u>	<u>Immediately to LHJ</u>	<u>Presumptive positive isolate</u> <u>If no isolate available, specimen associated with presumptive positive result</u>	<u>Within 2 business days</u>
<u>Haemophilus influenzae (children < 5 years of age)</u>	<u>Positive result for specimen from a normally sterile site by: Culture or Nucleic acid detection (NAT or NAAT)</u>	<u>Immediately to LHJ</u>	<u>Isolate</u> <u>If no isolate available, specimen associated with positive result</u>	<u>Within 2 business days</u>
<u>Hantavirus including, but not limited to: Andes virus Bayou virus Black Creek Canal virus Dobrava-Belgrade virus Hantaan virus Seoul virus Sin nombre virus</u>	<u>Positive result by any method</u>	<u>Within 24 hours to LHJ</u>	<u>Specimen associated with positive result</u>	<u>Within 2 business days</u>
<u>Hepatitis A virus</u>	<u>Positive results for: IgM or Nucleic acid detection (NAT or NAAT)</u> <u>Hepatocellular enzyme levels to accompany report, if available, for positive IgM results</u>	<u>Within 24 hours to LHJ</u>	<u>Specimen associated with positive result</u>	<u>Within 2 business days of request by LHJ or DOH</u>

<u>Agent (Condition)</u>	<u>Notification of Results</u>		<u>Specimen Submission to the Washington State Public Health Laboratories</u>	
	<u>What to Submit in a Laboratory Report</u>	<u>When and Whom to Notify Upon Receiving Presumptive or Final Test Result</u>	<u>What to Submit</u>	<u>When to Submit</u>
<u>Hepatitis B virus</u>	<p>Positive results for: <u>IgM anti-HBc,</u> <u>HBsAg,</u> <u>HBeAg, or</u> <u>HBV Nucleic acid detection (NAT or NAAT) either qualitative or quantitative, for example PCR or genotyping</u></p> <p><u>If associated with a positive result listed above, and available:</u> <u>Hepatocellular enzyme levels,</u> <u>Pregnancy status, and</u> <u>Negative IgM anti-HBc result</u></p>	<u>Within 24 hours to LHJ</u>	<u>Specimen associated with positive result</u>	<u>Within 2 business days of request by LHJ or DOH</u>
<u>Hepatitis C virus</u>	<p><u>Positive result by any method</u></p> <p><u>Positive and nonpositive results for:</u> <u>HCV nucleic acid detection (NAT or NAAT) for qualitative, quantitative, and genotype tests</u></p> <p><u>If associated with a positive result and available:</u> <u>Hepatocellular enzyme levels, Preg-</u> <u>nancy status,</u> <u>Negative result for</u> <u>IgM anti-HAV, and</u> <u>Negative result for</u> <u>IgM anti-HBc</u></p>	<u>Within 2 business days to LHJ</u>	<u>Specimen associated with positive result</u>	<u>Within 2 business days of request by LHJ or DOH</u>
<u>Hepatitis C virus</u>	<u>Deidentified negative screening result</u>	<u>At least annually to DOH</u>	<u>N/A</u>	<u>N/A</u>
<u>Hepatitis D virus</u>	<p><u>Positive result by any method</u></p> <p><u>If associated with a positive result and available:</u> <u>Hepatocellular enzyme levels</u></p>	<u>Within 24 hours to LHJ</u>	<u>Specimen associated with positive result</u>	<u>Within 2 business days of request by LHJ or DOH</u>

<u>Agent (Condition)</u>	<u>Notification of Results</u>		<u>Specimen Submission to the Washington State Public Health Laboratories</u>	
	<u>What to Submit in a Laboratory Report</u>	<u>When and Whom to Notify Upon Receiving Presumptive or Final Test Result</u>	<u>What to Submit</u>	<u>When to Submit</u>
<u>Hepatitis E virus</u>	Positive result by any method If associated with a positive result and available: <u>Hepatocellular enzyme levels</u>	<u>Within 24 hours to LHJ</u>	<u>Specimen associated with positive result</u>	<u>Within 2 business days of request by LHJ or DOH</u>
<u>Histoplasma capsulatum (histoplasmosis)</u>	Positive result by any method	<u>Within 2 business days to LHJ</u>	<u>Isolate</u>	<u>Within 2 business days</u>
			<u>Serum</u>	<u>Within 2 business days of request by LHJ or DOH</u>
<u>Human immunodeficiency virus (HIV)</u>	Positive and indeterminate results and subsequent negative results associated with those positive or indeterminate results for the tests below: <u>Antibody detection tests (including RST),</u> <u>Antigen detection tests (including RST),</u> <u>or</u> <u>Viral culture</u> <u>All HIV nucleic acid detection (NAT or NAAT) tests:</u> <u>Qualitative and quantitative</u> <u>Detectable and undetectable</u> <u>HIV antiviral resistance testing genetic sequences</u>	<u>Within 2 business days to DOH except in King County where this is notifiable to the LHJ</u>	<u>N/A</u>	<u>N/A</u>
<u>Human immunodeficiency virus (HIV)</u>	<u>Deidentified negative screening result</u>	<u>At least annually to DOH</u>	<u>N/A</u>	<u>N/A</u>
<u>Human prion disease</u>	Positive result by any method excluding <u>Tau protein</u>	<u>Within 2 business days to LHJ</u>	<u>Specimen associated with positive result</u>	<u>Within 2 business days of request by LHJ or DOH</u>
<u>Influenza virus, novel or unsubtypable strain</u>	Positive novel and unsubtypable result	<u>Immediately to LHJ</u>	<u>Isolate</u> <u>If no isolate available, specimen associated with positive result</u>	<u>Within 2 business days</u>

<u>Agent (Condition)</u>	<u>Notification of Results</u>		<u>Specimen Submission to the Washington State Public Health Laboratories</u>	
	<u>What to Submit in a Laboratory Report</u>	<u>When and Whom to Notify Upon Receiving Presumptive or Final Test Result</u>	<u>What to Submit</u>	<u>When to Submit</u>
<u>Japanese encephalitis virus, acute (Arbovirus)</u>	<u>Positive result by any method excluding IgG</u>	<u>Within 2 business days to LHJ</u>	<u>Specimen associated with positive result</u>	<u>Within 2 business days of request by LHJ or DOH</u>
<u>Junin virus (Viral hemorrhagic fever)</u>	<u>Positive result by any method</u>	<u>Immediately to LHJ</u>	<u>Presumptive positive isolate</u> <u>If no isolate available, specimen associated with presumptive positive result</u>	<u>Within 2 business days</u>
<u>La Crosse encephalitis virus, acute (Arbovirus)</u>	<u>Positive result by any method excluding IgG</u>	<u>Within 2 business days to LHJ</u>	<u>Specimen associated with positive result</u>	<u>Within 2 business days of request by LHJ or DOH</u>
<u>Lassa virus (Viral hemorrhagic fever)</u>	<u>Positive result by any method</u>	<u>Immediately to LHJ</u>	<u>Presumptive positive isolate</u> <u>If no isolate available, specimen associated with presumptive positive result</u>	<u>Within 2 business days</u>
<u>Legionella species (Legionellosis)</u>	<u>Positive result by any method</u>	<u>Within 24 hours to LHJ</u>	<u>Isolate</u> <u>If no isolate available but respiratory specimen available and associated with a positive test (as in the case of a PCR positive), respiratory specimen associated with positive result</u>	<u>Within 2 business days</u>
<u>Leptospira species (Leptospirosis)</u>	<u>Positive result by any method</u>	<u>Within 24 hours to LHJ</u>	<u>Isolate</u> <u>If no isolate available, specimen associated with positive result</u>	<u>Within 2 business days of request by LHJ or DOH</u>
<u>Listeria monocytogenes (Listeriosis)</u>	<u>Positive result for specimen from a normally sterile site by:</u> <u>Culture or</u> <u>Nucleic acid detection (NAT or NAAT)</u>	<u>Within 24 hours to LHJ</u>	<u>Isolate</u> <u>If no isolate available, specimen associated with positive result</u>	<u>Within 2 business days</u>
<u>Lujo virus (Viral hemorrhagic fever)</u>	<u>Positive result by any method</u>	<u>Immediately to LHJ</u>	<u>Presumptive positive isolate</u> <u>If no isolate available, specimen associated with presumptive positive result</u>	<u>Within 2 business days</u>

<u>Agent (Condition)</u>	<u>Notification of Results</u>		<u>Specimen Submission to the Washington State Public Health Laboratories</u>	
	<u>What to Submit in a Laboratory Report</u>	<u>When and Whom to Notify Upon Receiving Presumptive or Final Test Result</u>	<u>What to Submit</u>	<u>When to Submit</u>
<u>Machupo virus (Viral hemorrhagic fever)</u>	<u>Positive result by any method</u>	<u>Immediately to LHJ</u>	<u>Presumptive positive isolate</u> <u>If no isolate available, specimen associated with presumptive positive result</u>	<u>Within 2 business days</u>
<u>Marburg virus (Viral hemorrhagic fever)</u>	<u>Positive result by any method</u>	<u>Immediately to LHJ</u>	<u>Presumptive positive isolate</u> <u>If no isolate available, specimen associated with presumptive positive result</u>	<u>Within 2 business days</u>
<u>Measles virus - See "Rubeola (measles virus)"</u>				
<u>Mumps virus</u>	<u>Positive result for: Culture, Nucleic acid detection (NAT or NAAT), or IgM</u>	<u>Within 24 hours to LHJ</u>	<u>Isolate</u> <u>If no isolate available, specimen associated with positive result</u> <u>Specimen associated with positive IgM</u>	<u>Within 2 business days</u> <u>Within 2 business days of request by LHJ or DOH</u>
<u>Mycobacterium tuberculosis complex (Tuberculosis)</u>	<u>Positive result for: Culture Nucleic acid detection (NAT or NAAT) Drug susceptibilities (molecular and culture based)</u>	<u>Within 2 business days to DOH</u>	<u>Mycobacterium tuberculosis complex positive isolate (earliest available isolate for the patient)</u>	<u>Within 2 business days</u>
<u>Neisseria gonorrhoeae (Gonorrhea)</u>	<u>Positive and indeterminate result by any method</u>	<u>Within 2 business days to LHJ</u>	<u>N/A</u>	<u>N/A</u>
<u>Neisseria gonorrhoeae (Gonorrhea)</u>	<u>Deidentified negative screening result</u>	<u>At least annually to DOH</u>	<u>N/A</u>	<u>N/A</u>
<u>Neisseria meningitidis (Meningococcal disease)</u>	<u>Positive result for specimen from a normally sterile site by any method</u>	<u>Immediately to LHJ</u>	<u>Isolate from a normally sterile site</u> <u>If no isolate available, specimen associated with positive result</u>	<u>Within 2 business days</u> <u>Within 2 business days of request by LHJ or DOH</u>

<u>Agent (Condition)</u>	<u>Notification of Results</u>		<u>Specimen Submission to the Washington State Public Health Laboratories</u>	
	<u>What to Submit in a Laboratory Report</u>	<u>When and Whom to Notify Upon Receiving Presumptive or Final Test Result</u>	<u>What to Submit</u>	<u>When to Submit</u>
<u>Plasmodium species (Malaria)</u>	Positive results for: <u>Nucleic acid detection (NAT or NAAT),</u> <u>Malaria-specific antigens by rapid diagnostic test,</u> <u>PCR, or</u> <u>Microscopy (thick or thin smear)</u>	<u>Within 2 business days to LHJ</u>	<u>Specimen associated with positive result</u>	<u>Within 2 business days of request by LHJ or DOH</u>
<u>Poliovirus (Poliomyelitis)</u>	<u>IgM positivity; PCR positivity</u>	<u>Immediately to LHJ</u>	<u>Isolate</u> <u>If no isolate available, specimen associated with positive result</u>	<u>Within 2 business days</u>
<u>Powassan virus, acute (Arbovirus)</u>	<u>Positive result by any method excluding IgG</u>	<u>Within 2 business days to LHJ</u>	<u>Specimen associated with positive result</u>	<u>Within 2 business days of request by LHJ or DOH</u>
<u>Rabies virus</u>	<u>Positive result by any method</u>	<u>Immediately to LHJ</u>	<u>Specimen associated with positive result</u>	<u>Within 2 business days</u>
<u>Rickettsia species including, but not limited to:</u> <u><i>Rickettsia rickettsii</i></u> <u><i>Rickettsia africae</i></u> <u><i>Rickettsia conorii</i></u> <u><i>Rickettsia typhi</i></u> <u><i>Rickettsia parkeri</i></u> <u><i>Rickettsia philipii</i></u>	<u>Positive results by any method</u>	<u>Within 2 business days to LHJ</u>	<u>Specimen associated with positive result</u>	<u>Within 2 business days of request by LHJ or DOH</u>
<u>Rubella</u>	<u>Positive result by:</u> <u>Culture,</u> <u>IgM, or</u> <u>Nucleic acid detection (NAT or NAAT)</u>	<u>Immediately to LHJ</u>	<u>Isolate</u> <u>If no isolate available, specimen associated with positive result</u>	<u>Within 2 business days</u>
			<u>Other specimen</u>	<u>Within 2 business days of request by LHJ or DOH</u>
<u>Rubeola (measles virus)</u>	<u>Positive result by:</u> <u>Culture,</u> <u>IgM, or</u> <u>Nucleic acid detection (NAT or NAAT)</u>	<u>Immediately to LHJ</u>	<u>Isolate and specimen associated with positive culture</u>	<u>Within 2 business days</u>
			<u>Isolate and specimen association with positive NAT or NAAT result</u>	
			<u>Specimen associated with positive IgM</u> <u>Other specimen</u>	

<u>Agent (Condition)</u>	<u>Notification of Results</u>		<u>Specimen Submission to the Washington State Public Health Laboratories</u>	
	<u>What to Submit in a Laboratory Report</u>	<u>When and Whom to Notify Upon Receiving Presumptive or Final Test Result</u>	<u>What to Submit</u>	<u>When to Submit</u>
<u>Sabia virus (Viral hemorrhagic fever)</u>	<u>Positive result by any method</u>	<u>Immediately to LHJ</u>	<u>Presumptive positive isolate</u> <u>If no isolate available, specimen associated with presumptive positive result</u>	<u>Within 2 business days</u>
<u>Salmonella species (Salmonellosis, typhoid fever)</u>	<u>Positive result by any method</u>	<u>Within 24 hours to LHJ</u>	<u>Isolate</u> <u>If no isolate available, specimen associated with positive result</u>	<u>Within 2 business days</u>
<u>Shiga toxin-producing E. coli/enterohemorrhagic E. coli (STEC)</u>	<u>Positive result by any method</u>	<u>Immediately to LHJ</u>	<u>Isolate</u> <u>If no isolate available, specimen associated with positive result</u>	<u>Within 2 business days</u>
<u>Shigella species (Shigellosis)</u>	<u>Positive result by any method</u>	<u>Within 24 hours to LHJ</u>	<u>Isolate</u> <u>If no isolate available, specimen associated with positive result</u>	<u>Within 2 business days</u>
<u>St. Louis encephalitis virus, acute (Arbovirus)</u>	<u>Positive result by any method excluding IgG</u>	<u>Within 2 business days to LHJ</u>	<u>Specimen associated with positive result</u>	<u>Within 2 business days of request by LHJ or DOH</u>
<u>Taenia solium (Taeniasis or Cysticercosis)</u>	<u>Positive result by any method</u>	<u>Within 2 business days to LHJ</u>	<u>Specimen associated with positive result</u>	<u>Within 2 business days of request by LHJ or DOH</u>
<u>Treponema pallidum (Syphilis)</u>	<u>Positive and indeterminate result by any method</u>	<u>Within 2 business days to LHJ</u>	<u>Specimen associated with positive result</u>	<u>Within 2 business days</u>
<u>Treponema pallidum (Syphilis)</u>	<u>Deidentified negative screening result</u>	<u>At least annually to DOH</u>	<u>N/A</u>	<u>N/A</u>
<u>Trichinella species (Trichinellosis)</u>	<u>Positive serologic test for Trichinella</u>	<u>Within 2 business days to LHJ</u>	<u>Specimen associated with positive result</u>	<u>Within 2 business days of request by LHJ or DOH</u>
<u>Trypanosoma cruzi (Chagas disease)</u>	<u>Positive result by any method</u>	<u>Within 2 business days to LHJ</u>	<u>Specimen associated with positive result</u>	<u>Within 2 business days</u>
<u>Vaccinia</u>	<u>Any request for testing associated with a suspect case</u>	<u>Immediately to LHJ</u>	<u>Any specimen collected from a suspect case</u>	<u>Immediately</u>
<u>Vancomycin-resistant Staphylococcus aureus</u>	<u>Resistance to vancomycin</u>	<u>Within 24 hours to LHJ</u>	<u>Isolate</u> <u>If no isolate available, specimen associated with positive result</u>	<u>Within 2 business days</u>

<u>Agent (Condition)</u>	<u>Notification of Results</u>		<u>Specimen Submission to the Washington State Public Health Laboratories</u>	
	<u>What to Submit in a Laboratory Report</u>	<u>When and Whom to Notify Upon Receiving Presumptive or Final Test Result</u>	<u>What to Submit</u>	<u>When to Submit</u>
<u>Variola virus (smallpox)</u>	<u>Any request for testing associated with a suspect case</u>	<u>Immediately to LHJ</u>	<u>Specimen collected from a suspect case</u>	<u>Immediately</u>
<u>Vibrio cholerae O1 or O139 (Cholera)</u>	<u>Positive result by any method</u>	<u>Immediately to LHJ</u>	<u>Isolate</u> <u>If no isolate available, specimen associated with positive result</u>	<u>Within 2 business days</u>
<u>Vibrio species (Vibriosis) not including Vibrio cholerae O1 or O139 (Cholera)</u> <u>See "Vibrio cholerae O1 or O139 (Cholera)"</u>	<u>Positive result by any method</u>	<u>Within 24 hours to LHJ</u>	<u>Isolate</u> <u>If no isolate available, specimen associated with positive result</u>	<u>Within 2 business days</u>
<u>West Nile virus, acute (Arbovirus)</u>	<u>Positive result by any method excluding IgG</u>	<u>Within 2 business days to LHJ</u>	<u>Specimen associated with positive result</u>	<u>Within 2 business days of request by LHJ or DOH</u>
<u>Yellow fever virus (Arbovirus)</u>	<u>Positive result by any method excluding IgG</u>	<u>Immediately to LHJ</u>	<u>Specimen associated with positive result</u>	<u>Within 2 business days</u>
<u>Yersinia enterocolitica, Y. pseudotuberculosis, Y. intermedia, Y. fredericksonii, or Y. kristensenii (Yersiniosis)</u>	<u>Positive result by any method</u>	<u>Within 24 hours to LHJ</u>	<u>Isolate</u> <u>If no isolate available, specimen associated with positive result</u>	<u>Within 2 business days of request by LHJ or DOH</u>
<u>Yersinia pestis (Plague)</u>	<u>Positive result by any method</u>	<u>Immediately to LHJ</u>	<u>Presumptive positive isolate</u> <u>If no isolate available, specimen associated with presumptive positive result</u>	<u>Within 2 business days</u>
<u>Zika virus, acute (Arbovirus)</u>	<u>Positive result by any method excluding IgG</u>	<u>Within 2 business days to LHJ</u>	<u>Specimen associated with positive result</u>	<u>Within 2 business days of request by LHJ or DOH</u>

¹ "CD4 + counts" means CD4 + (T4) lymphocyte counts.
² "CD4 + percents" means CD4 + (T4) percents of total lymphocytes.

AMENDATORY SECTION (Amending WSR 11-02-065, filed 1/4/11, effective 2/4/11)

WAC 246-101-205 ((Responsibilities and) Duties (of the) Laboratory directors. (1) A laboratory director((s)) shall:

(a) ((Notify the local health department where the patient resides, or, in the event that patient residence cannot be determined, the local health department in which the ordering

~~health care provider practices, or the local health department in which the laboratory operates, regarding:~~

~~(i) Positive preliminary test results and positive final test results of notifiable conditions specified as notifiable to the local health department in Table Lab 1.~~

~~(ii) Positive preliminary test results and positive final test results of conditions specified as notifiable by the local health officer within that health officer's jurisdiction.)) Submit laboratory reports:~~

(i) To the local health jurisdiction or the department as required in Table Lab-1 of WAC 246-101-201, and under the requirements of WAC 246-101-220, 246-101-225, and this section; and

(ii) To the local health jurisdiction as required by the local health officer within that health officer's jurisdiction under WAC 246-101-505 (4)(d).

(b) Notify the department of conditions designated as notifiable to the local health ~~((department))~~ jurisdiction when:

(i) A local health ~~((department))~~ jurisdiction is closed or representatives of the local health ~~((department))~~ jurisdiction are unavailable at the time a ~~((positive preliminary test result or positive))~~ presumptive or final test result of an immediately notifiable condition occurs; or

~~(ii) ((A local health department is closed or representatives of the local health department are unavailable at the time an outbreak or suspected outbreak of communicable disease occurs.~~

~~(c) Notify the department of positive preliminary test results or positive final test results for conditions designated notifiable to the department in Table Lab-1.~~

~~(d) Notify the department of nonelevated blood lead levels on a monthly basis.~~

~~(e) Submit specimens for conditions noted in Table Lab-1 to the Washington state public health laboratories or other laboratory designated by the state health officer for diagnosis, confirmation, storage, or further testing.~~

~~(f) Ensure that positive preliminary test results and positive final test results for notifiable conditions of specimens referred to other laboratories for testing are correctly notified to the correct local health department or the department. This requirement can be satisfied by:~~

~~(i) Arranging for the referral laboratory to notify either the local health department, the department, or both; or~~

~~(ii) Forwarding the notification of the test result from the referral laboratory to the local health department, the department, or both.~~

~~(g)) The notifiable test result pertains to a patient who resides outside of and is visiting Washington state as indicated by information provided by the requesting health care provider or health care facility.~~

(c) Submit specimens required in Table Lab-1 of WAC 246-101-201 under the requirements of WAC 246-101-210 and 246-101-215, and this section;

(d) Cooperate with public health authorities during investigation of:

(i) The circumstances of a case ~~((or suspected case))~~ of a notifiable condition ~~((or other communicable disease));~~ ~~(and)~~ or

(ii) An outbreak or suspected outbreak of disease.

(2) A laboratory director(s) may designate responsibility for working and cooperating with public health authorities to certain employees as long as designated employees are:

(a) Readily available; and

(b) Able to provide requested information in a timely manner.

(3) ~~((By July 1, 2011, when referring))~~ A laboratory director may refer a specimen of a notifiable condition to a reference laboratory for testing.

(4) When a laboratory director refers a specimen ~~((to another))~~ of a notifiable condition to a reference laboratory for ~~((a test for a notifiable condition))~~ testing, the laboratory director(s) shall:

(a) Provide the reference laboratory with Table Lab-1 of WAC 246-101-201, 246-101-220, 246-101-225, and this section; and the following information for each ~~((test referral))~~ specimen:

~~((a) Patient name;~~

~~(b) Full address of patient, or patient zip code at a minimum, when available in laboratory database;~~

~~(c) Date of birth or age of patient, when available in laboratory database;~~

~~(d) Sex of patient, when available in laboratory database;~~

~~(e) Name of the principal health care provider;~~

~~(f) Telephone number of the principal health care provider;~~

~~(g) Address of the principal health care provider, when available;~~

~~(h) Type of test requested;~~

~~(i) Type of specimen; and~~

~~(j) Date of specimen collection.~~

~~(4) By January 1, 2013, laboratory databases must have the ability to receive, store, and retrieve all of the data elements specified in subsection (3)(a) through (j) of this section.)~~

~~(i) Patient's first and last name;~~

~~(ii) Patient's physical address including zip code;~~

~~(iii) Patient's date of birth;~~

~~(iv) Patient's sex;~~

~~(v) Patient's ethnicity, as required in WAC 246-101-011~~

~~(4);~~

~~(vi) Patient's race, as required in WAC 246-101-011(5);~~

~~(vii) Patient's preferred language, as required in WAC 246-101-011(6);~~

~~(viii) For hepatitis B virus tests, pregnancy status (pregnant, not pregnant, or unknown) of patients twelve to fifty years of age;~~

~~(ix) Patient's best contact telephone number;~~

~~(x) For blood lead level tests, medicaid status of patients less than seventy-two months of age;~~

~~(xi) Requesting health care provider's name;~~

~~(xii) Requesting health care provider's phone number;~~

~~(xiii) Address where patient received care;~~

~~(xiv) Name of submitting laboratory;~~

~~(xv) Telephone number of submitting laboratory;~~

~~(xvi) Specimen type;~~

~~(xvii) Specimen collection date;~~

~~(xviii) Date laboratory received specimen; and~~

~~(xix) Test method requested.~~

(b) Ensure the laboratory report is submitted appropriately either by:

(i) Arranging for the reference laboratory to submit the laboratory report under Table Lab-1 of WAC 246-101-201, 246-101-220, and 246-101-225; or

(ii) Submitting the laboratory report under Table Lab-1 of WAC 246-101-201, 246-101-220, and 246-101-225.

(5) A laboratory director may provide health information, demographic information, or infectious or noninfectious condition information in addition to the information required

under this chapter when the provider or facility determines that the additional information will aid the appropriate public health authority in protecting and improving the public's health through prevention and control of infectious and non-infectious conditions.

(6) When a laboratory director submits information under subsection (4) of this section, they shall submit the information under the requirements of WAC 246-101-220.

AMENDATORY SECTION (Amending WSR 11-02-065, filed 1/4/11, effective 2/4/11)

WAC 246-101-210 Means of specimen submission—Laboratory directors and laboratories. (1) ((When submitting specimens as indicated in Table Lab-1 of WAC 246-101-201, laboratories shall adhere to the following timelines and procedures:

(a) Specimens designated for submission within two business days must be in transit within two business days from the time the specimen is ready for packaging;

(b) Specimens designated for submission on request may be requested by the local health departments or the department. The laboratory shall ship a requested specimen within two business days of receiving the request, provided the specimen is still available at the time of the request. This is not intended to require laboratories to save specimens indefinitely in anticipation of a request.

(2) Local health jurisdictions may temporarily waive specimen submission for circumstances at their discretion by communication with individual laboratories.)) A laboratory director shall submit specimens as required in Table Lab-1 of WAC 246-101-201 in accordance with the requirements of this chapter.

(2) For test results notifiable to local health jurisdictions, the local health officer may temporarily waive specimen submission requirements and notify laboratories, including the Washington state public health laboratories, of the basis for the waiver, which requirements are being waived and how long the waiver will be in effect.

(3) ((Laboratories)) A laboratory shall forward ((all)) required specimens ((submissions)) to:

Washington State Public Health Laboratories
Washington State Department of Health
1610 N.E. 150th Street
Shoreline, WA 98155

(4) The state health officer may designate additional laboratories as public health ((referral)) reference laboratories.

AMENDATORY SECTION (Amending WSR 11-02-065, filed 1/4/11, effective 2/4/11)

WAC 246-101-215 Content of documentation accompanying specimen submission—Laboratory directors. ((For each condition listed in Table Lab-1 of WAC 246-101-201,)) A laboratory director((s)) shall provide the following information with each specimen ((submission):

- (1) Type of specimen tested;
- (2) Name of reporting laboratory;
- (3) Telephone number of reporting laboratory;

(4) Date of specimen collection;

(5) Requesting health care provider's name;

(6) Requesting health care provider's phone number;

(7) Requesting health care provider's address, when available;

(8) Test result;

(9) Name of patient;

(10) Sex of patient, when available in laboratory database;

(11) Date of birth or age of patient, when available in laboratory database;

(12) Full address of patient, or patient zip code at a minimum, when available in laboratory database;

(13) Telephone number of patient, when available in laboratory database;

(14) Other information of epidemiological value, when available)) submitted under this chapter to the Washington state public health laboratories:

(1) Patient's first and last name;

(2) Patient's physical address including zip code;

(3) Patient's date of birth;

(4) Patient's sex;

(5) Patient's ethnicity, as required in WAC 246-101-011(4);

(6) Patient's race, as required in WAC 246-101-011(5);

(7) Patient's preferred language, as required in WAC 246-101-011(6);

(8) For hepatitis B virus, pregnancy status (pregnant, not pregnant, or unknown) of patients twelve to fifty years of age;

(9) Patient's best contact telephone number;

(10) Requesting health care provider's name;

(11) Requesting health care provider's phone number;

(12) Address where patient received care;

(13) Name of submitting laboratory;

(14) Telephone number of submitting laboratory;

(15) Specimen type;

(16) Specimen collection date;

(17) Date laboratory received specimen;

(18) Test method used; and

(19) Test result.

AMENDATORY SECTION (Amending WSR 11-02-065, filed 1/4/11, effective 2/4/11)

WAC 246-101-220 Means of notification ((for positive preliminary test results and positive final test results))—Laboratory directors. A laboratory director((s)) shall ((adhere to the following timelines and procedures:

(1) Conditions designated as immediately notifiable must be reported to the local health officer or the department, as specified in Table Lab-1 of WAC 246-101-201, immediately at the time of positive preliminary test result or positive final test result. This applies twenty-four hours a day, seven days a week. Each local health jurisdiction, as well as the department, maintains after-hours emergency telephone contacts for this purpose. A party sending notification by secure facsimile copy or secure electronic transmission during normal business hours must confirm immediate receipt by a live person.

(2) Conditions designated as notifiable within twenty-four hours must be reported to the local health officer or the department, as specified in Table Lab 1 of WAC 246-101-201, within twenty-four hours of positive preliminary test result or positive final test result, seven days a week. Reports during normal public health business hours may be sent by secure electronic transmission, telephone, or secure facsimile copy of a case report. A party sending a report outside of normal public health business hours must use the after-hours emergency phone contact for the appropriate jurisdiction.

(3) Conditions designated as notifiable within two business days must be reported to the local health officer or the department, as specified in Table Lab 1 of WAC 246-101-201, within two business days. Notification may be sent by secure electronic transmission, telephone, or secure facsimile copy of a case report; and

(4) Conditions designated as notifiable on a monthly basis must be reported to the local health officer or the department, as specified in Table Lab 1 of WAC 246-101-201, on a monthly basis. Notification may be sent by written case report, secure electronic transmission, telephone, or secure facsimile copy of a case report);

(1) Submit laboratory reports as required under this chapter by secure electronic data transmission.

(2) Call the local health jurisdiction in which the case occurred immediately and confirm receipt of a presumptive or final test result for a condition designated as:

(a) Immediately notifiable; or

(b) Notifiable within twenty-four hours when submitting the test result outside the local health jurisdiction's normal business hours.

AMENDATORY SECTION (Amending WSR 11-02-065, filed 1/4/11, effective 2/4/11)

WAC 246-101-225 Content of ~~((notifications for positive preliminary test results and positive final test results))~~ laboratory reports—Laboratory directors. (1) ~~((For each condition listed in Table Lab 1 of WAC 246-101-201;))~~ A laboratory director((s must)) shall provide the following information ((for)) in each ((positive culture or suggestive test result)) laboratory report required under this chapter:

~~((a))~~ Type of specimen tested;

(b) Name of reporting laboratory;

(c) Telephone number of reporting laboratory;

(d) Date of specimen collection;

(e) Date specimen received by reporting laboratory;

(f) Requesting health care provider's name;

(g) Requesting health care provider's phone number;

(h) Requesting health care provider's address, when available;

(i) Test result;

(j) Name of patient;

(k) Sex of patient, when available in laboratory database;

(l) Date of birth or age of patient, when available in laboratory database; and

(m) Full address of patient, or patient zip code at a minimum, when available in laboratory database-)) (a) Patient's first and last name;

(b) Patient's physical address including zip code;

(c) Patient's date of birth;

(d) Patient's sex;

(e) Patient's ethnicity, as required in WAC 246-101-011

(4);

(f) Patient's race, as required in WAC 246-101-011(5);

(g) Patient's preferred language, as required in WAC 246-101-011(6);

(h) For hepatitis B virus, pregnancy status (pregnant, not pregnant, or unknown) of patients twelve to fifty years of age;

(i) Patient's best contact telephone number;

(j) For blood lead level, medicaid status of patients less than seventy-two months of age;

(k) Requesting health care provider's name;

(l) Requesting health care provider's phone number;

(m) Address where patient received care;

(n) Name of submitting laboratory;

(o) Telephone number of submitting laboratory;

(p) Specimen type;

(q) Specimen collection date;

(r) Date laboratory received specimen;

(s) Test method used; and

(t) Test result.

(2) The local health ((officers and)) officer or the state health officer may ((require laboratory directors to report other)) request additional information of epidemiological or public health value when conducting a case investigation or otherwise for prevention and control of a specific notifiable condition.

AMENDATORY SECTION (Amending WSR 11-02-065, filed 1/4/11, effective 2/4/11)

WAC 246-101-230 Handling ~~((of case reports and medical))~~ confidential information—Laboratory directors. (1) ~~((All records and specimens containing or accompanied by patient identifying information are confidential. The Washington state public health laboratories, other laboratories approved as public health referral laboratories, and any persons, institutions, or facilities submitting specimens or records containing patient identifying information.))~~ A laboratory shall maintain the confidentiality of ((identifying information accompanying submitted laboratory specimens)) health care information consistent with chapter 70.02 RCW and any other applicable confidentiality laws.

(2) A laboratory director((s)) shall establish and implement policies and procedures to maintain confidentiality ((related to a patient's medical)) of health care information.

~~((3))~~ Laboratory directors and personnel working in laboratories who know of a person with a notifiable condition, other than a sexually transmitted disease, shall release identifying information only to other individuals responsible for protecting the health and well-being of the public through control of disease.

(4) Laboratory directors and personnel working in laboratories with knowledge of a person with sexually transmitted disease, and following the basic principles of health care providers, which respect the human dignity and confidentiality of patients:

(a) May disclose identity of a person or release identifying information only as specified in RCW 70.24.105; and
 (b) Shall under RCW 70.24.105(6), use only the following customary methods for exchange of medical information:
 (i) Laboratory directors and personnel working in laboratories may exchange medical information related to HIV testing, HIV test results, and confirmed HIV or confirmed STD diagnosis and treatment in order to provide health care services to the patient. This means that information shared impacts the care or treatment decisions concerning the

patient; and the laboratory director or personnel working in the laboratory require the information for the patient's benefit.
 (ii) Laboratory directors are authorized to permit access to a patient's medical information and medical record by laboratory staff or office staff to carry out duties required for care and treatment of a patient, the management of medical information, and the management of the patient's medical record.)

PART IV: NOTIFIABLE CONDITIONS—DUTIES OF OTHERS

AMENDATORY SECTION (Amending WSR 11-02-065, filed 1/4/11, effective 2/4/11)

WAC 246-101-405 ((Responsibilities of) Duties—Veterinarians. (1) A veterinarian(s) shall(=

(a) Notify the local health officer of the jurisdiction in which the human resides of any suspected human case or suspected human outbreak based on the human's exposure to a confirmed animal case of any disease listed in Table V-1 of this section:

Table V-1 (Conditions Notifiable by Veterinarians)

Notifiable Condition	Time Frame for Notification	Notifiable to Local Health Department
Anthrax	Immediately	√
Arboviral Disease	Within 24 hours	√
Brucellosis (<i>Brucella</i> species)	Within 24 hours	√
<i>Burkholderia mallei</i> (Glanders)	Immediately	√
Disease of suspected bioterrorism origin (including but not limited to anthrax)	Immediately	√
<i>E. coli</i> —Refer to "Shiga toxin producing <i>E. coli</i> "	Immediately	√
Emerging condition with outbreak potential	Immediately	√
Influenza virus, novel or unsubtypeable strain	Immediately	√
Leptospirosis	Within 24 hours	√
Plague	Immediately	√
Psittacosis	Within 24 hours	√
Q Fever	Within 24 hours	√
Rabies (suspected human or animal)	Immediately	√
Shiga toxin-producing <i>E. coli</i> infections (enterohemorrhagic <i>E. coli</i> including, but not limited to, <i>E. coli</i> O157:H7)	Immediately	√
Fularemia	Immediately	√

(√) Indicates that the condition is notifiable to the local health department.

(b)) cooperate with public health authorities in ((the)) their:

(a) Investigation of human and animal cases, ((suspected cases;)) outbreaks, ((and)) suspected outbreaks, and clusters of zoonotic disease(=

(c) Cooperate with public health authorities in the implementation of infection control measures including isolation and quarantine.

(d) Comply with requirements in chapter 16-70 WAC for submitting positive specimens and isolates for specific diseases, and provide information requested by the department or local health jurisdiction.

(2) The department of health shall:

(a) Coordinate with the state veterinarian at the department of agriculture to develop, maintain, and implement a procedure for notifying the department of animal cases of the conditions listed in Table V-1 of this section.

(b) Notify the local health jurisdiction of reported animal cases of the conditions in Table V-1 of this section); and

(b) Implementation of infection control measures.

(2) Cooperation with public health authorities includes, but is not limited to:

(a) Providing information requested by the department or local health jurisdiction; and

(b) Following infection control measures for:

(i) Humans under chapter 246-100 WAC;

(ii) Dogs, cats, ferrets, and hybrids under WAC 246-100-197; and

(iii) Other animals under chapter 16.36 RCW.

AMENDATORY SECTION (Amending WSR 11-02-065, filed 1/4/11, effective 2/4/11)

WAC 246-101-410 (~~Responsibilities of food service~~) Duties—Food establishments. (1) For the purposes of this section "food establishment" has the same meaning as defined and referenced under WAC 246-215-01115.

(2) The person in charge of a food (~~service~~) establishment shall:

~~((1))~~ (a) Notify the local health (~~department~~) jurisdiction of potential foodborne disease as required in WAC (~~246-215-260~~) 246-215-02215.

~~((2))~~ (b) Cooperate with public health authorities in ~~((the))~~ their investigation and control of cases, (~~suspected cases~~) outbreaks, and suspected outbreaks (~~of foodborne or waterborne disease~~). This includes, but is not limited to, the release of the name and other pertinent information about food handlers diagnosed with a notifiable condition or other communicable disease (~~as it relates to a foodborne or waterborne disease investigation~~) to the public health authority.

~~((3))~~ (c) Not release identifying information about food handlers with a notifiable condition or other communicable disease to other employees or the general public.

AMENDATORY SECTION (Amending WSR 11-02-065, filed 1/4/11, effective 2/4/11)

WAC 246-101-415 (~~Responsibilities of child day~~) Duties—Child care facilities. (1) For the purposes of this section "child care facility" means an agency that regularly provides early childhood education and early learning services for a group of children for less than twenty-four hours a day and is subject to licensing under chapter 74.15 or 43.216 RCW, or both.

(2) A child (~~day~~) care (~~facilities~~) facility shall:

~~((1))~~ (a) Notify the local health (~~department~~) jurisdiction of cases, (~~suspected cases~~) outbreaks, and suspected outbreaks of notifiable conditions in Table HC-1 of WAC 246-101-101 that may be associated with the child (~~day~~) care facility.

~~((2))~~ (b) Consult with a health care provider or the local health (~~department~~) jurisdiction for information about the control and prevention of infectious (~~or communicable disease~~) conditions, as necessary.

~~((3))~~ (c) Cooperate with public health authorities in ~~((the))~~ their investigation and control of cases, (~~suspected cases~~) outbreaks, and suspected outbreaks (~~of disease~~) that may be associated with the child (~~day~~) care facility.

~~((4))~~ (d) Establish and implement policies and procedures to maintain confidentiality related to (~~medical~~) health care information in their possession.

AMENDATORY SECTION (Amending WSR 11-02-065, filed 1/4/11, effective 2/4/11)

WAC 246-101-420 (~~Responsibilities of~~) Duties—Schools. A school(~~s~~) shall:

(1) Notify the local health (~~department~~) jurisdiction of cases, (~~suspected cases~~) outbreaks, and suspected outbreaks of (~~disease~~) notifiable conditions in Table HC-1 of WAC 246-101-101 that may be associated with the school.

(2) Cooperate with the local health (~~department~~) jurisdiction in monitoring influenza.

(3) Consult with a health care provider or the local health (~~department~~) jurisdiction for information about the control and prevention of infectious (~~or communicable disease~~) conditions, as necessary.

(4) Cooperate with public health authorities in ~~((the))~~ their investigation and control of cases, (~~suspected cases~~) outbreaks, and suspected outbreaks (~~of disease~~) that may be associated with the school.

(5) Release identifying information only to other individuals responsible for protecting the health and well-being of the public through control of disease.

(6) (~~Schools shall~~) Establish and implement policies and procedures to maintain confidentiality related to (~~medical~~) health care information in their possession.

AMENDATORY SECTION (Amending WSR 11-02-065, filed 1/4/11, effective 2/4/11)

WAC 246-101-425 (~~Responsibilities of~~) Duties—The general public. (1) Members of the general public shall cooperate with:

(a) (~~Cooperate with~~) Public health authorities in ~~((the))~~ their investigation and control of cases, (~~suspected cases~~) outbreaks, and suspected outbreaks (~~of notifiable conditions or other communicable diseases~~); and

(b) (~~Cooperate with the~~) Implementation of infection control measures (~~, including isolation and quarantine~~).

(2) Members of the general public may notify the local health (~~department~~) jurisdiction of any case, (~~suspected case~~) outbreak, or (~~potential~~) suspected outbreak (~~of communicable disease~~).

PART V: NOTIFIABLE CONDITIONS (~~AND~~)—LOCAL HEALTH JURISDICTIONS (~~AND THE DEPARTMENT~~)

AMENDATORY SECTION (Amending WSR 11-02-065, filed 1/4/11, effective 2/4/11)

WAC 246-101-505 Duties (~~of the~~)—Local health officer or the local health (~~department~~) jurisdiction. (1) A local health officer(~~s~~) or (~~the~~) local health (~~department~~) jurisdiction shall:

(a) Review and determine appropriate action for:

(i) Each (~~reported~~) case (~~or suspected case~~) of a notifiable condition submitted to the local health jurisdiction;

(ii) Any (~~disease or~~) condition considered a threat to public health; and

(iii) Each (~~reported~~) outbreak or suspected outbreak of disease (~~, requesting~~) submitted to the local health jurisdiction, and request assistance from the department in carrying out any of these investigations when necessary.

(b) Establish a system at the local health (~~department~~) jurisdiction for maintaining confidentiality of (~~written~~)

records ~~((and written and telephoned notifiable conditions case reports))~~ under WAC 246-101-515;

(c) Notify health care providers, laboratories, and health care facilities within the ~~((jurisdiction of the))~~ local health ~~((department))~~ jurisdiction of requirements in this chapter;

(d) Notify the department of cases of ~~((any))~~ conditions notifiable to the local health ~~((department (except animal bites) upon completion of the case investigation))~~ jurisdiction under this chapter;

(e) ~~((Distribute appropriate notification forms to persons responsible for reporting;~~

~~((f))~~ Notify the principal health care provider named in the case report or laboratory report, if possible, prior to initiating a case investigation ~~((by the local health department));~~

~~((g))~~ Carry out the HIV partner notification requirements of WAC 246-100-072;

~~((h))~~ ~~((f))~~ Allow laboratories to contact the health care provider ordering the diagnostic test before initiating patient contact if requested and the delay is unlikely to jeopardize public health; and

~~((i))~~ ~~((g))~~ Conduct investigations and institute infection control measures in accordance with chapter 246-100 WAC.

(2) The local health ~~((department))~~ jurisdiction may:

(a) Adopt alternate arrangements for meeting the ((reporting)) requirements under this chapter through cooperative agreement between the local health ((department)) jurisdiction and any health care provider, laboratory, or health care facility((;)). The alternative must provide the same level of public health protection as the reporting requirement for which an alternative is sought;

(b) Receive health information, demographic information, and infectious or noninfectious condition information in addition to that required under this chapter from health care providers, health care facilities, laboratories, the department of agriculture, and the department of labor and industries when the entity submitting the information determines that the additional information will aid the public health authority in protecting and improving the public's health through prevention and control of infectious and noninfectious conditions.

(3) When the local health jurisdiction receives information under subsection (2)(b) of this section, the local health jurisdiction shall handle the information under the requirements of WAC 246-101-515.

(4) Each local health officer ~~((has the authority to))~~ may:

(a) Carry out additional steps ~~((determined to be))~~ necessary to verify a diagnosis reported by a health care provider;

(b) Require any person suspected of having a notifiable condition to submit to examinations ~~((required))~~ necessary to determine the presence or absence of the condition;

(c) Investigate any case ~~((or suspected case))~~ of a ~~((reportable disease or))~~ notifiable condition or other ~~((illness, communicable or otherwise))~~ infectious or noninfectious condition, if deemed necessary; and

(d) Require the notification of additional conditions of public health importance occurring within the jurisdiction of the local health officer.

AMENDATORY SECTION (Amending WSR 11-02-065, filed 1/4/11, effective 2/4/11)

WAC 246-101-510 Means of notification—Local health officer or local health jurisdiction. (1) A local health ((departments)) jurisdiction shall:

(a) Maintain a twenty-four-hour telephone number to receive confirmation calls of case reports or laboratory reports submitted under this chapter for:

(i) Immediately notifiable conditions; and

(ii) Conditions designated as notifiable within twenty-four hours.

(b) Notify the department immediately ((by telephone or secure electronic data transmission of any case or suspected case of:

(a) Botulism;

(b) Cholera;

(c) Diphtheria;

(d) Disease of suspected bioterrorism origin (including, but not limited to, anthrax);

(e) Emerging condition with outbreak potential;

(f) Influenza, novel strain;

(g) Measles;

(h) Paralytic shellfish poisoning;

(i) Plague;

(j) Poliomyelitis;

(k) Rabies, human;

(l) SARS;

(m) Smallpox;

(n) Tularemia;

(o) Viral hemorrhagic fever; and

(p) Yellow fever.

(2) Immediate notifications of cases and suspected cases shall include:

(a) Patient name;

(b) Patient's notifiable condition; and

(c) Condition onset date.

(3) For each case of any condition notifiable to the local health department, submit to the department case report either on a form provided by the department or in a format approved by the department. Case reports must be sent by secure electronic transmission or telephone within seven days of completing the case investigation. If the case investigation is not complete within twenty-one days of notification, pertinent information collected from the case investigation must be sent to the department and shall include:

(a) Patient name;

(b) Patient's notifiable condition or suspected condition;

(c) Source or suspected source; and

(d) Condition onset date.

(4) Local health officials will report asymptomatic HIV infection cases to the department according to a standard code developed by the department.

(5) When notified of an outbreak or suspected outbreak of illness due to an infectious agent or toxin, the local health department shall:

(a) Notify the department immediately by telephone or secure electronic data transmission.

(b) Include in the initial notification:

(i) Organism or suspected organism;

(ii) Source or suspected source; and

~~(iii) Number of persons affected.~~

~~(e) Within seven days of completing the outbreak investigation, submit)) using either telephone or secure electronic data transmission:~~

~~(i) Upon receiving a case report or laboratory report for a condition that is immediately notifiable to the local health jurisdiction under this chapter, excluding Meningococcal disease, invasive (Neisseria meningitides); Shiga toxin-producing *E. coli* (STEC)/enterohemorrhagic *E. coli*; and Vaccinia; and~~

~~(ii) Of an outbreak or suspected outbreak within their jurisdiction:~~

~~(c) Notify the department using a secure electronic disease surveillance system within three business days of receiving a case report or laboratory report for a condition that is not immediately notifiable to the local health jurisdiction under this chapter:~~

~~(d) If after submitting a notification to the department, the local health officer determines no further investigation is necessary, indicate in the secure electronic disease surveillance system that no further investigation is warranted within three business days of the determination.~~

~~(e) Immediately reassign cases to the department upon determining the patient who is the subject of the case:~~

~~(i) Is a resident of another local health jurisdiction; or~~

~~(ii) Resides outside Washington state.~~

~~(f) Submit an investigation report to the department using a secure electronic disease surveillance system for each case report or laboratory report received by the local health jurisdiction for which the local health officer determined an investigation was necessary:~~

~~(i) Within seven days of completing the investigation for any condition notifiable to the local health jurisdiction; or~~

~~(ii) Within twenty-one days of receiving the case report or laboratory report if the investigation is not complete.~~

~~(g) Submit an outbreak report to the department ((a report on forms provided by the department or in a format approved by the department)) using secure electronic data transmission within seven days of completing an outbreak investigation. The department may waive this requirement if ((telephone or secure electronic data transmission)) notification under (b)(ii) of this subsection provided ((pertinent)) sufficient information.~~

~~(2) The local health officer shall confirm that each case is based on clinical criteria, or laboratory criteria, or both prior to submitting the investigation report to the department. These criteria include, but are not limited to, the Centers for Disease Control and Prevention, National Notifiable Diseases Surveillance System, Council of State and Territorial Epidemiologists case definitions.~~

NEW SECTION

WAC 246-101-513 Content of notifications, investigation reports, and outbreak reports—Local health officer. A local health officer shall provide the following information for each notification, investigation report, and outbreak report submitted under WAC 246-101-510:

(1) Notifications must include:

(a) Patient's first and last name;

(b) Patient's notifiable condition;
(c) Date local health jurisdiction was notified;
(d) Condition symptom onset date (preferred), or alternatively, diagnosis date;

(e) Patient's date of birth; and

(f) Patient's sex.

(2) Investigation reports must include:

(a) Patient's first and last name;

(b) Patient's date of birth;

(c) Patient's ethnicity, as required in WAC 246-101-011(4);

(d) Patient's race, as required in WAC 246-101-011(5);

(e) Patient's preferred language, as required in WAC 246-101-011(6);

(f) For hepatitis B acute or chronic infection investigation reports, pregnancy status (pregnant, not pregnant, or unknown) of patients twelve to fifty years of age;

(g) Investigation start date;

(h) Investigation completion date;

(i) Initial notification source;

(j) Hospitalization status of patient;

(k) Whether the patient died during this illness;

(l) Probable geographic region of exposure (i.e., county, state, or country other than the United States of America);

(m) Travel out of the country (as applicable);

(n) Whether the case is associated with an ongoing outbreak investigation; and

(o) The data used to verify the case meets clinical criteria, or laboratory criteria, or both. These criteria include, but are not limited to, the Centers for Disease Control and Prevention, National Notifiable Diseases Surveillance System, Council of State and Territorial Epidemiologists case definitions.

(3) Outbreak reports must include:

(a) Organism or suspected organism;

(b) Source or suspected source; and

(c) Number of persons infected and potentially exposed.

AMENDATORY SECTION (Amending WSR 11-02-065, filed 1/4/11, effective 2/4/11)

WAC 246-101-515 Handling ~~(of case reports and medical)~~ confidential information—Local health officers and local health jurisdictions. (1) Local health officers and local health jurisdiction employees shall maintain the confidentiality of health care information consistent with chapter 70.02 RCW, RCW 42.56.360(2), and any other applicable confidentiality laws.

(2) Local health officers or local health ((departments)) jurisdictions shall establish and ((maintain)) implement confidentiality policies and procedures related to employee handling of ((all reports of cases and suspected cases, prohibiting disclosure of report information identifying an individual case or suspected cases except:

~~(a) To employees of the local health department, another local health department, or other official agencies needing to know for the purpose of administering public health laws and these regulations;~~

~~(b) To health care providers, designees of health care facilities, laboratory directors, and others for the purpose of~~

collecting additional information about a case or suspected case as required for disease prevention and control;

~~(2)) health care information.~~

~~(3) Local health officers shall ((require and maintain signed confidentiality agreements with));~~

~~(a) Require all local health ((department)) jurisdiction employees with access to ((identifying)) health care information ((related to a case or suspected case of a person diagnosed with a notifiable condition. The agreements will be renewed)) to sign confidentiality agreements;~~

~~(b) Retain current signed confidentiality agreements;~~

~~(c) Reference in confidentiality agreements the penalties for violation of chapter 70.24 RCW and administrative actions that may be taken by the local health jurisdiction if the confidentiality agreement is violated; and~~

~~(d) Renew confidentiality agreements at least annually ((and will include reference to criminal and civil penalties for violation of chapters 70.02 and 70.24 RCW and other administrative actions that may be taken by the local health department.~~

~~(3) Local health departments may release statistical summaries and epidemiological studies based on individual case reports if no individual is identified or identifiable)).~~

AMENDATORY SECTION (Amending WSR 06-16-117, filed 8/1/06, effective 9/1/06)

WAC 246-101-520 Special conditions—AIDS and HIV—Local health officers and local health jurisdictions.

(1) The local health officer and local health ~~((department))~~ jurisdiction personnel shall maintain individual case reports, laboratory reports, investigation reports, and other data and supporting information for AIDS and HIV as confidential records consistent with the requirements of ~~((this section))~~ RCW 70.02.220 and any other applicable confidentiality laws.

~~(2) The local health officer and local health ((department)) jurisdiction personnel ((must)) shall:~~

~~(a) Use identifying information ((on HIV-infected individuals)) of individuals tested, diagnosed, or reported with HIV only:~~

~~(i) ((For purposes of contacting the HIV-positive individual)) To contact the individual tested, diagnosed, or reported with HIV to provide test results ((and post-test counseling)) or refer the individual to social and medical services; or~~

~~(ii) To contact persons who have ((experienced substantial exposure, including)) been identified as sex ((and)) or injection equipment-sharing partners((-and spouses)); or~~

~~(iii) To link with other name-based public health disease registries when doing so will improve ability to provide needed care services ((and counseling)) and disease prevention, provided that the identity or identifying information of the individual tested, diagnosed, or reported with HIV is not disclosed outside of the local health jurisdiction; or~~

~~(iv) As specified in WAC 246-100-072; or~~

~~(v) To provide case reports, laboratory reports, or investigation reports to the ((state health)) department; or~~

~~(vi) To conduct investigations under RCW 70.24.022 or 70.24.024.~~

~~(b) ((Destroy case report identifying information on asymptomatic HIV-infected individuals received as a result of this chapter within three months of receiving a complete case report, or)) Within ninety days of completing an investigation report, or of receiving a complete investigation report from another public health authority:~~

~~(i) Destroy case reports, laboratory reports, investigation reports, and other data and supporting identifying information on individuals tested, diagnosed, or reported with HIV received as a result of this chapter. If an investigation is not conducted for a case, then the identifying information for that case shall be destroyed within ninety days of receiving a complete HIV case report or laboratory report; or~~

~~(ii) Maintain HIV case reports, laboratory reports, investigation reports, and other data and supporting information in secure systems ((that meet the following standards and are)) consistent with the ((2006)) 2011 Data Security and Confidentiality Guidelines ((developed)) for HIV, Viral Hepatitis, Sexually Transmitted Disease, and Tuberculosis Programs: Standards to Facilitate Sharing and Use of Surveillance Data for Public Health Action published by the Centers for Disease Control and Prevention.~~

~~(3) The local health officer shall:~~

~~((i)) (a) Describe the secure systems ((must be described)) in written policies ((that are reviewed)) and review the policies annually ((by the local health officer));~~

~~((ii)) (b) Limit access to case report, laboratory report, investigation report, and other data and supporting information ((must be limited)) to local health ((department)) jurisdiction staff who need ((it)) the information to perform their job duties ((and));~~

~~(c) Maintain a current list of ((these)) local health jurisdiction staff ((must be maintained by the local health officer)) with access to case report, laboratory report, investigation report, and other data and supporting information;~~

~~((iii)) (d) Enclose physical locations containing electronic or paper copies of surveillance data ((must be enclosed)) in a locked, secured area with limited access and not accessible by window;~~

~~((iv)) (e) Store paper copies or electronic media containing surveillance information ((must be housed)) inside locked file cabinets that are in the locked, secured area;~~

~~((v)) (f) Destroy information by either shredding it with a crosscut shredder ((must be available for destroying information and)) or appropriately sanitizing electronic media ((must be appropriately sanitized)) prior to disposal;~~

~~((vi)) (g) Store files or databases containing confidential information ((must reside)) on either stand-alone computers with restricted access or on networked drives with proper access controls, encryption software, and firewall protection;~~

~~((vii)) (h) Protect electronic communication of confidential information ((must be protected)) by encryption standards ((that are reviewed annually by the local health officer)) and review the standards annually; and~~

~~((viii)) (i) Make available locking briefcases ((must be available)) for transporting confidential information((;~~

~~(e))).~~
(4) The local health officer and local health jurisdiction staff shall:

(a) If maintaining identifying information on (~~asymptomatic HIV-infected~~) individuals tested, diagnosed, or reported with HIV more than ninety days following (~~receipt of a completed case~~) completion of an investigation report or receipt of a complete investigation report from another public health authority, cooperate with the department (~~of health~~) in biennial review of system security measures described in subsection (2)(b) of this (~~subsection~~) section.

(~~(d)~~) Destroy documentation of referral information established in WAC 246-100-072 containing identities and identifying information on HIV-infected individuals and at-risk partners of those individuals immediately after notifying partners or within three months, whichever occurs first unless such documentation is being used in an investigation of conduct endangering the public health or of behaviors presenting an imminent danger to the public health pursuant to RCW 70.24.022 or 70.24.024.

(~~(e)~~) (b) Not disclose identifying information received as a result of this chapter unless:

(i) Explicitly and specifically required to do so by state or federal law; (~~(f)~~)

(ii) Permitted under RCW 70.02.220; or

(iii) Authorized by written patient consent.

(~~(2)~~) Local health department personnel are authorized to use HIV-identifying information obtained as a result of this chapter only for the following purposes:

(a) Notification of persons with substantial exposure, including sexual or syringe-sharing partners;

(b) Referral of the infected individual to social and health services;

(c) Linkage to other public health databases, provided that the identity or identifying information on the HIV-infected person is not disclosed outside of the health department; and

(d) Investigations pursuant to RCW 70.24.022 or 70.24.024.

(3) Public health databases do not include health professions licensing records, certifications or registries, teacher certification lists, other employment rolls or registries, or databases maintained by law enforcement officials.

(4) Local health officials will report HIV infection cases to the state health department.

(5) Local health officers must require and maintain signed confidentiality agreements with all health department employees with access to HIV-identifying information. These agreements will be renewed at least annually and include reference to criminal and civil penalties for violation of chapter 70.24 RCW and other administrative actions that may be taken by the department.

(6)) (5) Local health officers (~~(must)~~) shall investigate potential breaches of the confidentiality of HIV identifying information by health (~~(department)~~) jurisdiction employees. The local health officer shall report all breaches of confidentiality (~~(must be reported)~~) to the state health officer (~~(or their designee)~~) for review and appropriate action.

(~~(7)~~) Local health officers and local health department personnel must assist the state health department to reascertain the identities of previously reported cases of HIV infection.)

AMENDATORY SECTION (Amending WSR 00-23-120, filed 11/22/00, effective 12/23/00)

WAC 246-101-525 Special condition—Influenza—Local health jurisdictions. A local health (~~(departments)~~) jurisdiction shall:

(1) Maintain a surveillance system for influenza during the (~~(appropriate)~~) influenza season which may include:

(a) Monitoring of excess school absenteeism;

(b) (~~(Sample cheek with)~~) Requesting information from health care providers (~~(, clinics, nursing homes, and hospitals)~~) and health care facilities regarding influenza-like illnesses; and

(c) Monitoring (~~(of)~~) workplace absenteeism and other mechanisms.

(2) (~~(Encourage)~~) Request submission of appropriate clinical specimens from a sample of patients with influenza-like illness to the Washington state public health laboratories or other laboratory approved by the state health officer.

PART VI: NOTIFIABLE CONDITIONS—DEPARTMENT OF HEALTH

AMENDATORY SECTION (Amending WSR 11-02-065, filed 1/4/11, effective 2/4/11)

WAC 246-101-605 Duties (~~(of the)~~)—Department (~~(of health)~~). (1) The department shall:

(a) Upon request, provide consultation and technical assistance to local health (~~(departments and)~~) jurisdictions, the department of labor and industries, and the department of agriculture when they are investigating notifiable conditions (~~(reports upon request)~~).

(b) Upon request, provide consultation and technical assistance to health care providers, laboratories, health care facilities, and others required to (~~(make notifications to public health authorities of notifiable conditions upon request)~~) comply with this chapter.

(c) Develop, maintain, and make available for local health (~~(departments)~~) jurisdictions guidance on investigation and control measures for notifiable (~~(communicable disease)~~) conditions.

(d) (~~(Develop and)~~) Make case report, laboratory report, specimen submittal forms, and investigation report forms available (~~(forms for the submission of notifiable conditions data)~~) to local health (~~(departments)~~) jurisdictions, health care providers, laboratories, health care facilities, and others required to (~~(make notifications to public health authorities of notifiable conditions)~~) comply with this chapter.

(e) Maintain a twenty-four hour telephone number (~~(for reporting notifiable conditions)~~) to receive:

(i) Confirmation calls for immediately notifiable condition case reports and laboratory reports; and

(ii) Notification of immediately notifiable conditions including outbreaks and suspected outbreaks from local health jurisdictions.

(f) Develop routine data dissemination mechanisms that describe and analyze notifiable conditions case investigations and data (~~(These may include annual and monthly reports and other mechanisms for data dissemination as developed by the department)~~) in accordance with WAC 246-101-615.

(g) Conduct investigations and institute infection control measures as necessary.

(h) Document the known environmental, human, and other variables associated with a case ~~((or suspected case))~~ of pesticide poisoning.

(i) Report the results of the pesticide poisoning investigation to the principal health care provider named in the case report or laboratory report ~~((form))~~ and to the local health officer in whose jurisdiction the ~~((exposure has))~~ case occurred.

(2) The department may:

(a) Negotiate ~~((alternate arrangements))~~ alternatives for meeting ~~((reporting))~~ requirements under this chapter through cooperative agreement between the department and any health care provider, laboratory, ~~((or))~~ health care facility, or state agency. An alternative must provide the same level of public health protection as the reporting requirement for which an alternative is sought.

(b) ~~((Consolidate reporting for notifiable conditions from any))~~ Under an approved cooperative agreement, relieve a health care provider, laboratory, or health care facility ~~((; and relieve that health care provider, laboratory, or health care facility from reporting directly to each))~~ of the duty to notify a local health ~~((department))~~ jurisdiction, if the department can ~~((provide the report))~~ consolidate and submit notifications to the local health ~~((department))~~ jurisdiction within the ~~((same time as the local health department would have otherwise received it))~~ time frame for notification required under Table HC-1 of WAC 246-101-101 and Table Lab-1 of WAC 246-101-201.

(c) Receive health care information, demographic information, and infectious or noninfectious condition information in addition to that required under this chapter from health care providers, health care facilities, laboratories, and public health authorities.

(3) When the department receives information under subsection (2)(c) of this section, the department shall handle the information under the requirements of WAC 246-101-610.

AMENDATORY SECTION (Amending WSR 11-02-065, filed 1/4/11, effective 2/4/11)

WAC 246-101-610 Handling of ~~((case reports and medical))~~ confidential information and information exempt from public disclosure—State health officer and department. (1) The state health officer and department employees shall maintain the confidentiality of health care information in accordance with chapter 70.02 RCW, RCW 42.56.360(2), and any other applicable confidentiality laws.

(2) The state health officer ~~((or designee))~~ shall establish and ~~((maintain))~~ implement confidentiality policies and procedures related to employee handling of ~~((all reports of cases and suspected cases, prohibiting disclosure of report information identifying an individual case or suspected cases except:~~

~~((a) To employees of the local health department, other local health departments, or other official agencies needing to know for the purpose of administering public health laws and these regulations.~~

~~((b) To health care providers, specific designees of health care facilities, laboratory directors, and others for the purpose of collecting additional information about a case or suspected case as required for disease prevention and control.~~

~~((c) For research approved by an institutional review board as indicated under chapter 42.48 RCW. The institutional review board applies federal and state privacy laws to research requests for confidential information.~~

~~((2))~~ health care information under this chapter.

(3) The state health officer or department shall:

(a) Require all department employees, contractors, and others with access to ~~((identifying))~~ health information ~~((related to a case or suspected case of a person diagnosed with a notifiable condition shall be required))~~ to sign ~~((a))~~ confidentiality agreements ~~((The))~~.

(b) Retain current signed confidentiality agreements;

(c) Reference in confidentiality agreements the penalties for violation of chapter 70.24 RCW and administrative actions that may be taken by the department if the confidentiality agreement is violated; and

(d) Renew confidentiality agreements ~~((shall be renewed))~~ at least annually ~~((and shall include reference to criminal and civil penalties for violation of chapters 70.02 and 70.24 RCW and other administrative actions that may be taken by the department)).~~

AMENDATORY SECTION (Amending WSR 11-02-065, filed 1/4/11, effective 2/4/11)

WAC 246-101-615 ~~((Requirements for))~~ Data dissemination and notification—Department. The department shall:

(1) Distribute periodic epidemiological summary reports and an annual review of public health issues to local health officers ~~((and)),~~ local health ~~((departments))~~ jurisdictions, and the department of labor and industries.

(2) ~~((Upon execution of a data sharing agreement,))~~ Make available ~~((any data or other))~~ case investigation documentation ~~((in its possession regarding))~~ for notifiable conditions reported directly to the department to local health officers or ~~((their designees within two days of a request))~~ the department of labor and industries within twenty-four hours of receipt by the department.

(3) Make other data necessary to conduct case investigations or epidemiological summaries available within two business days of a request from a public health authority.

~~((3))~~ (4) Periodically distribute statistical summaries and epidemiological studies based on individual case reports, laboratory reports, and investigation reports if no ~~((individual))~~ patient is identified or identifiable.

AMENDATORY SECTION (Amending WSR 00-23-120, filed 11/22/00, effective 12/23/00)

WAC 246-101-630 Special condition—Antibiotic resistant disease—Department. The department shall:

(1) Maintain a surveillance system for monitoring antibiotic resistant disease that may include:

(a) Development of a sentinel network of laboratories to provide information regarding antibiotic resistant disease; and

(b) Sample checks with health care providers (~~(clinics, and hospitals)~~) and health care facilities regarding antibiotic resistant disease ~~(-); and~~

(2) ~~((Encourage submission of appropriate clinical))~~ Request the health care providers and laboratories submit specimens from a sample of patients with antibiotic resistant disease to the Washington state public health laboratories or other laboratory approved by the state health officer.

AMENDATORY SECTION (Amending WSR 06-16-117, filed 8/1/06, effective 9/1/06)

WAC 246-101-635 Special conditions—AIDS and HIV—Department. The following provisions apply ~~((for))~~ to the use of AIDS and HIV notifiable conditions case reports, laboratory reports, and investigation reports, related information, and data and is in addition to the requirements established under WAC 246-101-610:

(1) Department personnel ~~((must))~~ shall not disclose ~~((identifying))~~ health care information ~~((received as a result of receiving information regarding a notifiable conditions report of))~~ related to a case of AIDS or HIV unless:

(a) Explicitly and specifically required to do so by state or federal law; ~~((or))~~

(b) Permitted under RCW 70.02.220; or

(c) Authorized by written patient consent.

(2) Department personnel ~~((are authorized to))~~ may use HIV identifying information ~~((received as a result of receiving information regarding a notifiable conditions report of))~~ related to a case of AIDS or HIV only for the following purposes:

(a) Notification of persons ~~((with substantial exposure, including sexual or syringe sharing))~~ identified as sex or injection equipment-sharing partners;

(b) Referral of the ~~((infected))~~ individual tested, diagnosed, or reported with HIV to social and ~~((health))~~ medical services; and

(c) Linkage to other public health databases, provided that the identity or identifying information ~~((or))~~ of the ~~((HIV-infected person))~~ individual tested, diagnosed, or reported with HIV is not disclosed outside ~~((of))~~ the ~~((health))~~ department.

(3) ~~((For the purposes of this chapter, public health databases do not include health professions licensing records, certifications or registries, teacher certification lists, other employment rolls or registries, or databases maintained by law enforcement officials.~~

~~((4))~~ The state health officer ~~((must))~~ shall require and maintain signed confidentiality agreements with all department employees with access to HIV identifying information. The state health officer shall ensure these agreements ~~((will be))~~ are renewed at least annually and include reference to ~~((criminal and civil))~~ penalties for violation of chapter 70.24 RCW and ~~((other))~~ administrative actions that may be taken by the department.

~~((5))~~ (4) The state health officer ~~((must))~~ shall investigate potential breaches of the confidentiality of HIV identifying information by department employees. All breaches of confidentiality shall be reported to the state health officer or

their authorized representative for review and appropriate action.

~~((6))~~ (5) The department ~~((must))~~ shall maintain all HIV case reports, laboratory reports, and investigation reports and other data and supporting information in a name-based surveillance system solely for the purpose of complying with HIV reporting guidelines from the ~~((federal))~~ Centers for Disease Control and Prevention, and ~~((must))~~ shall not disclose or otherwise use any information contained in that system for any other purpose, except as expressly permitted by this section.

~~((7))~~ Authorized representatives of the department must review available records to reascertain the identities of previously reported cases of asymptomatic HIV infection and retain those cases in a confidential name-based system.

~~((8))~~ (6) The department ~~((must))~~ shall:

(a) Maintain HIV case reports, laboratory reports, and investigation reports and other data and supporting information in secure systems that meet the following standards and are consistent with the ~~((2006))~~ 2011 *Data Security and Confidentiality Guidelines* ~~((developed))~~ for HIV, *Viral Hepatitis, Sexually Transmitted Disease, and Tuberculosis Programs: Standards to Facilitate Sharing and Use of Surveillance Data for Public Health Action* published by the Centers for Disease Control and Prevention ~~((:~~

~~((a))~~;

(b) Describe secure systems ~~((must be described))~~ in written policies ~~((that are reviewed))~~ and review the policies annually ~~((by the overall responsible party))~~;

~~((b))~~ (c) Limit access to case report, laboratory report, and investigation report and other data and supporting information ~~((must be limited))~~ to ~~((health))~~ department staff who need it to perform their job duties ~~((and))~~;

(d) Maintain a current list of ~~((these))~~ department staff ~~((must be maintained by the overall responsible party))~~ with access to case report, laboratory report, and investigation report and other data and supporting information;

~~((e))~~ (e) Enclose all physical locations containing electronic or paper copies of surveillance data ~~((must be enclosed))~~ in a locked, secured area with limited access and not accessible by window;

~~((f))~~ (f) Store paper copies or electronic media containing surveillance information ~~((must be housed))~~ inside locked file cabinets that are in the locked, secured area;

~~((g))~~ (g) Destroy information by either shredding it with a crosscut shredder ~~((must be available for destroying information and))~~ or appropriately sanitizing electronic media ~~((must be appropriately sanitized))~~ prior to disposal;

~~((h))~~ (h) Store files or databases containing confidential information ~~((must reside))~~ on either stand-alone computers with restricted access or on networked drives with proper access controls, encryption software, and firewall protection;

~~((g))~~ (i) Protect electronic communication of confidential information ~~((must be protected))~~ by encryption standards ~~((that are reviewed))~~ and review the standards annually ~~((by the overall responsible party))~~;

~~((h))~~ (j) Use locking briefcases ~~((must be available))~~ for transporting confidential information.

~~((9))~~ (7) The state health officer ~~((or designee must))~~ shall conduct a biennial review of local health jurisdictions

system security measures described in WAC 246-101-520 ~~((1)(b) at local health jurisdictions))~~ that are maintaining records by name.

~~((10))~~ (8) When providing technical assistance to a local health ~~((department))~~ jurisdiction, authorized representatives of the department may temporarily, and subject to the time limitations in WAC 246-101-520, receive the names of reportable cases of HIV infection for the purpose of partner notification, or special studies. Upon completion of the activities by representatives of the ~~((state health))~~ department, named information will be provided to the local health ~~((department))~~ jurisdiction subject to the provisions of WAC 246-101-520.

~~((11) By December 2007, the state health officer, in cooperation with local health officers, will report to the board on:~~

~~(a) The ability of the HIV reporting system to meet surveillance performance standards established by the federal Centers for Disease Control and Prevention;~~

~~(b) The cost of the reporting system for state and local health departments;~~

~~(c) The reporting system's effect on disease control activities;~~

~~(d) The impact of HIV reporting on HIV testing among persons at increased risk of HIV infection; and~~

~~(e) The availability of anonymous HIV testing in the state.~~

~~((12))~~ (9) The state health officer ~~((must))~~ shall provide a report to the state board of health if federal policy no longer requires that HIV surveillance systems be name-based.

AMENDATORY SECTION (Amending WSR 00-23-120, filed 11/22/00, effective 12/23/00)

WAC 246-101-640 Special condition—Birth defects.

The department shall enter into a data sharing agreement with the office of the superintendent of public instruction ~~((the superintendent))~~ to access data from databases maintained by the superintendent containing student health information for the purpose of identifying cases of autism or other conditions of public health interest.

**PART VII: NOTIFIABLE CONDITIONS—
DEPARTMENT OF LABOR AND INDUSTRIES**

AMENDATORY SECTION (Amending WSR 00-23-120, filed 11/22/00, effective 12/23/00)

WAC 246-101-705 Duties ~~((of the))~~—Department of labor and industries. (1) The department of labor and industries shall:

(a) Be responsible for the investigation of cases identified as notifiable to the department of labor and industries under this chapter;

(b) Provide consultation and technical assistance to local health ~~((departments))~~ jurisdictions and the department investigating ~~((notifiable conditions reports))~~ cases;

~~((b))~~ (c) Upon request, provide consultation and technical assistance to health care providers, laboratories, health care facilities, and others required to ~~((make notifications to~~

~~public health authorities of notifiable conditions upon request))~~ notify and cooperate with public health authorities under this chapter;

~~((c))~~ (d) Provide technical assistance to businesses and labor organizations for understanding the use of notifiable conditions data collected and analyzed by the department of labor and industries; and

~~((d))~~ (e) Develop routine data dissemination mechanisms that describe and analyze notifiable conditions case investigations and data. These may include annual and monthly reports and other mechanisms for data dissemination as developed by the department of labor and industries.

(2) The department of labor and industries may:

(a) Receive data through ~~((any))~~ cooperative ~~((relationship))~~ agreement negotiated by the department of labor and industries and ~~((any))~~ a health care provider, laboratory, or health care facility;

(b) Receive health information, demographic information, and infectious or noninfectious condition information in addition to that required under this chapter from health care providers and health care facilities.

(3) When the department of labor and industries receives information under this section, the department of labor and industries shall handle the information under the requirements of WAC 246-101-710.

AMENDATORY SECTION (Amending WSR 00-23-120, filed 11/22/00, effective 12/23/00)

WAC 246-101-710 Handling of ~~((case reports and medical information))~~ confidential information—Department of labor and industries. (1) ~~((The department of labor and industries shall establish and maintain confidentiality procedures related to employee handling of all reports of cases and suspected cases, prohibiting disclosure of report information identifying an individual case or suspected cases except:~~

~~((a) To employees of the local health department, the department, or other official agencies needing to know for the purpose of administering public health laws and these regulations; and~~

~~((b) To health care providers, specific designees of health care facilities, laboratory directors, and others for the purpose of collecting additional information about a case or suspected case as required for occupational condition prevention and control.~~

~~((2))~~ The director of the department of labor and industries and department of labor and industries employees shall maintain the confidentiality of health care information consistent with chapter 70.02 RCW, RCW 42.56.360(2), and any other applicable confidentiality laws.

(2) The director of the department of labor and industries shall ~~((require and maintain signed confidentiality agreements with))~~:

(a) Require all employees, contractors, and others with access to ~~((identifying))~~ health care information ~~((related to a case or suspected case of a person diagnosed with a notifiable condition. Such agreements will be renewed at least annually and include reference to criminal and civil penalties for violation of chapter 70.02 RCW, other chapters of pertinent state~~

law, and other administrative actions that may be taken by the department of labor and industries.

(3) ~~The department of labor and industries may release statistical summaries and epidemiological studies based on individual case reports if no individual is identified or identifiable), to sign confidentiality agreements;~~

(b) Retain signed confidentiality agreements;

(c) Reference in confidentiality agreements the administrative actions that may be taken by the department of labor and industries if the confidentiality agreement is violated; and

(d) Renew confidentiality agreements at least annually.

AMENDATORY SECTION (Amending WSR 00-23-120, filed 11/22/00, effective 12/23/00)

WAC 246-101-715 ((Requirements for)) Data dissemination and notification—Department of labor and industries. The department of labor and industries shall:

(1) Distribute periodic epidemiological summary reports and an annual review of public health issues to local health officers ~~((and)), local health ((departments)) jurisdictions, and the department.~~

(2) Make available case investigation documentation for notifiable conditions reported directly to the department of labor and industries, data necessary to conduct case investigations, or epidemiological summaries to local health officers or ((their designees upon execution of a data sharing agreement)) the department within two business days of a request.

AMENDATORY SECTION (Amending WSR 00-23-120, filed 11/22/00, effective 12/23/00)

WAC 246-101-730 Special condition—Hospitalized burns. The department of labor and industries shall maintain a surveillance system for monitoring hospitalized burn((s)) patients that may include:

(1) Development of a sentinel network of burn treatment centers and hospitals to provide information regarding hospitalized burn((s)) patients; and

(2) Sample checks with health care providers~~((clinics;))~~ and ~~((hospitals))~~ health care facilities regarding hospitalized burn((s)) patients.

**PART VIII: NOTIFIABLE CONDITIONS—
DEPARTMENT OF AGRICULTURE**

NEW SECTION

WAC 246-101-805 Duties—Department of agriculture. (1) For the purposes of this section, "new, emerging, or unusual animal diseases or disease clusters with potential public health significance" means zoonotic or potentially zoonotic diseases in animals that have never or rarely been observed in Washington state (new or emerging); or appear in a new species or show evidence of higher pathogenicity than expected (unusual); or appear in a higher than expected number of animals clustered in time or space (cluster).

(2) The department of agriculture shall:

(a) Submit an individual animal case report for each animal case of a condition identified in Table Agriculture-1 to the department immediately upon being notified of the animal case using secure electronic data transmission under this table and this chapter.

(b) Call the department and confirm receipt immediately after submitting an animal case report for the following conditions:

(i) Anthrax (*Bacillus anthracis* or *Bacillus cereus* biovar *anthracis*);

(ii) Coronavirus infection (SARS-associated coronavirus, MERS-associated coronavirus, and Novel coronavirus (COVID-19));

(iii) Influenza virus in swine, influenza H5 and H7 (avian);

(iv) Livestock exposed to toxic substances which may threaten public health;

(v) Plague (*Yersinia pestis*);

(vi) Rabies (suspected human or animal);

(vii) Transmissible Spongiform Encephalopathy; and

(viii) Tularemia (*Francisella tularensis*).

Table Agriculture-1 (Conditions Notifiable by the Department of Agriculture)

Notifiable Condition (Agent)
Anthrax (<i>Bacillus anthracis</i> or <i>B. cereus</i> biovar <i>anthracis</i>)
Arboviral Diseases
California serogroup
Chikungunya
Dengue
Eastern equine encephalitis

Notifiable Condition (Agent)
Japanese encephalitis
La Crosse encephalitis
Powassan
St. Louis encephalitis
Western equine encephalitis
West Nile virus
Zika
Brucellosis (<i>Brucella</i> species)
Coccidioidomycosis (<i>Coccidioides</i> species)
Coronavirus infection
SARS-associated coronavirus
MERS-associated coronavirus
Novel coronavirus (COVID-19)
<i>Cryptococcus gattii</i> or undifferentiated <i>Cryptococcus</i> species (i.e., <i>Cryptococcus</i> not identified as <i>C. neoformans</i>)
Cysticercosis (<i>Taenia solium</i>)
Echinococcosis (<i>Echinococcus</i> species)
Ehrlichiosis (<i>Ehrlichia</i> species)
Glanders (<i>Burkholderia mallei</i>)
Influenza virus in swine, influenza H5 and H7 (avian)
Leptospirosis (<i>Leptospira</i> species)
Livestock exposed to toxic substances which may threaten public health
Psittacosis (<i>Chlamydia psittaci</i>)
Plague (<i>Yersinia pestis</i>)
Q Fever (<i>Coxiella burnettii</i>)
Rabies (suspected human or animal)
Shiga toxin-producing <i>E. coli</i> infections/enterohemorrhagic <i>E. coli</i> infections
Transmissible Spongiform Encephalopathy
Trichinosis (<i>Trichinella spiralis</i>)
Tuberculosis
Tularemia (<i>Francisella tularensis</i>)
Vancomycin-resistant (<i>Staphylococcus aureus</i>)
Zoonotic Viral Hemorrhagic Fever
New, emerging, or unusual animal diseases or disease clusters with potential public health significance.

(3) The department of agriculture may provide additional health information, demographic information, or infectious or noninfectious condition information than is required under this chapter to the department, local health jurisdiction, or both when it determines that the additional information will aid the public health authority in protecting and improving the public's health through prevention and control of infectious and noninfectious conditions.

(4) When the department of agriculture submits information under subsection (3) of this section, they shall submit the information using secure electronic data transmission.

(5) The department shall:

- (a) Consult with the department of agriculture on all animal cases; and
- (b) Notify the local health jurisdiction of animal cases submitted to the department.

NEW SECTION

WAC 246-101-810 Content of animal case reports—Department of agriculture. (1) The state department of agriculture shall provide the following information for each animal case required under WAC 246-101-805:

- (a) Animal species;
- (b) Animal county of current residence;
- (c) Diagnosis or suspected diagnosis of the condition;
- (d) Contact name;
- (e) Contact address;
- (f) Contact telephone number;
- (g) Pertinent laboratory data, if available; and
- (h) Other information of public health significance collected under chapter 16-70 WAC.

(2) The local health officer or state health officer may request additional information of epidemiological or public health value when conducting a case investigation or for control of a notifiable condition.

(3) The department and local health jurisdiction shall handle all information received under this chapter including, but not limited to, information collected under this section and WAC 246-101-805 and information collected during case investigations or for investigation or control of a notifiable condition, consistent with applicable provisions of WAC 246-101-515, 246-101-610, and RCW 42.56.380.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 246-101-001 Provisions of general applicability.
- WAC 246-101-301 Notifiable conditions and health care facilities.
- WAC 246-101-305 Duties of the health care facility.
- WAC 246-101-310 Means of notification.
- WAC 246-101-315 Content of notifications.
- WAC 246-101-320 Handling of case reports and medical information.
- WAC 246-101-401 Notifiable conditions and the responsibilities and duties of others.
- WAC 246-101-501 Notifiable conditions and local health departments.
- WAC 246-101-601 Notifiable conditions and the department of health.
- WAC 246-101-620 Requirements for notification to the department of labor and industries.
- WAC 246-101-625 Content of notifications to the department of labor and industries.
- WAC 246-101-701 Notifiable conditions and the department of labor and industries.
- WAC 246-101-720 Requirements for notification to local health departments.
- WAC 246-101-725 Requirements for notification to the department of health.

WSR 21-11-042

PERMANENT RULES

DEPARTMENT OF TRANSPORTATION

[Filed May 13, 2021, 8:41 a.m., effective July 1, 2021]

Effective Date of Rule: July 1, 2021.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: At the request of the transportation commission, the definition of the transportation commission has been edited in WAC 468-305-001 reflecting its statutory authority.

Purpose: The effective date for this rule making is changed to July 1, 2021. Rules are needed to define customer requirements to use toll facilities and Washington state department of transportation procedures for processing transactions and penalties. This rule making is required to update specific requirements and procedures that will change when a new toll back office system becomes operational.

Citation of Rules Affected by this Order: Amending WAC 468-305-001, 468-305-100, 468-305-105, 468-305-125, 468-305-131, 468-305-133, 468-305-150, 468-305-160, 468-305-210, 468-305-220, 468-305-300, 468-305-315, 468-305-316, 468-305-320, 468-305-330, 468-305-340, 468-305-400, 468-305-526, 468-305-527, 468-305-528, 468-305-529, 468-305-540, 468-305-570, and 468-305-580.

Statutory Authority for Adoption: RCW 46.63.160(5), 47.01.101(5), 47.56.030(1), and 47.56.795.

Adopted under notice filed as WSR 19-09-069 on April 16, 2019.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 24, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 24, Repealed 0.

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

Date Adopted: May 13, 2021.

Shannon Gill
Interim Director
Risk Management
and Legal Services

WSR 21-11-045

PERMANENT RULES

PIERCE COLLEGE

[Filed May 13, 2021, 10:54 a.m., effective June 13, 2021]

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

Purpose: Pierce College is utilizing the rule-making process to update the student conduct code (chapter 132K-135

WAC) in order to address state and federal law compliance requirements and general updates to organization and usefulness for Pierce College students and the Pierce College community.

Citation of Rules Affected by this Order: New WAC 132K-135-220, 132K-135-230, 132K-135-240, 132K-135-300, 132K-135-310, 132K-135-320, 132K-135-330, 132K-135-340, 132K-135-350, 132K-135-360, 132K-135-370 and 132K-135-380; and amending WAC 132K-135-020, 132K-135-030, 132K-135-040, 132K-135-060, 132K-135-070, 132K-135-090, 132K-135-100, 132K-135-110, 132K-135-120, 132K-135-130, 132K-135-150, 132K-135-170, 132K-135-180, 132K-135-190, and 132K-135-200.

Statutory Authority for Adoption: RCW 28B.50.140 (13).

Adopted under notice filed as WSR 21-07-087 on March 18, 2021.

Changes Other than Editing from Proposed to Adopted Version: Changes/additions to the Title IX sections to maintain compliance with federal rules and standards, changes to academic misconduct to address recent state court cases, changes to prohibited conduct, definitions, and sanctions to address best practices in student conduct.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 15, Repealed 0.

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

Date Adopted: May 13, 2021.

Michele L. Johnson
Chancellor and CEO

AMENDATORY SECTION (Amending WSR 17-13-102, filed 6/20/17, effective 7/21/17)

WAC 132K-135-020 Authority. The ~~((board))~~ Pierce College board of trustees, acting pursuant to RCW 28B.50.140(14), delegates to the chancellor of the college the authority to administer disciplinary action. The chancellor is authorized to delegate or reassign any and all duties and responsibilities as set forth in this chapter as may be reasonably necessary. Administration of the disciplinary procedures is the responsibility of the vice president of learning and student success or their designee. The student conduct officer shall serve as the principal investigator and administrator for alleged violations of this code.

AMENDATORY SECTION (Amending WSR 17-13-102, filed 6/20/17, effective 7/21/17)

WAC 132K-135-030 Definitions. The following definitions shall apply for the purposes of this student conduct code:

~~(1) ("Assembly" means any overt activity engaged in by one or more persons, the object of which is to gain publicity, advocate a view, petition for a cause, or disseminate information to any person, persons, or group of persons.~~

~~(2) "Board" means the board of trustees of Community College District No. 11, state of Washington.~~

~~(3) "Calendar day" means days will be counted by excluding the first day and including the last day of timelines. When the last day falls on a Saturday, Sunday, or holiday, the last day will be the next day which is not a Saturday, Sunday, or holiday. When the period of time prescribed or allowed is less than seven days, Saturdays, Sundays, and holidays are not included in the count.~~

~~(4))~~ "Business day" means a weekday, excluding weekends, college holidays, and college closures unless otherwise specified.

~~(2)~~ "College" means Pierce College district and any other community college centers or ((facilities)) premises established within Washington State Community College District No. 11.

~~((5))~~ (3) "College community" means students, employees, trustees, and volunteers.

~~((6) "College facilities" and "college facility" mean and include any and all real and personal property owned, rented, leased, or operated by the board of Washington state Community College District No. 11, and shall include all buildings and appurtenances attached thereto and all parking lots and other grounds. College facilities extend to distance education classroom environments, and agencies or institutions that have educational agreement with the college.~~

~~(7))~~ (4) "College official" includes any person employed by the college performing assigned duties.

~~((8))~~ (5) "College premises" shall include all campuses of the college, wherever located, and includes all land, buildings, facilities, vehicles, equipment, and other property owned, used, rented, leased, operated or controlled by the college. College premises extends to distance education classroom environments, and agencies or institutions that have educational agreements with the college.

~~((9))~~ (6) "Complainant" ((is any person who submits a complaint alleging that a student violated the student conduct code, or in matters of sexual misconduct, a complainant is an alleged victim of sexual misconduct)) is a student or another member of the college community who is allegedly directly affected by a reported violation of this student conduct code. The complainant may be the reporting party, but not necessarily; witnesses or other third parties may report concerns. In any case involving a report of sexual misconduct as defined in this student conduct code, a complainant is afforded certain rights under this student conduct code including, but not limited to:

(a) The right to be informed of all orders issued in the disciplinary case in which this person is a complainant;

(b) The right to appeal a disciplinary decision; and

(c) The right to be accompanied by a process advisor.

~~((10))~~ (7) "Conduct review officer" is the dean of student success or other college administrator designated by the chancellor to be responsible for receiving and for reviewing or referring appeals of student disciplinary actions in accordance with the procedures of this code.

~~((11) "Controlled substance" means and includes any drug or substance as defined in chapter 69.50 RCW as now law or hereafter amended.~~

~~(12) "Day" means a weekday, excluding weekends, college holidays, and college closures unless otherwise specified.~~

~~(13))~~ (8) "Disciplinary action" is the process by which the student conduct officer imposes discipline against a student for a violation of the student conduct code.

~~((14))~~ (9) "Disciplinary appeal" is the process by which an aggrieved student can appeal the discipline imposed by the student conduct officer. Disciplinary appeals from a suspension in excess of ten days or a dismissal are heard by the student conduct committee. Appeals of all other appealable disciplinary action shall be reviewed through brief adjudicative proceedings.

~~((15))~~ (10) "Faculty member" and "instructor" are any employee of Community College District No. 11 who is employed on a full-time or part-time basis as a teacher, instructor, counselor, faculty advisor, or librarian.

~~((16))~~ (11) "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 email address and official's office address.

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

~~((17))~~ (12) "President" is the president of a college campus. The president is authorized to delegate any and all responsibilities as set forth in the chapter as may be reasonably necessary.

~~((18) "RCW" means Revised Code of Washington which can be accessed at <http://apps.leg.wa.gov/rew/>.~~

~~(19))~~ (13) "Respondent" is the student against whom disciplinary action is initiated.

~~((20))~~ (14) "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 both email, and by either 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.

~~((21))~~ (15) "Sexual misconduct" has the meaning ascribed to this term in WAC 132K-135-070(15).

~~((22))~~ (16) "Student" includes all persons taking courses at or through the college, whether on a full-time or part-time basis, and whether such courses are credit courses,

noncredit courses, online courses, or otherwise. Persons who withdraw after allegedly violating the code, who are not officially enrolled for a particular term, but who have a continuing relationship with the college, or who have been notified of their acceptance for admission are considered "students."

~~((23))~~ (17) "Student conduct officer" is a college administrator designated by the president or vice president of learning and student success to be responsible for implementing and enforcing the student conduct code.

~~((24))~~ (18) "Student organization" means any number of students who have met the college's formal requirements of clubs or organizations.

~~((25) "WAC" means Washington Administrative Code which can be accessed at <http://app.leg.wa.gov/wac/>.~~

~~(26))~~ (19) "Visitors" means guests, applicants, contractors, vendors, advisory board members, foundation board members, and members of the public on college premises.

AMENDATORY SECTION (Amending WSR 17-13-102, filed 6/20/17, effective 7/21/17)

WAC 132K-135-040 Statement of jurisdiction. (1) The student conduct code shall apply to student conduct that occurs:

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

(b) At or in connection with college-sponsored activities ~~(, or to); or~~

(c) Off-campus ~~(conduct)~~ that in the judgment of the college adversely affects the college community ~~(and/or)~~, visitors, or the pursuit of ~~(its)~~ the college's objectives.

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

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

(4) These standards shall apply to a student's conduct even if the student withdraws from college while a disciplinary matter is pending.

(5) The student conduct officer has sole discretion on a case-by-case basis to determine whether the student conduct code will be applied to conduct that occurs off-campus.

AMENDATORY SECTION (Amending WSR 17-13-102, filed 6/20/17, effective 7/21/17)

WAC 132K-135-060 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 free-

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

AMENDATORY SECTION (Amending WSR 17-13-102, filed 6/20/17, effective 7/21/17)

WAC 132K-135-070 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 using or any attempt to use, 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. Plagiarism 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) No student shall be allowed to withdraw from a course or from the college to avoid the consequences of academic dishonesty.~~

~~(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.** Obstruction or disruption of:~~

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

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

~~(4) **Assault, intimidation, harassment.** Assault, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, stalking, or other conduct, which harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property.~~

~~(5) **Bullying is severe or pervasive physical or verbal (written or oral) abuse.**~~

~~(6) **Cyber misconduct.** Cyberstalking, cyberbullying, or online harassment. Use of electronic communications including, but not limited to, email, instant messaging, online bulletin boards, and social media sites to harass, abuse, bully, or engage in other conduct 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, noneconsensual recording of sexual activity, and noneconsensual distribution of a recording of sexual activity.~~

~~(7) **Property violation.** Damage to, or theft or misuse of, real or personal property or money of:~~

~~(a) The college or state;~~

~~(b) Any student or college officer, employee, or organization;~~

~~(c) Any other member of the college community, visitors, or organization; or~~

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

~~(8) **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 duties, including failure to properly identify oneself to such a person when requested to do so.~~

~~(9) **Weapons.** 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 or legally authorized military personnel while in performance of their duties;

(b) A student with a valid concealed weapons permit may store a pistol in the student's vehicle parked on campus in accordance with RCW 9A.41.050 (2) or (3), provided the vehicle is locked and the weapon is concealed from view; or

(c) The president or chancellor 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.

(d) This policy does not apply to the possession and/or use of disabling chemical sprays when possessed and/or used for self-defense.

(10) **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.

(11) **Alcohol, drug, and tobacco violations.**

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

(b) **Marijuana.** The use, possession, delivery, sale, or being observably under the influence of marijuana or the psychoactive compounds found in marijuana 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 college community and visitors will abide by all Washington state laws and college policy as it relates to the use of tobacco, electronic cigarettes, and related products.

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

(13) **Disorderly conduct.** Conduct which disrupts campus operations or the educational, social, or housing programs, or assisting or encouraging another person to engage in such conduct.

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

(15) **Sexual misconduct.** The term "sexual misconduct" includes sexual harassment, sexual intimidation, and sexual violence.

(a) **Sexual harassment.** The term "sexual harassment" means unwelcome conduct of a sexual nature, including unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature that is sufficiently serious as to deny or limit, and that does deny or limit, based on sex, the ability of a student to participate in or benefit from the college's educational, social, or housing programs or that creates an intimidating, hostile, or offensive environment for other college community members and/or visitors.

(b) **Sexual intimidation.** The term "sexual intimidation" 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 sexual harassment. Nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, intimate partner violence, and stalking are all types of sexual violence.

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

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

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

(iv) Intimate partner violence is violence by a person who is or has been in a dating, romantic, or intimate relationship with the victim.

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

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

A person may be incapable of giving consent by reason of age, threat or intimidation, lack of opportunity to object,

disability, drug or alcohol consumption, or other cause. A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep or unconscious for any reason, including due to alcohol or other drugs. Intoxication is not a defense against allegations that an individual has engaged in noneconsensual sexual activity.

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 noneconsensual sexual activity.

(16) **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, social, or housing programs or that creates an intimidating, hostile, or offensive environment for other college community members and/or visitors. Harassing conduct may include, but is not limited to, physical, verbal, written, social media, and electronic communications.

Protected status includes a person's race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age; religion; creed; genetic information; sexual orientation; gender identity; veteran's status; or any other legally protected classification. See "sexual misconduct" for the definition of "sexual harassment."

(17) **Retaliation.** Any intentional, adverse action taken by an accused individual or allied third party, absent legitimate nondiscriminatory purposes, as reprisal against any individual for reporting, providing information, exercising one's rights or responsibilities, or otherwise being involved in the process of responding to, investigating, or addressing allegations or violations of federal, state or local law, or college policies including, but not limited to, student conduct code provisions prohibiting discrimination and harassment. Retaliatory actions include, but are not limited to, threats or actual violence against the person or their property, adverse educational or employment consequences, ridicule, intimidation, bullying, or ostracism.

(18) **Theft or 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 student computing resources policy.

(19) **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.

(20) **Safety violations.** Safety violations include any nonaccidental conduct that interferes with or otherwise compromises any college policy, equipment, or procedure relating to the safety and security of the college community and/or visitors, including tampering with fire safety equipment and triggering false alarms or other emergency response systems.

(21) **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.

(22) **Ethical violation.** The breach of any generally recognized and published code of ethics or standards of professional practice that governs the conduct of a particular profession for which the student is taking a course or is pursuing as an educational goal or 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 shall proceed with student disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution.) (1) **Abuse of others.** Assault, physical abuse, verbal abuse, threat(s), intimidation, or other conduct, which harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property unless otherwise protected by law.

(2) **Academic dishonesty.** Any act of academic dishonesty including, but not limited to, cheating, plagiarism, and fabrication. The decision to bring a student conduct proceeding under this code for academic dishonesty is at the sole discretion of the student conduct officer. Nothing in this code prohibits instructors and/or academic divisions or departments from imposing academic consequences in response to academic dishonesty. Faculty may impose up to and including a failing grade in an academic class and academic divisions or departments may impose up to and including dismissal from an academic program. Policies and procedures governing the imposition of academic consequences for academic dishonesty can be found in the class syllabus and applicable program handbook.

(a) Cheating includes using or any attempt to use, give or obtain unauthorized assistance relating to the completion of an academic assignment, test, or exam.

(b) Plagiarism includes taking and using as one's own, without proper attribution, the ideas, writings, or work of another person in completing an academic assignment. Plagiarism 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) Multiple submissions includes submitting the same work in separate classes without the express permission of the instructor(s).

(e) Deliberate damage includes taking deliberate action to destroy or damage another's academic work or college property.

(f) No student shall be allowed to withdraw from a course or from the college to avoid the consequences of academic dishonesty.

(3) Acts of dishonesty. Acts of dishonesty 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.

(4) Alcohol. The use, possession, manufacture, distribution, sale, or being under the influence of any alcoholic beverage, except as permitted by law and applicable college policies.

(5) Cyber misconduct. Cyberstalking, cyberbullying, or online harassment. Use of electronic communications including, but not limited to, electronic mail (email), text messaging, social media sites, or applications (apps), 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 electronic communications or computer activities directly or through spyware, sending threatening emails or texts, disrupting electronic communications with spam or by sending a computer virus, or sending false messages to third parties using another's identity (spoofing).

(6) Discriminatory harassment.

(a) Unwelcome and offensive conduct, not otherwise protected by law, including verbal, nonverbal, or physical conduct, that is directed at a person because of such person's protected status and that is sufficiently severe, persistent, or pervasive as to:

(i) Limit the ability of a student to participate in or benefit from the college's educational, social, or housing programs; or

(ii) Create an intimidating, hostile, or offensive environment for other college community members and/or visitors.

(b) Discriminatory harassment may include, but is not limited to, physical, verbal, written, social media, and electronic communications.

(c) Protected status includes a person's race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age; religion; creed; genetic information; sexual orientation; gender identity; veteran's status; or any other legally protected classification.

(7) Disorderly conduct. Conduct, or assisting or encouraging another person to engage in such conduct, which

disrupts campus operations or the college's educational, social, or housing programs.

(8) Disruption or obstruction. Disruption or obstruction of instruction, research, administration, disciplinary proceeding, or other college activity, including the obstruction of the free flow of pedestrian or vehicular movement on college premises or at a college activity, or any activity that is authorized to occur on college premises, whether or not actually conducted or sponsored by the college.

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

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

(11) Harassment or bullying. Conduct unrelated to a protected class that is unwelcome and sufficiently severe, persistent, or pervasive such that it could reasonably be expected to create an intimidating, hostile or offensive environment, or has the purpose or effect of unreasonably interfering with a person's academic or work performance, or a person's ability to participate in or benefit from the college's programs, services, opportunities, or activities.

(a) Harassing conduct may include, but is not limited to, physical, verbal, or nonverbal conduct, including written, social media and electronic communications unless otherwise protected by law.

(b) For purposes of this code, "bullying" is defined as repeated or aggressive unwanted behavior not otherwise protected by law when a reasonable person would feel humiliated, harmed, or intimidated.

(c) For purposes of this code, "intimidation" is an implied threat. Intimidation exists when a reasonable person would feel threatened or coerced even though an explicit threat or display of physical force has not been made. Intimidation is evaluated based on the intensity, frequency, or duration of the comments or actions.

(12) 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.

(13) Lewd conduct. Conduct which is vulgar, obscene, or indecent, unless otherwise protected by law.

(14) Marijuana or other drugs.

(a) Marijuana or marijuana products. 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.

(b) Drugs. The use, possession, delivery, sale, or being observably under the influence of any legend or prescription drug, including anabolic steroids, androgens, or human growth hormones as defined in chapter 69.41 RCW, or any

other controlled substance, including narcotic drugs or opiates, under chapter 69.50 RCW, except as prescribed for a student's use by a licensed practitioner.

(15) Misuse of computer time or 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 unauthorized 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, harassing, 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 computer information systems resources acceptable use or subsequent similar policy.

(16) Property violation. Damage to, theft of, misappropriation of, unauthorized use or possession of, vandalism of, or other nonaccidental damaging or destruction of, real or personal property or money of:

(a) The college or state;

(b) Any student or college officer, employee, or student organization;

(c) Any other member of the college community, or visitors.

(17) Retaliation. Any intentional, adverse action taken by an accused individual or allied third party, absent legitimate nondiscriminatory purposes, as reprisal against any individual for reporting, providing information, exercising one's rights or responsibilities, or otherwise being involved in the process of responding to, investigating, or addressing allegations or violations of federal, state or local law, or college policies including, but not limited to, student conduct code provisions prohibiting discrimination and harassment. Retaliatory actions include, but are not limited to, threats or actual violence against the person or their property, adverse educational or employment consequences, ridicule, intimidation, bullying, or ostracism.

(18) Safety violations. Safety violations include committing any reckless or unsafe act that endangers others, failing to follow established safety procedures, or interfering with or otherwise compromising any college policy, equipment, or procedure relating to the safety and security of the college community or visitors including, but not limited to, tampering with fire safety equipment or triggering false alarms and other emergency response systems.

(19) Sexual misconduct. The term "sexual misconduct" includes sexual harassment, sexual intimidation, and sexual

violence. Sexual harassment prohibited by Title IX defined in the supplemental procedures to this code. See WAC 132K-135-300, et seq.

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

(b) Sexual intimidation. The term "sexual intimidation" 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 sexual harassment. Nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, intimate partner violence, and stalking are all types of sexual violence.

(i) Nonconsensual sexual intercourse. 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:

(A) Fear for their safety or the safety of others; or

(B) Suffer substantial emotional distress.

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

A person cannot consent if 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 conduct.

(20) Tobacco, electronic cigarettes, and related products. The college community and visitors will abide by all Washington state laws and college policy as it relates to the use of tobacco, electronic cigarettes, and related products, including chapter 70.160 RCW.

(21) 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. Providing keys to an unauthorized person or providing access to an unauthorized person is also prohibited.

(22) 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.

(23) Weapons. 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 or legally authorized military personnel while in performance of their duties;

(b) A student with a valid concealed weapons permit may store a pistol in the student's vehicle parked on campus in accordance with RCW 9.41.050 (2) or (3), provided the vehicle is locked and the weapon is concealed from view; or

(c) The president or chancellor may grant permission to bring a weapon on campus upon a determination that the weapon is reasonably related to a legitimate pedagogical pur-

pose. Such permission shall be in writing and shall be subject to such terms or conditions incorporated in the written permission.

(d) This policy does not apply to the possession and/or use of disabling chemical sprays when possessed and/or used for self-defense.

AMENDATORY SECTION (Amending WSR 17-13-102, filed 6/20/17, effective 7/21/17)

WAC 132K-135-090 Disciplinary sanctions—~~(Terms—)~~**Conditions.** The following disciplinary sanctions may be imposed upon students found to have violated the student conduct code. Depending upon the misconduct, more than one sanction may be imposed. Other than college dismissal or revocation or withholding of a degree, disciplinary sanctions are not made part of the student's academic record, but are part of the student's disciplinary record. Violation of any ~~(term or condition of any)~~ disciplinary sanction or condition constitutes a new violation and may subject the student to additional sanctions and/or conditions.

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

(2) **Written reprimand.** Notice in writing that the student has violated one or more terms of this code of conduct and that continuation of the same or similar behavior may result in more severe disciplinary action.

(3) **Disciplinary probation.** Formal action placing specific conditions and restrictions upon the student's continued attendance depending upon the seriousness of the violation and which may include a deferred disciplinary sanction.

(a) 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.

(b) Probation may be for a limited period of time or may be for the duration of the student's attendance at the college.

(4) **Disciplinary suspension.** ~~(Dismissal)~~ Separation 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.

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

Disciplinary terms and conditions that may be imposed in conjunction with the imposition of a disciplinary sanction include, but are not limited to, the following:

(6) **Educational sanction.** The college may require the student to complete an educational activity or experience directly related to the violation committed, at the student's expense.

(7) **Professional evaluation.** Referral for drug, alcohol, psychological, or medical evaluation by an appropriately cer-

tified 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.

(8) **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:

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

(b) 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.

(9) **Restitution or monetary fine.** 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, monetary fine, or other compensation.

(10) **Hold on transcript or registration.** This is a temporary measure restricting release of a student's transcript or access to registration. Upon satisfactory completion of the conditions of the sanction, the hold will be released.

(11) **Revocation of admission or degree.** Admission to or a degree awarded from the college may be revoked for fraud, misrepresentation, or other violation of standards of conduct for students in obtaining the degree, or for other serious violations committed by a student prior to graduation.

(12) **Withholding degree.** The college may withhold awarding a degree otherwise earned until the completion of the process set forth in this chapter, including the completion of all sanctions imposed.

(13) **No trespass order.** A student may be restricted from college property based on misconduct.

(14) **No contact order.** An order directing a student to have no contact with a specified member of the college community, visitor, or a particular college facility.

((HEARING PROCEDURES))

AMENDATORY SECTION (Amending WSR 17-13-102, filed 6/20/17, effective 7/21/17)

WAC 132K-135-100 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 complaint.

(2) The student conduct officer shall initiate disciplinary action by serving the respondent with written notice directing

the student to attend a disciplinary meeting. The notice shall briefly describe the factual allegations, the provision(s) of the student 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 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 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 supporting the 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) and/or condition(s) as described in WAC 132K-135-090.

(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 and ensure prompt notice of the protective disciplinary sanctions and/or conditions.

AMENDATORY SECTION (Amending WSR 17-13-102, filed 6/20/17, effective 7/21/17)

WAC 132K-135-110 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 business days of service of the student con-

duct 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. Interim measures, including no contact orders, may remain in place pending appeal if the student conduct officer determines they are necessary.

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

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

(b) Dismissals; and

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

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

(a) Suspensions of ten days or less;

(b) Disciplinary probation;

(c) Written reprimands; and

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

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

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

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

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

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

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

AMENDATORY SECTION (Amending WSR 17-13-102, filed 6/20/17, effective 7/21/17)

WAC 132K-135-120 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 involved as a complainant or witness, or in which there is direct or personal interest, prejudice, or bias, or in which previous actions have been taken in an advisory capacity.

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

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

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

(3) The conduct review officer shall serve an initial decision upon both the respondent and the student conduct officer within ten business days of the completion of the informal hearing. 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 business 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 days or dismissal, the matter shall be referred to the student conduct committee for a disciplinary hearing.

AMENDATORY SECTION (Amending WSR 17-13-102, filed 6/20/17, effective 7/21/17)

WAC 132K-135-130 Brief adjudicative proceedings—Review of an initial decision. (1) An initial decision is subject to review by the president, provided a party files a written request for review with the conduct review officer within ten business days of service of the initial decision.

(2) The president shall not participate in any case in which involved as a complainant or witness, or in which there is direct or personal interest, prejudice, or bias, or in which previous actions have been taken 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 reason for the decision and must be served on the parties within twenty (~~calendar~~) business 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 (~~calendar~~) business 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 days or dismissal, the matter shall be referred to the student conduct committee for a disciplinary hearing.

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

AMENDATORY SECTION (Amending WSR 17-13-102, filed 6/20/17, effective 7/21/17)

WAC 132K-135-150 Appeal—Student conduct committee. (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 (~~calendar~~) business days in advance of the hearing date. The chair may shorten this notice period if both parties agree, and also may continue the hearing to a later time for good cause shown.

(3) The committee chair is authorized to conduct prehearing conferences 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 the 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) Each party may be accompanied at the hearing by a nonattorney assistant of the party's choice. A respondent, or complainant in a case involving allegations of sexual misconduct, 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 or the complainant is represented by an attorney, the student conduct officer may also be represented by a second, appropriately screened assistant attorney general.

AMENDATORY SECTION (Amending WSR 17-13-102, filed 6/20/17, effective 7/21/17)

WAC 132K-135-170 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 thirty (~~calendar~~) business 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 decision 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 condition(s), if any, as authorized in the student conduct code. If the matter is an appeal by the respondent, the committee may affirm, reverse, or modify the disciplinary sanction(s) and/or condition(s) imposed by the student conduct officer and/or impose additional disciplinary sanction(s) or condition(s) as authorized herein.

(4) The committee's initial decision shall also include a statement of the available procedures and time frames for seeking reconsideration or appeal.

(5) 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.

(6) 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.

AMENDATORY SECTION (Amending WSR 17-13-102, filed 6/20/17, effective 7/21/17)

WAC 132K-135-180 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 written notice of appeal with the president's office within ten business 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 written 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. 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. If necessary to aid review, the president may ask for additional briefing from the parties on issues raised on appeal.

(3) The president shall provide a written decision to the respondent and the student conduct officer within thirty (~~calendar~~) business 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 has discretion to suspend any disciplinary action, summary suspension, or interim measures, pending review of the merits of the findings, conclusions, and disciplinary actions imposed.

(6) Per RCW 34.05.455 the president shall not engage in any improper "ex parte" communication with any of the parties regarding an appeal.

AMENDATORY SECTION (Amending WSR 17-13-102, filed 6/20/17, effective 7/21/17)

WAC 132K-135-190 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, a temporary no trespass order, 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~~) reasonable basis to believe that the respondent:

(a) Has violated any provision of the student conduct code; and

(b) Presents an immediate danger to the health, safety, or welfare of members of the college community or visitors; 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 college premises or communicate with members of the college community and visitors. If the respondent has been temporarily trespassed from the college premises, a notice against trespass shall be included that warns the respondent that privilege to enter into or remain on college premises has been withdrawn and that the respondent shall be considered trespassing and subject to arrest for criminal trespass if the respondent enters the college premises other than for a scheduled meeting 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 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 respondent fails to appear at the designated hearing time, the conduct review officer may order that the summary suspension remain in place pending the conclusion of the disciplinary proceedings.

(d) As soon as practicable following the hearing, the conduct review officer shall issue a written decision 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.

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

AMENDATORY SECTION (Amending WSR 17-13-102, filed 6/20/17, effective 7/21/17)

WAC 132K-135-200 Classroom misconduct and authority to suspend for no more than one day. (1) Faculty members have the authority to take appropriate action to maintain order and proper conduct in their classroom and to maintain the effective cooperation of students in fulfilling the objectives of the course.

(2) Bringing any person, thing, or object to a teaching and learning environment that may disrupt the environment or cause a safety or health hazard, without the express approval of the faculty member is prohibited.

(3) Faculty members have the right to temporarily suspend any student(s) from a single class or related activity for the remainder of that day if the student's misconduct creates disruption to the point that it is difficult or impossible to maintain the decorum of the class, related activity, or the learning and teaching environment. The faculty member ~~((shall))~~ must report this temporary suspension to the student conduct officer or designee on the same day. ~~((In consultation with the faculty member, the student conduct officer))~~ The student conduct officer, in accordance with this code and following due process, may set conditions for the student upon return to the class or activity.

NEW SECTION

WAC 132K-135-220 Interim measures. (1) After receiving a report of sexual misconduct or other student misconduct, a student conduct officer or designee may implement interim measures which may include, but are not limited to:

(a) A no-contact order prohibiting direct or indirect contact, by any means, with a complainant, a respondent, a reporting party, or other specified persons;

(b) Reassignment of college associated housing;

(c) Changes to class schedules, assignments, test schedules, or other academic related activities;

(d) Modified on-campus employment schedule or location; or

(e) Restrictions on access to portions of college premises.

(2) If an interim measure is put in place pending or during a conduct proceeding, the student will be notified of the interim measure and be advised how to raise an objection about the interim measure or request that it be made less restrictive. The student conduct officer will consider any objections and requests regarding interim measures, make a determination whether to make any changes, and provide notice of the decision to the student. The student conduct officer may adjust or modify interim measures as students' situations and schedules change and evolve over time. Interim measures will remain in place until the student receives notice they have been lifted or modified from the student conduct officer.

(3) Implementation of any interim measure does not assume any determination of, or create any presumption regarding responsibility for, a violation under this student conduct code.

NEW SECTION

WAC 132K-135-230 Amnesty. (1) Pierce College values the health, safety and wellness of those in our college community. Students are encouraged to report crimes, share concerns, and seek medical attention for themselves or others in need.

(2) A student conduct officer may elect not to initiate disciplinary action against a student who, while in the course of helping another person seek medical or other emergency assistance, admits to a possible policy violation under this student conduct code, provided that any such violations did not and do not place the health or safety of any other person at risk.

(3) A student conduct officer may elect not to initiate disciplinary action against a student who, while in the course of reporting violence, sexual misconduct, or a crime in progress, admits to personal consumption of alcohol or drugs at or near the time of the incident, provided that any such use did not place the health or safety of any other person at risk.

(4) While policy violations cannot be overlooked, the college may elect to offer educational options or referrals, rather than initiating disciplinary action against students who report crimes, serve as witnesses, or seek medical attention as described in this section.

(5) This amnesty policy may not apply to students who repeatedly violate college policies in regards to alcohol, drugs, or other prohibited conduct.

NEW SECTION

WAC 132K-135-240 Conduct hold on student records. (1) A student conduct officer or other designated college official may place a conduct hold on the student's record if the student is the respondent in a pending complaint of prohibited conduct, a pending conduct proceeding under this code, or in conjunction with a disciplinary sanction or condition under this code.

(2) A conduct hold may restrict the student from registering for classes, requesting an official transcript, or receiving a degree from the college until the hold has been removed.

(3) If the conduct hold is placed pending or during a conduct proceeding, the student will be notified of the hold and be advised how to raise an objection about the hold or request that it be made less restrictive. The student conduct officer will consider any objections and requests regarding the conduct hold, make a determination whether to make any changes, and provide notice of the decision to the student. The hold will remain in place until lifted by the student conduct officer or other designated college official with authority to do so.

(4) Implementation of any conduct hold prior to disciplinary action does not assume any determination of, or create any expectation of, responsibility for prohibited conduct under this conduct code.

SUPPLEMENTAL TITLE IX STUDENT CONDUCT PROCEDURES

NEW SECTION

WAC 132K-135-300 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 Pierce College's standard disciplinary procedures, WAC 132K-135-020 through 132K-135-250, these supplemental procedures shall take precedence. The college may, at its discretion, contract with an administrative law judge or other person to act as presiding officer and assign such presiding officer to exercise any or all of the duties in lieu of the student conduct committee and committee chair.

NEW SECTION

WAC 132K-135-310 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 132K-135-320 Title IX jurisdiction. (1) The 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 132K-135 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 132K-135-330 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.

(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 132K-135-340 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 132K-135-150. 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 132K-135-350 Rights of parties. (1) The college's student conduct procedures, chapter 132K-135 WAC, and this supplemental procedure shall apply equally to all parties.

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

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

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

NEW SECTION

WAC 132K-135-360 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 132K-135-370 Initial order. (1) In addition to complying with WAC 132K-135-170, the student conduct committee will be responsible for conferring and drafting an initial order that:

- (a) Identifies the allegations of sexual harassment;
 - (b) Describes the grievance and disciplinary procedures, starting with filing of the formal complaint through the determination of responsibility, including notices to parties, interviews with witnesses and parties, site visits, methods used to gather evidence, and hearings held;
 - (c) Makes findings of fact supporting the determination of responsibility;
 - (d) Reaches conclusions as to whether the facts establish whether the respondent is responsible for engaging in sexual harassment in violation of Title IX;
 - (e) Contains a statement of, and rationale for, the committee's determination of responsibility for each allegation;
 - (f) Describes any disciplinary sanction or conditions imposed against the respondent, if any;
 - (g) Describes to what extent, if any, complainant is entitled to remedies designed to restore or preserve complainant's equal access to the college's education programs or activities; and
 - (h) Describes the process for appealing the initial order to the college president.
- (2) The committee chair will serve the initial order on the parties simultaneously.

NEW SECTION

WAC 132K-135-380 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 132K-135-180.

(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 21-11-057
PERMANENT RULES
GAMBLING COMMISSION

[Filed May 14, 2021, 9:16 a.m., effective June 14, 2021]

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

Purpose: The gambling commission is amending current rules, repealing rules, and adopting a new rule to address and clarify the offering of jackpot prizes with approved house-banked card games, authorizing new card games, authorizing changes to existing card games, requirements for card games, wagering, adding merchandise and cash to card games, minimum cash on hand requirements, paying out prizes, and maintaining funds to pay prizes.

Citation of Rules Affected by this Order: New WAC 230-15-671 Jackpot prizes; repealing WAC 230-15-105 Only authorized cards or chips may be used and 230-15-705 Temporarily removing a progressive jackpot from play; and amending WAC 230-15-030 Authorized nonhouse-banked card games, 230-15-035 Authorizing new games or changing game rules, 230-15-040 Requirements for authorized card games, 230-15-055 Limit on number of players at each table, 230-15-060 Posting rules for play, 230-15-065 Enforcement of card game rules of play, 230-15-140 Wagering limits for house-banked card games, 230-15-141 Additional merchandise or cash prizes for card games, 230-15-455 [230-15-455] Keeping funds to pay prizes, progressive jackpot prizes, and odds-based wager prizes, 230-15-490 Limiting pay outs for odds-based wagers, 230-15-491 Limiting payouts to dealers for tip or "toke" wagers for odds-based payouts, 230-15-680 Operating progressive jackpot prizes, 230-15-685 Restrictions on progressive jackpots, 230-15-695 Adjusting progressive jackpot amounts, 230-15-700 Merchandise prizes for progressive jackpots, 230-15-710 Permanently removing a progressive jackpot or a portion of a progressive jackpot from play, 230-15-715 Tax authorities seizing all, or a portion, of a progressive jackpot, and 230-15-720 Deposit and reconciliation requirements for progressive jackpot prizes.

Statutory Authority for Adoption: RCW 9.46.070.

Adopted under notice filed as WSR 21-07-062 on March 15, 2021.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 18, Repealed 2.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 18, Repealed 2.

Number of Sections Adopted using Negotiated Rule Making: New 1, Amended 18, Repealed 2; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: May 13, 2021.

Ashlie Laydon
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-17-053, filed 8/15/14, effective 9/15/14)

WAC 230-15-030 Authorized nonhouse-banked card games. (1) The following nonhouse-banked card games are authorized:

- (a) Poker;
- (b) Hearts;
- (c) Pinochle;
- (d) Cribbage;
- (e) Rummy;
- (f) Panguingue (Pan);
- (g) Pitch; and
- (h) Bid Whist(~~(; and~~
- (i) ~~Other games approved by the director or the director's designee).~~

(2) Card (~~(game)~~) room licensees must operate these games in the manner explained in the most current version of *The New Complete Hoyle, Revised* or *Hoyle's Modern Encyclopedia of Card Games*, or similar authoritative book on card games we have approved, or when operated as described in the commission approved game rules on our website. Card (~~(game)~~) room licensees may make immaterial modifications to the games.

(3) Authorization of a nonhouse-banked card game other than those listed in subsection (1) of this section requires approval from the director or director's designee. In order for a nonhouse-banked card game to be authorized, it must:

(a) Be played with standard playing cards. Authorized card games may:

- (i) Use more than one deck of cards; and
- (ii) Remove cards to comply with rules of a specific game.
- (b) Not allow side bets between players; and
- (c) Describe player requirements. Players must:
 - (i) Compete solely as a player in the card game; and
 - (ii) Compete against all other players on an equal basis;

and

- (iii) Receive their own hand of cards and be responsible for decisions regarding such hand, such as whether to fold, discard, draw additional cards, or raise the wager.

(d) Require the player's win or loss to be determined during the course of play of a single deal of cards.

(4) Approved game rules under subsection (3) of this section will be posted on the commission's website. Licensee's must operate these games as described in the commission approved game rules on our website.

AMENDATORY SECTION (Amending WSR 08-21-086, filed 10/14/08, effective 1/1/09)

WAC 230-15-035 Authorizing new games or changing game rules. (~~(Card game licensees must operate only the card games the director or the director's designee has specifically authorized.))~~ All new card games and changes to existing card games must be approved by the director or director's designee prior to implementation at a card room licensee. The director or the director's designee authorizes each new card game or changes to existing card games on an individual basis. A list of all authorized games and the rules of play are

available (~~(at all commission offices and)~~) on the commission website.

(1) (~~(Card game)~~) Licensees approved to market, sell, rent, or otherwise supply card games to card room licensees must submit, in the format we require, requests for:

(a) (~~(Requests for)~~) Authorizing new card games (~~(in the format we require)~~); and

(b) Changes to (~~(an)~~) existing card games in writing.

(2) The director or the director's designee will notify the licensee in writing if the request is approved or denied. The notification for denial will include reasons for the denial and provide the licensee all information necessary to file a petition to the commission for rule making.

(3) Card room licensees must operate only the card games the director or the director's designee has specifically authorized.

AMENDATORY SECTION (Amending WSR 14-05-056, filed 2/14/14, effective 3/17/14)

WAC 230-15-040 Requirements for authorized house-banked card games. (~~((+))~~) In order for a house-banked card game to be authorized, it must be approved by the director or the director's designee and must:

~~((+))~~ (1) Be played with standard playing cards or with electronic card facsimiles approved by the director or the director's designee(~~(; and~~

~~(b) Offer no more than four "separate games" with a single hand of cards and no more than three of the "separate games" may offer a wager that exceeds five dollars each).~~

~~((+))~~ Authorized house-banked card games may:

- (a) Use more than one deck of cards; and
- (b) Remove cards to comply with rules of a specific game; and

(2) Limit the number of wagering areas to nine or less.

(a) "Wagering area" means identified areas on the layout to place wagers;

(b) All wagering areas must be identical to each other; and

(3) Identify all separate games in the card game:

(a) "Separate game" means each individual objective to be achieved within a card game that requires a separate wager and results in a distinct and separate pay out based upon the outcome(~~(;)~~);

~~((ii) Progressive jackpots are considered "separate games.")~~ (b) Separate games may incorporate bonus features; and

(c) Progressive jackpots and house jackpots are considered separate games; and

(4) Describe player requirements. Players must:

(a) Compete solely as a player in the card game, except as authorized in the approved card game rules for variations of Pai Gow poker where a player may bank the game every other hand; and

(b) Receive their own hand of cards and be responsible for decisions regarding such hand, such as whether to fold, discard, draw additional cards, or raise the wager except for separate games that:

(i) Use cards shared by all players (i.e., community cards); or

(ii) Allow players to wager on the outcome of the dealer's hand; or

(iii) Allow players to win a prize if any players' hand, including the dealer's hand, achieves a predetermined outcome at the same table; and

~~(5) Identify ((⁽²⁾)bonus features(⁽²⁾)) to be allowed in each ((~~card~~)) separate game:~~

~~((⁽⁺⁾)) (a) "Bonus feature" means an ((~~added prize and/or variation based on achieving the predetermined specific hand required to win the prize and does not require a separate wager. More than one "bonus feature" may be offered per card game. A "bonus feature" must not be combined with a progressive jackpot. Examples include, but are not limited to, "envy" and "share the wealth" "bonus features" when~~)) opportunity within a separate game whereby a player may win additional prizes. Bonus features must be operated as described below(~~(-)~~):~~

~~((⁽ⁱ⁾ A "⁽²⁾")) (i) A bonus feature(⁽²⁾) is not considered a separate game(~~(-~~~~

~~(d) Operate "envy" and "share the wealth" "bonus features" as follows:~~

~~(i) If a player makes a wager that qualifies for an "envy" "bonus feature" pay out, they are entitled to); and~~

~~(ii) Players must not place wagers on bonus features. However, players may be required to place a minimum wager on a separate game to qualify for a bonus feature; and~~

~~(iii) Players may receive a prize if their hand or another player's hand at the same table achieves ((~~the~~)) a predetermined specific hand. If a player is playing more than one wagering area ((~~or if a hand they are playing is split into two or more hands~~)) and any one of their hands achieves the predetermined specific hand, their other hand with a qualifying wager is entitled to receive a prize also(~~(-~~~~

~~(ii) If a player makes a wager that qualifies for a "share the wealth" pay out, they are entitled to receive a prize if their hand(s) or another player's hand(s) achieves the predetermined specific hand:~~

~~(e)); and~~

~~(iv) A bonus feature cannot be a progressive jackpot; and~~

~~(6) Not allow side bets between players(~~(-~~~~

~~(2) Card game licensees may use more than one deck of cards for a specific game. They also may remove cards to comply with rules of a specific game, such as Pinochle or Spanish 21.~~

~~(3) Players must:~~

~~(a) Compete against all other players on an equal basis for nonhouse-banked games or against the house for house-banked games. All players must compete solely as a player in the card game, except as authorized in approved card game rules for variations of the game of Pai Gow poker where a player may bank the game every other hand; and~~

~~(b) Receive their own hand of cards and be responsible for decisions regarding such hand, such as whether to fold, discard, draw additional cards, or raise the wager; and~~

~~(c) Not place wagers on any other player's or the house's hand or make side wagers with other players, except for:~~

~~(i) An insurance wager placed in the game of Blackjack; or~~

~~(ii) "Envy" or "share the wealth" "bonus features"; or~~

~~(iii) A tip wager made on behalf of a dealer.~~

~~(4) Mini-Baccarat is authorized when operated as described in the commission approved game rules on our web site. However:~~

~~(a) Card game licensees may make immaterial modifications to the game; and~~

~~(b) Subsection (3) of this section does not apply; and~~

~~(c) The number of players is limited under WAC 230-15-055.~~

~~(5)); and~~

~~(7) Use only authorized gambling equipment; and~~

~~(8) A player's win or loss must be determined during the course of ((~~play of~~)) a single ((~~card game~~)) deal of cards except for:~~

~~(a) A carryover pot game. A carryover pot is an optional pot that accumulates as a dealer and participating players contribute to the pot. The winner of the pot is not necessarily determined after one game and the pot can be carried over to more than one game. Carryover pots must not carryover more than ten games. Participants must include at least one player and the dealer competing for the highest qualifying winning hand. Game rules must state how the pot is distributed. If the carryover pot has not been won by the tenth game, the dealer will divide it equally between the remaining players still participating in the pot and the house or, if allowed by game rules, only the players still participating in the pot; and~~

~~(b) In the game of Mini-Baccarat, a player may make an optional wager on the player hand winning the next three consecutive games, or the banker hand winning the next three consecutive games.~~

AMENDATORY SECTION (Amending WSR 15-15-065, filed 7/10/15, effective 8/9/15)

WAC 230-15-055 Limit on number of players at each table. Card ((~~game~~) room) licensees must only allow:

(1) Up to nine players ((~~or areas for wagering~~)) at any table in house-banked card games.

(a) Only one player can place a wager in a wagering area.

(b) This section does not apply to Mini-Baccarat when the game is operated without any modification according to the nonpatented approved game rules posted on the agency's website ((~~and without any modifications as allowed in WAC 230-15-040~~)).

(2) Up to ten players at any table in nonhouse-banked card games.

AMENDATORY SECTION (Amending WSR 07-09-033, filed 4/10/07, effective 1/1/08)

WAC 230-15-060 Posting rules for play. Card ((~~game~~) room) licensees must:

(1) Prominently post:

(a) Wagering limits for each type of game, including ((~~the ante~~)) all fees to play; and

(b) ((~~Prize pay outs~~)) Jackpot prize amounts and any prize-related restrictions; and

(c) All ((~~fees to play~~)) odds-based and fixed prizes; and

(d) Policies on employees being allowed to play; and

(e) Procedures for resolving player disputes; and

(2) Prominently post any general rules, or a sign stating that these rules are available immediately on request. These rules must include, at least:

- (a) Rules of play; and
- (b) ~~((Methods of making wagers; and~~
- (c) ~~Procedures for misdeals; and~~
- (d) ~~Procedures for betting irregularities; and~~
- (e) ~~Procedures for splitting pots; and~~
- (f) ~~Internal controls related to the operation of card games; and~~

(c) Any rules that may restrict a player's right to win a hand, pot, or jackpot prize; and

(3) Post at the gambling table any aggregate payout limits, procedures, or restrictions that differ from the general rules of play that have been posted.

AMENDATORY SECTION (Amending WSR 07-10-034, filed 4/24/07, effective 1/1/08)

WAC 230-15-065 Enforcement of card game rules of play. Card ~~((game))~~ room licensees must conduct card games according to the approved rules of play. We enforce rules of play in the following order:

(1) **First priority:** Rules explained in Title 230 WAC; and

(2) **Second priority:** ~~((Rules explained by a licensed manufacturer of a patented game))~~ Proprietary and nonproprietary game rules explained on the commission website that we have approved; and

(3) **Third priority:** House rules card ~~((game))~~ room licensees have developed and we have approved; and

(4) **Fourth priority:** Rules explained in the most current version of *The New Complete Hoyle, Revised* or *Hoyle's Modern Encyclopedia of Card Games*, or a similar authoritative book on card games which we have approved.

AMENDATORY SECTION (Amending WSR 08-20-025, filed 9/19/08, effective 1/1/09)

WAC 230-15-140 Wagering limits for house-banked card games. (1) A single wager ~~((or a bonus wager for an odds-based pay-out))~~ must not exceed three hundred dollars.

(2) A player may make a single wager for each decision before the dealer deals or reveals additional cards. ~~((For Blackjack, the player may place an additional wager for doubling down or splitting pairs.~~

~~(3) Bonus wagers for progressive jackpots must not exceed manufacturer's rules or limits listed in subsection (1) of this section.))~~ Wagers must be placed on the table layout on an approved betting spot, except for:

(a) In Blackjack games, players may place an additional wager next to their original wager when doubling down or splitting pairs; or

(b) Tip wagers made on behalf of a dealer; or

(c) As authorized in approved card games rules.

AMENDATORY SECTION (Amending WSR 08-17-066, filed 8/18/08, effective 9/18/08)

WAC 230-15-141 Additional merchandise or cash prizes for card games.

Nonproprietary games.

(1) Card room licensees may add additional merchandise or cash prizes to nonproprietary games like Blackjack or Pai Gow. We consider these additional prizes a gambling promotion and they must meet all requirements of WAC 230-06-030.

Proprietary games.

(2) Card room licensees must not add additional merchandise or cash prizes to proprietary games without the approval of the company that owns the rights to the games. ~~((3) To indicate their approval, the owner of the rights to a proprietary game must:~~

(a) ~~Submit an alternative pay table that includes the additional or revised prize payout to us for review and approval; or~~

(b) ~~Send an authorization letter to us allowing the addition of gambling promotions to their game.~~

(4) ~~Once we approve the changes, the revised pay tables are available to all card game licensees. The prizes become a part of the game rules and we consider them prize payouts on the game. Because of this, we do not consider the prizes a gambling promotion.))~~ Any additional prizes approved by the company that owns the rights to the game will be considered a gambling promotion and they must meet all requirements of WAC 230-06-030.

AMENDATORY SECTION (Amending WSR 09-15-070, filed 7/13/09, effective 1/1/10)

WAC 230-15-455 Keeping funds to pay prizes~~((progressive jackpot prizes, and odds-based wager prizes)).~~

~~((1))~~ House-banked card ~~((game))~~ room licensees must ensure that they have sufficient funds available to redeem all chips and pay out all prizes~~((s))~~ including, but not limited to, progressive jackpot prizes, house jackpot prizes, and odds-based ((wager)) prizes. ((An "odds-based wager" means a wager where the player wins an amount over and above the amount he or she wagered if a fixed pattern or combination of cards occurs, for example, a royal flush, four aces, or a pair.

(2) Licensees must not offer card games until they have met all of these requirements:

(a) Progressive jackpot prizes.

(i) Keep a separate bank account for progressive jackpot prizes. The account must be kept in a bank, mutual savings bank, or credit union located in Washington state;

(ii) Deposit all funds accrued for progressive jackpot prizes at least weekly; and

(iii) If the prize bank account is reduced below the level required, licensees must immediately stop operating games until they are in compliance.

(b) Odds-based wager prizes:

(i) Licensees offering more than one individual odds-based wager prize greater than twenty five thousand dollars must keep an amount equal to the second highest odds-based wager prize offered in a bank, mutual savings bank, or a credit union located in Washington state; or possess a verifiable line of credit from a Washington state financial institution for at least the amount required; and

(ii) Use the highest wager they allow to calculate the individual odds-based wager prize amount to determine the amount for this requirement.

(3) Licensees may limit pay outs by using table and/or individual player aggregates.

(4) A licensee's failure to keep funds as required in this rule is prima facie evidence of defrauding the public and a) Failure to keep funds to cash in chips, pay prizes, or redeem gambling related checks is prima facie evidence of fraud and in violation of RCW 9.46.190.

AMENDATORY SECTION (Amending WSR 07-09-033, filed 4/10/07, effective 1/1/08)

WAC 230-15-490 (~~Limiting pay outs for odds-based wagers.~~) Aggregate payout limits for odds-based prizes. ((1) House-banked card game licensees may create pay out limits for odds-based wagers made in card games.

(2) Licensees may limit the pay out for odds-based wagers if we approve all pay out limits and their procedures for computing limits.

(3) Individual players' winnings must not be less than the higher of:

(a) The maximum wager allowed for the game times the highest odds offered up to fifty to one (50 to 1). For example: If the maximum wager is one hundred dollars (\$100) and the odds are fifty to one (50 to 1); then the per player limit is five thousand dollars ($\$100 \times 50 = \$5,000$); or

(b) The house minimum required wager for the game times the highest odds offered for any wager in the game. The "minimum required wager" means the least amount a player must wager in order to win. For example: If the minimum required wager is ten dollars (\$10) and the maximum odds are one thousand to one (1,000 to 1); then the per player limit is ten thousand dollars ($\$10 \times 1,000 = \$10,000$).

(4) Table limits (aggregate pay out) must not be less than two times the individual player limit, as computed in subsection (3) of this section; and

(5) Licensees must clearly disclose all procedures for computing any per player or table limit (aggregate pay outs). This explanation must be available to players in a brochure or other printed material.) (1) House-banked card room licensees may impose aggregate payout limits if we approve for odds-based prizes.

(2) "Aggregate payout limit" means the maximum pay-out by a licensee to one or more players as the result of winning wagers from a single deal of cards.

(3) Aggregate payout limits must not be:

(a) Combined with different types of odds-based prizes; and

(b) Less than the maximum wager allowed for the game times the highest odds offered up to fifty to one. For example, if the maximum wager is three hundred dollars and the highest odds offered are five thousand to one, the aggregate pay-out limit cannot be less than fifteen thousand dollars (three hundred dollars times fifty); and

(c) Imposed upon any odds-based prize where the highest payoff odds on a winning wager are less than fifty to one; and

(4) All aggregate payout limits must be prominently displayed on the table layout or a sign placed on the table.

AMENDATORY SECTION (Amending WSR 07-21-116, filed 10/22/07, effective 1/1/08)

WAC 230-15-491 Limiting payouts to dealers for tip or "toke" wagers for odds-based payouts. (1) A "toke" is a wager made by a player as a tip for the dealer and it is treated as a separate bet.

(2) House-banked card (~~game~~) room licensees may:

(a) Establish a separate, individual limit on the amount of the payout on a toke for odds-based payouts within the requirements of WAC 230-15-490; and

(b) Restrict the types of wagers tokens are allowed on and the amounts of tokens.

(3) Tokens are not included in the calculation of the (~~player or table~~) aggregate payout limits.

AMENDATORY SECTION (Amending WSR 07-09-033, filed 4/10/07, effective 1/1/08)

WAC 230-15-680 Operating progressive jackpot prizes. House-banked card (~~game~~) room licensees may operate progressive jackpot prizes with certain approved house-banked card games.

(1) To participate in a progressive jackpot, a player places a separate wager, part of which accrues to the progressively increasing prize.

(2) (~~Manufacturer's~~) The company that owns the rights to the approved game rules must determine or establish the:

(a) Winning patterns or combinations of cards to win the progressive jackpot prize(s); and

(b) Pay tables to include a description of any fixed pay-outs, odds-based payouts, or percentage-based payouts of the total prize amount displayed.

(3) Licensees must offer a primary jackpot prize and may (~~have a~~) also offer secondary (~~or reserve~~) jackpot prizes.

(4) Licensees must (~~adequately disclose to players the~~) conspicuously and prominently disclose at the gaming table all prizes available and how they are won.

(5) Licensees must ensure that they closely control progressive jackpot games and account for all the funds collected.

(6) Licensees may take a portion of each progressive bet to be retained in the progressive account for the purposes of reseeding primary and secondary jackpot prizes after they are won.

AMENDATORY SECTION (Amending WSR 15-21-005, filed 10/8/15, effective 11/8/15)

WAC 230-15-685 Restrictions on progressive jackpots. House-banked card (~~game~~) room licensees operating progressive jackpots must follow these restrictions and procedures:

(1) Progressive jackpot funds must accrue according to the rules of the game(~~and~~).

(2) At each gambling table, licensees must prominently post the amount of the progressive jackpot that players can win(~~and~~) along with any associated pay tables.

~~(3) ((Licensees must record the beginning amount of each progressive jackpot offered, including explanations for any increases or decreases in the prize amount offered. Licensees must keep this documentation with the progressive jackpot records; and~~

~~(4)) Licensees may establish a maximum limit on a progressive jackpot prize. If licensees establish a limit, they must make the amount equal to, or greater than, the amount of the jackpot when they imposed the limit. They must prominently post a notice of the limit at or near the game(~~; and~~).~~

~~((5)) (4) Licensees may connect progressive jackpots. Progressive jackpots are considered "connected" when jackpot prize displays at gaming tables incrementally increase at the same time after players place jackpot wagers. Connected progressive jackpot displays must show the same prize amounts. Licensees may only connect progressive jackpots:~~

~~(a) When offered on the same card game on multiple tables within the same licensed location(~~(~~~~

~~(6) Licensees may connect progressive jackpots); or~~

~~(b) When offered on different card games on multiple tables within the same licensed location when the following requirements are met. Only one progressive jackpot may be operated on a card game at a time and the card games must have:~~

~~((a)) (i) The same probability of winning the jackpot prize; and~~

~~((b)) (ii) The same winning hand(~~; and~~~~

~~(c) A progressive meter on each table that increases incrementally each time a wager is made)).~~

~~((7)) (5) When gambling equipment will allow a progressive jackpot between different manufacturers, the gambling equipment must be submitted for testing for interoperability in accordance with WAC 230-06-050.~~

AMENDATORY SECTION (Amending WSR 10-17-089, filed 8/16/10, effective 1/1/11)

WAC 230-15-695 Adjusting progressive jackpot amounts. House-banked card ~~((game))~~ room licensees must not reduce the amount of a progressive jackpot prize accrued or displayed except for the following reasons:

(1) To reduce the primary or secondary jackpot(s) and the ~~((advertised))~~ displayed amount by the amount won; or

(2) To correct an amount displayed incorrectly because of malfunctioning equipment; or

(3) To correct the display when the amount displayed is greater than the predetermined maximum prize limit; or

(4) To reduce ~~((a reserve or secondary jackpot))~~ the progressive account for nondisplayed prizes as long as they record the funds removed as gross receipts and properly documented that in their records; or

(5) To reduce ~~((a reserve or secondary jackpot))~~ the progressive account or displayed amount to recover seed money ~~((that was not taken from gross receipts, if they properly document those funds in their records)); or~~

~~(6) ((To reduce the jackpot by the dollar amount they paid for merchandise they award as prizes.~~

~~(7) To reduce a reserve or secondary jackpot to immediately seed a different progressive jackpot if the licensee properly documents this transfer in their records.)) Any adjust-~~

ment to the progressive account or displayed prizes must be properly documented in card room records.

AMENDATORY SECTION (Amending WSR 07-09-033, filed 4/10/07, effective 1/1/08)

WAC 230-15-700 Merchandise prizes for progressive jackpots. House-banked card ~~((game))~~ room licensees ~~((offering merchandise prizes for progressive jackpots))~~ may use only nondisplayed progressive jackpot funds to purchase merchandise prizes to be offered on a progressive jackpot game in lieu of fixed prizes as set out in the approved pay table for the card game as posted on the commission's website. The merchandise purchased must be of equal or greater value to the fixed prizes offered in approved pay tables. Licensees must:

(1) Obtain approval from the company that owns the rights to the progressive jackpot card game to offer merchandise prizes; and

(2) Submit internal controls for review and approval; and

(3) Own the merchandise prizes and pay for them in full, without lien or interest of others, before they award the merchandise as prizes. If the winner has an option to receive a cash prize instead of the merchandise, licensees may enter into a contract to immediately purchase a merchandise prize after the winner chooses their option; and

~~((2) Disclose that they used))~~ (4) Prominently post a notice at the progressive jackpot gaming table describing:

(a) A specific portion of the jackpot funds were used to buy merchandise to be awarded as prizes, as well as the specific merchandise prizes to be awarded; and

~~((3) Disclose))~~ (b) The value of the merchandise they plan to award. This value must be accurate and verifiable; and

~~((4) Award the merchandise on the specific outcome of a game and include the outcome in the game rules))~~ (c) The predetermined designated hand needed to win the merchandise prize; and

(d) Fees or restrictions associated with ownership of the merchandise prize; and

(5) Display merchandise prize or an accurate description or photograph of the merchandise prize for the public to view; and

~~((5))~~ (6) Keep detailed records, including the purchase invoice, on premises and make them available for our review.

AMENDATORY SECTION (Amending WSR 07-09-033, filed 4/10/07, effective 1/1/08)

WAC 230-15-710 Permanently removing a progressive jackpot ~~((or a portion of a progressive jackpot))~~ game from play. ~~((1))~~ Players have a vested interest in the ~~((posted or advertised))~~ displayed progressive jackpot prize.

~~((2))~~ (1) House-banked card room licensees must not remove a progressive jackpot game from play without written approval. Licensees must:

(a) Submit a detailed distribution plan to us in writing and receive written approval before removing any progressive jackpot prizes from play; and

(b) Prominently post a notice and the approved distribution plan at the progressive jackpot gambling table, including

if they plan to close the business, at least ten days before they begin the process of removing the jackpot and distributing the funds; and

(c) ~~(Distribute the funds in one or more of the following ways:~~

~~(i) Offering the prize on a different house-banked game; or~~

~~(ii) Offering the prize in an approved free tournament in which funds must be distributed within sixty days from the date of approval; or~~

~~(iii) Donating the money to the Washington State Council on Problem Gambling.)~~ Not make any changes to the approved distribution plan after it is posted at the progressive jackpot gambling table without written approval from us.

(2) Licensees must distribute the amount of the posted progressive jackpot prizes using one of these authorized methods:

(a) Transfer the progressive jackpot prize to a different house-banked progressive jackpot game; or

(b) Give away the progressive jackpot prize through an approved gambling promotion within sixty days of the effective date of the distribution plan. Licensees must:

(i) Operate the gambling promotion on the same game the funds were collected on; and

(ii) Receive approval from the owner of the game in accordance with WAC 230-15-141; or

(c) Offer the progressive jackpot prize in an approved free tournament on the same progressive jackpot game the funds were collected on within sixty days of the effective date of the distribution plan; or

(d) Donate the money to a nonprofit gambling organization in Washington state.

AMENDATORY SECTION (Amending WSR 07-09-033, filed 4/10/07, effective 1/1/08)

WAC 230-15-715 Tax authorities seizing all, or a portion, of a progressive jackpot. If a taxing authority seizes jackpot funds, the house-banked card ~~((game))~~ room licensee must immediately cease operating the progressive jackpot game and collecting funds for the progressive jackpot until the amount that was posted as the prize has been replaced in the bank account. Licensees may either replace ~~((reserve or secondary funds))~~ nondisplayed prizes retained in the progressive account that were seized or record the funds as gross receipts.

AMENDATORY SECTION (Amending WSR 10-11-087, filed 5/17/10, effective 7/1/10)

WAC 230-15-720 Deposit and reconciliation requirements for progressive jackpot prizes. (1) House-banked card ~~((game))~~ room licensees must deposit all progressive jackpot funds in a separate bank account at least weekly. The account must be kept in a bank, mutual savings bank, or credit union located in Washington state. If the progressive bank account is reduced below the progressive jackpot prize posted at the gambling table, licensees must immediately stop operating the progressive game until they are in compliance.

(2) Licensees must:

(a) Keep a record of all deposits; and

(b) For each progressive jackpot prize, identify the deposits by game name ~~((and number))~~ and dates of collection; and

(c) Maintain validated deposit slips as part of their records or have online access to their progressive jackpot prize bank accounts.

(3) ~~((At the end of the month,))~~ Licensees must:

(a) Reconcile the account balance with the bank statement to the progressive jackpot fund balances. "Reconcile" means the licensee must compare the two balances, resolve any differences, and document the comparison and the differences in writing; and

(b) Complete the reconciliation within seven days following the end of the month; and

(c) Keep the reconciliation as part of their records.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 230-15-105 Only authorized cards or chips may be used.

WAC 230-15-705 Temporarily removing a progressive jackpot from play.

NEW SECTION

WAC 230-15-671 Jackpot prizes. House-banked card room licensees may offer and operate "jackpot" prizes with approved house-banked card games.

(1) "Jackpot" prizes are cash prizes displayed at house-banked card game tables. Jackpot prizes are won by achieving a predetermined specific hand. There are two types of "jackpot" prize schemes:

(a) **Progressive jackpots:** A jackpot prize which increases in real-time based on each wager placed. Licensees must:

(i) Collect players' wagers to allocate towards a separate progressive jackpot prize. Approved game rules determine how a progressive jackpot accrues; and

(ii) Adjust the master games report in the prescribed format to reflect daily accrued prizes; and

(iii) Act only as the custodian of the progressive jackpot funds; and

(iv) Maintain no legal right to funds collected for the posted progressive jackpot prize or reserve funds which have not been recorded as gross receipts; and

(v) Strictly account for all funds collected.

(b) **House jackpots:** A fixed prize amount funded by the licensee that does not accrue or incrementally increase each time a wager is made to any guaranteed player fund or prize. Licensees must:

(i) Follow approved game rules related to house jackpots; and

(ii) Not adjust the master games report for house jackpot prizes; and

(iii) Award the posted house jackpot prize to each player achieving the predetermined winning hand; and

(iv) Conspicuously post the following at the table:

(A) The fixed prize amount; and

(B) A disclosure defining the jackpot prize as a house jackpot which involves no player funded money; and

(C) A disclosure to the players stating that the house jackpot may be removed without prior notice.

(2) Only progressive jackpots may use approved gambling equipment where the jackpot meter shows a real-time incrementally increasing progressive jackpot prize amount.

(3) House jackpots may use approved gambling equipment. Displayed prize amounts may only be adjusted manually by the licensee.

WSR 21-11-058

PERMANENT RULES

UNIVERSITY OF WASHINGTON

[Filed May 14, 2021, 9:29 a.m., effective June 14, 2021]

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

Purpose: The purpose is to make permanent the proposal to add and update definitions and information for future transportation needs and inclusivity. Some of the changes also allow for improved regulation of shared micromobility companies, both existing and possible future developments.

Citation of Rules Affected by this Order: New WAC 478-116-202; and amending WAC 478-116-024 (9) and (16)-(45), 478-116-199, 478-116-221, and 478-116-232.

Statutory Authority for Adoption: RCW 28B.10.560 and [28B.]20.130.

Adopted under notice filed as WSR 21-07-136 on March 23, 2021.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 4, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 4, Repealed 0.

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

Date Adopted: May 13, 2021.

Barbara Lechtanski
Director for the University Policy
and Rules Office and State
Rules Coordinator for UW

AMENDATORY SECTION (Amending WSR 19-11-046, filed 5/10/19, effective 6/10/19)

WAC 478-116-024 Definitions. (1) **Authorized agent.** An entity or individual authorized by the director of transpor-

tation services to facilitate services provided by the department.

(2) **Automatic license plate recognition.** (Also referred to as ALPR.) A system which automatically captures an image of a vehicle's license plate to assist in streamlined enforcement of parking by authorized agents.

(3) **Automatic vehicle identification.** (Also referred to as AVI.) A system to support vehicle access control and vehicle identification.

(4) **Bicycle.** A device with two or three wheels, a saddle, fully operative pedals propelled solely by human power.

(5) **Campus.** The University of Washington, Seattle, and those lands and leased facilities of the university within UWPD jurisdiction and where parking is managed by transportation services.

(6) **Disability parking.** See "persons with disability."

(7) **Disability zone/area.** A parking zone designated for exclusive use by persons with a disability and identified with a sign bearing the associated international symbol.

(8) **Electric-assisted bicycle (class 1, 2, and 3).** A bicycle with two or three wheels, a saddle, fully operative pedals for human propulsion, and an electric motor. The electric-assisted bicycle's electric motor must have a power output of no more than seven hundred fifty watts. The electric-assisted bicycle must meet the requirements of one of the following three classifications:

(a) Class 1: The motor provides assistance only when the rider is pedaling and ceases to provide assistance when the bicycle reaches the speed of twenty miles per hour;

(b) Class 2: The motor may be used exclusively to propel the bicycle and is not capable of providing assistance when the bicycle reaches the speed of twenty miles per hour; or

(c) Class 3: The motor provides assistance only when the rider is pedaling and ceases to provide assistance when the bicycle reaches the speed of twenty-eight miles per hour and is equipped with a speedometer.

(9) **Electric scooter.** A stand-up or seated motor vehicle consisting of a footboard mounted on two wheels and a long steering handle, propelled by an electric motor.

(10) **Fee.** The charge for the use of services provided and facilities managed by transportation services.

(11) **Fine.** The charge associated with a parking citation.

(12) **Immobilization.** The attachment of a device to a parked car, motorcycle, bicycle, electric-assisted bicycle, motor scooter, or electric scooter so that the vehicle cannot be moved.

(13) **Impoundment.** The removal of the vehicle, bicycle, electric-assisted bicycle, or electric scooter to a storage facility either by an authorized agent of transportation services or UWPD.

(14) **Load zone.** A stall or area signed for loading and unloading purposes, adjacent to a facility or loading dock, or in a parking area or lot.

(15) **Meter.** See "parking meter."

(16) **Micromobility device.** A compact device designed for personal mobility which is not considered a vehicle per RCW 46.04.670 including, but not limited to, roller skates, scooters, and skateboards. This term does not describe electric personal assistive mobility devices, such as electric wheelchairs or other medical mobility devices.

(17) Mobile payment. Payment service performed from or via a mobile device.

~~((17))~~ (18) Motorcycle. Motor vehicle designed to travel with not more than three wheels in contact with the ground, on which the driver rides astride the motor unit or power train and which is designed to be steered with a handle bar.

~~((18))~~ (19) Motorized micromobility device. A device fitting the description of a micromobility device that is powered by a motor.

(20) Motor scooter. A light two-wheeled or three-wheeled open motor vehicle with a step-through frame on which the driver sits over an enclosed engine with legs together and feet resting on a floorboard.

~~((19))~~ (21) Motor vehicle. An automobile, truck, motorcycle, motor scooter, or electric-assisted bicycle that is assisted by an engine or other mechanism, or a vehicle without motor power designed to be drawn or used in conjunction with the aforementioned vehicles including, but not limited to, trailers, travel trailers, and campers.

~~((20))~~ (22) Nonmotorized vehicle. A device other than a motor vehicle used to transport persons including, but not limited to, bicycles, skateboards, in-line skates, and roller skates.

~~((21))~~ (23) No parking zone/area. Any area not specifically marked and/or signed and designed for parking.

~~((22))~~ (24) Operator or driver. Every person who drives or is in actual physical control of a motor vehicle or nonmotorized vehicle.

~~((23))~~ (25) Overtime parking. The occupation by a vehicle of a time-limited space beyond the posted time limit or time provided on a permit issuance system including, but not limited to, a permit, parking meter, mobile device, or permit-issuance machine.

~~((24))~~ (26) Park/parking. Refers to the placement or standing of a motorized vehicle or a nonmotorized vehicle, with or without a driver in attendance, and with or without the engine running.

~~((25))~~ (27) Parking citation. The notice of a parking violation.

~~((26))~~ (28) Parking credential. See parking product.

~~((27))~~ (29) Parking meter. (Also referred to as a meter.) A single fixed device that registers and collects payment for a specified length of time for a vehicle to occupy a single parking space. A parking meter does not produce a receipt. A parking meter is not a permit-issuance machine.

~~((28))~~ (30) Parking product. A product issued by transportation services to manage motorized and nonmotorized access to university parking. Parking products include, but are not limited to, permits, virtual permits, access to bicycle lockers and other bicycle parking facilities, and parking access cards.

~~((29))~~ (31) Parking space. A space for parking one motor vehicle designated by lines painted on either side of the space, and/or a wheel stop positioned in the front of the space, and/or a sign or signs, or other markings.

~~((30))~~ (32) Parking system. A parking management system that includes parking related products and technologies. This includes, but is not limited to, web-based and online technologies to purchase virtual products, enforce

parking permits, issue parking citations, and the administration of parking citation payments and appeals.

~~((31))~~ (33) Permit. A document approved by and/or issued by transportation services that when properly displayed authorizes a person to park.

~~((32))~~ (34) Permit-issuance machine. A transportation services deployed and managed machine that issues physical or virtual permits for designated spaces. A permit-issuance machine is not a parking meter.

~~((33))~~ (35) Persons with disability. For the purposes of this chapter, persons with disability refers to a person who meets one or more of the criteria of RCW 46.19.010(1) for the issuance of a state disability permit. A vehicle displaying a validly issued state department of transportation disability placard or a valid disability parking permit initiated through the University of Washington disability office shall be permitted to park in designated disability parking spaces, subject to payment of all applicable parking fees.

~~((34))~~ (36) Registered owner. The person who has the lawful right of possession of a vehicle most recently recorded with any state department of licensing.

~~((35))~~ (37) Roller skate/in-line skate. A device used to attach wheels to the foot or feet of a person.

~~((36))~~ (38) Scooter. A ~~((nonmotorized))~~ vehicle consisting of a footboard mounted on two wheels and a long steering handle, propelled by resting one foot on the footboard and pushing the other against the ground.

~~((37))~~ (39) Skateboard. Any oblong board of whatever composition, with a pair of wheels at each end, which may be ridden by a person.

~~((38))~~ (40) Traffic. The movement of motorized vehicles, nonmotorized vehicles, and pedestrians in an area or along a street as is defined in chapter 46.04 RCW.

~~((39))~~ (41) Transportation services. The university department that manages and maintains University of Washington vehicles and shuttles, promotes alternate commute options, manages and maintains parking facilities, issues parking products, issues citations, processes citation appeals, and collects fees and fines.

~~((40))~~ (42) University. The University of Washington, Seattle, and collectively those responsible for its control and operation.

~~((41))~~ (43) UWPD. University of Washington police department.

~~((42))~~ (44) Virtual permit. A permit stored within a permit-issuance machine or permitting system that authorizes a person to park in a designated space. Virtual permits are valid for a space through the date or time recorded in the permit system.

(45) Visitor. A person who is neither an employee nor a student of the university. May also pertain to an employee or student who has not purchased a long-term product.

~~((43))~~ Virtual permit. ~~A permit stored within a permit-issuance machine or permitting system that authorizes a person to park in a designated space. Virtual permits are valid for a space through the date or time recorded in the permit system.~~

AMENDATORY SECTION (Amending WSR 19-11-046, filed 5/10/19, effective 6/10/19)

WAC 478-116-199 Bicycle, electric-assisted bicycle and ~~(electric scooter)~~ motorized micromobility device parking. (1) Bicycles, electric-assisted bicycles, and ~~(electric scooters)~~ motorized micromobility devices shall be parked only in ~~(bicycle racks or)~~ designated ~~(bicycle)~~ parking facilities and locations. ~~(Without limiting the generality of the foregoing,)~~ At no time shall a bicycle, electric-assisted bicycle, or ~~(electric scooter)~~ motorized micromobility device be parked:

(a) In a building or residence hall, except where ~~(bicycle storage rooms)~~ designated parking facilities are provided;

(b) ~~(Near a building exit,)~~ Blocking or hindering access to any stairway, ramp, or doorway;

(c) On a path or sidewalk unless attached to a university ~~(bike)~~ designated parking rack;

(d) In planted areas; or

(e) Chained or otherwise secured to trees, lamp standards, railings, garbage receptacles, fencing, or sign posts.

(2) ~~(Bicycle racks)~~ Designated parking facilities in campus areas are ~~(for parking and shall not be used for overnight storage)~~ intended for short-term parking not to exceed five business days, except for those racks adjacent to residence halls, which may be used for storage when the owner/operator is a current resident of that hall. ~~(Bicycle lockers on campus are to be used for bicycle parking and may not be used for overnight storage of a bicycle. Bicycle houses on campus are to be used for bicycle parking and may not be used for overnight storage of a bicycle.)~~

(3) Locks and other accessories may not be left attached to university parking facilities. Locks that are left are assumed to be abandoned and may be removed without warning.

NEW SECTION

WAC 478-116-202 Micromobility device storage and parking (nonmotorized). (1) Storage of micromobility devices within residence halls is determined by housing and food services.

(2) Micromobility devices that are nonmotorized and cannot be secured to a rack or within a designated parking facility may be taken into buildings so long as they are not:

(a) Blocking or hindering access to any stairway, ramp, or doorway;

(b) Obstructing access or mobility within a building; and

(c) Are stored within close proximity of the owner/operator and can be moved at the request of authorized agents.

(3) Long-term storage and parking of micromobility devices exceeding five business days is not permitted within university facilities.

AMENDATORY SECTION (Amending WSR 19-11-046, filed 5/10/19, effective 6/10/19)

WAC 478-116-221 Use of motorcycles, motor scooters, electric-assisted bicycles~~(, and electric scooters)~~. (1) Motorcycles, motor scooters, and class 3 electric-assisted bicycles powered or assisted by combustible engines or

engaged electric motors are considered motor vehicles and subject to all traffic rules. These vehicles shall not be ~~(permitted)~~ operated on paths, sidewalks, authorized bicycle or pedestrian areas, or in buildings.

(2) Class 1 and 2 electric-assisted bicycles are subject to all of the restrictions set forth in WAC 478-116-232 relating to the use of bicycles and micromobility devices.

~~((3) Electric scooters are permitted on campus paths where bicycles are permitted to travel with the exception of sidewalks, unless there is no alternative for an electric scooter to travel over a sidewalk as part of a bicycle or pedestrian path. It shall be a violation of this section for any electric scooter rider to fail to yield to pedestrians or to ride an electric scooter on paths, sidewalks, or streets where signs indicate it is prohibited. An audible signal or warning must be given by the electric scooter rider whenever there is any appreciable risk of injury to a pedestrian not otherwise aware of the presence of the electric scooter.~~

~~(4) Class 1 and 2 electric-assisted bicycles and electric scooters operated on paths, sidewalks, and roadways shall be subject to all relevant state statutes regulating class 1 and 2 bicycle and electric scooter use. Violation of those statutes shall be considered a violation of this section.)~~

AMENDATORY SECTION (Amending WSR 11-13-058, filed 6/14/11, effective 8/8/11)

WAC 478-116-232 Use of bicycles and micromobility devices (nonmotorized and motorized). (1) ~~(The primary aim of the bicycle control program is safety. All bicycle owners are encouraged to register their bicycles at UWPD.~~

~~(2)) Bicycles and motorized and nonmotorized micromobility devices may be ridden any ~~(place)~~ where vehicles are permitted. ~~(They may be ridden on most sidewalks, though pedestrians always have the right of way.)~~ It shall be a violation of this section for any ~~(bicycle rider)~~ device operator to fail to yield to pedestrians, or to ride ~~(a bicycle)~~ on paths, sidewalks, or streets where ~~(signs indicate it is)~~ it is indicated as prohibited (i.e., signs, in-app technology, on-site measures). Pedestrians always have the right of way. An audible signal or warning must be given by the ~~(bicyclist)~~ operator whenever there is any appreciable risk of injury to a pedestrian not otherwise aware of the presence of the ~~(bicycle)~~ device.~~

~~((3) Bicycles operated on paths, sidewalks, and roadways shall be subject to all relevant state statutes regulating bicycle use. Violation of those statutes shall be considered a violation of this section.~~

~~(4) Bicycles)~~ (2) All devices shall be operated in a controlled and safe manner at all times. Riding at speeds too fast for conditions, weaving in and out of vehicular or pedestrian traffic, or similar unsafe actions shall be considered "negligent riding." Negligent riding shall be a violation of this section.

~~((5))~~ (3) Any use of devices that poses a risk to other individuals or university property is strictly prohibited. Moving or riding a ~~(bicycle)~~ device into any unauthorized area such as a building ~~(or construction)~~, restricted access zone, or parking garage is prohibited.

(4) Bicycles and micromobility devices operated on campus shall be subject to all relevant state and local statutes regulating bicycle use. Violation of those statutes shall be considered a violation of this section.

WSR 21-11-059

PERMANENT RULES

UNIVERSITY OF WASHINGTON

[Filed May 14, 2021, 9:56 a.m., effective June 14, 2021]

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

Purpose: The purpose is to make permanent the repeal of the entire chapter 478-160 WAC and the creation of new chapter 478-161 WAC. The repeal removed outdated and inaccurate information contained in chapter 478-160 WAC. The concise new chapter 478-161 WAC now contains up-to-date and accurate information.

Citation of Rules Affected by this Order: New chapter 478-161 WAC; and repealing chapter 478-160 WAC.

Statutory Authority for Adoption: RCW 28B.20.130.

Adopted under notice filed as WSR 21-07-133 on March 23, 2021.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 6, Amended 0, Repealed 57.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 6, Amended 0, Repealed 57.

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

Date Adopted: May 13, 2021.

Barbara Lechtanski
Director for the University Policy
and Rules Office and State
Rules Coordinator for UW

REPEALER

The following chapter of the Washington Administrative Code is repealed:

- WAC 478-160-005 Legal authority to enact.
- WAC 478-160-010 Admissions procedures—Statement of purpose.
- WAC 478-160-015 Admission categories.
- WAC 478-160-020 Undergraduate admission policy.
- WAC 478-160-025 Undergraduate student classifications.
- WAC 478-160-030 Early application guidelines.

- WAC 478-160-035 Application forms for undergraduate standing.
- WAC 478-160-040 Admission of undergraduate students through the educational opportunity program.
- WAC 478-160-045 Admission of international students.
- WAC 478-160-050 Application forms for international students.
- WAC 478-160-055 Admission to specific major degree programs.
- WAC 478-160-060 Reconsideration of decisions for admission to the University of Washington.
- WAC 478-160-065 Admission of former students.
- WAC 478-160-070 Graduate admission policy.
- WAC 478-160-075 Graduate classifications.
- WAC 478-160-080 Early application.
- WAC 478-160-085 Application to graduate school.
- WAC 478-160-095 Admission to the advanced professional schools of dentistry, law, medicine, and pharmacy—Policy.
- WAC 478-160-100 Admission to the school of dentistry.
- WAC 478-160-105 Admission to the school of dentistry—Application.
- WAC 478-160-110 Admission to the school of law—Online application.
- WAC 478-160-115 Admission to the school of law with advanced standing.
- WAC 478-160-125 Admission to the school of medicine.
- WAC 478-160-130 First-year admission to the school of medicine—Application.
- WAC 478-160-140 Application for transfer to the school of medicine.
- WAC 478-160-142 Admission to the school of pharmacy—Application forms.
- WAC 478-160-143 Admission to the school of pharmacy with advanced standing.
- WAC 478-160-145 Admission with nonmatriculated status.
- WAC 478-160-150 Definition of nonmatriculated status.
- WAC 478-160-160 Applications for housing and financial aid.
- WAC 478-160-162 Financial aid information.
- WAC 478-160-163 Waivers of tuition and fees.
- WAC 478-160-165 Continuing education procedures—Statement of purpose.
- WAC 478-160-170 Continuing education—Policy.
- WAC 478-160-175 Credit definitions.
- WAC 478-160-190 Noncredit courses.

- WAC 478-160-210 Change of residence application forms.
- WAC 478-160-230 Appeal of change of residence determination.
- WAC 478-160-231 Residence classification review committee.
- WAC 478-160-235 Enrollment and registration procedures—Statement of purpose.
- WAC 478-160-240 Definitions.
- WAC 478-160-246 Enrollment confirmation deposit for new and returning students for autumn, winter and spring quarters.
- WAC 478-160-256 Refund of the enrollment confirmation deposit.
- WAC 478-160-260 International students—Accident insurance requirement.
- WAC 478-160-265 Registration for residence credit courses.
- WAC 478-160-270 Registration periods.
- WAC 478-160-271 Registration eligibility.
- WAC 478-160-275 Late registration or course adds—Registration period III.
- WAC 478-160-280 Registration changes.
- WAC 478-160-285 Change of registration service fee.
- WAC 478-160-290 Withdrawal from the university.
- WAC 478-160-295 Military withdrawals.
- WAC 478-160-300 Registration requirements for graduate students.
- WAC 478-160-305 On-leave status for graduate students.
- WAC 478-160-310 Change of school or college.
- WAC 478-160-315 Auditors.
- WAC 478-160-320 Special instructional programs offered summer quarter.

Chapter 478-161 WAC

STUDENT ENROLLMENT FOR THE UNIVERSITY OF WASHINGTON

NEW SECTION

WAC 478-161-010 Admission to specific undergraduate majors. Criteria for acceptance to undergraduate majors may vary from department to department. Department admission policies are binding if they are the result of action by the faculty of the department concerned and have also been approved by the dean of that school or college, the designated faculty governing council or body, and the president of the university.

NEW SECTION

WAC 478-161-015 Registration eligibility. (1) **Continuing students.** Continuing students at the university who remain in good standing are in compliance with other rules and regulations will have the opportunity to register at the same campus each quarter as long as they maintain continuous enrollment. A "continuing student" is one who has registered at the same University of Washington campus in the same degree level (i.e., undergraduate to undergraduate) or degree level program (i.e., graduate to graduate) the preceding quarter, or preceding spring quarter, if registering for autumn quarter.

(2) **Newly admitted students.** Newly admitted students are eligible to register for the quarter for which they have been offered admission when the applicable registration period(s) open and only after they have confirmed their enrollment and intention to attend the university beginning that quarter. Confirmation usually requires an advance payment on tuition and/or a confirmation fee. A "newly admitted student" is either one who has not previously registered for credit courses at the university or one who will be in their first quarter in a status different from that in which they last attended.

(3) **Quarter-off, on-leave status and returning students.**

(a) **Quarter-off eligibility for undergraduate and professional students.**

(i) Subject to college, school, and departmental enrollment policies, undergraduate and professional students who have completed a quarter at the University of Washington may take the following quarter off and remain eligible to register for the subsequent quarter without reapplying as returning students. Any quarter from which a student has completely withdrawn or been canceled does not constitute a completed quarter. Summer quarter enrollment is not required to maintain continuous registration eligibility.

(ii) Undergraduate and professional students who have taken more than one consecutive quarter off (not including summer) and who wish to return to the university in the degree or certificate program for which they were last registered must submit a "returning student reenrollment" form to the university registration office.

(b) **Graduate students.** Graduate students are required either to be registered each quarter (except summer) or to be officially on leave until the completion of all requirements for the graduate degree toward which such a student is working. Graduate students who do not maintain continuous enrollment must file an on-leave application with the graduate school. An "on-leave graduate student" is a graduate student in good standing who is away from the university and has been granted on-leave status. Failure to register each quarter (except summer) or to go on leave will constitute presumptive evidence that the student has withdrawn and resigned from the graduate school. The quarter-off eligibility is not available to graduate students.

(4) **Enrollment in a different campus or different program.** Current students who wish to attend the university at a different campus or in a different program than they are currently enrolled in must complete the application of and be

accepted into the campus or program in which they would like to enroll.

(5) **Enrollment after program completion.** All undergraduate and graduate students who completed a degree or certificate program at the time they were last enrolled must apply as new students if they wish to continue or return to the university. For students completing a master's degree, it is sometimes possible to return into the PhD program without a new student application.

NEW SECTION

WAC 478-161-020 Waiver of tuition and fees. (1) The board of regents is authorized to grant tuition and fee waivers to students pursuant to RCW 28B.15.910 and the laws identified therein. A number of these statutes authorize, but do not require, the board of regents to grant waivers for different categories of students and provide for waivers of different fees. For the waivers that are authorized but not required by state law, the board of regents must affirmatively act to implement the legislature's grant of authority under each individual law. The permissive waivers that the board has implemented are noted in subsections (5) and (6) of this section. Permissive waivers not listed in subsection (5) or (6) have not been implemented. A full list of permissive waivers adopted by the board of regents and a list of mandatory waivers can be found online on the University of Washington's office of the university registrar website. Mandatory waivers are also listed in university policy.

(2) Even when it has decided to implement a permissive waiver listed in RCW 28B.15.910, the university, for specific reasons and a general need for flexibility in the management of its resources, may choose not to award waivers to all students who may be eligible under the terms of the laws. The university's description of the factors it may consider to adjust a waiver program to meet emergent or changing needs is found in subsection (7) of this section. All permissive waivers are subject to subsection (7) of this section.

(3) The board of regents also has the authority under RCW 28B.15.915 to grant waivers of all or a portion of operating fees as defined in RCW 28B.15.031. Waivers granted under RCW 28B.15.915 are subject to subsection (7) of this section.

(4) No waivers contained in this section will be awarded to students participating in self-sustaining courses or programs.

(5) Pursuant to its authority to grant permissive waivers under RCW 28B.15.910 and the laws cited in this subsection, the board of regents adopts the waivers of all or a portion of nonresident tuition fees differential contained in the subsections listed below, with the accompanying noted limitations. These limitations are in addition to any limitations set forth in RCW.

(a) RCW 28B.15.014(1);

(b) RCW 28B.15.014(2). Waivers under this subsection shall be restricted to four consecutive quarters from the employee's initial date of employment with the University of Washington. The employee must be employed on or before the first day of the quarter for which the waiver is awarded;

(c) RCW 28B.15.014(3). Waivers under this subsection shall be restricted to persons who reside in Washington state;

(d) RCW 28B.15.225; and

(e) RCW 28B.15.544 and chapter 28B.70 RCW.

(6) Pursuant to its authority to grant permissive waivers under RCW 28B.15.910 and the laws cited in this subsection, the board of regents adopts the following waivers contained in the sections listed below, with the accompanying noted limitations. These limitations are in addition to any limitations set forth in RCW.

(a) RCW 28B.15.100(3);

(b) RCW 28B.15.540(2);

(c) RCW 28B.15.555 and 28B.15.556;

(d) RCW 28B.15.558. All waivers authorized by RCW 28B.15.558 shall be subject to such additional limitations as determined by the provost, pursuant to the terms of subsection (7) of this section. These limitations on employee and course eligibility can be found in university policy in administrative policy statement (APS) 22.1. The office of the university registrar also maintains a list of excluded courses and programs. As authorized by RCW 28B.15.558(5) waivers shall be awarded to eligible University of Washington employees before considering waivers for eligible persons who are not employed by the institution;

(e) RCW 28B.15.615;

(f) RCW 28B.15.621(2). The university adopts this waiver only as to:

(i) Undergraduate students pursuing their first bachelor's degree to a maximum of 225 college-level credits, including credits transferred from other institutions of higher education; and

(ii) Full-time graduate or professional degree students, provided however, that the waiver may be applied only toward a single degree program at the University of Washington, and provided further, that graduate and professional degree students who received a waiver authorized by RCW 28B.15.621(2) as undergraduates at the University of Washington shall not be eligible for this waiver.

To qualify an individual as an "eligible veteran or National Guard member," the person seeking the waiver must present proof of domicile in Washington state and either a DD Form 214 (report of separation) or other documentation indicating they meet the criteria in RCW 28B.15.621(8).

(g) RCW 28B.15.740(1); and

(h) RCW 28B.15.740(2).

(7) The university may modify its restrictions or requirements pursuant to changes in state or federal law, changes in programmatic requirements, or in response to financial or other considerations, which may include, but are not limited to, the need to adopt fiscally responsible budgets, the management of the overall levels and mix of enrollments, management initiatives to modify enrollment demand for specific programs and management decisions to eliminate or modify academic programs. The university may choose not to exercise the full funding authority granted under RCW 28B.15.910 and may limit the total funding available under RCW 28B.15.915.

NEW SECTION**WAC 478-161-030 Change of residence application.**

Nonresident students who desire to apply for a change in residence status must complete and submit a Washington institutions of higher education residence questionnaire or a Washington higher education residency affidavit, whichever is appropriate to the student's circumstances, and submit all requested supporting documentation to the University of Washington, residence classification office at the student's home campus.

Residence questionnaire and additional instructions are available on the residence classification office website. Within ten days of taking action on the residence questionnaire, the residence classification office shall provide to the student a written statement of the reasons for any decision it makes. This statement may be transmitted electronically (e.g., by email). This rule is adopted in accordance with RCW 34.05.482 through 34.05.494, governing brief adjudicatory proceedings, the provisions of which are hereby adopted.

NEW SECTION

WAC 478-161-031 Appeal of change of residence determination. Any student wishing to appeal a decision of the residence classification office may request administrative review through the University of Washington, residence classification review committee. The residence classification review committee shall be composed of at least four persons appointed by the vice provost for academic and student affairs or designee.

Appeals may be submitted by written or oral request to the residence classification office within twenty-one days from the date of the emailed residency decision required by WAC 478-161-030. Written appeals are strongly preferred, and may be made by the student submitting a written statement describing why the student believes the decision was incorrect. The residence classification review committee will consider the student's statement of appeal and the student's residency file as of the time of the residence classification office's decision. Decisions of the residence classification review committee shall be rendered within twenty days of the request for the review. Decisions shall be in writing, and may be transmitted electronically (e.g., by email). The residence classification review committee shall issue the institution's final decision.

NEW SECTION

WAC 478-161-040 International students—Accident insurance requirement. All F-1 and J-1 eligible international students enrolled in a program of study with an I-20 or DS 2019 issued by the University of Washington are required to purchase the UW International Student Health Insurance Plan (ISHIP) while attending the University of Washington.

WSR 21-11-063**PERMANENT RULES****WASHINGTON STATE LOTTERY**

[Filed May 14, 2021, 12:29 p.m., effective June 14, 2021]

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

Purpose: Amendments to chapter 315-06 WAC, General lottery rules, establish a program that allows a person to voluntarily exclude themselves from lottery activities, as mandated by SHB 1302 (2019). This new program will provide those suffering from problem gambling or gambling disorder a time-limited period when they will not be able to redeem winning lottery tickets or participate in lottery promotions.

Citation of Rules Affected by this Order: New WAC 315-06-220.

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

Adopted under notice filed as WSR 21-06-080 on March 1, 2021.

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

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

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

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

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

Date Adopted: May 14, 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 21-11-064
PERMANENT RULES
OFFICE OF THE
INSURANCE COMMISSIONER

[Filed May 14, 2021, 1:12 p.m., effective June 14, 2021]

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

Purpose: WSR 20-24-070 created WAC 284-30-595 to provide guidance for companies to use and apply implementation credits from the passing of SHB 1075 (2019). Due [to] solely using the word "insurer" in WAC 284-30-595, health care service contractors and health maintenance organizations were unintentionally excluded. This rule making specifically defines health carriers as a permissible entity within WAC 284-30-595.

Citation of Rules Affected by this Order: Amending WAC 284-30-595.

Statutory Authority for Adoption: RCW 48.02.060, 48.44.050, and 48.46.200.

Adopted under notice filed as WSR 21-08-068 on April 6, 2021.

A final cost-benefit analysis is available by contacting David Forte, 302 Sid Snyder Avenue S.W., Olympia, WA 98504, phone 360-725-7042, fax 360-586-3109, TTY 360-586-0241, email rulescoordinator@oic.wa.gov.

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

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

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

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

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

Date Adopted: May 14, 2021.

Mike Kreidler
Insurance Commissioner

AMENDATORY SECTION (Amending WSR 20-24-070, filed 11/24/20, effective 12/25/20)

WAC 284-30-595 Unfair practices regarding documented expenses for implementation credits. Under RCW 48.30.140 and 48.30.150, an insurer or health carrier may issue payment to offset a documented expense that is incurred by a group policyholder (~~((while transferring from one policy to another policy))~~) in changing coverages from one insurer or health carrier to another provided that the insurer or health carrier maintains evidence of the documented expense for three years from the date of the expense. An insurer or health carrier will describe in the policy or in any such filing with the commissioner that the payment made

to the group policyholder will not exceed the amount of the documented expenses.

(1) The failure to maintain and document an expense incurred by a group policyholder constitutes an unfair trade practice and is a violation of this chapter.

(2) Upon the commissioner's request, the insurer or health carrier must provide proof of a documented expense in the form of paper or electronic copy.

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

(a) "Health carrier" has the same meaning as in RCW 48.43.005.

(b) "Insurer" has the same meaning as in RCW 48.01.-050.

WSR 21-11-066
PERMANENT RULES
BUILDING CODE COUNCIL

[Filed May 14, 2021, 3:47 p.m., effective June 14, 2021]

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

Purpose: Making changes to chapters 51-50, 51-51, 51-52, 51-54A, and 51-56 WAC. Permanently modify the codes' effective dates to February 1, 2021.

Citation of Rules Affected by this Order: Amending 5.

Statutory Authority for Adoption: RCW 19.27.031, 19.27.074.

Adopted under notice filed as WSR 21-04-041 on January 27, 2021.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 5, Repealed 0.

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

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

Date Adopted: May 12, 2021.

Diane Glenn
Council Chair

AMENDATORY SECTION (Amending WSR 20-01-090, filed 12/12/19, effective 7/1/20)

WAC 51-50-008 Implementation. The *International Building Code* adopted under chapter 51-50 WAC shall become effective in all counties and cities of this state on ~~((July 1, 2020))~~ February 1, 2021.

AMENDATORY SECTION (Amending WSR 20-03-023, filed 1/6/20, effective 7/1/20)

WAC 51-51-008 Implementation. The International Residential Code adopted by chapter 51-51 WAC shall become effective in all counties and cities of this state on ~~((July 1, 2020))~~ February 1, 2021.

AMENDATORY SECTION (Amending WSR 20-03-041, filed 1/8/20, effective 7/1/20)

WAC 51-52-008 Implementation. The International Mechanical Code adopted by chapter 51-52 WAC shall become effective in all counties and cities of this state on ~~((July 1, 2020))~~ February 1, 2021.

AMENDATORY SECTION (Amending WSR 19-24-058, filed 11/27/19, effective 7/1/20)

WAC 51-54A-008 Implementation. The *International Fire Code* adopted by chapter 51-54A WAC shall become effective in all counties and cities of this state on ~~((July 1, 2020))~~ February 1, 2021.

AMENDATORY SECTION (Amending WSR 20-02-072, filed 12/26/19, effective 7/1/20)

WAC 51-56-008 Implementation. The Uniform Plumbing Code adopted by chapter 51-56 WAC shall become effective in all counties and cities of this state on ~~((July 1, 2020))~~ February 1, 2021.

WSR 21-11-072

PERMANENT RULES DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed May 17, 2021, 1:03 p.m., effective June 17, 2021]

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

Purpose: The department is amending WAC 388-106-0665 How are volunteers qualified to provide volunteer services?, to change an outdated WAC reference from WAC 388-71-0105 to 388-103-0001.

Citation of Rules Affected by this Order: Amending WAC 388-106-0665.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Adopted under notice filed as WSR 21-05-058 on February 16, 2021.

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

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

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

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

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

Date Adopted: May 17, 2021.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-07-074, filed 3/17/15, effective 4/17/15)

WAC 388-106-0665 How are volunteers qualified to provide volunteer services? Volunteers are qualified to provide volunteer services through the following mechanisms:

(1) Volunteers who will have unsupervised access to vulnerable adults cannot have any convictions, pending crimes or findings that are listed in WAC ~~((388-71-0105))~~ 388-103-0001 or provide contracted services per RCW 43.20A.0710 (1)(c) prior to working alone with them.

(2) The volunteer services contractor(s) will provide orientation and ongoing training as needed to volunteers.

WSR 21-11-074

PERMANENT RULES DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed May 17, 2021, 3:19 p.m., effective August 1, 2021]

Effective Date of Rule: August 1, 2021.

Purpose: The purpose of these adopted rules is to update requirements that are obsolete or require clarification. The department worked with internal and external stakeholders to identify rules that have been in place for a number of years and that are ambiguous or difficult to implement or enforce. The department of social and health services (DSHS) adopted changes to clarify rules that could have multiple interpretations, to respond to new or updated technology, and to improve resident safety. Because some of the requirements in the sections outlining resident rights are closely related to the federal regulations under the home and community-based settings program, DSHS adapted the language to more closely align with those requirements. Similarly, adult family homes must meet the requirements of chapters 388-76 and 51-51 WAC, State building code adoption, and Amendment of the 2018 Edition of the International Residential Code. For easier use, some of the adopted changes in chapter 388-76 WAC incorporate parts of the International Residential Code as adopted by the Washington state building code council.

Citation of Rules Affected by this Order: New WAC 388-76-10616; repealing WAC 388-76-10520, 388-76-10555, 388-76-10565 and 388-76-10835; and amending WAC 388-76-10510, 388-76-10515, 388-76-10522, 388-76-10525, 388-76-10530, 388-76-10532, 388-76-10540, 388-76-10545, 388-76-10550, 388-76-10560, 388-76-10561,

388-76-10585, 388-76-10595, 388-76-10600, 388-76-10605, 388-76-10615, 388-76-10620, 388-76-10685, 388-76-10715, 388-76-10720, 388-76-10725, 388-76-10750, 388-76-10765, 388-76-10770, 388-76-10784, 388-76-10795, 388-76-10800, 388-76-10805, 388-76-10810, 388-76-10825, 388-76-10830, 388-76-10840, 388-76-10850, 388-76-10865, 388-76-10870, 388-76-10885, 388-76-10890, 388-76-10895, 388-76-10900, and 388-76-10905.

Statutory Authority for Adoption: RCW 70.128.040 and 70.128.060.

Adopted under notice filed as WSR 20-22-102 on November 3, 2020.

Changes Other than Editing from Proposed to Adopted Version:

Changes after CR-102 Filed as WSR 20-02-013:

WAC 388-76-10532(1): Changed "is required to" to "must."

WAC 388-76-10532 (2)(c): Changed "in each resident's record" to "that has been signed and dated by the resident in the resident's record."

WAC 388-76-10532 (2)(d): Subsection deleted.

WAC 388-76-10532(3): Added "rights and."

WAC 388-76-10540(8): Changed "any resident agreement" to "the notice of rights and services."

WAC 388-76-10550 (1)(d): Added "including which general care management decisions they will make and which will be made by the resident or their representative."

WAC 388-76-10550(4): Subsection deleted.

WAC 388-76-10620 (2)(b): Deleted "Be informed about community activities and ways to."

WAC 388-76-10685 (4) and (5): Changed to the following:

(4) When a bedroom will be shared by two residents, the home must:

(a) Document through the notice of rights and services that the resident's bedroom is a shared bedroom; and

(b) Allow residents to express their preference of roommate and allow residents who mutually consent to share a bedroom to live in a double occupancy bedroom together, unless this will pose a health or safety risk for any resident in the home;

(5) Provide each bedroom with a minimum usable floor space as required in WAC 388-76-10690.

WAC 388-76-10720 (3) and (4): Changed to the following:

(3) The home must notify all residents in writing of the video monitoring equipment. The home must:

(a) Identify in the written notification each person or organization with access to electronic monitoring; and

(b) Retain an acknowledgment that has been signed and dated by both the resident and the home that states in writing that the resident has received this notification.

(4) The presence of cameras must not alter the obligation of the home to provide appropriate in-person assistance and monitoring due to individual physical or cognitive limitations.

WAC 388-76-10725(4): Added "in their bedrooms."

WAC 388-76-10725(5): Deleted "Each person or organization with access to the electronic monitoring must be identified in the resident's negotiated care plan";

WAC 388-76-10750 (7) and (8): Changed to the following:

(7) Keep all toxic substances and hazardous materials in locked storage and in their original containers;

(8) Grant a resident access to and use of toxic substances and hazardous materials only with direct supervision, unless the resident has been assessed as safe to use the substance or material without direct supervision and if the use is documented in the negotiated care plan;

WAC 388-76-10805(3): Added the following:

Physical interconnection of smoke alarms shall not be required where listed wireless alarms are installed and all alarms sound upon activation of one alarm.

WAC 388-76-10825(3): Changed "accidental" to "any."

WAC 388-76-10885: Changed "ensure there is" to "develop."

WAC 388-76-10895(2): Changed "ensure" to "conduct."

WAC 388-76-10895 (2)(b) and (c): Changed to the following:

(b) A full emergency evacuation drill at least once each calendar year, with all residents participating in the drill together and at the same time; and

(c) Emergency evacuation drills even if there are no residents living in the home for the purpose of staff practice.

Changes after CR-102 Filed as WSR 20-11-055:

WAC 388-76-10805(2): Changed "detectors" to "alarms."

WAC 388-76-10866 (4)(a): Changed "WAC 51-51-0325" to "chapter 51-51 WAC."

Changes after CR-102 Filed as WSR 20-22-102:

WAC 388-76-10750(6): Added word "hot."

A final cost-benefit analysis is available by contacting Libby Wagner, P.O. Box 45600, Olympia, WA 98504, phone 360-464-0487, fax 360-725-3224, email libby.wagner@dshs.wa.gov.

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

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

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

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

Number of Sections Adopted using Negotiated Rule Making: New 1, Amended 40, Repealed 4; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 40, Repealed 4.

Date Adopted: May 17, 2021.

Donald L. Clintsman
Acting Secretary

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10510 Resident rights—Basic rights.
The adult family home must ensure that each resident:

(1) Receives appropriate necessary services, as identified in the assessment and negotiated care plan;

(2) Is treated with courtesy, dignity, and respect;

(3) Continues to enjoy basic civil and legal rights;

(4) Has the ~~((chance))~~ opportunity to exercise ~~((reasonable))~~ control over life decisions, such as ~~((choice))~~ making the resident's own choices about daily life, participation in services or activities, care, and privacy;

(5) ~~((Is provided))~~ Has the opportunity to engage in religious, political, civic, recreational, and other social activities of their choice;

(6) Is cared for in a manner ~~((and in an environment))~~ that ~~((promotes maintenance or enhancement of each))~~ enhances or maintains the resident's quality of life ~~((including a))~~;

(7) Is cared for in an environment that is safe, clean, comfortable, and homelike ~~((environment))~~; and

~~((7-Is allowed))~~ (8) Has the freedom to have and use ~~((his or her))~~ their personal belongings to the extent possible.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10515 Resident rights—Exercise of rights. The adult family home must:

(1) Protect each resident's right to a dignified existence, self-determination, and communication with and access to persons and services inside and outside the home;

(2) Protect and promote the rights of each resident and assist the resident to exercise ~~((his or her))~~ the rights ~~((as))~~ of a resident of the home ~~((as a citizen or resident of the United States))~~ and the state of Washington.

(3) Be free of interference, coercion, discrimination, and ~~((reprisal))~~ retaliation from the home in exercising ~~((his or her))~~ the resident's rights; and

(4) Ensure the resident's right to choose a representative who may exercise the resident's rights to the extent provided by law.

AMENDATORY SECTION (Amending WSR 10-03-064, filed 1/15/10, effective 2/15/10)

WAC 388-76-10522 Resident rights—Notice—Policy on accepting medicaid as a payment source. The adult family home must fully disclose the home's policy on accepting medicaid ~~((payments))~~ or other public funds as a payment source. The policy must:

(1) Clearly state the circumstances under which the adult family home provides care for medicaid eligible residents and for residents who become eligible for medicaid after admission;

(2) Be provided both orally and in writing in a language ~~((that))~~ the resident understands;

(3) Be provided to all prospective residents, before ~~((they are admitted))~~ admission to the home;

(4) Be provided to any current residents who were admitted before this requirement took effect or who did not receive copies prior to admission;

(5) Be a written ~~((on a page))~~ document that is separate from other documents and ~~((be written in))~~ use a type font that is at least fourteen point; and

(6) Be signed and dated by the resident and ~~((be))~~ kept in the resident record after signature.

AMENDATORY SECTION (Amending WSR 15-03-037, filed 1/12/15, effective 2/12/15)

WAC 388-76-10525 Resident rights—~~((Description))~~ Postings. The adult family home must ~~((give each resident a written description of resident's rights that includes a))~~ post the following in a common use area where they can be easily viewed by anyone in the home, including residents, resident representatives, the department, and visitors:

(1) ~~((Description of how the home will protect personal funds))~~ The name, address, and telephone number for the home's regional residential care services licensing office;

(2) ~~((Posting of names, addresses, and telephone numbers of the~~

~~(a) State survey and certification agency;~~

~~(b) State licensing office;~~

~~(c) State ombuds program; and~~

~~(d) Protection and advocacy systems.)~~ The department's poster that includes the complaint resolution unit hotline and the telephone number for the state ombuds program; and

(3) ~~((Statement informing the resident that he or she may file a complaint with the appropriate state licensing agency concerning alleged abandonment, abuse, neglect, or financial exploitation))~~ The poster from the agency designated as the protection and advocacy system for residents with disabilities.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10530 Resident rights—Notice of rights and services. (1) The adult family home must provide each resident ~~((notice in writing))~~ written notice of the resident's rights and services provided in the home in a language the resident understands and before ~~((admission, and))~~ the resident is admitted to the home. The notice must be reviewed at least once every twenty-four months ~~((after admission of))~~ from the date of the resident's admission and must include the following:

~~((+))~~ (a) Information regarding resident rights, including rights under chapter 70.129 RCW;

(b) A complete description of the services, items, and activities customarily available in the home or arranged for by the home as permitted by the license;

~~((2))~~ (c) A complete description of the charges for those services, items, and activities, including charges for services, items, and activities not covered by the home's per diem rate or applicable public benefit programs; ~~((and~~

~~(3))~~ (d) The monthly or per diem rate charged to private pay residents to live in the home;

(e) Rules of the ~~((home's operations))~~ home, which must not violate resident rights in chapter 70.129 RCW;

(f) How the resident can file a complaint concerning alleged abandonment, abuse, neglect, or financial exploitation with the state hotline; and

(g) If the home will be managing the resident's funds, a description of how the home will protect the resident's funds.

(2) Upon receiving the notice of rights and services at admission and at least every twenty-four months, the home must ensure the resident and a representative of the home sign and date an acknowledgement stating that the resident has received the notice of rights and services as outlined in this section. The home must retain a signed and dated copy of both the notice of rights and services and the acknowledgement in the resident's record.

AMENDATORY SECTION (Amending WSR 15-03-037, filed 1/12/15, effective 2/12/15)

WAC 388-76-10532 Resident rights—Department standardized disclosure ~~(of services form)~~ forms. (1) The adult family home ~~(is required to)~~ must complete the department's standardized disclosure of services form.

~~((4))~~ The home must:

- (a) List on the form the scope of care and services available in the home;
- (b) Send the completed form to the department when applying for a license; and
- (c) Provide an updated form to the department thirty days prior to changing services, except in emergencies, when the scope of care and services is changing.

~~(2) The ~~(form does not)~~~~

~~(a) Replace the notice of services required when a resident is admitted to the adult family home as directed in chapter 388-76-10530 WAC.~~

~~(b) Replace any other form or policy as required in chapter 388-76 WAC))~~ adult family home must complete the disclosure of charges form as provided by the department. The home must:

(a) Provide a copy to each resident prior to or upon admission to the home;

(b) Provide a copy upon resident request; and

(c) Keep a copy that has been signed and dated by the resident in the resident's record.

(3) These forms do not replace the notice of rights and services required when a resident is admitted to the adult family home as directed in WAC 388-76-10530.

AMENDATORY SECTION (Amending WSR 16-20-095, filed 10/4/16, effective 11/4/16)

WAC 388-76-10540 Resident rights—Disclosure of ~~(fees and)~~ charges—Notice requirements—Deposits. (1) ~~((The adult family home must complete the department's disclosure of charges form and provide a copy to each resident admitted to the home.~~

~~(2))~~ If the adult family home requires an admission fee, deposit, prepaid charges, or any other fees or charges, by or on behalf of a person seeking admission, the home must ~~((give the resident full))~~ include this information on the disclosure of charges form in writing in a language the resident understands prior to its receipt of any funds.

~~((3))~~ (2) The disclosure must include:

- (a) A statement of the amount of any admissions fees, security deposits, prepaid charges, minimum stay fees, or any other fees or charges specifying what the funds are paid for and the basis for retaining any portion of the funds if the res-

ident dies, is hospitalized, transferred, or discharged from the home;

(b) The home's advance notice or transfer requirements; and

(c) The amount of the security deposits, admission fees, prepaid charges, minimum stay fees, or any other fees or charges that the home will refund to the resident if the resident leaves the home.

~~((4) The home must ensure that the resident and home sign and date an acknowledgement in writing stating that the resident has received a disclosure required under subsection (2) of this section. The home must retain a copy of the disclosure and acknowledgement.~~

~~(5))~~ (3) If the home does not provide the disclosures in subsection ~~((3))~~ (1) of this section to the resident, the home must not keep the resident's security deposits, admission fees, prepaid charges, minimum stay fees, or any other fees or charges.

~~((6))~~ (4) If a resident dies, is hospitalized, or is transferred to another facility for more appropriate care and does not return to the home, the adult family home:

(a) Must refund any deposit or charges paid by the resident less the home's per diem rate for the days the resident actually resided, reserved, or retained a bed in the home regardless of any minimum stay policy or discharge notice requirements;

(b) May keep an additional amount to cover its reasonable and actual expenses incurred as a result of a private-pay resident's move, not to exceed five days per diem charges, unless the resident has given advance notice in compliance with the home's admission agreement; and

(c) Must not require the resident to obtain a refund from a placement agency or person.

~~((7))~~ (5) The adult family home must not retain funds for reasonable wear and tear by the resident or for any basis that would violate RCW 70.129.150.

~~((8))~~ (6) The adult family home must provide the resident with any and all refunds due ~~((to him or her))~~ within thirty days from the resident's date of discharge from the home.

~~((9))~~ (7) Nothing in this section applies to provisions in contracts negotiated between a home and a certified health plan, health or disability insurer, health maintenance organization, managed care organization, or similar entities.

~~((10))~~ (8) The home must ensure that ~~((any resident admission agreement))~~ the notice of rights and services is consistent with the requirements of this section, chapters 70.128, 70.129, and 74.34 RCW, and other applicable state and federal laws.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10545 Resident rights—Admitting and keeping residents. The adult family home must:

(1) Only admit or keep individuals whose needs the home can safely ~~((serve in the home))~~ meet:

- (a) With ~~((appropriate))~~ qualified available staff; and
- (b) Through the provision of reasonable accommodations required by state and federal law~~((:));~~

(2) Not admit an individual before obtaining ~~((a thorough))~~ a complete assessment of the ~~((resident's))~~ individual's needs and preferences, except in cases of a genuine emergency;

(3) Ensure that the admission of the individual does not negatively affect the ability of the home to meet the needs of or endangers the safety of other residents; and

(4) Comply with all applicable federal and state requirements regarding nondiscrimination.

AMENDATORY SECTION (Amending WSR 10-04-008, filed 1/22/10, effective 2/22/10)

WAC 388-76-10550 Resident rights—Adult family home staffing—Notification required. The adult family home must provide the following information in writing to prospective residents before admission and current residents who were admitted before this requirement took effect:

(1) Information about the provider, entity representative, and resident manager, ~~((if there is a resident manager))~~ including:

(a) Availability in the home, including a general statement about how often ~~((he or she is))~~ they each are in the home;

(b) Education and training relevant to resident caregiving;

(c) Caregiving experience;

(d) ~~((His or her))~~ Primary responsibilities, including ~~((whether he or she makes daily))~~ which general care management decisions they will make and which will be made by the resident or their representative; and

(e) How to contact the provider, entity representative ~~((or)), and~~ resident manager when ~~((he or she is))~~ not in the home.

(2) Information about a licensed practical nurse or registered nurse, if there is one, who is in any way involved in the care of residents, including:

(a) Who the licensed practical nurse or registered nurse is employed by;

(b) The specific routine hours that the licensed practical nurse or registered nurse is on-site, if they are on-site routinely;

(c) ~~((His or her))~~ Primary responsibilities ~~((including whether he or she makes daily general care management decisions));~~

(d) The nonroutine times when the licensed practical nurse or registered nurse will be available, such as on-call; and

(e) A description of what the provider or entity representative will do to make ~~((available))~~ the services of a licensed nurse available in an emergency or change in a resident's condition.

(3) A statement indicating whether the provider, caregiver or staff is qualified or willing to become qualified to perform nurse delegation as allowed under state law.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10560 Resident rights—Adult family home management of resident financial affairs. (1) Each

resident has the right to manage their own financial affairs. The adult family home must not require any resident to deposit their personal funds with the home.

(2) If the adult family home agrees to manage a resident's personal funds, the home must ~~((do all of the following))~~:

~~((1))~~ Hold, safeguard, manage, and account for the personal funds of the resident deposited with the home);

~~((2))~~ (a) Have a written authorization from the resident;

(b) Develop and maintain a system that assures a full, complete, and separate accounting of each resident's personal funds given to the home on the resident's behalf;

(c) Ensure the resident's funds are not mixed with the home's funds or with the funds of any person other than another resident. If funds are pooled accounts, there must be a separate accounting for each resident's share;

~~((3))~~ (d) Deposit a resident's personal funds in excess of one hundred dollars in an interest-bearing ~~((account or accounts))~~ account(s) separate from any of the home's operating accounts~~((;))~~ and that credits all interest earned on residents' funds to that account;

~~((4))~~ If funds are pooled accounts, there must be a separate accounting for each resident's share; and (c) Ensure that the account or accounts are held in a financial institution as defined in RCW 30A.22.040, and notify each resident in writing of the name, address, and location of the depository.

~~((5))~~ (f) Keep a resident's personal funds that do not exceed one hundred dollars in a noninterest-bearing account, interest-bearing account, or petty cash fund; and

(g) Provide an individual financial record when requested by the resident or the resident's legal representative.

AMENDATORY SECTION (Amending WSR 12-01-004, filed 12/7/11, effective 1/7/12)

WAC 388-76-10561 Resident rights—Resident security deposit account. ~~((Any))~~ (1) Funds in excess of one hundred dollars that are paid to an adult family home as a security deposit or as prepayment for charges beyond the first month's residency~~((;~~

~~((+)))~~ must be deposited by the adult family home in an interest bearing account that is separate from any of the home's operating accounts and that credits all interest earned on the resident's funds to that account.

(2) The adult family home must:

(a) ~~((Ensure that))~~ Provide a record of the account ~~((is available upon the request of))~~ when requested by the resident ~~((or their)), the resident's representative, or the department~~;

(b) ~~((Not commingle resident))~~ Ensure the resident's funds ~~((from these accounts))~~ are not mixed with the ~~((adult family))~~ home's funds or with the funds of any person other than another resident. If an account pools resident funds ~~((are commingled)),~~ ~~((the home must provide each resident with))~~ there must be a separate accounting for ~~((their))~~ each resident's share;

(c) Ensure that the ~~((account or accounts))~~ account(s) are held, and remain until a resident refund occurs, in a financial institution as defined in ~~((RCW 30.22.041,))~~ RCW 30A.22.-040; and

(d) Notify ~~((each))~~ the resident in writing of the name, address, and location of the depository.

AMENDATORY SECTION (Amending WSR 10-14-058, filed 6/30/10, effective 7/31/10)

WAC 388-76-10585 Resident rights—Examination of inspection results. (1) The adult family home must place a copy of the following documents ~~((in a visible location))~~ in a common use area where they can be ~~((examined))~~ easily viewed by residents, resident representatives, the department, and anyone interested without having to ask for them~~((:))~~:

(a) ~~((A copy of))~~ The most recent inspection report, any related follow-up reports, and related cover ~~((letter))~~ letters; and

(b) ~~((A copy of))~~ All complaint investigation reports, any related follow-up reports, and any related cover letters received since the most recent inspection or ~~((not less than))~~ within the last twelve months, whichever is longer.

(2) The adult family home must post a notice that the following documents are available for review if requested by the residents, resident representatives, the department, and anyone interested~~((:))~~:

(a) A copy of each inspection report and related cover letter received during the past three years; and

(b) A copy of any complaint investigation reports and related cover letters received during the past three years.

AMENDATORY SECTION (Amending WSR 15-03-037, filed 1/12/15, effective 2/12/15)

WAC 388-76-10595 Resident rights—Advocacy access and visitation rights. The adult family home must not interfere with each resident's right to have access to and from:

(1) Any representative of the state;

(2) The resident's own physician;

(3) The state long-term care ombuds ~~((program as established under chapter 43.190 RCW))~~ programs;

(4) The agency responsible for the protection and advocacy system for ~~((developmentally disabled individuals))~~ one or more of the following:

(a) Individuals with developmental disabilities as established under Part C of the Developmental Disabilities Assistance and Bill of Rights Act;

~~((5) The agency responsible for the protection and advocacy system for mentally ill individuals))~~ (b) Individuals with mental illness as established under the Protection and Advocacy for ((mentally ill)) Individuals with Mental Illness Act;

~~((6) Immediate family or other relatives of))~~ (c) Individuals with disabilities as established under section 509 of the Rehabilitation Act of 1973, as amended, who are not served under the mandates of existing protection and advocacy systems created under federal law;

(5) Visitors who are visiting the resident ~~((and others who are visiting))~~ with the resident's consent ~~((of the resident, subject to reasonable limits))~~, which:

(a) The resident may withdraw at any time; and

(b) May only be limited when the limitation is to protect the rights or safety of the residents or others ~~((and to the resident's right to deny or withdraw consent at any time;~~

~~((7) The agency responsible for the protection and advocacy system for individuals with disabilities as established under section 509 of the Rehabilitation Act of 1973, as amended, who are not served under the mandates of existing protection and advocacy systems created under federal law))~~ in the home and must be documented under WAC 388-76-10401; and

~~((8))~~ (6) The resident's representative or an entity or individual that provides health, social, legal, or other services to the resident, subject to the resident's right to deny or withdraw consent at any time.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10600 Resident rights—Mail and telephone privacy. The adult family home must ensure each resident's right to privacy in communications, including the right to:

(1) Send and receive unopened mail without delay;

(2) Have writing paper, postage, and pens or pencils available that have been paid for by the resident; and

(3) ~~((Be able to use a telephone where calls can be made without being overheard))~~ Have twenty-four hour per day access to a telephone to make and receive confidential calls.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10605 Resident rights—Personal property and storage space. The adult family home must ensure each resident's right to keep and use personal possessions, including ~~((some))~~ furnishings, and appropriate clothing, as space permits, unless to do so would infringe upon the rights or health and safety of other residents.

AMENDATORY SECTION (Amending WSR 15-03-037, filed 1/12/15, effective 2/12/15)

WAC 388-76-10615 Resident rights—Transfer and discharge. (1) The adult family home must allow each resident to stay in the home~~((:))~~ and not transfer or discharge the resident unless:

(a) The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the home;

(b) The safety or health of individuals in the home is or would otherwise be endangered;

(c) The resident has failed to make the required payment for ~~((his or her))~~ their stay; or

(d) The home ceases to operate.

(2) Before a home transfers or discharges a resident, the home must~~((:~~

(a) First attempt through reasonable accommodations to avoid the transfer or discharge, unless agreed to by the resident;

(b) Notify the resident and representative and make a reasonable effort to notify, if known, an interested family member of the transfer or discharge and the reasons for the move in writing and in a language and manner they understand;

(c) Record the reasons in the resident's record; and
 (d) Include in the notice the items described in subsection (5) of this section.

(3) Except as specified in (4) of this section, the home must give notice of the transfer or discharge at least thirty days before the resident is transferred or discharged.

(4) The home may make the notice as soon as practicable before transfer or discharge when:

(a) The safety and health of the individuals in the home would be endangered;

(b) An immediate transfer or discharge is required by the resident's urgent medical needs; or

(c) A resident has not resided in the home for thirty days.

(5) The home must include the following in the written notice specified in subsection (2) of this section:

(a) The reason for transfer or discharge;

(b) The effective date of transfer or discharge;

(c) The location where the resident is transferred or discharged;

(d) The name, address, and telephone number of the state long-term care ombuds;

(e) For residents with developmental disabilities, the mailing address and telephone number of the agency responsible for the protection and advocacy of developmentally disabled individuals; and

(f) For residents who are mentally ill, the mailing address and telephone number of the agency responsible for the protection and advocacy of mentally ill individuals)) first attempt through reasonable accommodations to avoid the transfer or discharge, unless agreed to by the resident.

((6)) (3) The home must give residents enough preparation and orientation to ensure a safe and orderly transfer or discharge from the home.

((7)) (4) If the home discharges a resident in violation of this section or WAC 388-76-10616, the home must readmit the resident to the home as soon as a gender-appropriate bed becomes available.

NEW SECTION

WAC 388-76-10616 Resident rights—Transfer and discharge notice. (1) Before a home transfers or discharges a resident, the home must give the resident and the resident's representative a written thirty day notification informing them of the transfer or discharge. The home must also make a reasonable effort to notify, if known, any interested family member. The written notification must be in a language and manner the resident understands and include the following:

(a) The reason for transfer or discharge;

(b) The effective date of transfer or discharge;

(c) The location where the resident is transferred or discharged if known at the time of the thirty-day discharge notice;

(d) The name, address, and telephone number of the state long-term care ombuds;

(e) For residents with developmental disabilities, the mailing address and telephone number of the agency responsible for the protection and advocacy of individuals with a developmental disability; and

(f) For residents with mental illness, the mailing address and telephone number of the agency responsible for the protection and advocacy of individuals with mental illness.

(2) The home may make the notice as soon as practicable before transfer or discharge when:

(a) The safety and health of the individuals in the home would be endangered;

(b) An immediate transfer or discharge is required by the resident's urgent medical needs; or

(c) The resident has been absent from the home for thirty or more days.

(3) A copy of the written notification must be in the resident's records.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10620 Resident rights—Quality of life—General. (1) The adult family home must promote care for residents in a manner and in an environment that maintains or enhances each resident's dignity and respect in full recognition of his or her individuality.

(2) ((Within reasonable)) The home may design home rules ((designed to)) that protect the rights and quality of life of residents((;)). Within these rules, the home must ensure the resident's right to:

(a) Choose activities, schedules, and health care consistent with ((his or her)) the resident's interests, assessments, and negotiated care plan;

(b) Interact with members of the community both inside and outside the home;

(c) Make choices about aspects of ((his or her)) life in the home that are significant to the resident;

(d) Wear ((his or her)) the resident's own clothing and decide ((his or her)) their own dress, hair style, or other personal effects according to individual preference;

(e) Unless adjudged incompetent or otherwise found to be legally incapacitated to:

(i) Be informed in advance about recommended care and services and of any recommended changes in the care and services;

(ii) Participate in planning care and treatment or changes in care and treatment;

(iii) Direct ((his or her)) the resident's own service plan and changes in the service plan, or

(iv) Refuse any particular service so long as such refusal is documented in the record of the resident.

AMENDATORY SECTION (Amending WSR 16-06-004, filed 2/17/16, effective 4/1/16)

WAC 388-76-10685 Bedrooms. The adult family home must meet all of the following requirements:

(1) Ensure each resident's bedroom is an outside room((; which)) that allows entrance of natural light((;)).

(2) Ensure window and door screens:

(a) Do not hinder emergency escape; and

(b) Prevent entrance of flies and other insects.

(3) Ensure each resident, including those using mobility aids such as wheelchairs and walkers has direct, unrestricted, and free access from the bedroom through doors, hallways,

and corridors to common use areas and other rooms used for care and services including bathrooms~~((;))~~.

~~((4))~~ ~~((Make separate bedrooms available for each sex))~~
When a bedroom will be shared by two residents, the home must:

(a) Document through the notice of rights and services that the resident's bedroom is a shared bedroom; and

(b) Allow residents to express their preference of roommate and allow residents who mutually consent to share a bedroom to live in a double occupancy bedroom together, unless this will pose a health or safety risk for any resident in the home;

~~((5))~~ ~~((Make reasonable efforts to accommodate residents wanting to share the room;))~~

~~((6))~~ Provide each bedroom with a minimum usable floor space as required in WAC 388-76-10690.

~~((7))~~ (6) Give each resident the opportunity to have a lock on their bedroom door if they ~~((choose))~~ choose to unless having a locked door would be unsafe for the resident and this is documented ~~((in the resident's negotiated care plan))~~ according to WAC 388-76-10401.

~~((8))~~ (7) Ensure each bedroom has a closet or a wardrobe, armoire, or reasonable ~~((facsimile thereof))~~ storage space for clothes accessible to residents. Neither the closet nor wardrobe/armoire floor space will be considered a part of the room's usable square footage. The home must not remove a closet in order to provide additional floor space.

~~((9))~~ (8) Ensure there are no more than two residents to a bedroom~~((;))~~.

~~((10))~~ (9) Unless the resident chooses to provide their own furniture and bedding, the home must provide each resident a bed thirty-six inches or ~~((more wide))~~ wider with:

(a) A clean, comfortable mattress;

(b) A waterproof cover for use when needed or requested by the resident;

(c) Clean sheets and pillow cases;

(d) Adequate clean blankets to meet the needs of each resident; and

(e) Clean pillows.

~~((11))~~ (10) Do not use the upper bunk of double-deck beds for a resident's bed~~((;))~~.

~~((12))~~ (11) Provide each resident a call bell ~~((or intercom system if)), or an alternative way of alerting staff in an emergency, that the resident can use, unless the ~~((provider, entity representative, resident manager or caregiver))~~ bedroom of an AFH staff member is ~~((not))~~ within hearing distance of ~~((each resident))~~ the resident's bedroom ~~((and the system is required by the department;))~~ and a staff member will be within hearing distance at all times.~~

~~((13))~~ (12) Ensure that members of the household~~((; other than residents;))~~ and staff do not share bedrooms with residents~~((; and))~~.

~~((14))~~ (13) Ensure a resident does not share a bedroom with a person under eighteen years of age, unless the person is the resident's own child.

AMENDATORY SECTION (Amending WSR 16-20-095, filed 10/4/16, effective 11/4/16)

WAC 388-76-10715 Doors—Ability to open. The adult family home must ensure:

(1) Every bedroom and bathroom door opens from the inside and outside;

(2) Every closet door opens from the inside and outside;
~~((and))~~

(3) At least one door leading to the outside is designated as ~~((the primary egress and))~~ an emergency exit. In homes licensed after January 1, 2016, this door must have a lever door handle on both sides and hardware that allows residents to exit when the door is locked and ~~((reentry))~~ immediately reenter without a key, tool, or special knowledge or effort by residents~~((;))~~;

(4) Other ~~((external exit))~~ doors leading to the outside that are not designated as ~~((the primary egress;))~~ an emergency exit must open without any special skills or knowledge, and they must remain accessible to residents unless doing so poses a risk to the health or safety of at least one resident~~((;))~~; and

(5) All internal and external doors comply with local jurisdictional requirements as well as the building code requirements in chapter 51-51 WAC.

AMENDATORY SECTION (Amending WSR 09-03-029, filed 1/12/09, effective 2/12/09)

WAC 388-76-10720 Electronic monitoring equipment—Audio monitoring and video monitoring. (1) Except as provided in this section or in WAC 388-76-10725, the adult family home must not use the following in the home or on the premises:

(a) Audio monitoring equipment; or

(b) Video monitoring equipment if it includes an audio component.

(2) The home may video monitor and video record activities in the home, without an audio component, only in the following areas:

(a) Entrances and exits if the cameras are:

(i) Focused only on the entrance or exit doorways; and

(ii) Not focused on areas where residents gather~~((;))~~;

(b) Outdoor areas accessible to both residents and the public, such as, but not limited to, driveways or walkways, provided that the purpose of such monitoring is to prevent theft, property damage, or other crime on the premises;

(c) Outdoor areas not commonly used by residents; and

~~((e))~~ (d) Designated smoking areas, subject to the following conditions:

(i) Residents are assessed as needing supervision for smoking;

(ii) A staff person watches the video monitor at any time the area is used by such residents;

(iii) The video camera ~~((is))~~ must be clearly visible;

(iv) The video monitor ~~((is))~~ must not be viewable by the general public; and

~~((f))~~ (3) The home ~~((notifies))~~ must notify all residents in writing of the video monitoring equipment. The home must:

(a) Identify in the written notification each person or organization with access to electronic monitoring; and

(b) Retain an acknowledgment that has been signed and dated by both the resident and the home that states in writing that the resident has received this notification.

(4) The presence of cameras must not alter the obligation of the home to provide appropriate in-person assistance and monitoring due to individual physical or cognitive limitations.

AMENDATORY SECTION (Amending WSR 09-03-029, filed 1/12/09, effective 2/12/09)

WAC 388-76-10725 Electronic monitoring equipment—Resident requested use. (1) ~~((The adult family home must not use))~~ Audio or video monitoring equipment ((to monitor any resident unless:

~~(a) The resident has requested the monitoring; and~~

~~(b) The monitoring is only used in the sleeping room of the resident who requested the monitoring-))~~ may not be installed in an adult family home to monitor any resident sleeping area unless the resident or the resident's representative has requested and consents to the monitoring;

(2) Electronic monitoring equipment must be installed in a manner that is safe for residents;

(3) An adult family home must not refuse to admit an individual, or discharge a resident, solely because of a request to conduct authorized electronic monitoring;

(4) A resident may limit consent for use of electronic monitoring devices in their bedrooms to specific times or situations, pointing the camera in a particular direction, or prohibiting the use of certain devices;

(5) The release of audio or video monitoring recordings by the facility is prohibited, except to authorized persons or as otherwise required by law;

(6) If the resident requests that the home conduct audio or video monitoring of their sleeping area, before any electronic monitoring occurs the home must ensure:

(a) That the electronic monitoring does not violate chapter 9.73 RCW;

~~(b) ((The resident has identified a threat to the resident's health, safety or personal property;~~

~~(e))~~ The resident's roommate has provided written consent to electronic monitoring, if the resident has a roommate; and

~~((d))~~ (c) The resident and the home have agreed upon a specific duration for the electronic monitoring and the agreement is documented in writing.

~~((3))~~ (7) The home must:

(a) Reevaluate the ((need for)) use of the electronic monitoring with the resident at least quarterly; and

(b) Have each reevaluation in writing signed and dated by the resident.

~~((4))~~ (8) The home must immediately stop electronic monitoring if the:

(a) Resident no longer wants electronic monitoring;

(b) Roommate objects or withdraws the consent to the electronic monitoring, or

(c) Resident becomes unable to give consent, unless consent has been provided by a resident's representative as described in this section.

~~((5))~~ (9) For the purposes of consenting to video electronic monitoring, without an audio component, the term "resident" includes the resident's ((decision maker)) representative.

~~((6))~~ (10) For the purposes of consenting to audio electronic monitoring, the term "resident" includes only:

(a) The resident residing in the home; or

(b) The resident's court-appointed guardian or attorney-in-fact who has obtained a court order specifically authorizing the court-appointed guardian or attorney-in-fact to consent to audio electronic monitoring of the resident.

~~((7))~~ (11) If the resident's decision maker consents to audio electronic monitoring as specified in subsection ((6) above)) (10) of this section, the home must maintain a copy of the court order authorizing such consent in the resident's record.

(12) If the adult family home determines that a resident, resident's family, or other third party is electronically monitoring a resident's bedroom without complying with the requirements of this section, the home must disconnect or remove such equipment until the appropriate consent is obtained and notice given as required by this section.

(13) Nothing in this section prohibits or limits an adult family home from implementing electronic monitoring pursuant to a resident's negotiated care plan, including but not limited to motion sensor alerts, floor pressure sensors, or global positioning devices, where the monitoring does not entail the transmittal or recording of a human-viewable image, sound, or resident name.

AMENDATORY SECTION (Amending WSR 10-03-064, filed 1/15/10, effective 2/15/10)

WAC 388-76-10750 Safety and maintenance. The adult family home must:

(1) Keep the home both internally and externally in good repair and condition with a safe, comfortable, sanitary, and homelike environment that is free of hazards;

(2) Ensure that there is existing outdoor space that is safe and usable for residents;

(3) Provide clean, functioning, safe, adequate household items and furnishings to meet the needs of each resident;

(4) Ensure items and furnishings brought into the home by the resident for their use are clean, functioning, and safe;

(5) Provide safe and functioning systems for:

(a) Heating;

(b) Cooling, which may include air circulating fans;

(c) Hot and cold water;

(d) Electricity;

(e) Plumbing;

(f) Garbage disposal;

(g) Sewage;

(h) Cooking;

(i) Laundry;

(j) Artificial and natural light;

(k) Ventilation; and

(l) Any other feature of the home((-);

~~((5))~~ (6) Ensure hot water temperature is at least one hundred five degrees and does not exceed one hundred twenty degrees Fahrenheit at all fixtures used by or accessible to residents, such as:

- (a) Tubs;
- (b) Showers; and
- (c) Sinks~~((:))~~;

~~((6) Provide storage for)~~ (7) Keep all toxic substances~~((, poisons,))~~ and ~~((other))~~ hazardous materials ~~((that is only accessible to residents under direct supervision, unless the resident is assessed for and the negotiated care plan indicates it is safe for the resident to use the materials unsupervised;))~~ in locked storage and in their original containers;

(8) Grant a resident access to and use of toxic substances and hazardous materials only with direct supervision, unless the resident has been assessed as safe to use the substance or material without direct supervision and if the use is documented in the negotiated care plan;

~~((7))~~ (9) Provide rapid access for all staff to any bedroom, toilet room, shower room, closet, other room occupied by each resident;

~~((8))~~ (10) Keep all firearms locked and accessible only to authorized persons; and

~~((9))~~ (11) Keep the home free from:

- (a) Rodents;
- (b) Flies;
- (c) Cockroaches~~((;))~~; and
- (d) Other vermin.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10765 Storage. The adult family home must:

(1) Supply each resident with adequate and reasonable storage space for:

- (a) Clothing;
- (b) Personal possessions; and

(c) Upon request, a lockable container or storage space for small items, unless ~~((the))~~:

(i) The resident has a ~~((private))~~ single occupancy room with a lockable door; and

(ii) Only the resident ~~((room can be locked by the resident))~~ and appropriate staff have a key to the door.

~~((2) Provide locked storage for all prescribed and over-the-counter medications as per WAC 388-76-10485.)~~

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10770 Telephones. The adult family home must ~~((provide))~~:

(1) Have at least one working ~~((nonpay))~~ telephone in the home that does not cost residents money to use; and

(2) Allow residents privacy and reasonable access to the telephone~~((; and~~

~~((3) Privacy for the resident when making or receiving))~~ to make and receive calls.

AMENDATORY SECTION (Amending WSR 09-03-030, filed 1/12/09, effective 2/12/09)

WAC 388-76-10784 Water hazards—Fences, gates, and alarms. For any adult family home ~~((newly))~~ licensed after July 1, 2007 or any currently licensed adult family home that adds or modifies a new or existing water hazard after July 1, 2007 must ensure:

(1) ~~((Comply with this section and))~~ Pools, spas, and hot tubs are installed according to the requirements of the~~((: (a))~~ International Residential Code (IRC)~~((; and (b))~~ as adopted by the Washington state ~~((amendments to the International Residential Code (IRC)))~~ building code council.

(2) ~~((Enclose))~~ Water hazards over twenty-four inches deep ~~((with))~~ are:

(a) Enclosed by fences and gates at least forty-eight inches high; ~~((and))~~

(b) Equipped with an audible ~~((alarms))~~ alarm that sounds when ~~((doors, screens, and gates))~~ any door, screen, or gate that directly ~~((lead))~~ leads to or ~~((surround))~~ surrounds the water hazard~~((; are))~~ is opened; and

(c) Secured by locking any doors, screens, or gates that lead directly to or surround the water hazard.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10795 Windows. (1) The adult family home must ensure at least one window in each resident bedroom meets the following requirements:

(a) The sill height ~~((of the bedroom window is))~~ must not be more than forty-four inches above the finished floor.

~~((2))~~ For homes licensed after July 1, 2007, the department will not approve alternatives to the sill height requirement such as step(s), raised platform(s), or other devices placed by or under the window openings.

~~((3))~~ (b) ~~The ~~((bedroom window must have the following:~~~~

(a) A minimum opening area must be a minimum of 5.7 square feet, except ~~((a))~~ that the openings of windows in rooms at grade level ~~((floor window openings))~~ as defined by the International Residential Code may have a minimum clear opening of 5.0 square feet~~((;)).~~ The window must also have:

~~((b))~~ (i) A minimum opening height of twenty-four inches; ~~((and))~~

~~((c))~~ (ii) A minimum opening width of twenty inches~~((;))~~; and

~~((4))~~ (c) The home must ensure the bedroom window can be opened from inside the room without keys ~~((or))~~, tools, or special knowledge or effort to open.

~~((5))~~ (d) The window must be free from obstructions that might block or interfere with access for emergency escape or rescue.

(2) When resident bedroom windows are fitted with storm windows, the home must equip the storm windows with release mechanisms that:

(a) Easily open from the inside; and

(b) Do not require a key or special knowledge or effort to open.

~~((6))~~ (3) The home must ensure that each basement ~~((and each resident bedroom))~~ window ~~((, that meets the requirements of subsection (1), (2) and (3) of this section, are))~~ is kept free from obstructions that might block or interfere with access for emergency escape or rescue.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10800 Adult family home located outside of public fire protection. (1) If the adult family home is located in an area without public fire protection, the home must have written verification of adequate fire protection from the fire authority.

(2) If the local fire authority requires the home to have additional protective measures such as a fire extinguisher with a rating other than that required under WAC 388-76-10810(1), the home must meet this requirement.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10805 Automatic smoke ~~((detectors))~~ alarms. (1) The adult family home must ensure approved automatic smoke ~~((detectors))~~ alarms are ~~((:))~~ installed and maintained according to manufacturer instructions;

~~((1-Installed;))~~ (2) At a minimum, smoke alarms must be located in the following ~~((locations))~~ areas:

(a) Every resident bedroom ~~((used by a resident));~~

(b) In ~~((proximity to the area where the))~~ the immediate vicinity of resident ~~((or))~~ bedroom(s), and if applicable, the sleeping areas used by the adult family home staff ~~((sleeps));~~ and

(c) On every level of a multilevel home.

~~((2-Installed in a manner so that))~~ (3) The home must ensure the ~~((fire warning is heard))~~ smoke alarms in all parts of the home ~~((upon))~~ are active and interconnected in such a manner that the activation of ~~((a single detector; and))~~ one alarm will activate them all. Physical interconnection of smoke alarms shall not be required where listed wireless alarms are installed and all alarms sound upon activation of one alarm.

~~((3))~~ (4) Each smoke alarm must be kept in working condition at all times.

AMENDATORY SECTION (Amending WSR 08-09-028, filed 4/8/08, effective 5/9/08)

WAC 388-76-10810 Fire extinguishers. (1) The adult family home must have an approved five pound 2A:10B-C rated fire extinguisher on each floor of the home.

(2) The home must ensure ~~((the))~~ fire extinguishers are:

(a) ~~((Installed according to manufacturer recommendations))~~ Mounted or securely fastened in a stationary position at a minimum of four inches from the floor and a maximum of sixty inches from the floor;

(b) Inspected and serviced annually;

(c) In proper working order; ~~((and))~~

(d) ~~((Readily available for use))~~ Accessible at all times~~((;~~

~~((3))~~ If required by the local fire authority, the home must provide different fire extinguishers in place of the fire extinguishers required in subsection (1) of this section); and

(e) Not located behind a locked door.

AMENDATORY SECTION (Amending WSR 16-20-095, filed 10/4/16, effective 11/4/16)

WAC 388-76-10825 Space heaters, fireplaces, and stoves. (1) The adult family home must not use oil, gas, kerosene, or electric space heaters that ~~((do not))~~ have ~~((an underwriters laboratories (UL) rating))~~ not been certified by an organization listed as a nationally recognized testing laboratory.

(2) The adult family home must ensure that stoves and heaters do not block resident, staff, or household member escape routes.

(3) The adult family home must ensure that fireplaces ~~((and)), stoves, or heaters that get hot to the touch when in use have a stable, flame-resistant barrier that ~~((prevents accidental resident contact. The adult family home is))~~ does not ~~((required to have a barrier if the fireplace and stove surfaces are not))~~ get hot to the touch ~~((when in use))~~ and that prevents any contact by residents or any flammable materials.~~

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10830 Emergency and disaster plan—Required. The adult family home must have a written emergency and disaster plan ~~((and procedures))~~ to meet the needs of each resident during emergencies and disasters. The plan must include:

(1) Responding to natural and man-made emergencies and disasters that may reasonably occur at the home;

(2) Actions to be taken by staff and residents during and after an emergency or disaster; and

(3) The fire drill plan for evacuation of the home.

AMENDATORY SECTION (Amending WSR 10-03-064, filed 1/15/10, effective 2/15/10)

WAC 388-76-10840 Emergency food supply. (1) The adult family home must have an on-site emergency food supply ~~((that can be stored with other food in the home and))~~ that:

~~((1))~~ (a) Will last for a minimum of seventy-two hours for each resident and each household member;

~~((2))~~ (b) Meets the dietary needs of each resident, including any specific dietary restrictions ~~((any resident))~~ they may have;

(c) Can be stored with other food in the home; and

~~((3))~~ (d) Is sufficient, safe, sanitary, and uncontaminated.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10850 Emergency medical supplies. The adult family home must ~~((have emergency medical supplies that include))~~:

(1) ~~((First aid))~~ Have emergency medical supplies on-hand for the application of basic first aid during an emergency or disaster in a sufficient amount for the number of residents living in the home;

(2) Replenish the emergency medical supplies as they are used; and

~~((2-A first aid))~~ (3) Have a first aid manual.

AMENDATORY SECTION (Amending WSR 16-20-095, filed 10/4/16, effective 11/4/16)

WAC 388-76-10865 Resident evacuation from adult family home. (1) The adult family home must be able to evacuate all residents from the home to a safe location outside the home in five minutes or less.

(2) The home must ensure that residents ~~((who require assistance))~~ are able to evacuate the home as follows:

(a) Through ~~((the primary egress))~~ a door designated as an emergency exit;

(b) Via a path from the resident's bedroom that does not go through other bedrooms; and

(c) Without the resident having to use any of the following:

- (i) ~~((Stairs;~~
- ~~((ii))~~ Elevators;
- ~~((iii) Chairlift))~~ (ii) Chairlifts; or
- ~~((iv))~~ (iii) Platform ~~((lift))~~ lifts.

(3) Residents who require assistance with evacuation must have a path via an emergency exit to the designated safe location that does not require the use of stairs.

(4) Ramps for residents to enter, exit, or evacuate on homes licensed after November 1, 2016 must:

(a) Comply with ~~((WAC 51-51-0325))~~ chapter 51-51 WAC;

(b) Have a slope measuring no greater than eight and three-tenths percent in the direction of travel; and

(c) Have required landings at the top, bottom, and at any change of direction, with a slope measuring no greater than two percent in the direction of travel.

~~((4))~~ (5) Homes that serve residents who are not able to hear the fire alarm warning must install visual fire alarms.

AMENDATORY SECTION (Amending WSR 10-03-064, filed 1/15/10, effective 2/15/10)

WAC 388-76-10870 Resident evacuation capability levels—Identification required. The adult family home must ensure that each resident's assessment, preliminary service plan, and negotiated care plan identifies ~~((, and each resident's preliminary care plan and negotiated care plan))~~ and describes the resident's ability to evacuate the home according to the following descriptions:

(1) Independent: Resident is physically and mentally capable of ~~((safely getting out of))~~ independently evacuating the home without the assistance of another individual or the use of mobility aids. The department will consider a resident independent if capable of getting out of the home after one ~~((verbal))~~ cue ~~((;))~~.

(2) Assistance required: Resident is not physically or mentally capable of ~~((getting out of))~~ evacuating the

~~((house))~~ home without assistance from another individual ~~((or))~~, mobility aids, or multiple cues.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10885 Elements of emergency evacuation floor plan. The adult family home must ~~((ensure the))~~ develop an emergency evacuation floor plan ~~((has))~~ for each level of the home that:

(1) ~~((An accurate floor plan of the home, including))~~ Is accurate and includes all rooms, hallways, and exits (such as doorways and windows) to the outside of the home;

(2) Illustrates the emergency evacuation ~~((routes showing the paths to take))~~ route(s) to exit the home, with the route to the emergency exit door being easily identifiable; and

(3) Identifies the designated safe location for the residents to meet outside the home.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10890 Posting the emergency evacuation floor plan—Required. The adult family home must display an emergency evacuation floor plan on each floor of the home ~~((in))~~ and the plan must:

(1) Be posted in a visible location ~~((in the home))~~ commonly used by residents, staff, and visitors alike; and

(2) ~~((Common areas normally used by residents, staff and visitors))~~ Illustrate the evacuation route from the rooms on that floor to the designated safe location outside the home.

AMENDATORY SECTION (Amending WSR 16-20-095, filed 10/4/16, effective 11/4/16)

WAC 388-76-10895 Emergency evacuation drills—Frequency and participation. (1) There are two types of emergency evacuation drills:

(a) A full evacuation is evacuation from the home to the designated safe location; and

(b) A partial evacuation is evacuation to the designated emergency exit.

(2) The adult family home must ~~((ensure))~~ conduct:
~~((+))~~ (a) Partial emergency evacuation drills which occur during random staffing shifts at least every ~~((two months))~~ sixty days, with each resident participating in at least one each calendar year; ~~((and~~

~~((2))~~ ~~((All residents take part in))~~ (b) A full emergency evacuation drill at least once each calendar year, with all residents participating in the drill together and at the same time ~~((at least one emergency evacuation drill each calendar year that includes full evacuation from the home to a safe location));~~ and

(c) Emergency evacuation drills even if there are no residents living in the home for the purpose of staff practice.

(3) The home must respect the resident's right to refuse to participate in emergency evacuation drills. However, the home must still demonstrate the ability to safely evacuate all residents doing the following:

(a) Documenting the resident's wish to refuse to participate in the negotiated care plan;

(b) Providing an estimate of the amount of time it would take to evacuate the resident and how they calculated this estimate in the negotiated care plan;

(c) Adding the estimated time to the time recorded on the emergency evacuation drill log after each drill to ensure the length of time to evacuate does not exceed five minutes; and

(d) Continuing to offer the resident a chance to participate in every evacuation drill.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10900 Documentation of emergency evacuation drills—Required. The adult family home must document ~~((in writing))~~ the following for all emergency evacuation drills ~~((which must include))~~:

- (1) Names of each resident and staff involved in the drill;
- (2) Name of the person conducting the drill;
- (3) Date and time of the drill;
- (4) Whether the drill was a full or partial emergency evacuation; and

~~((4))~~ (5) The length of time it took to ~~((evacuate all residents))~~ complete the evacuation.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10905 Emergency evacuation—Notification of department required. The adult family home must ~~((immediately call))~~ notify the department's complaint ~~((toll free complaint telephone number of))~~ resolution unit as soon as possible after resident safety is secure when:

- (1) The home is on emergent stand-by for evacuation;
- (2) There is any fire; or

~~((2) Emergency evacuation))~~ (3) Residents were evacuated from the home.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-76-10520	Resident rights—General notice.
WAC 388-76-10555	Resident rights—Financial affairs.
WAC 388-76-10565	Resident rights—Adult family home system for management of resident financial affairs.
WAC 388-76-10835	Elements of an emergency and disaster plan.

WSR 21-11-078

PERMANENT RULES DEPARTMENT OF

CHILDREN, YOUTH, AND FAMILIES

[Filed May 18, 2021, 8:37 a.m., effective June 18, 2021]

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

Purpose: Remove the requirement that petitions for administrative review of initial hearing orders specify disputed issues; emphasize secure email as a method for filing petitions for administrative review; and allow service of a petition for review on the department by secure email.

Citation of Rules Affected by this Order: Amending WAC 110-03-0530 and 110-03-0590.

Statutory Authority for Adoption: RCW 34.05.220, 43.216.020, and 43.216.065.

Adopted under notice filed as WSR 21-07-060 on March 15, 2021.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

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

Date Adopted: May 18, 2021.

Brenda Villarreal
Rules Coordinator

AMENDATORY SECTION (Amending WSR 20-02-031, filed 12/19/19, effective 1/19/20)

WAC 110-03-0530 Requesting review of the initial order. (1) A party must file the review request (petition for review) in writing and it ~~((must))~~ should:

(a) Clearly identify the parts of the initial order with which the party disagrees; and

(b) Clearly present arguments and refer to evidence in the record supporting the party's position.

(2) The petition for review must be filed with the BOA and the party requesting review must serve copies on the other parties and their representatives and OAH at the same time the petition is filed.

(3) ~~((The petition for review must be filed with the BOA at the address stated in the))~~ Instructions for obtaining a review will be sent with the initial order ~~((or using))~~. Depending on how the petition is filed, use the following contact information ~~((appropriate to the method of filing used))~~:

(a) Mailing address:

DCYF Board of Appeals

P.O. Box 40982

Olympia, WA 98504-0982;

(b) Fax: 360-586-5934;

(c) Email: Call the BOA at 360-902-0278 and request access to the secure email portal; or

(d) Physical address:

DCYF Board of Appeals

1115 Washington Street Southeast
Olympia, WA 98501
(Fax: 360-586-5934

~~This~~) (4) The contact information in this subsection is current as of the effective date of these rules; however, parties should file documents using the address or fax information received with the initial order if it is different from the information provided here.

~~((4))~~ (5) The DCYF board of appeals can be contacted by phone at: 360-902-0278.

AMENDATORY SECTION (Amending WSR 20-02-031, filed 12/19/19, effective 1/19/20)

WAC 110-03-0590 Judicial review. (1) Judicial review is the process of appealing a final agency order to a superior court.

(2) Any party, except DCYF, may appeal a final order by filing a written petition for judicial review in superior court pursuant to RCW 34.05.514 that meets the requirements of RCW 34.05.546. The petition must be properly filed and served, as required by RCW 34.05.542, within thirty calendar days of the date the review judge serves the final order in the case. However, as provided by RCW 34.05.470, if a petition for reconsideration has been properly filed, the thirty day period does not commence until the agency disposes of the petition for reconsideration. Copies of the petition must be served on DCYF, the office of the attorney general, and all other parties at the same time the petition is filed.

(3) To serve DCYF, a copy of the petition must be delivered to the secretary of DCYF or to the DCYF BOA. The petition must be hand delivered ~~((or))~~, mailed with proof of receipt, or sent by secure email.

(a) The physical location of the secretary is:

DCYF Office of the Secretary
1500 Jefferson Street Southeast
Olympia, WA 98501

The mailing address of the secretary is:

DCYF Office of the Secretary
P.O. Box 40975
Olympia, WA 98504-0975

(b) The physical location and mailing address for the DCYF BOA are as stated in WAC 110-03-0530.

(c) To serve by email, call the BOA at 360-902-0278 and request access to the secure email portal.

(4) Service on the office of the attorney general and other parties of a copy of the petition for judicial review may be made at the following locations:

(a) The office of the attorney general may be served personally or by delivery at:

Office of the Attorney General
7141 Cleanwater Drive S.W.
Tumwater, WA 98501

The mailing address of the office of the attorney general is:

Office of the Attorney General
P.O. Box 40124

Olympia, WA 98504-0124

(b) Each party must be served at each party's address of record.

(5) A party may file a petition for judicial review only after it has exhausted administrative remedies, as provided under RCW 34.05.534.

(6) Filing a petition for judicial review of a final order does not stay the effectiveness of the final order.

WSR 21-11-080

PERMANENT RULES

DEPARTMENT OF HEALTH

[Filed May 18, 2021, 9:31 a.m., effective June 18, 2021]

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

Purpose: WAC 246-282-990(4), sanitary control of shellfish—Fees, annual paralytic shellfish poisoning (PSP) testing fee redistribution. The adopted rule equitably assesses the cost of PSP testing by following the annual redistribution formula, which is based on the number of PSP tests done in the previous year. PSP testing is essential to public health as it is the only means available to determine if dangerous levels of PSP exist in commercial geoduck so that toxic shellfish do not reach consumers.

Citation of Rules Affected by this Order: Amending WAC 246-282-990.

Statutory Authority for Adoption: RCW 43.70.250.

Other Authority: RCW 69.30.050.

Adopted under notice filed as WSR 21-07-027 on March 8, 2021.

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

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

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

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

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

Date Adopted: May 13, 2021.

Lauren Jenks
Assistant Secretary

AMENDATORY SECTION (Amending WSR 20-22-001, filed 10/21/20, effective 11/21/20)

WAC 246-282-990 Fees. (1) Annual shellfish operation license fees are:

Type of Operation	Annual Fee
Harvester	\$263
Shellstock Shipper	
0 - 49 Acres	\$297
50 or greater Acres	\$476
Scallop Shellstock Shipper	\$297
Shucker-Packer	
Plants with floor space < 2000 sq. ft.	\$542
Plants with floor space 2000 sq. ft. to 5000 sq. ft.	\$656
Plants with floor space > 5000 sq. ft.	\$1,210

(2) The fee for each export certificate is \$55.00.

(3) Annual biotoxin testing fees for companies harvesting species other than geoduck intertidally (between the extremes of high and low tide) are as follows:

Fee Category		
Type of Operation	Number of Harvest Sites	Fee
Harvester	≤ 2	\$353
Harvester	3 or more	\$535
Shellstock Shipper		\$198
Wholesale Company		
Shellstock Shipper	≤ 2	\$393
0 - 49 acres		
Shellstock Shipper	3 or more	\$610
0 - 49 acres		
Shellstock Shipper	N/A	\$961
50 or greater acres		
Shucker-Packer	≤ 2	\$752
(plants < 2000 ft ²)		
Shucker-Packer	3 or more	\$1,076
(plants < 2000 ft ²)		
Shucker-Packer	≤ 2	\$882
(plants 2000 - 5000 ft ²)		
Shucker-Packer	3 or more	\$1,297
(plants 2000 - 5000 ft ²)		
Shucker-Packer	N/A	\$2,412
(plants > 5000 ft ²)		

(a) The number of harvest sites will be the total number of harvest sites on the licensed company's harvest site certificate:

(i) At the time of first licensure; or

(ii) January 1st of each year for companies licensed as harvesters; or

(iii) July 1st of each year for companies licensed as shellstock shippers and shucker packers.

(b) Two or more contiguous parcels with a total acreage of one acre or less is considered one harvest site.

(4) Annual PSP testing fees for companies harvesting geoduck are as follows:

Harvester	Cert #	Fee
<u>Chuckanut Shellfish, Inc.</u>	<u>WA-1350-HA</u>	<u>\$626</u>
Department of Natural Resources	NA	((\$10,584))
		<u>\$11,266</u>
Jamestown S'Klallam Tribe	WA-0588-SS	((\$2,964))
		<u>\$4,590</u>
Lower Elwha Klallam Tribe	WA-0587-HA	((\$3,810))
		<u>\$6,468</u>
Lummi Indian Business Council	WA-0098-SS	((\$635))
		<u>\$209</u>
<u>Nisqually Indian Tribe</u>	<u>WA-1268-HA</u>	<u>\$209</u>
Port Gamble S'Klallam Tribe	WA-0859-HA	((\$2,540))
		<u>\$2,295</u>
Puyallup Tribe of Indians	WA-1137-HA	((\$9,949))
		<u>\$7,302</u>
<u>Seaproducts, Inc.</u>	<u>WA-1416-SS</u>	<u>\$417</u>
Skokomish Indian Tribe	WA-0577-HA	((\$1,270))
		<u>\$1,878</u>
Suquamish Tribe	WA-0694-SS	((\$13,971))
		<u>\$7,719</u>
Swinomish Indian Tribal Community	WA-1420-SS	((\$423))
		<u>\$1,043</u>
Taylor Shellfish Company, Inc.	WA-0046-SP	((\$7,409))
		<u>\$6,468</u>
The Tulalip Tribes	WA-0997-HA	((\$4,445))
		<u>\$7,511</u>

(5) Fees must be paid in full to department of health before a commercial shellfish license is issued or renewed.

(6) Refunds for fees will be given only if the applicant withdraws a new or renewal license application prior to the effective date of the new or renewed license.

**WSR 21-11-083
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES**

[Filed May 18, 2021, 11:01 a.m., effective July 1, 2021]

Effective Date of Rule: July 1, 2021.

Purpose: These final rules allow the department of labor and industries to license third-party administrators managing claims for self-insured employers, penalize third-party administrators for rule violations, and certify claim administrators managing claims for self-insured employers as required by RCW 51.14.170.

Citation of Rules Affected by this Order: New WAC 296-15-520, 296-15-530, 296-15-540, 296-15-550, 296-15-560 and 296-15-570; and amending WAC 296-15-001, 296-15-350, and 296-15-360.

Statutory Authority for Adoption: RCW 51.04.020, 51.32.190; chapter 277, Laws of 2020 (SHB 2409).

Adopted under notice filed as WSR 21-06-087 on March 2, 2021.

Changes Other than Editing from Proposed to Adopted Version: The first sentence of WAC 296-15-550 (2)(g) was updated to: "May provide automatic deposit of benefit checks to workers or their representatives." The deletion of "may" in the proposed language of WSR 21-06-087 was inadvertent and is a minor change to ensure consistent implementation and understanding of the rule.

A final cost-benefit analysis is available 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.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 6, Amended 3, Repealed 0.

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

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 6, Amended 3, Repealed 0.

Date Adopted: May 18, 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 con-

tracts 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.

~~((d))~~ (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 success-

fully 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 con-

tents 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) May 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 21-11-084
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed May 18, 2021, 11:02 a.m., effective July 1, 2021]

Effective Date of Rule: July 1, 2021.

Purpose: This rule updates a conversion factor provided in WAC 296-20-135 and maximum daily fees provided in WAC 296-23-220 and 296-23-230 for certain professional health care services for injured workers. Rule changes are necessary to maintain current overall fees for health care services, which are published annually in the medical aid rules and fee schedules.

These rules decrease the resource based relative value scale (RBRVS) conversion factor, increase the anesthesia conversion factor and increase the maximum daily caps to be consistent with the changes for other professional fees resulting from our RBRVS process and changes in the relative value units published by the Centers for Medicare and Medicaid Services.

Citation of Rules Affected by this Order: Amending WAC 296-20-135, 296-23-220, and 296-23-230.

Statutory Authority for Adoption: RCW 51.04.020(1) and 51.04.030.

Adopted under notice filed as WSR 21-06-088 on March 2, 2021.

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

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

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 3, Repealed 0.

Date Adopted: May 18, 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 (differ-

ent 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 21-11-085
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES**

[Filed May 18, 2021, 11:04 a.m., effective July 1, 2021]

Effective Date of Rule: July 1, 2021.

Purpose: The purpose of this rule making is to adopt a 5.79 percent fee increase for the electrical program to support operating expenses for electrical inspections and other program public safety activities. This is the office of financial management's maximum allowable fiscal growth rate for fiscal year 2022. The program's budget and projected revenue were evaluated and a fee increase is needed to support the cost of ongoing services. A fee increase enables the program to continue providing quality and timely services to assure [ensure] safe electrical installations and inspections in homes, businesses, industry and institutions to protect people and property from electrical hazards.

Citation of Rules Affected by this Order: Amending WAC 296-46B-906, 296-46B-909, and 296-46B-911.

Statutory Authority for Adoption: RCW 19.28.031, 19.28.041(3), 19.28.051, 19.28.061(3), 19.28.101(6), 19.28.161(2), 19.28.201, 19.28.211(3), 19.28.251, 19.28.420(7), and 19.28.440.

Adopted under notice filed as WSR 21-08-070 on April 6, 2021.

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

Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 3, Repealed 0.

Date Adopted: May 18, 2021.

Joel Sacks
Director

AMENDATORY SECTION (Amending WSR 20-11-053 and 20-14-083, filed 5/19/20 and 6/30/20, effective 10/29/20)

WAC 296-46B-906 Inspection fees. To calculate inspection fees, the amperage is based on the conductor ampacity or the overcurrent device rating. The total fee must not be less than the number of progress inspection (one-half hour) units times the progress inspection fee rate from subsection (8) of this section, PROGRESS INSPECTIONS.

The amount of the fee due is calculated based on the fee effective at the date of a department assessed fee (e.g., plan review or fee due) or when the electrical permit is purchased.

(1) Residential.

(a) Single- and two-family residential (New Construction).

Notes:

- (1) Square footage is the area included within the surrounding exterior walls of a building exclusive of any interior courts. (This includes any floor area in an attached garage, basement, or unfinished living space.)
- (2) "Inspected with the service" means that a separate service inspection fee is included on the same electrical work permit.
- (3) "Inspected at the same time" means all wiring is to be ready for inspection during the initial inspection trip.
- (4) An "outbuilding" is a structure that serves a direct accessory function to the residence, such as a pump house or storage building. Outbuilding does not include buildings used for commercial type occupancies or additional dwelling occupancies.

(i) First 1300 sq. ft.	((\$94.20) \$99.60)
Each additional 500 sq. ft. or portion of	((\$30.10) \$31.80)
(ii) Each outbuilding or detached garage - Inspected at the same time as a dwelling unit on the property	((\$39.20) \$41.40)
(iii) Each outbuilding or detached garage - Inspected separately	((\$62.00) \$65.50)
(iv) Each swimming pool - Inspected with the service	((\$62.00) \$65.50)
(v) Each swimming pool - Inspected separately	((\$94.20) \$99.60)
(vi) Each hot tub, spa, or sauna - Inspected with the service	((\$39.20) \$41.40)

(vii) Each hot tub, spa, or sauna - Inspected separately	((\$62.00) \$65.50)
(viii) Each septic pumping system - Inspected with the service	((\$39.20) \$41.40)
(ix) Each septic pumping system - Inspected separately	((\$62.00) \$65.50)

(b) Multifamily residential and miscellaneous residential structures, services and feeders (New Construction).

Each service and/or feeder		
Ampacity	Service/Feeder	Additional Feeder
0 to 200	((\$101.60) \$107.40)	((\$30.10) \$31.80)
201 to 400	((\$126.30) \$133.60)	((\$62.00) \$65.50)
401 to 600	((\$173.50) \$183.50)	((\$86.30) \$91.20)
601 to 800	((\$222.70) \$235.50)	((\$118.60) \$125.40)
801 and over	((\$317.60) \$335.90)	((\$238.20) \$251.90)

(c) Single or multifamily altered services or feeders including circuits.

(i) Each altered service and/or altered feeder		
Ampacity	Service/Feeder	
0 to 200	((\$86.30) \$91.20)	
201 to 600	((\$126.30) \$133.60)	
601 and over	((\$190.40) \$201.40)	
(ii) Maintenance or repair of a meter or mast (no alterations to the service or feeder)		((\$46.70) \$49.40)

(d) Single or multifamily residential circuits only (no service inspection).

Note:

Altered or added circuit fees are calculated per panelboard. Total cost of the alterations in an individual panel should not exceed the cost of a complete altered service or feeder of the same rating, as shown in subsection (1) RESIDENTIAL (c) (table) of this section.

(i) 1 to 4 circuits (see note above)	((\$62.00) \$65.50)
(ii) Each additional circuit (see note above)	((\$6.60) \$6.90)

(e) Mobile homes and modular homes.

(i) Mobile home or modular home service or feeder only	((\$62.00) \$65.50)
(ii) Mobile home service and feeder	((\$101.60) \$107.40)

(f) Mobile home park sites and RV park sites.

Note:

For master service installations, see subsection (2) COMMERCIAL/INDUSTRIAL of this section.

(i) First site service or site feeder	((\$62.00) \$65.50)
(ii) Each additional site service; or additional site feeder inspected at the same time as the first service or feeder	((\$39.20) \$41.40)

(2) Commercial/industrial.

(a) New service or feeder, and additional new feeders inspected at the same time (includes circuits).

Note:

For large COMMERCIAL/INDUSTRIAL projects that include multiple feeders, "inspected at the same time" can be interpreted to include additional inspection trips for a single project. The additional inspections must be for electrical work specified on the permit at the time of purchase. The permit fee for such projects must be calculated using this section. However, the total fee must not be less than the number of progress inspection (one-half hour) units times the progress inspection fee rate from subsection (8) PROGRESS INSPECTIONS of this section.

Ampacity	Service/Feeder	Additional Feeder
0 to 100	(\$101.60) \$107.40	(\$62.00) \$65.50
101 to 200	(\$123.70) \$130.80	(\$79.00) \$83.50
201 to 400	(\$238.20) \$251.90	(\$94.20) \$99.60
401 to 600	(\$277.60) \$293.60	(\$110.80) \$117.20
601 to 800	(\$359.10) \$379.80	(\$151.00) \$159.70
801 to 1000	(\$438.40) \$463.70	(\$182.70) \$193.20
1001 and over	(\$478.30) \$505.90	(\$255.00) \$269.70

(b) Altered services/feeders (no circuits).

(i) Service/feeder

Ampacity	Service/Feeder
0 to 200	(\$101.60) \$107.40
201 to 600	(\$238.20) \$251.90
601 to 1000	(\$359.10) \$379.80
1001 and over	(\$398.90) \$421.90

(ii) Maintenance or repair of a meter or mast (no alterations to the service or feeder) ~~(\$86.30)~~
\$91.20

(c) Circuits only.

Note:

Altered/added circuit fees are calculated per panelboard. Total cost of the alterations in a panel (or panels) should not exceed the cost of a new feeder (or feeders) of the same rating, as shown in subsection (2) COMMERCIAL/INDUSTRIAL (2)(a)(table) above.

- (i) First 5 circuits per branch circuit panel ~~(\$79.00)~~
\$83.50
- (ii) Each additional circuit per branch circuit panel ~~(\$6.60)~~
\$6.90
- (d) Over 600 volts surcharge per permit. ~~(\$79.00)~~
\$83.50

(3) Temporary service(s).

Notes:

- (1) See WAC 296-46B-590 for information about temporary installations.
- (2) Temporary stage or concert inspections requested outside of normal business hours will be subject to the portal-to-portal hourly fees in subsection (11) OTHER INSPECTIONS. The fee for such after hours inspections will be the greater of the fee from this subsection or the portal-to-portal fee.

Temporary services, temporary stage or concert productions.

Ampacity	Service/Feeder	Additional Feeder
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0 to 60	(\$54.30) \$57.40	(\$27.80) \$29.40
61 to 100	(\$62.00) \$65.50	(\$30.10) \$31.80
101 to 200	(\$79.00) \$83.50	(\$39.20) \$41.40
201 to 400	(\$94.20) \$99.60	(\$46.80) \$49.50
401 to 600	(\$126.30) \$133.60	(\$62.00) \$65.50
601 and over	(\$143.30) \$151.50	(\$71.30) \$75.40

(4) Irrigation machines, pumps, and equipment.

Irrigation machines.

- (a) Each tower - When inspected at the same time as a service and feeder from (2) COMMERCIAL/INDUSTRIAL ~~(\$6.60)~~
\$6.90
- (b) Towers - When not inspected at the same time as a service and feeder - 1 to 6 towers ~~(\$94.20)~~
\$99.60
- (c) Each additional tower ~~(\$6.60)~~
\$6.90

(5) Miscellaneous - Commercial/industrial and residential.

(a) **A Class 2 low-voltage thermostat** and its associated cable controlling a single piece of utilization equipment or a single furnace and air conditioner combination.

- (i) First thermostat ~~(\$46.80)~~
\$49.50
- (ii) Each additional thermostat inspected at the same time as the first ~~(\$14.50)~~
\$15.30

(b) **Class 2 or 3 low-voltage systems and telecommunications systems.** Includes all telecommunications installations, fire alarm, nurse call, energy management control systems, industrial and automation control systems, lighting control systems, and similar Class 2 or 3 low-energy circuits and equipment not included in WAC 296-46B-908 for Class B work.

- (i) First 2500 sq. ft. or less ~~(\$54.30)~~
\$57.40
- (ii) Each additional 2500 sq. ft. or portion thereof ~~(\$14.50)~~
\$15.30

(c) Signs and outline lighting.

- (i) First sign (no service included) ~~(\$46.80)~~
\$49.50
- (ii) Each additional sign inspected at the same time on the same building or structure ~~(\$22.10)~~
\$23.30

(d) Berth at a marina or dock.

Note:

Five berths or more will be permitted to have the inspection fees based on appropriate service and feeder fees from section (2) COMMERCIAL/INDUSTRIAL above.

- (i) Berth at a marina or dock ~~(\$62.00)~~
\$65.50
- (ii) Each additional berth inspected at the same time ~~(\$39.20)~~
\$41.40

(e) Yard pole, pedestal, or other meter loops only.

- (i) Yard pole, pedestal, or other meter loops only ~~(\$62.00)~~
\$65.50
- (ii) Meters installed remote from the service equipment and inspected at the same time as a service, temporary service or other installations ~~(\$14.50)~~
\$15.30

(f) Inspection appointment requested for outside of normal working hours.

Regular fee plus surcharge of: ((~~\$118.60~~))
\$125.40

(g) Generators.

Note:

Permanently installed generators: Refer to the appropriate residential or commercial new/alterd service or feeder section.

Portable generators: Permanently installed transfer equipment for portable generators ((~~\$86.30~~))
\$91.20

(h) Electrical - Annual permit fee.

Note:

See WAC 296-46B-901(13).

For commercial/industrial location employing full-time electrical maintenance staff or having a yearly maintenance contract with a licensed electrical contractor. Note, all yearly maintenance contracts must detail the number of contractor electricians necessary to complete the work required under the contract. This number will be used as a basis for calculating the appropriate fee. Each inspection is based on a 2-hour maximum.

	Inspections	Fee
1 to 3 plant electricians	12	((\$2,284.20)) \$2,416.40
4 to 6 plant electricians	24	((\$4,571.00)) \$4,835.60
7 to 12 plant electricians	36	((\$6,856.20)) \$7,253.10
13 to 25 plant electricians	48	((\$9,143.00)) \$9,672.30
More than 25 plant electricians	52	((\$11,429.80)) \$12,091.50

(i) Telecommunications - Annual permit fee.

Notes:

(1) See WAC 296-46B-901(12).

(2) Annual inspection time required may be estimated by the purchaser at the rate for "OTHER INSPECTIONS" in this section, charged portal-to-portal per hour.

For commercial/industrial location employing full-time telecommunications maintenance staff or having a yearly maintenance contract with a licensed electrical/telecommunications contractor.

2-hour minimum ((~~\$188.80~~))
\$199.70

Each additional hour, or portion thereof, of portal-to-portal inspection time ((~~\$94.20~~))
\$99.60

(j) Permit requiring ditch cover inspection only.

Each 1/2 hour, or portion thereof ((~~\$46.80~~))
\$49.50

(k) Cover inspection for elevator/conveyance installation. This item is only available to a licensed/registered elevator contractor. ((~~\$79.00~~))
\$83.50

(6) Carnival inspections.

(a) First carnival field inspection each calendar year.

(i) Each ride and generator truck ((~~\$22.10~~))
\$23.30

(ii) Each remote distribution equipment, concession, or gaming show ((~~\$6.60~~))
\$6.90

(iii) If the calculated fee for first carnival field inspection above is less than ((~~\$100.50~~)) \$106.30, the minimum inspection fee will be:

(b) Subsequent carnival inspections.

(i) First ten rides, concessions, generators, remote distribution equipment, or gaming show ((~~\$118.60~~))
\$125.40

(ii) Each additional ride, concession, generator, remote distribution equipment, or gaming show ((~~\$6.60~~))
\$6.90

(c) Concession(s) or ride(s) not part of a carnival.

(i) First field inspection each year of a single concession or ride, not part of a carnival ((~~\$94.20~~))
\$99.60

(ii) Subsequent inspection of a single concession or ride, not part of a carnival ((~~\$62.00~~))
\$65.50

(7) Trip fees.

(a) Requests by property owners to inspect existing installations. (This fee includes a maximum of one hour of inspection time. All inspection time exceeding one hour will be charged at the rate for progressive inspections.) ((~~\$94.20~~))
\$99.60

(b) Submitter notifies the department that work is ready for inspection when it is not ready. ((~~\$46.80~~))
\$49.50

(c) Additional inspection required because submitter has provided the wrong address or incomplete, improper or illegible directions for the site of the inspection. ((~~\$46.80~~))
\$49.50

(d) More than one additional inspection required to inspect corrections; or for repeated neglect, carelessness, or improperly installed electrical work. ((~~\$46.80~~))
\$49.50

(e) Each trip necessary to remove a noncompliance notice. ((~~\$46.80~~))
\$49.50

(f) Corrections that have not been made in the prescribed time, unless an exception has been requested and granted. ((~~\$46.80~~))
\$49.50

(g) Installations that are covered or concealed before inspection. ((~~\$46.80~~))
\$49.50

(8) Progress inspections.

Note:

The fees calculated in subsections (1) through (6) of this section will apply to all electrical work. This section will be applied to a permit where the permit holder has requested additional inspections beyond the number supported by the permit fee calculated at the rate in subsections (1) through (6) of this section.

On partial or progress inspections, each 1/2 hour. ((~~\$46.80~~))
\$49.50

(9) Plan review.

(a) Plan review fee is 35% of the electrical work permit fee as determined by WAC 296-46B-906. 35%

(b) Plan review submission fee. ((~~\$79.00~~))
\$83.50

(c) Supplemental submissions of plans per hour or fraction of an hour of review time. ((~~\$94.20~~))
\$99.60

(d) Plan review handling fee. ((~~\$22.10~~))
\$23.30

(10) Out-of-state inspections.

(a) Permit fees will be charged according to the fees listed in this section.

(b) Travel expenses:

All travel expenses and per diem for out-of-state inspections are billed following completion of each inspection(s). These expenses can include, but are not limited to: Inspector's travel time, travel cost and per diem at the state rate. Travel time is hourly based on the rate in subsection (11) of this section.

(11) Other inspections.

Inspections not covered by above inspection fees must be charged portal-to-portal per hour:	((\$94.20)) <u>\$99.60</u>
(12) Variance request processing fee.	
Variance request processing fee. This fee is nonrefundable once the transaction has been validated.	((\$94.20)) <u>\$99.60</u>
(13) Class B basic electrical work labels.	
(a) Block of twenty Class B basic electrical work labels (not refundable).	((\$258.70)) <u>\$273.60</u>
(b) Reinspection of Class B basic electrical work to assure that corrections have been made (per 1/2 hour timed from leaving the previous inspection until the reinspection is completed). See WAC 296-46B-908(5).	((\$46.80)) <u>\$49.50</u>
(c) Reinspection of Class B basic electrical work because of a failed inspection of another Class B label (per 1/2 hour from previous inspection until the reinspection is completed). See WAC 296-46B-908(5).	((\$46.80)) <u>\$49.50</u>
(14) Provisional electrical work permit labels.	
Block of twenty provisional electrical work permit labels.	((\$258.70)) <u>\$273.60</u>

AMENDATORY SECTION (Amending WSR 19-15-117, filed 7/23/19, effective 8/23/19)

WAC 296-46B-909 Electrical/telecommunications contractor's license, administrator certificate and examination, master electrician certificate and examination, electrician certificate and examination, copy, and miscellaneous fees.

Notes:

- (1) The department will deny renewal of a license, certificate, or permit if an individual owes money as a result of an outstanding final judgment(s) to the department or is in revoked status. The department will deny application of a license, certificate, or permit if an individual is in suspended status or owes money as a result of an outstanding final judgment(s) to the electrical program.
- (2) Certificates may be prorated for shorter renewal periods in one-year increments. Each year or part of a year will be calculated to be one year.
- (3) The amount of the fee due is calculated based on the fee effective at the date payment is made.

(1) General or specialty contractor's license per twenty-four month period. (Nonrefundable after license has been issued.)	
(a) Initial application or renewal made in person, by mail, or by fax	((\$277.60)) <u>\$293.60</u>
(b) Renewal fully completed using the online web process	((\$240.10)) <u>\$254.00</u>
(c) Reinstatement of a general or specialty contractor's license after a suspension	((\$56.20)) <u>\$59.40</u>
(2) Master electrician/administrator/electrician/trainee certificate.	
(a) Examination application (nonrefundable)	
Administrator certificate examination application. (Required only for department administered examinations.) (Not required when testing with the department's contractor.)	((\$34.70)) <u>\$36.70</u>
(b) Examination fees (nonrefundable)	

Note:
Normal examination administration is performed by a state authorized contractor. The fees for such examinations are set by contract with the department. For written examinations administered by the department, use the following fee schedule.

(i) Master electrician or administrator first-time examination fee (when administered by the department)	((\$83.80)) <u>\$88.60</u>
(ii) Master electrician or administrator retest examination fee (when administered by the department)	((\$98.20)) <u>\$103.80</u>
(iii) Journey level or specialty electrician examination fee (first test or retest when administered by the department)	((\$63.10)) <u>\$66.70</u>
(iv) Certification examination review fee	((\$129.90)) <u>\$137.40</u>
(c) Original certificates (nonrefundable after certificate has been issued)	
(i) Electrical administrator original certificate (except 09 telecommunication)	((\$125.60)) <u>\$132.80</u>
(ii) Telecommunications administrator original certificate (for 09 telecommunications)	((\$83.50)) <u>\$88.30</u>
(iii) Master electrician exam application (includes original certificate and application processing fee) ((\$34.70)) \$36.70 is nonrefundable after application is submitted)	((\$160.60)) <u>\$169.80</u>
(iv) Journey level, specialty, or reciprocal electrician application (includes original certificate and application processing fee) ((\$34.70)) \$36.70 is nonrefundable after application is submitted)	((\$90.00)) <u>\$95.20</u>
(v) Training certificate	
(A) Initial application made in person, by mail, or by fax	((\$44.10)) <u>\$46.60</u>
(B) Initial application fully completed online using the online web process	((\$37.90)) <u>\$40.00</u>
(C) 0% supervision modified training certificate. Includes trainee update of hours (i.e., submission of affidavit of experience) ((\$53.40)) \$56.40 is nonrefundable after application is submitted)	((\$80.30)) <u>\$84.90</u>
(D) 75% supervision modified training certificate.	((\$53.40)) <u>\$56.40</u>
(E) Unsupervised training certificate as allowed by RCW 19.28.161 (4)(b).	((\$26.40)) <u>\$27.90</u>
(d) Certificate renewal (nonrefundable)	
(i) Master electrician or administrator certificate renewal	
(A) Renewal made in person, by mail, or by fax	((\$158.70)) <u>\$167.80</u>
(B) Renewal fully completed using the online web process	((\$137.90)) <u>\$145.80</u>
(ii) Telecommunications (09) administrator certificate renewal	
(A) Renewal made in person, by mail, or by fax	((\$105.70)) <u>\$111.80</u>
(B) Renewal fully completed using the online web process	((\$91.20)) <u>\$96.40</u>
(iii) Late renewal of master electrician or administrator certificate	
(A) Renewal made in person, by mail, or by fax	((\$317.50)) <u>\$335.60</u>
(B) Renewal fully completed using the online web process	((\$275.90)) <u>\$291.60</u>
(iv) Late renewal of telecommunications (09) administrator certificate	

(A) Renewal made in person, by mail, or by fax	((211.60)) <u>\$223.60</u>	(i) First page:	((26.40)) <u>\$27.90</u>
(B) Renewal fully completed using the online web process	((182.50)) <u>\$192.80</u>	(ii) Each additional page:	((2.10)) <u>\$2.20</u>
(v) Journey level or specialty electrician certificate renewal		(b) RCW or WAC printed document:	((5.80)) <u>\$6.10</u>
(A) Renewal made in person, by mail, or by fax	((83.50)) <u>\$88.30</u>	(6) Training school program review fees. Initial training school program review fee. (Nonrefundable.)	
(B) Renewal fully completed using the online web process	((72.70)) <u>\$76.90</u>	(a) Initial training school program review fee submitted for approval. Valid for three years or until significant changes in program content or course length are implemented (see WAC 296-46B-971(4)).	((615.30)) <u>\$650.90</u>
(vi) Late renewal of journey level or specialty electrician certificate		(b) Renewal of training school program review fee submitted for renewal. Valid for 3 years or until significant changes in program content or course length are implemented (see WAC 296-46B-971(4)).	((307.60)) <u>\$325.40</u>
(A) Renewal made in person, by mail, or by fax	((167.20)) <u>\$176.60</u>		
(B) Renewal fully completed using the online web process	((145.50)) <u>\$153.80</u>		
(vii) Trainee update of hours submitted more than 30 days after expiration of a training certificate	((53.40)) <u>\$56.40</u>		
(viii) Trainee certificate renewal			
(A) Renewal made in person, by mail, or by fax	((53.40)) <u>\$56.40</u>		
(B) Renewal fully completed using the online web process when the affidavit of experience is submitted per WAC 296-46B-942 (8)(d)	((46.60)) <u>\$49.20</u>		
(ix) Late trainee certificate renewal			
(A) Renewal made in person, by mail, or by fax	((74.90)) <u>\$79.20</u>		
(B) Renewal fully completed using the online web process	((65.20)) <u>\$68.90</u>		
(e) Certificate - Reinstatement (nonrefundable)			
(i) Reinstatement of a suspended master electrician or administrator's certificate (in addition to normal renewal fee)	((56.20)) <u>\$59.40</u>		
(ii) Reinstatement of suspended journey level, or specialty electrician certificate (in addition to normal renewal fee)	((26.40)) <u>\$27.90</u>		
(f) Assignment/unassignment of master electrician/administrator designation (nonrefundable)	((41.60)) <u>\$44.00</u>		
(3) Certificate/license.			
(a) Replacement for lost or damaged certificate/license. (Nonrefundable.)	((18.20)) <u>\$19.20</u>		
(b) Optional display quality General Master Electrician certificate.	((29.60)) <u>\$31.30</u>		
(4) Continuing education courses or instructors. (Nonrefundable.)			
(a) If the course or instructor review is performed by the electrical board or the department			
The course or instructor review	((53.50)) <u>\$56.50</u>		
(b) If the course or instructor review is contracted out by the electrical board or the department			
(i) Continuing education course or instructor submittal and approval (per course or instructor)	As set in contract		
(ii) Applicant's request for review, by the chief electrical inspector, of the contractor's denial	((130.20)) <u>\$137.70</u>		
(5) Copy fees. (Nonrefundable.)			
(a) Certified copy of each document (maximum charge per file):	((59.10)) <u>\$62.50</u>		

AMENDATORY SECTION (Amending WSR 16-23-139, filed 11/22/16, effective 1/1/17)

WAC 296-46B-911 Electrical testing laboratory and engineer accreditation fees. The amount of the fee due is calculated based on the fee effective at the date payment is made.

Electrical testing laboratory

Initial filing fee: (Nonrefundable) ~~((585.00))~~
\$618.80

Initial accreditation fee:

1 product category ~~((292.40))~~
\$309.30

Each additional category for the next 19 categories ~~((116.90))~~
\$123.60 each

Maximum for 20 categories or more ~~((2,515.70))~~
\$2,661.30

Renewal fee: (Nonrefundable) 50% of initial filing fee

Renewal of existing accreditations

Each additional category for the next 19 categories ~~((116.90))~~
\$123.60 each

Maximum for 20 categories or more ~~((2,515.70))~~
\$2,661.30

Engineer for evaluating industrial utilization equipment

Initial filing fee: (Nonrefundable) ~~((585.00))~~
\$618.80

Renewal fee: (Nonrefundable) 50% of initial filing fee

WSR 21-11-087

PERMANENT RULES

DEPARTMENT OF HEALTH

[Filed May 18, 2021, 11:27 a.m., effective June 18, 2021]

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

Purpose: WAC 246-08-400 Health care provider charges for searching and duplicating records, the department of health is amending an inaccurately referenced RCW citation.

This amendment ensures the rule maintains its accuracy and clarity as statutes are updated.

Citation of Rules Affected by this Order: Amending WAC 246-08-400.

Statutory Authority for Adoption: RCW 43.70.040.

Other Authority: RCW 70.02.010.

Adopted under notice filed as WSR 21-04-069 on January 29, 2021.

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

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

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

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

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

Date Adopted: May 14, 2021.

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

AMENDATORY SECTION (Amending WSR 20-10-025, filed 4/27/20, effective 5/28/20)

WAC 246-08-400 Health care providers charging for searching and duplicating health care records. (~~RCW 70.02.010(38) allows health care providers to charge fees~~) A health care provider may charge a reasonable fee as defined in RCW 70.02.010 for searching and duplicating health care records. In accordance with RCW 70.02.010 the fees a provider may charge cannot exceed the fees listed below:

(1) Copying charge per page:

(a) No more than one dollar and twenty-four cents per page for the first thirty pages;

(b) No more than ninety-four cents per page for all other pages.

(2) Additional charges:

(a) The provider can charge a twenty-eight dollar clerical fee for searching and handling records;

(b) If the provider personally edits confidential information from the record, as required by statute, the provider can charge the usual fee for a basic office visit.

(3) HIPAA covered entities as defined in 45 C.F.R. Sec. 103 may not charge fees or costs that are not authorized by, or are prohibited by, Federal HIPAA regulation 45 C.F.R. Sec. 164.

WSR 21-11-088

PERMANENT RULES

DEPARTMENT OF HEALTH

[Filed May 18, 2021, 12:43 p.m., effective June 18, 2021]

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

Purpose: WAC 246-470-030, 246-470-052, and 246-470-053, the department of health is adopting rules that will bring the rules into alignment with the statutory changes resulting from SSB 5380 (chapter 314, Laws of 2019), including amendments to timelines for submission of information by dispensers, and eliminating requirements for facilities or entities to be trading partners with the state's health information exchange.

Citation of Rules Affected by this Order: Amending WAC 246-470-030, 246-470-052, and 246-470-053.

Statutory Authority for Adoption: RCW 70.225.025.

Other Authority: RCW 70.25.040 [70.225.040] and 70.225.020 as amended by SSB 5380.

Adopted under notice filed as WSR 21-01-123 on December 15, 2020.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 3, Repealed 0.

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

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 3, Repealed 0.

Date Adopted: May 16, 2021.

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

AMENDATORY SECTION (Amending WSR 16-15-014, filed 7/8/16, effective 8/8/16)

WAC 246-470-030 Data submission requirements for dispensers. (1) A dispenser shall provide to the department the dispensing information required by RCW 70.225.020 and this section for all scheduled II, III, IV, and V controlled substances and for drugs identified by the pharmacy quality assurance commission under WAC 246-470-020. Only drugs dispensed for more than one day use must be reported.

(2) Dispenser identification number. A dispenser shall acquire and maintain an identification number issued to dispensing pharmacies by the National Council for Prescription Drug Programs or a prescriber identifier issued to authorized prescribers of controlled substances by the Drug Enforcement Administration, United States Department of Justice.

(3) Submitting data. A dispenser shall submit data to the department electronically, ~~((not))~~ as soon as readily available, but no later than one business day from the date of dispensing, and in the format required by the department. When the dispenser has not dispensed any drugs during a business day which require reporting, then within seven days the dispenser shall report that no drugs requiring reporting were dispensed. The notification shall be in a format established by the department.

(a) A dispenser shall submit for each dispensing the following information and any additional information required by the department:

(i) Patient identifier. A patient identifier is the unique identifier assigned to a particular patient by the dispenser;

(ii) Name of the patient for whom the prescription is ordered including first name, middle initial, last name, and generational suffixes, if any;

(iii) Patient date of birth;

(iv) Patient address;

(v) Patient gender and species code;

(vi) Drug dispensed;

(vii) Date of dispensing;

(viii) Quantity and days supply dispensed;

(ix) Refill and partial fill information;

(x) Prescriber identifiers including the National Provider Identifier and the Drug Enforcement Administration number including any suffix used;

(xi) Prescription issued date;

(xii) Dispenser identifiers including the Drug Enforcement Administration number and the National Provider Identifier;

(xiii) Prescription fill date and number;

(xiv) Source of payment indicated by one of the following:

(A) Private pay (cash, change, credit card, check);

(B) Medicaid;

(C) Medicare;

(D) Commercial insurance;

(E) Military installations and veterans affairs;

(F) Workers compensation;

(G) Indian nations;

(H) Other;

(xv) When practicable, the name of the person picking up or dropping off the prescription as verified by valid photographic identification; and

(xvi) The prescriber's and dispenser's business phone numbers.

(b) A nonresident, licensed pharmacy that delivers controlled substances, as defined in RCW 18.64.360, is required to submit only the transactions for patients with a Washington state zip code.

(c) Data submission requirements do not apply to:

(i) The department of corrections or pharmacies operated by a county for the purpose of providing medications to offenders in state or county correctional institutions who are receiving pharmaceutical services from a state or county correctional institution's pharmacy. A state or county correctional institution's pharmacy must submit data to the program related to each offender's current prescriptions for controlled

substances upon the offender's release from a state or county correctional institution.

(ii) Medications provided to patients receiving inpatient services provided at hospitals licensed under chapter 70.41 RCW or patients of such hospitals receiving services at the clinics, day surgery areas, or other settings within the hospital's license where the medications are administered in single doses; or medications provided to patients receiving outpatient services provided at ambulatory surgical facilities licensed under chapter 70.230 RCW.

AMENDATORY SECTION (Amending WSR 18-17-048, filed 8/8/18, effective 9/8/18)

WAC 246-470-052 Facility and provider group access to information from the program. (1) Access.

(a) A health care facility or entity may have access to prescription monitoring information for the purpose of providing medical or pharmaceutical care to the patients of the facility or entity or for quality improvement purposes ~~((only under the following conditions:~~

~~(i))~~, provided that the facility or entity is licensed by the department, operated by the federal government, or a federally recognized Indian tribe~~((and~~

~~(ii) The facility or entity is a trading partner with the state's health information exchange)).~~

(b) A health care provider group of five or more prescribers may have access to prescription monitoring information for the purpose of providing medical or pharmaceutical care to the patients, or for quality improvement purposes, ~~((only under the following conditions:~~

~~(i))~~ provided that all prescribers in the provider group are licensed by the department, the provider group is operated by the federal government or a federally recognized Indian tribe~~((and~~

~~(ii) The provider group is a trading partner with the state's health information exchange)).~~

(2) Registration for access. A facility or entity identified in subsection (1)(a) of this section or a provider group of five or more prescribers identified in subsection (1)(b) of this section may register for access by using the registration process established by the department.

(3) Verification by the department. The department or its designee shall verify the authentication and identity of the facility, entity, or provider group before allowing access to any prescription monitoring information.

(4) Procedure for accessing prescription information. A facility, entity, or provider group identified in subsection (1) of this section must access information from the program electronically through ~~((the state health information exchange))~~ a method approved by the department.

(5) If the connection between the facility, entity, or provider group and the ~~((health information exchange))~~ program is compromised, the facility, entity, or provider group shall notify the department's designee by telephone and in writing as soon as reasonably possible.

(6) All requests for, uses of, and disclosures of prescription monitoring information by authorized persons must be consistent with the mandate as outlined in RCW 70.225.040 and this chapter.

AMENDATORY SECTION (Amending WSR 18-17-048, filed 8/8/18, effective 9/8/18)

WAC 246-470-053 The coordinated care electronic tracking program access to information from the program. (1) Access. The coordinated care electronic tracking program may have access to data for the purposes of:

(a) Providing program data to emergency department personnel when the patient registers in the emergency department; and

(b) Providing notice to the patient's providers, appropriate care coordination staff, and prescribers listed in the patient's prescription monitoring program record when the patient has experienced a controlled substance overdose event.

(2) Registration for access. The coordinated care electronic tracking program may register for access by using the registration process established by the department.

(3) Verification by the department. The department or its designee shall verify the authentication and identity of the coordinated care electronic tracking program before allowing access to any prescription monitoring information.

(4) Procedure for accessing prescription data. The coordinated care electronic tracking program must access data from the program electronically through ~~((the state health information exchange))~~ a method approved by the department. The data shall only be retained long enough by the tracking program to create the report needed by emergency department personnel when the patient registered or to provide notice of an overdose event.

(5) If the secure connection between the coordinated care electronic tracking program and the ~~((state health information exchange))~~ program is compromised, the coordinated care electronic tracking program shall notify the department's designee by telephone and in writing as soon as reasonably possible.

(6) All requests for, uses of, and disclosures of prescription monitoring information by authorized persons must be consistent with the mandate as outlined in RCW 70.225.040 and this chapter.

WSR 21-11-090

PERMANENT RULES DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed May 18, 2021, 3:09 p.m., effective June 18, 2021]

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

Purpose: The department is amending WAC 388-112A-0105 Who is required to obtain home care aide certification and by when?, and 388-112A-0550 Who is required to complete nurse delegation core training and nurse delegation specialized diabetes training and by when?, to change an outdated WAC reference from WAC 246-980-070 to 246-980-025.

Citation of Rules Affected by this Order: Amending WAC 388-112A-0105 and 388-112A-0550.

Statutory Authority for Adoption: RCW 74.39A.009, 74.39A.070, 74.39A.074, 74.39A.351, 74.39A.341, 18.20.270, 18.88B.021, 18.88B.035, 70.128.230, 71A.12.030.

Adopted under notice filed as WSR 21-05-047 on February 12, 2021.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 2, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: May 18, 2021.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 17-22-036, filed 10/24/17, effective 11/24/17)

WAC 388-112A-0105 Who is required to obtain home care aide certification and by when? Unless exempt under WAC ~~((246-980-070))~~ 246-980-025, the following individuals must be certified by the department of health as a home care aide within the required time frames:

(1) All long-term care workers, within two hundred days of the date of hire;

(2) If a long-term care worker is limited-English proficient and the department of health has issued a provisional certification, within two hundred sixty days of the date of hire;

(3) Adult family home applicants, before licensure;

(4) Adult family home entity representatives and resident managers, before assuming the duties of the position;

(5) Assisted living facility administrators or their designees within two hundred calendar days of the date of hire.

(6) Enhanced services facility applicants, before licensure; and

(7) Enhanced services facility administrators or their designees within two hundred days of the date of hire.

AMENDATORY SECTION (Amending WSR 17-22-036, filed 10/24/17, effective 11/24/17)

WAC 388-112A-0550 Who is required to complete nurse delegation core training and nurse delegation specialized diabetes training and by when? (1) Before performing any delegated nursing task, long-term care workers in adult family homes and assisted living facilities must:

(a) Successfully complete the DSHS designated nurse delegation core training, "nurse delegation for nursing assistants & home care aides";

(b) Be one or more of the following:

(i) Certified home care aide under chapter 18.88B RCW;

(ii) Nursing assistant certified under chapter 18.88A RCW;

(iii) If the long-term care worker is exempt from the home care aide certification under WAC ((246-980-070)) 246-980-025, the long-term care worker must be a nursing assistant registered and complete the core competencies of basic training, unless they already completed the twenty-eight hours of revised fundamentals of care or a department approved alternative;

(iv) If nurse delegation is needed to implement a care plan or negotiated service agreement earlier than home care aide certification can be obtained, the long-term care worker must become a nursing assistant registered and complete core competencies (the core basic training) of the seventy-hour long-term care worker basic training.

(2) Before long-term care workers in adult family homes and assisted living facilities may perform the task of insulin injections, the long-term care workers must:

(a) Meet the requirements in subsection (1)(a) and (b) of this section; and

(b) Successfully complete the DSHS designated specialized diabetes nurse delegation training.

WSR 21-11-107

PERMANENT RULES

DEPARTMENT OF HEALTH

[Filed May 19, 2021, 10:19 a.m., effective July 1, 2021]

Effective Date of Rule: July 1, 2021.

Purpose: WAC 246-322-990 Fees, the department of health (department) is raising fees for psychiatric hospitals to implement the requirements of SHB 2426 (chapter 115, Laws of 2020). The department is increasing psychiatric hospital licensing fees. This increase is needed to recover the costs of implementing SHB 2426 (chapter 115, Laws of 2020) which added new sections to chapters 43.70 and 71.12 RCW to enhance the department's regulatory oversight for psychiatric hospitals to protect the health, safety, and well-being of patients seeking behavioral health care in these facilities. The department also made three technical edits to match department WAC style guidelines.

The current initial application and renewal fee is \$135 per bed. The fee amount is determined by taking the total amount of new costs and dividing it by the number of projected licensed beds. The department estimates the amount necessary to recover the costs of this new work is \$360 per bed. This would increase fees to \$495 per bed, effective July 1, 2021.

Citation of Rules Affected by this Order: Amending WAC 246-322-990.

Statutory Authority for Adoption: RCW 43.70.250, 43.70.110, and 71.12.670.

Other Authority: SHB 2426 (chapter 115, Laws of 2020); RCW 71.12.470.

Adopted under notice filed as WSR 21-04-123 on February 1, 2021.

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

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

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

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

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

Date Adopted: May 19, 2021.

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

AMENDATORY SECTION (Amending WSR 19-16-049, filed 7/30/19, effective 10/1/19)

WAC 246-322-990 Private psychiatric hospital fees.

This section establishes the initial licensure and annual renewal fees for private psychiatric hospitals licensed under chapter 71.12 RCW.

(1) Applicants and licensees shall:

(a) Submit to the department an initial licensure fee of ((one hundred thirty-five)) four hundred ninety-five dollars for each bed space within the licensed bed capacity of the hospital ((to the department));

(b) Submit to the department an annual renewal fee of ((one hundred thirty-five)) four hundred ninety-five dollars for each bed space within the licensed bed capacity of the hospital to the department;

(c) Include all bed spaces and rooms complying with physical plant and movable equipment requirements of this chapter for twenty-four-hour assigned patient rooms;

(d) Include bed spaces assigned for less than twenty-four-hour patient use as part of the licensed bed capacity when:

(i) Physical plant requirements of this chapter are met without movable equipment; and

(ii) The private psychiatric hospital currently possesses the required movable equipment and certifies this fact to the department.

(e) Limit licensed bed spaces as required under chapter 70.38 RCW;

(f) Submit applications for bed additions to the department for review and approval under chapter 70.38 RCW subsequent to department establishment of the private psychiatric hospital's licensed bed capacity;

(g) Set up twenty-four-hour assigned patient beds only within the licensed bed capacity approved by the department.

(2) Refunds. The department shall refund fees paid by the applicant for initial licensure if:

(a) The department has received the application but has not conducted an on-site survey or provided technical assistance, the department will refund two-thirds of the fees paid, less a fifty dollar processing fee.

(b) The department has received the application and has conducted an on-site survey or provided technical assistance, the department will refund one-third of the fees paid, less a fifty dollar processing fee.

(c) The department will not refund fees if:

(i) The department has performed more than one on-site visit for any purpose;

(ii) One year has elapsed since an initial licensure application is received by the department, and the department has not issued the license because the applicant has failed to complete requirements for licensure; or

(iii) The amount to be refunded as calculated by (a) or (b) of this subsection is ten dollars or less.

WSR 21-11-108

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed May 19, 2021, 10:31 a.m., effective July 1, 2021]

Effective Date of Rule: July 1, 2021.

Purpose: The purpose of the proposal is to create a new WAC chapter containing all department of social and health services (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, 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*. A further proposal is to memorialize a petition process for certified nursing assistants (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.

Citation of Rules Affected by this Order: New WAC 388-103-0001, 388-103-0002, 388-103-0010, 388-103-0020, 388-103-0030, 388-103-0040, 388-103-0050, 388-103-0060, 388-103-0070, 388-103-0080, 388-103-0090, 388-103-0100, 388-103-0110, 388-103-0120, 388-103-0130, 388-103-0140, 388-103-0150, 388-103-0160, 388-103-0170, 388-103-0180, 388-103-0190, 388-103-0200 and 388-103-0210; and repealing WAC 388-71-0100, 388-71-0105, 388-71-0110, 388-71-0115, 388-71-01201, 388-71-01202, 388-71-01205, 388-71-

01210, 388-71-01215, 388-71-01220, 388-71-01225, 388-71-01230, 388-71-01235, 388-71-01240, 388-71-01245, 388-71-01247, 388-71-01250, 388-71-01255, 388-71-01260, 388-71-01265, 388-71-01270, 388-71-01275, 388-71-01280, and 388-71-01281.

Statutory Authority for Adoption: RCW 74.34.068, 74.34.165; 42 U.S.C. Sec. 1396r (g)(1)(D), 42 U.S.C. Sec. 1395i3 (g)(1)(D).

Adopted under notice filed as WSR 21-06-109 on March 3, 2021.

Changes Other than Editing from Proposed to Adopted Version: WAC 388-103-0001 What definitions apply to this chapter?, the definition of "assisted living facility" was added, which is an incorporation by reference to the definition under chapter 18.20 RCW.

WAC 388-103-0060 When is notice to the alleged perpetrator complete?, clarified that notice is complete when both regular mail [and] certified mail, return receipt requested, is sent under subsection (2).

WAC 388-103-0080 Will adult protective services notify anyone other than the alleged perpetrator of the initial substantiated finding?, stated who at a facility will be informed of an initial substantiated finding.

Number of Sections Adopted in Order to Comply with Federal Statute: New 5, Amended 0, Repealed 0; Federal Rules or Standards: New 9, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted on the Agency's own Initiative: New 4, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 21, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 23, Amended 0, Repealed 24.

Date Adopted: May 18, 2021.

Katherine I. Vasquez
Rules Coordinator

Chapter 388-103 WAC

ADULT PROTECTIVE SERVICES

NEW SECTION

WAC 388-103-0001 What definitions apply to this chapter? In addition to the definitions found in chapter 74.34 RCW, the following definitions apply to this chapter:

(1) "Adult family home" is defined under chapter 70.128 RCW.

(2) "Alleged perpetrator" means the person who is alleged to have abandoned, abused, financially exploited, neglected, or misappropriated the property of, an alleged victim; and the department has received a report of, is investigating, or has made an initial substantiated finding about such allegation.

(3) "Alleged victim" means:

(a) The person who is alleged to have been abandoned, abused, financially exploited, neglected, or had their property misappropriated by an alleged perpetrator; and the department has received a report of, is investigating, or has made an initial substantiated finding about such allegation; or

(b) The person who is alleged to be neglecting themselves; and the department has received a report of, is investigating, or has made an initial substantiated finding about the self-neglect.

(4) "Assisted living facility" is defined under chapter 18.20 RCW.

(5) "Basic necessities of life" means food, water, shelter, clothing, and medically necessary health care, including but not limited to health-related treatment or activities, hygiene, oxygen, and medication.

(6) "Facility" means a residence licensed or required to be licensed under:

(a) Chapter 18.20 RCW, assisted living facilities;

(b) Chapter 18.51 RCW, nursing homes;

(c) Chapter 70.128 RCW, adult family homes;

(d) Chapter 72.36 RCW, soldiers' homes;

(e) Chapter 71A.20 RCW, residential habilitation centers;

(f) Chapter 70.97 RCW, enhanced services facilities; or

(g) Any other facility licensed or certified by the department.

(7) "Final substantiated finding" means an initial substantiated finding of abandonment, abuse, financial exploitation, misappropriation of resident property, or neglect that:

(a) Has been upheld through the administrative hearing process described in WAC 388-103-0090 through 388-103-0160; or

(b) Is not timely appealed to the office of administrative hearings as required under WAC 388-103-0100.

(8) "Initial substantiated finding" means a finding by the department that, more likely than not, the alleged abandonment, abuse, financial exploitation, misappropriation of resident property, neglect, or self-neglect occurred.

(9) "Legal representative" means a guardian or conservator appointed under either chapter 11.88 RCW or chapter 11.130 RCW; or an agent granted authority under a power of attorney as described under chapter 11.125 RCW.

(10) "Nursing assistant" means as it is defined under chapter 18.88A RCW.

(11) "Nursing facility" means a nursing home, or any portion of a hospital, veterans' home, or residential habilitation center, that is certified to provide nursing services to medicaid recipients under section 1919(a) of the Social Security Act (42 U.S.C. Sec. 1396r).

(12) "Nursing home" means any facility licensed to operate under chapter 18.51 RCW.

(13) "Person with a duty of care," in the context of abandonment and neglect, includes:

(a) A guardian or conservator appointed under chapter 11.88 RCW or chapter 11.130 RCW;

(b) An agent granted authority under a power of attorney as described under chapter 11.125 RCW; or

(c) A person providing the basic necessities of life to a vulnerable adult where:

(i) The person is employed by or on behalf of the vulnerable adult; or

(ii) The person voluntarily agrees to provide, or has been providing, the basic necessities of life to the vulnerable adult on a continuing basis.

(14) "Skilled nursing facility" means a nursing home, a portion of a nursing home, or a long-term care wing or unit of a hospital that has been certified to provide nursing services to medicare recipients under section 1819(a) of the Social Security Act (42 U.S.C. Sec. 1395i-3).

(15) "Vulnerable adult abuse registry" means the registry, established and maintained by the department as required under RCW 74.39A.056, that contains identifying information about people who have final substantiated findings of abandonment, abuse, financial exploitation, misappropriation of resident property, or neglect of a vulnerable adult.

(16) "Willful." A person's action or inaction is willful when the person's action or inaction is intentional or knowing.

(a) INTENTIONAL. A person's action or inaction is intentional when the person's objective or purpose is to inflict injury, unreasonable confinement, intimidation, or punishment on a vulnerable adult.

(b) KNOWING. A person's action or inaction is knowing when the person is aware that his or her action or inaction would inflict injury, unreasonable confinement, intimidation, or punishment on a vulnerable adult.

NEW SECTION

WAC 388-103-0002 What additional definitions apply when the facility is a nursing facility or skilled nursing facility? (1) This section incorporates those definitions under 42 C.F.R. Sec. 488.301 into this chapter.

(2) In addition to the definitions in WAC 388-103-0001 and RCW 74.34.020, the definitions in this section apply to this chapter when:

(a) The alleged victim is a resident of a nursing facility or skilled nursing facility; and

(b) The alleged perpetrator is an individual used by such facility to provide services to residents.

(3) Abuse.

(a) Abuse is the willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain or mental anguish. Abuse also includes the deprivation by an individual, including a caretaker, of goods or services that are necessary to attain or maintain physical, mental, and psychosocial well-being.

(b) Instances of abuse of all residents, irrespective of any mental or physical condition, cause physical harm, pain or mental anguish.

(c) Abuse includes verbal abuse, sexual abuse, physical abuse, and mental abuse including abuse facilitated or enabled through the use of technology.

(d) Willful, as used in this definition of abuse, means the individual must have acted deliberately, not that the individual must have intended to inflict injury or harm.

(4) "Individual" means a person used by a nursing facility or skilled nursing facility to provide services to residents of such facility.

(5) "Misappropriation of resident property" means the deliberate misplacement, exploitation, or wrongful, temporary or permanent use of a resident's belongings or money without the resident's consent.

(6) "Neglect" means the failure of an individual to provide goods and services to a resident that are necessary to avoid physical harm, pain, mental anguish, or emotional distress.

NEW SECTION

WAC 388-103-0010 What is the purpose of an adult protective services investigation? The purpose of an adult protective services investigation is to:

(1) Investigate allegations of abandonment, abuse, financial exploitation, misappropriation of resident property, neglect, or self-neglect.

(2) Provide protective services to the alleged victim, with the consent of the alleged victim or their legal representative, when the protective services could assist in ending or preventing of the harm to the alleged victim.

NEW SECTION

WAC 388-103-0020 When does adult protective services respond to a report? The department will initiate a response to a report of suspected abandonment, abuse, financial exploitation, misappropriation of resident property, neglect, or self-neglect of a vulnerable adult when the alleged facts and circumstances reasonably fit the definition of abandonment, abuse, financial exploitation, misappropriation of resident property, neglect, or self-neglect as defined in RCW 74.34.020 or this chapter.

NEW SECTION

WAC 388-103-0030 What state-only funded services may be offered to an alleged victim? (1) Subject to available funding, adult protective services (APS) may arrange for, and provide referrals to, state-only funded services for an alleged victim.

(2) Services may include:

(a) In-home personal care, household services, or both; and

(b) Emergency referral options for a department-licensed and -contracted adult family home, assisted living facility, or nursing home.

(3) Services may be offered if:

(a) The person is the alleged victim in an open APS investigation;

(b) The services would help protect the alleged victim from harm;

(c) APS cannot identify alternative resources or options for payment for services available to the alleged victim at the time the services are needed;

(d) Services are provided in the least restrictive and cost effective manner and setting available to meet the needs of the alleged victim;

(e) APS is pursuing service alternatives or resolution of the issues that resulted in the need for the services; and

(f) The services are temporary and provided with the consent of the alleged victim, or their legal representative, only until the situation has stabilized.

(4) Service limitations.

(a) State-only funded protective services are provided by APS on a discretionary basis, are not a benefit, and are not an entitlement.

(b) There is no right to notice over an approval, denial, change, termination, or any other action regarding services.

(c) There is no right to an administrative hearing over an approval, denial, change, termination, or any other action regarding services.

(d) All services are limited to a cumulative maximum total of ninety days in any twelve-month period, with nursing home services limited to thirty days in the twelve-month period. An exception to rule requested under chapter 388-440 WAC will not be accepted.

(e) In-home personal care, household services, or both, are provided based on assessed need and limited to one hundred forty-three hours per calendar month.

NEW SECTION

WAC 388-103-0040 When does adult protective services notify the alleged perpetrator of an initial substantiated finding? (1) Adult protective services (APS) will notify the alleged perpetrator in writing on or before the tenth working day after making an initial substantiated finding.

(2) APS may notify the alleged perpetrator after the tenth working day if time is needed to translate the notification letter, or if time is needed to provide for the safety of the alleged victim.

NEW SECTION

WAC 388-103-0050 How will adult protective services give the alleged perpetrator notice of the initial substantiated finding? (1) Adult protective services (APS) will notify the alleged perpetrator of the initial substantiated finding using one of the following methods:

(a) Personal service of the notice as described under RCW 4.28.080; or

(b) Sending a copy of the notice by first-class mail and certified mail, return receipt requested, to the alleged perpetrator's last known mailing address.

(2) If APS knows the alleged perpetrator no longer receives mail at their last known mailing address, then APS will give notice by personal service.

NEW SECTION

WAC 388-103-0060 When is notice to the alleged perpetrator complete? Notice is complete when:

(1) Personal service is made; or

(2) First-class mail and certified mail, return receipt requested, are both properly stamped, addressed, and deposited in the United States mail.

NEW SECTION

WAC 388-103-0070 What proves that adult protective services provided notice of the initial substantiated finding to the alleged perpetrator? Adult protective services may prove notice was provided to the alleged perpetrator by any of the following:

- (1) A sworn statement, certification, or declaration of personal service;
- (2) A sworn statement, certification, or declaration of mailing; or
- (3) The certified mail receipt confirming the notice was delivered.

NEW SECTION

WAC 388-103-0080 Will adult protective services notify anyone other than the alleged perpetrator of the initial substantiated finding? (1) Facilities.

(a) If the incident occurred in a facility, adult protective services (APS) will inform the facility owner, manager, or administrator of the initial substantiated finding.

(b) If abuse, neglect, or misappropriation of resident property occurred in a nursing home, APS will inform the administrator of the nursing home of the initial substantiated finding.

(2) Agencies or programs.

(a) If the alleged perpetrator is an employee, contractor, volunteer, or otherwise related to an agency or program described in RCW 74.34.068, APS may inform such agency or program of the initial substantiated finding; and

(b) APS may also inform appropriate state or local governmental authorities responsible for licensing or certification of such agency or program.

(3) APS may inform law enforcement of the initial substantiated finding.

(4) APS may inform the long-term care ombuds, the developmental disabilities ombuds, or both, of the initial substantiated finding.

(5) Other authorities.

(a) If an alleged perpetrator is professionally licensed, certified, or registered under title 18 RCW, APS may inform the proper authority of the initial substantiated finding.

(b) APS may inform other investigative authorities of the initial substantiated finding.

NEW SECTION

WAC 388-103-0090 May an alleged perpetrator challenge an initial substantiated finding? An alleged perpetrator may request an administrative hearing to challenge an initial substantiated finding.

NEW SECTION

WAC 388-103-0100 How does an alleged perpetrator request an administrative hearing to challenge an initial substantiated finding? (1) To request an administrative hearing, the alleged perpetrator must send, deliver, or fax a written request to the office of administrative hearings (OAH).

(a) OAH must receive the written request no later than the earlier of:

(i) 5:00 p.m. on the thirtieth calendar day after the mailing date on adult protective services' (APS's) letter of notice; or

(ii) 5:00 p.m. on the thirtieth calendar day after the date APS's letter of notice was personally served upon the alleged perpetrator.

(b) Days are counted as described under WAC 388-02-0035.

(c) OAH mailing addresses, fax numbers, and telephone numbers are in WAC 388-02-0025.

(2) The minimum information required to make a request is given by:

(a) Completing the adult protective services administrative hearing request form (DSHS 27-178); or

(b) A written request that includes:

(i) The full legal name, current address, and phone number of the alleged perpetrator;

(ii) A brief explanation of why the alleged perpetrator disagrees with the initial substantiated finding; and

(iii) A description of assistance needed in the administrative appeal process, if any, by the alleged perpetrator, such as a foreign or sign language interpreter, or accommodation for a disability.

(3) Good cause, as described under WAC 388-02-0020, does not apply to the requirements of this section.

NEW SECTION

WAC 388-103-0110 What laws and rules will control the administrative hearings held regarding initial substantiated findings? (1) Chapters 34.05 and 74.34 RCW, chapters 388-02 and 10-08 WAC, and this chapter govern an administrative hearing regarding an initial substantiated finding.

(2) In the event of a conflict between this chapter and chapter 388-02 or 10-08 WAC, this chapter will prevail; and in the event of a conflict between chapter 388-02 and 10-08 WAC, chapter 388-02 WAC will prevail.

NEW SECTION

WAC 388-103-0120 What additional rules apply to administrative hearings regarding initial substantiated findings of abuse, neglect, or misappropriation of resident property, where the alleged perpetrator is an individual used by a nursing facility or skilled nursing facility to provide services to residents of that facility? (1) This section applies to the administrative hearing when an initial substantiated finding of abuse, neglect, or misappropriation of resident property is made against an individual used by a nursing facility or skilled nursing facility to provide services to residents of that facility.

(2) The hearing and the hearing record must be completed within one hundred and twenty days from the day the office of administrative hearings received the request for a hearing under WAC 388-103-0100.

(a) If the administrative law judge (ALJ) finds that extenuating circumstances exist that will make it impossible to render a decision within one hundred and twenty days,

then the ALJ may extend the limit by a maximum of sixty days.

(b) The individual must be available for the hearing and other preliminary matters.

(c) If the individual is a nursing assistant, and if the hearing and hearing record cannot be completed within the time limit because of the unavailability of the nursing assistant, then, after the time limit has expired, the nursing assistant's name will be placed on the vulnerable adult abuse registry pending the outcome of the hearing.

(3) The hearing must be held at a reasonable place and time convenient for the individual.

(4) A final substantiated finding of neglect, where neglect is defined under WAC 388-103-0002, may not be made if the individual demonstrates the neglect was caused by factors beyond the control of the individual.

NEW SECTION

WAC 388-103-0130 How is confidential information protected in the administrative hearing process? (1) All information described under RCW 74.34.095(1) is confidential, and not subject to disclosure in the administrative hearing process, except as described under RCW 74.34.095(3) and this section.

(2) If the administrative law judge (ALJ) determines that disclosure is essential to the administration of justice and will not endanger the life or safety of the alleged victim or the person who made the report, then the ALJ may order disclosure of the information otherwise protected under RCW 74.34.095

(3) Such disclosure may only be made under a protective order agreed to by the parties and entered by the ALJ. The ALJ may place restrictions on such disclosure as the ALJ deems proper.

NEW SECTION

WAC 388-103-0140 How does the administrative law judge make a decision regarding the initial substantiated finding? (1) If the administrative law judge (ALJ) finds that the preponderance of the evidence supports the initial substantiated finding, the ALJ shall uphold the initial substantiated finding in an initial order.

(2) If the ALJ finds that the initial substantiated finding is not supported by a preponderance of the evidence, the ALJ shall remand the matter to the department to modify the finding consistent with the initial order.

NEW SECTION

WAC 388-103-0150 What if the alleged perpetrator or the department disagrees with the administrative law judge's initial order? (1) If the alleged perpetrator or the department disagrees with the administrative law judge's (ALJ's) initial order, either party may request review of the initial order with the department's board of appeals as described under chapter 388-02 WAC.

(2) If either party requests review of the ALJ's initial order, the initial order will not be effected.

NEW SECTION

WAC 388-103-0160 When does the initial substantiated finding become a final substantiated finding? (1) An initial substantiated finding becomes a final substantiated finding when:

(a) The department gives the alleged perpetrator notice of the initial substantiated finding as described under WAC 388-103-0050, and the alleged perpetrator does not request an administrative hearing under WAC 388-103-0100;

(b) The administrative law judge (ALJ) dismisses the alleged perpetrator's request for hearing;

(c) The ALJ issues an initial order upholding the initial substantiated finding and the order becomes a final order under WAC 388-02-0525; or

(d) The department's board of appeals enters a final order upholding the initial substantiated finding.

NEW SECTION

WAC 388-103-0170 What happens when an initial substantiated finding becomes a final substantiated finding? When an initial substantiated finding becomes a final substantiated finding, identifying information about the perpetrator of the abandonment, abuse, financial exploitation, misappropriation of resident property, or neglect is placed on the vulnerable adult abuse registry that is maintained by the department.

NEW SECTION

WAC 388-103-0180 Is a final substantiated finding permanent? (1) A final substantiated finding is permanent, except as described under subsection (2) of this section.

(2) A final substantiated finding may be reversed, and the person's identifying information removed from the vulnerable adult abuse registry, if:

(a) The department determines the final substantiated finding was made in error;

(b) The final substantiated finding is reversed or otherwise overturned upon judicial review; or

(c) The department is notified that a person with a final substantiated finding is deceased.

NEW SECTION

WAC 388-103-0190 Will adult protective services notify anyone other than the alleged perpetrator of the final substantiated finding? (1) Adult protective services (APS) may provide notice of the final substantiated finding to those persons and entities described under WAC 388-103-0080.

(2) Where the perpetrator of a final substantiated finding is an individual used by a nursing home to provide services to residents of such nursing home, APS will notify the following on or before the tenth working day of the final substantiated finding:

(a) The perpetrator;

(b) The current administrator of the nursing home in which the incident occurred;

(c) The administrator of the nursing home in which the perpetrator is currently employed, if known by APS and if different than the nursing home in which the incident occurred; and

(d) The Washington state department of health.

NEW SECTION

WAC 388-103-0200 Does the department disclose information contained in the vulnerable adult abuse registry about final substantiated findings of abandonment, abuse, financial exploitation, misappropriation of resident property, and neglect? Upon request of any person, the department shall disclose the identity of a person on the vulnerable adult abuse registry with a final substantiated finding of abandonment, abuse, financial exploitation, misappropriation of resident property, or neglect.

NEW SECTION

WAC 388-103-0210 May a nursing assistant petition the department to have their name removed from the vulnerable adult abuse registry? (1) This section implements 42 U.S.C. Sec. 1396r (g)(1)(D) and Sec. 1395i-3 (g)(1)(D).

(2) A nursing assistant may petition the department to have their name removed from the vulnerable adult abuse registry, subject to the requirements of this section.

(3) Preliminary requirements for the department to accept a petition:

(a) At least one year must have elapsed between the date of the final substantiated finding and the date the department receives the petition;

(b) The final substantiated finding was a singular occurrence of neglect; and

(c) The petition must be in writing and contain the following information:

(i) About the petitioner:

(A) Name;

(B) Date of birth;

(C) Social security number;

(D) Mailing address; and

(E) Phone number;

(ii) The final substantiated finding;

(iii) All documents regarding any disciplinary action, or any other negative action, taken against the petitioner under chapter 18.88A RCW;

(iv) A background check through the Washington state patrol that was completed no earlier than thirty days prior to the date the department accepts the petition;

(v) An affidavit stating why the petitioner believes the department should grant the petition. The statement must include whether the petitioner has abused or neglected a vulnerable adult since the final substantiated finding was entered;

(vi) A list of three references for the department to contact regarding the petitioner's employment and personal history, where two references must be professional references; and

(vii) Any other relevant information the petitioner wants the department to consider.

(4) Standard for removal.

(a) The department will accept a petition if the requirements of subsection (3) of this section are met.

(b) Once the petition is accepted, the petitioner must attend an in-person interview with the department. "In-person" means either physical presence with department personnel, or visual presence through electronic means.

(c) Once the petition is accepted and the interview is completed, the department will determine whether the petitioner's employment and personal history reflects a pattern of abusive behavior or neglect:

(i) If the department determines the petitioner's employment and personal history does not reflect a pattern of abusive behavior or neglect, the department approves the petition, and removes the petitioner's name from the vulnerable adult abuse registry.

(ii) If the department determines the petitioner's employment and personal history does reflect a pattern of abusive behavior or neglect, the department denies the petition.

(iii) If the department is unable to determine whether the petitioner's employment and personal history reflects a pattern of abusive behavior or neglect, the department denies the petition.

(5) Other information.

(a) The department will act with reasonable promptness upon receiving a petition that contains the information required under subsection (3) of this section, and make its decision within sixty days of accepting a petition.

(b) If the department requires additional information to make its determination, a letter will be sent to the petitioner requesting the additional information. The petitioner has ten business days to provide the information. If the department does not receive the requested information, it may be unable to determine whether petitioner's employment and personal history reflects a pattern of abusive behavior or neglect, and deny the petition.

(c) Decisions and other correspondence regarding the petition will be mailed to the petitioner. At the petitioner's request, correspondence may also be sent via email.

(d) A petitioner does not have a right to an administrative hearing regarding any department action taken on a petition.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-71-0100	What are the statutory references for WAC 388-71-0100 through 388-71-01281?
WAC 388-71-0105	What definitions apply to adult protective services?
WAC 388-71-0110	What is the purpose of an adult protective services investigation?
WAC 388-71-0115	When is an investigation conducted?

- WAC 388-71-01201 What state-only funded services may be offered to a vulnerable adult victim of abandonment, abuse, financial exploitation, neglect or self-neglect?
- WAC 388-71-01202 When does the department make a substantiated initial finding of an individual used by a nursing facility or skilled nursing facility to provide services to vulnerable adults?
- WAC 388-71-01205 When does APS notify the alleged perpetrator of a substantiated initial finding?
- WAC 388-71-01210 How may APS give the alleged perpetrator notice of the substantiated initial finding?
- WAC 388-71-01215 When is notice to the alleged perpetrator complete?
- WAC 388-71-01220 What proves that APS provided notice of the substantiated initial finding to the alleged perpetrator?
- WAC 388-71-01225 What information must not be in the APS finding notice to the alleged perpetrator?
- WAC 388-71-01230 Will APS notify anyone other than the alleged perpetrator of the substantiated initial finding of abandonment, abuse, financial exploitation or neglect?
- WAC 388-71-01235 Can an alleged perpetrator challenge a substantiated initial finding of abandonment, abuse, financial exploitation or neglect?
- WAC 388-71-01240 How does an alleged perpetrator request an administrative hearing to challenge a substantiated initial finding of abandonment, abuse, financial exploitation or neglect?
- WAC 388-71-01245 What laws and rules will control the administrative hearings held regarding substantiated initial findings?
- WAC 388-71-01247 What additional rules apply to administrative hearings held regarding substantiated initial findings made against a nursing assistant employed in a nursing facility or skilled nursing facility?
- WAC 388-71-01250 How is confidential information protected in the appeal process?
- WAC 388-71-01255 How does the administrative law judge make a decision regarding the substantiated initial finding?
- WAC 388-71-01260 When is the alleged perpetrator notified of the administrative law judge's decision?
- WAC 388-71-01265 What if the alleged perpetrator or the department disagrees with the decision?
- WAC 388-71-01270 What happens if the administrative law judge rules against the department?
- WAC 388-71-01275 When does the APS substantiated initial finding become a final finding?
- WAC 388-71-01280 Does the department disclose information about final findings of abuse, abandonment, neglect and financial exploitation?
- WAC 388-71-01281 To whom does the department report a final substantiated finding against a nursing assistant employed in a nursing facility or skilled nursing facility?