

WSR 21-13-023
PERMANENT RULES
BUILDING CODE COUNCIL

[Filed June 9, 2021, 9:30 a.m., effective July 10, 2021]

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

Purpose: This rule is in response to ESHB 2783, chapter 43, Laws of 2020, and addresses WAC 51-54A-5707 amendments to the 2018 International Fire Code, addressing on-demand mobile fueling operations.

Citation of Rules Affected by this Order: Amending 1.

Statutory Authority for Adoption: RCW 19.27.077.

Other Authority: RCW 19.27.031, 19.27.074.

Adopted under notice filed as WSR 21-03-078 on January 19, 2021.

Changes Other than Editing from Proposed to Adopted Version: The portion of the proposed rule addressing Section 427 of chapter 51-50 WAC was deleted. This text was also filed in WSR 21-03-08 [21-03-081] and the permanent rule for WAC 51-50-0427 will be addressed under a separate filing. It was included with this proposed filing in error.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: May 21, 2021.

Diane Glenn
Chair

NEW SECTION

WAC 51-54A-5707 Section 5705—On-demand mobile fueling operations.

5707.1 General. On-demand mobile fueling operations that dispense Class I, II and III liquids into the fuel tanks of motor vehicles shall comply with Sections 5707.1 through 5707.6.6.

EXCEPTION: Fueling from an *approved* portable container in cases of an emergency or for personal use.

5707.1.1 Approval required. Mobile fueling operations shall not be conducted without first obtaining a *permit* and approval from the fire code official. Mobile fueling operations shall occur only at *approved* locations. The fire code official is authorized to *approve* individual locations or geographic areas where mobile fueling is allowed.

5707.1.2 Coordination of permits. *Permits* across multiple authorities having jurisdiction shall be coordinated in accordance with Sections 5707.1.2.1 through 5707.1.2.4.

5707.1.2.1 Acceptance of permits issued by other authorities having jurisdiction. Local authorities having jurisdiction that allow mobile on demand fueling trucks may accept conforming *permits* issued and/or inspections performed by any other local authorities having jurisdiction in Washington state. Local authorities having jurisdiction that choose to accept conforming *permits* issued by other local authorities having jurisdiction in Washington state retain the right to enforce the provisions of this section.

5707.1.2.2 Local authorities having jurisdiction not offering operator or truck certification. A conforming operator or vehicle *permit* issued by one local authority having jurisdiction shall be recognized and accepted by all local authorities having jurisdiction in Washington state, if those local authority having jurisdictions allow mobile on-demand fueling and do not offer such operator or truck certification. Under no circumstances will an issuing local authority having jurisdiction be expected to perform permissive inspections beyond their jurisdiction.

5707.1.2.3 Commencing permit issuance. When a local authority having jurisdiction that has previously authorized mobile fueling operations but not issued their own *permits* commences *permit* issuance for mobile fueling operations or vehicles, that local authority having jurisdiction shall continue to accept *permits* previously issued by another local authority having jurisdiction in Washington state for three months or until their expiration date, whichever is sooner.

5707.1.2.4 Permit record maintenance. Issuing local authorities having jurisdiction shall maintain a publicly available list of current *permits* or other information source to enable all parties to have information about whether *permits* are in good standing.

5707.2 Mobile fueling vehicle. An on-demand mobile fueling vehicle shall be utilized in on-demand fueling operations for the dispensing of Class I, II or III liquids into the fuel tanks of motor vehicles and shall comply with Sections 5707.2.1 and 5707.2.2.

5707.2.1 Mobile fueling vehicle classifications. An on-demand mobile fueling vehicle shall be classified as one of the following:

1. **Type 1 Mobile Fueling Vehicle** - A tank vehicle that complies with NFPA 385 and that has chassis-mounted tanks where the aggregate capacity does not exceed 1600 gallons (6057 L).

2. **Type 2 Mobile Fueling Vehicle** - A vehicle with one or more chassis-mounted tanks or chassis-mounted containers, not to exceed 110 gallons (415 L) capacity for each tank or container and having an aggregate capacity not exceeding 800 gallons (3028 L) or the weight capacity of the vehicle in accordance with DOTn.

3. **Type 3 Mobile Fueling Vehicle** - A vehicle that carries a maximum aggregate capacity of 60 gallons (227 L) of motor fuel in metal safety cans *listed* in accordance with UL 30 or other *approved* metal containers, each not to exceed 5 gallons (19 L) in capacity.

5707.2.2 Mobile fueling vehicle requirements. Each mobile fueling vehicle shall comply with all local, state and federal requirements, and the following:

1. Mobile fueling vehicles with a chassis-mounted tank in excess of 110 gallons (415 L) shall also comply with the requirements of Section 5706.6 and NFPA 385.
2. The mobile fueling vehicle and its equipment shall be maintained in good repair.
3. Safety cans and *approved* metal containers shall be secured to the mobile fueling vehicle except when in use.
4. Fueling a motor vehicle from tanks or containers mounted in a trailer connected to a mobile fueling vehicle shall be prohibited.

5707.3 Required documents. Documents developed to comply with Sections 5707.3.1 through 5707.3.3 shall be updated as necessary by the owner of the mobile fueling operation and shall be maintained in compliance with Section 108.3.

5707.3.1 Safety and emergency response plan. Mobile fueling operators shall have an *approved* written safety and emergency response plan that establishes policies and procedures for fire safety, spill prevention and control, personnel training and compliance with other applicable requirements of this code. The safety and emergency response plan shall specifically address and require that all operators assess surroundings prior to fueling to consider the presence of items listed in Section 5707.3.3.

5707.3.2 Training records. Mobile fueling vehicles shall be operated only by designated personnel who are trained on proper fueling procedures and the safety and emergency response plan. Training records of operators shall be maintained.

5707.3.3 Site plan. Where required by the fire code official, a site plan shall be developed for each location or area at which mobile fueling occurs. The site plan shall be in sufficient detail to indicate but not be limited to the following:

1. All buildings, structures.
2. Lot lines or property lines.
3. Electric car chargers.
4. Solar photovoltaic parking lot canopies.
5. Appurtenances on-site and their use or function.
6. All uses adjacent to the lot lines of the site.
7. Fueling locations.
8. Locations of all storm drain openings and adjacent waterways or wetlands.
9. Information regarding slope, natural drainage, curbing, and impounding.
10. How a spill will be kept on the site property.
11. Scale of the site plan.

5707.3.4 Tiered sites. Where a site permitting process is required by the local jurisdiction, a site shall be designated by the fire code official to be one of the following and based on local provisions as necessitated by zoning laws, environmental laws, public safety, and other characteristics.

5707.3.4.1 Tier 1 sites. Sites that do not present atypical geographic, safety or environmental concerns shall be provided expedited permitting review and shall allow *permit* issuance prior to site inspection. The fire code official may impose

additional conditions and may perform a site inspection during the period of *permit* validity.

5707.3.4.2 Tier 2 sites. Sites that require an inspection shall be approved by the fire code official prior to *permit* issuance.

5707.4 Mobile fueling areas. During fueling, the mobile fueling vehicle and point of connection of the vehicle being fueled shall not be located on public streets, public ways or inside buildings. Fueling on the roof level of parking structures or other buildings is prohibited.

5707.4.1 Separation. During fueling, the point of connection of the vehicle being fueled shall not take place within 25 feet (7620 mm) of buildings, lot lines, property lines or combustible storage. Mobile fueling vehicles shall not park within 10 feet (3048 mm) of buildings, lot lines, property lines or combustible storage.

- EXCEPTIONS:
1. The fire code official shall be authorized to decrease the separation distance for dispensing from metal safety cans or other *approved* metal containers in accordance with Section 5707.2.
 2. The point of fueling shall not take place within 10 feet (3048 mm) of buildings, lot lines, property lines or combustible storage when the mobile fueling vehicle has an approved vapor recovery system or is servicing vehicles with on board refueling vapor recovery.

Where dispensing operations occur within 15 feet (4572 mm) of a storm drain, an *approved* storm drain cover or an *approved* equivalent method that will prevent any fuel from reaching the drain shall be used.

5707.4.2 Sources of ignition. Smoking, open flames and other sources of ignition shall be prohibited within 25 feet (7620 mm) of fuel dispensing activities. Signs prohibiting smoking or open flames within 25 feet (7620 mm) of the vehicle or the point of fueling shall be prominently posted on the mobile fueling vehicle. The engines of vehicles being fueled shall be shut off during fueling.

5707.4.3 Electrical equipment. Mobile fueling shall not occur within 20 feet of electrical equipment located within 18 inches of the ground unless such electrical equipment is rated for Class 1, Division 2 hazardous locations in accordance with NFPA 70.

5707.5 Equipment. Mobile fueling equipment shall comply with Sections 5707.5.1 through 5707.5.5.

5707.5.1 Dispensing hoses and nozzles. Where equipped, the dispensing hose shall not exceed 50 feet (15240 mm) in length. The dispensing nozzles and hoses shall be of an *approved* and *listed* type. Where metal-to-metal contact cannot be made between the nozzle and the fuel fill opening, then a means for bonding the mobile fueling vehicle to the motor vehicle shall be provided and employed during fueling operations.

5707.5.2 Break-away device. A listed break-away device shall be provided at the nozzle.

EXCEPTION: Mobile fueling vehicles equipped with an approved brake interlock tied to the nozzle holder that prohibits movement of the mobile fueling vehicle when the nozzle is removed from its holder or tied to the delivery of fuel that prevents activation of the pumping system.

5707.5.3 Shut-off valve and fuel limit. Mobile fueling vehicles shall be equipped with a *listed* shut-off valve assembly and a fuel limit switch set to a maximum of 30 gallons (116 L).

5707.5.4 Fire extinguisher. An *approved* portable fire extinguisher complying with Section 906 with a minimum rating of 4A:80-B:C shall be provided on the mobile fueling vehicle with signage clearly indicating its location.

5707.5.5 Spill kit. Mobile fueling vehicles shall contain a minimum 5 gallon (19 L) spill kit of an *approved* type.

5707.6 Operations. Mobile fueling vehicles shall be constantly attended during fueling operations with brakes set and warning lights in operation. Mobile fueling vehicles shall not obstruct emergency vehicle access roads.

5707.6.1 Dispensing hose. Where equipped, mobile fueling vehicles shall be positioned in a manner to preclude traffic from driving over the dispensing hose. The dispensing hose shall be properly placed on an *approved* reel or in an *approved* compartment prior to moving the mobile fueling vehicle.

5707.6.2 Drip control. Operators shall place a drip pan or an absorbent pillow under the nozzle and each fuel fill opening prior to and during dispensing operations to catch drips.

5707.6.3 Safety cones. Safety cones or other visual barriers shall be employed as warning devices to highlight the vehicle fueling area. Signs prohibiting smoking or open flames within 25 feet (7620 mm) shall be prominently posted in the vehicle fueling area.

5707.6.4 Vehicle lights. The mobile fueling vehicle flasher lights shall be in operation while dispensing operations are in progress.

5707.6.5 Nighttime deliveries. Nighttime deliveries shall only be made in areas adequately lighted per WAC 296-800-21005.

5707.6.6 Spill reporting. Spills shall be reported in accordance with Section 5003.3.1.

WSR 21-13-026
PERMANENT RULES
LIQUOR AND CANNABIS
BOARD

[Filed June 9, 2021, 11:30 a.m., effective July 10, 2021]

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

Purpose: The Washington state liquor and cannabis board (WSLCB) has repealed WAC 314-28-070 and 314-28-080, and adopted amendments to WAC 314-28-010, 314-28-055, and 314-28-090, related to distillery reporting and pay-

ment requirements, to be consistent with the court of appeals decision in *Blue Spirits Distilling, LLC v. WSLCB*, 15 Wn. App. 2d 779, 478 P.3d 153 (2020), which held that WSLCB rules requiring distillers to pay spirits retailer licensing fees when they acted as spirits retailers were invalid.

Citation of Rules Affected by this Order: Repealing WAC 314-28-070 and 314-28-080; and amending WAC 314-28-010, 314-28-055, and 314-28-090.

Statutory Authority for Adoption: RCW 66.08.030.

Other Authority: *Blue Spirits Distilling, LLC v. WSLCB*, 15 Wn. App. 2d 779, 478 P.3d 153 (2020).

Adopted under notice filed as WSR 21-09-042 on April 14, 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 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 2.

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 3, Repealed 2.

Date Adopted: June 9, 2021.

David Postman
Chair

AMENDATORY SECTION (Amending WSR 16-01-102, filed 12/16/15, effective 1/16/16)

WAC 314-28-010 Records. (1) All distilleries licensed under RCW 66.24.140 and 66.24.145, including craft, fruit, and laboratory distillers must:

(a) Keep records regarding any spirits, whether produced or purchased, for three years after each sale(~~(--A distiller is required to report on forms approved by the liquor and cannabis board))~~);

(b) In the case of spirits exported or sold, preserve all bills of lading and other evidence of shipment;

(c) Submit duplicate copies of transcripts, notices, or other data that is required by the federal government to the (~~(liquor and cannabis))~~ board if requested, within thirty days of the notice of such request. A distiller shall also furnish copies of the bills of lading, covering all shipments of the products of the licensee, to the board within thirty days of notice of such request;

(d) Preserve all sales records to spirits retail licensees, sales to spirits distributors, and exports from the state; and

(e) Submit copies of its (~~(monthly))~~ records to the (~~(liquor and cannabis))~~ board upon request.

(2) In addition to the above, a craft distiller must:

- (a) Preserve all sales records of retail sales to consumers; and
- (b) Submit its ~~((monthly))~~ records to the ~~((liquor and cannabis))~~ board upon request.

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

WAC 314-28-055 ~~((What are the))~~ **Requirements for contract production by craft distilleries**~~((?))~~. (1) This section clarifies the language for contract production found in RCW 66.24.145. For the purposes of this section, contract production is when one craft distillery, referred to as the "contractor," produces distilled spirits for and sells contract distilled spirits to holders of distillers' or manufacturers' licenses 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) The contractee is the product owner. The contractee may handle the product under its license as RCW and WAC allow.

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

(2) 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.

(3) The contractor and contractee are required to obtain any federal approvals.

(4) Maintaining qualification as a craft distillery. Each craft distillery, whether in the capacity of a contractor or contractee, is allowed to produce one hundred fifty thousand gallons or less of total product per year. Total product, in this instance, includes:

- (a) Product owned and produced by the craft distillery;
- (b) Product owned and produced by the craft distillery for export from the state;
- (c) Product owned by the craft distillery but produced by another craft distillery;
- (d) Product produced by the craft distillery on behalf of another craft distillery;
- (e) Product produced by the craft distillery under contract for another distillery, manufacturer, or grower.

(5) ~~((Reporting and))~~ Recordkeeping.

(a) The contractor must ~~((include))~~ submit, upon request by the board, records of all product produced including contract production ~~((when it reports its monthly production to the board))~~.

(b) The contractee must ~~((include))~~ submit, upon request by the board, records of the product contract produced by another craft distillery ~~((when the contractee reports its monthly production to the board))~~.

(c) The contractor's and the contractee's recordkeeping documents must include the product information for each contract. The information must show the quantities produced.

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

WAC 314-28-090 Distilleries or craft distilleries—Requirements for selling out-of-state. ~~((What are the requirements for a craft distillery licensee to sell its spirits product outside the state of Washington?))~~

(1) A distillery or craft distillery licensee shall ~~((include, in its monthly report to))~~ provide, upon request by the board, information on the product it produces in-state and sells out-of-state. Information includes, but is not limited to, the amount of proof gallons sold, and for a craft distillery, the composition of raw materials used in production of the product.

(2) Product produced in-state and sold out-of-state counts toward a craft distillery licensee's one hundred fifty thousand proof gallons per calendar year production limit.

(3) Product produced in-state and sold out-of-state is subject to the fifty percent Washington grown raw materials requirement for a craft distillery.

~~((4) A distillery or craft distillery licensee is not subject to Washington state liquor taxes on any product the licensee sells out-of-state.))~~

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 314-28-070 Monthly reporting and payment requirements for a distiller and craft distiller.

WAC 314-28-080 What if a distillery or craft distillery licensee fails to report or pay, or reports or pays late?

WSR 21-13-032 PERMANENT RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 21-60—Filed June 10, 2021, 12:31 p.m., effective July 11, 2021]

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

Purpose: Washington department of fish and wildlife reclassified the "greater" sage-grouse as endangered in WAC 220-610-010 Wildlife classified as endangered species. The "greater" sage-grouse will move from WAC 220-200-100 Wildlife classified as protected shall not be hunted or fished, to WAC 220-610-010 Wildlife classified as endangered species. The reason we adopted the rule is to include the additional regulation and enforcement of wildlife classified as endangered identified in RCW 77.15.120 and initiate work on a recovery plan for the species according to WAC 220-610-110.

Also, in WAC 220-610-010 Wildlife classified as endangered species, administrative changes such as capitalization to species names are made for consistency.

Citation of Rules Affected by this Order: Amending WAC 220-200-100 Wildlife classified as protected shall not

be hunted or fished and 220-610-010 Wildlife classified as endangered species.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.055, 77.12.047, and 77.12.240.

Adopted under notice filed as WSR 21-05-038 on February 11, 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 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: June 10, 2021.

Larry Carpenter, Chair
Fish and Wildlife Commission

AMENDATORY SECTION (Amending WSR 18-17-153, filed 8/21/18, effective 9/21/18)

WAC 220-200-100 Wildlife classified as protected shall not be hunted or fished. Protected wildlife are designated into three subcategories: Threatened, sensitive, and other.

(1) Threatened species are any wildlife species native to the state of Washington that are likely to become endangered within the foreseeable future throughout a significant portion of their range within the state without cooperative management or removal of threats. Protected wildlife designated as threatened include:

Common Name	Scientific Name
western gray squirrel	<i>Sciurus griseus</i>
sea otter	<i>Enhydra lutris</i>
ferruginous hawk	<i>Buteo regalis</i>
green sea turtle	<i>Chelonia mydas</i>
((greater sage grouse	<i>Centrocercus urophasianus</i>
Mazama pocket gopher	<i>Thomomys mazama</i>
American white pelican	<i>Pelecanus erythrorhynchos</i>

(2) Sensitive species are any wildlife species native to the state of Washington that are vulnerable or declining and are likely to become endangered or threatened in a significant portion of their range within the state without cooperative management or removal of threats. Protected wildlife designated as sensitive include:

Common Name	Scientific Name
Gray whale	<i>Eschrichtius robustus</i>
Common Loon	<i>Gavia immer</i>
Larch Mountain salamander	<i>Plethodon larselli</i>
Pygmy whitefish	<i>Prosopium coulteri</i>
Margined sculpin	<i>Cottus marginatus</i>
Olympic mudminnow	<i>Novumbra hubbsi</i>

(3) Other protected wildlife include:

Common Name	Scientific Name
cony or pika	<i>Ochotona princeps</i>
least chipmunk	<i>Tamias minimus</i>
yellow-pine chipmunk	<i>Tamias amoenus</i>
Townsend's chipmunk	<i>Tamias townsendii</i>
red-tailed chipmunk	<i>Tamias ruficaudus</i>
hoary marmot	<i>Marmota caligata</i>
Olympic marmot	<i>Marmota olympus</i>
Cascade golden-mantled ground squirrel	<i>Callospermophilus saturatus</i>
golden-mantled ground squirrel	<i>Callospermophilus lateralis</i>
Washington ground squirrel	<i>Urocitellus washingtoni</i>
red squirrel	<i>Tamiasciurus hudsonicus</i>
Douglas squirrel	<i>Tamiasciurus douglasii</i>
northern flying squirrel	<i>Glaucomys sabrinus</i>
Humboldt's flying squirrel	<i>Glaucomys oregonensis</i>
wolverine	<i>Gulo gulo</i>
painted turtle	<i>Chrysemys picta</i>
California mountain kingsnake	<i>Lampropeltis zonata</i>

All birds not classified as game birds, predatory birds or endangered species, or designated as threatened species or sensitive species; all bats, except when found in or immediately adjacent to a dwelling or other occupied building; mammals of the order *Cetacea*, including whales, porpoises, and mammals of the order *Pinnipedia* not otherwise classified as endangered species, or designated as threatened species or sensitive species. This section shall not apply to hair seals and sea lions which are threatening to damage or are damaging commercial fishing gear being utilized in a lawful manner or when said mammals are damaging or threatening to damage commercial fish being lawfully taken with commercial gear.

AMENDATORY SECTION (Amending WSR 21-07-019, filed 3/5/21, effective 4/5/21)

WAC 220-610-010 Wildlife classified as endangered species. Endangered species include:

Common Name	Scientific Name
Oregon vesper sparrow	<i>Poocetes gramineus affinis</i>
pygmy rabbit	<i>Brachylagus idahoensis</i>
fisher	<i>Pekania pennanti</i>
gray wolf	<i>Canis lupus</i>
grizzly bear	<i>Ursus arctos</i>
killer whale	<i>Orcinus orca</i>
sei whale	<i>Balaenoptera borealis</i>
fin whale	<i>Balaenoptera physalus</i>
blue whale	<i>Balaenoptera musculus</i>
humpback whale	<i>Megaptera novaeangliae</i>
North Pacific right whale	<i>Eubalaena japonica</i>
sperm whale	<i>Physeter macrocephalus</i>
Columbian white-tailed deer	<i>Odocoileus virginianus leucurus</i>
woodland caribou	<i>Rangifer tarandus caribou</i>
Columbian sharp-tailed grouse	<i>Tympanuchus phasianellus columbianus</i>
sandhill crane	<i>Grus canadensis</i>
snowy plover	<i>Charadrius nivosus</i>
upland sandpiper	<i>Bartramia longicauda</i>
spotted owl	<i>Strix occidentalis</i>
western pond turtle	<i>Clemmys marmorata</i>
leatherback sea turtle	<i>Dermodochelys coriacea</i>
mardon skipper	<i>Polites mardon</i>
Oregon silverspot butterfly	<i>Speyeria zerene hippolyta</i>
Oregon spotted frog	<i>Rana pretiosa</i>
northern leopard frog	<i>Rana pipiens</i>
Taylor's checkerspot	<i>Euphydryas editha taylora</i>
Streaked horned lark	<i>Eremophila alpestris strigata</i>
Tufted puffin	<i>Fraterecula cirrhata</i>
North American lynx	<i>Lynx canadensis</i>
marbled murrelet	<i>Brachyramphus marmoratus</i>
Loggerhead sea turtle	<i>Caretta caretta</i>
Yellow-billed cuckoo	<i>Coccyzus americanus</i>
Pinto abalone	<i>Haliotis kamschatkana</i>
<u>Greater sage grouse</u>	<u><i>Centrocercus urophasianus</i></u>

WSR 21-13-039
PERMANENT RULES
NORTHWEST CLEAN
AIR AGENCY

[Filed June 10, 2021, 4:21 p.m., effective July 11, 2021]

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

Purpose: Update the effective date for external rules that are adopted by reference in Northwest Clean Air Agency (NWCAA) Section 104 to allow NWCAA to implement the most recent version of the referenced state and federal rules.

Citation of Rules Affected by this Order: Amending Section 104 of the Regulation of the NWCAA.

Statutory Authority for Adoption: Chapter 70A.15 RCW.

Adopted under notice filed as WSR 21-09-074 on April 20, 2021.

Date Adopted: June 10, 2021.

Mark Buford
 Executive Director

SECTION 104 - ADOPTION OF STATE AND FEDERAL LAWS AND RULES

104.1 All provisions of the following state rules that are in effect as of April 21, 2021 (~~February 19, 2020~~) are hereby adopted by reference and made part of the Regulation of the NWCAA: chapter 173-400 WAC, (except -025, -030, -035, -036, -040 (1) & (7), -045, -075, -099, -100, -101, -102, -103, -104, -105(7), -110, -114, -115, -116, -171, -930), chapter 173-401 WAC, chapter 173-407 WAC, chapter 173-420 WAC, chapter 173-425 WAC, chapter 173-430 WAC, chapter 173-433 WAC, chapter 173-434 WAC, chapter 173-435 WAC, chapter 173-441 WAC, chapter 173-442 WAC, chapter 173-450 WAC, chapter 173-460 WAC, chapter 173-476 WAC, chapter 173-480 WAC, chapter 173-481 WAC, chapter 173-485 WAC, chapter 173-491 WAC. The requirements of the NWCAA Regulation apply in addition to the state-wide regulations adopted and enforced under this paragraph.

104.2 All provisions of the following federal rules that are in effect as of April 21, 2021 (~~February 19, 2020~~) are hereby adopted by reference and made part of the Regulation of the NWCAA: 40 CFR Part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans) Appendix M; 40 CFR Part 60 (Standards of Performance For New Stationary Sources) subparts A, D, Da, Db, Dc, E, Ea, Eb, Ec, F, G, Ga, H, I, J, Ja, K, Ka, Kb, L, M, N, Na, O, P, Q, R, T, U, V, W, X, Y, Z, AA, AAa, CC, DD, EE, GG, HH, KK, LL, MM, NN, PP, QQ, RR, SS, TT, UU, VV, VVa, WW, XX, AAA, BBB, DDD, FFF, GGG, GGGa, HHH, III, JJJ, KKK, LLL, NNN, OOO, PPP, QQQ, RRR, SSS, TTT, UUU, VVV, WWW, XXX, AAAA, CCCC, EEEE, IIII, JJJJ, KKKK, LLLL, OOOO, OOOOa, QQQQ, and Appendix A - I; 40 CFR Part 61 (National Emission Standards For Hazardous Air Pollutants) Subparts A, C, D, E, F, J, L, M, N, O, P, V, Y, BB, FF; 40 CFR Part 62 (Approval and Promulgation of State Plans for Designated Facilities and Pollutants) Subpart LLL; 40 CFR Part 63 (National Emission Standards for Hazardous Air Pollutants for Source Categories) Subparts A, B, C, D, F, G, H, I, L, M, N, O, Q, R, T, U, W, X, Y, AA, BB,

CC, DD, EE, GG, HH, II, JJ, KK, OO, PP, QQ, RR, SS, TT, UU, VV, WW, XX, YY, CCC, DDD, EEE, GGG, HHH, III, JJJ, LLL, MMM, NNN, OOO, PPP, QQQ, TTT, UUU, VVV, XXX, AAAA, CCCC, DDDD, EEEE, FFFF, GGGG, HHHH, IIII, JJJJ, KKKK, MMMM, NNNN, OOOO, PPPP, QQQQ, RRRR, SSSS, TTTT, UUUU, VVVV, WWWW, XXXX, YYYY, ZZZZ, AAAAA, BBBB, CCCC, DDDDD, EEEEE, FFFFF, GGGGG, HHHHH, IIII, LLLLL, MMMMM, NNNNN, PPPPP, QQQQQ, RRRRR, SSSSS, TTTTT, UUUUU, WWWW, YYYYY, ZZZZ, BBBBB, CCCCC, EEEEE, FFFFF, GGGGG, HHHH, JJJJJ, MMMMM, NNNNN, QQQQQ, SSSSS, TTTTT, VVVVV, WWWW, XXXXX, ZZZZ, AAAAAA, DDDDDDD, EEEEEEE, and HHHHHHH; and 40 CFR Parts 72, 73, 74, 75, 76, 77 and 78 (Acid Rain Program).

PASSED: July 8, 1970 AMENDED: April 14, 1993, September 8, 1993, December 8, 1993, October 13, 1994, May 11, 1995, February 8, 1996, May 9, 1996, March 13, 1997, May 14, 1998, November 12, 1998, November 12, 1999, June 14, 2001, July 10, 2003, July 14, 2005, November 8, 2007, June 10, 2010, June 9, 2011, November 17, 2011, August 9, 2012, March 14, 2013, September 11, 2014, August 13, 2015, August 11, 2016, September 13, 2018, April 11, 2019, April 9, 2020, June 10, 2021

WSR 21-13-041
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed June 10, 2021, 4:27 p.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: According to RCW 34.05.380 (3)(a) an agency can have an adopted rule effective earlier than the standard thirty day effective date established by RCW 34.05.380(2) if such action is required by state law. SB 6170 passed by the legislature in 2020 required the department of labor and industries (L&I) to license plumbing contractors starting July 1, 2021. The rules must become effective by July 1, 2021, in order for L&I to meet its statutory obligation. The adoption of the rule was delayed due to the need to evaluate stakeholder feedback on elements of the proposed rule.

Purpose: In the 2020 legislative session, SB 6170 was adopted and became law that created a new plumbing contractor license among other necessary changes to the plumber statute chapter 18.106 RCW. SB 6170 was the result of the entire industry working together for several years. These rules are necessary to create the framework for how people can become licensed as plumbing contractors. The integrity of the existing law is maintained while ensuring that qualified workers are put in people's homes.

Citation of Rules Affected by this Order: New WAC 296-400A-011, 296-400A-012, 296-400A-013, 296-400A-014, 296-400A-015, 296-400A-016, 296-400A-017, 296-400A-018, 296-400A-019, 296-400A-165, 296-400A-170

and 296-400A-175; and amending WAC 296-400A-005, 296-400A-010, 296-400A-022, 296-400A-024, 296-400A-045, 296-400A-110, 296-400A-120, 296-400A-121, 296-400A-130, 296-400A-150, 296-400A-155, 296-400A-300, 296-400A-400, and 296-400A-430.

Statutory Authority for Adoption: Chapter 153, Laws of 2020, SB 6170.

Adopted under notice filed as WSR 21-09-087 on April 21, 2021.

Changes Other than Editing from Proposed to Adopted Version: WAC 296-400A-005 What definitions do I need to know to understand these rules?

- Removed "including multipurpose or passive purge fire sprinkler systems["] from the definition of "plumbing."
- Removed the definition of "residential service" and added definitions from RCW 18.106.010 for "residential service plumber" and "residential structure."

WAC 296-400A-010 Plumbing certificate types and scope of work.

- Added "residential structures" to the scope of residential specialty plumbers, replacing "single-family dwellings, duplexes and apartment buildings which do not exceed three stories."
- Clarified subsection (3) to state that residential service plumbers may not perform electrical work described in RCW 19.28.091(8) that is incidentally, directly, and immediately appropriate to the like-in-kind replacement of household appliance or other small household utilization equipment that requires limited electric power and limited waste and/or water connections.
- Moved language under subsection (3) regarding the restriction on unsupervised or remote trainees doing like-in kind electrical replacement to subsection (7) and clarified to state that a trainee performing electrical work described in RCW 19.28.091(8) that is incidentally, directly, and immediately appropriate to the like-in-kind replacement of household appliances or other small household utilization equipment that requires limited electric power and limited waste and/or water connections must be supervised by a journey level plumber (PL01) or residential specialty plumber (PL02). In accordance with RCW 19.28.161(3), the trainee performing electrical work must be under the direct supervision of a PL01 or PL02 certified plumber who is on the same job site as the trainee and remote supervision or supervision by residential service plumbers is not permitted.

WAC 296-400A-011 How does a plumbing contractor become licensed, renew, and reinstate their license?

- Added subsections (a)(i) and (ii) to reflect that a plumbing contractor must assign a journey level plumber or specialty plumber as their designated plumber to meet the requirement of RCW 18.106.400(4). This change is necessary to ensure the conditions of licensure to employ a full-time journey level plumber or specialty plumber as required under RCW 18.106.400(4) are met at the time of application.

- Added subsection (6) to add a plumbing contractor license implementation and transition for registered contractors under chapter 18.27 RCW to state that existing registered general contractor or registered plumbing specialty contractor under chapter 18.27 RCW who submit completed applications for plumbing contractor licenses to the department by September 1, 2021, are considered to be in compliance with this chapter until the department reviews the application. Upon review, department decisions on applications under WAC 296-400A-014 are applicable.

WAC 296-400A-015 What requirements must be met if a plumbing contractor changes its business structure, address, or designated plumber.

- Updated the title of the WAC section to make clear there are additions to the section regarding what a plumber contractor must do when changing a designated plumber.
- Subsection (1) added language that a change in the designated plumber that would change the scope of work the contractor can perform is included as an example of what the department considers a business structure change. This type of change requires the plumbing contractor to submit a new application and fee. This change is necessary to ensure the conditions of licensure to employ a full-time journey level plumber or specialty plumber as required under RCW 18.106.400(4) continue to be met.
- Added a subsection (2) to make clear what steps must be followed when a plumbing contractor wants or needs to change their designated plumber and it doesn't involve changing the scope or work the plumbing contractor is allowed to perform. This change is necessary to ensure the conditions of licensure to employ a full-time journey level plumber or specialty plumber as required under RCW 18.106.400(4) continue to be met. This requires plumbing contractors to submit a form and associated fee.
- The remainder of the section was renumbered.

WAC 296-400A-028 What are the requirements for continuing education and classroom training?

- This section was inadvertently repealed in the proposed rule, and has been added back in by removing the "repealer" language at the bottom of the draft.

WAC 296-400A-045 What fees does the department charge for issuance, renewal, relicensing, and reinstatement of a plumbing contractor license and plumbing certificates?

- Added the fee amount for initial identification or change in designated plumber of a designated plumber for purposes of licensure and meeting the requirement in RCW 18.106.400(4) consistent with the changes to under WAC 296-400A-011 and 296-400A-015.

WAC 296-400A-120 What do I need to know about plumber trainee certificates?

- Subsections (3)(a)(ii)(A) - (C) were updated to reflect the exact language in RCW 18.106.070(4) which outlines the ratios of trainees to plumbers on a jobsite. This resulted in bringing the RCW language into the WAC

and adding subsection (3)(a)(iii) to ensure the seventy-five percent of supervision takes place on each and every jobsite which is a current requirement.

- Subsection (3)(b) was updated to "after December 31, 2021" rather than "until December 31, 2025" to match the language in RCW 18.106.070 (4)(b).
- Removed the word "not" from subsection (4)(c), which was inadvertently included to the language updates clarifying that plumber hour reporting must be submitted within thirty days after the renewal date of a plumbing training certificate.

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 12, Amended 14, 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 12, Amended 14, Repealed 0.

Date Adopted: June 10, 2021.

Joel Sacks
Director

AMENDATORY SECTION (Amending WSR 20-16-141, filed 8/4/20, effective 8/4/20)

WAC 296-400A-005 What definitions do I need to know to understand these rules? Unless a different meaning is clearly required by the context, the following terms and definitions are important:

"Administrative law judge (ALJ)" is a person appointed by the chief administrative law judge pursuant to chapter 34.12 RCW to conduct or preside over hearings convened under chapter 18.106 RCW and this chapter.

"Advisory board" is the state advisory board of plumbers.

"Appeal bond" is a certified check in the amount prescribed under RCW 18.106.200 made payable to the Washington state department of labor and industries.

"Appeal hearing" is any proceeding in which an administrative law judge is empowered to determine legal rights, duties, or privileges of specific parties on behalf of the director.

"Applicant" is any person, firm, corporation or other entity applying to become a licensed plumbing contractor according to chapter 18.106 RCW and this chapter. Applicant includes all principal officer(s), members, partners of a partnership, firm, corporation, or other entity named on the application.

"Assist" means a friend, neighbor, or other person (including a certified plumber) may assist a householder, at his or her residence, in the performance of plumbing work on

the condition that the householder is present when the work is performed and the person assisting the householder does not accept money or other forms of compensation for the volunteer work. For the purposes of this subsection, a residence is a single-family residence.

"Audit" means an assessment, evaluation, examination or investigation of, plumbing contractor's accounts, books and records for the purpose of verifying the plumbing contractor's compliance with RCW 18.106.320.

"Backflow assembly" or "backflow prevention assembly" or "backflow preventer" is a device as described in the *Uniform Plumbing Code* used to prevent the undesired reversal of flow of water or other substances through a cross-connection into the public water system or consumer's potable water system.

"Backflow assembly tester" is an individual certified by the department of health to perform tests to backflow assemblies.

"Calendar day" means each day of the week, including weekends and holidays.

"Continuing education" is approved plumbing and electrical courses for journey level, domestic pump specialty plumbers, and residential specialty plumbers, to meet the requirements to maintain their plumbing certification and for trainees or individuals to become certified plumbers in Washington.

"Continuing education course provider" is an entity approved by the department, in consultation with the state advisory board of plumbers, to provide continuing education training for journey level, domestic pump specialty plumbers, residential specialty plumbers, and trainees. All training course providers must comply with the requirements in WAC 296-400A-028.

"Continuity affidavit" is a form developed by the department that is used to verify whether medical gas pipe installation work (brazing process) has been performed biannually. This form is provided to the department at the time of renewal by the person holding the medical gas piping installer endorsement and requires the notarized signature of the employer of the medical gas piping installer or another qualified verifier as determined by the department. Continuity is a visual examination by the employer of the brazing that was performed. The medical gas installer must also review the current medical gas code and sign the affidavit stating that they have done so.

~~(**"Contractor"** means any person, corporate or otherwise, who engages in, or offers or advertises to engage in, any work covered by the provisions of chapter 18.106 RCW by way of trade or business, or any person, corporate or otherwise, who employs anyone, or offers or advertises to employ anyone, to engage in any work covered by the provisions of chapter 18.106 RCW and is registered as a contractor under chapter 18.27 RCW.)~~

"Control" means that the journey level plumber, specialty plumber, or temporary permit plumber is physically on-site at the start of each day and each and every job site to diagnose, direct, and lay out the plumbing work the trainee is to perform.

"Course of study" means classroom training and practical work experience in the plumbing industry as defined in WAC 296-400A-100.

"Department" is the department of labor and industries.

"Director" is the director of the department of labor and industries or designee.

"Dispatcher" means the contractor's employee who authorized the work assignment of the person employed in violation of chapter 18.106 RCW.

"Final judgment" means any money that is owed to a claimant as a result of court action against or settlement with a plumbing contractor and/or plumbing contractor's bond or assigned savings account with the department or any money that is owed the department as a result of a plumbing contractor's unsuccessful appeal of an infraction. Final judgment also includes any penalties assessed against the plumbing contractor and owed the department as a result of an infraction or notice of correction that has not been appealed, final tax warrants or any delinquent fees or penalties due.

"Journey level plumber" is anyone who has learned the commercial plumbing trade and has been issued a journey level certificate of competency by the department. A journey level plumber may work on plumbing projects including residential, commercial and industrial worksite locations.

"Medical gas piping installer" is anyone who has been issued a medical gas piping installer endorsement of competency by the department.

"Medical gas piping systems" are piping systems that convey or involve oxygen, nitrous oxide, high pressure nitrogen, medical compressed air, and other medical gas or equipment including, but not limited to, medical vacuum systems.

"Multiunit" is a multi-single family residence contained in a building or group of buildings that do not exceed three stories on any portion of the building.

"Plumbing" is that craft involved in installing, altering, repairing and renovating potable water systems, liquid waste systems and medical gas piping systems in the footprint of a building. Potable water systems, liquid waste systems, and medical gas piping systems are defined by the current *Uniform Plumbing Code* (UPC) and amendments adopted by the state building code council. All piping, fixtures, pumps and plumbing appurtenances that are used for rain water catchment and a reclaimed water system are included in the definition of liquid waste systems.

"Plumbing contractor" means any person, corporate or otherwise, who engages in, or offers or advertises to engage in, any plumbing work covered by the provisions of this chapter by way of trade or business, or any person, corporate or otherwise, who employs anyone, or offers or advertises to employ anyone, to engage in any plumbing work as defined in this section. The plumbing contractor is responsible for ensuring the plumbing business is operated in accordance with rules adopted under this chapter.

"Records" include, but are not limited to, all bids, invoices, billing receipts, time cards and payroll records that show the work was performed, advertised, or bid.

~~(**"Residential service"** is limited to performing residential service in single family dwellings and duplexes and can only repair or replace previously existing fixtures, piping,~~

and fittings that are outside the interior wall or above the floor:))

"Reinstatement" or **"reinstated"** means the reinstatement of a plumbing contractor's license after the license has expired, or has been suspended, or been revoked.

"Relicense" means an update to a plumbing contractor's license because of business structure change or name change.

"Renewal" or **"renewed"** means the renewal of a plumbing contractor's license before it expires.

"Residential service plumber" means anyone who has been issued a certificate of competency limited to performing residential service plumbing in an existing residential structure.

(a) In single-family dwellings and duplexes only, a residential service plumber may service, repair, or replace previously existing fixtures, piping, and fittings that are outside the interior wall or above the floor, often, but not necessarily in a like-in-kind manner. In any residential structure, a residential service plumber may perform plumbing work as needed to perform drain cleaning and may perform leak repairs on any pipe, fitting, or fixture from the leak to the next serviceable connection.

(b) A residential service plumber may directly supervise plumber trainees provided the trainees have been supervised by an appropriate journey level or specialty plumber for the trainees' first two thousand hours of training.

"Residential structure" means single-family dwellings, duplexes, and multiunit buildings that do not exceed three stories.

"Secured contractor" is a plumbing contractor who has complied with RCW 18.106.410 by assigning to the department a savings account held in a Washington state bank, or by filing with the department a surety bond.

"Security" is a savings account held in a Washington state branch of a financial institution and assigned to the department in lieu of a surety bond.

"Specialty plumber" is anyone who has been issued a specialty plumbers certificate of competency by the department limited to:

(a) Installation, maintenance and repair of plumbing for single-family dwellings, duplexes and apartment buildings which do not exceed three stories;

(b) Maintenance and repair of backflow assemblies located within a residential or commercial building or structure. For the purposes of this subsection, "maintenance and repair" includes cleaning and replacing internal parts of an assembly, but does not include installing or replacing backflow assemblies.

(c) "Domestic pump specialty" means the installation, maintenance, and repair of a domestic water pumping system consisting of the pressurization, treatment, and filtration components of a domestic water system consisting of: One or more pumps; pressure, storage, and other tanks; filtration and treatment equipment; if appropriate, a pitless adapter; along with valves, transducers, and other plumbing components that:

(i) Are used to acquire, treat, store, or move water suitable for either drinking or other domestic purposes, including irrigation, to:

(A) A single-family dwelling, duplex, or other similar place of residence;

(B) A public water system, as defined in RCW 70.119.020 and as limited under RCW 70.119.040; or

(C) A farm owned and operated by a person whose primary residence is located within thirty miles of any part of the farm;

(ii) Are located within the interior space including, but not limited to, an attic, basement, crawl space, or garage, of a residential structure, which space is separated from the living area of the residence by a lockable entrance and fixed walls, ceiling, or floor;

(iii) If located within the interior space of a residential structure, are connected to a plumbing distribution system supplied and installed into the interior space by either:

(A) A person who, pursuant to RCW 18.106.070 or 18.106.090, possesses a valid temporary permit or certificate of competency as a journey level plumber, specialty plumber, or trainee, as defined in this chapter; or

(B) A person exempt from the requirement to obtain a certified plumber to do such plumbing work under RCW 18.106.150.

For the purposes of the domestic pump specialty, residential structure includes any improvement to real property where that property is primarily used as a residence.

"Story" ((is) as defined by the ((current)) Washington state adopted building codes and amendments ((adopted by the state building code council which)). Also includes basements or garages.

"Supervision" for the purpose of these rules means within sight and sound. Supervision requirements are met when the supervising plumber is on the premises and within sight and sound of the individual who is being trained. "Exception" for remote service trainee supervision available via mobile phone or a similar device on a residential structure and meeting all other requirements under RCW 18.106.070 and the requirements for service plumbing under RCW 18.106.010.

"Trainee plumber" is anyone who has been issued a trainee certificate and is learning or being trained in the plumbing trade with direct supervision of either a journey level plumber or specialty plumber working in their specialty.

"Training course provider" is an entity approved by the department, in consultation with the state advisory board of plumbers, to provide medical gas piping installer training. All training course providers must comply with the requirements in WAC 296-400A-026.

AMENDATORY SECTION (Amending WSR 20-16-141, filed 8/4/20, effective 8/4/20)

WAC 296-400A-010 Plumbing certificate types and scope of work. (1) **Journey level plumber (PL01):** A journey level plumber may work on all phases of plumbing projects including residential, commercial and industrial worksite locations.

(2) **Residential specialty plumber (PL02):** Installation, maintenance and repair of all phases of plumbing for ((single family dwellings, duplexes and apartment buildings which do not exceed three stories)) residential structures.

(3) "**Residential service plumber (PL04)**" is limited to performing residential service in single-family dwellings and duplexes and can only repair or replace previously existing fixtures, piping, and fittings that are outside the interior wall or above the floor. (~~Does not include like-in-kind replacement of household appliances or other small utilization equipment that requires limited electric power and limited waste and/or water connections~~) Residential service plumbers may not perform electrical work described in RCW 19.28.091(8) that is incidentally, directly, and immediately appropriate to the like-in-kind replacement of household appliance or other small household utilization equipment that requires limited electric power and limited waste and/or water connections.

(4) **Backflow specialty plumber (PL30)**: Maintenance and repair of backflow assemblies located within a residential or commercial building or structure. For the purposes of this subsection, "maintenance and repair" includes cleaning and replacing internal parts of an assembly, but does not include installing or replacing backflow assemblies. A plumber trainee must have a PT31 certificate in order to work as a backflow specialty plumber under the supervision of a certified backflow specialty plumber, certified residential specialty plumber or certified journey level plumber. PT31 trainee requires one hundred percent supervision.

(5) **Pump and irrigation specialty plumber (PL03)**: Installation, maintenance and repair of equipment that is used to acquire, treat, store, or move water suitable for either drinking or other domestic purposes, including irrigation or to a domestic water pumping system consisting of the pressurization, treatment, and filtration components of a domestic water system consisting of: One or more pumps; pressure, storage, and other tanks; filtration and treatment equipment. For the purposes of this subsection, if located within the interior space of a residential structure as stated in RCW 18.106.010 (14)(c), only the equipment and piping defined by RCW 18.106.010 (14)(c) are included in this specialty and other parts of the system must be worked on by the appropriate certification.

(6) **Limited volume domestic pump specialty plumber (PL03A)**: Installation, maintenance and repair of equipment that is used to acquire, treat, store, or move water suitable for either drinking or other domestic purposes on pumping systems not exceeding one hundred gallons per minute. A domestic water pumping system consisting of the pressurization, treatment, and filtration components of a domestic water system consisting of: One or more pumps; pressure, storage, and other tanks; filtration and treatment equipment. For the purposes of this subsection, if located within the interior space of a residential structure as stated in RCW 18.106.010 (14)(c), only the equipment and piping to stated equipment in this locked room can be worked on by this certification; other parts of the system must be worked on by the appropriate certification.

(7) **Plumber trainee (PT00 and PT31)**: Is an individual learning the trade or craft of plumbing. Trainees are required to have and maintain a valid plumber's training certificate. Trainees will be accredited for those hours worked within the scope of their supervising plumber. Any plumber trainee may perform plumbing work within the scope of their supervising

journey level or specialty plumber. A trainee must keep a record of the hours worked as a trainee as required by WAC 296-400A-120(3). A trainee performing electrical work described in RCW 19.28.091(8) that is incidentally, directly, and immediately appropriate to the like-in-kind replacement of household appliances or other small household utilization equipment that requires limited electric power and limited waste and/or water connections must be supervised by a journey level plumber (PL01) or residential specialty plumber (PL02). In accordance with RCW 19.28.161(3), the trainee performing electrical work must be under the direct supervision of a PL01 or PL02 certified plumber who is on the same job site as the trainee and remote supervision or supervision by residential service plumbers is not permitted.

(8) **Certified journey level electricians, certified residential specialty electricians, or electrical trainees (EL01 and EL02)**: According to RCW 18.106.150 (2)(b), a current plumbing certificate of competency or plumber trainee card is not required for: Certified journey level electricians, certified residential specialty electricians, or electrical trainees working for a general or residential specialty electrical contractor (EC01 or EC02) and performing exempt work under RCW (~~18.27.090(18)~~) 18.106.150(8). A plumber trainee must have an electrical trainee (ET00) certificate in order to work with a journey level electrician or residential specialty electrician.

The plumbing work must be directly and immediately appropriate to the like-in-kind replacement of a household fixture or its component(s) that requires limited power and waste/water connections.

An example would be replacing the heating element (a component) of an electric hot water heater. An electrician performing a like-in-kind replacement of an electric hot water tank could only disconnect and then reconnect the water supply lines to the tank and drain line from the temperature and pressure relief valve. Gas hot water tanks are not part of the electrician's exemption.

NEW SECTION

WAC 296-400A-011 How does a plumbing contractor become licensed, renew, and reinstate their license?

(1) A plumbing contractor may license/renew/relicense/reinstate if it:

(a) Completes an application for plumbing contractor licensing, have it notarized, and submit it to the department as required by RCW 18.106.400;

(i) Each applicant for a plumbing contractor's license shall identify the full-time employee or member of the firm, who currently possesses a valid journey level plumber's certificate of competency or specialty plumber's certificate of competency, as the plumbing contractor's designated certified plumber.

(ii) The designated plumber's certificate will define the journey level (general) or specialty scope of work allowed to be performed by the plumbing contractor per RCW 18.106.400 and 18.106.430;

(b) Satisfies one of the following:

(i) Obtains a continuous surety bond in the total amount specified in WAC 296-400A-012 and submits the original

bond to the department or submits the bond information through the department of labor and industries' electronic bond and insurance policy system (EBIPS) (see RCW 18.106.410); or

(ii) Assigns, to the department, a security deposit in the form of a savings account held in a Washington state bank on a department issued form in the amounts specified in WAC 296-400A-012;

(c) Obtains public liability and property damage insurance and submits the original insurance certificate to the department or submits the insurance information through the department of labor and industries' electronic bond and insurance policy system (EBIPS) (see RCW 18.106.420); and

(d) Pays the issuance/renewal/relicensing/reinstatement fee shown in WAC 296-400A-045.

(2) A plumbing contractor may renew its license if it submits, to the department, a completed plumbing contractor license renewal notice and the material required in subsection (1)(b) and (c) of this section and pays the renewal fee shown in WAC 296-400A-045. No more than forty-five days before the plumbing contractor's license expires, the department must send a renewal notice to the plumbing contractor's last recorded address with the plumbing contractor licensing program. It is the responsibility of the plumbing contractor to notify the department within ten days and in writing of a change in address.

(3) The plumbing contractor must submit all required documents to the department in a manner approved by the department as set forth in this subsection:

(a) Include, on each document, the name exactly as it appears on the plumbing contractor license application or renewal notice;

(b) Include, if renewing a license, the plumbing contractor's license number on each of the documents;

(c) Include a copy of the certificate or document (when required) by the secretary of state for the contractor to do business in the state of Washington; and

(d) Have and maintain an active and valid unified business identifier (certificate of registration) with the department of revenue.

(4) The department will not license, renew, or reinstate the license of a plumbing contractor if:

(a) Any of the required documents are missing, false, or are incomplete;

(b) The documents do not have the legal name of the plumbing contractor as documented on official governmental issued photo identification;

(c) In the case of a renewal, the documents do not include the license number or UBI number; or

(d) The applicant or person pursuant to RCW 18.106.400 has an unsatisfied final judgment based on work which is subject to chapter 18.106 RCW and this chapter.

(5) The plumbing contractor may request, in a letter filed with the application or renewal materials, that the license period end on a particular day. However, the license period cannot exceed two years.

(6) Plumbing contractor license implementation and transition for registered contractors under chapter 18.27 RCW. Any existing registered general contractor or registered plumbing specialty contractor under chapter 18.27

RCW who submit completed applications for plumbing contractor licenses to the department by September 1, 2021, are considered to be in compliance with this chapter until the department reviews the application. Upon review, department decisions on applications under WAC 296-400A-014 are applicable.

NEW SECTION

WAC 296-400A-012 How much are the surety bond or savings account amounts? (1) The continuous surety bond or savings account amounts for applicants of plumbing contractor license: Six thousand dollars for the plumbing contractor license.

(2) The surety bond or savings account amounts for applicants of plumbing contractors with final judgments involving a residential single-family dwelling in the previous five years can be required a bond up to three times the normal amount: Per RCW 18.106.410(11).

Final Judgments	Bond or Savings Account Amount per Registration Cycle
Up to 3	\$18,000.00

(3) At the time of relicensing, renewal, or reinstatement the department shall only consider final judgments from the previous five years which will be used to determine the bond or savings account amount according to subsection (2) of this section.

(4) A plumbing contractor's required bond or savings account amount may only be reviewed for reduction to a lower level at their next regular renewal. The increased bond requirement must remain in effect during the entire license cycle even if reinstatement or relicensing occurs.

(5) For purposes of this section, final judgment does not include infractions.

NEW SECTION

WAC 296-400A-013 What can cause the suspension of a plumbing contractor's license? (1) A plumbing contractor's license will be suspended if the following impairments, cancellations, noncompliance, or errors occur:

(a) A surety bond or other security has an unsatisfied final judgment against it or becomes otherwise impaired.

(b) A surety bond is canceled.

(c) An insurance policy on file is expired, canceled, revoked, or the insurer is withdrawn from the insurance policy.

(d) The plumbing contractor has an unsatisfied final judgment against it under chapter 18.106 RCW and this chapter.

(e) The department has notice that the plumbing contractor is a sole proprietor or an owner, principal, or officer of a licensed plumbing contractor that has an unsatisfied final judgment against it for work within the scope of chapter 18.106 RCW and this chapter.

(f) The department finds that the plumbing contractor has provided false or misleading information or has otherwise been licensed in error.

(g) The plumbing contractor fails to comply with a penalty payment plan agreement.

(h) The plumbing contractor has been certified by a lending agency and reported to the department for nonpayment or default on a federally or state-guaranteed educational loan or service conditional scholarship.

(i) The plumbing contractor does not maintain an active and valid unified business identifier number with the department of revenue.

(j) The plumbing contractor does not provide the department with updated information or forms as necessary to validate their information.

(2) The plumbing contractor's license will be automatically suspended on the effective date of the impairment or cancellation. The department must mail a notice of the suspension to the plumbing contractor's last recorded address with the plumbing contractor licensing program within two days after suspension.

(3) A plumbing contractor must not advertise, offer to do work, submit a bid, or perform any work as a plumbing contractor while its license is suspended. To continue to operate as a plumbing contractor while its license is suspended is a violation of chapter 18.106 RCW and subject to infractions.

(4) The department shall not deny an application or suspend a license because of an unsatisfied final judgment if the applicant's or licensee's unsatisfied final judgment was determined by the director to be the result of the fraud or negligence of another party.

NEW SECTION

WAC 296-400A-014 When will the department deny an application for licensure, renewal, or reinstatement? The department shall deny an application for licensure, renewal, or reinstatement if:

(1) The applicant does not submit the required documents on the forms required by the department.

(2) The documents are false or incomplete.

(3) The documents do not have the legal name of the plumbing contractor as documented on official governmental issued photo identification.

(4) The applicant does not have a valid unified business identifier number, if required by the department of revenue.

(5) The applicant has been previously performing work subject to this chapter as a sole proprietor, partnership, corporation, or other entity and the department has notice that the applicant has an unsatisfied final judgment against him or her in an action based on this chapter or the applicant owes the department money for penalties assessed or fees due under this chapter as a result of a final judgment.

(6) The applicant was an owner, principal, or officer of a partnership, corporation, or other entity that either has an unsatisfied final judgment against it in an action that was incurred for work performed subject to this chapter or owes the department money for penalties assessed or fees due under this chapter as a result of a final judgment.

(7) The applicant has not complied with a department of social and health services support enforcement division support enforcement order.

(8) The plumbing contractor does not employ a full-time individual who currently possesses a valid journey level plumber's certificate of competency or specialty plumber's certificate of competency in the specialty for the scope of work performed.

NEW SECTION

WAC 296-400A-015 What requirements must be met if a plumbing contractor changes its business structure, name, address, or designated plumber? (1) If a plumbing contractor changes its business structure (for example, from a partnership to a corporation or if the partners in a partnership change or change in the designated plumber that changes the scope of work that can be performed), the plumbing contractor must:

(a) Apply for a new plumbing license as required in WAC 296-400A-011; and

(b) Pay the plumbing license fee shown in WAC 296-400A-045.

(2) If a plumbing contractor changes its designated plumber without a change in the scope of work that can be performed, the plumbing contractor must:

(a) Submit a new designated plumber form as required in WAC 296-400A-011.

(b) Pay the change designated plumber fee shown in WAC 296-400A-045.

(3) Failure to relicense after a change in business structure may invalidate the plumbing contractor's license. See RCW 18.106.410.

(4) If a licensed plumbing contractor changes its name, it must:

(a) Notify the department, in writing, of the change; and

(b) Pay the relicensing fee shown in WAC 296-400A-045; and

(c) Submit to the department a name change rider or a new bond in the new name and a certificate of insurance in the new name.

(5) If a licensed plumbing contractor changes its address, it must notify the department in writing.

NEW SECTION

WAC 296-400A-016 What procedures must be followed when surety bonds and/or insurance policies are canceled? (1) Insurance and bonding companies must send cancellation notices to the department.

(2) Cancellation notices must contain the following information:

(a) The name of the plumbing contractor exactly as it appears in the plumbing contractor's licensing file;

(b) The plumbing contractor's license number;

(c) The plumbing contractor's business address;

(d) The names of the owners, partners, or officers of the plumbing contractor;

(e) The bond or insurance policy number; and

(f) The effective date of the bond or insurance policy.

(3) The cancellation of a surety bond or insurance policy shall be considered effective immediately after the department receives a cancellation notice unless a later specific date is provided.

NEW SECTION

WAC 296-400A-017 What procedures must be followed when surety bonds and/or other securities approved by the department become impaired? (1) Once the department has been notified that the surety bond or other security approved by the department has been impaired by a final judgment or reduced by payment to an amount less than is required by WAC 296-400A-012, the plumbing contractor's license will automatically be suspended and the department will mail a letter to the plumbing contractor within two days.

(2) Once the unsatisfied final judgment has been satisfied, the plumbing contractor may reapply according to the requirements of this chapter.

NEW SECTION

WAC 296-400A-018 When will the department release a security deposit? (1) The department will release a security deposit two years after the plumbing contractor's last plumbing license has expired unless there is an unsatisfied final judgment or ongoing claim against the plumbing contractor.

(2) The department will release a security deposit in less than two years after the plumbing contractor's last license has expired if the plumbing contractor provides a surety bond covering both the previous and current registration periods.

NEW SECTION

WAC 296-400A-019 How is a suit filed against a plumbing contractor? (1) A civil suit against a plumbing contractor must be filed in the superior court of the county in which the work was done or of any county in which jurisdiction of the plumbing contractor may be had. Unless the suit is filed in a superior court, the department will not be able to direct payment on an unsatisfied final judgment against a secured contractor.

(2) Notice that a suit has been filed (a summons and complaint) against a plumbing contractor, the plumbing contractor's bond, and/or the plumbing contractor's deposit must be exclusively delivered to the department by registered or certified mail to: P.O. Box 44470, Olympia, Washington 98504-4470. The notice must be addressed to the department and must include three copies of the summons and complaint filed against the plumbing contractor, the plumbing contractor's bond and/or the plumbing contractor's deposit. The person filing the suit must pay the required service fee to the department in WAC 296-400-045.

(3) The summons and complaint against a plumbing contractor must include the following information:

- (a) The name of the plumbing contractor exactly as it appears in the plumbing contractor's licensing file;
- (b) The plumbing contractor's business address;
- (c) The names of the owners, partners, or officers of the plumbing contractor if known; and
- (d) The plumbing contractor's license number.

(4) If the suit joins a bonding company, the summons and complaint should also include:

(a) The name of the bonding company that issued the plumbing contractor's bond;

(b) The bond number; and

(c) The effective date of the bond.

(5) If the suit is against a plumbing contractor using an assigned account in lieu of a bond, the complaint must also include:

(a) The name of the institution where the assigned account is held;

(b) The account number; and

(c) The date the assigned account was opened.

(6) Service is not considered complete until the department receives the documents in Tumwater with the service fee required by WAC 296-400A-045 and three copies of the summons and complaint.

(7) Within two days of receiving a summons and complaint, the department must mail a copy of the summons and complaint to the licensee at the address listed on the licensee's application or at their last known address provided to the department and to the licensee's surety.

(8) The department will return a summons and complaint without it being served, if the department cannot readily identify either the contractor or bonding company being sued, if the action did not arise under chapter 18.106 RCW, or if the fee and three copies of the summons and complaint are not received.

AMENDATORY SECTION (Amending WSR 20-16-141, filed 8/4/20, effective 8/4/20)

WAC 296-400A-022 What procedure is required for renewal of a journey level medical gas endorsement? (1) Maintain an active Washington state journey level certification.

(2) Submit affidavit of continuity verifying that brazing has been performed every six months during the renewal cycle.

(3) Submit affidavit of review of current medical gas code adopted by the Washington state building code council.

(4) Pay the appropriate fee: If renewal occurs before expiration of current endorsement, the renewal fee shown in WAC 296-400A-045; if renewal occurs within ninety days of expiration of current endorsement, you must pay a double renewal fee; if the current endorsement has been expired for ninety-one days or more, you must take an examination relating to medical gas installation administered by the department and pay the examination application fee shown in WAC 296-400A-045. Medical gas endorsement is renewed every three years.

(5) Plumbing contractors must accurately verify and attest to brazing performed by the journey level plumber by sending an affidavit of continuity to the department or in lieu of the biannual braze requirement from the plumbing contractor, a performed brazed coupon test documenting that the coupon was certified as passing from a department approved medical gas training course provider would be accepted.

(6) If affidavit of continuity and/or affidavit of review are not received within ninety days of expiration, the applicant will be required to retake the examination and pay the appropriate fees prior to being placed in active status.

AMENDATORY SECTION (Amending WSR 16-08-100, filed 4/5/16, effective 5/16/16)

WAC 296-400A-024 How should a person performing plumbing wear or visibly display their certification, trainee card, or endorsement? (1) The certificate must be immediately available for examination at all times.

(2) The individual must also have in their possession governmental issued photo identification.

(3) To work in the plumbing trade, an individual must possess, ~~((and is encouraged to))~~ wear, and visibly display on the front of the upper body a current, valid plumber certifi-

cate of competency, medical gas endorsement, or plumber trainee card.

(a) The certificate may be worn inside the outer layer of clothing when outer protective clothing (e.g., rain gear when outside in the rain, arc flash, welding gear, etc.), is required.

(b) The certificate may be worn inside the protective clothing so that when the protective clothing is removed, the certificate is visible. A cold weather jacket or similar apparel is not protective clothing.

(c) The certificate may be worn inside the outer layer of clothing when working in an attic or crawl space or when operating equipment where wearing the certificate may pose an unsafe condition for the individual.

AMENDATORY SECTION (Amending WSR 20-16-141, filed 8/4/20, effective 8/4/20)

WAC 296-400A-045 What fees ~~((will I have to pay))~~ does the department charge for issuance, renewal, relicensing, and reinstatement of a plumbing contractor license and plumbing certificates? The following are the department's ~~((plumbers))~~ nonrefundable fees: Fees related to journey level and specialty plumber certification and exam application:

<u>Type of Fee</u>	<u>Period Covered by Fee</u>	<u>Dollar Amount of Fee</u>
<u>Plumbing contractor</u>	<u>This registration is valid for two years from date of issuance, renewal or reregistration, or until it is suspended or revoked</u>	<u>\$139.10</u>
<u>For each issuance, renewal or reregistration of a license</u>		
<u>Initial identification or change in designated plumber (nonrefundable)</u>		<u>\$50.00</u>
<u>Examination application for journey level, residential specialty, residential service, backflow certification</u>	<u>Per examination the department's fee. Normal examination administration is performed by a state authorized contractor. The fees for such examinations are set by contract with the department and are additional to the department's examination fees</u>	((160.85)) <u>\$189.80</u>
<u>or</u>		
<u>Reexaminations of medical gas endorsements</u>		
<u>Domestic pump specialty application</u> fec*****	<u>Per application the department's fee. Normal examination administration is performed by a state authorized contractor. The fees for such examinations are set by contract with the department and are additional to the department's examination fees</u>	((160.85)) <u>\$189.80</u>
<u>Reciprocity application*</u>	<u>Per application</u>	((160.85)) <u>\$189.80</u>
<u>Trainee certificate**</u>	<u>One year or when hours are updated</u>	((47.85)) <u>\$56.40</u>
<u>Temporary permit (not applicable for backflow assembly maintenance and repair specialty)</u>	<u>One hundred twenty days</u>	((79.85)) <u>\$94.20</u>
<u>Journey level, residential specialty, or residential service certificate renewal or 1st card***</u>	<u>Three years</u>	((193.15)) <u>\$227.90</u>
<u>Domestic pump specialty plumber certificate renewal or 1st card***</u>	<u>Three years</u>	((193.25)) <u>\$228.00</u>
<u>Backflow assembly maintenance and repair specialty certificate renewal or 1st card***</u>	<u>Three years</u>	((133.25)) <u>\$157.20</u>

<u>Type of Fee</u>	<u>Period Covered by Fee</u>	<u>Dollar Amount of Fee</u>
Medical gas endorsement application	Per application	(\$59.20) \$69.80
Medical gas endorsement renewal or 1st card***	Three years	(\$132.80) \$156.70
Medical gas endorsement examination fee****		See note below.
Medical gas endorsement training course fee*****		See note below.
Domestic pump specialty examination fee****		See note below.
<u>Reinstatement of a plumbing contractor license</u>		<u>\$69.50</u>
Reinstatement fee for residential and journey level certificates		(\$258.30) \$304.70
Reinstatement fee for backflow assembly maintenance and repair specialty certificates		(\$148.55) \$175.20
Reinstatement fee for domestic pump		(\$386.75) \$456.30
Replacement fee for all certificates <u>and licenses</u>		(\$21.70) \$25.60
Refund processing fee		(\$34.50) \$27.50
Unsupervised trainee endorsement		(\$34.50) \$40.70
Inactive status fee		(\$34.50) \$40.70
Certified letter fee/verification of licensure		(\$34.50) \$40.70
<u>Required to cover the costs for the service of process in an action against a plumbing contractor, the contractor's bond, or the deposit under RCW 18.106.410</u>		<u>\$55.00</u>
<u>Documents copied from a plumber's, trainee or plumbing contractor file</u>		(\$2.40) <u>\$2.40</u> per page maximum copy charge (\$31.75) \$37.40
Continuing education new course fee*****		(\$209.15) \$246.70
Continuing education renewal course fee*****		(\$104.40) \$123.10
Continuing education classes provided by the department		(\$12.70) <u>\$14.90</u> per continuing education training hour (\$8.45) <u>\$9.90</u> per continuing education training hour for correspondence and internet courses

* Reciprocity application is only allowed for applicants that are applying work experience toward certification that was obtained in state(s) with which the department has a reciprocity agreement. The reciprocity application is valid for one year.

- ** The trainee certificate will expire one year from the date of issuance and must be renewed on or before the date of expiration. Trainee update fee required when hours are submitted outside of renewal period.
- *** This fee applies to either the original issuance or a renewal of a certificate. If you have passed the plumbers certificate of competency examination or the medical gas piping installer endorsement examination and paid the certificate fee, you will be issued a plumber certificate of competency or a medical gas endorsement that will expire on your birth date.
The (~~two-year~~) three-year renewal of a Medical Gas Piping Installer Endorsement must include a continuity affidavit verifying that brazing work has been performed every six months during the renewal cycle.
- **** This fee is paid directly to a nationally recognized testing agency under contract with the department. It covers the cost of preparing and administering the written competency examination and the materials necessary to conduct the practical competency examination required for the medical gas piping system installers endorsement or the domestic pump or pump and irrigation examination. **This fee is not paid to the department.**
- ***** This fee is paid directly to a training course provider approved by the department, in consultation with the state advisory board of plumbers. It covers the cost of providing training courses required for the medical gas piping system installer endorsement. **This fee is not paid to the department.**
- ***** This fee is for a three-year period or code cycle.
- ***** The domestic pump specialty application is valid for one year.

AMENDATORY SECTION (Amending WSR 98-13-126, filed 6/17/98, effective 7/20/98)

WAC 296-400A-110 (~~Does previous~~) How does work experience count toward my trainee certificate? If your work experience was in plumbing construction in Washington state, you will be given credit for all verifiable hours that are properly submitted on the department's approved form. Plumber trainee hours accumulated in the state of Washington will be credited only if an active Washington state trainee card was in place when the work occurred. (Refer to the definition of "plumbing" in WAC 296-400A-005.)

AMENDATORY SECTION (Amending WSR 20-16-141, filed 8/4/20, effective 8/4/20)

WAC 296-400A-120 What do I need to know about plumber trainee certificates? General.

(1) **Journey level and specialty plumber original trainee certificates:**

The department will issue an original trainee certificate when the trainee applicant submits a complete trainee certificate application including:

- (a) Date of birth, mailing address, Social Security number; and
- (b) All appropriate fees as listed in WAC 296-400A-045.
- (c) If an individual has previously held a plumbing trainee certificate, then that individual is not eligible for a subsequent original trainee certificate.
- (d) All applicants for a plumbing trainee certificate must be at least sixteen years of age and must follow requirements as defined in WAC 296-125-030.

(2) **Renewal.**

- (a) The department issues separate trainee certificates once a year.
- (b) The plumbing trainee may not apply for renewal more than ninety days prior to the expiration date. Plumber trainee certificates are valid for one year.
- (c) All applicants for trainee certificate of renewal must:
 - (i) Submit a complete renewal application;
 - (ii) Pay all appropriate fees; and
 - (iii) Completed the continuing education requirements described in chapter 296-400A WAC. Backflow trainees are exempt from continuing education requirements.

(d) If an individual files inaccurate or false evidence of continuing education information when renewing a plumbing trainee certificate, the individual's certificate may be suspended or revoked.

(e) An individual who has not completed the required hours of continuing education can renew a trainee certificate; however, the training certificate will be placed in an inactive status. The inactive training certificate will be returned to active status upon validation by the department of the required continuing education.

(f) If continuing education hours have not been met, trainee certificates will become expired/inactive and any plumbing work experience obtained by the trainee in expired/inactive status will not be credited.

(g) An individual may not renew a revoked trainee certificate.

(h) Apprentices registered in an approved program according to chapter 49.04 RCW who are obtaining classroom training consistent with the continuing education requirements under chapter 18.106 RCW and this chapter, as approved by the department, are deemed to have met the continuing education requirements necessary to renew a trainee certificate. Included under this exemption are active trainees that are not in the formal approved program according to chapter 49.04 RCW but are attending all hours of required classroom training along with the apprentices and meeting the work experience as required under chapter 18.106 RCW and this chapter. The plumber craft training school will be required to supply the department the necessary documentation to prove there was full hourly attendance of these trainees as is required of the apprentices while they attend the classroom training.

(i) The trainee will not be issued a renewal or reinstated training certificate if the individual owes the department money as a result of an outstanding final judgment.

(3) **Ratio/supervision.**

(a) **Commercial/residential.**

(i) A certified residential specialty plumber, residential service plumber, or domestic pump specialty plumber working on a commercial job site may work as a journey level trainee only if they have a current trainee certificate on their person while performing commercial plumbing work.

(ii) On a job site, the ratio of certified plumbers to plumber(~~(s)~~) trainees must be:

~~(A) ((One residential specialty plumber or journey level working on a residential plumbing job site may supervise no more than three trainees. Supervision must be a minimum of seventy-five percent of the time spent on each and every job site.~~

~~(B) One journey level plumber working on a commercial job site may supervise no more than one trainee or one residential specialty plumber who holds a current trainee certificate. Supervision must be a minimum of seventy-five percent of the time spent on each and every job site.)) Until December 31, 2025:~~

(I) No more than three trainees working on any one residential structure job site for every certified specialty plumber or journey level plumber working as a specialty plumber;

(II) No more than one trainee working on any one job site for every certified journey level plumber working as a journey level plumber; and

(III) No more than one trainee working on any one job site for every certified residential service.

(B) After December 31, 2025, no more than two trainees may work on any residential structure job site for every certified specialty plumber or journey level plumber working as a specialty plumber.

(iii) Supervision must be a minimum of seventy-five percent of the time spent on each and every job site.

(b) Domestic pump.

One appropriate domestic pump specialty plumber or one journey level plumber working on a domestic pump system may supervise no more than three trainees, after December 31, 2025, no more than two trainees can be supervised. Supervision must be a minimum of seventy-five percent of the time spent on each and every job site.

(c) Medical gas.

A plumber trainee or specialty plumber who has a current trainee certificate with the state of Washington and has successfully completed or is enrolled in an approved medical gas piping installer training course may work on medical gas piping systems. Work may only occur when there is direct supervision by an active Washington state certified journey level plumber with an active medical gas piping installer endorsement issued by the department. Supervision must be one hundred percent of the time spent on each and every job site on a one-to-one ratio.

(d) Backflow.

A backflow specialty plumber, a journey level plumber on a commercial job site, or a residential specialty plumber on a residential job site must supervise one backflow trainee to perform maintenance and repair work on every backflow assembly on potable water systems inside every commercial or residential building. The ratio must be one to one for one hundred percent of the time on each and every job site.

(4) Affidavits of experience.

(a) At the time of renewal, the holder must provide the department with an accurate list of the holder's employers in the plumbing construction industry for the previous annual period. The individual must submit a completed, signed, and notarized affidavit(s) of experience. The affidavit of experience must accurately attest to:

(i) The plumbing installation work performed for each employer the individual worked for in the plumbing trade during the previous period;

(ii) The correct plumbing category the individual worked in; and

(iii) The actual number of hours worked in each category, worked under the proper supervision of a Washington certified journey level plumber, certified domestic pump specialty plumber, or residential specialty plumber.

(b) The trainee should ask each employer and/or apprenticeship-training director for an accurately completed, signed, and notarized affidavit of experience for the previous certification period. The employer(s) or apprenticeship training director(s) must provide the previous period's affidavit of experience to the individual within twenty days of the request.

(c) ~~((H)) Plumbing hours for previous ((period are not)) years are to be submitted within ((the)) thirty days after ((renewing a)) the renewal date of the plumbing training certificate(;;); failure to submit within thirty days is a violation of chapter 18.106 RCW. The individual may not receive credit for these previous ((period)) plumbing hours and will result in nonrenewal of the trainee certificate and subject to an infraction under RCW 18.106.320. See RCW 18.106.070 (2).~~

(d) Trainee hours will not be credited if the trainee owes outstanding penalties for violations of this chapter.

(e) Trainee hours will not be credited during periods of time when the trainee card is expired or inactive.

AMENDATORY SECTION (Amending WSR 20-16-141, filed 8/4/20, effective 8/4/20)

WAC 296-400A-121 What do I need to know about trainee experience and plumber examination requirements for the journey level and specialty plumber? (1) You may take the journey level examination after completing 8,000 hours and not less than four years of documented training which must include 4,000 hours of commercial plumbing experience under direct supervision of a certified journey level plumber.

(2) You may take the residential specialty plumber examination after completing 6,000 hours and not less than three years of documented training under direct supervision of a certified residential specialty or journey level plumber.

(3) You may take the residential service plumbing examination after completing 4,000 hours and not less than two years of documented training. The first year and 2,000 hours of supervision must be under direct supervision of a certified journey level or residential specialty plumber. The second year and 2,000 hours of trainee could be under a residential service plumber.

(4) For domestic pump specialty plumbers:

(a) To be eligible for a limited volume domestic pump specialty plumbers examination defined by RCW 18.106.010 (14)(c), the trainee must complete one year and 2,000 hours practical experience working under the direct supervision of a certified limited volume domestic pump specialty plumber, a certified unrestricted domestic pump specialty plumber, or a journey level plumber on pumping systems not exceeding

one hundred gallons per minute. The experience may be obtained at the same time the individual is meeting the experience required by RCW 19.28.191, or equivalent experience may be accepted as determined by rule by the department in consultation with the advisory board. Restricted domestic pump specialty trainees who have completed at least 720 hours of on-the-job training and passed the competency examination required by WAC 296-400A-020 may work unsupervised for the remainder of the time required for work experience to become a restricted domestic pump specialty plumber.

(b) To be eligible for an unrestricted domestic pump specialty plumbers examination defined by RCW 18.106.010 (14)(c), the trainee must complete 4,000 hours but not less than two years, of practical experience working under the direct supervision of a certified unrestricted domestic pump specialty plumber or a journey level plumber on pumping systems. The experience may be obtained at the same time the individual is meeting the experience required by RCW 19.28.191 or equivalent experience may be accepted as determined by rule by the department in consultation with the advisory board.

(5) To be eligible for a backflow assembly maintenance and repair specialty examination, the trainee must furnish written evidence that they have a valid backflow assembly tester certification administered and enforced by the department of health.

(6) Individuals are required to complete 16 hours of continuing education with a minimum of 4 hours of industry related electrical training prior to testing for journey level, domestic pump, or residential specialty plumber certification.

(7) ~~(Effective January 1, 2005, all plumber trainees will be required to meet the current hour requirements to test.~~

~~(8))~~ **Apprentice/trade school endorsement requirements.** An individual who has a current journey level plumber, domestic pump specialty plumber, or residential specialty plumber trainee certificate and who has successfully completed or is currently enrolled in an approved apprenticeship program or in a technical school program in the plumbing construction trade in a school approved by the work force training and education coordinating board, may work without direct on-site supervision during the last six months of meeting the practical experience requirements of this chapter.

(a) In order to work without direct on-site supervision applicable to the type (residential or journey level) of training hours for which certification is being sought by the individual, this individual must obtain an apprentice/trade school trainee endorsement by submitting the applicable forms provided by the department and paying the applicable fees.

(b) This individual may work without direct on-site supervision until he or she receives the remaining hours required ~~(to be eligible)~~ to take the applicable examination.

(c) This individual may not supervise trainees. (See RCW 18.106.070.)

~~((9))~~ (8) **Any applicant** who fails an examination will be required to wait at least until the next scheduled examination date and location and work under the direct supervision of a certified plumber while holding an active trainee card, until they have passed the exam and their certificate of com-

petency has been issued. Examinations are held the first Thursday of every month, unless that date falls on a holiday. Applications must be submitted and received by the plumbing certification program office two weeks before the next scheduled date.

~~((10))~~ (9) Failure to reschedule or appear on the scheduled exam date will result in forfeiture of the examination fee.

AMENDATORY SECTION (Amending WSR 09-10-080, filed 5/5/09, effective 6/5/09)

WAC 296-400A-130 What if I make a false statement or a material misrepresentation on an application, an employment report or a trainee certificate? (1) A person making a false statement or material misrepresentation on an application, statement of hours, or signed statement to the department may be referred to the county prosecutor for criminal prosecution. The department may also file a civil action under chapter 18.106 RCW and may revoke or suspend a certificate under chapter 18.106 RCW.

(2) The department may file a civil action under chapter 18.106 RCW and may revoke or suspend a certificate of competency under chapter 18.106 RCW for inaccurate or false reporting of continuing education hours.

(3) If the department determines that a course sponsor has issued an inaccurate or incomplete course application or attendance/completion roster, the department may suspend or revoke the course approval and deny future approval of a continuing education course(s) by the course sponsor.

(4) The department may file a civil action under chapter 18.106 RCW against both the trainee and the plumbing contractor, apprentice training director, or other entity verifying the training hours and may subtract the falsified hours of employment from a trainee's total hours if the department determines a false statement or material misrepresentation has been made in an affidavit of experience.

AMENDATORY SECTION (Amending WSR 04-12-046, filed 5/28/04, effective 6/30/04)

WAC 296-400A-150 May the department audit the records of a plumbing contractor? Yes, for any reason ~~((such as))~~, but not limited to: Dispatching, ratio, supervision, excessive hours, and certification. The department may audit the records of plumbing contractors as authorized under RCW 18.106.320 when the department has reason to believe that a violation of the plumbing certification laws has occurred.

AMENDATORY SECTION (Amending WSR 09-10-080, filed 5/5/09, effective 6/5/09)

WAC 296-400A-155 What records must every plumbing contractor keep for quarterly reporting and audits of trainee hours. (1) The department, under RCW 18.106.320, may audit the employment records of the plumbing contractor or employer who verified the plumbing trainee hours.

(2) Every contractor must keep a record of trainee employment so the department may obtain the necessary information to verify plumbing trainee work experience.

(a) The plumbing contractor must keep the records of jobs performed for ~~((a))~~ at least ~~((five))~~ three years.

(b) Upon request, these records must be made available to the department for inspection within seven business days.

(3) The plumbing contractor must maintain ~~((time cards or similar))~~ records to verify:

(a) The number of hours the trainee worked as a supervised trainee by category~~((:))~~;

(b) The type of plumbing work the trainee performed (e.g., commercial or residential).

(4) Any information obtained from the trainee's plumbing contractor ~~((or employer))~~ during the audit under the provisions of RCW 18.106.320 is confidential and is not open to public inspection under chapter 42.17 RCW.

(5) The department's audit may include, but will not be limited to, the following:

(a) An audit to determine whether the trainee and supervising plumber were employed by the same plumbing contractor ~~((or employer))~~ during the period for which the hours were submitted, the actual number of hours the trainee worked, and the category of plumbing work performed; and

(b) An audit covering a specific time period and examination of a plumbing contractor's ~~((or employer's))~~ books and records which may include their reporting of the trainee's payroll hours required for industrial insurance, employment security or prevailing wage purposes.

NEW SECTION

WAC 296-400A-165 Is a city, town, or county required to verify a plumbing contractor license number?

Before issuing a plumbing permit, a city, town, or county must verify the licensure of the plumbing contractor applying for the permit.

NEW SECTION

WAC 296-400A-170 How does a city, town, or county verify a plumbing contractor's license?

A city, town, or county may verify a plumbing contractor's license by checking the department's contractor registration internet website or by calling the department to confirm that the plumbing contractor is licensed.

NEW SECTION

WAC 296-400A-175 Who is liable when a city, town, or county fails to verify a plumbing contractor's license?

The city, town, or county that issues a building permit without verifying the contractor's registration may be liable for a maximum penalty amount of five thousand dollars. See RCW 18.106.440(1).

AMENDATORY SECTION (Amending WSR 20-16-141, filed 8/4/20, effective 8/4/20)

WAC 296-400A-300 What procedures does the department follow when issuing a notice of infraction? (1)

If an authorized representative of the department determines that an individual, employer, contractor, or plumbing contractor has violated plumber certification requirements, including medical gas piping installer endorsement requirements, and plumbing licensing requirements, the department must issue a notice of infraction describing the reasons for the infraction.

(2) For plumber certification violations, the department may issue a notice of infraction to:

(a) An individual who is plumbing without a current plumber certificate; and

(b) The plumbing contractor or employer of the individual who is plumbing without a current plumber certificate; and

(c) The plumbing contractor or employer's authorizing agent or foreman that made the work assignment to the individual who is plumbing without a current plumber certificate; and

(d) An individual for not having their department issued certification card and governmental issued photo identification in their possession and not visibly wearing their certification on the job site.

(3) For medical gas piping installer endorsement violations, the department may issue a notice of infraction to:

(a) An individual who is installing medical gas piping systems without a current plumber certificate and a current medical gas piping installer endorsement; and

(b) The plumbing contractor or employer of the individual who is installing medical gas piping systems without a current plumber certificate and a current medical gas piping installer endorsement; and

(c) The plumbing contractor or employer's authorizing agent or foreman that made the work assignment to the individual who is installing medical gas piping systems without a current plumber certificate and a current medical gas piping installer endorsement; and

(d) An individual for not having their department issued certification card and governmental issued photo identification in their possession and not visibly wearing their certification on the job site.

(4) The department may issue an infraction to ~~((a))~~ an individual, employer, contractor, or plumbing contractor advertising or performing work and is not properly licensed under this chapter or chapter ~~((18.27 RCW who is not properly registered under chapter 18.27))~~ 18.106 RCW.

(5) An individual, employer, contractor, or plumbing contractor may appeal a notice of infraction by complying with the appropriate provisions of RCW 18.106.220.

(6) If good cause is shown, the director may waive, reduce or suspend any monetary penalties resulting from the infraction.

(7) Any monetary penalties collected under this chapter, must be deposited in the plumbing certificate fund.

(8) The notice shall be accompanied by a certified check for two hundred dollars. The check shall be returned to the assessed party if the decision of the department is not sustained by the administrative law judge (ALJ). If the ALJ sustains the decision of the department, the amount of the check shall be applied by the department.

AMENDATORY SECTION (Amending WSR 20-16-141, filed 8/4/20, effective 8/4/20)

WAC 296-400A-400 What are the monetary penalties for violating certification requirements? (1) A person cited for an infraction under chapter 18.106 RCW or this chapter will be assessed a monetary penalty based upon the following schedule:

(a) Individual or dispatcher

First Infraction	\$100.00
Second Infraction	\$200.00
Third Infraction	\$500.00
Fourth Infraction	\$1,000.00
Fifth Infraction	\$2,000.00
Sixth Infraction	\$4,000.00
Seventh and each additional infraction	Not more than \$5,000.00

(b) Contractor, employer, or plumbing contractor

First Infraction	\$500.00
Second Infraction	\$1,000.00
Third Infraction	\$2,000.00
Fourth Infraction	\$4,000.00
Fifth and each additional infraction	Not more than \$5,000.00

(2) Each day a person is in violation is considered a separate infraction.

(3) Each job site at which a person is in violation is considered a separate infraction.

(4) A warning may be issued for first-time violation of chapter 18.106 RCW and this chapter (~~((may be issued))~~) to only individuals or employees and only once (~~((to an individual ~~and~~))~~). Second or additional violations must be assessed a monetary penalty based on the escalating schedule; starting with the first infraction penalty amount under individual or dispatcher.

AMENDATORY SECTION (Amending WSR 16-08-100, filed 4/5/16, effective 5/16/16)

WAC 296-400A-430 If I am a certified backflow assembly maintenance and repair, journey level, or specialty plumber do I need to be a ~~((registered))~~ licensed plumbing contractor under chapter ~~((18.27))~~ 18.106 RCW? Anyone who advertises, offers to do work, submits a bid, or performs any work under chapter 18.106 RCW and these rules must be a ~~((registered))~~ licensed plumbing contractor as required under chapter ~~((18.27))~~ 18.106 RCW, or an employee of such a ~~((registered))~~ licensed plumbing contractor, with wages as their sole compensation.

**WSR 21-13-066
PERMANENT RULES
SEATTLE COLLEGES**

[Filed June 12, 2021, 4:52 p.m., effective July 13, 2021]

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

- Increase integration and alignment as more students attend multiple campuses during their time as a student;
- Make the process more student focused by encouraging all parties to engage in sincere efforts to listen and resolve complaints informally;
- Ensure students are supported through the complaint process;
- Enhance an accepting culture and provide supports to encourage students to raise concerns.

Citation of Rules Affected by this Order: Amending 4.
Statutory Authority for Adoption: RCW 28B.50.140, 28B.50.090(3).

Adopted under notice filed as WSR 21-05-041 on February 3 [11], 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 4, Repealed 0.

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

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

Date Adopted: June 10, 2021.

Shouan Pan
Chancellor

AMENDATORY SECTION (Amending WSR 13-11-127, filed 5/21/13, effective 6/21/13)

WAC 132F-121-060 Student ~~((complaints))~~ grievances generally. (1) ~~((The procedures in this chapter are to be used for the processing and disposition of complaints by students (complainants) against college employees or other students, except to the extent that a complaint is against a college employee and the processing is dictated otherwise by a collective bargaining agreement or other applicable process. These procedures are available to all students and are intended to protect the rights of both the complainant and the respondent.~~

(2) For the purposes of this chapter, a "complaint" is the purpose of these procedures is to provide guidelines which enable a student to express and resolve misunderstandings, complaints, or grievances in a fair and equitable manner. These procedures are to be used for addressing informal

grievances and formal grievances against college employees as far as the collective bargaining agreement under which the employee works allows.

(2) Students have the right to receive clear information and fair application of college policies, standards, rules and requirements and are responsible for complying with them in their relationships with college personnel. The grievance procedure emphasizes an informal resolution which promotes constructive dialogue and understanding. Available to all students and it is intended to protect the rights of both the complainant and the respondent. The formal procedures should be used when informal process does not resolve the issue.

(3) A "grievance" is defined as a good faith allegation based on personal experience or knowledge by a student or students that there has been a violation, misapplication, or misinterpretation of some service or rule as it applies to students in the institution by a staff or faculty member of the institution, resulting in loss or detriment to the complainant. However, an objection to disciplinary action under the student conduct code is only appealable under that code, and cannot constitute a ((complaint)) grievance.

((3)) (4) The student grievance procedure described is not intended to cover grievances of discrimination or sexual harassment. The college has separate, specific procedures for such grievances.

(5) Each college president shall appoint a ((complaints)) grievance officer to handle student ((complaints)) grievances. This position shall be filled by an employee whose position is below the level of vice president. The district chancellor shall designate a ((complaints)) grievance officer to handle ((complaints)) grievances against Siegal Center employees. If the president or chancellor determines, upon request, that the ((complaints)) grievance officer has a disqualifying ((personal)) conflict of interest in a particular matter, ((he/she)) they may appoint a substitute ((complaints)) grievance officer for that matter. Information on the identity and location of the ((complaints)) grievance officer(s) and about this procedure shall be readily available within each college.

((4) The complaints officer shall be responsible for taking appropriate actions to try to resolve complaints.

(5) A complaint may be addressed under either the informal process or the formal process, as set forth below. Students are encouraged to begin with the informal process.

(6) Each campus will appoint one or more nonstudent employees who will serve as student process advocates. This role will guide the student through the informal and formal process.

(7) No respondent or district employee shall take adverse action or otherwise retaliate against a student because that student initiated a good faith ((complaint)) grievance or assisted another student with a ((complaint)) grievance.

((7) If more than one type of complaint or more than one respondent is included in one complaint, the complaints officer may, upon request, provide for appropriate modification(s) of these procedures.

(8) If a respondent employee is unavailable, or otherwise fails or refuses to participate timely in a complaint proceeding, the respondent's supervisor may act or designate another person to act in the complaint proceeding on that employee's behalf. However, no action by a substitute may subject the

respondent employee to discipline.) (8) Federal and state laws, rules and regulations, in addition to policies, regulations and procedures adopted by the state board for community college education or the board of trustees of Seattle Colleges shall not be grievable matters.

AMENDATORY SECTION (Amending WSR 13-11-127, filed 5/21/13, effective 6/21/13)

WAC 132F-121-070 Informal processing of ((complaints)) student grievances. (1) ((This informal process is intended to facilitate prompt and amicable resolution of a complaint apart from the formal complaint process.

(2) A student who has a complaint is encouraged to discuss the matter directly with the respondent to attempt to resolve it.) The goal is to informally resolve the grievance with the employee most closely responsible for the policy, procedure, or action. The college employee and student shall make a good faith effort to resolve the issue on a one-to-one basis.

(2) Both parties should openly discuss the concern, attempt to understand the other's perspective, explore alternatives and attempt to arrive at a satisfactory resolution. For assistance in identifying the appropriate person a student should contact the student grievance process advocate, as designated by the VPSS. In such cases, the student may choose to engage with the student grievance process advocate as designed by the institution in support of these efforts.

(3) If the student complainant believes that discussion with an employee respondent will not achieve or has not achieved a satisfactory result, the student may communicate about the matter with the respondent's supervisor.

(4) ((Any participant in the informal process may request the complaint officer's assistance in obtaining a resolution.

((5)) This informal process must be completed in a timely manner. In general, a student wishing to express a grievance should do so as soon as the grievance arises, but no later than the end of the quarter in which the issue occurred.

AMENDATORY SECTION (Amending WSR 13-11-127, filed 5/21/13, effective 6/21/13)

WAC 132F-121-080 Formal processing of ((complaints)) grievances. ((1) To be considered under the formal process, a complaint must be filed in writing with the campus complaints officer by the final day of the quarter following the quarter in which the problem occurred, except as otherwise provided in WAC 132F-121-090 for a grade complaint. For purposes of complaints, the quarter which follows spring quarter is fall quarter. The written document should fully specify the facts and other grounds on which the complaint is based, and should include copies of relevant supporting documents when feasible. The complaints officer may extend any deadline herein for good cause.

(2) If the complaints officer determines that the complaint does not qualify to be addressed through the formal process, that officer must inform the student, explaining the reasons in writing within five working days. The student complainant may obtain review of that notice of complaint disqualification by filing a written request with the complaints officer under subsection (9) of this section.

(3) If the complaints officer determines that the complaint does qualify as such, that officer must serve copies of the complaint and the supporting documents on the individual named in the complaint (the respondent) and the respondent's supervisor, within five working days.

(4) The respondent, upon receiving notice of the formal complaint, shall provide a response in writing to the complaints officer, and to the respondent's supervisor, within ten working days.

(5) The complaints officer must forward the written response, or the information that no response was received, to the student complainant within five working days of receipt of the response, or five working days from when a response was due.

(6) If the student complainant finds that the response or lack thereof is unsatisfactory she/he has five working days in which to submit a written request for the complaints officer to schedule a conference with the respondent to discuss the matter.

(7) Upon receipt of such request, the complaints officer has five working days to schedule the conference which must be convened within ten working days of receipt of the students' request or as soon thereafter as feasible. This conference will include the student, the respondent, and his or her supervisor, and be moderated by the complaints officer.

(8) During this conference the complaints officer shall try to facilitate resolution. The complaints officer shall produce a written statement summarizing the conference and provide copies to all parties within ten working days of the conference.

(9) The student complainant may request a review of the outcome of the complaint conference (or of a complaint disqualification) by submitting a written request for administrative review to the complaints officer within five working days of receiving the conference summary.

(10) The complaints officer shall forward, within five working days, the request for administrative review, the complaint, supporting documents, and the conference summary either to the vice president of instruction (if the officer determines that the complaint is predominantly an instructional matter), or to the vice president for student services (if the officer determines that the complaint is predominantly non-instructional in nature).

(11) This administrator shall review the complaint and documentation, and may also interview knowledgeable persons as appropriate. The administrator should render a written decision within ten working days after receiving the complaint and documents, or as soon thereafter as feasible. The administrator may accept, reject, or modify any of the previous action(s) in the matter, and/or take other action(s). This decision shall be in writing and shall be served on the student complainant and others deemed appropriate.

(12) This decision of the reviewing administrator shall be the final decision of the district on that complaint.)) (1) A grievance is a formal procedure instituted when a grievance is not resolved through the informal grievance process. It involves submitting a written grievance to the student grievance officer often with the help of the student grievance process advocate.

(2) A student wishing to express a grievance should do so no later than the last day of the quarter after the event occurred, with the exception of spring quarter where the last day to file a formal grievance is the last day of fall quarter.

(3) The following procedures shall be used when a student initiates the grievance process. All timelines below can be adjusted as deemed appropriate by the grievance officer.

(a) Student (complainant) submits a written grievance;

(b) Grievance officer reviews and qualifies, or requests the student revise for subsequent qualification;

(c) Grievance officer notifies employee (respondent) and their supervisor with written grievance and documentation, once qualified, within five business days or the maximum days afforded in the employee's contract;

(d) Respondent must provide a written response to student grievance officer, within ten business days;

(e) The respondent's supervisor must provide a written summary of attempts to resolve or facts gathered in the grievance process to the student grievance officer within the same time frame as respondent;

(f) Student grievance officer sends response to complainant within five business days;

(g) The grievance is confirmed by the student as resolved, or if the student feels a satisfactory resolution was not achieved, they may request a conference with the respondent and their supervisor, facilitated by the student grievance officer within five business days. Students have the right to bring an advocate to the conference meeting with notification to the grievance officer;

(h) Student grievance officer initiates scheduling of one hour conference meeting to facilitate discussion for attempted resolution, within five business days;

(i) Grievance officer will provide to all parties a written summary of the conference, within five business days;

(j) If complainant is not satisfied with the resolution upon receipt of the conference summary, they may request of the grievance officer a final review by the respondent's vice president or appropriate unit administrator in writing within five business days; and

(k) The unit administrator may amend, modify, reverse or accept the recommendation. This decision must be sent to the complainant within ten business days. This decision shall be final.

(4) The grievance officer or appropriate unit administrator may extend the timeline under exceptional circumstances such as extended illness or off contract status.

AMENDATORY SECTION (Amending WSR 13-11-127, filed 5/21/13, effective 6/21/13)

WAC 132F-121-090 Additional provisions for grade ((complaints)) grievances. (1) For student ((complaints)) grievances regarding grades received for course work, ((this section shall apply in addition to the above-described informal and formal procedures.

(2) A student may formally grieve only the final grade received in a course, but that complaint may include any or all of the components of that final grade. For a grade complaint, the respondent(s) shall be, or include, the instructor who issued the grade.

~~(3))~~ before a student can file a formal or written grade appeal, they should try to resolve the issue directly with the instructor or their dean.

(2) If direct discussion with the faculty or instructional dean does not resolve the grade dispute to the student's satisfaction, the student may begin the formal grade grievance process.

(3) A student may formally grieve only the final grade received in a course, but that grievance may include any or all of the components of that final grade. For a grade grievance, the respondent(s) shall be, or include, the instructor who issued the grade. Assignment grades before the quarter ends, must be resolved using the informal grievance process by involving the instructor and their dean.

(4) A formal ((~~complaint~~)) grievance regarding a grade must be filed not later than the last day of the quarter which follows the quarter for which the disputed grade was received, except that a ((~~complaint~~)) grievance regarding a spring quarter grade may be filed through the last day of the following fall quarter.

~~((4))~~ (5) In specifying the facts and other grounds on which it is based, the formal ((~~complaint~~)) grievance shall specify the grade that is being challenged and should attach copies of relevant documents. The response on behalf of the respondent shall include, to the extent feasible, the applicable evaluation criteria, copies of the course syllabus and relevant grading records, and the faculty member's explanation for the grade.

~~((5))~~ (6) Ordinarily the evaluation of course mastery is exclusively within the province of the instructor of a particular course, and so a grade change may be initiated only by that instructor. (~~However, if a formal grade complaint is ultimately reviewed by the vice president of instruction, and she/he finds that the grade was issued for an improper reason or was arbitrary and capricious or otherwise unlawful, that vice president may change the grade in the records of the college~~)).

~~((6))~~ (7) Nothing in these rules shall be construed to limit the separate authority of the vice president of instruction to change a grade when required by a judicial order or a legal settlement agreement entered into by the district, regardless of whether a ((~~complaint~~)) grievance has been filed.

WSR 21-13-067
PERMANENT RULES
SEATTLE COLLEGES

[Filed June 12, 2021, 4:58 p.m., effective July 13, 2021]

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

Purpose: This proposed rule addresses a need for the colleges to issue medical withdrawals to students who exhibit self-harm and cannot otherwise be accommodated through the interactive process while attending college.

Citation of Rules Affected by this Order: New 7.

Statutory Authority for Adoption: RCW 28B.50.140, 28B.50.090(3).

Adopted under notice filed as WSR 21-05-040 on February 11, 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 7, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 7, 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: June 10, 2021.

Shouan Pan
Chancellor

Chapter 132F-126 WAC

**REQUIRED AND EMERGENCY MEDICAL LEAVES
OF ABSENCE**

NEW SECTION

WAC 132F-126-001 Purpose. The vice presidents of student services may, after a careful and collaborative review, place a student on mandatory medical leave of absence in accordance with the procedures set forth in this chapter. This process is only considered in rare situations when other options have been utilized and considered. A mandatory leave of absence is not the preferred option when addressing students' health, welfare, and safety. Any assessment or action taken under this policy will be based on legitimate safety concerns and not based on speculation, stereotypes, or generalizations about individuals with disabilities.

NEW SECTION

WAC 132F-126-010 Issuing a required medical leave of absence. (1) The vice president of student services, or the vice president's designee, (hereinafter collectively referred to as the "vice president") may require a student to take a medical leave of absence if a student has a physical illness or a mental, emotional, or psychological condition and as a result of the condition:

(a) Is engaging in, or is threatening to engage in, behavior that poses a significant danger of causing substantial harm to the health, safety, or welfare of the student or others;

(b) The student's behavior has resulted in substantial harm to the health, safety, or welfare of the student or others and the behavior continues, or there is a risk that the behavior will continue, posing a significant danger of causing substantial harm to the health, safety, or welfare of the student or others; or

(c) The student's behavior has resulted in significant disruption of the teaching, learning or administrative activities of other members of the campus community and the behavior

continues, or there is a risk the behavior will continue, with the likely result of such behavior substantially impeding the education processes or proper activities or functions of the college and its personnel.

(2) In determining whether to require a student to take a medical leave of absence, the vice president may consult with a qualified medical, health and/or public safety professional and, where possible, other persons to assess the student's ability to function in the academic environment.

(3) Prior to the vice president requiring a student to take a medical leave of absence, the student shall be provided an opportunity to present information about his or her circumstances, where reasonably possible, to the vice president. A student waives their opportunity to provide information if he or she is unwilling or unable to meet with the vice president upon request.

(4) The vice president shall issue the required medical leave of absence in writing to the student. The written notice shall include the effective date of the leave, the reasons for requiring the leave, the conditions for reenrollment, and any restrictions imposed on the student's access to the campus or college-sponsored activities.

(5) The required medical leave of absence shall be effective twenty-one days after it is served on the student, unless the student files an appeal.

NEW SECTION

WAC 132F-126-020 Appealing a required medical leave of absence. A student may appeal the vice president's decision imposing a required medical leave of absence to the medical leave of absence review board (review board). The appeal must be filed in writing with the vice president of student services within twenty days of service of the vice president's decision. Service of the vice president's decision shall be complete upon deposit in the United States mail to the student, postage prepaid and properly addressed to the student at the last known address on file with the registrar's office, or by personal service on the student.

NEW SECTION

WAC 132F-126-030 Hearing an appeal of a required medical leave of absence. (1) Upon receipt of a timely appeal by a student of the vice president's decision imposing a required medical leave of absence, the vice president of student services, or the vice president's designee, shall convene the review board to hear the appeal. The review board may:

- (a) Affirm the vice president's decision;
- (b) Affirm the vice president's decision but alter the disposition from imposition of a required medical leave of absence to conditional enrollment under specified directives; or
- (c) Reverse the vice president's decision allowing the student to remain enrolled without restriction.

(2) The review board's decision shall be in writing and served on the student within seven business days of the hearing. Service of the decision shall be effective upon deposit in the United States mail to the student, postage prepaid and properly addressed to the student at the last known address on

file with the registrar's office, or by personal service on the student.

(3) The review board shall be composed of at least three members drawn from a pool of academic deans and staff members not reporting to the vice president who have been identified by the president. The president shall select one of the members to act as the chair at the hearing.

(4) The vice president shall notify the student in writing of the time, date, and location of the hearing.

(5) The review board shall conduct the hearing according to the Administrative Procedure Act, chapter 34.05 RCW.

(6) The chair of the review board may order the hearing closed to public observation as necessary to protect from disclosure medical or educational records held to be confidential under state or federal law.

NEW SECTION

WAC 132F-126-040 President's review and final college order. (1) The college president shall review the record and enter the final college order, in accordance with RCW 34.05.461(2) and 34.05.464.

(2) If either the respondent or the vice president for student services wishes to file written argument with the president, she/he must file that argument and serve a copy on the other within fifteen days after service of the review board's order. Within seven days after service of any such argument, the other party may file and serve a written response. The president shall have discretion to modify these deadlines and/or to allow oral arguments. However no new evidence, not already part of the record, may be introduced in any argument, except as expressly authorized by the president upon a showing of compelling legal justification and after any appropriate fact-finding.

(3) The president shall personally consider the whole record or such portions of it as may be cited by the parties. A party's failure to present any argument shall mean that the party is citing "none" of the record.

(4) Within ninety days following the later of the conclusion of the hearing or the review board's receipt of closing arguments, the president shall either remand the matter for further proceedings, with instructions to the review board, or enter a final order in the matter. The president shall have all of the decision-making power that he/she would have had if presiding over the hearing, including the power to affirm, reverse, or modify the review board's decision.

(5) The president's final order shall include, or incorporate by reference to the review board's initial order, all matters required by RCW 34.05.461, and in accordance with RCW 34.05.464. It shall also include notice to the respondent of his/her right to seek judicial review under RCW 34.05.510 et seq.

(6) Copies of the final order shall be served on the respondent, the vice president, any legal counsel who have appeared, and the review board's chair.

(7) The decision of the president shall be the final district action in the matter.

NEW SECTION

WAC 132F-126-050 Emergency medical leave of absence. (1) The vice president may immediately require a student to take an emergency medical leave of absence if the student has a medical, mental, emotional, or psychological condition and as a result of the condition:

(a) The student is engaging in, or threatening to engage in, behavior that poses a significant danger of causing imminent and substantial harm to the health, safety, or welfare of the student or others; or

(b) The student's behavior has resulted in substantial harm to the health, safety, or welfare of the student or others and the behavior continues, or there is a risk the behavior will continue, posing a significant danger of causing imminent and substantial harm to the health, safety, or welfare of the student or others; or

(c) The student's behavior has resulted in significant disruption of the teaching, learning or administrative activities of other members of the campus community and the behavior continues, or there is a risk the behavior will continue, with the likely result of such behavior imminently and substantially impeding the education processes or proper activities or functions of the college and its personnel.

(2) A decision by the vice president requiring a student to take an emergency medical leave of absence shall be in writing and served on the student. The decision shall set forth the reasons for requiring the leave and, as appropriate, any restrictions imposed on the student's access to the campus or college-sponsored activities. Service of the decision shall be effective upon deposit in the United States mail to the student, postage prepaid and properly addressed to the student at the last known address on file with the registrar's office, or by personal service on the student.

(3) A student subject to an emergency medical leave of absence shall be provided a hearing before a presiding officer appointed by the college president to review the vice president's decision. The hearing shall occur within three business days of the student being served with the vice president's decision imposing the emergency medical leave of absence unless a student elects to waive his or her right to a hearing. Except as otherwise provided herein, the process for conducting the emergency medical leave hearing shall be pursuant to the Administrative Procedure Act, chapter 34.05 RCW.

(4) An emergency medical leave of absence shall take effect immediately and remain in effect until the review board or president reinstate the student. The vice president may at any time decide to reinstate the student under an emergency medical leave when the vice president determines that the reasons for the emergency medical leave of absence no longer exist.

NEW SECTION

WAC 132F-126-060 Returning from a required or emergency leave of absence. (1) A student wishing to be considered for reenrollment to the college shall submit an application for reenrollment to the vice president at least one month prior to the start of the quarter in which the student wishes to reenroll. The student shall provide appropriate documentation with any conditions for reenrollment set forth in

the vice president's decision. If a student files an appeal of the vice president's decision, and the conditions for reenrollment are modified by the review board, the student shall provide evidence that the conditions set forth in the review board's order have been met. A student must also meet all other admission or enrollment requirements of the college for reenrollment.

(2) The vice president shall consult with a qualified medical professional and, where possible, other persons to assess the student's ability to function in the academic environment prior to determining if the student may reenroll.

(3) The vice president shall notify the student in writing of the decision and the conditions associated with the approval or denial for reenrollment.

WSR 21-13-079**PERMANENT RULES****DEPARTMENT OF HEALTH**

[Filed June 15, 2021, 3:32 p.m., effective July 16, 2021]

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

Purpose: Chapter 246-930 WAC, Sex offender treatment provider, ESSB 6641, an act relating to increasing the availability of certified sex offender treatment providers (SOTP), made significant statutory changes to SOTP credential qualifications and other aspects of this profession. ESHB 1551 repealed statutory authority for AIDS training requirements for practitioners. The department of health (department) adopted amendments to align related rules with these statutory changes and to make other organizational changes.

Citation of Rules Affected by this Order: New WAC 246-930-067; repealing WAC 246-930-220 and 246-930-300; and amending WAC 246-930-010, 246-930-020, 246-930-030, 246-930-065, 246-930-075, 246-930-200, 246-930-301, 246-930-350, 246-930-431, and 246-930-990.

Statutory Authority for Adoption: RCW 18.155.040.

Other Authority: ESSB 6641 (chapter 266, Laws of 2020); and ESHB 1551 (chapter 76, Laws of 2020).

Adopted under notice filed as WSR 21-06-009 on February 18, 2021.

Changes Other than Editing from Proposed to Adopted Version: Correcting a drafting error in WAC 246-930-010 (2), which incorrectly included the phrase "as an affiliate" in the definition of "Certified sex offender treatment provider." This phrase has been removed.

A final cost-benefit analysis is available by contacting Brandon Williams, Office of Health Professions, P.O. Box 47850, Olympia, WA 98504-7850, phone 360-236-4611, fax 360-236-2321, TTY 711, email brandon.williams@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 1, Amended 7, 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 3, Repealed 2.

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 10, Repealed 2.

Date Adopted: June 15, 2021.

Kristin Peterson
Deputy Secretary of
Policy and Planning
for Umair A. Shah, MD, MPH
Secretary

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~((12)))~~ (11) "SSODA" means special sex offender disposition alternative, authorized under RCW 13.40.160.

~~((13)))~~ (12) "SSOSA" means special sex offender sentencing alternative, authorized under RCW 9.94A.670.

~~((14)))~~ (13) "Supervising officer" is the designated representative of the agency having oversight responsibility for a client sentenced under SSOSA or SSODA, for example, a community corrections officer or a juvenile probation officer.

~~((15)))~~ (14) "Treatment" means face-to-face individual, group, or family therapy, provided by an affiliate or provider, to a client. Treatment is focused on the client's offending behavior.

~~((16)))~~ (15) "Treatment plan" means a written statement of intended care and services as documented in the evaluation that details how the client's treatment needs will be met while protecting the community during the course of treatment.

AMENDATORY SECTION (Amending WSR 21-02-002, filed 12/23/20, effective 1/23/21)

WAC 246-930-020 Underlying credential ~~((as a health professional))~~ required. (1) Under RCW 18.155.020 ~~((1))~~ (2), only ~~((credentialed health professionals))~~ a person who is a licensed psychologist, licensed marriage and family therapist, licensed social worker, licensed mental health counselor, or psychiatrist as defined in RCW 71.05.020 may be certified as ~~((providers))~~ a provider.

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

~~((3))~~ A person who is ~~((credentialed as a health professional))~~ a licensed psychologist, licensed marriage and family therapist, licensed social worker, licensed mental health counselor, or psychiatrist in a state or jurisdiction other than

Washington may satisfy this requirement by submitting the following:

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

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

(c) A statement from the issuing authority:

(i) That the credential is in good standing;

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

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

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

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

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

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

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

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

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

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

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

~~(2) Approved subject content includes at least five graduate semester hours or seven graduate quarter hours in coun-~~

~~seling, psychotherapy, and personality theory, and five graduate semester hours or seven graduate quarter hours in at least two of the following content areas:~~

~~(a) Counseling and psychotherapy;~~

~~(b) Personality theory;~~

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

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

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

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

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

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

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

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

WAC 246-930-065 Requirements for certification.

(1) An applicant for certification must:

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

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

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

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

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

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

NEW SECTION

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

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

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

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

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

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

WAC 246-930-075 Supervision of affiliates. Supervision of affiliates by a qualified supervisor is considerably different than consultation with other professionals. Consultation is solely advisory; consultants do not assume responsibility for those individuals with whom they consult. Supervision of affiliates requires that the ~~((provider))~~ qualified supervisor take full ethical and legal responsibility for the quality of work of the affiliate. A ~~((provider))~~ qualified supervisor may not supervise more than two affiliates.

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

(a) Depending on the affiliate's skill and experience levels, the ~~((provider's))~~ qualified supervisor's supervision shall include direct observation of the affiliate by:

- (i) Sitting in sessions;
- (ii) Audio tape recording;
- (iii) Videotaping, etc.

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

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

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

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

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

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

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

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

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

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

(14) Supervision is a power relationship. The ~~((provider))~~ qualified supervisor must not use his or her position to take advantage of the affiliate. This subsection is not intended

to prevent a provider from seeking reasonable compensation for supervisory services.

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

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

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

WAC 246-930-200 Application and examination. (1) In order to be certified to practice under this chapter as a provider or affiliate provider in the state of Washington all applicants shall pass an examination approved by the secretary.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (a) Preparation of a written SSOSA, SSODA, self-referral or forensic evaluation;
- (b) Primary or secondary responsibility for interviewing the client;
- (c) Preparation of the written evaluation report;
- (d) All contact with clients; and
- (e) Preparation of limited assessments for the purpose of:
 - (i) Institution classification;
 - (ii) Treatment monitoring; and
 - (iii) Reporting.

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

- (a) Face-to-face treatment hours performed by affiliates under the supervision of ~~((certified providers))~~ qualified supervisors;
- (b) Time spent as a co-therapist. Both therapists must have formal responsibility for the group session; and
- (c) Time spent maintaining collateral contacts and written case/progress notes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 246-930-220 Reexamination.

WAC 246-930-300 Mandatory reporting.

**WSR 21-13-099
PERMANENT RULES
HEALTH CARE AUTHORITY**

[Filed June 18, 2021, 1:53 p.m., effective October 1, 2021]

Effective Date of Rule: October 1, 2021.

Purpose: The agency is establishing rules regarding prescriber and pharmacist use of the qualified prescription drug monitoring program, as required by § 5042 of the SUPPORT for Patients and Communities Act (Public Law 115-271), prior to prescribing or dispensing scheduled drugs.

Citation of Rules Affected by this Order: New WAC 182-530-1080.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Other Authority: Public Law 115-271.

Adopted under notice filed as WSR 21-06-097 on March 2, 2021.

Changes Other than Editing from Proposed to Adopted Version:

Proposed/ Adopted	WAC Subsection	Reason
WAC 182-530-1080		
Proposed	WAC 182-530-1080 Requirements for prescribing and dispensing controlled substances—Prescription monitoring program (PMP). This section identifies the steps prescribers and pharmacists must take to check an apple health client's prescription drug history in the prescription monitoring program (PMP) described in chapter 246-470 WAC, prior to prescribing a controlled substance or dispensing a controlled substance from an outpatient pharmacy.	Revised language to clarify that prescribers conduct their review before prescribing, and pharmacists conduct their check when dispensing.
Adopted	WAC 182-530-1080 Requirements for prescribing and dispensing controlled substances—Prescription monitoring program (PMP). This section identifies the steps prescribers must take before prescribing a controlled substance and the steps pharmacists must take when dispensing a controlled substance from an outpatient pharmacy to check an apple health client's prescription drug history in the prescription monitoring program (PMP) described in chapter 246-470 WAC.	
WAC 182-530-1080		
Proposed	(1) PMP review required. Except as identified in subsection (4) of this section, a prescriber or pharmacist must check all of a client's current prescriptions in the PMP, including any prescriptions not paid for by apple health, before prescribing or dispensing a controlled substance.	Revised language to clarify when prescribers and pharmacists conduct their checks.
Adopted	(1) PMP review required. Except as identified in subsection (4) of this section, a prescriber, before prescribing, and a pharmacist, when dispensing, must check all of a client's current prescriptions in the PMP, including any prescriptions not paid for by apple health.	
WAC 182-530-1080		
Proposed	(2) Retrieval by delegates allowed. A prescriber or pharmacist may delegate the retrieval of the client's PMP information to anyone in their practice setting with authorization to access the PMP, so long as the prescriber or pharmacist reviews all of the client's current prescriptions in the PMP before prescribing or dispensing a controlled substance.	Added "when" before "dispensing" to better clarify the timing for the pharmacist's check.
Adopted	(2) Retrieval by delegates allowed. A prescriber or pharmacist may delegate the retrieval of the client's PMP information to anyone in their practice setting with authorization to access the PMP, so long as the prescriber or pharmacist reviews all of the client's current prescriptions in the PMP before prescribing or when dispensing a controlled substance.	
WAC 182-530-1080		

Proposed/ Adopted	WAC Subsection	Reason
Proposed	(3) Documentation. The prescriber or pharmacist must document in the client's record the date and time of the: (a) Retrieval of information from the PMP; and (b) Review of information from the PMP.	Revised this to say "prescriber and pharmacist" to clarify that both parties must conduct PMP checks.
Adopted	(3) Documentation. The prescriber and pharmacist must document in the client's record the date and time of the: (a) Retrieval of information from the PMP; and (b) Review of information from the PMP.	
WAC 182-530-1080		
Adopted	(4) Good faith effort exception. (a) A prescriber, pharmacist, or their delegate must make a good faith effort to review a client's prescription drug history in the PMP. (b) If a prescriber, pharmacist, or their delegate is unable to access the client's record in the PMP after a good faith effort, that attempt must be documented in the client's record. (c) A prescriber or pharmacist must document the reason or reasons they were unable to conduct the check.	Removed proposed subsection (a) because it is not needed and because delegates can only retrieve, not review PMP information.
Proposed	(4) Good faith effort exception. (a) If a prescriber, pharmacist, or their delegate is unable to access the client's record in the PMP after a good faith effort, that attempt must be documented in the client's record. (b) A prescriber or pharmacist must document the reason or reasons they were unable to conduct the check.	

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, 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 1, Amended 0, Repealed 0.

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

Date Adopted: June 18, 2021.

Wendy Barcus
Rules Coordinator

NEW SECTION

WAC 182-530-1080 Requirements for prescribing and dispensing controlled substances—Prescription monitoring program (PMP). This section identifies the steps prescribers must take before prescribing a controlled substance and the steps pharmacists must take when dispensing a controlled substance from an outpatient pharmacy to check an apple health client's prescription drug history in the pre-

scription monitoring program (PMP) described in chapter 246-470 WAC.

(1) **PMP review required.** Except as identified in subsection (4) of this section, a prescriber, before prescribing, and a pharmacist, when dispensing, must check all of a client's current prescriptions in the PMP, including any prescriptions not paid for by apple health.

(2) **Retrieval by delegates allowed.** A prescriber or pharmacist may delegate the retrieval of the client's PMP information to anyone in their practice setting with authorization to access the PMP, so long as the prescriber or pharmacist reviews all of the client's current prescriptions in the PMP before prescribing or when dispensing a controlled substance.

(3) **Documentation.** The prescriber and pharmacist must document in the client's record the date and time of the:

- (a) Retrieval of information from the PMP; and
- (b) Review of information from the PMP.

(4) **Good faith effort exception.**

(a) If a prescriber, pharmacist, or their delegate is unable to access the client's record in the PMP after a good faith effort, that attempt must be documented in the client's record.

(b) A prescriber or pharmacist must document the reason or reasons they were unable to conduct the check.

**WSR 21-13-100
PERMANENT RULES
DEPARTMENT OF REVENUE**

[Filed June 18, 2021, 2:12 p.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: The stumpage values rule is required by statute (RCW 84.33.091) to be effective on July 1, 2021.

Purpose: WAC 458-40-660 contains the stumpage values used by harvesters of timber to calculate the timber excise tax. This rule is being revised to provide the stumpage values to be used during the second half of 2021.

Citation of Rules Affected by this Order: Amending WAC 458-40-660 Timber excise tax—Stumpage value tables—Stumpage value adjustments.

Statutory Authority for Adoption: RCW 82.01.060(2) and 84.33.096.

Adopted under notice filed as WSR 21-10-042 on April 28, 2021.

A final cost-benefit analysis is available by contacting Jennifer Arnold, P.O. Box 47453, Olympia, WA 98504-7453, phone 360-534-1574, fax 360-534-1606, TTY 1-800-451-7985, email JenniferA@dor.wa.gov, website dor.wa.gov.

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

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

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

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

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

Date Adopted: June 18, 2021.

Atif Aziz
Rules Coordinator

AMENDATORY SECTION (Amending WSR 21-02-020, filed 12/28/20, effective 1/1/21)

WAC 458-40-660 Timber excise tax—Stumpage value tables—Stumpage value adjustments. (1) Introduction. This rule provides stumpage value tables and stumpage value adjustments used to calculate the amount of a harvester's timber excise tax.

(2) **Stumpage value tables.** The following stumpage value tables are used to calculate the taxable value of stumpage harvested from ~~((January 1st))~~ July 1 through ~~((June 30))~~ December 31, 2021:

**Washington State Department of Revenue
WESTERN WASHINGTON STUMPAGE VALUE TABLE
~~((January))~~ July 1 through ~~((June 30))~~ December 31, 2021**

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾
Starting January 1, 2019, there are no Haul Zone adjustments.

Species Name	Species Code	SVA (Stumpage Value Area)	Stumpage Values		
Douglas-fir ⁽²⁾	DF	1	((391)) <u>422</u>		
		2	((453)) <u>520</u>		
		3	((483)) <u>520</u>		
		4	((511)) <u>573</u>		
		5	((465)) <u>539</u>		
		9	((377)) <u>408</u>		
		Western Hemlock and Other Conifer ⁽³⁾	WH	1	((226)) <u>282</u>
				2	((290)) <u>395</u>
				3	((389)) <u>419</u>
Western Redcedar ⁽⁴⁾	RC	4	((320)) <u>348</u>		
		5	((255)) <u>362</u>		
		9	((212)) <u>268</u>		
		1-5	((932)) <u>1153</u>		
		9	((918)) <u>1139</u>		
Ponderosa Pine ⁽⁵⁾	PP	1-5	((158)) <u>163</u>		
		9	((144)) <u>149</u>		
		1-5	((343)) <u>363</u>		
Red Alder	RA	9	((329)) <u>349</u>		
		1-5	((+)) <u>19</u>		
Black Cottonwood	BC	9	((+)) <u>5</u>		

Species Name	Species Code	SVA (Stumpage Value Area)	Stumpage Values
Other Hard-wood	OH	1-5	((159)) <u>123</u>
		9	((145)) <u>109</u>
Douglas-fir Poles & Piles	DFL	1-5	((798)) <u>811</u>
		9	((784)) <u>797</u>
Western Red-cedar Poles	RCL	1-5	((1459)) <u>1724</u>
		9	((1445)) <u>1710</u>
Chipwood ⁽⁶⁾	CHW	1-5	((5)) <u>1</u>
		9	((3)) <u>1</u>
RC Shake & Shingle Blocks ⁽⁷⁾	RCS	1-9	301
Posts ⁽⁸⁾	LPP	1-9	0.35
DF Christmas Trees ⁽⁹⁾	DFX	1-9	0.25
Other Christmas Trees ⁽⁹⁾	TFX	1-9	0.50

- (1) Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
- (2) Includes Western Larch.
- (3) Includes all Hemlock, Spruce and true Fir species, or any other conifer not listed on this page.
- (4) Includes Alaska-Cedar.
- (5) Includes all Pines in SVA 1-5 & 9.
- (6) Stumpage value per ton.
- (7) Stumpage value per cord.
- (8) Includes Lodgepole posts and other posts, Stumpage value per 8 lineal feet or portion thereof.
- (9) Stumpage value per lineal foot.

Washington State Department of Revenue
EASTERN WASHINGTON STUMPAGE VALUE TABLE
 ((January)) July 1 through ((June 30)) December 31, 2021

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾
 Starting January 1, 2019, there are no Haul Zone adjustments.

Species Name	Species Code	SVA (Stumpage Value Area)	Stumpage Values
Douglas-fir ⁽²⁾	DF	6	\$((233)) <u>299</u>
		7	((247)) <u>313</u>

Species Name	Species Code	SVA (Stumpage Value Area)	Stumpage Values
Western Hemlock and Other Conifer ⁽³⁾	WH	6	((204)) <u>231</u>
		7	((218)) <u>245</u>
Western Red-cedar ⁽⁴⁾	RC	6	((704)) <u>945</u>
		7	((718)) <u>959</u>
Ponderosa Pine ⁽⁵⁾	PP	6	((144)) <u>149</u>
		7	((158)) <u>163</u>
Other Hard-wood	OH	6	((4)) <u>1</u>
		7	((18)) <u>9</u>
Western Red-cedar Poles	RCL	6	((1442)) <u>1594</u>
		7	((1456)) <u>1608</u>
Chipwood ⁽⁶⁾	CHW	6	1
		7	((2)) <u>1</u>
Small Logs ⁽⁶⁾	SML	6	((16)) <u>20</u>
		7	((18)) <u>22</u>
RC Shake & Shingle Blocks ⁽⁷⁾	RCS	6-7	301
Posts ⁽⁸⁾	LPP	6-7	0.35
DF Christmas Trees ⁽⁹⁾	DFX	6-7	0.25
Other Christmas Trees ⁽⁹⁾	TFX	6-7	0.50

- (1) Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
- (2) Includes Western Larch.
- (3) Includes all Hemlock, Spruce and true Fir species, and Lodgepole Pine in SVA 6-7, or any other conifer not listed on this table.
- (4) Includes Alaska-Cedar.
- (5) Includes Western White Pine in SVA 6-7.
- (6) Stumpage value per ton.
- (7) Stumpage value per cord.
- (8) Includes Lodgepole posts and other posts, Stumpage value per 8 lineal feet or portion thereof.
- (9) Stumpage value per lineal foot.

(3) **Harvest value adjustments.** The stumpage values in subsection (2) of this rule for the designated stumpage value areas are adjusted for various logging and harvest conditions, subject to the following:

(a) No harvest adjustment is allowed for special forest products, chipwood, or small logs.

(b) Conifer and hardwood stumpage value rates cannot be adjusted below one dollar per MBF.

(c) Except for the timber yarded by helicopter, a single logging condition adjustment applies to the entire harvest unit. The taxpayer must use the logging condition adjustment class that applies to a majority (more than 50%) of the acreage in that harvest unit. If the harvest unit is reported over more than one quarter, all quarterly returns for that harvest unit must report the same logging condition adjustment. The helicopter adjustment applies only to the timber volume from the harvest unit that is yarded from stump to landing by helicopter.

(d) The volume per acre adjustment is a single adjustment class for all quarterly returns reporting a harvest unit. A harvest unit is established by the harvester prior to harvesting. The volume per acre is determined by taking the volume logged from the unit excluding the volume reported as chipwood or small logs and dividing by the total acres logged. Total acres logged does not include leave tree areas (RMZ, UMZ, forested wetlands, etc.) over 2 acres in size.

(e) A domestic market adjustment applies to timber which meet the following criteria:

(i) **Public timber** - Harvest of timber not sold by a competitive bidding process that is prohibited under the authority of state or federal law from foreign export may be eligible for the domestic market adjustment. The adjustment may be applied only to those species of timber that must be processed domestically. According to type of sale, the adjustment may be applied to the following species:

Federal Timber Sales: All species except Alaska-cedar. (Stat. Ref. - 36 C.F.R. 223.10)

State, and Other Nonfederal, Public Timber Sales: Western Redcedar only. (Stat. Ref. - 50 U.S.C. appendix 2406.1)

(ii) **Private timber** - Harvest of private timber that is legally restricted from foreign export, under the authority of The Forest Resources Conservation and Shortage Relief Act (Public Law 101-382), (16 U.S.C. Sec. 620 et seq.); the Export Administration Act of 1979 (50 U.S.C. App. 2406(i)); a Cooperative Sustained Yield Unit Agreement made pursuant to the act of March 29, 1944 (16 U.S.C. Sec. 583-583i); or Washington Administrative Code (WAC 240-15-015(2)) is also eligible for the Domestic Market Adjustment.

The following harvest adjustment tables apply from ~~((January 1st))~~ July 1 through ~~((June 30))~~ December 31, 2021:

TABLE 9—Harvest Adjustment Table
Stumpage Value Areas 1, 2, 3, 4, 5, and 9
~~((January))~~ July 1 through ~~((June 30))~~ December 31, 2021

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
I. Volume per acre		

Permanent

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
Class 1	Harvest of 30 thousand board feet or more per acre.	\$0.00
Class 2	Harvest of 10 thousand board feet to but not including 30 thousand board feet per acre.	-\$15.00
Class 3	Harvest of less than 10 thousand board feet per acre.	-\$35.00
II. Logging conditions		
Class 1	Ground based logging a majority of the unit using tracked or wheeled equipment or draft animals.	\$0.00
Class 2	Logging a majority of the unit: Using an overhead system of winch-driven cables and/or logging on slopes greater than 45% using tracked or wheeled equipment supported by winch-driven cables.	-\$85.00
Class 3	Applies to logs yarded from stump to landing by helicopter. This does not apply to special forest products.	-\$200.00
III. Remote island adjustment:		
	For timber harvested from a remote island	-\$50.00
IV. Thinning		
Class 1	A limited removal of timber described in WAC 458-40-610 (28)	-\$100.00

TABLE 10—Harvest Adjustment Table
Stumpage Value Areas 6 and 7
~~((January))~~ July 1 through ~~((June 30))~~ December 31, 2021

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
I. Volume per acre		
Class 1	Harvest of more than 8 thousand board feet per acre.	\$0.00
Class 2	Harvest of 8 thousand board feet per acre and less.	-\$8.00
II. Logging conditions		
Class 1	The majority of the harvest unit has less than 40% slope. No significant rock outcrops or swamp barriers.	\$0.00
Class 2	The majority of the harvest unit has slopes between 40% and 60%. Some rock outcrops or swamp barriers.	-\$50.00
Class 3	The majority of the harvest unit has rough, broken ground with slopes over 60%. Numerous rock outcrops and bluffs.	-\$85.00
Class 4	Applies to logs yarded from stump to landing by helicopter. This does not apply to special forest products.	-\$200.00

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
Note:	A Class 2 adjustment may be used for slopes less than 40% when cable logging is required by a duly promulgated forest practice regulation. Written documentation of this requirement must be provided by the taxpayer to the department of revenue.	

III. Remote island adjustment:

For timber harvested from a remote island	-\$50.00
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TABLE 11—Domestic Market Adjustment

Class	Area Adjustment Applies	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
	SVAs 1 through 5 only:	\$0.00

Note: This adjustment only applies to published MBF sawlog values.

(4) **Damaged timber.** Timber harvesters planning to remove timber from areas having damaged timber may apply to the department of revenue for an adjustment in stumpage values. The application must contain a map with the legal descriptions of the area, an accurate estimate of the volume of damaged timber to be removed, a description of the damage sustained by the timber with an evaluation of the extent to which the stumpage values have been materially reduced from the values shown in the applicable tables, and a list of estimated additional costs to be incurred resulting from the removal of the damaged timber. The application must be received and approved by the department of revenue before the harvest commences. Upon receipt of an application, the department of revenue will determine the amount of adjustment to be applied against the stumpage values. Timber that has been damaged due to sudden and unforeseen causes may qualify.

(a) Sudden and unforeseen causes of damage that qualify for consideration of an adjustment include:

(i) Causes listed in RCW 84.33.091; fire, blow down, ice storm, flood.

(ii) Others not listed; volcanic activity, earthquake.

(b) Causes that do not qualify for adjustment include:

(i) Animal damage, root rot, mistletoe, prior logging, insect damage, normal decay from fungi, and pathogen caused diseases; and

(ii) Any damage that can be accounted for in the accepted normal scaling rules through volume or grade reductions.

(c) The department of revenue will not grant adjustments for applications involving timber that has already been harvested but will consider any remaining undisturbed damaged timber scheduled for removal if it is properly identified.

(d) The department of revenue will notify the harvester in writing of approval or denial. Instructions will be included for taking any adjustment amounts approved.

(5) **Forest-derived biomass,** has a \$0/ton stumpage value.

WSR 21-13-101
PERMANENT RULES
HEALTH CARE AUTHORITY
(Public Employees Benefits Board)

[Admin #2021-01.01—Filed June 18, 2021, 3:07 p.m., effective January 1, 2022]

Effective Date of Rule: January 1, 2022.

Purpose: The purpose of this proposal is to amend and repeal rules to support the public employees benefits board (PEBB) program.

Implement PEBB policy resolution and make other technical amendments:

Repealed WAC 182-12-208 to implement policy resolution PEBB 2021-01 removing the retiree two-year dental enrollment requirement.

Amended WAC 182-12-250 to implement policy resolution PEBB 2021-01 removing the retiree two-year dental enrollment requirement and to clarify survivors' enrollment requirements when returning to a PEBB health plan following deferment.

Citation of Rules Affected by this Order: Repealing WAC 182-12-208; and amending WAC 182-12-250.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Other Authority: Policy resolution PEBB 2021-01.

Adopted under notice filed as WSR 21-10-070 on May 3, 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 1.

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: June 18, 2021.

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 20-16-062, filed 7/28/20, effective 1/1/21)

WAC 182-12-250 Public employees benefits board (PEBB) insurance coverage eligibility for survivors of emergency service personnel killed in the line of duty. Surviving spouses, state registered domestic partners, and dependent children of emergency service personnel who are killed in the line of duty are eligible to enroll or defer enrollment in public employees benefits board (PEBB) retiree insurance coverage.

(1) This section applies to the surviving spouse, the surviving state registered domestic partner, and dependent children of emergency service personnel "killed in the line of duty" as determined by the Washington state department of labor and industries.

(2) "Emergency service personnel" means law enforcement officers and firefighters as defined in RCW 41.26.030, members of the Washington state patrol retirement fund as defined in RCW 43.43.120, and reserve officers and firefighters as defined in RCW 41.24.010.

(3) "Surviving spouse, state registered domestic partner, and dependent children" means:

(a) A lawful spouse;

(b) An ex-spouse as defined in RCW 41.26.162;

(c) A state registered domestic partner as defined in RCW 26.60.020(1); and

(d) Children. The term "children" includes children of the emergency service worker up to age twenty-six. Children with disabilities as defined in RCW 41.26.030(6) are eligible at any age. "Children" is defined as:

(i) Biological children (including the emergency service worker's posthumous children);

(ii) Stepchildren or children of a state registered domestic partner;

(iii) Legally adopted children;

(iv) Children for whom the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption of the child;

(v) Children specified in a court order or divorce decree; or

(vi) Children as defined in RCW 26.26A.100.

(4) Surviving spouses, state registered domestic partners, and children who are eligible for medicare must enroll in both Parts A and B of medicare.

Note: For the exclusive purpose of medicare Part A as described in this subsection, "eligible" means the enrollee is eligible for medicare Part A without a monthly premium.

(5) The survivor (or agent acting on their behalf) must submit the required forms to the PEBB program to either enroll or defer enrollment in PEBB retiree insurance coverage as described in subsection (7) of this section. The forms must be received by the PEBB program no later than one hundred eighty days after the later of:

(a) The death of the emergency service worker;

(b) The date on the letter from the department of retirement systems or the board for volunteer firefighters and reserve officers that informs the survivor that they are determined to be an eligible survivor;

(c) The last day the surviving spouse, state registered domestic partner, or child was covered under any health plan through the emergency service worker's employer; or

(d) The last day the surviving spouse, state registered domestic partner, or child was covered under the Consolidated Omnibus Budget Reconciliation Act (COBRA) coverage from the emergency service worker's employer.

(6) Survivors who do not choose to defer enrollment in PEBB retiree insurance coverage may choose among the following options for when their enrollment in a PEBB health plan will begin:

(a) June 1, 2006, for survivors whose required forms are received by the PEBB program no later than September 1, 2006;

(b) The first of the month that is not earlier than sixty days before the date that the PEBB program receives the required forms (for example, if the PEBB program receives the required forms on August 29th, the survivor may request health plan enrollment to begin on July 1st); or

(c) The first of the month after the date that the PEBB program receives the required forms.

Exception: Enrollment in the PEBB program's medicare advantage or medicare advantage-prescription drug plan may not be retroactive. If the forms are received after the date enrollment in PEBB retiree insurance coverage is to begin, the survivor may not select a medicare advantage or medicare advantage-prescription drug plan until a special enrollment period as described in WAC 182-08-198(2).

For surviving spouses, state registered domestic partners, and children who enroll, monthly health plan premiums and applicable premium surcharges must be paid by the survivor as described in WAC 182-08-180 (1)(c) except as provided in RCW 41.26.510(5) and 43.43.285 (2)(b).

(7) Survivors must choose one of the following two options to maintain eligibility for PEBB retiree insurance coverage:

(a) Enroll in a PEBB health plan:

(i) Enroll in medical; or

(ii) Enroll in medical and dental.

~~(iii) ((Survivors enrolling in dental must stay enrolled for at least two years before dental can be dropped, unless they defer PEBB retiree insurance coverage as described in WAC 182-12-205, or drop dental as described in WAC 182-12-208(4)).~~

~~(iv))~~ Dental only is not an option.

(b) Defer enrollment:

(i) Survivors may defer enrollment in PEBB retiree insurance coverage if continuously enrolled in qualifying coverage as described in WAC 182-12-205(3).

~~(ii) Survivors may enroll in a PEBB health plan as described in WAC 182-12-205(6) ((when they lose other coverage)). Survivors must provide evidence that they were continuously enrolled in one or more qualifying coverages as described in WAC 182-12-205 (3)(a) through (e) when enrolling in a PEBB health plan. ((The required form and evidence of continuous enrollment must be received by the PEBB program no later than sixty days after such coverage ends:))~~

Exception: Enrollment in the PEBB program's medicare advantage or medicare advantage-prescription drug plan may not be retroactive so the required forms and evidence of continuous enrollment must be received by the PEBB program no later than the last day of the month prior to the month coverage ends. If the forms are received after the date enrollment in PEBB retiree insurance coverage is to begin, the survivor may not select a medicare advantage or medicare advantage-prescription drug plan until a special enrollment period as described in WAC 182-08-198(2).

(iii) PEBB health plan enrollment and premiums will begin the first day of the month following the day that the

other coverage ended for eligible spouses and children who enroll.

(8) Survivors may change their health plan during the annual open enrollment. In addition to the annual open enrollment, survivors may change health plans as described in WAC 182-08-198.

(9) Survivors will lose their right to enroll in PEBB retiree insurance coverage if they:

(a) Do not apply to enroll or defer enrollment within the timelines as described in subsection (5) of this section; or

(b) Do not maintain continuous enrollment in other qualifying coverage during the deferral period, as described in subsection (7)(b)(i) of this section.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 182-12-208 What are the requirements regarding enrollment in dental under public employees benefits board (PEBB) retiree insurance coverage?

WSR 21-13-102

PERMANENT RULES

HEALTH CARE AUTHORITY

(Public Employees Benefits Board)

[Admin #2021-01.02—Filed June 18, 2021, 3:11 p.m., effective January 1, 2022]

Effective Date of Rule: January 1, 2022.

Purpose: The purpose of this proposal is to amend some of the existing rules to support the public employees benefits board (PEBB) program.

1. Implement PEBB policy resolutions related to dual enrollment prohibitions between PEBB and school employees benefits board (SEBB) programs:

Amended WAC 182-12-123, 182-12-128, and 182-12-263 to implement the following dual enrollment related PEBB policy resolutions:

- PEBB 2021-02 Employees may waive enrollment in medical.
- PEBB 2021-03 PEBB benefit enrollment requirements when SEBB benefits are waived.
- PEBB 2021-04 Resolving dual enrollment when an employee's only medical enrollment is in SEBB.
- PEBB 2021-05 Resolving dual enrollment involving dual subscriber eligibility.
- PEBB 2021-06 Resolving dual enrollment involving a PEBB dependent with multiple medical enrollments.
- PEBB 2021-07 Resolving dual enrollment involving a member with multiple medical enrollments as a dependent.
- PEBB 2021-08 PEBB benefit automatic enrollments when SEBB benefits are auto-disenrolled.
- PEBB 2021-09 Enrollment requirements when an employee loses dependent coverage in SEBB benefits.

2. Make other technical amendments:

Amended WAC 182-12-128 to clarify when an employee may waive PEBB medical during a special enrollment event and to clarify what a special open enrollment event is, and to change basic long-term disability insurance to employer-paid long-term disability insurance.

Citation of Rules Affected by this Order: Amending WAC 181-12-123, 182-12-128, and 182-12-263.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Other Authority: Policy resolutions PEBB 2021-02, 2021-03, 2021-04, 2021-05, 2021-06, 2021-07, 2021-08, 2021-09.

Adopted under notice filed as WSR 21-10-071 on May 3, 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 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 3, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 3, Repealed 0.

Date Adopted: June 18, 2021.

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 20-16-062, filed 7/28/20, effective 1/1/21)

WAC 182-12-123 Is dual enrollment in public employees benefits board (PEBB) and school employees benefits board (SEBB) prohibited? Public employees benefits board (PEBB) medical and dental coverage is limited to a single enrollment per individual as described in subsections (1) through (5) of this section. Effective January 1, 2022, individuals are limited to a single enrollment in medical, dental, and vision plans in either the PEBB program or school employees benefits board (SEBB) program as described in subsection (6) of this section.

(1) An individual who has more than one source of eligibility for enrollment in PEBB medical and PEBB dental coverage (called "dual eligibility") is limited to one enrollment.

(2) An eligible employee may waive PEBB medical and enroll as a dependent under the PEBB medical plan of their spouse, state registered domestic partner, or parent as described in WAC 182-12-128.

(3) A dependent enrolled in PEBB medical or PEBB dental who becomes eligible for PEBB benefits as an employee must elect to enroll in PEBB benefits as described in WAC 182-08-197 (1) or (3). This includes making an elec-

tion to enroll in or waive enrollment in PEBB medical as described in WAC 182-12-128.

(a) If the employee does not waive enrollment in PEBB medical, the employee is not eligible to remain enrolled in their spouse's, state registered domestic partner's, or parent's PEBB medical as a dependent. If the employee's spouse, state registered domestic partner, or parent does not take action to remove the employee (who is enrolled as a dependent) from their subscriber account, the PEBB program will ((terminate)) automatically disenroll the employee's enrollment as a dependent the last day of the month before the employee's enrollment in PEBB benefits begins as described in WAC 182-12-114.

Exception: An enrolled dependent who becomes newly eligible for PEBB benefits as an employee may be dual-enrolled in PEBB medical and dental for one month. This exception is only allowed for the first month the dependent is enrolled as an employee, and only if the dependent becomes enrolled as an employee on the first working day of a month that is not the first day of the month.

(b) If the employee elects to waive their enrollment in PEBB medical, the employee will remain enrolled in PEBB medical under their spouse's, state registered domestic partner's, or parent's PEBB medical as a dependent.

(4) A child who is eligible for PEBB medical and PEBB dental under two subscribers may be enrolled under both subscribers but is limited to a single enrollment in PEBB medical and a single enrollment in PEBB dental.

(5) When an employee is eligible for the employer contribution toward PEBB benefits due to employment in more than one PEBB-participating employing agency the following provisions apply:

(a) The employee must choose to enroll under only one employing agency.

Exception: Faculty who stack to establish or maintain eligibility as described in WAC 182-12-114(3) with two or more state institutions of higher education will be enrolled under the employing agency responsible to pay the employer contribution according to WAC 182-08-200(2).

(b) If the employee loses eligibility under the employing agency, they must notify their other employing agency no later than sixty days from the date PEBB benefits end through the employing agency described in (a) of this subsection to transfer coverage.

(c) The employee's elections remain the same when an employee transfers their enrollment under one employing agency to another employing agency without a break in PEBB benefits for one month or more, as described in (b) of this subsection.

(6) An individual who has more than one source of eligibility for enrollment in the PEBB and SEBB programs is limited to a single enrollment in medical, dental, and vision plans in either the PEBB or SEBB program. If the individual takes no action to resolve the dual enrollment, the PEBB program or the SEBB program will automatically enroll or automatically disenroll the individual as described in this subsection.

(a) An eligible employee may waive enrollment in PEBB medical to enroll in SEBB medical only if they are enrolled in SEBB dental and SEBB vision as described in WAC 182-12-128. An employee who waives enrollment in PEBB medical

to enroll in SEBB medical also waives enrollment in PEBB dental.

(b) A school employee in the SEBB program who waives SEBB medical, SEBB dental, and SEBB vision for PEBB medical must be enrolled in PEBB dental. If necessary, the PEBB program will automatically enroll the individual in the associated subscriber's PEBB dental.

(c) If the employee is enrolled only in PEBB dental, and is also enrolled in SEBB medical, and no action is taken to resolve their dual enrollment, the employee will remain in SEBB medical. The PEBB program will automatically disenroll the employee from PEBB dental in which they are enrolled. The employee's enrollment in PEBB program life insurance, accidental death and dismemberment (AD&D) insurance, and long-term disability (LTD) insurance will remain.

(d) If the employee is enrolled in PEBB medical and is also a school employee in the SEBB program and enrolled in SEBB medical, and the employee has been enrolled in SEBB medical longer than they have been enrolled in PEBB medical, and no action is taken by the employee to resolve their dual enrollment, they will remain in SEBB medical. The PEBB program will automatically disenroll the employee from PEBB medical and PEBB dental. The employee's enrollment in PEBB program life insurance, AD&D insurance, and LTD insurance will remain. If the employee eligible under both the PEBB program as an employee and the SEBB program as a school employee is not enrolled in any medical, but is enrolled only in PEBB dental and SEBB vision (with or without SEBB dental), the employee will remain in SEBB vision and if enrolled, SEBB dental. The PEBB program will automatically disenroll the employee from PEBB dental.

(e) If the employee's dependent is enrolled in any PEBB medical or PEBB dental plan, and the dependent is also a school employee in the SEBB program and enrolled in SEBB medical, and no action is taken by either the employee or the dependent to resolve the dependent's dual enrollment, the employee's dependent will remain in SEBB medical. The PEBB program will automatically disenroll the employee's dependent from PEBB medical and PEBB dental in which they are enrolled.

(f) If the employee's dependent is enrolled in both PEBB medical and SEBB medical as a dependent and has been enrolled in SEBB medical longer than they have been enrolled in PEBB medical, and no action is taken to resolve the dual enrollment, the employee's dependent will remain in SEBB medical. The PEBB program will automatically disenroll the employee's dependent from PEBB medical and PEBB dental if they are enrolled. If the employee's dependent who is eligible as a dependent in both the PEBB and SEBB programs is not enrolled in any medical but is enrolled only in PEBB dental and SEBB vision (with or without SEBB dental) as a dependent, the dependent will remain in SEBB vision and if enrolled, SEBB dental. The PEBB program will automatically disenroll the employee's dependent from PEBB dental.

Exception: If there is a National Medical Support Notice (NMSN) or a court order in place, enrollment will be in accordance with the NMSN or order.

(g) If the employee's dependent, who is also a school employee in the SEBB program who the SEBB program automatically disenrolled from SEBB dental and SEBB vision, the PEBB program will automatically enroll the employee's dependent in PEBB dental, if they are not already enrolled.

(h) If the employee who is eligible for the employer contribution toward PEBB benefits was enrolled as a dependent in SEBB medical, SEBB dental, and SEBB vision and is removed by the SEBB subscriber, the employee will be required to return from waived enrollment as described in WAC 182-12-128 (3)(b).

(7) A retiree who defers enrollment in PEBB retiree insurance coverage as described in WAC 182-12-200 by enrolling as an eligible dependent in a health plan sponsored by PEBB, a Washington state educational service district, or SEBB and who loses the employer contribution for such coverage must enroll in PEBB retiree insurance coverage as described in WAC 182-12-200 or defer enrollment as described in WAC 182-12-205.

AMENDATORY SECTION (Amending WSR 20-16-062, filed 7/28/20, effective 1/1/21)

WAC 182-12-128 When may an employee waive enrollment in public employees benefits board (PEBB) medical and when may they enroll in PEBB medical after having waived enrollment? An employee may waive enrollment in public employees benefits board (PEBB) medical only if they are enrolled in other employer-based group medical, a TRICARE plan, or medicare as described in subsection (1)(a) through (c) of this section. ~~((A special open enrollment event must be an event other than an employee gaining initial eligibility for PEBB benefits.))~~ An employee who waives enrollment in PEBB medical must enroll in PEBB dental, basic life insurance, basic accidental death and dismemberment insurance, and ((basic)) employer-paid long-term disability (LTD) insurance (unless the employing agency does not participate in these PEBB insurance coverages). For an employing agency that participates in LTD insurance, an employee will also be enrolled in employee-paid LTD insurance automatically unless the employee declines their employee-paid LTD insurance as described in WAC 182-08-197.

Exception: An employee may waive their enrollment in PEBB medical to enroll in school employees benefits board (SEBB) medical only if they are enrolled in SEBB dental and SEBB vision. An employee who waives enrollment in PEBB medical to enroll in SEBB medical also waives enrollment in PEBB dental.

(1) To waive enrollment in PEBB medical, the employee must submit the required form to their employing agency at one of the following times:

(a) **When the employee becomes eligible:** An employee may waive PEBB medical when they become eligible for PEBB benefits. The employee must indicate their election to waive enrollment in PEBB medical on the required form and submit the form to their employing agency. The employing agency must receive the form no later than thirty-one days after the date the employee becomes eligible for PEBB bene-

fits (see WAC 182-08-197). PEBB medical will be waived as of the date the employee becomes eligible for PEBB benefits.

(b) **During the annual open enrollment:** An employee may waive PEBB medical during the annual open enrollment. The required form must be received by the employee's employing agency before the end of the annual open enrollment. PEBB medical will be waived beginning January 1st of the following year.

(c) **During a special open enrollment:** An employee may waive PEBB medical during a special open enrollment only if they are enrolled in other employer-based group medical, a TRICARE plan, or medicare as described in subsection (4) of this section. A special open enrollment event must be an event other than an employee gaining initial eligibility or regaining eligibility for PEBB benefits.

The employee must submit the required form to their employing agency. The employing agency must receive the form no later than sixty days after the event that creates the special open enrollment. In addition to the required form, the employee must provide evidence of the event that creates the special open enrollment to the employing agency.

PEBB medical will be waived the last day of the month following the later of the event date or the date the required form is received. If that day is the first of the month, PEBB medical will be waived the last day of the previous month. If the special open enrollment is due to the birth, adoption, or assumption of legal obligation for total or partial support in anticipation of adoption of a child, PEBB medical will be waived the last day of the previous month.

(2) If an employee waives PEBB medical, the employee may not enroll dependents in PEBB medical.

(3) Once PEBB medical is waived, the employee is only allowed to enroll in PEBB medical at the following times:

(a) During the annual open enrollment. The required form must be received by the employee's employing agency before the end of the annual open enrollment. PEBB medical will begin January 1st of the following year.

(b) During a special open enrollment. A special open enrollment allows an employee to revoke their election and make a new election outside of the annual open enrollment. A special open enrollment may be created when one of the events described in subsection (4) of this section occurs.

The employee must submit the required form to their employing agency. The employing agency must receive the form no later than sixty days after the event that creates the special open enrollment. In addition to the required form, the employee must provide evidence of the event that creates the special open enrollment to the employing agency.

PEBB medical will begin the first day of the month following the later of the event date or the date the required form is received. If that day is the first of the month, coverage is effective on that day. If the special open enrollment is due to the birth, adoption, or assumption of legal obligation for total or partial support in anticipation of adoption of a child, PEBB medical for the employee will begin on the first day of the month in which the event occurs. PEBB medical for the newly born child, newly adopted child, spouse, or state registered domestic partner will begin as described in WAC 182-12-262 (3)(a)(iv).

If an employee who is eligible for the employer contribution toward PEBB benefits was enrolled as a dependent in SEBB medical, SEBB dental, and SEBB vision and is removed by the SEBB subscriber, the health care authority will notify the employee of their removal from the SEBB subscriber's account and that they have experienced a special enrollment event. The employee will be required to return from waived enrollment and elect PEBB medical and PEBB dental. If the employee's employing agency does not receive the employee's required forms indicating their medical and dental elections within sixty days of the employee losing SEBB medical, SEBB dental, and SEBB vision, they will be defaulted into employee-only PEBB medical and PEBB dental as described in WAC 182-08-197 (1)(b)(i) and (ii).

(4) **Special open enrollment:** Any one of the events in (a) through (k) of this subsection may create a special open enrollment that allows the employee to enroll in PEBB medical after having waived enrollment. The change in enrollment must be allowable under the Internal Revenue Code (IRC) and Treasury regulations, and correspond to and be consistent with the event that creates the special open enrollment for the employee, the employee's dependent, or both.

(a) Employee acquires a new dependent due to:

(i) Marriage or registering a state registered domestic partnership;

(ii) Birth, adoption, or when the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption; or

(iii) A child becoming eligible as an extended dependent through legal custody or legal guardianship.

(b) Employee or an employee's dependent loses other coverage under a group health plan or through health insurance coverage, as defined by the Health Insurance Portability and Accountability Act (HIPAA);

(c) Employee has a change in employment status that affects the employee's eligibility for their employer contribution toward their employer-based group medical;

(d) The employee's dependent has a change in their own employment status that affects their eligibility for the employer contribution under their employer-based group medical;

Note: As used in (d) of this subsection, "employer contribution" means contributions made by the dependent's current or former employer toward health coverage as described in Treasury Regulation 26 C.F.R. 54.9801-6.

(e) Employee or an employee's dependent has a change in enrollment under an employer-based group medical plan during its annual open enrollment that does not align with the PEBB program's annual open enrollment;

(f) Employee's dependent has a change in residence from outside of the United States to within the United States, or from within the United States to outside of the United States and that change in residence resulted in the dependent losing their health insurance;

(g) A court order requires the employee or any other individual to provide a health plan for an eligible dependent of the employee (a former spouse or former state registered domestic partner is not an eligible dependent);

(h) Employee or an employee's dependent enrolls in coverage under medicaid or a state children's health insurance

program (CHIP), or the employee or an employee's dependent loses eligibility for coverage under medicaid or CHIP;

Note: An employee may only return from having waived PEBB medical for the events described in (h) of this subsection. An employee may not waive their PEBB medical for the events described in (h) of this subsection.

(i) Employee or an employee's dependent becomes eligible for state premium assistance subsidy for PEBB health plan coverage from medicaid or CHIP;

(j) Employee or employee's dependent becomes eligible and enrolls in a TRICARE plan, or loses eligibility for a TRICARE plan;

(k) Employee becomes eligible and enrolls in medicare, or loses eligibility for medicare.

AMENDATORY SECTION (Amending WSR 20-16-062, filed 7/28/20, effective 1/1/21)

WAC 182-12-263 National Medical Support Notice (NMSN). (1) When a National Medical Support Notice (NMSN) requires a subscriber to provide health plan coverage for a dependent child the following provisions apply:

(a) The subscriber may enroll their dependent child and request changes to their health plan coverage as described under subsection (c) of this section. Employees submit the required forms to their employing agency. Subscribers on continuation coverage or PEBB retiree insurance coverage submit the required forms to the public employees benefits board (PEBB) program.

(b) If the subscriber fails to request enrollment or health plan coverage changes as directed by the NMSN, the employing agency or the PEBB program may make enrollment or health plan coverage changes according to (c) of this subsection upon request of:

(i) The child's other parent; or

(ii) Child support enforcement program.

(c) Changes to health plan coverage or enrollment are allowed as directed by the NMSN:

(i) The dependent will be enrolled under the subscriber's health plan coverage as directed by the NMSN;

(ii) An employee who has waived PEBB medical under WAC 182-12-128 will be enrolled in medical as directed by the NMSN, in order to enroll the dependent;

(iii) The subscriber's selected health plan will be changed if directed by the NMSN;

(iv) If the dependent is already enrolled under another PEBB subscriber, the dependent will be removed from the other health plan coverage and enrolled as directed by the NMSN; ~~((e))~~

(v) If the dependent is enrolled in both school employees benefits board medical and PEBB medical as a dependent as described in WAC 182-12-123 (6)(f) and there is a NMSN in place, enrollment will be in accordance with the NMSN; or

(vi) If the subscriber is eligible for and elects Consolidated Omnibus Budget Reconciliation Act (COBRA) or other continuation coverage, the NMSN will be enforced and the dependent must be covered in accordance with the NMSN.

(d) Changes to health plan coverage or enrollment as described in (c)(i) through (iii) of this subsection will begin

the first day of the month following receipt by the employing agency of the NMSN. If the NMSN is received by the employing agency on the first day of the month, the change to health plan coverage or enrollment begins on that day. A dependent will be removed from the subscriber's health plan coverage as described in (c)(iv) of this subsection the last day of the month the NMSN is received. If that day is the first of the month, the change in enrollment will be made the last day of the previous month.

(2) When a NMSN requires a spouse, former spouse, or other individual to provide health plan coverage for a dependent who is already enrolled in PEBB coverage, and that health plan coverage is in fact provided, the dependent may be removed from the subscriber's PEBB health plan coverage prospectively.

WSR 21-13-103

PERMANENT RULES

HEALTH CARE AUTHORITY

(Public Employees Benefits Board)

[Admin #2021-01-03—Filed June 18, 2021, 3:15 p.m., effective January 1, 2022]

Effective Date of Rule: January 1, 2022.

Purpose: The purpose of this proposal is to amend rules to support the public employees benefits board (PEBB) program.

1. Implement PEBB policy resolutions related to long-term disability insurance enrollment and eligibility requirements:

Amended WAC 182-08-180, 182-08-187, 182-08-197, 182-12-114, 182-12-133, 182-12-138, and 182-12-148 to implement the following long-term disability insurance related PEBB policy resolutions:

- PEBB 2021-11 Employee-paid long-term disability (LTD) enrollment procedures.
- PEBB 2021-12 Amending resolution PEBB 2020-04 relating to default enrollments.

2. Make other technical amendments:

- Amended WAC 182-08-180 to include medicare Part D late enrollment penalty payment associated with medicare advantage-prescription drug plan be made to the contracted vendor, to include premiums and applicable premium surcharges are due to contracted vendor, to change the accounting adjustment period from three months to sixty days, and to update citations.
- Amended WAC 182-08-187 to change medical flexible spending arrangement or dependent care assistance program enrollment from three months to sixty days prior to the date enrollment is processed.
- Amended WAC 182-08-190 to clarify the entire employer contribution is due and payable to the health care authority.
- Amended WAC 182-08-197 to clarify when the employee's request for a change in their supplemental life insurance becomes effective and when PEBB medi-

cal and dental will begin for a faculty who regains eligibility.

- Amended WAC 182-12-138 to change supplemental LTD insurance to employee-paid LTD insurance and to include a WAC reference.

Citation of Rules Affected by this Order: Amending WAC 182-08-180, 182-08-187, 182-08-190, 182-08-197, 182-12-114, 182-12-133, 182-12-138, and 182-12-148.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Other Authority: Policy resolutions PEBB 2021-11 and 2021-12.

Adopted under notice filed as WSR 21-10-072 on May 3, 2021.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 1, 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 8, 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 0.

Date Adopted: June 18, 2021.

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 20-16-062, filed 7/28/20, effective 1/1/21)

WAC 182-08-180 Premium payments and premium refunds. Public employees benefits board (PEBB) insurance coverage premiums and applicable premium surcharges for all subscribers are due as described in this section, except when an employing agency is correcting its enrollment error as described in WAC 182-08-187 (4) or (5).

(1) **Premium payments.** PEBB insurance coverage premiums and applicable premium surcharges for all subscribers become due the first of the month in which PEBB insurance coverage is effective.

Premiums and applicable premium surcharges are due from the subscriber for the entire month of PEBB insurance coverage and will not be prorated during any month.

(a) For subscribers not eligible for the employer contribution that are electing to enroll in PEBB retiree insurance coverage as described in WAC 182-12-171 (1)(a), 182-12-180 (3)(a), 182-12-200 (3)(a) or (b), 182-12-205 (6)((a) through (f)) or (7), 182-12-211, and 182-12-265; or electing to enroll in continuation coverage as described in WAC 182-12-133, 182-12-141, 182-12-142, 182-12-146, 182-12-148, and 182-12-270, the first premium payment and applicable premium surcharges are due to the health care authority

(HCA) or the contracted vendor no later than forty-five days after the election period ends as described within the Washington Administrative Code applicable to the subscriber. Premiums and applicable premium surcharges associated with continuing PEBB medical must be made to the HCA as well as premiums associated with continuing PEBB dental or long-term disability (LTD) insurance coverage. Any medicare part D late enrollment penalty associated with the medicare advantage-prescription drug plan must be made to the contracted vendor. Premiums associated with life insurance and accidental death and dismemberment (AD&D) insurance coverage must be made to the contracted vendor. Following the first premium payment, premiums and applicable premium surcharges must be paid as premiums become due.

(b) For employees who are eligible for the employer contribution, premiums and applicable premium surcharges are due to the employing agency or contracted vendor. If an employee elects supplemental coverage or employee-paid LTD insurance, or is enrolled in employee-paid LTD insurance as described in WAC 182-08-197 (1)(a) or (3)(a), or is enrolled in employee-paid LTD insurance as described in WAC 182-08-197 (1)(b), the employee is responsible for payment of premiums from the month that the supplemental coverage or employee-paid LTD insurance begins.

(c) Unpaid or underpaid premiums or applicable premium surcharges for all subscribers must be paid, and are due from the employing agency, subscriber, or a subscriber's legal representative to the HCA or contacted vendor. For subscribers not eligible for the employer contribution, monthly premiums or applicable premium surcharges that remain unpaid for thirty days will be considered delinquent. A subscriber is allowed a grace period of thirty days from the date the monthly premiums or applicable premium surcharges become delinquent to pay the unpaid premium balance or applicable premium surcharges. If a subscriber's monthly premiums or applicable premium surcharges remain unpaid for sixty days from the original due date, the subscriber's PEBB insurance coverage will be terminated retroactive to the last day of the month for which the monthly premiums and any applicable premium surcharges were paid. If it is determined by the HCA that payment of the unpaid balance in a lump sum would be considered a hardship, the HCA may develop a reasonable payment plan of up to twelve months in duration with the subscriber or the subscriber's legal representative upon request.

Exception: For a subscriber enrolled in a medicare advantage or a medicare advantage-prescription drug plan a notice will be sent to them notifying them that they are delinquent on their monthly premiums and that the enrollment will be terminated prospectively to the end of the month after the notice is sent.

(d) Monthly premiums or applicable premium surcharges due from a subscriber who is not eligible for the employer contribution will be considered unpaid if one of the following occurs:

(i) No payment of premiums or applicable premium surcharges are received by the HCA or contracted vendor and the monthly premiums or applicable premium surcharges remain unpaid for thirty days; or

(ii) Premium payments or applicable premium surcharges received by the HCA or contracted vendor are underpaid by an amount greater than an insignificant shortfall and the monthly premiums or applicable premium surcharges remain underpaid for thirty days past the date the monthly premiums or applicable premium surcharges were due.

(2) **Premium refunds.** PEBB insurance coverage premiums and applicable premium surcharges will be refunded using the following methods:

(a) When a subscriber submits an enrollment change affecting subscriber or dependent eligibility, HCA may allow up to three months of accounting adjustments. HCA will refund to the individual or the employing agency any excess premiums and applicable premium surcharges paid during the ~~((three month))~~ sixty day adjustment period, except as indicated in WAC 182-12-148(5).

(b) If a PEBB subscriber, dependent, or beneficiary submits a written appeal as described in WAC 182-16-2010, and provides clear and convincing evidence of extraordinary circumstances, such that the subscriber could not timely submit the necessary information to accomplish an allowable enrollment change within sixty days after the event that created a change of premiums, the PEBB director, the PEBB director's designee, or the PEBB appeals unit may:

(i) Approve a refund of premiums and applicable premium surcharges which does not exceed twelve months of premiums; and

(ii) Approve the enrollment change that was originally requested and which forms the basis for the refund.

(c) If a federal government entity determines that an enrollee is retroactively enrolled in coverage (for example, medicare) the subscriber or beneficiary may be eligible for a refund of premiums and applicable premium surcharges paid during the time they were enrolled under the federal program if approved by the PEBB director or the PEBB director's designee.

(d) HCA errors will be corrected by returning all excess premiums and applicable premium surcharges paid by the employing agency, subscriber, or beneficiary.

(e) Employing agency errors will be corrected by returning all excess premiums and applicable premium surcharges paid by the employee or beneficiary as described in WAC 182-08-187 (4) and (5).

AMENDATORY SECTION (Amending WSR 20-16-062, filed 7/28/20, effective 1/1/21)

WAC 182-08-187 How do employing agencies and contracted vendors correct enrollment errors and is there a limit on retroactive enrollment? (1) An employing agency or contracted vendor that makes one or more of the following enrollment errors must correct the error as described in subsections (2) through (5) of this section.

(a) Failure to timely notify an employee of their eligibility for public employee benefits board (PEBB) benefits and the employer contribution as described in WAC 182-12-113(2);

(b) Failure to enroll the employee and their dependents in PEBB benefits as elected by the employee, if the elections were timely;

(c) Failure to enroll an employee and their dependents in PEBB benefits as described in WAC 182-08-197 (1)(b);

(d) Failure to accurately reflect an employee's premium surcharge attestation on the employee's account;

(e) Enrolling an employee or their dependent in PEBB insurance coverage when they are not eligible as described in WAC 182-12-114 or 182-12-260 and it is clear there was no fraud or intentional misrepresentation by the employee involved; or

(f) Providing incorrect information regarding PEBB benefits to the employee that they relied upon.

(2) The employing agency or the applicable contracted vendor must enroll the employee and the employee's dependents, as elected, or terminate enrollment in PEBB benefits as described in subsection (3) of this section, reconcile premium payments and applicable premium surcharges as described in subsection (4) of this section, and provide recourse as described in subsection (5) of this section.

(3) Enrollment or termination.

(a) PEBB medical and dental enrollment is effective at a minimum the first day of the month following the date the enrollment error is identified, unless the authority determines additional recourse is warranted, as described in subsection (5) of this section. If the enrollment error is identified on the first day of the month, the enrollment correction is effective that day;

(b) Basic life, basic accidental death and dismemberment (AD&D), ~~((and basic))~~ employer-paid long-term disability (LTD) insurance, and employee-paid LTD insurance (unless the employee declines the employee-paid LTD insurance as described in WAC 182-08-197(1)) enrollment is retroactive to the first day of the month following the day the employee became newly eligible, or the first day of the month the employee regained eligibility, as described in WAC 182-08-197. If the employee became newly eligible on the first working day of a month, basic life, basic AD&D, ~~((and basic))~~ employer-paid LTD insurance, and employee-paid LTD insurance begin~~(s)~~ on that date;

(c) Supplemental life, supplemental AD&D, and ~~((supplemental))~~ employee-paid LTD insurance enrollment is retroactive to the first day of the month following the day the employee became newly eligible if the employee elects to enroll in this coverage (or if previously elected, the first of the month following the signature date on the employee's application for this coverage). If an employing agency enrollment error occurred when the employee regained eligibility for the employer contribution following a period of leave as described in WAC 182-08-197(3):

(i) Supplemental life, supplemental AD&D, and ~~((supplemental))~~ employee-paid LTD insurance is enrolled the first day of the month the employee regained eligibility, at the same level of coverage the employee continued during the period of leave, without evidence of insurability.

(ii) If the employee was not eligible to continue ~~((supplemental))~~ employee-paid LTD insurance during the period of leave as described in WAC 182-12-133, ~~((supplemental))~~ employee-paid LTD insurance is reinstated the first day of the month the employee regained eligibility, to the level of coverage the employee was enrolled in prior to the period of leave, without evidence of insurability.

(iii) If the employee was eligible to continue supplemental life insurance, supplemental AD&D insurance, and ~~((supplemental))~~ employee-paid LTD insurance under the period of leave but did not, the employee must provide evidence of insurability and receive approval from the contracted vendor.

(d) If the employee is eligible and elects (or elected) to enroll in the medical flexible spending arrangement (FSA) or dependent care assistance program (DCAP), enrollment is limited to ~~((three months))~~ sixty days prior to the date enrollment is processed, but not earlier than the current plan year. If an employee was not enrolled in a medical FSA or DCAP as elected, the employee may either participate at the amount originally elected with a corresponding increase in contributions for the balance of the plan year, or participate at a reduced amount for the plan year by maintaining the per-pay period contribution in effect;

(e) If the employee or their dependent was not eligible but still enrolled as described in subsection (1)(e) of this section, the employee's or their dependent's PEBB benefits will be terminated prospectively effective as of the last day of the month.

(4) Premium payments.

(a) The employing agency must remit to the authority the employer contribution and the employee contribution for health plan premiums, applicable premium surcharges, basic life, basic AD&D, and ~~((basic))~~ employer-paid LTD starting the date PEBB benefits begins as described in subsections (3) and (5)(a)(i) of this section. If a state agency failed to notify a newly eligible employee of their eligibility for PEBB benefits, the state agency may only collect the employee contribution for health plan premiums and applicable premium surcharges for coverage for the months after the employee was notified.

(b) When an employing agency fails to correctly enroll the amount of ~~((supplemental))~~ employee-paid LTD insurance elected by the employee, premiums will be corrected as follows:

(i) When additional premiums are due to the authority, the employee is responsible for premiums for the most recent twenty-four months of coverage. The employing agency is responsible for additional months of premiums.

(ii) When a premium refund is due to the employee, the ~~((supplemental))~~ LTD insurance contracted vendor is responsible for premium refunds for the most recent twenty-four months of coverage. The employing agency is responsible for additional months of premium refund.

(c) When an employing agency mistakenly enrolls an employee or their dependent as described in subsection (1)(e) of this section, premiums and any applicable premium surcharges will be refunded by the employing agency to the employee without rescinding the insurance coverage.

(5) Recourse.

(a) Employee eligibility for PEBB benefits begins on the first day of the month following the date eligibility is established as described in WAC 182-12-114. Dependent eligibility is described in WAC 182-12-260, and dependent enrollment is described in WAC 182-12-262. When retroactive correction of an enrollment error is limited as described in subsection (3)(b), (c) and (d) of this section, the employing agency must work with the employee, and receive approval

from the authority, to implement retroactive PEBB benefits within the following parameters:

- (i) Retroactive enrollment in a PEBB insurance coverage;
 - (ii) Reimbursement of claims paid;
 - (iii) Reimbursement of amounts paid by the employee or dependent for medical and dental premiums;
 - (iv) Reimbursement of amounts paid by the employee for the premium surcharges;
 - (v) Other legal remedy received or offered; or
 - (vi) Other recourse, upon approval by the authority.
- (b) Recourse must not contradict a specific provision of federal law or statute and does not apply to requests for non-covered services or in the case of an individual who is not eligible for PEBB benefits.

AMENDATORY SECTION (Amending WSR 20-16-062, filed 7/28/20, effective 1/1/21)

WAC 182-08-190 The employer contribution is set by the health care authority (HCA) and paid to the HCA for all eligible employees. State agencies and employer groups that participate in the public employees benefits board (PEBB) program under contract with the health care authority (HCA) must pay the employer contributions to the HCA for PEBB for all eligible employees and their enrolled dependents.

(1) Employer contributions for state agencies are set by the HCA, and are subject to the approval of the governor for availability of funds as specifically appropriated by the legislature for that purpose. Insurance and health care contributions for ferry employees shall be governed by RCW 47.64-.270.

(2) Employer contributions must include an amount determined by the HCA to pay administrative costs to administer PEBB benefits for employees of these groups.

(3) Each employee of a state agency eligible under WAC 182-12-131 or each eligible employee of a state agency on leave under the federal Family and Medical Leave Act (FMLA) or the paid family and medical leave program is eligible for the employer contribution as described in WAC 182-12-138.

(4) Employees of employer groups eligible under criteria stipulated under contract with the HCA are eligible for the employer contribution.

(5) The entire employer contribution is due and payable to the HCA even if ~~((PEBB medical)) enrollment~~ is waived as described in WAC 182-12-128.

(6) Washington state patrol officers disabled while performing their duties as determined by the chief of the Washington state patrol are eligible for the employer contribution for PEBB medical as authorized in RCW 43.43.040. No other retiree or disabled employee is eligible for the employer contribution for PEBB benefits unless they are an eligible employee as described in WAC 182-12-114 or 182-12-131.

(7) The terms of payment to HCA for employer groups shall be stipulated under contract with the HCA.

AMENDATORY SECTION (Amending WSR 20-16-059, filed 7/28/20, effective 1/1/21)

WAC 182-08-197 When must a newly eligible employee, or an employee who regains eligibility for the employer contribution, elect public employees benefits board (PEBB) benefits and complete required forms? An employee who is newly eligible or who regains eligibility for the employer contribution toward public employees benefits board (PEBB) benefits enrolls as described in this section.

(1) When an employee is newly eligible for PEBB benefits:

(a) An employee must complete the required forms indicating their enrollment elections, including an election to waive ~~((PEBB medical)) enrollment~~ provided the employee is eligible to waive ~~((PEBB medical and elects to waive))~~ as described in WAC 182-12-128. The required forms must be returned to the employee's employing agency or contracted vendor. Their employing agency or contracted vendor must receive the forms no later than thirty-one days after the employee becomes eligible for PEBB benefits under WAC 182-12-114.

(i) An employee may enroll in supplemental life ~~((and supplemental long-term disability (LTD)))~~ insurance up to the guaranteed issue coverage amount without evidence of insurability if the required forms are returned to the employee's employing agency or contracted vendor as required. An employee may apply for enrollment in supplemental life ~~((and supplemental LTD))~~ insurance over the guaranteed issue coverage amount at any time during the calendar year by submitting the required form to the contracted vendor for approval. For an employee who requests a change in their supplemental life insurance after the election period described in this subsection, the change begins the first day of the month following the date the contracted vendor approves the request. An employee may enroll in supplemental accidental death and dismemberment (AD&D) insurance at any time during the calendar year without evidence of insurability by submitting the required form to the contracted vendor.

(ii) Employees are enrolled in employee-paid long-term disability (LTD) insurance automatically. An employee may elect to reduce their employee-paid LTD insurance or decline their employee-paid LTD insurance by returning the form to their employing agency. An employee may apply for a change in their employee-paid LTD insurance at any time during the calendar year by submitting the required form to their employing agency or the contracted vendor. For an employee who requests a change in their employee-paid LTD insurance after the election period described in this subsection, the change begins the first day of the month following the date the employing agency receives the required form requesting to reduce or decline the employee-paid LTD insurance, or the day of the month the contracted vendor approves the required form to increase the employee-paid LTD insurance.

(iii) If an employee is eligible to participate in the salary reduction plan (see WAC 182-12-116), the employee will automatically enroll in the premium payment plan upon enrollment in PEBB medical allowing medical premiums to be taken on a pretax basis. To opt out of the premium payment plan, a new employee must complete the required form

and return it to their state agency. The form must be received by their state agency no later than thirty-one days after the employee becomes eligible for PEBB benefits.

~~((iii))~~ (iv) If an employee is eligible to participate in the salary reduction plan (see WAC 182-12-116), the employee may enroll in the state's medical flexible spending arrangement (FSA) or dependent care assistance program (DCAP) or both, except as limited by subsection (4) of this section. To enroll in these PEBB benefits, the employee must return the required form to their state agency. The form must be received by the state agency no later than thirty-one days after the employee becomes eligible for PEBB benefits.

(b) If a newly eligible employee's employing agency, or the authority's contracted vendor in the case of life insurance and AD&D insurance, does not receive the employee's required forms indicating medical, dental, life insurance, AD&D insurance, and LTD insurance elections, and the employee's tobacco use status attestation within thirty-one days of the employee becoming eligible, their enrollment will be as follows for those elections not received within thirty-one days:

(i) A medical plan determined by the health care authority (HCA);

(ii) A dental plan determined by the HCA;

(iii) Basic life insurance;

(iv) Basic AD&D insurance;

(v) ~~(Basic)~~ Employer-paid LTD insurance and employee-paid LTD insurance;

(vi) Dependents will not be enrolled; and

(vii) A tobacco use premium surcharge will be incurred as described in WAC 182-08-185 (1)(b).

(2) The employer contribution toward PEBB benefits ends according to WAC 182-12-131. When an employee's employment ends, participation in the salary reduction plan ends.

(3) When an employee regains eligibility for the employer contribution toward PEBB benefits, including following a period of leave described in WAC 182-12-133(1), or after being between periods of leave as described in WAC 182-12-142 (1) and (2), or 182-12-131 (3)(e), PEBB medical and dental begin on the first day of the month the employee is in pay status eight or more hours, or the first day of the month in which the quarter or semester begins for faculty who regains eligibility as described in WAC 182-12-131 (3)(e).

(a) An employee must complete the required forms indicating their enrollment elections, including an election to waive ~~((PEBB-medical)) enrollment~~ if the employee chooses to waive ~~((PEBB-medical)) enrollment~~ as described in WAC 182-12-128. The required forms must be returned to the employee's employing agency except as described in (d) of this subsection. Forms must be received by the employing agency, life insurance contracted vendor, or AD&D contracted vendor, if required, no later than thirty-one days after the employee regains eligibility, except as described in (a)(i) and (b) of this subsection:

(i) An employee who self-paid for supplemental life insurance or supplemental AD&D coverage after losing eligibility will maintain that level of coverage upon return;

(ii) An employee who was eligible to continue supplemental life ~~((or supplemental AD&D)) insurance~~ but discontinued that supplemental coverage must submit evidence of insurability to the contracted vendor if they choose to reenroll when they regain eligibility for the employer contribution;

(iii) An employee who was eligible to continue ~~((supplemental)) employee-paid LTD insurance~~ but discontinued that ~~((supplemental)) coverage~~ must submit evidence of insurability for ~~((supplemental)) employee-paid LTD insurance~~ to the contracted vendor when they regain eligibility for the employer contribution.

(b) An employee or faculty in any of the following circumstances does not have to return a form indicating ~~((supplemental)) employee-paid LTD insurance~~ elections. Their ~~((supplemental)) employee-paid LTD insurance~~ will be automatically reinstated effective the first day of the month they are in pay status eight or more hours or the first day of the month in which the quarter or semester begins for faculty who regains eligibility as described in WAC 182-12-131 (3)(e):

(i) The employee continued to self-pay for their ~~((supplemental)) employee-paid LTD insurance~~ after losing eligibility for the employer contribution;

(ii) The employee was not eligible to continue ~~((supplemental)) employee-paid LTD insurance~~ after losing eligibility for the employer contribution.

(c) If an employee's employing agency, or contracted vendor accepting forms directly, does not receive the required forms within thirty-one days of the employee regaining eligibility, the employee's enrollment for those elections not received will be as described in subsection (1)(b)(i) through (vii) of this section, except as described in (a)(i) and (b) of this subsection.

(d) If an employee is eligible to participate in the salary reduction plan (see WAC 182-12-116) the employee may enroll in the medical FSA or DCAP or both, except as limited by subsection (4) of this section. To enroll in these PEBB benefits, the employee must return the required form to the contracted vendor or their state agency. The contracted vendor or employee's state agency must receive the form no later than thirty-one days after the employee becomes eligible for PEBB benefits.

(4) If an employee who is eligible to participate in the salary reduction plan (see WAC 182-12-116) is hired into a new position that is eligible for PEBB benefits in the same year, the employee may not resume participation in DCAP or medical FSA until the beginning of the next plan year, unless the time between employments is thirty days or less and within the current plan year. The employee must notify their new state agency of the transfer by providing the new state agency's personnel, payroll, or benefits office the required form no later than thirty-one days after the employee's first day of work with the new state agency.

(5) An employee's PEBB benefits elections remain the same when an employee transfers from one employing agency to another employing agency without a break in PEBB benefits for one month or more. This includes movement of an employee between any entities described in WAC 182-12-111 and participating in PEBB benefits. PEBB benefits elections also remain the same when an employee has a break in employment that does not interrupt their employer contribution toward PEBB benefits.

AMENDATORY SECTION (Amending WSR 20-16-062, filed 7/28/20, effective 1/1/21)

WAC 182-12-114 How do employees establish eligibility for public employees benefits board (PEBB) benefits? Eligibility for an employee whose work circumstances are described by more than one of the eligibility categories in subsections (1) through (5) of this section shall be determined solely by the criteria of the category that most closely describes the employee's work circumstances.

Hours that are excluded in determining eligibility include standby hours and any temporary increases in work hours, of six months or less, caused by training or emergencies (except governor-declared emergencies) that have not been or are not anticipated to be part of the employee's regular work schedule or pattern. Any hours worked in direct response to a governor-declared emergency are not excludable and must be included in determining eligibility. In order to include excluded hours in determining eligibility, employing agencies must request and receive the public employees benefits board (PEBB) program's approval.

For how the employer contribution toward PEBB benefits is maintained after eligibility is established under this section, see WAC 182-12-131.

(1) Employees are eligible for PEBB benefits as follows, except as described in subsections (2) through (5) of this section:

(a) **Eligibility.** An employee is eligible if they are anticipated to work an average of at least eighty hours per month and are anticipated to work for at least eight hours in each month for more than six consecutive months.

(b) **Determining eligibility.**

(i) **Upon employment:** An employee is eligible from the date of employment if the employing agency anticipates the employee will work according to the criteria in (a) of this subsection.

(ii) **Upon revision of anticipated work pattern:** If an employing agency revises an employee's anticipated work hours or anticipated duration of employment such that the employee meets the eligibility criteria in (a) of this subsection, the employee becomes eligible when the revision is made.

(iii) **Based on work pattern:** An employee who is determined to be ineligible, but later meets the eligibility criteria in (a) of this subsection, becomes eligible the first of the month following the six-month averaging period.

(c) **Stacking of hours.** As long as the work is within one state agency, employees may "stack" or combine hours worked in more than one position or job to establish eligibility and maintain the employer contribution toward PEBB benefits. Employees become eligible through stacking when they meet the requirements described in (a) of this subsection. They must notify their employing agency if they believe they are eligible through stacking. Stacking includes work situations in which:

(i) The employee works two or more positions or jobs at the same time (concurrent stacking);

(ii) The employee moves from one position or job to another (consecutive stacking); or

(iii) The employee combines hours from a seasonal position with hours from a nonseasonal position or job. An

employee who establishes eligibility by stacking hours from a seasonal position or job with hours from a nonseasonal position or job shall maintain the employer contribution toward PEBB benefits as described in WAC 182-12-131(1).

(d) **When PEBB benefits begin.** Medical, dental, basic life insurance, basic accidental death and dismemberment (AD&D) insurance, ~~((basic))~~ employer-paid long-term disability (LTD) insurance, employee-paid LTD insurance (unless the employee declines the employee-paid LTD insurance as described in WAC 182-08-197(1)), and if eligible, benefits under the salary reduction plan begin on the first day of the month following the date an employee becomes eligible. If the employee becomes eligible on the first working day of a month, then coverage begins on that date. Supplemental life insurance~~((;))~~ and supplemental AD&D insurance~~((; and supplemental LTD insurance))~~ begin on the first day of the month following the date the contracted vendor receives the required form or approves the enrollment.

(2) **Seasonal employees,** as defined in WAC 182-12-109, are eligible as follows:

(a) **Eligibility.** A seasonal employee is eligible if they are anticipated to work an average of at least eighty hours per month and are anticipated to work for at least eight hours in each month of at least three consecutive months of the season.

(b) **Determining eligibility.**

(i) **Upon employment:** A seasonal employee is eligible from the date of employment if the employing agency anticipates that they will work according to the criteria in (a) of this subsection.

(ii) **Upon revision of anticipated work pattern.** If an employing agency revises an employee's anticipated work hours or anticipated duration of employment such that the employee meets the eligibility criteria in (a) of this subsection, the employee becomes eligible when the revision is made.

(iii) **Based on work pattern.** An employee who is determined to be ineligible for benefits, but later works an average of at least eighty hours per month and works for at least eight hours in each month and works for more than six consecutive months, becomes eligible the first of the month following a six-month averaging period.

(c) **Stacking of hours.** As long as the work is within one state agency, employees may "stack" or combine hours worked in more than one position or job to establish eligibility and maintain the employer contribution toward PEBB benefits. Employees become eligible through stacking when they meet the requirements described in (a) of this subsection. They must notify their employing agency if they believe they are eligible through stacking. Stacking includes work situations in which:

(i) The employee works two or more positions or jobs at the same time (concurrent stacking);

(ii) The employee moves from one position or job to another (consecutive stacking); or

(iii) The employee combines hours from a seasonal position or job with hours from a nonseasonal position or job. An employee who establishes eligibility by stacking hours from a seasonal position or job with hours from a nonseasonal

position or job shall maintain the employer contribution toward PEBB benefits as described in WAC 182-12-131(1).

(d) **When PEBB benefits begin.** Medical, dental, basic life insurance, basic AD&D insurance, ~~((basic)) employer-paid LTD insurance, employee-paid LTD insurance (unless the employee declines the employee-paid LTD insurance as described in WAC 182-08-197(1))~~, and if eligible, benefits under the salary reduction plan begin on the first day of the month following the day the employee becomes eligible. If the employee becomes eligible on the first working day of a month, then coverage begins on that date. Supplemental life insurance~~((;)) and supplemental AD&D insurance((; and supplemental LTD insurance))~~ begin on the first day of the month following the date the contracted vendor receives the required form or approves the enrollment.

(3) **Faculty** are eligible as follows:

(a) **Determining eligibility.** "Half-time" means one-half of the full-time academic workload as determined by each institution, except that half-time for community and technical college faculty employees is governed by RCW 28B.50.489.

(i) **Upon employment:** Faculty who the employing agency anticipates will work half-time or more for the entire instructional year, or equivalent nine-month period, are eligible from the date of employment.

(ii) **For faculty hired on quarter/semester to quarter/semester basis:** Faculty who the employing agency anticipates will not work for the entire instructional year, or equivalent nine-month period, are eligible at the beginning of the second consecutive quarter or semester of employment in which they are anticipated to work, or has actually worked, half-time or more. Spring and fall are considered consecutive quarters/semesters when first establishing eligibility for faculty that work less than half-time during the summer quarter/semester.

(iii) **Upon revision of anticipated work pattern:** Faculty who receive additional workload after the beginning of the anticipated work period (quarter, semester, or instructional year), such that their workload meets the eligibility criteria as described in (a)(i) or (ii) of this subsection become eligible when the revision is made.

(b) **Stacking.** Faculty may establish eligibility and maintain the employer contribution toward PEBB benefits by working as faculty for more than one institution of higher education. Faculty workloads may only be stacked with other faculty workloads to establish eligibility under this section or maintain eligibility as described in WAC 182-12-131(3). A faculty becomes eligible through stacking when they meet the requirements as described in (a) of this subsection. When a faculty works for more than one institution of higher education, the faculty must notify their employing agencies that they work at more than one institution and may be eligible through stacking.

(c) **When PEBB benefits begin.**

(i) Medical, dental, basic life insurance, basic AD&D insurance, ~~((basic)) employer-paid LTD insurance, employee-paid LTD insurance (unless the faculty declines the employee-paid LTD insurance as described in WAC 182-08-197(1))~~, and if eligible, benefits under the salary reduction plan begin on the first day of the month following the day the faculty becomes eligible. If the faculty becomes eligible on

the first working day of a month, then coverage begins on that date. Supplemental life insurance~~((;)) and supplemental AD&D insurance((; and supplemental LTD insurance))~~ begin on the first day of the month following the date the contracted vendor receives the required form or approves the enrollment.

(ii) For faculty hired on a quarter/semester to quarter/semester basis under (a)(ii) of this subsection, medical, dental, basic life insurance, basic AD&D insurance, ~~((basic)) employer-paid LTD insurance, employee-paid LTD insurance (unless the faculty declines the employee-paid LTD insurance as described in WAC 182-08-197(1))~~, and if eligible, benefits under the salary reduction plan begin the first day of the month following the beginning of the second consecutive quarter/semester of half-time or more employment. If the first day of the second consecutive quarter/semester is the first working day of the month, then coverage begins at the beginning of the second consecutive quarter/semester. Supplemental life insurance~~((;)) and supplemental AD&D insurance((; and supplemental LTD insurance))~~ begin on the first day of the month following the date the contracted vendor receives the required form or approves the enrollment.

(4) **Elected and full-time appointed officials of the legislative and executive branches of state government** are eligible as follows:

(a) **Eligibility.** A legislator is eligible for PEBB benefits on the date their term begins. All other elected and full-time appointed officials of the legislative and executive branches of state government are eligible on the date their terms begin or the date they take the oath of office, whichever occurs first.

(b) **When PEBB benefits begin.** Medical, dental, basic life insurance, basic AD&D insurance, ~~((basic)) employer-paid LTD insurance, employee-paid LTD insurance (unless the employee declines the employee-paid LTD insurance as described in WAC 182-08-197(1))~~, and if eligible, benefits under the salary reduction plan begin on the first day of the month following the day the employee becomes eligible. If the employee becomes eligible on the first working day of a month, then coverage begins on that date. Supplemental life insurance~~((;)) and supplemental AD&D insurance((; and supplemental LTD insurance))~~ begin on the first day of the month following the date the contracted vendor receives the required form or approves the enrollment.

(5) **Justices and judges** are eligible as follows:

(a) **Eligibility.** A justice of the supreme court and judges of the court of appeals and the superior courts become eligible for PEBB benefits on the date they take the oath of office.

(b) **When PEBB benefits begin.** Medical, dental, basic life insurance, basic AD&D insurance, ~~((basic)) employer-paid LTD insurance, employee-paid LTD insurance (unless the employee declines the employee-paid LTD insurance as described in WAC 182-08-197(1))~~, and if eligible, benefits under the salary reduction plan begin on the first day of the month following the day the employee becomes eligible. If the employee becomes eligible on the first working day of a month, then coverage begins on that date. Supplemental life insurance~~((;)) and supplemental AD&D insurance((; and supplemental LTD insurance))~~ begin on the first day of the month following the date the contracted vendor receives the required form or approves the enrollment.

AMENDATORY SECTION (Amending WSR 20-16-062, filed 7/28/20, effective 1/1/21)

WAC 182-12-133 What options for continuation coverage are available to employees and their dependents during certain types of leave or when employment ends due to a layoff? Employees who have established eligibility for public employees benefits board (PEBB) benefits as described in WAC 182-12-114 may continue coverage for themselves and their dependents during certain types of leave or when their employment ends due to a layoff.

(1) Employees who are no longer eligible for the employer contribution toward PEBB benefits due to an event described in (b)(i) through (vi) of this subsection may continue coverage by self-paying the premium and applicable premium surcharges set by the health care authority (HCA) from the date eligibility for the employer contribution is lost:

(a) Employees may continue any combination of medical or dental, and may also continue life insurance and accidental death and dismemberment (AD&D) insurance. If life insurance or AD&D insurance is elected, both basic life and basic AD&D insurance must be continued. Employees who continue basic life insurance and basic AD&D insurance may also continue supplemental life and AD&D insurance. Employees on approved educational leave or called in to active duty in the uniformed services as defined under the Uniformed Services Employment and Reemployment Rights Act (USERRA) may continue either ~~((basic))~~ employer-paid long-term disability (LTD) insurance or both ~~((basic))~~ employer-paid and ~~((supplemental long-term disability))~~ employee-paid LTD ~~((+))~~ insurance.

(b) Employees in the following circumstances who lose their eligibility for the employer contribution toward PEBB benefits qualify to continue coverage under this subsection:

- (i) Employees who are on authorized leave without pay;
- (ii) Employees who are on approved educational leave;
- (iii) Employees who are receiving time-loss benefits under workers' compensation;
- (iv) Employees who are called to active duty in the uniformed services as defined under USERRA;
- (v) Employees whose employment ends due to a layoff as defined in WAC 182-12-109; and
- (vi) Employees who are applying for disability retirement.

(c) The employee's election must be received by the PEBB program no later than sixty days from the date the employee's PEBB health plan coverage ended or from the postmark date on the election notice sent by the PEBB program, whichever is later;

(d) Employees may self-pay for a maximum of twenty-nine months. The employee's first premium payment and applicable premium surcharges are due no later than forty-five days after the election period ends as described in (c) of this subsection.

Premiums and applicable premium surcharges associated with continuing PEBB medical, must be made to the HCA as well as premiums associated with continuing PEBB dental or LTD insurance coverage. Premiums associated with continuing life insurance and AD&D insurance coverage must be made to the contracted vendor. Following the employee's first premium payment, the employee must pay

the premium amounts for PEBB insurance coverage and applicable premium surcharges as premiums become due; and

(e) If the employee's monthly premium or applicable premium surcharges remain unpaid for sixty days from the original due date, the employee's PEBB insurance coverage will be terminated retroactive to the last day of the month for which the monthly premium and applicable premium surcharges were paid as described in WAC 182-08-180 (1)(c).

(2) The number of months that employees self-pay the premium while eligible as described in subsection (1) of this section will count toward the total months of continuation coverage allowed under the federal Consolidated Omnibus Budget Reconciliation Act (COBRA). Employees who are no longer eligible for continuation coverage as described in subsection (1) of this section but who have not used the maximum number of months allowed under COBRA coverage may continue medical, dental, or both for the remaining difference in months by self-paying the premium and applicable premium surcharges as described in WAC 182-12-146.

AMENDATORY SECTION (Amending WSR 20-16-062, filed 7/28/20, effective 1/1/21)

WAC 182-12-138 What options are available if an employee is approved for the federal Family and Medical Leave Act (FMLA) or the paid family and medical leave program? (1) An employee on approved leave under the federal Family and Medical Leave Act (FMLA) may continue to receive the employer contribution toward public employees benefits board (PEBB) benefits in accordance with the federal FMLA. The employee may also continue current supplemental life, supplemental accidental death and dismemberment (AD&D), and ~~((supplemental))~~ employee-paid long-term disability (LTD) insurance. The employee's employing agency is responsible for determining if the employee is eligible for leave under FMLA and the duration of such leave.

(2) An employee on approved leave under the paid family and medical leave program under chapter 50A.05 RCW may continue to receive the employer contribution toward PEBB benefits in accordance with RCW 50A.35.020. The employee may also continue current supplemental life, supplemental AD&D, and ~~((supplemental))~~ employee-paid LTD insurance. The employment security department is responsible for determining if the employee is eligible for the paid family and medical leave program.

(3) If an employee exhausts the period of leave approved under FMLA or paid family and medical leave, PEBB insurance coverage may be continued by self-paying the premium and applicable premium surcharges set by the HCA, with no contribution from the employing agency as described in WAC 182-12-133(1).

AMENDATORY SECTION (Amending WSR 20-16-062, filed 7/28/20, effective 1/1/21)

WAC 182-12-148 What options for continuation coverage are available to employees during their appeal of dismissal? (1) Employees awaiting the hearing outcome of a dismissal action before any of the following may continue their public employees benefits board (PEBB) insurance cov-

erage by self-paying the premium and applicable premium surcharges set by the health care authority (HCA), with no contribution from the employer, on the same terms as an employee who is granted leave as described in WAC 182-12-133:

- (a) The personnel resources board;
- (b) An arbitrator;
- (c) A grievance or appeals committee established under a collective bargaining agreement for union represented employees; or
- (d) A court.

(2) The employee must pay premium amounts and applicable premium surcharges associated with PEBB insurance coverage as premiums and applicable premium surcharges become due. If the monthly premium or applicable premium surcharges remain unpaid for sixty days from the original due date, PEBB insurance coverage will be terminated retroactive to the last day of the month for which the monthly premium and applicable premium surcharges were paid as described in WAC 182-08-180 (1)(c).

(3) If the dismissal is upheld, all PEBB insurance coverage will terminate at the end of the month in which the decision is entered, or the date to which premiums have been paid, whichever is later, with the exception described in subsection (4) of this section.

(4) If the dismissal is upheld and the employee is eligible under the federal Consolidated Omnibus Budget Reconciliation Act (COBRA), the employee may continue PEBB medical, dental, or both for the remaining months available under COBRA. See WAC 182-12-146 for information on COBRA. The number of months the employee self-paid premiums during the appeal will count toward the total number of months allowed under COBRA.

(5) If the board, arbitrator, committee, or court sustains the employee in the appeal and directs reinstatement of employer paid PEBB insurance coverage retroactively, the employing agency must forward to HCA the full employer contribution for the period directed by the board, arbitrator, committee, or court and collect from the employee the employee's share of premiums due, if any.

(a) When the employer contribution is reinstated, the HCA will refund to the employee any premiums and applicable premium surcharges the employee paid. In the alternative, at the request of the employee, HCA may deduct the employee's contribution amount for PEBB benefits from the refund of premiums and applicable premium surcharges self-paid by the employee during the appeal period.

(b) All supplemental life, supplemental accidental death and dismemberment, and ~~((supplemental))~~ employee-paid LTD insurance which was in force at the time of dismissal shall be reinstated retroactively only if the employee makes retroactive payment of premium for any such supplemental coverage and employee-paid LTD insurance which was not continued by self-payment during the appeal process. If the employee chooses not to pay the retroactive premium, evidence of insurability will be required to enroll in such supplemental coverage and employee-paid LTD insurance.

WSR 21-13-104
PERMANENT RULES
HEALTH CARE AUTHORITY
(Public Employees Benefits Board)

[Admin #2021-01.04—Filed June 18, 2021, 3:18 p.m., effective January 1, 2022]

Effective Date of Rule: January 1, 2022.

Purpose: The purpose of this proposal is to amend some of the existing rules to support the public employees benefits board (PEBB) program.

1. Implement PEBB policy resolution:

- Amended WAC 182-12-200, 182-12-205, and 182-12-265 to implement PEBB policy resolution 2021-14 Authorizing a gap of thirty-one days or less between periods of enrollment in qualified coverages during the deferral period.

2. Other technical amendments:

- Amended WAC 182-12-205 to create new subsections (7) and (8) moved from subsection (6).
- Amended WAC 182-12-265 to clarify a survivor's enrollment requirement when they return from deferral.

Citation of Rules Affected by this Order: Amending WAC 182-12-200, 182-12-205, and 182-12-265.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Other Authority: Policy resolution PEBB 2021-14.

Adopted under notice filed as WSR 21-10-074 on May 3, 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 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 3, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 3, Repealed 0.

Date Adopted: June 18, 2021.

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 20-16-063, filed 7/28/20, effective 1/1/21)

WAC 182-12-200 May a retiring employee, a retiring school employee, or a retiree enrolled as a dependent in a health plan sponsored by public employees benefits board (PEBB), a Washington state educational service district, or school employees benefits board (SEBB) defer enrollment under PEBB retiree insurance coverage? (1) A retir-

ing employee or a retiring school employee may defer enrollment in public employees benefits board (PEBB) retiree insurance coverage at retirement if they meet substantive eligibility requirements as described in WAC 182-12-171(2) or as described in WAC 182-12-180(1). An enrolled retiree may defer enrollment after enrolling in PEBB retiree insurance coverage. Enrollment in PEBB retiree insurance coverage may be deferred when they are enrolled as a dependent in a health plan sponsored by PEBB, a Washington state educational service district, or school employees benefits board (SEBB), including such coverage under the Consolidated Omnibus Budget Reconciliation Act (COBRA) or continuation coverage.

(2) A retiring employee, a retiring school employee, or a retiree who defers enrollment in PEBB retiree insurance coverage defers enrollment in PEBB medical and PEBB dental. A retiree must be enrolled in PEBB medical to enroll in PEBB dental. A retiree who defers enrollment also defers enrollment for all eligible dependents. A retiree may only defer enrollment in PEBB retiree term life insurance as described in WAC 182-12-209 (3)(b).

(3) A retiring employee, a retiring school employee, or a retiree who defers enrollment as described in this section may later enroll themselves and their dependents in a PEBB health plan ((if they provide)) by submitting the required forms as described below and evidence of continuous enrollment in a health plan sponsored by PEBB, a Washington state educational service district, or SEBB, and between each period of enrollment in qualifying coverages as described in WAC 182-12-205 (3)(a) through (c) during the deferral period:

(a) During the PEBB annual open enrollment period. The required form must be received by the PEBB program no later than the last day of the open enrollment period. PEBB health plan coverage begins January 1st of the following year; or

(b) When enrollment in a health plan sponsored by PEBB, a Washington state educational service district, or SEBB ends, or such coverage under COBRA or continuation coverage ends. The required forms to enroll must be received by the PEBB program no later than sixty days after coverage ends. PEBB health plan coverage begins the first day of the month following the date the other coverage ends. To continue in a deferred status, the retiree must defer enrollment as described in WAC 182-12-205.

Exception: Enrollment in the PEBB program's medicare advantage or medicare advantage-prescription drug plan may not be retroactive so the required forms and evidence of continuous enrollment must be received by the PEBB program no later than the last day of the month prior to the month the other coverage ends. If the forms are received after the date enrollment in PEBB retiree insurance coverage is to begin, the subscriber may not select a medicare advantage or medicare advantage-prescription drug plan until a special enrollment period as described in WAC 182-08-198(2).

(c) If a retiree elects to enroll a dependent in PEBB health plan coverage as described in this subsection, the dependent must be enrolled in the same PEBB medical or PEBB dental plan as the retiree.

Exception: If a retiree selects a medicare supplement plan or medicare advantage-prescription drug plan, nonmedicare enrollees will be enrolled in the Uniform Medical Plan (UMP) Classic. If a retiree selects any other medicare plan, they must also select a nonmedicare plan with the same contracted vendor available to nonmedicare enrollees.

AMENDATORY SECTION (Amending WSR 20-16-063, filed 7/28/20, effective 1/1/21)

WAC 182-12-205 May a retiree or a survivor defer enrollment or voluntarily terminate enrollment under public employees benefits board (PEBB) retiree insurance coverage? (1) The following individuals may defer enrollment in public employees benefits board (PEBB) retiree insurance coverage:

- (a) A retiring employee or a retiring school employee;
- (b) A dependent becoming eligible as a survivor; or
- (c) A retiree or a survivor enrolled in PEBB retiree insurance coverage.

(2) A subscriber described in subsection (1) of this section who defers enrollment in PEBB retiree insurance coverage also defers enrollment for all eligible dependents, except as described in subsection (3)(c) of this section.

(3) A subscriber described in subsection (1) of this section who chooses to defer enrollment in PEBB retiree insurance coverage must maintain continuous enrollment in ((other medical)) one or more qualifying coverages as described in this ((section)) subsection or WAC 182-12-200. A gap of thirty-one days or less is allowed between the date PEBB retiree insurance coverage is deferred and the start date of a qualifying coverage, and between each period of enrollment in qualifying coverages during the deferral period. A subscriber who chooses to defer enrollment, defers enrollment in PEBB medical and PEBB dental. A subscriber must be enrolled in PEBB medical to enroll in PEBB dental. A retiree may only defer enrollment in PEBB retiree term life insurance as described in WAC 182-12-209 (3)(b).

(a) Beginning January 1, 2001, enrollment in PEBB retiree insurance coverage may be deferred when the subscriber is enrolled in employer-based group medical as an employee or the dependent of an employee, or such medical insurance continued under Consolidated Omnibus Budget Reconciliation Act (COBRA) coverage or continuation coverage.

(b) Beginning January 1, 2001, enrollment in PEBB retiree insurance coverage may be deferred when the subscriber is enrolled as a retiree or the dependent of a retiree in a federal retiree medical plan.

(c) Beginning January 1, 2006, enrollment in PEBB retiree insurance coverage may be deferred when the subscriber is enrolled in medicare Parts A and B and a medicaid program that provides creditable coverage as defined in WAC 182-12-109. Dependents may continue their PEBB health plan enrollment if they meet PEBB eligibility criteria

and are not eligible for creditable coverage under a medicaid program.

(d) Beginning January 1, 2014, subscribers who are not eligible for Parts A and B of medicare may defer enrollment in PEBB retiree insurance coverage when the subscriber is enrolled in exchange coverage.

(e) Beginning July 17, 2018, enrollment in PEBB retiree insurance coverage may be deferred when the subscriber is enrolled in the Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA).

(4) To defer enrollment in PEBB retiree insurance coverage, the required forms must be submitted to the PEBB program.

(a) For a retiring employee or a retiring school employee who meets the substantive eligibility requirements as described in WAC 182-12-171(2), enrollment will be deferred the first of the month following the date their employer-paid coverage, COBRA coverage, or continuation coverage ends. The forms must be received by the PEBB program no later than sixty days after the employer-paid coverage, COBRA coverage, or continuation coverage ends.

(b) For an official leaving public office who meets the requirements as described in WAC 182-12-180(1), enrollment will be deferred the first of the month following the date the official leaves public office. The forms must be received by the PEBB program no later than sixty days after the official leaves public office.

(c) For an employee or a school employee determined to be retroactively eligible for disability retirement who meets the requirements as described in WAC 182-12-211 (1)(a) through (c), enrollment will be deferred as described in WAC 182-12-211 (2) or (3). The forms and formal determination letter must be received by the PEBB program no later than sixty days after the date on the determination letter.

(d) For an eligible survivor, the dependent must meet the requirements described below and the forms must be received by the PEBB program within the time described:

(i) For a survivor of an employee or a school employee who meets the requirements as described in WAC 182-12-265 (1) or (3), enrollment will be deferred the first of the month following the later of the date of the employee's or the school employee's death or the date the survivor's PEBB insurance coverage, educational service district coverage, or school employees benefits board (SEBB) insurance coverage ends. The forms must be received by the PEBB program no later than sixty days after the later of the date of the employee's or the school employee's death or the date the survivor's PEBB insurance coverage, educational service district coverage, or SEBB insurance coverage ends.

(ii) For a survivor of an official who meets the requirements as described in WAC 182-12-180(2), enrollment will be deferred the first of the month following the later of the date of the official's death or the date the survivor's PEBB insurance coverage ends. The forms must be received by the PEBB program no later than sixty days after the later of the date of the official's death or the date the survivor's PEBB insurance coverage ends.

(iii) For a survivor of a retiree who meets the requirements as described in WAC 182-12-265(2), enrollment will be deferred the first of the month following the date of the

retiree's death. The forms must be received by the PEBB program no later than sixty days after the retiree's death.

(iv) For a survivor of an emergency service personnel killed in the line of duty who meets the requirements as described in WAC 182-12-250, enrollment will be deferred the first of the month following the later of one of the events described in WAC 182-12-250 (5)(a) through (d). The forms must be received by the PEBB program no later than one hundred eighty days after the later of one of the events described in WAC 182-12-250 (5)(a) through (d).

(e) For an enrolled retiree or survivor who submits the required forms to defer enrollment in PEBB retiree insurance coverage, enrollment will be deferred effective the first of the month following the date the required forms are received by the PEBB program. If the forms are received on the first day of the month, enrollment will be deferred effective that day.

Exception: When a subscriber or their dependent is enrolled in a medicare advantage plan, then enrollment in PEBB retiree insurance coverage will be deferred effective the first of the month following the date the medicare advantage plan disenrollment form is received.

(5) A retiree who meets substantive eligibility requirements in WAC 182-12-171(2) and whose employer-paid coverage, COBRA coverage, or continuation coverage ended between January 1, 2001, and December 31, 2001, was not required to have submitted the deferral form at that time, but must meet all procedural requirements as stated in this section, WAC 182-12-171, and 182-12-200.

(6) A subscriber described in subsection (1) of this section who defers enrollment while enrolled in qualifying coverage as described in subsection (3)(a) through (e) of this section may later enroll themselves and their dependents in a PEBB health plan by submitting the required forms as described below and evidence of continuous enrollment in one or more qualifying coverages as described in subsection (3)(a) through (e) of this section. A gap of thirty-one days or less is allowed between the date PEBB retiree insurance coverage is deferred and the start date of a qualifying coverage, and between each period of enrollment in qualifying coverages during the deferral period:

(a) A subscriber who defers enrollment while enrolled in employer-based group medical or such medical insurance continued under COBRA coverage or continuation coverage may enroll in a PEBB health plan by submitting the required forms and evidence of continuous enrollment to the PEBB program:

(i) During the PEBB annual open enrollment period. The required forms must be received by the PEBB program no later than the last day of the open enrollment period. PEBB health plan coverage begins January 1st of the following year; or

(ii) When their employer-based group medical or such coverage under COBRA coverage or continuation coverage ends. The required forms and evidence of continuous enrollment must be received by the PEBB program no later than sixty days after coverage ends. PEBB health plan coverage begins the first day of the month after the employer-based group medical coverage, COBRA coverage, or continuation coverage ends.

Exception: Enrollment in the PEBB program's medicare advantage or medicare advantage-prescription drug plan may not be retroactive so the required forms and evidence of continuous enrollment must be received by the PEBB program no later than the last day of the month prior to the month the employer-based group medical, COBRA coverage, or continuation coverage ends. If the forms are received after the date enrollment in PEBB retiree insurance coverage is to begin, the subscriber may not select a medicare advantage or medicare advantage-prescription drug plan until a special enrollment period as described in WAC 182-08-198(2).

(b) A subscriber who defers enrollment while enrolled as a retiree or dependent of a retiree in a federal retiree medical plan will have a one-time opportunity to enroll in a PEBB health plan by submitting the required forms and evidence of continuous enrollment to the PEBB program:

(i) During the PEBB annual open enrollment period. The required forms must be received by the PEBB program no later than the last day of the open enrollment period. PEBB health plan coverage begins January 1st of the following year; or

(ii) When the federal retiree medical plan coverage ends. The required forms and evidence of continuous enrollment must be received by the PEBB program no later than sixty days after coverage ends. PEBB health plan coverage begins the first day of the month after coverage under the federal retiree medical plan ends.

Exception: Enrollment in the PEBB program's medicare advantage or medicare advantage-prescription drug plan may not be retroactive so the required forms and evidence of continuous enrollment must be received by the PEBB program no later than the last day of the month prior to the month the federal retiree medical plan coverage ends. If the forms are received after the date enrollment in PEBB retiree insurance coverage is to begin, the subscriber may not select a medicare advantage or medicare advantage-prescription drug plan until a special enrollment period as described in WAC 182-08-198(2).

(c) A subscriber who defers enrollment while enrolled in medicare Parts A and B and a medicaid program that provides creditable coverage as defined in WAC 182-12-109 may enroll in a PEBB health plan by submitting the required forms and evidence of continuous enrollment to the PEBB program:

(i) During the PEBB annual open enrollment period. The required forms must be received by the PEBB program no later than the last day of the open enrollment period. PEBB health plan coverage begins January 1st of the following year; or

(ii) When their medicaid coverage ends. The required forms and evidence of continuous enrollment must be received by the PEBB program no later than sixty days after coverage ends. PEBB health plan coverage begins the first day of the month after the medicaid coverage ends; or

Exception: Enrollment in the PEBB program's medicare advantage or medicare advantage-prescription drug plan may not be retroactive so the required forms and evidence of continuous enrollment must be received by the PEBB program no later than the last day of the month prior to the month medicaid coverage ends. If the forms are received after the date enrollment in PEBB retiree insurance coverage is to begin, the subscriber may not select a medicare advantage or medicare advantage-prescription drug plan until a special enrollment period as described in WAC 182-08-198(2).

(ii) No later than the end of the calendar year when their medicaid coverage ends if the retiree or survivor was also determined eligible under 42 U.S.C. § 1395w-114 and subsequently enrolled in a medicare Part D plan. Enrollment in the PEBB health plan will begin January 1st following the end of the calendar year when the medicaid coverage ends. The required forms must be received by the PEBB program no later than the last day of the calendar year in which the medicaid coverage ends.

(d) A subscriber who defers enrollment while enrolled in exchange coverage will have a one-time opportunity to enroll or reenroll in a PEBB health plan by submitting the required forms and evidence of continuous enrollment to the PEBB program:

(i) During the PEBB annual open enrollment period. The required forms must be received by the PEBB program no later than the last day of the open enrollment period. PEBB health plan coverage begins January 1st of the following year; or

(ii) When exchange coverage ends. The required forms and evidence of continuous enrollment must be received by the PEBB program no later than sixty days after coverage ends. PEBB health plan coverage begins the first day of the month after exchange coverage ends.

Exception: Enrollment in the PEBB program's medicare advantage or medicare advantage-prescription drug plan may not be retroactive so the required forms and evidence of continuous enrollment must be received by the PEBB program no later than the last day of the month prior to the month exchange coverage ends. If the forms are received after the date enrollment in PEBB retiree insurance coverage is to begin, the subscriber may not select a medicare advantage or medicare advantage-prescription drug plan until a special enrollment period as described in WAC 182-08-198(2).

(e) A subscriber who defers enrollment while enrolled in CHAMPVA will have a one-time opportunity to enroll in a PEBB health plan by submitting the required forms and evidence of continuous enrollment to the PEBB program:

(i) During the PEBB annual open enrollment period. The required forms must be received by the PEBB program no later than the last day of the open enrollment period. PEBB health plan coverage begins January 1st of the following year; or

(ii) When CHAMPVA coverage ends. The required forms and evidence of continuous enrollment must be received by the PEBB program no later than sixty days after coverage ends. PEBB health plan coverage begins the first day of the month after CHAMPVA coverage ends.

Exception: Enrollment in the PEBB program's medicare advantage or medicare advantage-prescription drug plan may not be retroactive so the required forms and evidence of continuous enrollment must be received by the PEBB program no later than the last day of the month prior to the month CHAMPVA coverage ends. If the forms are received after the date enrollment in PEBB retiree insurance coverage is to begin, the subscriber may not select a medicare advantage or medicare advantage-prescription drug plan until a special enrollment period as described in WAC 182-08-198(2).

~~((f))~~ (7) A subscriber described in subsection (1) of this section who defers enrollment while enrolled in qualifying coverage as described in subsection (3)(a) through (c) of this section may later enroll themselves and their dependents in a PEBB health plan if they receive formal notice that the authority has determined it is more cost-effective to enroll them or their eligible dependents in PEBB medical than a medical assistance program.

~~((g))~~ (8) If a subscriber elects to enroll a dependent in PEBB health plan coverage as described in ~~((this))~~ subsection (6) or (7) of this section, the dependent must be enrolled in the same PEBB medical and PEBB dental plan as the subscriber.

Exception: If a subscriber selects a medicare supplement plan or medicare advantage-prescription drug plan, nonmedicare enrollees will be enrolled in the Uniform Medical Plan (UMP) Classic. If a subscriber selects any other medicare plan, they must also select a nonmedicare plan with the same contracted vendor available to nonmedicare enrollees.

~~((7))~~ (9) An enrolled retiree or a survivor who requests to voluntarily terminate their enrollment in PEBB retiree insurance coverage must do so in writing. The written termination request must be received by the PEBB program. A retiree or a survivor who voluntarily terminates their enrollment in a PEBB health plan also terminates enrollment for all eligible dependents. Once coverage is terminated, a retiree or a survivor may not enroll again in the future unless they reestablish eligibility for PEBB insurance coverage by becoming newly eligible. Enrollment in a PEBB health plan will terminate on the last day of the month in which the PEBB program receives the termination request. If the termination request is received on the first day of the month, enrollment will terminate on the last day of the previous month.

Exception: When a subscriber or their dependent is enrolled in a medicare advantage plan, then enrollment will terminate on the last day of the month when the medicare advantage plan disenrollment form is received.

AMENDATORY SECTION (Amending WSR 20-16-063, filed 7/28/20, effective 1/1/21)

WAC 182-12-265 What options for continuing health plan enrollment are available to a surviving spouse, state registered domestic partner, or child, if an employee, a school employee, or a retiree dies? The survivor of an eligible employee, an eligible school employee, or a retiree who meets the eligibility criteria and submits the required forms as described in subsection (1), (2), or (3) of this section is eligible to enroll or defer enrollment as a survivor under public

employees benefits board (PEBB) retiree insurance coverage. If enrolling in PEBB retiree insurance coverage, the survivor's first premium payment and applicable premium surcharges are due to the health care authority (HCA) no later than forty-five days after the election period ends as described in subsection (1), (2), or (3) of this section. Following the survivor's first premium payment, premiums and applicable premium surcharges must be paid as described in WAC 182-08-180 (1)(c).

(1) An employee's spouse, state registered domestic partner, or child who loses eligibility due to the death of an eligible employee may enroll or defer enrollment as a survivor under PEBB retiree insurance coverage provided they immediately begin receiving a monthly retirement benefit from any state of Washington sponsored retirement system. To satisfy the requirement to immediately receive a monthly retirement benefit they must begin receiving monthly benefit payments no later than one hundred twenty days from the date of death of the employee. The required forms to enroll or defer enrollment must be received by the PEBB program no later than sixty days after the later of the date of the employee's death or the date the survivor's PEBB insurance coverage ends.

Exception: Enrollment in the PEBB program's medicare advantage or medicare advantage-prescription drug plan may not be retroactive so the required forms must be received by the PEBB program no later than the last day of the month prior to the month PEBB insurance coverage ends. If the forms are received after the date enrollment in PEBB retiree insurance coverage is to begin, the survivor may not select a medicare advantage or medicare advantage-prescription drug plan until a special enrollment period as described in WAC 182-08-198(2).

(a) The employee's spouse or state registered domestic partner may continue health plan enrollment until death.

(b) The employee's children may continue health plan enrollment until they lose eligibility as described in WAC 182-12-260.

Notes: If a spouse, state registered domestic partner, or child of an eligible employee is not eligible for a monthly retirement benefit, they are not eligible to enroll as a survivor under PEBB retiree insurance coverage. However, they may continue health plan enrollment as described in WAC 182-12-146.

Eligibility for the surviving spouse, surviving state registered domestic partner, or surviving child of an employee of a participating employer group will cease at the end of the month in which the group's contract with the authority ends unless the employer group is an educational service district.

Eligibility for the surviving spouse, surviving state registered domestic partner, or surviving child of an elected and full-time appointed official of the legislative and executive branches of state government is described in WAC 182-12-180.

(2) A retiree's spouse, state registered domestic partner, or child who loses eligibility due to the death of an eligible retiree may enroll or defer enrollment as a survivor under PEBB retiree insurance coverage. The required forms to enroll or defer enrollment must be received by the PEBB program no later than sixty days after the retiree's death.

(a) The retiree's spouse or state registered domestic partner may continue health plan enrollment until death.

(b) The retiree's children may continue health plan enrollment until they lose eligibility as described in WAC 182-12-260.

(c) If a spouse, state registered domestic partner, or child of an eligible retiree is not enrolled in a PEBB health plan at the time of the retiree's death, the survivor is eligible to enroll or defer enrollment as a survivor under PEBB retiree insurance coverage. The required forms to enroll or defer enrollment must be received by the PEBB program no later than sixty days after the retiree's death. For a survivor to enroll in a PEBB health plan who is not enrolled due to the retiree electing to defer enrollment in PEBB retiree insurance coverage as described in WAC 182-12-200 or 182-12-205, the survivor must also provide evidence of continuous enrollment in ((medical coverage)) one or more qualifying coverages as described in WAC 182-12-205 (3)(a) through (e) from the most recent open enrollment for which the survivor was not enrolled in a PEBB medical plan prior to the retiree's death. A gap of thirty-one days or less is allowed between the date PEBB retiree insurance coverage was deferred and the start date of a qualifying coverage, and between each period of enrollment in qualifying coverages during the deferral period.

Note: Eligibility for the surviving spouse, surviving state registered domestic partner, or surviving child of an employer group retiree will cease at the end of the month in which the group's contract with the authority ends unless the employer group is an educational service district.

(3) A school employee's spouse, state registered domestic partner, or child who loses eligibility due to the death of an eligible school employee may enroll or defer enrollment as a survivor under PEBB retiree insurance coverage at the time of the school employee's death, provided the employee died on or after October 1, 1993. The survivor must immediately begin receiving a retirement benefit allowance under chapter 41.32, 41.35 or 41.40 RCW. The required forms to enroll or defer enrollment must be received by the PEBB program no later than sixty days after the later of the date of the school employee's death or the date the survivor's educational service district coverage, or school employees benefits board (SEBB) insurance coverage ends.

Exception: Enrollment in the PEBB program's medicare advantage or medicare advantage-prescription drug plan may not be retroactive so the required forms must be received by the PEBB program no later than the last day of the month prior to the month the educational service district coverage or SEBB insurance coverage ends. If the forms are received after the date enrollment in PEBB retiree insurance coverage is to begin, the survivor may not select a medicare advantage or medicare advantage-prescription drug plan until a special enrollment period as described in WAC 182-08-198(2).

(a) The school employee's spouse or state registered domestic partner may continue health plan enrollment until death.

(b) The school employee's children may continue health plan enrollment until they lose eligibility as described in WAC 182-12-260.

Note: If a spouse, state registered domestic partner, or child of an eligible school employee is not eligible for a retirement benefit allowance, they are not eligible to enroll as a survivor under PEBB retiree insurance coverage. However, a spouse, state registered domestic partner, or child of an eligible school employee enrolled in SEBB insurance coverage may continue health plan enrollment as described in WAC 182-31-090.

(4) If premiums and applicable premium surcharges received by the HCA are sufficient as described in WAC 182-08-180 (1)(d)(ii) to maintain PEBB health plan enrollment after the employee, school employee, or retiree's death, the PEBB program will consider the payment as notice of the survivor's intent to continue enrollment.

If the survivor's enrollment ended due to the death of the employee, school employee, or retiree, the PEBB program will reinstate the survivor's enrollment without a gap subject to payment of premium and applicable premium surcharges.

(5) If a survivor elects to enroll a dependent in PEBB health plan coverage, the dependent must be enrolled in the same PEBB medical and PEBB dental plan as the survivor.

Exception: If a survivor selects a medicare supplement plan or medicare advantage-prescription drug plan, nonmedicare enrollees will be enrolled in the Uniform Medical Plan (UMP) Classic. If a survivor selects any other medicare plan, they must also select a nonmedicare plan with the same contracted vendor available to nonmedicare enrollees.

(6) In order to avoid duplication of group medical coverage, a survivor may defer enrollment in PEBB retiree insurance coverage as described in WAC 182-12-200 and 182-12-205.

WSR 21-13-105
PERMANENT RULES
HEALTH CARE AUTHORITY
(Public Employees Benefits Board)

[Admin #2021-01.05—Filed June 18, 2021, 3:20 p.m., effective January 1, 2022]

Effective Date of Rule: January 1, 2022.

Purpose: The purpose of this proposal is to amend WAC 182-12-300 to support the public employees benefits board (PEBB) program.

Implement PEBB policy resolution:

Amended WAC 182-12-300 to implement policy resolution PEBB 2021-15 rescinding PEBB policy resolution #4 SmartHealth as adopted on July 12, 2017.

Citation of Rules Affected by this Order: Amending WAC 182-12-300.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Other Authority: Policy resolution PEBB 2021-15.

Adopted under notice filed as WSR 21-10-075 on May 3, 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 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: June 18, 2021.

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 20-16-062, filed 7/28/20, effective 1/1/21)

WAC 182-12-300 Public employees benefits board (PEBB) wellness incentive program eligibility and procedural requirements. The board annually determines the design of the PEBB wellness incentive program.

(1) All subscribers, except PEBB subscribers who are enrolled in both medicare Parts A and B, and in the medicare risk pool as described in RCW 41.05.080(3), are eligible to participate in the PEBB wellness incentive program.

(2) Effective January 1, 2020, to receive the PEBB wellness incentive of a reduction to the subscriber's medical plan deductible or a deposit to the subscriber's health savings account for the following plan year, eligible subscribers must complete PEBB wellness incentive program requirements during the current plan year by the following deadline:

(a) For subscribers continuing enrollment in PEBB medical and subscribers enrolling in PEBB medical with an effective date in January through September, the deadline is November 30th; or

(b) For subscribers enrolling in PEBB medical with an effective date in October through December, the deadline is December 31st.

(3) Subscribers who do not complete the requirements according to subsection (2) of this section, except as noted, within the time frame described are not eligible to receive a PEBB wellness incentive the following plan year.

Note: All eligible subscribers can earn a wellness incentive. Subscribers who cannot complete the wellness incentive program requirements may be able to earn the same incentive by different means. The contracted vendor will work with enrollees (and their physician, if they wish) to define an individual wellness program that provides the opportunity to qualify for the same incentive in light of the enrollee's health status.

~~(4) ((Effective January 1, 2018, an eligible subscriber will receive a separate PEBB wellness incentive for completing the SmartHealth well-being assessment on or before December 31st, of the current plan year. An eligible subscriber may only earn this separate PEBB wellness incentive once per plan year. Once earned, subscribers must claim the incentive on or before December 31st of the same calendar year it was earned.~~

~~(5))~~ A PEBB wellness incentive will be provided only if:

(a) For the wellness incentive described in subsection (2) of this section the subscriber is still eligible for the PEBB wellness incentive program and is enrolled in a PEBB medical plan in the year the incentive applies;

(b) The funding rate provided by the legislature is designed to provide a PEBB wellness incentive program or a PEBB wellness incentive, or both; or

(c) Specific appropriations are provided for wellness incentives.

WSR 21-13-106

PERMANENT RULES

HEALTH CARE AUTHORITY

(Public Employees Benefits Board)

[Admin #2021-01.06—Filed June 18, 2021, 3:23 p.m., effective January 1, 2022]

Effective Date of Rule: January 1, 2022.

Purpose: The purpose of this proposal is to amend some of the existing rules to support the public employees benefits board (PEBB) program:

1. Make technical amendments:

- Amended WAC 182-08-185 to update a subsection reference in WAC 182-12-205.
- Amended WAC 182-08-198 to include and update federal citations for medicare advantage-prescription drug plans and to clarify special open enrollment opportunities only apply if the dependent is a tax dependent.
- Amended WAC 182-08-245 to clarify board members of school districts and educational service districts.
- Amended WAC 182-12-262 to update federal citation references and add language related to special open enrollment event when a subscriber's dependent enrolls in medicare or loses eligibility for medicare, and to clarify a subscriber must certify the state registered domestic partner or state registered domestic partner's child is a tax dependent.

2. Amend rules to improve the administration of the PEBB program:

- Amended WAC 182-08-015 and 182-12-109 to update the definitions of annual open enrollment, long-term disability insurance or LTD insurance, special open enrollment, supplemental coverage, and waive.
- Amended WAC 182-08-120 to change basic long-term disability insurance to employer-paid long-term disability insurance.
- Amended WAC 182-16-020 to update the definition of long-term disability insurance or LTD insurance, to remove the definition of disability insurance, and to amend the definition of file or filing to include delivery methods for filing an appeal.

Citation of Rules Affected by this Order: Amending WAC 182-08-015, 182-08-120, 182-08-185, 182-08-198, 182-08-245, 182-12-109, 182-12-262, and 182-16-020.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 21-10-076 on May 3, 2021.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 3, 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 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 0, Amended 8, Repealed 0.

Date Adopted: June 18, 2021.

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 20-16-062, filed 7/28/20, effective 1/1/21)

WAC 182-08-015 Definitions. The following definitions apply throughout this chapter unless the context clearly indicates other meaning:

"Accidental death and dismemberment insurance" or "AD&D" means basic accidental death and dismemberment (AD&D) insurance paid for by the employing agency, as well as supplemental accidental death and dismemberment insurance offered to and paid for by employees for themselves and their dependents.

"Affordable Care Act" means the federal Patient Protection and Affordable Care Act, P.L. 111-148, as amended by the federal Health Care and Education Reconciliation Act of 2010, P.L. 111-152, or federal regulations or guidance issued under the Affordable Care Act.

"Annual open enrollment" means an annual event set aside for a period of time by the HCA when subscribers may make changes to their health plan enrollment and salary reduction elections for the following plan year. During the annual open enrollment, subscribers may transfer from one health plan to another, enroll or remove dependents from coverage, enroll in coverage, or waive enrollment (~~in PEBB medical~~) (see definition of "waive" in this section). Employees eligible to participate in the salary reduction plan may enroll in or change their election under the dependent care assistance program (DCAP) or the medical flexible spending arrangement (FSA). They may also enroll in or opt out of the premium payment plan.

"Authority" or "HCA" means the Washington state health care authority.

"Board" means the public employees benefits board established under provisions of RCW 41.05.055.

"Calendar days" or "days" means all days including Saturdays, Sundays, and all state legal holidays as set forth in RCW 1.16.050.

"Consolidated Omnibus Budget Reconciliation Act" or "COBRA" means continuation coverage as administered under 42 U.S.C. Secs. 300bb-1 through 300bb-8.

"Continuation coverage" means the temporary continuation of PEBB benefits available to enrollees under the Consolidated Omnibus Budget Reconciliation Act (COBRA), 42 U.S.C. Secs. 300bb-1 through 300bb-8, the Uniformed Services Employment and Reemployment Rights Act (USERRA), 38 U.S.C. Secs. 4301 through 4335, or the public employees benefits board's policies.

"Contracted vendor" means any person, persons, or entity under contract or agreement with the HCA to provide goods or services for the provision or administration of PEBB benefits. The term "contracted vendor" includes subcontractors of the HCA and subcontractors of any person, persons, or entity under contract or agreement with the HCA that provide goods or services for the provision or administration of PEBB benefits.

"Creditable coverage" means coverage that meets the definition of "creditable coverage" under RCW 48.66.020 (13)(a) and includes payment of medical and hospital benefits.

"Defer" means to postpone enrollment or interrupt enrollment in PEBB insurance coverage by a retiree or an eligible survivor.

"Dependent" means a person who meets eligibility requirements in WAC 182-12-260, except that "surviving spouses, state registered domestic partners, and dependent children" of emergency service personnel who are killed in the line of duty is defined in WAC 182-12-250.

"Dependent care assistance program" or "DCAP" means a benefit plan whereby employees may pay for certain employment related dependent care with pretax dollars as provided in the salary reduction plan under chapter 41.05 RCW pursuant to 26 U.S.C. Sec. 129 or other sections of the Internal Revenue Code.

"Director" means the director of the authority.

"Documents" means papers, letters, writings, electronic mail, electronic files, or other printed or written items.

"Employee" for the public employees benefits board program includes all employees of the state, whether or not covered by civil service; elected and appointed officials of the executive branch of government, including full-time members of boards, commissions, or committees; justices of the supreme court and judges of the court of appeals and the superior courts; and members of the state legislature. Pursuant to contractual agreement with the authority, "employee" may also include: (a) Employees of a county, municipality, or other political subdivision of the state and members of the legislative authority of any county, city, or town who are elected to office after February 20, 1970, if the legislative authority of the county, municipality, or other political subdivision of the state submits application materials to the authority to provide any of its insurance programs by contract with the authority, as provided in RCW 41.04.205 and 41.05.021 (1)(g); (b) employees of employee organizations representing state civil service employees, at the option of each such employee organization; (c) through December 31, 2019, employees of a school district or represented employees of an educational service district if the authority agrees to provide

any of the school districts' or educational service districts' insurance programs by contract with the authority as provided in RCW 28A.400.350; (d) employees of a tribal government, if the governing body of the tribal government seeks and receives the approval of the authority to provide any of its insurance programs by contract with the authority, as provided in RCW 41.05.021 (1)(f) and (g); (e) employees of the Washington health benefit exchange if the governing board of the exchange established in RCW 43.71.020 seeks and receives approval of the authority to provide any of its insurance programs by contract with the authority, as provided in RCW 41.05.021 (1)(g) and (n); (f) through December 31, 2019, employees of a charter school established under chapter 28A.710 RCW; and (g) through December 31, 2023, non-represented employees of an educational service district. "Employee" does not include: Adult family home providers; unpaid volunteers; patients of state hospitals; inmates; employees of the Washington state convention and trade center as provided in RCW 41.05.110; students of institutions of higher education as determined by their institution; and any others not expressly defined as employees under RCW 41.05.011 or by the authority under this chapter.

"Employer" for the public employees benefits board program means the state of Washington.

"Employer-based group health plan" means group medical and group dental related to a current employment relationship. It does not include medical or dental coverage available to retired employees, individual market medical or dental coverage, or government-sponsored programs such as medicare or medicaid.

"Employer-based group medical" means group medical related to a current employment relationship. It does not include medical coverage available to retired employees, individual market medical coverage, or government-sponsored programs such as medicare or medicaid.

"Employer contribution" means the funding amount paid to the HCA by a state agency or employer group for its eligible employees as described under WAC 182-12-114 and 182-12-131.

"Employer group" means those counties, municipalities, political subdivisions, the Washington health benefit exchange, tribal governments, employee organizations representing state civil service employees, and through December 31, 2019, school districts and charter schools, and through December 31, 2023, educational service districts obtaining employee benefits through a contractual agreement with the authority to participate in benefit plans developed by the public employees benefits board as described in WAC 182-08-245.

"Employer group rate surcharge" means the rate surcharge described in RCW 41.05.050(2).

"Employer-paid coverage" means PEBB insurance coverage for which an employer contribution is made by a state agency or an employer group for employees eligible under WAC 182-12-114 and 182-12-131. It also means SEBB insurance coverage for which an employer contribution is made by a SEBB organization, or basic benefits described in RCW 28A.400.270(1) for which an employer contribution is made by an educational service district.

"Employing agency" for the public employees benefits board program means a division, department, or separate agency of state government, including an institution of higher education; a county, municipality, or other political subdivision; and a tribal government covered by chapter 41.05 RCW.

"Enrollee" means a person who meets all eligibility requirements defined in chapter 182-12 WAC, who is enrolled in PEBB benefits, and for whom applicable premium payments have been made.

"Exchange" means the Washington health benefit exchange established in RCW 43.71.020, and any other health benefit exchange established under the Affordable Care Act.

"Exchange coverage" means coverage offered by a qualified health plan through an exchange.

"Faculty" means an academic employee of an institution of higher education whose workload is not defined by work hours but whose appointment, workload, and duties directly serve the institution's academic mission, as determined under the authority of its enabling statutes, its governing body, and any applicable collective bargaining agreement.

"Forms" or "form" means both paper forms and forms completed electronically.

"Health plan" means a plan offering medical or dental, or both, developed by the board and provided by a contracted vendor or self-insured plans administered by the HCA.

"Insignificant shortfall" means a premium balance owed that is less than or equal to the lesser of \$50 or ten percent of the premium required by the health plan as described in Treasury Regulation 26 C.F.R. 54.4980B-8.

"Institutions of higher education" means the state public research universities, the public regional universities, The Evergreen State College, the community and technical colleges, and the state board for community and technical colleges.

"Large claim" means a claim for more than \$25,000 in allowed costs for services in a quarter.

"Layoff," for purposes of this chapter, means a change in employment status due to an employer's lack of funds or an employer's organizational change.

"Life insurance" means basic life insurance paid for by the employing agency, as well as supplemental life insurance offered to and paid for by employees for themselves and their dependents. Life insurance for eligible retirees includes retiree term life insurance offered to and paid for by retirees.

"Long-term disability insurance" or "LTD insurance" means ~~((basic))~~ employer-paid long-term disability insurance ~~((paid for by the employing agency and supplemental))~~ and employee-paid long-term disability insurance offered ~~((~~and paid for by the employee~~))~~ by the PEBB program.

"Medical flexible spending arrangement" or "medical FSA" means a benefit plan whereby eligible state employees may reduce their salary before taxes to pay for medical expenses not reimbursed by insurance as provided in the salary reduction plan established under chapter 41.05 RCW pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.

"Ongoing large claim" means a claim where the patient is expected to need ongoing case management into the next

quarter for which the expected allowed cost is greater than \$25,000 in the quarter.

"PEBB" means the public employees benefits board.

"PEBB benefits" means one or more insurance coverages or other employee benefits administered by the PEBB program within the health care authority.

"PEBB insurance coverage" means any health plan, life insurance, accidental death and dismemberment insurance, long-term disability (LTD) insurance, long-term care insurance, or property and casualty insurance administered as a PEBB benefit.

"PEBB program" means the program within the HCA that administers insurance and other benefits for eligible employees (as described in WAC 182-12-114), eligible retired employees (as described in WAC 182-12-171, 182-12-180, and 182-12-211), eligible survivors (as described in WAC 182-12-180, 182-12-250, and 182-12-265), eligible dependents (as described in WAC 182-12-250 and 182-12-260) and others as defined in RCW 41.05.011.

"Plan year" means the time period established by the authority.

"Premium payment plan" means a benefit plan whereby public employees may pay their share of group health plan premiums with pretax dollars as provided in the salary reduction plan under chapter 41.05 RCW pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.

"Premium surcharge" means a payment required from a subscriber, in addition to the subscriber's medical premium contribution, due to an enrollee's tobacco use or an enrolled subscriber's spouse or state registered domestic partner choosing not to enroll in their employer-based group medical when:

- The spouse's or state registered domestic partner's share of the medical premium is less than ninety-five percent of the additional cost an employee would be required to pay to enroll a spouse or state registered domestic partner in the public employees benefits board (PEBB) Uniform Medical Plan (UMP) Classic; and
- The benefits have an actuarial value of at least ninety-five percent of the actuarial value of PEBB UMP Classic benefits.

"Public employee" has the same meaning as employee.

"Qualified health plan" means a medical plan that is certified to be offered through an exchange.

"Salary reduction plan" means a benefit plan whereby public employees may agree to a reduction of salary on a pretax basis to participate in the dependent care assistance program, medical flexible spending arrangement, or premium payment plan offered pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.

"Special open enrollment" means a period of time when subscribers may make changes to their health plan enrollment and salary reduction elections outside of the annual open enrollment period when specific life events occur. During the special open enrollment subscribers may change health plans and enroll or remove dependents from coverage. Additionally, employees may enroll in or waive enrollment ~~((in PEBB medical))~~ (see definition of "waive" in this section). Employees eligible to participate in the salary reduction plan may enroll in or revoke their election under the DCAP, medical

FSA, or the premium payment plan and make a new election. For special open enrollment events related to specific PEBB benefits, see WAC 182-08-198, 182-08-199, 182-12-128, and 182-12-262.

"State agency" means an office, department, board, commission, institution, or other separate unit or division, however designated, of the state government. It includes the legislature, executive branch, and agencies or courts within the judicial branch, as well as institutions of higher education and any unit of state government established by law.

"State registered domestic partner" has the same meaning as defined in RCW 26.60.020(1) and substantially equivalent legal unions from other jurisdictions as defined in RCW 26.60.090.

"Subscriber" means the employee, retiree, continuation coverage enrollee, or survivor who has been determined eligible by the PEBB program, employer group, or state agency, is enrolled in PEBB benefits, and is the individual to whom the PEBB program and contracted vendors will issue all notices, information, requests, and premium bills on behalf of an enrollee.

"Supplemental coverage" means any life insurance~~(s)~~ or accidental death and dismemberment (AD&D) insurance coverage~~((or long-term disability coverage))~~ purchased by the employee in addition to the coverage provided by the employing agency.

"Tobacco products" means any product made with or derived from tobacco that is intended for human consumption, including any component, part, or accessory of a tobacco product. This includes, but is not limited to, cigars, cigarettes, pipe tobacco, chewing tobacco, snuff, and other tobacco products. It does not include e-cigarettes or United States Food and Drug Administration (FDA) approved quit aids.

"Tobacco use" means any use of tobacco products within the past two months. Tobacco use, however, does not include the religious or ceremonial use of tobacco.

"Tribal government" means an Indian tribal government as defined in Section 3(32) of the Employee Retirement Income Security Act of 1974 (ERISA), as amended, or an agency or instrumentality of the tribal government, that has government offices principally located in this state.

"Waive" means an eligible employee affirmatively declining enrollment in PEBB medical ~~((plan))~~ because the employee is enrolled in other employer-based group medical, a TRICARE plan, or medicare as allowed under WAC 182-12-128~~((or is))~~. An employee on approved educational leave ~~((and))~~ who obtains another employer-based group health plan may waive enrollment as allowed under WAC 182-12-136. An employee may waive enrollment in PEBB medical to enroll in SEBB medical only if they are enrolled in SEBB dental and SEBB vision. An employee who waives enrollment in PEBB medical to enroll in SEBB medical also waives enrollment in PEBB dental.

AMENDATORY SECTION (Amending WSR 19-17-073, filed 8/20/19, effective 1/1/20)

WAC 182-08-120 Employer contribution for the public employees benefits board (PEBB) benefits. The

employer contribution must be used to provide public employees benefits board (PEBB) insurance coverage for the basic life insurance benefit, basic accidental death and dismemberment insurance benefit (AD&D), the ~~((basic))~~ employer-paid long-term disability (LTD) insurance benefit, medical insurance, dental insurance, and to establish a reserve for any remaining balance. There is no employer contribution available for any other insurance coverage for employees employed by state agencies.

AMENDATORY SECTION (Amending WSR 20-16-062, filed 7/28/20, effective 1/1/21)

WAC 182-08-185 What are the requirements regarding premium surcharges? (1) A subscriber's account will incur a premium surcharge in addition to the subscriber's monthly medical premium, when any enrollee, thirteen years and older, engages in tobacco use.

(a) A subscriber must attest to whether any enrollee, thirteen years and older, enrolled in their public employees benefits board (PEBB) medical engages in tobacco use. The subscriber must attest as described in (a)(i) through (vii) of this subsection:

(i) An employee who is newly eligible or regains eligibility for the employer contribution toward PEBB benefits must complete the required form to enroll in PEBB medical as described in WAC 182-08-197 (1) or (3). The employee must include their attestation on that form. The employee must submit the form to their employing agency. If the employee's attestation results in a premium surcharge, it will take effect the same date as PEBB medical begins.

(ii) If there is a change in the tobacco use status of any enrollee, thirteen years and older on the subscriber's PEBB medical, the subscriber must update their attestation on the required form. An employee must submit the form to their employing agency. Any other subscriber must submit their form to the PEBB program. The attestation change will apply as follows:

- A change that results in a premium surcharge will begin the first day of the month following the status change. If that day is the first of the month, the change to the surcharge begins on that day.

- A change that results in removing the premium surcharge will begin the first day of the month following receipt of the attestation. If that day is the first of the month, the change to the surcharge begins on that day.

(iii) If a subscriber submits the required form to enroll a dependent, thirteen years and older, in PEBB medical as described in WAC 182-12-262, the subscriber must attest for their dependent on the required form. An employee must submit the form to their employing agency. Any other subscriber must submit their form to the PEBB program. A change that results in a premium surcharge will take effect the same date as PEBB medical begins.

(iv) An enrollee, thirteen years and older, who elects to continue medical coverage as described in WAC 182-12-133, 182-12-141, 182-12-142, 182-12-146, 182-12-148, or 182-12-270, must provide an attestation on the required form if they have not previously attested as described in (a) of this subsection. The enrollee must submit their form to the PEBB

program. An attestation that results in a premium surcharge will take effect the same date as PEBB medical begins.

(v) An employee or retiree who enrolls in PEBB medical as described in WAC 182-12-171 (1)(a), 182-12-180 (3)(a), 182-12-200 (3)(a) or (b), 182-12-205 (6)~~((a) through (f))~~ (7), or 182-12-211, must provide an attestation on the required form if they have not previously attested as described in (a) of this subsection. The employee or retiree must submit their form to the PEBB program. An attestation that results in a premium surcharge will take effect the same date as PEBB medical begins.

(vi) A surviving spouse, state registered domestic partner, or dependent child, thirteen years and older, who enrolls in PEBB medical as described in WAC 182-12-180 (3)(a), 182-12-250(5) or 182-12-265, must provide an attestation on the required form to the PEBB program if they have not previously attested as described in (a) of this subsection. An attestation that results in a premium surcharge will take effect the same date as PEBB medical begins.

(vii) An employee who previously waived PEBB medical must complete the required form to enroll in PEBB medical as described in WAC 182-12-128(3). The employee must include their attestation on that form. An employee must submit the form to their employing agency. An attestation that results in a premium surcharge will take effect the same date as PEBB medical begins.

Exceptions:

(1) A subscriber enrolled in both Medicare Parts A and B and in the Medicare risk pool as described in RCW 41.05.080(3) is not required to provide an attestation and no premium surcharge will be imposed on the subscriber's account.

(2) An employee who waives PEBB medical as described in WAC 182-12-128 is not required to provide an attestation and no premium surcharge will be applied to their account as long as the employee remains in waived status.

(b) A subscriber's account will incur a premium surcharge when a subscriber fails to attest to the tobacco use status of all enrollees as described in (a) of this subsection.

(c) The PEBB program will provide a reasonable alternative for enrollees who use tobacco products. A subscriber can avoid the tobacco use premium surcharge if the subscriber attests on the required form that all enrollees who use tobacco products enrolled in or accessed one of the applicable reasonable alternatives offered below:

(i) An enrollee who is eighteen years and older and uses tobacco products is currently enrolled in the free tobacco cessation program through their PEBB medical.

(ii) An enrollee who is thirteen through seventeen years old and uses tobacco products accessed the information and resources aimed at teens on the Washington state department of health's website at <https://teen.smokefree.gov>.

(iii) A subscriber may contact the PEBB program to accommodate a physician's recommendation that addresses an enrollee's use of tobacco products or for information on how to avoid the tobacco use premium surcharge.

(2) A subscriber will incur a premium surcharge in addition to the subscriber's monthly medical premium, if an enrolled spouse or state registered domestic partner has chosen not to enroll in another employer-based group medical

where the spouse's or state registered domestic partner's share of the medical premium is less than ninety-five percent of the additional cost an employee would be required to pay to enroll a spouse or state registered domestic partner in the PEBB Uniform Medical Plan (UMP) Classic and the benefits have an actuarial value of at least ninety-five percent of the actuarial value of the PEBB UMP Classic's benefits.

(a) A subscriber who enrolled a spouse or state registered domestic partner under their PEBB medical may only attest during the following times:

(i) When a subscriber becomes eligible to enroll a spouse or state registered domestic partner in PEBB medical as described in WAC 182-12-262. The subscriber must complete the required form to enroll their spouse or state registered domestic partner, and include their attestation on that form. The employee must submit the form to their employing agency. Any other subscriber must submit the form to the PEBB program. If the subscriber's attestation results in a premium surcharge it will take effect the same date as PEBB medical begins;

(ii) During the annual open enrollment. A subscriber must attest if during the month prior to the annual open enrollment the subscriber was:

- Incurring the surcharge;
- Not incurring the surcharge because the spouse's or state registered domestic partner's share of the medical premium through their employer-based group medical was more than ninety-five percent of the additional cost an employee would be required to pay to enroll a spouse or state registered domestic partner in the PEBB UMP Classic; or
- Not incurring the surcharge because the actuarial value of benefits provided through the spouse's or state registered domestic partner's employer-based group medical was less than ninety-five percent of the actuarial value of the PEBB UMP Classic's benefits.

A subscriber must update their attestation on the required form. An employee must submit the form to their employing agency. Any other subscriber must submit the form to the PEBB program. The subscriber's attestation or any correction to a subscriber's attestation must be received no later than December 31st of the year in which the annual open enrollment occurs. If the subscriber's attestation results in a premium surcharge, being added or removed, the change to the surcharge will take effect January 1st of the following year; and

(iii) When there is a change in the spouse's or state registered domestic partner's employer-based group medical. A subscriber must update their attestation on the required form. An employee must submit the form to their employing agency no later than sixty days after the spouse's or state registered domestic partner's employer-based group medical status changes. Any other subscriber must submit the form to the PEBB program no later than sixty days after the spouse's or state registered domestic partner's employer-based group medical status changes.

• A change that results in a premium surcharge will begin the first day of the month following the status change. If that day is the first day of the month, the change to the premium surcharge begins on that day.

• A change that results in removing the premium surcharge will begin the first day of the month following receipt of the attestation. If that day is the first day of the month, the change to the premium surcharge begins on that day.

- Exceptions:**
- (1) A subscriber enrolled in both medicare Parts A and B and in the medicare risk pool as described in RCW 41.05.080(3) is not required to provide an attestation and no premium surcharge will be imposed on the subscriber's account.
 - (2) An employee who waives PEBB medical as described in WAC 182-12-128 is not required to provide an attestation and no premium surcharge will be applied to their account as long as the employee remains in waived status.
 - (3) An employee who covers their spouse or state registered domestic partner who has waived their own PEBB medical must attest as described in this subsection, but will not incur a premium surcharge if the employee provides an attestation that their spouse or state registered domestic partner is eligible for PEBB medical.
 - (4) A subscriber who covers their spouse or state registered domestic partner who elected not to enroll in a TRICARE plan must attest as described in this subsection, but will not incur a premium surcharge if the subscriber provides an attestation that their spouse or state registered domestic partner is eligible for a TRICARE plan.

(b) A premium surcharge will be applied to a subscriber who does not attest as described in (a) of this subsection.

AMENDATORY SECTION (Amending WSR 20-16-062, filed 7/28/20, effective 1/1/21)

WAC 182-08-198 When may a subscriber change health plans? A subscriber may change health plans at the following times:

(1) **During the annual open enrollment:** A subscriber may change health plans during the public employees benefits board (PEBB) annual open enrollment period. A subscriber must submit the required enrollment forms to change their health plan. An employee submits the enrollment forms to their employing agency. Any other subscriber submits the enrollment forms to the PEBB program. The required enrollment forms must be received no later than the last day of the annual open enrollment. Enrollment in the new health plan will begin January 1st of the following year.

(2) **During a special open enrollment:** A subscriber may revoke their health plan election and make a new election outside of the annual open enrollment if a special open enrollment event occurs. A special open enrollment event must be an event other than an employee gaining initial eligibility for PEBB benefits as described in WAC 182-12-114 or regaining eligibility for PEBB benefits as described in WAC 182-08-197. The change in enrollment must be allowable under Internal Revenue Code and Treasury regulations, and correspond to and be consistent with the event that creates the special open enrollment for the subscriber, the subscriber's dependent, or both. To disenroll from a medicare advantage plan or medicare advantage-prescription drug plan, the change in enrollment must be allowable under 42 C.F.R. Secs. 422.62(b) and ((42 C.F.R. See-)) 423.38(c). To make a health plan change, a subscriber must submit the required

enrollment forms (and a completed disenrollment form, if required). The forms must be received no later than sixty days after the event occurs, except as described in (i) of this subsection. An employee submits the enrollment forms to their employing agency. Any other subscriber submits the enrollment forms to the PEBB program. In addition to the required forms, a subscriber must provide evidence of the event that created the special open enrollment. New health plan coverage will begin the first day of the month following the later of the event date or the date the form is received. If that day is the first of the month, the change in enrollment begins on that day.

Exception: When a subscriber or their dependent is enrolled in a medicare advantage or medicare advantage-prescription drug plan, they may disenroll during a special enrollment period as allowed under ((Title)) 42 C.F.R. Secs. 422.62(b) and 423.38(c). The new medical plan coverage will begin the first day of the month following the date the medicare advantage plan disenrollment form is received.

If the special open enrollment is due to the birth, adoption, or assumption of legal obligation for total or partial support in anticipation of adoption of a child, health plan coverage will begin the month in which the birth, adoption, or assumption of legal obligation for total or partial support in anticipation of adoption occurs. If the special open enrollment is due to the enrollment of an extended dependent or a dependent with a disability, the change in health plan coverage will begin the first day of the month following the later of the event date or eligibility certification. Any one of the following events may create a special open enrollment:

(a) Subscriber acquires a new dependent due to:

(i) Marriage or registering a state registered domestic partnership;

(ii) Birth, adoption, or when the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption; or

(iii) A child becoming eligible as an extended dependent through legal custody or legal guardianship.

Note: A subscriber may not change their health plan if their state registered domestic partner or state registered domestic partner's child is not a tax dependent.

(b) Subscriber or a subscriber's dependent loses other coverage under a group health plan or through health insurance coverage, as defined by the Health Insurance Portability and Accountability Act (HIPAA);

(c) Subscriber has a change in employment status that affects the subscriber's eligibility for their employer contribution toward their employer-based group health plan;

(d) The subscriber's dependent has a change in their own employment status that affects their eligibility for the employer contribution under their employer-based group health plan;

Note: As used in (d) of this subsection, "employer contribution" means contributions made by the dependent's current or former employer toward health coverage as described in Treasury Regulation 26 C.F.R. 54.9801-6.

(e) Subscriber or a subscriber's dependent has a change in residence that affects health plan availability. If the subscriber moves and the subscriber's current health plan is not

available in the new location the subscriber must select a new health plan, otherwise there will be limited accessibility to network providers and covered services;

Exception: A dental plan is considered available if a provider is located within fifty miles of the subscriber's new residence.

(f) A court order requires the subscriber or any other individual to provide insurance coverage for an eligible dependent of the subscriber (a former spouse or former state registered domestic partner is not an eligible dependent);

(g) Subscriber or a subscriber's dependent enrolls in coverage under medicaid or a state children's health insurance program (CHIP), or the subscriber or a subscriber's dependent loses eligibility for coverage under medicaid or CHIP;

(h) Subscriber or a subscriber's dependent becomes eligible for state premium assistance subsidy for PEBB health plan coverage from medicaid or CHIP;

(i) Subscriber or a subscriber's dependent enrolls in coverage under medicare, or the subscriber or a subscriber's dependent loses eligibility for coverage under medicare, or enrolls in or terminates enrollment in a medicare advantage-prescription drug or a Part D plan. If the subscriber's current medical plan becomes unavailable due to the subscriber's or a subscriber's dependent's enrollment in medicare, the subscriber must select a new medical plan as described in WAC 182-08-196(2).

(i) A subscriber enrolled in PEBB retiree insurance coverage or an eligible subscriber enrolled in Consolidated Omnibus Budget Reconciliation Act (COBRA) coverage has six months from the date of their or their dependent's enrollment in medicare Part B to enroll in a PEBB medicare supplement plan for which they or their dependent is eligible. The forms must be received by the PEBB program no later than six months after the enrollment in medicare Part B for either the subscriber or the subscriber's dependent;

(ii) A subscriber enrolled in PEBB retiree insurance coverage or an eligible subscriber enrolled in Consolidated Omnibus Budget Reconciliation Act (COBRA) coverage has seven months to enroll in a medicare advantage or medicare advantage-prescription drug plan that begins three months before they or their dependent first enrolled in both medicare Part A and Part B and ends three months after the month of medicare eligibility. A subscriber may also enroll themselves or their dependent in a medicare advantage or medicare advantage-prescription drug plan before their last day of the medicare Part B initial enrollment period. The forms must be received by the PEBB program no later than the last day of the month prior to the month the subscriber or the subscriber's dependent enrolls in the medicare advantage or medicare advantage-prescription drug plan.

(j) Subscriber or a subscriber's dependent's current medical plan becomes unavailable because the subscriber or enrolled dependent is no longer eligible for a health savings account (HSA). The authority may require evidence that the subscriber or subscriber's dependent is no longer eligible for an HSA;

(k) Subscriber or a subscriber's dependent experiences a disruption of care for active and ongoing treatment, that could function as a reduction in benefits for the subscriber or the subscriber's dependent. A subscriber may not change

their health plan election if the subscriber's or dependent's physician stops participation with the subscriber's health plan unless the PEBB program determines that a continuity of care issue exists. The PEBB program will consider but not limit its consideration to the following:

- (i) Active cancer treatment such as chemotherapy or radiation therapy;
 - (ii) Treatment following a recent organ transplant;
 - (iii) A scheduled surgery;
 - (iv) Recent major surgery still within the postoperative period; or
 - (v) Treatment for a high-risk pregnancy.
- (3) If the employee is having premiums taken from payroll on a pretax basis, a medical plan change will not be approved if it would conflict with provisions of the salary reduction plan authorized under RCW 41.05.300.

AMENDATORY SECTION (Amending WSR 20-16-062, filed 7/28/20, effective 1/1/21)

WAC 182-08-245 Employer group and board members of school districts and educational service districts participation requirements. This section applies to an employer group as defined in WAC 182-08-015 or board members of school districts or educational service districts that is approved to purchase insurance for its employees through a contract with the health care authority (HCA).

(1) Prior to enrollment of employees in public employees benefits board (PEBB) insurance coverage, the employer group or board members of school districts or educational service districts must:

- (a) Remit to the authority the required start-up fee in the amount publicized by the PEBB program;
- (b) Sign a contract with the authority;
- (c) Determine employee and dependent eligibility and terms of enrollment for PEBB insurance coverage by the criteria outlined in this chapter and chapter 182-12 WAC unless otherwise approved by the authority in the employer group's contract with the authority;
- (d) Determine eligibility in order to ensure the PEBB program's continued status as a governmental plan under Section 3(32) of the Employee Retirement Income Security Act of 1974 (ERISA) as amended. This means the employer group may only consider employees whose services are substantially all in the performance of essential governmental functions, but not in the performance of commercial activities, whether or not those activities qualify as essential governmental functions to be eligible; and
- (e) Ensure PEBB insurance coverage is the only employer-sponsored coverage available to groups of employees eligible for PEBB insurance coverage under the contract.

(2) Pay premiums under its contract with the authority based on the following premium structure:

- (a) The premium rate structure for educational service districts purchasing PEBB insurance coverage for nonrepresented employees will be a composite rate equal to the rate charged to state agencies plus an amount equal to the employee premium based on health plan election and family enrollment. Educational service districts must collect an amount equal to the premium surcharges applied to an

employee's account by the authority from their nonrepresented employees and include the funds in their payment to the authority.

Exception: The authority will allow educational service districts that enrolled prior to September 1, 2002, to continue participation based on a tiered rate structure. The authority may require the district to change to a composite rate structure with ninety days advance written notice.

(b) The premium rate structure for employer groups other than educational service districts described in (a) of this subsection and board members of school districts and educational service districts will be a tiered rate based on health plan election and family enrollment. Employer groups must collect an amount equal to the premium surcharges applied to an employee's account by the authority from their employees and include the funds in their payment to the authority.

Exception: The authority will allow employer groups that enrolled prior to January 1, 1996, to continue to participate based on a composite rate structure. The authority may require the employer group to change to a tiered rate structure with ninety days advance written notice.

(3) Counties, municipalities, political subdivisions, and tribal governments must pay the monthly employer group rate surcharge in the amount invoiced by the authority.

(4) If an employer group or board member of school districts and educational service districts want to make subsequent changes to the contract, the changes must be submitted to the authority for approval.

(5) The employer group or board members of school districts and educational service districts must maintain participation in PEBB insurance coverage for at least one full year. An employer group or board members of school districts and educational service districts may only end participation at the end of a plan year unless the authority approves a mid-year termination. To end participation, an employer group or board members of school districts and educational service districts must provide written notice to the PEBB program at least sixty days before the requested termination date.

(6) Upon approval to purchase insurance through a contract with the authority, the employer group must provide a list of employees and dependents that are enrolled in Consolidated Omnibus Budget Reconciliation Act (COBRA) coverage and the remaining number of months available to them based on their qualifying event. These employees and dependents may enroll in a PEBB health plan as COBRA subscribers for the remainder of the months available to them based on their qualifying event.

(7) Enrollees in PEBB insurance coverage under one of the continuation of coverage provisions allowed under chapter 182-12 WAC or retirees included in the transfer unit as allowed under WAC 182-08-237 cease to be eligible as of the last day of the contract and may not continue enrollment beyond the end of the month in which the contract is terminated.

Exception: If an employer group, other than an educational service district, ends participation, retired and disabled employees who began participation before September 15, 1991, are eligible to continue enrollment in PEBB insurance coverage if the employee continues to meet the procedural and eligibility requirements of WAC 182-12-171. Employees who enrolled after September 15, 1991, who are enrolled in PEBB retiree insurance coverage cease to be eligible under WAC 182-12-171, but may continue health plan enrollment under COBRA (see WAC 182-12-146).

AMENDATORY SECTION (Amending WSR 20-16-062, filed 7/28/20, effective 1/1/21)

WAC 182-12-109 Definitions. The following definitions apply throughout this chapter unless the context clearly indicates another meaning:

"Accidental death and dismemberment insurance" or "AD&D" means basic accidental death and dismemberment (AD&D) insurance paid for by the employing agency, as well as supplemental accidental death and dismemberment insurance offered to and paid for by employees for themselves and their dependents.

"Affordable Care Act" means the federal Patient Protection and Affordable Care Act, P.L. 111-148, as amended by the federal Health Care and Education Reconciliation Act of 2010, P.L. 111-152, or federal regulations or guidance issued under the Affordable Care Act.

"Annual open enrollment" means an annual event set aside for a period of time by the HCA when subscribers may make changes to their health plan enrollment and salary reduction elections for the following plan year. During the annual open enrollment, subscribers may transfer from one health plan to another, enroll or remove dependents from coverage, enroll in coverage, or waive enrollment (~~in PEBB medical~~) (see definition of "waive" in this section). Employees eligible to participate in the salary reduction plan may enroll in or change their election under the dependent care assistance program (DCAP) or the medical flexible spending arrangement (FSA). They may also enroll in or opt out of the premium payment plan.

"Authority" or "HCA" means the Washington state health care authority.

"Benefits-eligible position" means any position held by an employee who is eligible for benefits under WAC 182-12-114, with the exception of employees who establish eligibility under WAC 182-12-114 (2) or (3)(a)(ii).

"Blind vendor" means a "licensee" as defined in RCW 74.18.200.

"Board" means the public employees benefits board established under provisions of RCW 41.05.055.

"Calendar days" or "days" means all days including Saturdays, Sundays, and all state legal holidays as set forth in RCW 1.16.050.

"Consolidated Omnibus Budget Reconciliation Act" or "COBRA" means continuation coverage as administered under 42 U.S.C. Secs. 300bb-1 through 300bb-8.

"Continuation coverage" means the temporary continuation of PEBB benefits available to enrollees under the Consolidated Omnibus Budget Reconciliation Act (COBRA), 42

U.S.C. Secs. 300bb-1 through 300bb-8, the Uniformed Services Employment and Reemployment Rights Act (USERRA), 38 U.S.C. Secs. 4301 through 4335, or the public employees benefits board's policies.

"Contracted vendor" means any person, persons, or entity under contract or agreement with the HCA to provide goods or services for the provision or administration of PEBB benefits. The term "contracted vendor" includes subcontractors of the HCA and subcontractors of any person, persons, or entity under contract or agreement with the HCA that provide goods or services for the provision or administration of PEBB benefits.

"Creditable coverage" means coverage that meets the definition of "creditable coverage" under RCW 48.66.020 (13)(a) and includes payment of medical and hospital benefits.

"Defer" means to postpone enrollment or interrupt enrollment in PEBB insurance coverage by a retiree or an eligible survivor.

"Dependent" means a person who meets eligibility requirements in WAC 182-12-260, except that "surviving spouses, state registered domestic partners, and dependent children" of emergency service personnel who are killed in the line of duty is defined in WAC 182-12-250.

"Dependent care assistance program" or "DCAP" means a benefit plan whereby employees may pay for certain employment related dependent care with pretax dollars as provided in the salary reduction plan under chapter 41.05 RCW pursuant to 26 U.S.C. Sec. 129 or other sections of the Internal Revenue Code.

"Director" means the director of the authority.

"Documents" means papers, letters, writings, electronic mail, electronic files, or other printed or written items.

"Effective date of enrollment" means the first date when an enrollee is entitled to receive covered benefits.

"Employee" for the public employees benefits board program includes all employees of the state, whether or not covered by civil service; elected and appointed officials of the executive branch of government, including full-time members of boards, commissions, or committees; justices of the supreme court and judges of the court of appeals and the superior courts; and members of the state legislature. Pursuant to contractual agreement with the authority, "employee" may also include: (a) Employees of a county, municipality, or other political subdivision of the state and members of the legislative authority of any county, city, or town who are elected to office after February 20, 1970, if the legislative authority of the county, municipality, or other political subdivision of the state submits application materials to the authority to provide any of its insurance programs by contract with the authority, as provided in RCW 41.04.205 and 41.05.021 (1)(g); (b) employees of employee organizations representing state civil service employees, at the option of each such employee organization; (c) through December 31, 2019, employees of a school district or represented employees of an educational service district if the authority agrees to provide any of the school districts' or educational service districts' insurance programs by contract with the authority as provided in RCW 28A.400.350; (d) employees of a tribal government, if the governing body of the tribal government seeks

and receives the approval of the authority to provide any of its insurance programs by contract with the authority, as provided in RCW 41.05.021 (1)(f) and (g); (e) employees of the Washington health benefit exchange if the governing board of the exchange established in RCW 43.71.020 seeks and receives approval of the authority to provide any of its insurance programs by contract with the authority, as provided in RCW 41.05.021 (1)(g) and (n); (f) through December 31, 2019, employees of a charter school established under chapter 28A.710 RCW; and (g) through December 31, 2023, non-represented employees of an educational service district. "Employee" does not include: Adult family home providers; unpaid volunteers; patients of state hospitals; inmates; employees of the Washington state convention and trade center as provided in RCW 41.05.110; students of institutions of higher education as determined by their institution; and any others not expressly defined as employees under RCW 41.05.011 or by the authority under this chapter.

"Employer" for the public employees benefits board program means the state of Washington.

"Employer-based group dental" means group dental related to a current employment relationship. It does not include dental coverage available to retired employees, individual market dental coverage, or government-sponsored programs such as medicaid.

"Employer-based group health plan" means group medical and group dental related to a current employment relationship. It does not include medical or dental coverage available to retired employees, individual market medical or dental coverage, or government-sponsored programs such as medicare or medicaid.

"Employer-based group medical" means group medical related to a current employment relationship. It does not include medical coverage available to retired employees, individual market medical coverage, or government-sponsored programs such as medicare or medicaid.

"Employer contribution" means the funding amount paid to the HCA by a state agency or employer group for its eligible employees as described under WAC 182-12-114 and 182-12-131.

"Employer group" means those counties, municipalities, political subdivisions, the Washington health benefit exchange, tribal governments, employee organizations representing state civil service employees, and through December 31, 2019, school districts and charter schools, and through December 31, 2023, educational service districts obtaining employee benefits through a contractual agreement with the authority to participate in benefit plans developed by the public employees benefits board as described in WAC 182-08-245.

"Employer-paid coverage" means PEBB insurance coverage for which an employer contribution is made by a state agency or an employer group for employees eligible in WAC 182-12-114 and 182-12-131. It also means SEBB insurance coverage for which an employer contribution is made by a SEBB organization, or basic benefits described in RCW 28A.400.270(1) for which an employer contribution is made by an educational service district.

"Employing agency" for the public employees benefits board means a division, department, or separate agency of

state government, including an institution of higher education; a county, municipality, or other political subdivision; and a tribal government covered by chapter 41.05 RCW.

"Enrollee" means a person who meets all eligibility requirements defined in chapter 182-12 WAC, who is enrolled in PEBB benefits, and for whom applicable premium payments have been made.

"Exchange" means the Washington health benefit exchange established in RCW 43.71.020, and any other health benefit exchange established under the Affordable Care Act.

"Exchange coverage" means coverage offered by a qualified health plan through an exchange.

"Faculty" means an academic employee of an institution of higher education whose workload is not defined by work hours but whose appointment, workload, and duties directly serve the institution's academic mission, as determined under the authority of its enabling statutes, its governing body, and any applicable collective bargaining agreement.

"Federal retiree medical plan" means the Federal Employees Health Benefits program (FEHB) or TRICARE plans which are not employer-based group medical.

"Forms" or "form" means both paper forms and forms completed electronically.

"Health plan" means a plan offering medical or dental, or both, developed by the board and provided by a contracted vendor or self-insured plans administered by the HCA.

"Institutions of higher education" means the state public research universities, the public regional universities, The Evergreen State College, the community and technical colleges, and the state board for community and technical colleges.

"Layoff," for purposes of this chapter, means a change in employment status due to an employer's lack of funds or an employer's organizational change.

"Life insurance" means basic life insurance paid for by the employing agency, as well as supplemental life insurance offered to and paid for by employees for themselves and their dependents. Life insurance for eligible retirees includes retiree term life insurance offered to and paid for by retirees.

"Long-term disability insurance" or "LTD insurance" means ~~((basic)) employer-paid~~ long-term disability insurance ~~((paid for by the employing agency))~~ and ~~((supplemental))~~ employee-paid long-term disability insurance offered ~~((to and paid for by the employee))~~ by the PEBB program.

"Medical flexible spending arrangement" or "medical FSA" means a benefit plan whereby eligible state employees may reduce their salary before taxes to pay for medical expenses not reimbursed by insurance as provided in the salary reduction plan established under chapter 41.05 RCW pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.

"Pay status" means all hours for which an employee receives pay.

"PEBB" means the public employees benefits board.

"PEBB benefits" means one or more insurance coverages or other employee benefits administered by the PEBB program within the health care authority.

"PEBB insurance coverage" means any health plan, life insurance, accidental death and dismemberment insurance,

long-term disability (LTD) insurance, long-term care insurance, or property and casualty insurance administered as a PEBB benefit.

"PEBB program" means the program within the HCA that administers insurance and other benefits for eligible employees (as described in WAC 182-12-114), eligible retired employees (as described in WAC 182-12-171, 182-12-180, and 182-12-211), eligible survivors (as described in WAC 182-12-180, 182-12-250, and 182-12-265), eligible dependents (as described in WAC 182-12-250 and 182-12-260) and others as defined in RCW 41.05.011.

"Plan year" means the time period established by the authority.

"Premium payment plan" means a benefit plan whereby public employees may pay their share of group health plan premiums with pretax dollars as provided in the salary reduction plan under chapter 41.05 RCW pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.

"Premium surcharge" means a payment required from a subscriber, in addition to the subscriber's medical premium contribution, due to an enrollee's tobacco use or an enrolled subscriber's spouse or state registered domestic partner choosing not to enroll in their employer-based group medical when:

- The spouse's or state registered domestic partner's share of the medical premium is less than ninety-five percent of the additional cost an employee would be required to pay to enroll a spouse or state registered domestic partner in the public employees benefits board (PEBB) Uniform Medical Plan (UMP) Classic; and
- The benefits have an actuarial value of at least ninety-five percent of the actuarial value of PEBB UMP Classic benefits.

"Public employee" has the same meaning as employee.

"Qualified health plan" means a medical plan that is certified to be offered through an exchange.

"Salary reduction plan" means a benefit plan whereby public employees may agree to a reduction of salary on a pretax basis to participate in the dependent care assistance program, medical flexible spending arrangement, or premium payment plan offered pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.

"School employee" includes:

(a) Through December 31, 2023, all employees of school districts and charter schools established under chapter 28A.710 RCW, and represented employees of educational service districts. For the exclusive purpose of eligibility for PEBB retiree insurance coverage, the term "school employee" also includes nonrepresented employees of an educational service district; and

(b) Effective January 1, 2024, all employees of school districts, educational service districts, and charter schools established under chapter 28A.710 RCW.

"SEBB" means the school employees benefits board.

"SEBB insurance coverage" means any medical, dental, vision, life insurance, accidental death and dismemberment insurance, or long-term disability insurance administered as a SEBB benefit.

"SEBB organization" means a public school district or educational service district or charter school established

under chapter 28A.710 RCW that is required to participate in benefit plans provided by the school employees benefits board.

"Season" means any recurring annual period of work at a specific time of year that lasts three to eleven consecutive months.

"Seasonal employee" means a state employee hired to work during a recurring, annual season with a duration of three months or more, and anticipated to return each season to perform similar work.

"Special open enrollment" means a period of time when subscribers may make changes to their health plan enrollment and salary reduction elections outside of the annual open enrollment period when specific life events occur. During the special open enrollment subscribers may change health plans and enroll or remove dependents from coverage. Additionally, employees may enroll in or waive enrollment (~~in PEBB medical~~) (see definition of "waive" in this section). Employees eligible to participate in the salary reductions plan may enroll in or revoke their election under the DCAP, medical FSA, or the premium payment plan and make a new election. For special open enrollment events related to specific PEBB benefits, see WAC 182-08-198, 182-08-199, 182-12-128, and 182-12-262.

"State agency" means an office, department, board, commission, institution, or other separate unit or division, however designated, of the state government. It includes the legislature, executive branch, and agencies or courts within the judicial branch, as well as institutions of higher education and any unit of state government established by law.

"State registered domestic partner" has the same meaning as defined in RCW 26.60.020(1) and substantially equivalent legal unions from other jurisdictions as defined in RCW 26.60.090.

"Subscriber" means the employee, retiree, continuation coverage enrollee, or survivor who has been determined eligible by the PEBB program, employer group, or state agency, is enrolled in PEBB benefits, and is the individual to whom the PEBB program and contracted vendors will issue all notices, information, requests, and premium bills on behalf of an enrollee.

"Supplemental coverage" means any life insurance(~~(s)~~) or accidental death and dismemberment (AD&D) insurance coverage(~~(, or long term disability coverage)~~) purchased by the employee in addition to the coverage provided by the employing agency.

"Tobacco products" means any product made with or derived from tobacco that is intended for human consumption, including any component, part, or accessory of a tobacco product. This includes, but is not limited to, cigars, cigarettes, pipe tobacco, chewing tobacco, snuff, and other tobacco products. It does not include e-cigarettes or United States Food and Drug Administration (FDA) approved quit aids.

"Tobacco use" means any use of tobacco products within the past two months. Tobacco use, however, does not include the religious or ceremonial use of tobacco.

"Tribal government" means an Indian tribal government as defined in Section 3(32) of the Employee Retirement Income Security Act of 1974 (ERISA), as amended, or an

agency or instrumentality of the tribal government, that has government offices principally located in this state.

"Waive" means an eligible employee affirmatively declining enrollment in PEBB medical because the employee is enrolled in other employer-based group medical, a TRI-CARE plan, or medicare as allowed under WAC 182-12-128(~~(-or is)~~). An employee on approved educational leave (~~and~~) who obtains another employer-based group health plan may waive enrollment as allowed under WAC 182-12-136. An employee may waive enrollment in PEBB medical to enroll in SEBB medical only if they are enrolled in SEBB dental and SEBB vision. An employee who waives enrollment in PEBB medical to enroll in SEBB medical also waives enrollment in PEBB dental.

AMENDATORY SECTION (Amending WSR 20-16-062, filed 7/28/20, effective 1/1/21)

WAC 182-12-262 When may subscribers enroll or remove eligible dependents? (1) Enrolling dependents in public employees benefits board (PEBB) health plan coverage and the effective date of supplemental dependent life insurance and accidental death and dismemberment (AD&D) insurance. A dependent must be enrolled in the same health plan coverage as the subscriber, and the subscriber must be enrolled to enroll their dependent except as provided in WAC 182-12-205 (3)(c). Subscribers must satisfy the enrollment requirements as described in subsection (4) of this section and may enroll eligible dependents at the following times:

(a) **When the subscriber becomes eligible** and enrolls in PEBB benefits. If eligibility is verified the dependent's effective date will be as follows:

(i) PEBB health plan coverage will be the same as the subscriber's effective date;

(ii) Supplemental dependent life or AD&D insurance, if elected, will be effective the first day of the month following the date the contracted vendor receives the required form or approves the enrollment. A newly born child must be at least fourteen days old before supplemental dependent life insurance or AD&D insurance coverage is effective.

(b) **During the annual open enrollment.** PEBB health plan coverage begins January 1st of the following year;

(c) **During special open enrollment.** Subscribers may enroll dependents during a special open enrollment as described in subsection (3) of this section;

(d) **When a National Medical Support Notice (NMSN) requires a subscriber to cover a dependent child** as described in WAC 182-12-263; or

(e) **Any time during the calendar year for supplemental dependent life insurance or AD&D insurance** by submitting the required form to the contracted vendor for approval. Evidence of insurability may be required for supplemental dependent life insurance but will not be required for supplemental AD&D insurance.

(2) **Removing dependents from a subscriber's PEBB health plan coverage or supplemental dependent life insurance or AD&D insurance.**

(a) **A dependent's eligibility for enrollment in PEBB health plan coverage or supplemental dependent life**

insurance or AD&D insurance ends the last day of the month the dependent meets the eligibility criteria as described in WAC 182-12-250 or 182-12-260. Subscribers must provide notice when a dependent is no longer eligible due to divorce, annulment, dissolution, or qualifying event of a dependent ceasing to be eligible as a dependent child, as described in WAC 182-12-260(3). The notice must be received within sixty days of the last day of the month the dependent loses eligibility for PEBB health plan coverage. Employees must notify their employing agency when a dependent is no longer eligible, except as required under WAC 182-12-260 (3)(g)(ii). All other subscribers must notify the PEBB program. Consequences for not submitting notice within the required sixty days include, but are not limited to:

(i) The dependent may lose eligibility to continue PEBB medical or dental under one of the continuation coverage options described in WAC 182-12-270;

(ii) The subscriber may be billed for claims paid by the health plan for services that were rendered after the dependent lost eligibility as described in WAC 182-12-270;

(iii) The subscriber may not be able to recover subscriber-paid insurance premiums for dependents that lost their eligibility; and

(iv) The subscriber may be responsible for premiums paid by the state for the dependent's health plan coverage after the dependent lost eligibility.

(b) **Employees have the opportunity to remove eligible dependents:**

(i) During the annual open enrollment. The dependent will be removed from PEBB health plan coverage the last day of December;

(ii) During a special open enrollment as described in subsections (3) and (4)(f) of this section;

(iii) When a NMSN requires a spouse, former spouse, or other individual to provide health plan coverage for a dependent who is already enrolled in PEBB coverage, and that health plan coverage is in fact provided as described in WAC 182-12-263(2); or

(iv) Any time during the calendar year from supplemental dependent life or AD&D insurance by submitting the required form to the contracted vendor.

(c) **Retirees (see WAC 182-12-171, 182-12-180, or 182-12-211), survivors (see WAC 182-12-180, 182-12-250, or 182-12-265), and PEBB continuation coverage enrollees (see WAC 182-12-133, 182-12-141, 182-12-142, 182-12-146, or 182-12-148) may remove dependents** from their PEBB health plan coverage outside of the annual open enrollment or a special open enrollment by providing written notice to the PEBB program. The dependent will be removed from the subscriber's PEBB health plan coverage prospectively. PEBB health plan coverage will end on the last day of the month in which the written notice is received by the PEBB program or on the last day of the month specified in the subscriber's written notice, whichever is later. If the written notice is received on the first day of the month, PEBB health plan coverage will end on the last day of the previous month. PEBB continuation coverage enrollees may remove supplemental dependent life or AD&D insurance any time during

the calendar year by submitting the required form to the contracted vendor.

(3) Special open enrollment.

(a) Subscribers may enroll or remove their eligible dependents outside of the annual open enrollment if a special open enrollment event occurs. The change in enrollment must be allowable under the Internal Revenue Code and Treasury Regulations, and correspond to and be consistent with the event that creates the special open enrollment for the subscriber, the subscriber's dependents, or both. To disenroll from a medicare advantage or medicare advantage-prescription drug plan, the change in enrollment must be allowable under 42 C.F.R. Sec. 422.62(b) and ~~((42 C.F.R. Sec.))~~ 423.38(c).

(i) PEBB health plan coverage will begin the first of the month following the later of the event date or the date the required form is received. If that day is the first of the month, the change in enrollment begins on that day.

(ii) PEBB health plan coverage for an extended dependent or a dependent with a disability will begin the first day of the month following the later of the event date or eligibility certification.

(iii) The dependent will be removed from the subscriber's PEBB health plan coverage the last day of the month following the later of the event date or the date the required form and proof of the event is received. If that day is the first of the month, the change in enrollment will be made the last day of the previous month.

(iv) If the special open enrollment is due to the birth or adoption of a child, or when the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption of a child, PEBB health plan coverage will begin or end as follows:

- For the newly born child, PEBB health plan coverage will begin the date of birth;
- For a newly adopted child, PEBB health plan coverage will begin on the date of placement or the date a legal obligation is assumed in anticipation of adoption, whichever is earlier;
- For a spouse or state registered domestic partner of a subscriber, PEBB health plan coverage will begin the first day of the month in which the event occurs. The spouse or state registered domestic partner will be removed from PEBB health plan coverage the last day of the month in which the event occurred;

(b) Any one of the following events may create a special open enrollment:

- (i) Subscriber acquires a new dependent due to:
- Marriage or registering a state registered domestic partnership;
 - Birth, adoption, or when a subscriber has assumed a legal obligation for total or partial support in anticipation of adoption; or
 - A child becoming eligible as an extended dependent through legal custody or legal guardianship.

(ii) Subscriber or a subscriber's dependent loses other coverage under a group health plan or through health insurance coverage, as defined by the Health Insurance Portability and Accountability Act (HIPAA);

(iii) Subscriber has a change in employment status that affects the subscriber's eligibility for their employer contribution toward their employer-based group health plan;

(iv) The subscriber's dependent has a change in their own employment status that affects their eligibility for the employer contribution under their employer-based group health plan;

Note: As used in (iv) of this subsection, "employer contribution" means contributions made by the dependent's current or former employer toward health coverage as described in Treasury Regulation 54.9801-6.

(v) Subscriber or a subscriber's dependent has a change in enrollment under an employer-based group health plan during its annual open enrollment that does not align with the PEBB program's annual open enrollment;

(vi) Subscriber's dependent has a change in residence from outside of the United States to within the United States, or from within the United States to outside of the United States and that change in residence resulted in the dependent losing their health insurance;

(vii) A court order requires the subscriber or any other individual to provide insurance coverage for an eligible dependent of the subscriber (a former spouse or former state registered domestic partner is not an eligible dependent);

(viii) Subscriber or a subscriber's dependent enrolls in coverage under medicaid or a state children's health insurance program (CHIP), or the subscriber or a subscriber's dependent loses eligibility for coverage under medicaid or CHIP;

(ix) Subscriber or a subscriber's dependent becomes eligible for state premium assistance subsidy for PEBB health plan coverage from medicaid or CHIP;

(x) Subscriber's dependent enrolls in medicare, or loses eligibility for medicare.

(4) Enrollment requirements. A subscriber must submit the required forms within the time frames described in this subsection. For PEBB health plan coverage, an employee must submit the required forms to their employing agency, a subscriber on continuation coverage or PEBB retiree insurance coverage must submit the required forms to the PEBB program. In addition to the required forms indicating dependent enrollment, the subscriber must provide the required documents as evidence of the dependent's eligibility; or as evidence of the event that created the special open enrollment. All required forms and documents must be received within the required time frames. An employee enrolling a dependent in supplemental life insurance or AD&D insurance must submit the required form to the contracted vendor for approval within the required time frames.

Note: When enrolling a state registered domestic partner or a state registered domestic partner's child, a subscriber must certify that the state registered domestic partner or state registered domestic partner's child is a tax dependent on the required form; otherwise, the PEBB program will assume the state registered domestic partner or state registered domestic partner's child is not a tax dependent.

(a) If a subscriber wants to enroll their eligible dependents in PEBB health plan coverage when the subscriber becomes eligible to enroll in PEBB benefits, the subscriber must include the dependent's enrollment information on the

required forms and submit them within the required time frame described in WAC 182-08-197, 182-08-187, 182-12-171, 182-12-180, 182-12-211, or 182-12-250. If an employee enrolls a dependent in supplemental life insurance or AD&D insurance, the required form must be submitted within the required time frame described in WAC 182-08-197 or 182-08-187.

(b) If a subscriber wants to enroll eligible dependents in PEBB health plan coverage during the PEBB annual open enrollment period, the required forms must be received no later than the last day of the annual open enrollment.

(c) If a subscriber wants to enroll newly eligible dependents, the required forms must be received no later than sixty days after the dependent becomes eligible. An employee enrolling a dependent in supplemental life insurance or AD&D insurance must submit the required form to the contracted vendor for approval. An employee may enroll a dependent in supplemental life insurance up to the guaranteed issue coverage amount without evidence of insurability if the required form is submitted to the contracted vendor as required. Evidence of insurability will be required for supplemental dependent life insurance over the guaranteed issue coverage amount. Evidence of insurability is not required for supplemental AD&D insurance.

(d) If a subscriber wants to enroll a newborn or child whom the subscriber has adopted or has assumed a legal obligation for total or partial support in anticipation of adoption in PEBB health plan coverage, the subscriber should notify the PEBB program by submitting the required forms as soon as possible to ensure timely payment of claims. If adding the child increases the premium, the required forms must be received no later than sixty days after the date of the birth, adoption, or the date the legal obligation is assumed for total or partial support in anticipation of adoption. An employee enrolling a dependent in supplemental life insurance or AD&D insurance must submit the required form to the contracted vendor for approval. A newly born child must be at least fourteen days old before supplemental dependent life insurance or AD&D insurance coverage can become effective.

(e) If the subscriber wants to enroll a child age twenty-six or older as a child with a disability in PEBB health plan coverage, the required forms must be received no later than sixty days after the child reaches age twenty-six or within the relevant time frame described in (a), (b), and (f) of this subsection. To recertify an enrolled child with a disability, the required forms must be received by the PEBB program or the contracted vendor by the child's scheduled PEBB health plan coverage termination date.

(f) If the subscriber wants to change a dependent's enrollment status in PEBB health plan coverage during a special open enrollment, the required forms must be received no later than sixty days after the event that creates the special open enrollment.

Exception: If the subscriber wants to change a dependent's enrollment or disenrollment in a medicare advantage or medicare advantage-prescription drug plan, the required forms must be received during a special enrollment period as allowed under 42 C.F.R. Secs. 422.62(b) and ((42 C.F.R.—See:)) 423.38(c).

(g) An employee may enroll a dependent in supplemental life insurance or AD&D insurance at any time during the calendar year by submitting the required form to the contracted vendor for approval. Evidence of insurability may be required for supplemental dependent life insurance but will not be required for supplemental AD&D insurance.

AMENDATORY SECTION (Amending WSR 20-16-062, filed 7/28/20, effective 1/1/21)

WAC 182-16-020 Definitions. The following definitions apply throughout this chapter unless the context clearly indicates another meaning:

"Accidental death and dismemberment insurance" or "AD&D" means basic accidental death and dismemberment (AD&D) insurance paid for by the employing agency, as well as supplemental accidental death and dismemberment insurance offered to and paid for by employees for themselves and their dependents.

"Appellant" means a person who requests a brief adjudicative proceeding with the PEBB appeals unit about the action of the employing agency, the HCA, or its contracted vendor.

"Authority" or "HCA" means the Washington state health care authority.

"Board" means the public employees benefits board established under provisions of RCW 41.05.055.

"Brief adjudicative proceeding" means the process described in RCW 34.05.482 through 34.05.494 and in WAC 182-16-2000 through 182-16-2160.

"Business days" means all days except Saturdays, Sundays, and all state legal holidays as set forth in RCW 1.16.050.

"Calendar days" or "days" means all days including Saturdays, Sundays, and all state legal holidays as set forth in RCW 1.16.050.

"Continuance" means a change in the date or time of when a brief adjudicative proceeding or formal administrative hearing will occur.

"Contracted vendor" means any person, persons, or entity under contract or agreement with the HCA to provide goods or services for the provision or administration of PEBB benefits. The term "contracted vendor" includes subcontractors of the HCA and subcontractors of any person, persons, or entity under contract or agreement with the HCA that provide goods or services for the provision or administration of PEBB benefits.

"Denial" or "denial notice" means an action by, or communication from, an employing agency, contracted vendor, or the PEBB program that aggrieves a subscriber, a dependent, or an applicant, with regard to PEBB benefits including, but not limited to, actions or communications expressly designated as a "denial," "denial notice," or "cancellation notice."

"Dependent" means a person who meets eligibility requirements in WAC 182-12-260, except that "surviving spouses, state registered domestic partners, and dependent children" of emergency service personnel who are killed in the line of duty is defined in WAC 182-12-250.

"Dependent care assistance program" or "DCAP" means a benefit plan whereby state employees may pay for certain employment related dependent care with pretax dollars as provided in the salary reduction plan under chapter 41.05 RCW pursuant to 26 U.S.C. Sec. 129 or other sections of the Internal Revenue Code.

"Director" means the director of the authority.

"Dispositive motion" means a motion made to a presiding officer, review officer, or hearing officer to decide a claim or case in favor of the moving party without further proceedings.

"Documents" means papers, letters, writings, electronic mail, electronic files, or other printed or written items.

"Employee" for the public employees benefits board program includes all employees of the state, whether or not covered by civil service; elected and appointed officials of the executive branch of government, including full-time members of boards, commissions, or committees; justices of the supreme court and judges of the court of appeals and the superior courts; and members of the state legislature. Pursuant to contractual agreement with the authority, "employee" may also include: (a) Employees of a county, municipality, or other political subdivision of the state and members of the legislative authority of any county, city, or town who are elected to office after February 20, 1970, if the legislative authority of the county, municipality, or other political subdivision of the state submits application materials to the authority to provide any of its insurance programs by contract with the authority, as provided in RCW 41.04.205 and 41.05.021 (1)(g); (b) employees of employee organizations representing state civil service employees, at the option of each such employee organization; (c) through December 31, 2019, employees of a school district or represented employees of an educational service district if the authority agrees to provide any of the school districts' or educational service districts' insurance programs by contract with the authority as provided in RCW 28A.400.350; (d) employees of a tribal government, if the governing body of the tribal government seeks and receives the approval of the authority to provide any of its insurance programs by contract with the authority, as provided in RCW 41.05.021 (1)(f) and (g); (e) employees of the Washington health benefit exchange if the governing board of the exchange established in RCW 43.71.020 seeks and receives approval of the authority to provide any of its insurance programs by contract with the authority, as provided in RCW 41.05.021 (1)(g) and (n); (f) through December 31, 2019, employees of a charter school established under chapter 28A.710 RCW; and (g) through December 31, 2023, non-represented employees of an educational service district. "Employee" does not include: Adult family home providers; unpaid volunteers; patients of state hospitals; inmates; employees of the Washington state convention and trade center as provided in RCW 41.05.110; students of institutions of higher education as determined by their institution; and any others not expressly defined as employees under RCW 41.05.011 or by the authority under this chapter.

"Employer-based group medical" means group medical related to a current employment relationship. It does not include medical coverage available to retired employees,

individual market medical coverage, or government-sponsored programs such as medicare or medicaid.

"Employer group" means those counties, municipalities, political subdivisions, the Washington health benefit exchange, tribal governments, employee organizations representing state civil service employees, and through December 31, 2019, school districts and charter schools, and through December 31, 2023, educational service districts obtaining employee benefits through a contractual agreement with the authority to participate in benefit plans developed by the public employees benefits board as described in WAC 182-08-245.

"Employing agency" for the public employees benefits board program means a division, department, or separate agency of state government, including an institution of higher education; a county, municipality, or other political subdivision; and a tribal government covered by chapter 41.05 RCW.

"Enrollee" means a person who meets all eligibility requirements defined in chapter 182-12 WAC, who is enrolled in PEBB benefits, and for whom applicable premium payments have been made.

"File" or "filing" means the act of delivering documents to the office of the presiding officer, review officer, or hearing officer. A document is considered filed when it is received by the authority or its designee. A document may be filed by one or more of the following:

- Personal delivery to the authority at Cherry Street Plaza, 626 8th Avenue S.E., Olympia, Washington 98501;

- First class, registered, or certified mail to the authority to the following mailing address:

Health Care Authority

Attn: PEBB Appeals Unit

P.O. Box 45504

Olympia, WA 98504-5504;

- Fax: 360-763-4709; or

- Submission online through the designated submission portal.

The identified methods are the exclusive methods for a document to be filed, and submission of documents by any other fashion to the authority shall not constitute filing unless agreed to in advance by the authority.

"Final order" means an order that is the final health care authority decision.

"Formal administrative hearing" means a proceeding before a hearing officer that gives an appellant an opportunity for an evidentiary hearing as described in RCW 34.05.413 through 34.05.476 and WAC 182-16-3000 through 182-16-3200.

"HCA hearing representative" means a person who is authorized to represent the PEBB program in a formal administrative hearing. The person may be an assistant attorney general or authorized HCA employee.

"Health plan" means a plan offering medical or dental, or both, developed by the board and provided by a contracted vendor or self-insured plans administered by the HCA.

"Hearing officer" means an impartial decision maker who presides at a formal administrative hearing, and is:

- A director-designated HCA employee; or

- When the director has designated the office of administrative hearings (OAH) as a hearing body, an administrative law judge employed by the OAH.

"Institutions of higher education" means the state public research universities, the public regional universities, The Evergreen State College, the community and technical colleges, and the state board for community and technical colleges.

"Life insurance" means basic life insurance paid for by the employing agency, as well as supplemental life insurance offered to and paid for by employees for themselves and their dependents. Life insurance for eligible retirees includes retiree term life insurance offered to and paid for by retirees.

"Long-term disability insurance" or "LTD insurance" means ~~((basic)) employer-paid~~ long-term disability insurance ~~((paid for by the employing agency))~~ and ~~((supplemental)) employee-paid~~ long-term disability insurance offered ~~((to and paid for by the employee))~~ by the PEBB program.

"Medical flexible spending arrangement" or "medical FSA" means a benefit plan whereby eligible state employees may reduce their salary before taxes to pay for medical expenses not reimbursed by insurance as provided in the salary reduction plan established under chapter 41.05 RCW pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.

"PEBB" means the public employees benefits board.

"PEBB benefits" means one or more insurance coverages or other employee benefits administered by the PEBB program within the health care authority.

"PEBB insurance coverage" means any health plan, life insurance, accidental death and dismemberment insurance, long-term disability (LTD) insurance, long-term care insurance, or property and casualty insurance administered as a PEBB benefit.

"PEBB program" means the program within the HCA that administers insurance and other benefits for eligible employees (as described in WAC 182-12-114), eligible retired employees (as described in WAC 182-12-171, 182-12-180, and 182-12-211), eligible survivors (as described in WAC 182-12-180, 182-12-250, and 182-12-265), eligible dependents (as described in WAC 182-12-250 and 182-12-260), and others as defined in RCW 41.05.011.

"Prehearing conference" means a proceeding scheduled and conducted by a hearing officer to address issues in preparation for a formal administrative hearing.

"Premium payment plan" means a benefit plan whereby public employees may pay their share of group health plan premiums with pretax dollars as provided in the salary reduction plan under chapter 41.05 RCW pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.

"Premium surcharge" means a payment required from a subscriber, in addition to the subscriber's medical premium contribution, due to an enrollee's tobacco use or an enrolled subscriber's spouse or state registered domestic partner choosing not to enroll in their employer-based group medical when:

- The spouse's or state registered domestic partner's share of the medical premiums is less than ninety-five percent of the additional cost an employee would be required to pay to enroll a spouse or state registered domestic partner in the

public employees benefits board (PEBB) Uniform Medical Plan (UMP) Classic; and

- The benefits have an actuarial value of at least ninety-five percent of the actuarial value of PEBB UMP Classic benefits.

"Presiding officer" means an impartial decision maker who conducts a brief adjudicative proceeding and is a director-designated HCA employee.

"Public employee" has the same meaning as employee.

"Review officer or officers" means one or more delegates from the director that consider appeals relating to the administration of PEBB benefits by the PEBB program.

"Salary reduction plan" means a benefit plan whereby public employees may agree to a reduction of salary on a pre-tax basis to participate in the dependent care assistance program, medical flexible spending arrangement, or premium payment plan offered pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.

"Service" or "serve" means the process described in WAC 182-16-058.

"State agency" means an office, department, board, commission, institution, or other separate unit or division, however designated, of the state government. It includes the legislature, executive branch, and agencies or courts within the judicial branch, as well as institutions of higher education, and any unit of state government established by law.

"State registered domestic partner" has the same meaning as defined in RCW 26.60.020(1) and substantially equivalent legal unions from other jurisdictions as defined in RCW 26.60.090.

"Subscriber" means the employee, retiree, continuation coverage enrollee, or survivor who has been determined eligible by the PEBB program, employer group, or state agency, is enrolled in PEBB benefits, and is the individual to whom the PEBB program and contracted vendors will issue all notices, information, requests, and premium bills on behalf of an enrollee.

"Tobacco products" means any product made with or derived from tobacco that is intended for human consumption, including any component, part, or accessory of a tobacco product. This includes, but is not limited to, cigars, cigarettes, pipe tobacco, chewing tobacco, snuff, and other tobacco products. It does not include e-cigarettes or United States Food and Drug Administration (FDA) approved quit aids.

"Tobacco use" means any use of tobacco products within the past two months. Tobacco use, however, does not include the religious or ceremonial use of tobacco.

"Tribal government" means an Indian tribal government as defined in Section 3(32) of the Employee Retirement Income Security Act of 1974 (ERISA), as amended, or an agency or instrumentality of the tribal government, that has government offices principally located in this state.

WSR 21-13-111
PERMANENT RULES
HEALTH CARE AUTHORITY
(School Employees Benefits Board)

[Admin #2021-01.01—Filed June 21, 2021, 10:43 a.m., effective
September 1, 2021]

Effective Date of Rule: September 1, 2021.

Purpose: The purpose of this proposal is to implement a policy resolution to support the school employees benefits board (SEBB) program.

Amended WAC 182-31-050 to implement policy resolution SEBB 2021-01 amending resolution SEBB 2018-25 when the employer contribution for SEBB benefits end.

Citation of Rules Affected by this Order: Amending WAC 182-31-050.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Other Authority: Policy resolution SEBB 2021-01.

Adopted under notice filed as WSR 21-10-061 on April 30, 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 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: June 21, 2021.

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 20-16-067, filed 7/28/20, effective 8/28/20)

WAC 182-31-050 When does eligibility for the employer contribution for school employees benefits board (SEBB) benefits end? (1) The employer contribution toward school employees benefits board (SEBB) benefits ends the last day of the month in which the school year ends. The employer contribution toward SEBB benefits will end earlier than the end of the school year if one of the following occurs:

(a) The SEBB organization terminates the employment relationship. In this case, eligibility for the employer contribution ends the last day of the month in which the employer-initiated termination notice is effective;

(b) The school employee terminates the employment relationship. In this case, eligibility for the employer contribution ends the last day of the month in which the school employee's resignation is effective; ((c))

(c) The school employee's work pattern is revised such that the school employee is no longer anticipated to work six hundred thirty hours during the school year. In this case, eligibility for the employer contribution ends as of the last day of the month in which the change is effective;

(d) The school employee who returns from approved leave without pay, who maintained or established eligibility as described in WAC 182-31-040 (4)(d), and who subsequently has a change in work pattern that, had the work pattern been in effect at the start of the school year, would not have resulted in the school employee being anticipated to work the minimum hours to meet SEBB eligibility for the employer contribution in the school year. In this case, eligibility for the employer contribution ends as of the last day of the month in which the change is effective;

(e) The nine to ten month school employee hired late in the year and eligible for the employer contribution as described in WAC 182-31-040 (4)(c)(i), who subsequently has a change in work pattern such that the school employee is no longer eligible under the criteria described in WAC 182-31-040 (4)(c)(i). In this case, eligibility for the employer contribution ends as of the last day of the month in which the change is effective;

(f) The twelve month school employee hired late in the year and eligible for the employer contribution as described in WAC 182-31-040 (4)(c)(ii), who subsequently has a change in work pattern such that the school employee is no longer eligible under the criteria described in WAC 182-31-040 (4)(c)(ii). In this case, eligibility for the employer contribution ends as of the last day of the month in which the change is effective; or

(g) The school employee hired later in the year and eligible for the employer contribution as described in WAC 182-31-040 (4)(c), who is no longer anticipated to work six hundred thirty hours the next school year. In this case, eligibility for the employer contribution ends as of the last day of the month in which the change in the anticipation occurs.

(2) If the SEBB organization deducted the school employee's portion of the premium for SEBB insurance coverage from their pay after the school employee was no longer eligible for the employer contribution, SEBB benefits end the last day of the month for which school employee premiums were deducted to prevent a rescission of SEBB benefits. The SEBB organization must refund any premiums deducted for the school employee's portion of the premium that were deducted in advance of any month's coverage for which the school employee is no longer eligible for the employer contribution.

WSR 21-13-115

PERMANENT RULES

HEALTH CARE AUTHORITY
(School Employees Benefits Board)

[Admin #2021-01.02—Filed June 21, 2021, 12:29 p.m., effective
January 1, 2022]

Effective Date of Rule: January 1, 2022.

Purpose: The purpose of this proposal is to amend rules to support the school employees benefits board (SEBB) program.

1. Implement SEBB policy resolutions related to dual enrollment prohibitions between SEBB and public employees benefits board (PEBB) programs and long-term disability insurance enrollment procedures:

Amended WAC 182-30-070, 182-31-070, 182-31-080, and 182-31-160 to implement the following dual enrollment related SEBB policy resolutions:

- SEBB 2021-02 Amending resolution SEBB 2018-53 School employees may waive enrollment in medical.
- SEBB 2021-03 SEBB benefit enrollment requirements when PEBB benefits are waived.
- SEBB 2021-04 Resolving dual enrollment when a school employee's only medical enrollment is in PEBB.
- SEBB 2021-05 Resolving dual enrollment involving dual subscriber eligibility.
- SEBB 2021-06 Resolving dual enrollment involving a SEBB dependent with multiple medical enrollments.
- SEBB 2021-07 Resolving dual enrollment involving a member with multiple medical enrollments as a dependent.
- SEBB 2021-08 SEBB benefit automatic enrollments when PEBB benefits are auto-disenrolled.
- SEBB 2021-09 Enrollment requirements when a school employee loses dependent coverage in PEBB benefits.

Amended WAC 182-31-080 to implement policy resolution SEBB 2021-11 Employee-paid long-term disability enrollment procedures.

2. Make other technical amendments:

- Amended WAC 182-31-080 to clarify when a school employee may waive SEBB medical during a special enrollment event and to clarify what a special open enrollment event is.

Citation of Rules Affected by this Order: Amending WAC 182-30-070, 182-31-070, 182-31-080, and 182-31-160.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Other Authority: Policy resolutions SEBB 2021-02, 2021-03, 2021-04, 2021-05, 2021-06, 2021-07, 2021-08, 2021-09, 2021-11.

Adopted under notice filed as WSR 21-10-062 on April 30, 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 0, Repealed 0.

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

Date Adopted: June 21, 2021.

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 20-16-067, filed 7/28/20, effective 8/28/20)

WAC 182-30-070 The employer contribution is set by the health care authority (HCA) and paid to the HCA for all eligible school employees. School employees benefits board (SEBB) organizations must pay the employer contributions to the health care authority (HCA) for SEBB insurance coverage for all eligible school employees and their enrolled dependents.

(1) Employer contributions are set by the HCA, and are subject to the approval of the governor for availability of funds as specifically appropriated by the legislature for that purpose. The employer contribution for school employees eligible under RCW 41.05.740 (6)(e) are set by the HCA.

(2) Employer contributions must include an amount determined by the HCA to pay administrative costs to administer SEBB benefits for school employees.

(3) Each school employee of a SEBB organization on leave under the federal Family and Medical Leave Act (FMLA) or the paid family medical leave program is eligible for the employer contribution as described in WAC 182-31-110.

(4) The entire employer contribution is due and payable to HCA even if ~~((SEBB medical))~~ enrollment is waived as described in WAC 182-31-080, except for school employees eligible under WAC 182-30-130.

AMENDATORY SECTION (Amending WSR 20-16-067, filed 7/28/20, effective 8/28/20)

WAC 182-31-070 Is dual enrollment in school employees benefits board (SEBB) and public employees benefits board (PEBB) prohibited? School employees benefits board (SEBB) medical, dental, and vision coverage is limited to a single enrollment per individual as described in subsections (1) through (5) of this section. Effective January 1, 2022, individuals are limited to a single enrollment in medical, dental, and vision plans in either the SEBB program or public employees benefits board (PEBB) program as described in subsection (6) of this section.

(1) An individual who has more than one source of eligibility for enrollment in SEBB medical, SEBB dental, and SEBB vision coverage (called "dual eligibility") is limited to one enrollment.

(2) An eligible school employee may waive SEBB medical and enroll as a dependent under the SEBB medical plan of their spouse, state registered domestic partner, or parent as described in WAC 182-31-080.

(3) A dependent enrolled in SEBB medical, SEBB dental, or SEBB vision who becomes eligible for SEBB benefits as a school employee must elect to enroll in SEBB benefits as

described in WAC 182-30-080(1). This includes making an election to enroll in or waive enrollment in SEBB medical as described in WAC 182-31-080 (1)(a).

(a) If the school employee does not waive enrollment in SEBB medical, the school employee is not eligible to remain enrolled in their spouse's, state registered domestic partner's, or parent's SEBB medical as a dependent. If the school employee's spouse, state registered domestic partner, or parent does not take action to remove the school employee (who is enrolled as a dependent) from their subscriber account, the SEBB program will ((terminate)) automatically disenroll the school employee's enrollment as a dependent the last day of the month before the school employee's enrollment in SEBB benefits begins as described in WAC 182-31-040.

Exception: An enrolled dependent who becomes newly eligible, at the start of the school year, for SEBB benefits as a school employee could be dual-enrolled in SEBB medical, dental, and vision for one month. This exception is only allowed for the first month the dependent is enrolled as a school employee.

(b) If the school employee elects to waive their enrollment in SEBB medical, the school employee will remain enrolled in SEBB medical under their spouse's, state registered domestic partner's, or parent's SEBB medical as a dependent.

(4) A child who is eligible for SEBB medical, SEBB dental, and SEBB vision under two subscribers may be enrolled under both subscribers but is limited to a single enrollment in SEBB medical, a single enrollment in SEBB dental, and a single enrollment in SEBB vision.

(5) When a school employee is eligible for the employer contribution toward SEBB benefits due to employment in more than one SEBB organization the following provisions apply:

(a) When a school employee is eligible for the employer contribution during a school year under WAC 182-31-040 and 182-30-130 the SEBB organization that has determined the school employee eligible under WAC 182-31-040 must make the employer contribution;

(b) If the school employee is eligible for the employer contribution under WAC 182-31-040 at two different SEBB organizations, the school employee must choose to enroll under only one SEBB organization;

(c) If the school employee is eligible for the employer contribution under WAC 182-30-130 at two different SEBB organizations, the school employee must choose to enroll under only one SEBB organization;

(d) If the school employee loses eligibility under one SEBB organization, they must notify their other SEBB organization no later than sixty days from the date of loss of the first SEBB benefits in order to transfer coverage;

(e) The school employee's elections remain the same when a school employee transfers their enrollment under one SEBB organization to another SEBB organization without a break in SEBB benefits for one month or more, as described in (d) of this subsection.

(6) An individual who has more than one source of eligibility for enrollment in the SEBB and PEBB programs is limited to a single enrollment in medical, dental, and vision plans in either the SEBB or PEBB program. If the individual takes

no action to resolve the dual enrollment, the SEBB program or the PEBB program will automatically enroll or automatically disenroll the individual as described in this subsection.

(a) An eligible school employee may waive enrollment in SEBB medical to enroll in PEBB medical only if they are enrolled in PEBB dental as described in WAC 182-31-080. A school employee who waives enrollment in SEBB medical to enroll in PEBB medical also waives enrollment in SEBB dental and SEBB vision.

(b) An employee in the PEBB program who waives PEBB medical and PEBB dental for SEBB medical must be enrolled in SEBB dental and SEBB vision. If necessary, the SEBB program will automatically enroll the individual in the associated subscriber's SEBB dental and SEBB vision.

(c) If the school employee is enrolled only in SEBB dental and SEBB vision, and is also enrolled in PEBB medical, and no action is taken to resolve their dual enrollment, the school employee will remain in PEBB medical. The SEBB program will automatically disenroll the school employee from SEBB dental and SEBB vision in which they are enrolled. The school employee's enrollment in SEBB program life insurance, accidental death and dismemberment (AD&D) insurance, and long-term disability (LTD) insurance will remain.

(d) If the school employee is enrolled in SEBB medical and is also an employee in the PEBB program enrolled in PEBB medical, and the school employee has been enrolled in PEBB medical longer than they have been enrolled in SEBB medical, and no action is taken by the school employee to resolve their dual enrollment, they will remain in PEBB medical. The SEBB program will automatically disenroll the school employee from SEBB medical, SEBB dental, and SEBB vision. The school employee's enrollment in SEBB program life insurance, AD&D insurance, and LTD insurance will remain. If the school employee eligible under both the SEBB program as a school employee and the PEBB program as an employee is not enrolled in any medical, but is enrolled only in PEBB dental, SEBB dental, and SEBB vision, the school employee will remain in SEBB dental and SEBB vision. The PEBB program will automatically disenroll the employee from PEBB dental.

(e) If the school employee's dependent is enrolled in any SEBB medical, SEBB dental, or SEBB vision plan, and the dependent is also an employee in the PEBB program and enrolled in PEBB medical, and no action is taken by either the school employee or the dependent to resolve the dependent's dual enrollment, the school employee's dependent will remain in PEBB medical. The SEBB program will automatically disenroll the school employee's dependent from SEBB medical, SEBB dental, and SEBB vision in which they are enrolled.

(f) If the school employee's dependent is enrolled in both SEBB medical and PEBB medical as a dependent and has been enrolled in PEBB medical longer than they have been enrolled in SEBB medical, and no action is taken to resolve the dual enrollment, the school employee's dependent will remain in PEBB medical. The SEBB program will automatically disenroll the school employee's dependent from SEBB medical, SEBB dental, and SEBB vision if they are enrolled. If the school employee's dependent who is eligible as a

dependent in both the SEBB and PEBB programs is not enrolled in any medical but is enrolled only in PEBB dental and SEBB vision (with or without SEBB dental) as a dependent, the dependent will remain in SEBB vision and if enrolled, SEBB dental. The PEBB program will automatically disenroll the dependent from PEBB dental.

Exception: If there is a National Medical Support Notice (NMSN) or a court order in place, enrollment will be in accordance with the NMSN or order.

(g) If the school employee's dependent, who is also an employee in the PEBB program who the PEBB program automatically disenrolled from PEBB dental, the SEBB program will automatically enroll the school employee's dependent in SEBB vision. The SEBB program will also automatically enroll the school employee's dependent in SEBB dental, if they are not already enrolled.

(h) If the school employee who is eligible for the employer contribution toward SEBB benefits was enrolled as a dependent in PEBB medical and PEBB dental and is removed by the PEBB subscriber, the school employee will be required to return from waived enrollment as described in WAC 182-31-080 (3)(b).

AMENDATORY SECTION (Amending WSR 20-16-067, filed 7/28/20, effective 8/28/20)

WAC 182-31-080 When may a school employee waive enrollment in school employees benefits board (SEBB) medical and when may they enroll in SEBB medical after having waived enrollment? A school employee may waive enrollment in school employees benefits board (SEBB) medical only if they are enrolled in other employer-based group medical, a TRICARE plan, or medicare as described in subsection (1)(a) through (c) of this section. ~~((A special open enrollment event must be an event other than a school employee gaining initial eligibility for SEBB benefits.))~~ A school employee who waives enrollment in SEBB medical must enroll in SEBB dental, SEBB vision, basic life insurance, basic accidental death and dismemberment (AD&D) insurance, and ((basic)) employer-paid long-term disability (LTD) insurance. A school employee will also be enrolled in employee-paid LTD insurance automatically unless the school employee declines their employee-paid LTD insurance as described in WAC 182-30-080.

Exception: A school employee may waive their enrollment in SEBB medical to enroll in public employees benefits board (PEBB) medical only if they are enrolled in PEBB dental. A school employee who waives enrollment in SEBB medical to enroll in PEBB medical also waives enrollment in SEBB dental and SEBB vision.

(1) To waive enrollment in SEBB medical, the school employee must submit the required form to their SEBB organization at one of the following times:

(a) **When the school employee becomes eligible:** A school employee may waive SEBB medical when they become eligible for SEBB benefits. The school employee must indicate their election to waive enrollment in SEBB medical on the required form and submit the form to their SEBB organization. The SEBB organization must receive the form no later than thirty-one days after the date the school

employee becomes eligible for SEBB benefits (see WAC 182-30-080). SEBB medical will be waived as of the date the school employee becomes eligible for SEBB benefits.

(b) **During the annual open enrollment:** A school employee may waive SEBB medical during the annual open enrollment. The required form must be received by the school employee's SEBB organization before the end of the annual open enrollment. SEBB medical will be waived beginning January 1st of the following year.

(c) **During a special open enrollment:** A school employee may waive SEBB medical during a special open enrollment only if they are enrolled in other employer-based group medical, a TRICARE plan, or medicare as described in subsection (4) of this section. A special open enrollment event must be an event other than a school employee gaining initial eligibility or regaining eligibility for SEBB benefits.

The school employee must submit the required form to their SEBB organization. The SEBB organization must receive the form no later than sixty days after the event that creates the special open enrollment. In addition to the required form, the school employee must provide evidence of the event that creates the special open enrollment to their SEBB organization.

SEBB medical will be waived the last day of the month following the later of the event date or the date the required form is received. If that day is the first of the month, SEBB medical will be waived the last day of the previous month. If the special open enrollment is due to the birth, adoption, or assumption of legal obligation for total or partial support in anticipation of adoption of a child, SEBB medical will be waived the last day of the previous month.

(2) If a school employee waives SEBB medical, the school employee may not enroll dependents in SEBB medical.

(3) Once SEBB medical is waived, the school employee is only allowed to enroll in SEBB medical at the following times:

(a) During the annual open enrollment. The required form must be received by the school employee's SEBB organization before the end of the annual open enrollment. SEBB medical will begin January 1st of the following year.

(b) During a special open enrollment. A special open enrollment allows a school employee to revoke their election and make a new election outside of the annual open enrollment. A special open enrollment may be created when one of the events described in subsection (4) of this section occurs.

The school employee must submit the required form to their SEBB organization. The SEBB organization must receive the form no later than sixty days after the event that creates the special open enrollment. In addition to the required form, the school employee must provide evidence of the event that creates the special open enrollment to the SEBB organization.

SEBB medical will begin the first day of the month following the later of the event date or the date the required form is received. If that day is the first of the month, coverage is effective on that day. If the special open enrollment is due to the birth, adoption, or assumption of legal obligation for total or partial support in anticipation of adoption of a child, SEBB medical for the school employee will begin on the first day of

the month in which the event occurs. SEBB medical for the newly born child, newly adopted child, spouse, or state-registered domestic partner will begin as described in WAC 182-31-150 (3)(a)(iv).

If a school employee who is eligible for the employer contribution toward SEBB benefits was enrolled as a dependent in PEBB medical and PEBB dental and is removed by the PEBB subscriber, the health care authority will notify the school employee of their removal from the PEBB subscriber's account and that they have experienced a special enrollment event. The school employee will be required to return from waived enrollment and elect SEBB medical, SEBB dental, and SEBB vision. If the school employee's SEBB organization does not receive the school employee's required forms indicating their medical, dental, and vision elections within sixty days of the school employee losing PEBB medical and PEBB dental, they will be defaulted into employee-only SEBB medical, SEBB dental, and SEBB vision as described in WAC 182-30-080 (1)(b)(i) through (iii).

(4) **Special open enrollment:** Any one of the events in (a) through (k) of this subsection may create a special open enrollment that allows the school employee to enroll in SEBB medical after having waived enrollment. The change in enrollment must be allowable under the Internal Revenue Code (IRC) and Treasury regulations, and correspond to and be consistent with the event that creates the special open enrollment for the school employee, the school employee's dependent, or both.

(a) School employee acquires a new dependent due to:

(i) Marriage or registering a state registered domestic partnership;

(ii) Birth, adoption, or when the school employee has assumed a legal obligation for total or partial support in anticipation of adoption; or

(iii) A child becoming eligible as an extended dependent through legal custody or legal guardianship.

(b) School employee or a school employee's dependent loses other coverage under a group health plan or through health insurance coverage, as defined by the Health Insurance Portability and Accountability Act (HIPAA);

(c) School employee has a change in employment status that affects the school employee's eligibility for their employer contribution toward their employer-based group medical;

(d) The school employee's dependent has a change in their own employment status that affects their eligibility for the employer contribution under their employer-based group medical;

Note: As used in (d) of this subsection "employer contribution" means contributions made by the dependent's current or former employer toward health coverage as described in Treasury Regulation 26 C.F.R. 54.9801-6.

(e) School employee or a school employee's dependent has a change in enrollment under an employer-based group medical plan during its annual open enrollment that does not align with the SEBB program's annual open enrollment;

(f) School employee's dependent has a change in residence from outside of the United States to within the United States, or from within the United States to outside of the

United States and that change in residence results in the dependent losing their health insurance;

(g) A court order requires the school employee or any other individual to provide a health plan for an eligible dependent of the school employee (a former spouse or former state registered domestic partner is not an eligible dependent);

(h) School employee or a school employee's dependent enrolls in coverage under medicaid or a state children's health insurance program (CHIP), or the school employee or a school employee's dependent loses eligibility for coverage under medicaid or CHIP;

Note: A school employee may only return from having waived SEBB medical for the events described in (h) of this subsection. A school employee may not waive their SEBB medical for the events described in (h) of this subsection.

(i) School employee or a school employee's dependent becomes eligible for state premium assistance subsidy for SEBB health plan coverage from medicaid or CHIP;

(j) School employee or a school employee's dependent becomes eligible and enrolls in a TRICARE plan, or loses eligibility for a TRICARE plan;

(k) School employee becomes eligible and enrolls in medicare, or loses eligibility for medicare.

AMENDATORY SECTION (Amending WSR 20-16-067, filed 7/28/20, effective 8/28/20)

WAC 182-31-160 National Medical Support Notice (NMSN). (1) When a National Medical Support Notice (NMSN) requires a subscriber to provide health plan coverage for a dependent child the following provisions apply:

(a) The subscriber may enroll their dependent child and request changes to their health plan coverage as described under (c) of this subsection. School employees submit the required forms to their school employees benefits board (SEBB) organization. Subscribers on continuation coverage submit the required forms to the SEBB program;

(b) If the subscriber fails to request enrollment or health plan coverage changes as directed by the NMSN, the SEBB organization or the SEBB program may make enrollment or health plan coverage changes according to (c) of this subsection upon request of:

(i) The child's other parent; or

(ii) Child support enforcement program.

(c) Changes to health plan coverage or enrollment are allowed as directed by the NMSN:

(i) The dependent will be enrolled under the subscriber's health plan coverage as directed by the NMSN;

(ii) A school employee who has waived SEBB medical as described in WAC 182-31-080 will be enrolled in medical as directed by the NMSN, in order to enroll the dependent;

(iii) The subscriber's selected health plan will be changed if directed by the NMSN;

(iv) If the dependent is already enrolled under another SEBB subscriber, the dependent will be removed from the other health plan coverage and enrolled as directed by the NMSN; ((e))

(v) If the dependent is enrolled in both public employees benefits board medical and SEBB medical as a dependent as

described in WAC 182-31-070 (6)(f) and there is a NMSN in place, enrollment will be in accordance with the NMSN; or

(vi) If the subscriber is eligible for and elects Consolidated Omnibus Budget Reconciliation Act (COBRA) or other continuation coverage, the NMSN will be enforced and the dependent must be covered in accordance with the NMSN.

(d) Changes to health plan coverage or enrollment as described in (c)(i) through (iii) of this subsection will begin the first day of the month following receipt by the SEBB organization of the NMSN. If the NMSN is received by the SEBB organization on the first day of the month, the change to health plan coverage or enrollment begins on that day. A dependent will be removed from the subscriber's health plan coverage as described in (c)(iv) of this subsection the last day of the month the NMSN is received. If that day is the first of the month, the change in enrollment will be made the last day of the previous month.

(2) When a NMSN requires a spouse, former spouse, or other individual to provide health plan coverage for a dependent who is already enrolled in SEBB coverage, and that health plan coverage is in fact provided, the dependent may be removed from the subscriber's SEBB health plan coverage prospectively.

WSR 21-13-116

PERMANENT RULES

HEALTH CARE AUTHORITY

(School Employees Benefits Board)

[Admin #2021-01.03—Filed June 21, 2021, 12:32 p.m., effective January 1, 2022]

Effective Date of Rule: January 1, 2022.

Purpose: The purpose of this proposal is to amend rules to support the school employees benefits board (SEBB) program.

1. Implement SEBB policy resolutions related to long-term disability insurance (LTD) enrollment and eligibility requirements:

Amended WAC 182-30-040, 182-30-060, 182-30-080, 182-31-040, and 182-31-120 to implement the following LTD insurance related SEBB policy resolutions:

- SEBB 2021-11 Employee-paid long-term disability (LTD) enrollment procedures.
- SEBB 2021-12 Amending resolution SEBB 2018-54 relating to default enrollments.

2. Make other technical amendments:

- Amended WAC 182-30-040 to include premiums and applicable premium surcharges are due to the contracted vendor, to change the accounting adjustment period from three months to sixty days, and to specify SEBB insurance coverage.
- Amended WAC 182-30-060 to change medical flexible spending arrangement or dependent care assistance program enrollment from three months to sixty days prior to the date enrollment is processed and to clarify recourse

rule on when school employee eligibility for SEBB benefits begins.

- Amended WAC 182-30-080 to clarify information a school employee must indicate when completing required forms, to clarify when the employee's request for a change in their supplemental life insurance becomes effective, and to update a WAC reference.
- Amended WAC 182-31-040 to reorder the eligibility criteria when determining school employees' eligibility.
- Amended WAC 182-31-110 to change supplemental LTD insurance to employee-paid LTD insurance.

Citation of Rules Affected by this Order: Amending WAC 182-30-040, 182-30-060, 182-30-080, 182-31-040, 182-31-110, and 182-31-120.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Other Authority: Policy resolutions SEBB 2021-11 and 2021-12.

Adopted under notice filed as WSR 21-10-063 on April 30, 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 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 6, 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 6, Repealed 0.

Date Adopted: June 21, 2021.

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 20-16-067, filed 7/28/20, effective 8/28/20)

WAC 182-30-040 Premium payments and premium refunds. School employees benefits board (SEBB) insurance coverage premiums and applicable premium surcharges for all subscribers are due as described in this section, except when a SEBB organization is correcting its enrollment error as described in WAC 182-30-060 (4) or (5).

(1) **Premium payments.** SEBB insurance coverage premiums and applicable premium surcharges for all subscribers become due the first of the month in which SEBB insurance coverage is effective.

Premiums and applicable premium surcharges are due from the subscriber for the entire month of SEBB insurance coverage and will not be prorated during any month.

(a) For subscribers not eligible for the employer contribution that are electing to enroll in continuation coverage as described in WAC 182-31-090, 182-31-100, 182-31-120, or

182-31-130, the first premium payment and applicable premium surcharges are due to the health care authority (HCA) or the contracted vendor no later than forty-five days after the election period ends as described within the Washington Administrative Code applicable to the subscriber. Premiums and applicable premium surcharges associated with continuing SEBB medical must be made to the HCA as well as premiums associated with continuing SEBB dental or vision insurance coverage. Premiums associated with life insurance coverage and accidental death and dismemberment (AD&D) coverage must be made to the contracted vendor. Following the first premium payment, premiums and applicable premium surcharges must be paid as premiums become due.

(b) For school employees who are eligible for the employer contribution, premiums and applicable premium surcharges are due to the SEBB organization or contracted vendor. If a school employee elects supplemental coverage (;) or employee-paid long-term disability (LTD) insurance, or is enrolled in employee-paid LTD insurance, as described in WAC 182-30-080 (1)(a) or (3)(a) or is enrolled in employee-paid LTD insurance as described in WAC 182-30-080 (1)(b) the school employee is responsible for payment of premiums from the month the supplemental coverage or employee-paid LTD insurance begins.

(c) Unpaid or underpaid premiums or applicable premium surcharges for all subscribers must be paid, and are due from the SEBB organization, subscriber, or a subscriber's legal representative to the HCA or the contracted vendor. For subscribers not eligible for the employer contribution, monthly premiums or applicable premium surcharges that remain unpaid for thirty days will be considered delinquent. A subscriber is allowed a grace period of thirty days from the date the monthly premiums or applicable premium surcharges become delinquent to pay the unpaid premium balance or applicable premium surcharges. If a subscriber, who is not eligible for the employer contribution, has monthly premiums or applicable premium surcharges remain unpaid for sixty days from the original due date, the subscriber's SEBB insurance coverage will be terminated retroactive to the last day of the month for which the monthly premiums and any applicable premium surcharges were paid. If it is determined by the HCA that payment of the unpaid balance in a lump sum would be considered a hardship, the HCA may develop a reasonable payment plan up to twelve months in duration with the subscriber or the subscriber's legal representative upon request.

(d) Monthly premiums or applicable premium surcharges due from a subscriber who is not eligible for the employer contribution will be considered unpaid if one of the following occurs:

(i) No payment of premiums or applicable premium surcharges are received by the HCA or the contracted vendor and the monthly premiums or applicable premium surcharges remain unpaid for thirty days; or

(ii) Premium payments or applicable premium surcharges received by the HCA or the contracted vendor are underpaid by an amount greater than an insignificant shortfall and the monthly premiums or applicable premium surcharges remain underpaid for thirty days past the date the monthly premiums or applicable premium surcharges were due.

(2) **Premium refunds.** SEBB insurance coverage premiums and applicable premium surcharges will be refunded using the following methods:

(a) When a subscriber submits an enrollment change affecting subscriber or dependent eligibility, HCA may allow up to three months of accounting adjustments. HCA will refund to the individual or the SEBB organization any excess premiums and applicable premium surcharges paid during the ~~((three month))~~ sixty day adjustment period, except as indicated in WAC 182-31-120.

(b) If a SEBB subscriber, dependent, or beneficiary submits a written appeal as described in WAC 182-32-2010, and provides clear and convincing evidence of extraordinary circumstances, such that the subscriber could not timely submit the necessary information to accomplish an allowable enrollment change within sixty days after the event that created a change of premiums, the SEBB director, the SEBB director's designee, or the SEBB appeals unit may:

(i) Approve a refund of premiums and applicable premium surcharges that does not exceed twelve months of premiums; and

(ii) Approve the enrollment change that was originally requested and which forms the basis for the refund.

(c) If a federal government entity determines that an enrollee is retroactively enrolled in coverage (for example, medicare) the subscriber or beneficiary may be eligible for a refund of premiums and applicable premium surcharges paid during the time they were enrolled under the federal program if approved by the SEBB director or the SEBB director's designee.

(d) HCA errors will be corrected by returning all excess premiums and applicable premium surcharges paid by the SEBB organization, subscriber, or beneficiary.

(e) SEBB organization errors will be corrected by returning all excess premiums and applicable premium surcharges paid by the school employee or beneficiary as described in WAC 182-30-060 (4) and (5).

AMENDATORY SECTION (Amending WSR 20-16-066, filed 7/28/20, effective 8/28/20)

WAC 182-30-060 How do school employees benefits board (SEBB) organizations and contracted vendors correct enrollment errors? (1) A school employees benefits board (SEBB) organization or contracted vendor that makes one or more of the following enrollment errors must correct the error as described in subsections (2) through (5) of this section.

(a) Failure to timely notify a school employee of their eligibility for SEBB benefits and the employer contribution as described in WAC 182-31-030;

(b) Failure to enroll a school employee or their dependents in SEBB benefits as elected by the school employee, if the election was timely;

(c) Failure to enroll a school employee and their dependents in SEBB benefits as described in WAC 182-30-080 (1)(b);

(d) Failure to accurately reflect a school employee's premium surcharge attestation on the school employee's account;

(e) Enrolling a school employee or their dependents in SEBB insurance coverage when they are not eligible as described in WAC 182-31-040 or 182-31-140 and it is clear there was no fraud or intentional misrepresentation by the school employee involved; or

(f) Providing incorrect information, via a benefits administrator or contracted vendor, regarding SEBB benefits to the employee that they relied upon.

(2) The SEBB organization or the applicable contracted vendor must enroll the school employee and the school employee's dependents, as elected, or terminate enrollment in SEBB benefits as described in subsection (3) of this section, reconcile premium payments and applicable premium surcharges as described in subsection (4) of this section, and provide recourse as described in subsection (5) of this section.

(3) Enrollment or termination.

(a) SEBB medical, vision, and dental enrollment is effective at a minimum the first day of the month following the date the enrollment error is identified, unless the authority determines additional recourse is warranted, as described in subsection (5) of this section;

(b) Basic life, basic accidental death and dismemberment (AD&D), ~~((and basic))~~ employer-paid long-term disability (LTD) insurance, and employee-paid LTD insurance (unless the school employee declines the employee-paid LTD insurance as described in WAC 182-30-080(1)) enrollment is retroactive to the first day of the month following the day the school employee became newly eligible, or the first day of the month the school employee regained eligibility, as described in WAC 182-30-080;

(c) Supplemental life, supplemental AD&D, and ~~((supplemental))~~ employee-paid LTD insurance enrollment is retroactive to the first day of the month following the day the school employee became newly eligible if the school employee elects to enroll in this coverage (or if previously elected, the first of the month following the signature date on the school employee's application for this coverage). If a SEBB organization enrollment error occurred when the school employee regained eligibility for the employer contribution following a period of leave as described in WAC 182-30-080(3)(-):

(i) Supplemental life and supplemental AD&D is enrolled the first day of the month the school employee regained eligibility, at the same level of coverage the school employee continued during the period of leave, without evidence of insurability.

(ii) If the school employee was eligible to continue supplemental life insurance and supplemental AD&D insurance during the period of leave but did not, the school employee must provide evidence of insurability and receive approval from the contracted vendor.

(iii) School employees may not continue ~~((supplemental))~~ employee-paid LTD insurance while on leave without pay as described in WAC 182-31-100. ~~((Supplemental))~~ Employee-paid LTD insurance is reinstated the first day of the month the employee regains eligibility, to the level of coverage the employee was enrolled in prior to the period of leave, without evidence of insurability.

(d) If the school employee is eligible and elects (or elected) to enroll in the medical flexible spending arrangement (FSA) or dependent care assistance program (DCAP), enrollment is limited to ~~((three months))~~ sixty days prior to the date enrollment is processed, but not earlier than the current plan year. If a school employee was not enrolled in a medical FSA or DCAP as elected, the school employee may either participate at the amount originally elected with a corresponding increase in contributions for the balance of the plan year, or participate at a reduced amount for the plan year by maintaining the per-pay period contribution in effect;

(e) If the school employee or their dependent was not eligible but still enrolled as described in subsection (1)(e) of this section, the employee's or their dependent's SEBB benefits will be terminated prospectively effective as of the last day of the month.

(4) Premium payments.

(a) The SEBB organization must remit to the authority the employer contribution and the school employee contribution for health plan premiums, applicable premium surcharges, basic life, basic AD&D, and ~~((basic))~~ employer-paid LTD insurance starting the date SEBB benefits begin as described in subsections (3) and (5)(a)(i) of this section. If a SEBB organization failed to notify a newly eligible school employee of their eligibility for SEBB benefits, the SEBB organization may only collect the school employee contribution for health plan premiums and applicable premium surcharges for coverage for the months after the school employee was notified.

(b) When a SEBB organization fails to correctly enroll the amount of ~~((supplemental))~~ employee-paid LTD insurance elected by the school employee, premiums will be corrected as follows:

(i) When additional premiums are due to the authority, the school employee is responsible for premiums for the most recent twenty-four months of coverage. The SEBB organization is responsible for additional months of premiums; and

(ii) When a premium refund is due to the school employee, the ~~((supplemental))~~ LTD insurance contracted vendor is responsible for premium refunds for the most recent twenty-four months of coverage. The SEBB organization is responsible for additional months of premium refunds after the twenty-four months of coverage and the overall refunding process to the school employee.

(c) When a SEBB organization mistakenly enrolls a school employee or their dependents as described in subsection (1)(e) of this section, premiums and any applicable premium surcharges will be refunded by the SEBB organization to the school employee without rescinding the insurance coverage.

(5) Recourse.

(a) School employee eligibility for SEBB benefits begins on the first day of the month following the date eligibility is established or the first day of work for school employees who start on or before the first day of school as described in WAC 182-31-040. Dependent eligibility is described in WAC 182-31-140, and dependent enrollment is described in WAC 182-31-150. When retroactive correction of an enrollment error is limited as described in subsection (3)(b), (c), and (d) of this section, the SEBB organization must work with the school

employee, and receive approval from the authority, to implement retroactive SEBB benefits within the following parameters:

- (i) Retroactive enrollment in a SEBB insurance coverage;
 - (ii) Reimbursement of claims paid;
 - (iii) Reimbursement of amounts paid by the school employee or dependent for medical, vision, and dental premiums;
 - (iv) Reimbursement of amounts paid by the school employee for the premium surcharges;
 - (v) Other legal remedy received or offered; or
 - (vi) Other recourse, upon approval by the authority.
- (b) Recourse must not contradict a specific provision of federal law or statute and does not apply to requests for non-covered services or in the case of an individual who is not eligible for SEBB benefits.

AMENDATORY SECTION (Amending WSR 20-16-067, filed 7/28/20, effective 8/28/20)

WAC 182-30-080 When must a newly eligible school employee, or a school employee who regains eligibility for the employer contribution, elect school employees benefits board (SEBB) benefits and complete required forms? A school employee who is newly eligible or who regains eligibility for the employer contribution toward school employees benefits board (SEBB) benefits enrolls as described in this section.

(1) When a school employee is newly eligible for SEBB benefits:

(a) A school employee must complete the required forms indicating their enrollment elections, including an election to waive ~~((SEBB medical)) enrollment~~ provided the school employee is eligible to waive ~~((SEBB medical and elects to waive))~~ as described in WAC 182-31-080. The required forms must be returned to the school employee's SEBB organization or contracted vendor. Their SEBB organization or contracted vendor must receive the forms no later than thirty-one days after the school employee becomes eligible for SEBB benefits under WAC 182-31-040.

(i) The school employee may enroll in supplemental life ~~((and supplemental long-term disability (LTD)))~~ insurance up to the guaranteed issue coverage amount without evidence of insurability if the required forms are returned to the school employee's SEBB organization or contracted vendor as required. A school employee may apply for enrollment in supplemental life ~~((and supplemental LTD))~~ insurance over the guaranteed issue coverage amount at any time during the calendar year by submitting the required form to the contracted vendor for approval. For a school employee who requests a change in their supplemental life insurance after the election period described in this subsection, the change begins the first day of the month following the date the contracted vendor approves the request. A school employee may enroll in supplemental accidental death and dismemberment (AD&D) insurance at anytime without evidence of insurability by submitting the required form to the contracted vendor.

(ii) School employees are enrolled in employee-paid long-term disability (LTD) insurance automatically. A school

employee may elect to reduce their employee-paid LTD insurance or decline their employee-paid LTD insurance by returning the form to their SEBB organization. A school employee may apply for a change in their employee-paid LTD insurance at any time during the calendar year by submitting the required form to their SEBB organization or the contracted vendor. For a school employee who requests a change in their employee-paid LTD insurance after the election period described in this subsection, the change begins the first day of the month following the date the SEBB organization receives the required form requesting to reduce or decline the employee-paid LTD insurance, or the day of the month the contracted vendor approves the required form to increase the employee-paid LTD insurance.

(iii) If the school employee is eligible to participate in the salary reduction plan (see WAC 182-31-060), the school employee will automatically enroll in the premium payment plan upon enrollment in SEBB medical allowing medical premiums to be taken on a pretax basis. To opt out of the premium payment plan, a new school employee must complete the required form and return it to their SEBB organization. The form must be received by their SEBB organization no later than thirty-one days after the employee becomes eligible for SEBB benefits.

~~((iii))~~ (iv) If a school employee is eligible to participate in the salary reduction plan (see WAC 182-31-060), the school employee may enroll in the state's medical flexible spending arrangement (FSA) or dependent care assistance program (DCAP) or both, except as limited by subsection (4) of this section. To enroll in these SEBB benefits, the school employee must return the required form to their SEBB organization. The form must be received by the SEBB organization no later than thirty-one days after the school employee becomes eligible for SEBB benefits.

(b) If a newly eligible school employee's SEBB organization, or the authority's contracted vendor in the case of life insurance and AD&D, does not receive the school employee's required forms indicating medical, dental, vision, life insurance, AD&D insurance, and LTD insurance elections, and the school employee's tobacco use status attestation within thirty-one days of the school employee becoming eligible, their enrollment will be as follows for those elections not received within thirty-one days:

(i) A medical plan determined by the health care authority (HCA);

(ii) A dental plan determined by the HCA;

(iii) A vision plan determined by the HCA;

(iv) Basic life insurance;

(v) Basic AD&D insurance;

(vi) ~~((Basic))~~ Employer-paid LTD insurance and employee-paid LTD insurance;

(vii) Dependents will not be enrolled; and

(viii) A tobacco use premium surcharge will be incurred as described in WAC 182-30-050 (1)(b).

(2) The employer contribution toward SEBB benefits ends according to WAC 182-31-050. When a school employee's employment ends, participation in the salary reduction plan ends.

(3) When a school employee regains eligibility for the employer contribution toward SEBB benefits, including fol-

lowing a period of leave as described in WAC 182-31-100(1) or ~~((182-31-040(6)))~~ 182-31-040 (4)(d), SEBB medical, dental, and vision begin the first day of the month following the school employee's return to work if the SEBB organization anticipates the school employee is eligible for the employer contribution.

(a) A school employee must complete the required forms indicating their enrollment elections, including an election to waive ~~((SEBB medical))~~ enrollment if the school employee chooses to waive ~~((SEBB medical))~~ enrollment as described in WAC 182-31-080. The required forms must be returned to the school employee's SEBB organization except as described in (d) of this subsection. Forms must be received by the SEBB organization, life insurance contracted vendor, or AD&D contracted vendor, if required, no later than thirty-one days after the school employee regains eligibility except as described in (a)(i) and (b) of this subsection:

(i) A school employee who self-paid for supplemental life insurance or supplemental AD&D coverage after losing eligibility will maintain that level of coverage upon return;

(ii) A school employee who was eligible to continue supplemental life ~~((or supplemental AD&D))~~ insurance but discontinued that ~~((SEBB))~~ supplemental coverage must submit evidence of insurability to the contracted vendor if they choose to reenroll when they regain eligibility for the employer contribution.

(b) A school employee does not have to return a form indicating ~~((supplemental))~~ employee-paid LTD insurance elections. Their ~~((supplemental))~~ employee-paid LTD insurance will be automatically reinstated effective the first day of the month they regain eligibility for the employer contribution toward SEBB benefits.

(c) If a school employee's SEBB organization, or contracted vendor accepting forms directly, does not receive the required forms within thirty-one days of the school employee regaining eligibility, the school employee's enrollment for those elections not received will be as described in subsection (1)(b)(i) through (viii) of this section, except as described in (a)(i) and (b) of this subsection.

(d) If a school employee is eligible to participate in the salary reduction plan (see WAC 182-31-060), the school employee may enroll in the medical FSA or DCAP or both, except as limited by subsection (4) of this section. To enroll in these SEBB benefits, the school employee must return the required form to the contracted vendor or their SEBB organization. The contracted vendor or school employee's SEBB organization must receive the form no later than thirty-one days after the school employee becomes eligible for SEBB benefits.

(4) If a school employee who is eligible to participate in the salary reduction plan (see WAC 182-31-060) is hired into a new position that is anticipated to be eligible for SEBB benefits in the same year, the school employee may not resume participation in DCAP or medical FSA until the beginning of the next plan year, unless the time between employments is thirty days or less and within the current plan year. The school employee must notify the new SEBB organization of the transfer by providing the new SEBB organization the required form no later than thirty-one days after the school

employee's first day of work with the new SEBB organization.

(5) A school employee will have uninterrupted coverage when moving from one SEBB organization to another within the same month or a consecutive month if they are eligible for the employer contribution towards SEBB benefits in the position they are leaving and are anticipated to be eligible for the employer contribution in the new position. SEBB benefits elections also remain the same when a school employee has a break in employment that does not interrupt their employer contribution toward SEBB benefits.

(6) A school employee returning to the same SEBB organization who is anticipated to work at least six hundred thirty hours in the coming school year, and who was receiving the employer contribution in August of the prior school year, will receive uninterrupted coverage from one school year to the next.

AMENDATORY SECTION (Amending WSR 20-16-064, filed 7/28/20, effective 8/28/20)

WAC 182-31-040 How do school employees establish eligibility for the employer contribution toward school employees benefits board (SEBB) benefits and when do SEBB benefits begin? (1) Eligibility shall be determined solely by the criteria that most closely describes the school employee's work circumstance.

(2) All hours worked by an employee in their capacity as a school employee must be included in the calculation of hours for determining eligibility. All hours for which a school employee receives compensation from a school employees benefits board (SEBB) organization during an approved leave (e.g., sick leave, personal leave, bereavement leave) or a paid holiday must be included when determining how many hours a school employee is anticipated to work, or did work, in the school year.

(3) A school employee may establish eligibility for the employer contribution toward SEBB benefits by stacking of hours from multiple positions within one SEBB organization. A school employee may not gain eligibility by stacking of hours from multiple SEBB organizations.

(4) School employee eligibility criteria shall be determined in the following order:

(a) A school employee is eligible for the employer contribution toward ~~((school employees benefits board (SEBB)))~~ SEBB benefits if they are anticipated to work at least six hundred thirty hours per school year. The eligibility effective date ~~((for a school employee eligible under this subsection))~~ shall be determined as follows:

(i) If the school employee's first day of work is on or after September 1st but not later than the first day of school for the current school year as established by the SEBB organization, they are eligible for the employer contribution on the first day of work; or

(ii) If the school employee's first day of work is at any other time during the school year, they are eligible for the employer contribution on that day.

(b) A school employee ~~((who))~~ is ~~((not anticipated to work at least six hundred thirty hours in the school year becomes))~~ presumed eligible for the employer contribution

~~((toward SEBB benefits on the date their work pattern is revised in such a way that they are now anticipated to work six hundred thirty hours in))~~ at the start of the school year, as described in (a) of this subsection, if they:

(i) Worked at least six hundred thirty hours in each of the previous two school years; and

(ii) Are returning to the same type of position (teacher, paraeducator, food service worker, custodian, etc.) or combination of positions with the same SEBB organization.

Note: A SEBB organization rebuts this presumption by notifying the school employee, in writing, of the specific reasons why the school employee is not anticipated to work at least six hundred thirty hours in the current school year and how to appeal the eligibility determination.

~~(c) ((A school employee who is not anticipated to work at least six hundred thirty hours in the school year becomes eligible for the employer contribution toward SEBB benefits on the date they actually worked six hundred thirty hours in the school year.~~

~~(d))~~ A school employee who is not anticipated to work six hundred thirty hours within the school year because of the time of year they are hired but is anticipated to work at least six hundred thirty hours the next school year, establishes eligibility for the employer contribution toward SEBB benefits as of their first working day if they are:

(i) A nine to ten month school employee anticipated to be compensated for at least seventeen and one-half hours a week in six of the last eight weeks counting backwards from the week that contains the last day of school; or

(ii) A twelve month school employee anticipated to be compensated for at least seventeen and one-half hours a week in six of the last eight weeks counting backwards from the week that contains August 31st, the last day of the school year.

~~((3) All hours worked by an))~~ (d) A school employee who returns from approved leave without pay will maintain or establish eligibility for the employer contribution toward SEBB benefits if their work schedule, had it been in effect at the start of the school year, would have resulted in the school employee being anticipated to work the minimum hours to meet SEBB eligibility for the employer contribution in the school year. A school employee who regains eligibility under this subsection, establishes eligibility for the employer contribution toward SEBB benefits as of the date they returned from approved leave without pay.

(5) A school employee ((in their capacity as a school employee must be included in the calculation of)) who is not anticipated to work at least six hundred thirty hours ((for determining eligibility. All hours for which a school employee receives compensation from a SEBB organization during an approved leave (e.g., sick leave, personal leave, bereavement leave) or a paid holiday must be included when determining how many hours a school employee is anticipated to work, or did work,)) in the school year as described in subsection (4)(a) of this section, may later be eligible for SEBB benefits when:

(a) Their work pattern is revised in such a way that they are now anticipated to work six hundred thirty hours in the school year. The school employee becomes eligible for the

employer contribution toward SEBB benefits on the date their work pattern is revised; or

(b) They actually worked six hundred thirty hours in the school year. The school employee becomes eligible for the employer contribution toward SEBB benefits on the date they actually worked six hundred thirty hours.

~~((4) A))~~ (6) If the school employee ((may establish eligibility for the employer contribution toward SEBB benefits by stacking of hours from multiple positions within one SEBB organization. A school employee may not gain eligibility by stacking of hours from multiple SEBB organizations.

~~(5) A school employee is presumed eligible for the employer contribution at the start of the school year, as described in subsection (2)(a) of this section, if they:~~

~~(a) Worked at least six hundred thirty hours in each of previous two school years; and~~

~~(b) Are returning to the same type of position (teacher, paraeducator, food service worker, custodian, etc.) or combination of positions with the same SEBB organization.~~

Note: A SEBB organization rebuts this presumption by notifying the school employee, in writing, of the specific reasons why the school employee is not anticipated to work at least six hundred thirty hours in the current school year and how to appeal the eligibility determination.

~~(6) A school employee who returns from approved leave without pay will maintain or establish eligibility for the employer contribution toward SEBB benefits if their work schedule, had it been in effect at the start of the school year, would have resulted in the school employee being anticipated to work the minimum hours to meet SEBB eligibility for the employer contribution in the school year. A school employee who regains eligibility under this subsection establishes eligibility for the employer contribution toward SEBB benefits as of the date they returned from approved leave without pay)) is not eligible under subsection (4) or (5) of this section, they may be eligible for SEBB benefits if their SEBB organization is engaging in local negotiations regarding eligibility for school employees as described in WAC 182-30-130.~~

(7) When SEBB benefits begin:

(a) For a school employee who establishes eligibility under subsection ~~((2))~~ (4)(a)(i) of this section, medical, dental, vision, basic life insurance, basic accidental death and dismemberment (AD&D) insurance, ~~((basic))~~ employer-paid long-term disability (LTD) insurance, employee-paid LTD insurance (unless the school employee declines the employee-paid LTD insurance as described in WAC 182-30-080(1)), and if eligible, benefits under the salary reduction plan begin on the first day of work for the new school year. Supplemental life insurance~~(;)~~ and supplemental AD&D insurance~~((, and supplemental LTD insurance))~~ begin on the first day of the month following the date the contracted vendor receives the required form or approves the enrollment.

(b) For a school employee who establishes eligibility under subsection ~~((2))~~ (4)(a)(ii), ~~((b;))~~ (c), (d), or ~~((6))~~ (5) of this section, medical, dental, vision, basic life insurance, basic AD&D insurance, ~~((basic))~~ employer-paid LTD insurance, employee-paid LTD insurance (unless the school employee declines the employee-paid LTD insurance as described in WAC 182-30-080(1)), and if eligible, benefits

under the salary reduction plan begin on the first day of the month following the date the school employee becomes eligible for the employer contribution toward SEBB benefits. Supplemental life insurance ~~(, and supplemental AD&D insurance (, and supplemental LTD insurance))~~ begin on the first day of the month following the date the contracted vendor receives the required form or approves the enrollment.

Exception: When a school employee establishes eligibility for the employer contribution toward SEBB benefits as described under subsection ~~((2)(b) or (e), or (6))~~ (4)(d) or (5) of this section, at any time in the month of August, SEBB benefits begin on September 1st only if the school employee is also determined to be eligible for the employer contribution toward SEBB benefits for the school year that begins on September 1st.

~~((8) If the school employee is not eligible under subsections (1) through (6) of this section, they may be eligible for SEBB benefits if their SEBB organization is engaging in local negotiations regarding eligibility for school employees as described in WAC 182-30-130.)~~

AMENDATORY SECTION (Amending WSR 20-16-067, filed 7/28/20, effective 8/28/20)

WAC 182-31-110 What options are available if a school employee is approved for the federal Family and Medical Leave Act (FMLA) or the paid family and medical leave program? (1) A school employee on approved leave under the federal Family and Medical Leave Act (FMLA) may continue to receive the employer contribution toward school employees benefits board (SEBB) benefits in accordance with the federal FMLA. The school employee may also continue current supplemental life, supplemental accidental death and dismemberment (AD&D), and ~~((supplemental))~~ employee-paid long-term disability (LTD) insurance. The school employee's SEBB organization is responsible for determining if the school employee is eligible for leave under FMLA and the duration of such leave.

(2) A school employee on approved leave under the paid family and medical leave program under chapter 50A.05 RCW may continue to receive the employer contribution toward SEBB benefits in accordance with RCW 50A.35.020. The school employee may also continue current supplemental life, supplemental AD&D, and ~~((supplemental))~~ employee-paid LTD insurance. The employment security department is responsible for determining if the school employee is eligible for the paid family and medical leave program.

(3) If a school employee exhausts the period of leave approved under FMLA or paid family and medical leave, SEBB benefits may be continued by self-paying the premium and applicable premium surcharges set by the health care authority (HCA), with no contribution from the SEBB organization, as described in WAC 182-31-100(1).

AMENDATORY SECTION (Amending WSR 20-16-067, filed 7/28/20, effective 8/28/20)

WAC 182-31-120 What options for continuation coverage are available to school employees during their appeal of a grievance? (1) A school employee awaiting the

hearing outcome of a grievance action before any of the following may continue their school employees benefits board (SEBB) insurance coverage by self-paying the premium and applicable premium surcharges set by the health care authority (HCA), with no contribution from the SEBB organization, on the same terms as a school employee who is granted leave as described in WAC 182-31-100(1):

- (a) An arbitrator;
- (b) A grievance or appeals committee established under a collective bargaining agreement for union represented employees; or
- (c) A court.

(2) The school employee must pay premium amounts and applicable premium surcharges associated with SEBB insurance coverage as premiums and applicable premium surcharges become due. If the monthly premium or applicable premium surcharges remain unpaid for sixty days from the original due date, SEBB insurance coverage will be terminated retroactive to the last day of the month for which the monthly premium and applicable premium surcharges were paid as described in WAC 182-30-040 (1)(c).

(3) If the dismissal is upheld, all SEBB insurance coverage will terminate at the end of the month in which the decision is entered, or the date to which premiums have been paid, whichever is later, with the exception described in subsection (4) of this section.

(4) If the dismissal is upheld and the school employee is eligible under the federal Consolidated Omnibus Budget Reconciliation Act (COBRA), the school employee may continue SEBB medical, dental, vision, or any combination of them for the remaining months available under COBRA. See WAC 182-31-090 for information on COBRA. The number of months the school employee self-paid premiums during the appeal will count toward the total number of months allowed under COBRA.

(5) If the arbitrator, committee, or court sustains the school employee in the appeal and directs reinstatement of SEBB organization paid SEBB insurance coverage retroactively, the SEBB organization must forward to HCA the full employer contribution for the period directed by the arbitrator, committee, or court and collect from the school employee the school employee's share of premiums due, if any.

(a) When the employer contribution is reinstated, HCA will refund premiums and applicable premium surcharges the school employee paid only if the school employee retroactively pays their employee contribution amounts for SEBB benefits. In the alternative, at the request of the school employee, HCA may deduct the school employee's contribution amount for SEBB benefits from the refund of premiums and applicable premium surcharges self-paid by the school employee during the appeal period.

(b) All supplemental life insurance ~~((and)),~~ supplemental accidental death and dismemberment (AD&D) insurance, and employee-paid long-term disability (LTD) insurance that was in force at the time of dismissal shall be reinstated retroactively only if the school employee makes retroactive payment of premium for any such supplemental coverage and employee-paid LTD insurance that was not continued by self-payment during the appeal process. If the school employee chooses not to pay the retroactive premium, evi-

dence of insurability will be required to enroll in such supplemental coverage and employee-paid LTD insurance.

WSR 21-13-117
PERMANENT RULES
HEALTH CARE AUTHORITY

(School Employees Benefits Board)

[Admin #2021-01.04—Filed June 21, 2021, 12:41 p.m., effective January 1, 2022]

Effective Date of Rule: January 1, 2022.

Purpose: The purpose of this proposal is to amend some of the existing rules to support the school employees benefits board (SEBB) program:

1. Make technical amendments:

- Amended WAC 182-30-090 to clarify special open enrollment opportunities only apply if the dependent is a tax dependent.
- Amended WAC 182-30-090 and 182-30-100 to remove the restriction when a subscriber has a change in health plan based on the location of their employment.
- Amended WAC 182-30-130 to include supplemental accidental death and dismemberment insurance in the list of benefits that are not available to school employees who eligibility is negotiated locally.
- Amended WAC 182-30-140 to clarify optional benefits must be paid for by the school employee without an employer contribution, except for when they participate in Voluntary Employees' Beneficiary Association account.
- Amended WAC 182-31-090 to include when an enrollee's Consolidated Omnibus Budget Reconciliation Act (COBRA) coverage will terminate upon eligibility for medicare due to age or when enrolled in medicare due to a disability.
- Amended WAC 182-31-150 to include a special open enrollment event when a subscriber's dependent enrolls in medicare or loses eligibility for medicare, and to clarify a subscriber must certify the state registered domestic partner or state registered domestic partner's child is a tax dependent.
- Amended WAC 182-32-2010 to clarify disability insurance is long-term disability insurance.

2. Amend rules to improve the administration of the SEBB program:

- Amended WAC 182-30-020 and 182-31-020 to update the definitions of annual open enrollment, long-term disability insurance or LTD insurance, special open enrollment, supplemental coverage, and waive.
- Amended WAC 182-30-030 to change basic long-term disability insurance to employer-paid long-term disability insurance.
- Amended WAC 182-31-090 to clarify a school employee or a school employee's dependent may continue coverage if they lose eligibility for continuation coverage but have not used the maximum number of months allowed under COBRA, and to include addi-

tional WAC section references that relate to the effective date of COBRA coverage when an enrollee loses eligibility for SEBB health plan coverage.

- Amended WAC 182-32-020 to update the definition of long-term disability insurance or LTD insurance, to remove the definition of disability insurance, and to amend the definition of file or filing to include delivery methods for filing an appeal.

Citation of Rules Affected by this Order: Amending WAC 182-30-020, 182-30-030, 182-30-090, 182-30-100, 182-30-130, 182-30-140, 182-31-020, 182-31-090, 182-31-150, 182-32-020, and 182-32-2010.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 21-10-065 on April 30, 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 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 11, 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 11, Repealed 0.

Date Adopted: June 21, 2021.

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 20-16-067, filed 7/28/20, effective 8/28/20)

WAC 182-30-020 Definitions. The following definitions apply throughout this chapter unless the context clearly indicates another meaning:

"Accidental death and dismemberment insurance" or "AD&D" means basic accidental death and dismemberment (AD&D) insurance paid for by the SEBB organization, as well as supplemental accidental death and dismemberment insurance offered to and paid for by school employees for themselves and their dependents.

"Annual open enrollment" means an annual event set aside for a period of time by the HCA when subscribers may make changes to their health plan enrollment and salary reduction elections for the following plan year. During the annual open enrollment, subscribers may transfer from one health plan to another, enroll or remove dependents from coverage, enroll in coverage, or waive enrollment (~~in SEBB medical~~) (see definition of "waive" in this section). School employees participating in the salary reduction plan may enroll in or change their election under the dependent care assistance program (DCAP), or the medical flexible spending

arrangement (FSA). They may also enroll in or opt out of the premium payment plan.

"Authority" or "HCA" means the Washington state health care authority.

"Benefits administrator" means any person or persons designated by the SEBB organization that trains, communicates, and interacts with school employees as the subject matter expert for eligibility, enrollment, and appeals for SEBB benefits.

"Board" means the school employees benefits board established under provisions of RCW 41.05.740.

"Calendar days" or "days" means all days including Saturdays, Sundays, and all state legal holidays as set forth in RCW 1.16.050.

"Consolidated Omnibus Budget Reconciliation Act" or "COBRA" means continuation coverage as administered under 42 U.S.C. Secs. 300bb-1 through 300bb-8.

"Continuation coverage" means the temporary continuation of SEBB benefits available to enrollees under the Consolidated Omnibus Budget Reconciliation Act (COBRA), 42 U.S.C. Secs. 300bb-1 through 300bb-8, the Uniformed Services Employment and Reemployment Rights Act (USERRA), 38 U.S.C. Secs. 4301 through 4335, or SEBB policies.

"Contracted vendor" means any person, persons, or entity under contract or agreement with the HCA to provide goods or services for the provision or administration of SEBB benefits. The term "contracted vendor" includes subcontractors of the HCA and subcontractors of any person, persons, or entity under contract or agreement with the HCA that provide goods or services for the provision or administration of SEBB benefits.

"Dependent" means a person who meets eligibility requirements in WAC 182-31-140.

"Dependent care assistance program" or "DCAP" means a benefit plan whereby school employees may pay for certain employment related dependent care with pretax dollars as provided in the salary reduction plan under chapter 41.05 RCW pursuant to 26 U.S.C. Sec. 129 or other sections of the Internal Revenue Code.

"Director" means the director of the authority.

"Employer-based group health plan" means group medical, group vision, and group dental related to a current employment relationship. It does not include medical, vision, or dental coverage available to retired employees, individual market medical or dental coverage, or government-sponsored programs such as medicare or medicaid.

"Employer-based group medical" means group medical related to a current employment relationship. It does not include medical coverage available to retired employees, individual market medical coverage, or government-sponsored programs such as medicare or medicaid.

"Employer contribution" means the funding amount paid to the HCA by a school employees benefits board (SEBB) organization for its eligible school employees as described under WAC 182-31-040 or 182-30-130.

"Enrollee" means a person who meets all eligibility requirements defined in chapter 182-31 WAC or WAC 182-30-130, who is enrolled in SEBB benefits, and for whom applicable premium payments have been made.

"Forms" or "form" means both paper forms and forms completed electronically.

"Health plan" means a plan offering medical, vision, dental, or any combination of these coverages, developed by the board and provided by a contracted vendor or self-insured plans administered by the HCA.

"Insignificant shortfall" means a premium balance owed that is less than or equal to the lesser of \$50 or ten percent of the premium required by the health plan as described in Treasury Regulation 26 C.F.R. 54.4980B-8.

"Life insurance" means basic life insurance paid for by the SEBB organization, as well as supplemental life insurance offered to and paid for by school employees for themselves and their dependents.

"Long-term disability insurance" or "LTD insurance" means ~~((any basic))~~ employer-paid long-term disability insurance ~~((paid for by the SEBB organization))~~ and any ~~((supplemental))~~ employee-paid long-term disability insurance offered ~~((to and paid for by the school employee))~~ by the SEBB program.

"Medical flexible spending arrangement" or "medical FSA" means a benefit plan whereby eligible school employees may reduce their salary before taxes to pay for medical expenses not reimbursed by insurance as provided in the salary reduction plan established under chapter 41.05 RCW pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.

"PEBB" means the public employees benefits board.

"Premium payment plan" means a benefit plan whereby school employees may pay their share of group health plan premiums with pretax dollars as provided in the salary reduction plan under chapter 41.05 RCW pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.

"Premium surcharge" means a payment required from a subscriber, in addition to the subscriber's medical premium contribution, due to an enrollee's tobacco use or an enrolled subscriber's spouse or state registered domestic partner choosing not to enroll in their employer-based group medical when:

- The spouse's or state registered domestic partner's share of the medical premium is less than ninety-five percent of the additional cost an employee would be required to pay to enroll a spouse or state registered domestic partner in the public employees benefits board (PEBB) Uniform Medical Plan (UMP) Classic; and

- The benefits have an actuarial value of at least ninety-five percent of the actuarial value of PEBB UMP Classic benefits.

"Salary reduction plan" means a benefit plan whereby school employees may agree to a reduction of salary on a pretax basis to participate in the dependent care assistance program, medical flexible spending arrangement, or premium payment plan offered pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.

"School employee" means:

- All employees of school districts and charter schools established under chapter 28A.710 RCW;
- Represented employees of educational service districts; and

• Effective January 1, 2024, all employees of educational service districts.

"School employees benefits board organization" or "SEBB organization" means a public school district or educational service district or charter school established under chapter 28A.710 RCW that is required to participate in benefit plans provided by the school employees benefits board.

"School year" means school year as defined in RCW 28A.150.203(11).

"SEBB" means the school employees benefits board.

"SEBB benefits" means one or more insurance coverages or other school employee benefits administered by the SEBB program within the HCA.

"SEBB insurance coverage" means any health plan, life insurance, accidental death and dismemberment insurance, or long-term disability insurance administered as a SEBB benefit.

"SEBB program" means the program within the HCA that administers insurance and other benefits for eligible school employees (as described in WAC 182-31-040 or 182-30-130) and eligible dependents (as described in 182-31-140).

"Special open enrollment" means a period of time when subscribers may make changes to their health plan enrollment and salary reduction elections outside of the annual open enrollment period when specific life events occur. During the special open enrollment subscribers may change health plans and enroll or remove dependents from coverage. Additionally, school employees may enroll in or waive enrollment (~~in SEBB medical~~) (see definition of "waive" in this section). School employees eligible to participate in the salary reductions plan may enroll in or revoke their election under the DCAP, medical FSA, or the premium payment plan and make a new election. For special open enrollment events related to specific SEBB benefits, see WAC 182-30-090, 182-30-100, 182-31-080, and 182-31-150.

"State registered domestic partner" has the same meaning as defined in RCW 26.60.020(1) and substantially equivalent legal unions from other jurisdictions as defined in RCW 26.60.090.

"Subscriber" means the school employee or continuation coverage enrollee who has been determined eligible by the SEBB program or SEBB organization, is enrolled in SEBB benefits, and is the individual to whom the SEBB program and contracted vendors will issue all notices, information, requests, and premium bills on behalf of an enrollee.

"Supplemental coverage" means any life insurance(~~(;) or accidental death and dismemberment (AD&D) insurance coverage(, or long-term disability coverage)~~) purchased by the school employee in addition to the (~~(basic)~~) coverage provided by the school employees benefits board (SEBB) organization.

"Tobacco products" means any product made with or derived from tobacco that is intended for human consumption, including any component, part, or accessory of a tobacco product. This includes, but is not limited to, cigars, cigarettes, pipe tobacco, chewing tobacco, snuff, and other tobacco products. It does not include e-cigarettes or United States Food and Drug Administration (FDA) approved quit aids.

"Tobacco use" means any use of tobacco products within the past two months. Tobacco use, however, does not include the religious or ceremonial use of tobacco.

"Waive" means an eligible school employee affirmatively declining enrollment in SEBB medical because the school employee is enrolled in other employer-based group medical, a TRICARE plan, or medicare as allowed under WAC 182-31-080. A school employee may waive enrollment in SEBB medical to enroll in PEBB medical only if they are enrolled in PEBB dental. A school employee who waives enrollment in SEBB medical to enroll in PEBB medical also waives enrollment in SEBB dental and SEBB vision.

"Week" means a seven-day period starting on Sunday and ending on Saturday.

AMENDATORY SECTION (Amending WSR 19-14-093, filed 7/1/19, effective 8/1/19)

WAC 182-30-030 Employer contribution for school employees benefits board (SEBB) benefits. The employer contribution must be used to provide school employees benefits board (SEBB) insurance coverage for the basic life insurance benefit, basic accidental death and dismemberment (AD&D) insurance benefit, (~~(basic)~~) employer-paid long-term disability (LTD) insurance benefit, medical insurance, vision insurance, dental insurance, SEBB program administrative costs, the school employee remittance required in RCW 28A.400.410 and to establish a reserve for any remaining balance. There is no employer contribution available for any other insurance coverage for school employees employed by SEBB organizations.

AMENDATORY SECTION (Amending WSR 20-16-067, filed 7/28/20, effective 8/28/20)

WAC 182-30-090 When may a subscriber change health plans? A subscriber may change health plans at the following times:

(1) **During the annual open enrollment:** A subscriber may change health plans during the school employees benefits board (SEBB) annual open enrollment period. The subscriber must submit the required enrollment forms to change their health plan. A school employee submits the enrollment forms to their SEBB organization. A subscriber on continuation coverage submits the enrollment forms to the SEBB program. The required enrollment forms must be received no later than the last day of the annual open enrollment. Enrollment in the new health plan will begin January 1st of the following year.

(2) **During a special open enrollment:** A subscriber may revoke their health plan election and make a new election outside of the annual open enrollment if a special open enrollment event occurs. A special open enrollment event must be an event other than a school employee gaining initial eligibility for SEBB benefits as described in WAC 182-31-040 or regaining eligibility for SEBB benefits as described in WAC 182-30-080. The change in enrollment must be allowable under Internal Revenue Code (IRC) and Treasury regulations, and correspond to and be consistent with the event that creates the special open enrollment for the subscriber, the subscriber's dependent, or both. To make a health plan

change, a subscriber must submit the required enrollment forms. The forms must be received no later than sixty days after the event occurs. A school employee submits the enrollment forms to their SEBB organization. A subscriber on continuation coverage submits the enrollment forms to the SEBB program. In addition to the required forms, a subscriber must provide evidence of the event that created the special open enrollment. New health plan coverage will begin the first day of the month following the later of the event date or the date the form is received. If that day is the first of the month, the change in enrollment begins on that day. If the special open enrollment is due to the birth, adoption, or assumption of legal obligation for total or partial support in anticipation of adoption of a child, health plan coverage will begin the month in which the birth, adoption, or assumption of legal obligation for total or partial support in anticipation of adoption occurs. If the special open enrollment is due to the enrollment of an extended dependent or a dependent with a disability, the change in health plan coverage will begin the first day of the month following the later of the event date or the eligibility certification. Any one of the following events may create a special open enrollment:

- (a) Subscriber acquires a new dependent due to:
 - (i) Marriage or registering a state registered domestic partnership;
 - (ii) Birth, adoption, or when the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption; or
 - (iii) A child becoming eligible as an extended dependent through legal custody or legal guardianship.

Note: A subscriber may not change their health plan if their state registered domestic partner or state registered domestic partner's child is not a tax dependent.

(b) Subscriber or a subscriber's dependent loses other coverage under a group health plan or through health insurance coverage, as defined by the Health Insurance Portability and Accountability Act (HIPAA);

(c) Subscriber has a change in employment status that affects the subscriber's eligibility for the employer contribution toward their employer-based group health plan;

(d) Subscriber has a change in employment from a SEBB organization to a public school district that ~~((straddles county lines or is in a county that borders Idaho or Oregon, which))~~ results in the subscriber having different medical plans available. The subscriber may change their election if the change in employment causes:

- (i) The subscriber's current medical plan to no longer be available, in this case the subscriber may select from any available medical plan; or
- (ii) The subscriber has one or more new medical plans available, in this case the subscriber may select to enroll in a newly available plan.
- (iii) As used in this subsection the term "public school district" shall be interpreted to not include charter schools and educational service districts.

(e) The subscriber's dependent has a change in their own employment status that affects their eligibility for the employer contribution under their employer-based group health plan;

Note: As used in (e) of this subsection "employer contribution" means contributions made by the dependent's current or former employer toward health coverage as described in Treasury Regulation 26 C.F.R. 54.9801-6.

(f) Subscriber or a subscriber's dependent has a change in residence that affects health plan availability. If the subscriber moves and the subscriber's current health plan is not available in the new location the subscriber must select a new health plan, otherwise there will be limited accessibility to network providers and covered services;

Exception: A dental plan is considered available if a provider is available within fifty miles of the subscriber's new residence.

(g) A court order requires the subscriber or any other individual to provide insurance coverage for an eligible dependent of the subscriber (a former spouse or former state registered domestic partner is not an eligible dependent);

(h) Subscriber or a subscriber's dependent enrolls in coverage under medicaid or a state children's health insurance program (CHIP), or the subscriber or a subscriber's dependent loses eligibility for coverage under medicaid or CHIP;

(i) Subscriber or a subscriber's dependent becomes eligible for state premium assistance subsidy for SEBB health plan coverage from medicaid or CHIP;

(j) Subscriber or a subscriber's dependent enrolls in coverage under medicare, or the subscriber or a subscriber's dependent loses eligibility for coverage under medicare. If the subscriber's current medical plan becomes unavailable due to the subscriber's or a subscriber's dependent's enrollment in medicare, the subscriber must select a new medical plan as described in WAC 182-30-085(2);

(k) Subscriber or a subscriber's dependent's current health plan becomes unavailable because the subscriber or enrolled dependent is no longer eligible for a health savings account (HSA). The authority may require evidence that the subscriber or subscriber's dependent is no longer eligible for an HSA;

(l) Subscriber or a subscriber's dependent experiences a disruption of care for active and ongoing treatment that could function as a reduction in benefits for the subscriber or the subscriber's dependent. The subscriber may not change their health plan election if the subscriber's or dependent's physician stops participation with the subscriber's health plan unless the SEBB program determines that a continuity of care issue exists. The SEBB program will consider but not limit its consideration to the following:

- (i) Active cancer treatment such as chemotherapy or radiation therapy;
- (ii) Treatment following a recent organ transplant;
- (iii) A scheduled surgery;
- (iv) Recent major surgery still within the postoperative period; or
- (v) Treatment for a high-risk pregnancy.

(3) If the school employee is having premiums taken from payroll on a pretax basis, a medical plan change will not be approved if it would conflict with provisions of the salary reduction plan authorized under RCW 41.05.300.

AMENDATORY SECTION (Amending WSR 20-16-067, filed 7/28/20, effective 8/28/20)

WAC 182-30-100 When may a school employee enroll, or revoke an election and make a new election under the premium payment plan, medical flexible spending arrangement (FSA), or dependent care assistance program (DCAP)? A school employee who is eligible to participate in the salary reduction plan as described in WAC 182-31-060 may enroll, or revoke their election and make a new election under the premium payment plan, medical flexible spending arrangement (FSA), or dependent care assistance program (DCAP) at the following times:

(1) When newly eligible under WAC 182-31-040 and enrolling as described in WAC 182-30-080(1).

(2) **During annual open enrollment:** An eligible school employee may elect to enroll in or opt out of participation under the premium payment plan during the annual open enrollment by submitting the required form to their school employees benefits board (SEBB) organization. An eligible school employee may elect to enroll or reenroll in the medical FSA, DCAP, or both during the annual open enrollment by submitting the required forms to their SEBB organization (and the HCA) or applicable contracted vendor as instructed. All required forms must be received no later than the last day of the annual open enrollment. The enrollment or new election becomes effective January 1st of the following year.

Note: School employees enrolled in a high deductible health plan (HDHP) with a health savings account (HSA) cannot also enroll in a medical FSA in the same plan year. School employees who elect both will only be enrolled in the HDHP with a HSA.

(3) **During a special open enrollment:** A school employee who is eligible to participate in the salary reduction plan may enroll or revoke their election and make a new election under the premium payment plan, medical FSA, or DCAP outside of the annual open enrollment if a special open enrollment event occurs. The enrollment or change in election must be allowable under Internal Revenue Code (IRC) and Treasury regulations, and correspond to and be consistent with the event that creates the special open enrollment. To make a change or enroll, the school employee must submit the required form to their SEBB organization. The SEBB organization must receive the required form and evidence of the event that created the special open enrollment no later than sixty days after the event occurs.

For purposes of this section, an eligible dependent includes any person who qualifies as a dependent of the school employee for tax purposes under IRC 26 U.S.C. Sec. 152 without regard to the income limitations of that section. It does not include a state registered domestic partner unless the state registered domestic partner otherwise qualifies as a dependent for tax purposes under IRC 26 U.S.C. Sec. 152.

(a) **Premium payment plan.** A school employee may enroll or revoke their election and elect to opt out of the premium payment plan when any of the following special open enrollment events occur, if the requested change corresponds to and is consistent with the event. The enrollment or election to opt out will be effective the first day of the month following the later of the event date or the date the required form is received. If that day is the first of the month, the enrollment

or change in election begins on that day. If the special open enrollment is due to the birth, adoption, or assumption of legal obligation for total or partial support in anticipation of adoption of a child, the enrollment or change in election will begin the first of the month in which the event occurs.

(i) School employee acquires a new dependent due to:

- Marriage;
- Registering a state registered domestic partnership when the dependent is a tax dependent of the school employee;

- Birth, adoption, or when the school employee has assumed a legal obligation for total or partial support in anticipation of adoption; or

- A child becoming eligible as an extended dependent through legal custody or legal guardianship.

(ii) School employee's dependent no longer meets SEBB eligibility criteria because:

- School employee has a change in marital status;
- School employee's domestic partnership with a state registered domestic partner who is a tax dependent is dissolved or terminated;

- An eligible dependent child turns age twenty-six or otherwise does not meet dependent child eligibility criteria;

- An eligible dependent ceases to be eligible as an extended dependent or as a dependent with a disability; or

- An eligible dependent dies.

(iii) School employee or a school employee's dependent loses other coverage under a group health plan or through health insurance coverage, as defined by Health Insurance Portability and Accountability Act (HIPAA);

(iv) School employee has a change in employment status that affects the school employee's eligibility for their employer contribution toward their employer-based group health plan;

(v) The school employee's dependent has a change in their own employment status that affects their eligibility for the employer contribution toward their employer-based group health plan;

Exception: As used in (a)(v) of this subsection, "employer contribution" means contributions made by the dependent's current or former employer toward health coverage as described in Treasury Regulation 26 C.F.R. 54.9801-6.

(vi) School employee or a school employee's dependent has a change in enrollment under an employer-based group health plan during its annual open enrollment that does not align with the SEBB annual open enrollment;

(vii) School employee or a school employee's dependent has a change in residence that affects health plan availability;

(viii) School employee's dependent has a change in residence from outside of the United States to within the United States, or from within the United States to outside of the United States, and that change in residence resulted in the dependent losing their health insurance;

(ix) A court order requires the school employee or any other individual to provide insurance coverage for an eligible dependent of the school employee (a former spouse or former state registered domestic partner is not an eligible dependent);

(x) School employee or a school employee's dependent enrolls in coverage under medicaid or a state children's health

insurance program (CHIP), or the school employee or a school employee's dependent loses eligibility for coverage under medicaid or CHIP;

(xi) School employee or a school employee's dependent becomes eligible for state premium assistance subsidy for SEBB health plan coverage from medicaid or CHIP;

(xii) School employee or a school employee's dependent enrolls in coverage under medicare or the school employee or a school employee's dependent loses eligibility for coverage under medicare;

(xiii) School employee or a school employee's dependent's current medical plan becomes unavailable because the school employee or enrolled dependent is no longer eligible for a HSA. The HCA may require evidence that the school employee or a school employee's dependent is no longer eligible for a HSA;

(xiv) School employee or a school employee's dependent experiences a disruption of care for active and ongoing treatment, that could function as a reduction in benefits for the school employee or a school employee's dependent. The school employee may not change their health plan election if the school employee's or dependent's physician stops participation with the school employee's health plan unless the SEBB program determines that a continuity of care issue exists. The SEBB program will consider but not limit its consideration to the following:

- Active cancer treatment such as chemotherapy or radiation therapy;
- Treatment following a recent organ transplant;
- A scheduled surgery;
- Recent major surgery still within the postoperative period; or
- Treatment for a high-risk pregnancy.

(xv) School employee or school employee's dependent becomes eligible and enrolls in a TRICARE plan, or loses eligibility for a TRICARE plan.

(xvi) Subscriber has a change in employment from a SEBB organization to a public school district that ~~((straddles county lines or is in a county that borders Idaho or Oregon, which))~~ results in the subscriber having different medical plans available, and the subscriber changes their election. The subscriber may change their election if the change in employment causes:

- The subscriber's current medical plan to no longer be available, in this case the subscriber may select from any available medical plan; or
 - The subscriber has one or more new medical plans available, in this case the subscriber may select to enroll in a newly available plan.
- As used in this subsection the term "public school district" shall be interpreted to not include charter schools and educational service districts.

If the school employee is having premiums taken from payroll on a pretax basis, a medical plan change will not be approved if it would conflict with provisions of the salary reduction plan authorized under RCW 41.05.300.

(b) **Medical FSA.** A school employee may enroll or revoke their election and make a new election under the medical FSA when any one of the following special open enrollment events occur, if the requested change corresponds to

and is consistent with the event. The enrollment or new election will be effective the first day of the month following the later of the event date or the date the required form and evidence of the event that created the special open enrollment is received by the SEBB organization. If that day is the first of the month, the enrollment or change in election begins on that day. If the special open enrollment is due to the birth, adoption, or assumption of legal obligation for total or partial support in anticipation of adoption of a child, the enrollment or change in election will begin the first of the month in which the event occurs.

(i) School employee acquires a new dependent due to:

- Marriage;
- Registering a state registered domestic partnership when the dependent is a tax dependent of the school employee;
- Birth, adoption, or when the school employee has assumed a legal obligation for total or partial support in anticipation of adoption; or
- A child becoming eligible as an extended dependent through legal custody or legal guardianship.

(ii) School employee's dependent no longer meets SEBB eligibility criteria because:

- School employee has a change in marital status;
- School employee's domestic partnership with a state registered domestic partner who qualifies as a tax dependent is dissolved or terminated;
- An eligible dependent child turns age twenty-six or otherwise does not meet dependent child eligibility criteria;
- An eligible dependent ceases to be eligible as an extended dependent or as a dependent with a disability; or
- An eligible dependent dies.

(iii) School employee or a school employee's dependent loses other coverage under a group health plan or through health insurance coverage, as defined by HIPAA;

(iv) School employee or a school employee's dependent has a change in employment status that affects the school employee's or a dependent's eligibility for the medical FSA;

(v) A court order requires the school employee or any other individual to provide insurance coverage for an eligible dependent of the school employee (a former spouse or former state registered domestic partner is not an eligible dependent);

(vi) School employee or a school employee's dependent enrolls in coverage under medicaid or CHIP, or the school employee or a school employee's dependent loses eligibility for coverage under medicaid or CHIP;

(vii) School employee or a school employee's dependent enrolls in coverage under medicare.

(c) **DCAP.** A school employee may enroll or revoke their election and make a new election under the DCAP when any one of the following special open enrollment events occur, if the requested change corresponds to and is consistent with the event. The enrollment or new election will be effective the first day of the month following the later of the event date or the date the required form and evidence of the event that created the special open enrollment is received by the SEBB organization. If that day is the first of the month, the enrollment or change in election begins on that day. If the special open enrollment is due to the birth, adoption, or

assumption of legal obligation for total or partial support in anticipation of adoption of a child, the enrollment or change in election will begin the first of the month in which the event occurs.

(i) School employee acquires a new dependent due to:

- Marriage;
- Registering a state registered domestic partnership if the state registered domestic partner qualifies as a tax dependent of the school employee;
- Birth, adoption, or when the school employee has assumed a legal obligation for total or partial support in anticipation of adoption; or
- A child becoming eligible as an extended dependent through legal custody or legal guardianship.

(ii) School employee or a school employee's dependent has a change in employment status that affects the school employee's or a dependent's eligibility for DCAP;

(iii) School employee or school employee's dependent has a change in enrollment under an employer-based group health plan during its annual open enrollment that does not align with the SEBB annual open enrollment;

(iv) School employee changes dependent care provider; the change to the DCAP election amount can reflect the cost of the new provider;

(v) School employee or school employee's spouse experiences a change in the number of qualifying individuals as defined in IRC 26 U.S.C. Sec. 21 (b)(1);

(vi) School employee's dependent care provider imposes a change in the cost of dependent care; school employee may make a change in the DCAP election amount to reflect the new cost if the dependent care provider is not a qualifying relative of the school employee as defined in IRC 26 U.S.C. Sec. 152.

AMENDATORY SECTION (Amending WSR 20-16-065, filed 7/28/20, effective 8/28/20)

WAC 182-30-130 What are the requirements for a school employees benefits board (SEBB) organization engaging in local negotiations regarding SEBB benefits eligibility criteria? This section describes the terms and conditions for a school employees benefits board (SEBB) organization that is engaging in local negotiations regarding eligibility for school employees as described in RCW 41.05.740 (6)(e).

(1) A SEBB organization must provide a current ratified collective bargaining agreement (CBA) and information on all eligible school employees under the CBA to the health care authority (HCA) by the start of the school year.

(2) A SEBB organization must offer all of, and only, the following SEBB benefits to employees and their dependents:

- (a) Medical (includes the wellness incentive);
- (b) Dental;
- (c) Vision;
- (d) Basic life;
- (e) Basic accidental death and dismemberment (AD&D) insurance.

(3) A SEBB organization must provide an employer contribution as described below:

(a) The subscriber-only employer medical contribution (EMC) amount for school employees eligible under RCW 41.05.740 (6)(d) multiplied by the premium tier ratio associated with the enrollment tier selected by the school employee;

(b) One hundred percent of the cost for the school employee dental plan multiplied by the enrollment tier selected by the school employee;

(c) One hundred percent of the cost for the school employee vision plan multiplied by the enrollment tier selected by the school employee;

(d) One hundred percent of the cost for basic life and accidental death and dismemberment (AD&D) insurance;

(e) One hundred percent of the cost of the administrative fee charged by the HCA; and

(f) One hundred percent of the monthly K-12 remittance for deposit in the retired school employees' subsidy account.

(4) A SEBB organization providing SEBB benefits as described in this section may do so by group as described in (a) through (d) of this subsection:

- (a) The entire SEBB organization;
- (b) A entire collective bargaining unit;
- (c) A group containing all nonrepresented school employees; or
- (d) A combination of (b) and (c) of this subsection.

(5) A SEBB organization must establish a threshold of anticipated work hours no less than one hundred eighty hours but less than the minimum hours to meet SEBB eligibility under WAC 182-31-040 within a school year.

(6) All of the rules in chapters 182-30, 182-31, and 182-32 WAC apply, except for all rules governing SEBB benefits that are not available to school employees whose eligibility is established under this section. The following benefits are not available to school employees whose eligibility is established under this section:

- (a) Long-term disability (LTD);
- (b) Medical flexible spending arrangement (FSA);
- (c) Dependent care assistance program (DCAP); ~~((and))~~
- (d) Supplemental life insurance; and
- (e) Supplemental accidental death and dismemberment insurance.

(7) If a school employee waives medical under this section, there is no requirement to send the employer contribution to the HCA as required in WAC 182-30-070(4).

(8) Eligibility determinations must align with the SEBB program's status as a governmental plan under Section 3(32) of the Employee Retirement Income Security Act of 1974 (ERISA) as amended. This means the SEBB organization may only consider school employees whose services are substantially all in the performance of essential governmental functions, but not in the performance of commercial activities, whether or not those activities qualify as essential governmental functions to be eligible.

(9) A SEBB organization providing SEBB benefits to a group of school employees under this section must notify the SEBB program each time the CBA is renegotiated.

AMENDATORY SECTION (Amending WSR 20-16-067, filed 7/28/20, effective 8/28/20)

WAC 182-30-140 What is the process for school districts to offer optional benefits? (1) School districts may offer optional benefits that do not compete with any form of the basic or optional benefits offered in the school employees' benefits board (SEBB) program either under the SEBB's authority in RCW 41.05.740 or offered under the health care authority's (HCA) authority in the salary reduction plan authorized in RCW 41.05.300 and 41.05.310. Optional benefits must be paid for by the school employee without an employer contribution, except for when a school employee participates in voluntary employees' beneficiary association accounts (VEBA), which may have an employer contribution as described in RCW 28A.400.210(3). Optional benefits may include:

- (a) Emergency transportation;
 - (b) Identity protection;
 - (c) Legal aid;
 - (d) Long-term care insurance;
 - (e) Noncommercial personal automobile insurance;
 - (f) Personal homeowner's or renter's insurance;
 - (g) Pet insurance;
 - (h) Specified disease or illness-triggered fixed payment insurance, hospital confinement fixed payment insurance, or other fixed payment insurance offered as an independent, noncoordinated benefit regulated by the office of the insurance commissioner;
 - (i) Travel insurance; and
 - (j) ~~((Voluntary employees' beneficiary association accounts.))~~ VEBA.
- (2) Any school districts providing optional benefits must:
- (a) Report optional benefits on the form designed and communicated by the HCA; and
 - (b) Submit the form so it is received by December 1st of each year for the following calendar year as required in RCW 28A.400.280 (2)(b).
- (3) The HCA, in consultation with the SEBB will review the optional benefits offered by school districts as described in section 3, chapter 231, Laws of 2020 (HB 2458).

AMENDATORY SECTION (Amending WSR 20-16-067, filed 7/28/20, effective 8/28/20)

WAC 182-31-020 Definitions. The following definitions apply throughout this chapter unless the context clearly indicates another meaning:

"Accidental death and dismemberment insurance" or "AD&D" means basic accidental death and dismemberment (AD&D) insurance paid for by the SEBB organization, as well as supplemental accidental death and dismemberment insurance offered to and paid for by school employees for themselves and their dependents.

"Annual open enrollment" means an annual event set aside for a period of time by the HCA when subscribers may make changes to their health plan enrollment and salary reduction elections for the following plan year. During the annual open enrollment, subscribers may transfer from one health plan to another, enroll or remove dependents from

coverage, enroll in coverage, or waive enrollment (~~(in SEBB medical))~~ (see definition of "waive" in this section). School employees eligible to participate in the salary reduction plan may enroll in or change their election under the dependent care assistance program (DCAP), or the medical flexible spending arrangement (FSA). They may also enroll in or opt out of the premium payment plan.

"Authority" or "HCA" means the Washington state health care authority.

"Board" means the school employees benefits board established under provisions of RCW 41.05.740.

"Calendar days" or "days" means all days including Saturdays, Sundays, and all state legal holidays as set forth in RCW 1.16.050.

"Consolidated Omnibus Budget Reconciliation Act" or "COBRA" means continuation coverage as administered under 42 U.S.C. Secs. 300bb-1 through 300bb-8.

"Continuation coverage" means the temporary continuation of SEBB benefits available to enrollees under the Consolidated Omnibus Budget Reconciliation Act (COBRA), 42 U.S.C. Secs. 300bb-1 through 300bb-8, the Uniformed Services Employment and Reemployment Rights Act (USERRA), 38 U.S.C. Secs. 4301 through 4335, or SEBB policies.

"Contracted vendor" means any person, persons, or entity under contract or agreement with the HCA to provide goods or services for the provision or administration of SEBB benefits. The term "contracted vendor" includes subcontractors of the HCA and subcontractors of any person, persons, or entity under contract or agreement with the HCA that provide goods or services for the provision or administration of SEBB benefits.

"Dependent" means a person who meets eligibility requirements in WAC 182-31-140.

"Dependent care assistance program" or "DCAP" means a benefit plan whereby school employees may pay for certain employment related dependent care with pretax dollars as provided in the salary reduction plan under chapter 41.05 RCW pursuant to 26 U.S.C. Sec. 129 or other sections of the Internal Revenue Code.

"Director" means the director of the authority.

"Documents" means papers, letters, writings, electronic mail, electronic files, or other printed or written items.

"Effective date of enrollment" means the first date when an enrollee is entitled to receive covered benefits.

"Employer-based group health plan" means group medical, group vision, and group dental related to a current employment relationship. It does not include medical, vision, or dental coverage available to retired employees, individual market medical or dental coverage, or government-sponsored programs such as medicare or medicaid.

"Employer-based group medical" means group medical related to a current employment relationship. It does not include medical coverage available to retired employees, individual market medical coverage, or government-sponsored programs such as medicare or medicaid.

"Employer contribution" means the funding amount paid to the HCA by a school employees benefits board (SEBB) organization for its eligible school employees as described under WAC 182-30-130 and 182-31-040.

"Enrollee" means a person who meets all eligibility requirements defined in chapter 182-31 WAC or WAC 182-30-130, who is enrolled in school employees benefits board (SEBB) benefits, and for whom applicable premium payments have been made.

"Forms" or "form" means both paper forms and forms completed electronically.

"Health plan" means a plan offering medical, vision, dental, or any combination of these coverages, developed by the board and provided by a contracted vendor or self-insured plans administered by the HCA.

"Layoff," for purposes of this chapter, means a change in employment status due to a SEBB organization's lack of funds or a SEBB organization's organizational change.

"Life insurance" means basic life insurance paid for by the SEBB organization, as well as supplemental life insurance offered to and paid for by school employees for themselves and their dependents.

"Long-term disability insurance" or "LTD insurance" means ~~((any basic)) employer-paid long-term disability insurance ((paid for by the SEBB organization)) and ((supplemental)) employee-paid long-term disability insurance offered ((to and paid for by the school employee))~~ by the SEBB program.

"Medical flexible spending arrangement" or "medical FSA" means a benefit plan whereby eligible school employees may reduce their salary before taxes to pay for medical expenses not reimbursed by insurance as provided in the salary reduction plan established under chapter 41.05 RCW pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.

"PEBB" means the public employees benefits board.

"Plan year" means the time period established by the authority.

"Premium payment plan" means a benefit plan whereby school employees may pay their share of group health plan premiums with pretax dollars as provided in the salary reduction plan under chapter 41.05 RCW pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.

"Premium surcharge" means a payment required from a subscriber, in addition to the subscriber's medical premium contribution, due to an enrollee's tobacco use or an enrolled subscriber's spouse or state registered domestic partner choosing not to enroll in their employer-based group medical when:

- The spouse's or state registered domestic partner's share of the medical premium is less than ninety-five percent of the additional cost an employee would be required to pay to enroll a spouse or state registered domestic partner in the public employees benefits board (PEBB) Uniform Medical Plan (UMP) Classic; and

- The benefits have an actuarial value of at least ninety-five percent of the actuarial value of PEBB UMP Classic benefits.

"Salary reduction plan" means a benefit plan whereby school employees may agree to a reduction of salary on a pre-tax basis to participate in the dependent care assistance program, medical flexible spending arrangement, or premium payment plan offered pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.

"School employee" means:

- All employees of school districts and charter schools established under chapter 28A.710 RCW;
- Represented employees of educational service districts; and
- Effective January 1, 2024, all employees of educational service districts.

"School employees benefits board organization" or "SEBB organization" means a public school district or educational service district or charter school established under chapter 28A.710 RCW that is required to participate in benefit plans provided by the school employees benefits board.

"School year" means school year as defined in RCW 28A.150.203(11).

"SEBB" means the school employees benefits board.

"SEBB benefits" means one or more insurance coverages or other school employee benefits administered by the SEBB program within the HCA.

"SEBB insurance coverage" means any health plan, life insurance, accidental death and dismemberment insurance, or long-term disability insurance administered as a SEBB benefit.

"SEBB program" means the program within the HCA that administers insurance and other benefits for eligible school employees (as described in WAC 182-31-040 or 182-30-130) and eligible dependents (as described in WAC 182-31-140).

"Special open enrollment" means a period of time when subscribers may make changes to their health plan enrollment and salary reduction elections outside of the annual open enrollment period when specific life events occur. During the special open enrollment subscribers may change health plans and enroll or remove dependents from coverage. Additionally, school employees may enroll in or waive enrollment ~~((in SEBB medical))~~ (see definition of "waive" in this section). School employees eligible to participate in the salary reductions plan may enroll in or revoke their election under the DCAP, medical FSA, or the premium payment plan and make a new election. For special open enrollment events related to specific SEBB benefits, see WAC 182-30-090, 182-30-100, 182-31-080, and 182-31-150.

"State registered domestic partner" has the same meaning as defined in RCW 26.60.020(1) and substantially equivalent legal unions from other jurisdictions as defined in RCW 26.60.090.

"Subscriber" means the school employee or continuation coverage enrollee who has been determined eligible by the SEBB program or SEBB organizations, is enrolled in SEBB benefits, and is the individual to whom the SEBB program and contracted vendors will issue all notices, information, requests, and premium bills on behalf of an enrollee.

"Supplemental coverage" means any life insurance ~~((or))~~ or accidental death and dismemberment (AD&D) insurance coverage ~~((or long-term disability coverage))~~ purchased by the school employee in addition to the coverage provided by the school employees benefits board (SEBB) organization.

"Tobacco products" means any product made with or derived from tobacco that is intended for human consumption, including any component, part, or accessory of a tobacco product. This includes, but is not limited to, cigars,

cigarettes, pipe tobacco, chewing tobacco, snuff, and other tobacco products. It does not include e-cigarettes or United States Food and Drug Administration (FDA) approved quit aids.

"Tobacco use" means any use of tobacco products within the past two months. Tobacco use, however, does not include the religious or ceremonial use of tobacco.

"Waive" means an eligible school employee affirmatively declining enrollment in SEBB medical because the school employee is enrolled in other employer-based group medical, a TRICARE plan, or medicare as allowed under WAC 182-31-080. A school employee may waive enrollment in SEBB medical to enroll in PEBB medical only if they are enrolled in PEBB dental. A school employee who waives enrollment in SEBB medical to enroll in PEBB medical also waives enrollment in SEBB dental and SEBB vision.

"Week" means a seven-day period starting on Sunday and ending on Saturday.

AMENDATORY SECTION (Amending WSR 20-16-067, filed 7/28/20, effective 8/28/20)

WAC 182-31-090 When is an enrollee eligible to continue school employees benefits board (SEBB) benefits under Consolidated Omnibus Budget Reconciliation Act (COBRA)? (1) A school employee or a school employee's dependent who loses eligibility for the employer contribution toward school employees benefits board (SEBB) benefits and who qualifies for continuation coverage under the federal Consolidated Omnibus Budget Reconciliation Act (COBRA) may continue coverage for all or any combination of SEBB medical, dental, or vision.

(2) A school employee or a school employee's dependent who loses eligibility for continuation coverage described in WAC 182-31-100, 182-31-110, or 182-31-120 but who has not used the maximum number of months allowed under COBRA may continue any combination of SEBB medical, dental, or vision for the remaining difference in months.

(3) An enrollee may continue SEBB medical, dental, or vision under COBRA by self-paying the premium and applicable premium surcharges set by the health care authority (HCA):

(a) The election must be received by the SEBB program no later than sixty days from the date the ~~((school employee's or school employee's dependent's))~~ enrollee's SEBB health plan coverage ended or from the postmark date on the election notice sent by the SEBB program, whichever is later;

(b) The first premium payment under COBRA coverage and applicable premium surcharges are due to the HCA no later than forty-five days after the election period ends as described in (a) of this subsection. Following the enrollee's first premium payment, premiums and applicable premium surcharges must be paid as described in WAC 182-30-040 (1)(c);

(c) COBRA continuation coverage enrollees who voluntarily terminate their COBRA coverage will not be eligible to reenroll in COBRA coverage unless they regain eligibility as described in WAC 182-31-040. Those who request to terminate their COBRA coverage must do so in writing. COBRA coverage will end on the last day of the month in which the

SEBB program receives the termination request or on the last day of the month specified in the COBRA enrollee's termination request, whichever is later. If the termination request is received on the first day of the month, COBRA coverage will end on the last day of the previous month;

(d) A school employee enrolled in a medical flexible spending arrangement (FSA) and the school employee's dependents will have an opportunity to continue making contributions to their medical FSA by electing COBRA if on the date of the qualifying event, as described under 42 U.S.C. Sec. 300bb-3, the school employee's medical FSA has a greater amount in remaining benefits than remaining contribution payments for the current year. The election must be received by the contracted vendor no later than sixty days from the date the SEBB health plan coverage ended or from the postmark date on the election notice sent by the contracted vendor, whichever is later. The first premium payment under COBRA coverage is due to the contracted vendor no later than forty-five days after the election period ends as described above.

~~((3))~~ (4) A subscriber's state registered domestic partner and the state registered domestic partner's children may continue SEBB medical, dental, or vision on the same terms and conditions as spouses and other eligible dependents under COBRA as described under RCW 26.60.015.

~~((4))~~ (5) Medical, dental, and vision coverage under COBRA begin on the first day of the month following the day the COBRA enrollee loses eligibility for ~~((the employer contribution))~~ SEBB health plan coverage as described in WAC 182-31-050, 182-31-100, 182-31-120, or 182-31-140.

(6) An enrollee's COBRA coverage will terminate at the end of the month when they become eligible for medicare due to turning age sixty-five or older, or when enrolled in medicare due to a disability.

AMENDATORY SECTION (Amending WSR 20-16-067, filed 7/28/20, effective 8/28/20)

WAC 182-31-150 When may subscribers enroll or remove eligible dependents? (1) **Enrolling dependents in school employees benefits board (SEBB) health plan coverage and the effective date of supplemental dependent life insurance and accidental death and dismemberment (AD&D) insurance.** A dependent must be enrolled in the same health plan coverage as the subscriber, and the subscriber must be enrolled to enroll their dependent. Subscribers must satisfy the enrollment requirements as described in subsection (4) of this section and may enroll eligible dependents at the following times:

(a) **When the subscriber becomes eligible** and enrolls in SEBB benefits. If eligibility is verified the dependent's effective date will be as follows:

(i) SEBB health plan coverage will be the same as the subscriber's effective date;

(ii) Supplemental dependent life or AD&D insurance, if elected, will be effective the first day of the month following the date the contracted vendor receives the required form or approves the enrollment. A newly born child must be at least fourteen days old before supplemental dependent life insurance or AD&D insurance coverage is effective.

(b) **During the annual open enrollment.** SEBB health plan coverage begins January 1st of the following year;

(c) **During special open enrollment.** Subscribers may enroll dependents during a special open enrollment as described in subsection (3) of this section;

(d) **When a National Medical Support Notice (NMSN)** requires a subscriber to cover a dependent child as described in WAC 182-31-160; or

(e) **Any time during the calendar year for supplemental dependent life insurance or AD&D insurance** by submitting the required form to the contracted vendor for approval. Evidence of insurability may be required for supplemental dependent life insurance but will not be required for supplemental AD&D insurance.

(2) Removing dependents from SEBB health plan coverage or supplemental dependent life insurance or AD&D insurance.

(a) **A dependent's eligibility for enrollment in SEBB health plan coverage or supplemental dependent life insurance or AD&D insurance ends the last day of the month the dependent meets the eligibility criteria** as described in WAC 182-31-140. Subscribers must provide notice when a dependent is no longer eligible due to divorce, annulment, dissolution, or qualifying event of dependent ceasing to be eligible as a dependent child as described in WAC 182-31-140(3). The notice must be received within sixty days of the last day of the month the dependent loses eligibility for SEBB health plan coverage. School employees must notify their SEBB organization when a dependent is no longer eligible except as required under WAC 182-31-140(3)(f)(ii). All other subscribers must notify the SEBB program. Consequences for not submitting notice within the required sixty days include, but are not limited to:

(i) The dependent may lose eligibility to continue SEBB medical, dental, or vision under one of the continuation coverage options described in WAC 182-31-130;

(ii) The subscriber may be billed for claims paid by the health plan for services that were rendered after the dependent lost eligibility as described in WAC 182-31-130;

(iii) The subscriber may not be able to recover subscriber-paid insurance premiums for dependents that lost their eligibility; and

(iv) The subscriber may be responsible for premiums paid by the state for the dependent's health plan coverage after the dependent lost eligibility.

(b) School employees have the opportunity to remove eligible dependents:

(i) During the annual open enrollment. The dependent will be removed from SEBB health plan coverage the last day of December;

(ii) During a special open enrollment as described in subsections (3) and (4)(f) of this section;

(iii) When a NMSN requires a spouse, former spouse, or other individual to provide health plan coverage for a dependent who is already enrolled in SEBB coverage, and that health plan coverage is in fact provided as described in WAC 182-31-160(2); or

(iv) Any time during the calendar year from supplemental dependent life or AD&D insurance by submitting the required form to the contracted vendor.

(c) **Enrollees with SEBB continuation coverage as described in WAC 182-31-090 and 182-31-100 may remove dependents** from their SEBB health plan coverage outside of the annual open enrollment or a special open enrollment by providing written notice to the SEBB program. The dependent will be removed from the subscriber's SEBB health plan coverage prospectively. SEBB health plan coverage will end on the last day of the month in which the written notice is received by the SEBB program or on the last day of the month specified in the subscriber's written notice, whichever is later. If the written notice is received on the first day of the month, SEBB health plan coverage will end on the last day of the previous month. SEBB continuation coverage enrollees may remove supplemental dependent life or AD&D insurance any time during the calendar year by submitting the required form to the contracted vendor.

(3) Special open enrollment.

(a) Subscribers may enroll or remove their eligible dependents outside of the annual open enrollment if a special open enrollment event occurs. The change in enrollment must be allowable under the Internal Revenue Code and Treasury regulations, and correspond to and be consistent with the event that creates the special open enrollment for the subscriber, the subscriber's dependents, or both.

(i) SEBB health plan coverage will begin the first of the month following the later of the event date or the date the required form is received. If that day is the first of the month, the change in enrollment begins on that day.

(ii) SEBB health plan coverage for an extended dependent or a dependent with a disability will begin the first day of the month following the later of the event date or eligibility certification.

(iii) The dependent will be removed from the subscriber's SEBB health plan coverage the last day of the month following the later of the event date or the date the required form and proof of the event is received. If that day is the first of the month, the change in enrollment will be made the last day of the previous month.

(iv) If the special open enrollment is due to the birth or adoption of a child, or when the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption of a child, SEBB health plan coverage will begin or end as follows:

- For the newly born child, SEBB health plan coverage will begin the date of birth;

- For a newly adopted child, SEBB health plan coverage will begin on the date of placement or the date a legal obligation is assumed in anticipation of adoption, whichever is earlier;

- For a spouse or state registered domestic partner of a subscriber, SEBB health plan coverage will begin the first day of the month in which the event occurs. The spouse or state registered domestic partner will be removed from SEBB health plan coverage the last day of the month in which the event occurred.

(b) Any one of the following events may create a special open enrollment:

(i) Subscriber acquires a new dependent due to:

- Marriage or registering a state registered domestic partnership;

- Birth, adoption, or when a subscriber has assumed a legal obligation for total or partial support in anticipation of adoption; or

- A child becoming eligible as an extended dependent through legal custody or legal guardianship.

(ii) Subscriber or a subscriber's dependent loses other coverage under a group health plan or through health insurance coverage, as defined by the Health Insurance Portability and Accountability Act (HIPAA);

(iii) Subscriber has a change in employment status that affects the subscriber's eligibility for their employer contribution toward their employer-based group health plan;

(iv) The subscriber's dependent has a change in their own employment status that affects their eligibility for the employer contribution under their employer-based group health plan;

Note: As used in (iv) of this subsection "employer contribution" means contributions made by the dependent's current or former employer toward health coverage as described in Treasury Regulation 54.9801-6.

(v) Subscriber or a subscriber's dependent has a change in enrollment under an employer-based group health plan during its annual open enrollment that does not align with the SEBB program's annual open enrollment;

(vi) Subscriber's dependent has a change in residence from outside of the United States to within the United States, or from within the United States to outside of the United States and that change in residence results in the dependent losing their health insurance;

(vii) A court order requires the subscriber or any other individual to provide insurance coverage for an eligible dependent of the subscriber (a former spouse or former state registered domestic partner is not an eligible dependent);

(viii) Subscriber or a subscriber's dependent enrolls in coverage under medicaid or a state children's health insurance program (CHIP), or the subscriber or a subscriber's dependent loses eligibility for coverage under medicaid or CHIP;

(ix) Subscriber or a subscriber's dependent becomes eligible for state premium assistance subsidy for SEBB health plan coverage from medicaid or CHIP;

(x) Subscriber's dependent enrolls in medicare, or loses eligibility for medicare.

(4) Enrollment requirements. A subscriber must submit the required forms within the time frames described in this subsection. For SEBB health plan coverage, a school employee must submit the required forms to their SEBB organization, a subscriber on continuation coverage must submit the required forms to the SEBB program. In addition to the required forms indicating dependent enrollment, the subscriber must provide the required documents as evidence of the dependent's eligibility; or as evidence of the event that created the special open enrollment. All required forms and documents must be received within the required time frames. A school employee enrolling a dependent in supplemental life insurance or AD&D insurance must submit the required form to the contracted vendor for approval within the required time frames.

Note: When enrolling a state registered domestic partner or a state registered domestic partner's child, a subscriber must certify that the state registered domestic partner or state registered domestic partner's child is a tax dependent on the required form; otherwise, the SEBB program will assume the state registered domestic partner or state registered domestic partner's child is not a tax dependent.

(a) If a subscriber wants to enroll their eligible dependents in SEBB health plan coverage or supplemental dependent life or AD&D insurance when the subscriber becomes eligible to enroll in SEBB benefits, the subscriber must include the dependent's enrollment information on the required forms and submit them within the required time frame as described in WAC 182-30-060 and 182-30-080.

(b) If a subscriber wants to enroll eligible dependents in SEBB health plan coverage during the SEBB annual open enrollment period, the required forms must be received no later than the last day of the annual open enrollment.

(c) If a subscriber wants to enroll newly eligible dependents, the required forms must be received no later than sixty days after the dependent becomes eligible. A school employee enrolling a dependent in supplemental life insurance or AD&D insurance must submit the required form to the contracted vendor for approval. A school employee may enroll a dependent in supplemental life insurance up to the guaranteed issue coverage amount without evidence of insurability if the required form is submitted to the contracted vendor as required. Evidence of insurability will be required for supplemental dependent life insurance over the guaranteed issue coverage amount. Evidence of insurability is not required for supplemental AD&D insurance.

(d) If a subscriber wants to enroll a newborn or child whom the subscriber has adopted or has assumed a legal obligation for total or partial support in anticipation of adoption in SEBB health plan coverage, the subscriber should notify the SEBB program by submitting the required forms as soon as possible to ensure timely payment of claims. If adding the child increases the premium, the required forms must be received no later than sixty days after the date of the birth, adoption, or the date the legal obligation is assumed for total or partial support in anticipation of adoption. A school employee enrolling a dependent in supplemental life insurance or AD&D insurance must submit the required form to the contracted vendor for approval. A newly born child must be at least fourteen days old before supplemental dependent life insurance or AD&D insurance coverage can become effective.

(e) If the subscriber wants to enroll a child age twenty-six or older as a child with a disability in SEBB health plan coverage, the required forms must be received no later than sixty days after the child reaches age twenty-six or within the relevant time frame described in (a), (b), and (f) of this subsection. To recertify an enrolled child with a disability, the required forms must be received by the SEBB program or the contracted vendor by the child's scheduled SEBB health plan coverage termination date.

(f) If the subscriber wants to change a dependent's enrollment status in SEBB health plan coverage during a special open enrollment, the required forms must be received no later

than sixty days after the event that creates the special open enrollment.

(g) A school employee may enroll a dependent in supplemental life insurance or AD&D insurance at any time during the calendar year by submitting the required form to the contracted vendor for approval. Evidence of insurability may be required for supplemental dependent life insurance but will not be required for supplemental AD&D insurance.

AMENDATORY SECTION (Amending WSR 20-16-067, filed 7/28/20, effective 8/28/20)

WAC 182-32-020 Definitions. The following definitions apply throughout this chapter unless the context clearly indicates another meaning:

"Accidental death and dismemberment insurance" or "AD&D" means basic accidental death and dismemberment (AD&D) insurance paid for by the SEBB organization, as well as supplemental accidental death and dismemberment insurance offered to and paid for by school employees for themselves and their dependents.

"Appellant" means a person who requests a brief adjudicative proceeding with the SEBB appeals unit about the action of the SEBB organization, the HCA, or its contracted vendor.

"Authority" or "HCA" means the Washington state health care authority.

"Board" means the school employees benefits board established under provisions of RCW 41.05.740.

"Brief adjudicative proceeding" means the process described in RCW 34.05.482 through 34.05.494 and in WAC 182-32-2000 through 182-32-2160.

"Business days" means all days except Saturdays, Sundays, and all state legal holidays as set forth in RCW 1.16.050.

"Calendar days" or "days" means all days including Saturdays, Sundays, and all state legal holidays as set forth in RCW 1.16.050.

"Continuance" means a change in the date or time of when a brief adjudicative proceeding or formal administrative hearing will occur.

"Contracted vendor" means any person, persons, or entity under contract or agreement with the HCA to provide goods or services for the provision or administration of SEBB benefits. The term "contracted vendor" includes subcontractors of the HCA and subcontractors of any person, persons, or entity under contract or agreement with the HCA that provide goods or services for the provision or administration of SEBB benefits.

"Denial" or "denial notice" means an action by, or communication from, a school employees benefits board (SEBB) organization, contracted vendor, or the SEBB program that aggrieves a subscriber, a dependent, or an applicant, with regard to SEBB benefits including, but not limited to, actions or communications expressly designated as a "denial," "denial notice," or "cancellation notice."

"Dependent" means a person who meets eligibility requirements in WAC 182-31-140.

"Dependent care assistance program" or "DCAP" means a benefit plan whereby school employees may pay for certain

employment related dependent care with pretax dollars as provided in the salary reduction plan under chapter 41.05 RCW pursuant to 26 U.S.C. Sec. 129 or other sections of the Internal Revenue Code.

"Director" means the director of the authority.

~~("Disability insurance" includes any basic long-term disability insurance paid for by the school employees benefits board (SEBB) organization and any supplemental long-term disability or supplemental short-term disability paid for by the school employee.)~~

"Dispositive motion" is a motion made to a presiding officer, review officer, or hearing officer to decide a claim or case in favor of the moving party without further proceedings.

"Documents" means papers, letters, writings, electronic mail, electronic files, or other printed or written items.

"Employer-based group medical" means group medical related to a current employment relationship. It does not include medical coverage available to retired employees, individual market medical coverage or government-sponsored programs such as medicare or medicaid.

"Enrollee" means a person who meets all eligibility requirements defined in chapter 182-31 WAC or WAC 182-30-130, who is enrolled in SEBB benefits, and for whom applicable premium payments have been made.

"File" or "filing" means the act of delivering documents to the office of the presiding officer, review officer, or hearing officer. A document is considered filed when it is received by the authority or its designee. A document may be filed by one or more of the following:

• Personal delivery to the authority at Cherry Street Plaza, 626 8th Avenue S.E., Olympia, Washington 98501;

• First class, registered, or certified mail to the authority to the following mailing address:

Health Care Authority

Attn: SEBB Appeals Unit

P.O. Box 45504

Olympia, WA 98504-5504;

• Fax: 360-763-4709; or

• Submission online through the designated submission portal.

The identified methods are the exclusive methods for a document to be filed, and submission of documents by any other fashion to the authority shall not constitute filing unless agreed to in advance by the authority.

"Final order" means an order that is the final health care authority decision.

"Formal administrative hearing" means a proceeding before a hearing officer that gives an appellant an opportunity for an evidentiary hearing as described in RCW 34.05.413 through 34.05.476 and WAC 182-32-3000 through 182-32-3200.

"HCA hearing representative" means a person who is authorized to represent the SEBB program in a formal administrative hearing. The person may be an assistant attorney general or authorized HCA employee.

"Health plan" means a plan offering medical, vision, dental, or any combination of these coverages, developed by the board and provided by a contracted vendor or self-insured plans administered by the HCA.

"Hearing officer" means an impartial decision maker who presides at a formal administrative hearing, and is:

- A director-designated HCA employee; or
- When the director has designated the office of administrative hearings (OAH) as a hearing body, an administrative law judge employed by the OAH.

"Life insurance" means any basic life insurance paid for by the SEBB organization, as well as supplemental life insurance offered to and paid for by school employees for themselves and their dependents.

"Long-term disability insurance" or "LTD insurance" means ~~((basic)) employer-paid long-term disability insurance ((paid for by the SEBB organization)) and ((supplemental)) employee-paid long-term disability insurance offered ((to and paid for by the school employee))~~ by the SEBB program.

"Medical flexible spending arrangement" or "medical FSA" means a benefit plan whereby eligible school employees may reduce their salary before taxes to pay for medical expenses not reimbursed by insurance as provided in the salary reduction plan established under chapter 41.05 RCW pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.

"PEBB" means the public employees benefits board.

"Prehearing conference" means a proceeding scheduled and conducted by a hearing officer to address issues in preparation for a formal administrative hearing.

"Premium payment plan" means a benefit plan whereby school employees may pay their share of group health plan premiums with pretax dollars as provided in the salary reduction plan under chapter 41.05 RCW pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.

"Premium surcharge" means a payment required from a subscriber, in addition to the subscriber's medical premium contribution, due to an enrollee's tobacco use or an enrolled subscriber's spouse or state registered domestic partner choosing not to enroll in their employer-based group medical when:

- The spouse's or state registered domestic partner's share of the medical premiums is less than ninety-five percent of the additional cost an employee would be required to pay to enroll a spouse or state registered domestic partner in the public employees benefits board (PEBB) Uniform Medical Plan (UMP) Classic; and
- The benefits have an actuarial value of at least ninety-five percent of the actuarial value of PEBB UMP Classic benefits.

"Presiding officer" means an impartial decision maker who conducts a brief adjudicative proceeding and is a director-designated HCA employee.

"Review officer or officers" means one or more delegates from the director that consider appeals relating to the administration of SEBB benefits by the SEBB program.

"Salary reduction plan" means a benefit plan whereby school employees may agree to a reduction of salary on a pre-tax basis to participate in the dependent care assistance program, medical flexible spending arrangement, or premium payment plan offered pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.

"School employee" means:

- All employees of school districts and charter schools established under chapter 28A.710 RCW;
- Represented employees of educational service districts; and
- Effective January 1, 2024, all employees of educational service districts.

"School employees benefits board organization" or "SEBB organization" means a public school district or educational service district or charter school established under chapter 28A.710 RCW that is required to participate in benefit plans provided by the school employees benefit board.

"SEBB" means the school employees benefits board.

"SEBB benefits" means one or more insurance coverages or other employee benefits administered by the SEBB program within the HCA.

"SEBB insurance coverage" means any health plan, life insurance, accidental death and dismemberment insurance, or long-term disability insurance administered as a SEBB benefit.

"SEBB program" means the program within the HCA that administers insurance and other benefits for eligible school employees (as described in WAC 182-31-040 or 182-30-130), and eligible dependents (as described in WAC 182-31-140).

"State registered domestic partner," has the same meaning as defined in RCW 26.60.020(1) and substantially equivalent legal unions from other jurisdictions as defined in RCW 26.60.090.

"Subscriber" means the school employee or continuation coverage enrollee who has been determined eligible by the SEBB program or SEBB organizations, is enrolled in SEBB benefits, and is the individual to whom the SEBB program and contracted vendors will issue all notices, information, requests, and premium bills on behalf of an enrollee.

"Tobacco products" means any product made with or derived from tobacco that is intended for human consumption, including any component, part, or accessory of a tobacco product. This includes, but is not limited to, cigars, cigarettes, pipe tobacco, chewing tobacco, snuff, and other tobacco products. It does not include e-cigarettes or United States Food and Drug Administration (FDA) approved quit aids.

"Tobacco use" means any use of tobacco products within the past two months. Tobacco use, however, does not include the religious or ceremonial use of tobacco.

AMENDATORY SECTION (Amending WSR 20-16-067, filed 7/28/20, effective 8/28/20)

WAC 182-32-2010 **Appealing a decision regarding school employees benefits board (SEBB) eligibility, enrollment, premium payments, premium surcharges, a wellness incentive, or the administration of benefits.** (1) Any current or former school employee of a school employees benefits board (SEBB) organization or their dependent aggrieved by a decision made by the SEBB organization with regard to SEBB eligibility, enrollment, or premium surcharges may appeal that decision to the SEBB organization by the process described in WAC 182-32-2020.

Note: Eligibility decisions address whether a subscriber or a subscriber's dependent is entitled to SEBB benefits, as described in SEBB rules and policies. Enrollment decisions address the application for SEBB benefits as described in SEBB rules and policies including, but not limited to, the submission of proper documentation and meeting enrollment deadlines.

(2) Any subscriber or dependent aggrieved by a decision made by the SEBB program with regard to SEBB eligibility, enrollment, premium payments, premium surcharges, eligibility to participate in the SEBB wellness incentive program, or eligibility to receive the SEBB wellness incentive, may appeal that decision to the SEBB appeals unit by the process described in WAC 182-32-2030.

(3) Any enrollee aggrieved by a decision regarding the administration of SEBB medical, dental, and vision, life insurance, accidental death and dismemberment (AD&D) insurance, or long-term disability insurance, may appeal that decision by following the appeal provisions of those plans, with the exception of:

- (a) Enrollment decisions;
- (b) Premium payment decisions other than life insurance or AD&D insurance premium payment decisions; and
- (c) Eligibility decisions.

(4) Any SEBB enrollee aggrieved by a decision regarding the administration of SEBB property and casualty insurance may appeal that decision by following the appeal provisions of those plans.

(5) Any school employee aggrieved by a decision regarding the administration of a benefit offered under the salary reduction plan may appeal that decision by the process described in WAC 182-32-2050.

(6) Any subscriber aggrieved by a decision made by the SEBB wellness incentive program contracted vendor regarding the completion of the SEBB wellness incentive program requirements, or a request for a reasonable alternative to a wellness incentive program requirement, may appeal that decision by the process described in WAC 182-32-2040.

WSR 21-13-121

PERMANENT RULES

DEPARTMENT OF HEALTH

[Filed June 21, 2021, 1:46 p.m., effective July 23, 2021]

Effective Date of Rule: July 23, 2021.

Purpose: WAC 246-10-109 and 246-11-080, procedural rules applicable to adjudicative proceedings conducted by the department of health (department) and health professions boards and commissions. Chapter 246-10 WAC applies to all adjudicative proceedings conducted by the department. Chapter 246-11 WAC applies to adjudicative proceedings conducted by health professions boards and commissions having disciplining authority under the Uniform Disciplinary Act, chapter 18.130 RCW.

The adopted amendments will: (1) Allow for the option of electronically filing of documents with the adjudicative clerk's office (ACO). Electronic filing may now be done via electronic mail or other secure electronic means as established by the department; (2) continue to allow for the option

of hand delivering documents to ACO, however, the rule excludes hand delivery of documents to the ACO when the office is closed during normal business hours due to exigent circumstances; (3) no longer require copies of documents being filed or served by fax to be mailed simultaneously with fax transmission of documents; (4) recognize that the parties may agree to electronic mail for service of documents between or among themselves, and provides that ACO will serve documents on the parties electronically when the parties agree to service via electronic mail or other secure electronic means as established by the department.

Citation of Rules Affected by this Order: Amending WAC 246-10-109 and 246-11-080.

Statutory Authority for Adoption: RCW 43.70.040 and 34.05.220 (1)(a).

Adopted under notice filed as WSR 21-09-079 on April 20, 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 2, Repealed 0.

Date Adopted: June 21, 2021.

Kristin Peterson, JD
Deputy Secretary, Policy and Planning
for Umair A. Shah, MD, MPH
Secretary

AMENDATORY SECTION (Amending WSR 18-18-049, filed 8/29/18, effective 9/29/18)

WAC 246-10-109 Filing and service of documents.

(1) For purposes of this section "documents" means pleadings, briefs, exhibits, orders, or other materials requested or relevant to an adjudicative proceeding.

(2) Filing. Filing is the act of delivering documents to the adjudicative clerk's office.

(a) A party must file with the adjudicative clerk's office documents required or allowed pursuant to this chapter.

(b) Unless otherwise provided by law or directed by the presiding officer, documents must be filed by:

(i) Hand delivery to the adjudicative clerk's office, except when the office is closed during normal business hours due to exigent circumstances;

(ii) First class, registered, or certified mail; ((✉))

(iii) Fax transmission (~~where copies are mailed simultaneously~~);

(iv) Electronic mail sent to ACO~~fax~~@doh.wa.gov; or

(v) Other secure electronic means as established by the department.

(c) The date of filing is the date the documents are received by the adjudicative clerk's office.

(d) Filing is effective when the documents are received by the adjudicative clerk's office during normal business hours. For documents received after 5:00 p.m. on a business day or on a Saturday, Sunday, or legal holiday, the filing is effective the next business day.

(3) Service. Service is the act of delivering a document to a party or a party's designated representative.

(a) Unless otherwise provided by law, documents must be served by:

- (i) Personal service;
- (ii) First class, registered, or certified mail; or
- (iii) Fax transmission (~~((where copies are mailed simultaneously))~~).

(b) A party must serve copies of documents required or allowed by this chapter prior to or simultaneously with filing the original document with the adjudicative clerk's office.

(c) Service is complete when the documents are:

- (i) Personally served;
- (ii) Properly stamped, addressed, and deposited in the United States mail; or
- (iii) Successfully transmitted by fax (~~((and properly stamped and addressed copies are deposited in the United States mail))~~).

(d) A party may prove service by filing in compliance with this chapter any of the following:

- (i) An acknowledgment of service; or
- (ii) A certificate of service including the date the documents were served, the parties upon whom served, the signature of the serving party, and a statement specifying which type of service was used.

(e) Service on a licensee, applicant, or a person requesting an adjudicative proceeding will be made at the last known address provided to the department in accordance with WAC 246-12-310, unless the program has actual knowledge of a different correct address for the person being served.

(4) The parties may agree to use electronic mail for service of documents.

(5) A party may agree with the adjudicative clerk's office to service of documents via electronic mail or other secure electronic means as established by the department, including notices of hearing, initial orders, and final orders.

(6) The adjudicative clerk's office will serve documents via electronic mail or other secure electronic means as established by the department in those cases in which all parties agree to electronic service.

AMENDATORY SECTION (Amending WSR 18-18-050, filed 8/29/18, effective 9/29/18)

WAC 246-11-080 Filing and service of documents.

(1) For purposes of this section "document" means pleadings, briefs, exhibits, orders, or other materials requested or relevant to an adjudicative proceeding.

(2) Filing. Filing is the act of delivering documents to the adjudicative clerk's office.

(a) A party must file with the adjudicative clerk's office documents required or allowed pursuant to this chapter.

(b) Unless otherwise provided by law or directed by the presiding officer, documents must be filed by:

(i) Hand delivery to the adjudicative clerk's office, except when the office is closed during normal business hours due to exigent circumstances;

(ii) First class, registered, or certified mail; (~~((☒))~~)

(iii) Fax transmission (~~((where copies are mailed simultaneously))~~);

(iv) Electronic mail sent to ACOfax@doh.wa.gov; or

(v) Other secure electronic means as established by the department.

(c) The date of filing is the date the documents are received by the adjudicative clerk's office.

(d) Filing is effective when the documents are received by the adjudicative clerk's office during normal business hours. For documents received after 5:00 p.m. on a business day or on a Saturday, Sunday, or legal holiday, the filing is effective the next business day.

(3) Service. Service is the act of delivering a document to a party or a party's designated representative.

(a) Unless otherwise provided by law, documents must be served by:

- (i) Personal service;
- (ii) First class, registered, or certified mail; or
- (iii) Fax transmission (~~((where copies are mailed simultaneously))~~).

(b) A party must serve copies of documents required or allowed by this chapter prior to or simultaneously with filing the original document with the adjudicative clerk's office.

(c) Service is complete when the documents are:

- (i) Personally served;
- (ii) Properly stamped, addressed, and deposited in the United States mail; or
- (iii) Successfully transmitted by fax (~~((and properly stamped and addressed copies are deposited in the United States mail))~~).

(d) A party may prove service by filing in compliance with this chapter any of the following:

- (i) An acknowledgment of service; or
- (ii) A certificate of service including the date the documents were served, the parties upon whom served, the signature of the serving party, and a statement specifying which type of service was used.

(e) Service on a licensee, applicant, or a person requesting an adjudicative proceeding will be made at the last known address provided to the department in accordance with WAC 246-12-310, unless the program has actual knowledge of a different correct address for the person being served.

(4) The parties may agree to use electronic mail for service of documents.

(5) A party may agree with the adjudicative clerk's office to service of documents via electronic mail or other secure electronic means as established by the department, including notices of hearing, initial orders, and final orders.

(6) The adjudicative clerk's office will serve documents via electronic mail or other secure electronic means as established by the department in those cases in which all parties have agreed to electronic service.

WSR 21-13-122
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed June 21, 2021, 2:27 p.m., effective July 22, 2021]

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

Purpose: The department is amending WAC 388-450-0185 What income deductions does the department allow when determining if I am eligible for food benefits and the amount of my monthly benefits?, 388-450-0190 How does the department figure my shelter cost income deduction for basic food?, 388-450-0195 Does the department use my utility costs when calculating my basic food or WASHCAP benefits?, and 388-478-0060 What are the income limits and maximum benefit amounts for basic food?, to implement annual adjustments to standards for the Washington basic food program.

This permanent rule-making order supersedes the Emergency rule-making order filed as WSR 21-12-043 on May 25, 2021.

Citation of Rules Affected by this Order: Amending WAC 388-450-0185, 388-450-0190, 388-450-0195, and 388-478-0060.

Statutory Authority for Adoption: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120.

Other Authority: 7 C.F.R. § 273.9 (a)(3), "USDA, Food and Nutrition Service, SNAP—Fiscal Year 2021 Cost-of-Living Adjustments (July 29, 2020)," and "USDA, Food and Nutrition Service, Standard utility allowance approval letter (August 4, 2020)" and H.R.133 Consolidated Appropriations Act 2021.

Adopted under notice filed as WSR 21-07-071 on March 16, 2021, and WSR 20-24-056 on November 24, 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 4, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: June 21, 2021.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 20-04-021, filed 1/27/20, effective 2/27/20)

WAC 388-450-0185 What income deductions does the department allow when determining if I am eligible for food benefits and the amount of my monthly benefits?

(1) We determine if your assistance unit (AU) is eligible for basic food and calculate your monthly benefits according to requirements of the Food and Nutrition Act of 2008 and federal regulations related to the supplemental nutrition assistance program (SNAP).

(2) Under these federal laws, we subtract the following amounts from your AU's total monthly income to determine your countable monthly income under WAC 388-450-0162:

(a) A standard deduction based on the number of eligible people in your AU under WAC 388-408-0035:

Eligible AU members	Standard deduction
3 or less	\$167
4	((\$178)) <u>\$181</u>
5	((\$209)) <u>\$212</u>
6 or more	((\$240)) <u>\$243</u>

(b) Twenty percent of your AU's gross earned income (earned income deduction);

(c) Your AU's expected monthly dependent care expense needed for an AU member to:

(i) Keep work, look for work, or accept work;

(ii) Attend training or education to prepare for employment; or

(iii) Meet employment and training requirements under chapter 388-444 WAC;

(d) Medical expenses over thirty-five dollars a month owed or anticipated by an elderly or disabled person in your AU as allowed under WAC 388-450-0200; and

(e) A portion of your shelter costs as described in WAC 388-450-0190.

AMENDATORY SECTION (Amending WSR 20-04-021, filed 1/27/20, effective 2/27/20)

WAC 388-450-0190 How does the department figure my shelter cost income deduction for basic food? The department calculates your shelter cost income deduction for basic food as follows:

(1) First, we add up the amounts your assistance unit (AU) must pay each month for shelter. We do not count any overdue amounts, late fees, penalties, or mortgage payments you make ahead of time as allowable shelter costs. We count the following expenses as an allowable shelter cost in the month the expense is due:

(a) Monthly rent, lease, and mortgage payments;

(b) Property taxes;

(c) Homeowner's association or condo fees;

(d) Homeowner's insurance for the building only;

(e) Utility allowance your AU is eligible for under WAC 388-450-0195;

(f) Out-of-pocket repairs for the home if it was substantially damaged or destroyed due to a natural disaster such as a fire or flood;

(g) Expense of a temporarily unoccupied home because of employment, training away from the home, illness, or abandonment caused by a natural disaster or casualty loss if your:

- (i) AU intends to return to the home;
- (ii) AU has current occupants who are not claiming the shelter costs for basic food purposes; and
- (iii) AU's home is not being leased or rented during your AU's absence.

(h) A homeless AU with shelter costs is eligible for a homeless shelter expense deduction of one hundred (~~(fifty-two)~~) fifty-seven dollars. If the homeless AU has shelter costs in excess of one hundred (~~(fifty-two)~~) fifty-seven dollars, the AU has the option to claim either:

- (i) The homeless shelter deduction; or
- (ii) Actual shelter costs.

(2) Second, we subtract all deductions your AU is eligible for under WAC 388-450-0185 (2)(a) through (2)(d) from your AU's gross income. The result is your AU's countable income.

(3) Finally, we subtract one-half of your AU's countable income from your AU's total shelter costs. The result is your excess shelter costs. Your AU's shelter cost deduction is the excess shelter costs:

- (a) Up to a maximum of five hundred (~~(sixty-nine)~~) eighty-six dollars if no one in your AU is elderly or disabled; or
- (b) The entire amount if an eligible person in your AU is elderly or disabled, even if the amount is over five hundred (~~(sixty-nine)~~) eighty-six dollars.

AMENDATORY SECTION (Amending WSR 20-04-021, filed 1/27/20, effective 2/27/20)

WAC 388-450-0195 Does the department use my utility costs when calculating my basic food or WASH-CAP benefits? (1) The department uses utility allowances

instead of the actual utility costs your assistance unit (AU) pays when we determine your:

(a) Monthly benefits under WAC 388-492-0070 if you receive Washington state combined application project (WASHCAP); or

(b) Shelter cost income deduction under WAC 388-450-0190 for basic food.

(2) We use the following amounts if you have utility costs separate from your rent or mortgage payment:

(a) If your AU has heating or cooling costs or receives more than twenty dollars in low income home energy assistance program (LIHEAP) benefits each year, you get a standard utility allowance (SUA) of four hundred (~~(thirty-seven)~~) forty-nine dollars.

(b) If your household does not receive a LIHEAP payment and the reason is solely because of your immigration status, you get a SUA of four hundred (~~(thirty-seven)~~) forty-nine dollars.

(c) If your AU does not qualify for the SUA and you have any two utility costs listed in subsection (3) of this section, you get a limited utility allowance (LUA) of three hundred (~~(forty-three)~~) fifty-two dollars.

(d) If your AU has only telephone costs and no other utility costs, you get a telephone utility allowance (TUA) of (~~(fifty-eight)~~) fifty-nine dollars.

(3) "Utility costs" include the following:

- (a) Heating or cooling fuel;
- (b) Electricity or gas;
- (c) Water;
- (d) Sewer;
- (e) Well installation/maintenance;
- (f) Septic tank installation/maintenance;
- (g) Garbage/trash collection; and
- (h) Telephone service.

(4) If you do not have a utility cost separate from your rent or mortgage payment and do not receive low income energy assistance program (LIHEAP), you do not receive a utility allowance.

AMENDATORY SECTION (Amending WSR 20-04-021, filed 1/27/20, effective 2/27/20)

WAC 388-478-0060 What are the income limits and maximum benefit amounts for basic food? (1) If your assistance unit (AU) meets all other eligibility requirements for basic food, your AU must have income at or below the limits in columns B and C of this subsection to get basic food, unless you meet one of the exceptions listed below in subsection (2) of this section.

(a) The maximum monthly food assistance benefit your AU could receive is listed in column D of this subsection.

(b) From January 1, 2021 through June 30, 2021, the maximum monthly food assistance benefit your AU could receive is listed in column E of this subsection.

EFFECTIVE (~~(10/1/2019)~~) 10/1/2020

Column A	Column B	Column C	Column D	Column E 115% Max Allotment	Column ((E)) E 165% of Poverty Level
Number of Eligible AU Members	Maximum Gross Monthly Income	Maximum Net Monthly Income	Maximum Allotment		
1	((\$1,354)) <u>\$1,383</u>	((\$1,041)) <u>\$1,064</u>	((\$194)) <u>\$204</u>	<u>\$234</u>	((\$1,718)) <u>\$1,755</u>
2	((1,832)) <u>1,868</u>	((1,410)) <u>1,437</u>	((355)) <u>374</u>	<u>430</u>	((2,326)) <u>2,371</u>
3	((2,311)) <u>2,353</u>	((1,778)) <u>1,810</u>	((509)) <u>535</u>	<u>616</u>	((2,933)) <u>2,987</u>

EFFECTIVE ((10/1/2019)) 10/1/2020

Column A Number of Eligible AU Members	Column B Maximum Gross Monthly Income	Column C Maximum Net Monthly Income	Column D Maximum Allotment	Column E 115% Max Allotment	Column ((E)) E 165% of Poverty Level
4	((2,790)) <u>2,839</u>	((2,146)) <u>2,184</u>	((646)) <u>680</u>	<u>782</u>	((3,544)) <u>3,603</u>
5	((3,269)) <u>3,324</u>	((2,515)) <u>2,557</u>	((768)) <u>807</u>	<u>929</u>	((4,149)) <u>4,219</u>
6	((3,748)) <u>3,809</u>	((2,883)) <u>2,930</u>	((921)) <u>969</u>	<u>1,114</u>	((4,757)) <u>4,835</u>
7	((4,227)) <u>4,295</u>	((3,251)) <u>3,304</u>	((1,018)) <u>1,071</u>	<u>1,232</u>	((5,364)) <u>5,451</u>
8	((4,705)) <u>4,780</u>	((3,620)) <u>3,677</u>	((1,164)) <u>1,224</u>	<u>1,408</u>	((5,972)) <u>6,067</u>
9	((5,184)) <u>5,266</u>	((3,989)) <u>4,051</u>	((1,310)) <u>1,377</u>	<u>1,584</u>	((6,580)) <u>6,683</u>
10	((5,663)) <u>5,752</u>	((4,358)) <u>4,425</u>	((1,456)) <u>1,530</u>	<u>1,760</u>	((7,188)) <u>7,299</u>
Each Additional Member	((+479)) <u>+486</u>	((+369)) <u>+374</u>	((+146)) <u>+153</u>	<u>+176</u>	((+608)) <u>+616</u>

(2) Exceptions:

(a) If your AU is categorically eligible as under WAC 388-414-0001, your AU does not have to meet the gross or net income standards in columns B and C of subsection (1) of this section. We budget your AU's income to decide the amount of basic food your AU will receive.

(b) If your AU includes a member who is sixty years of age or older or has a disability, your AU's income must be at or below the limit in column C of subsection (1) of this section.

(c) If you are sixty years of age or older and cannot buy and cook your own meals because of a permanent disability, we will use column E of subsection (1) of this section to decide if you can be a separate AU.

(d) If your AU has zero income, your benefits are the maximum allotment in column D of subsection (1) of this section, based on the number of eligible members in your AU.

Citation of Rules Affected by this Order: Amending WAC 392-344-130.

Statutory Authority for Adoption: RCW 28A.525.020.

Adopted under notice filed as WSR 21-09-090 on April 21, 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 0, Repealed 0.

Date Adopted: June 22, 2021.

Chris P. S. Reykdal
State Superintendent
of Public Instruction

WSR 21-13-128
PERMANENT RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed June 22, 2021, 9:15 a.m., effective July 23, 2021]

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

Purpose: The purpose of this rule change is to allow the office of the superintendent of public instruction flexibility to disburse state funding assistance for school district projects which are also receiving small district modernization grant funds. The rule change will assist school districts in minimizing project financing costs and provide additional time for a school district to secure sufficient local funding to meet its local funding obligations.

AMENDATORY SECTION (Amending WSR 10-09-008, filed 4/8/10, effective 5/9/10)

WAC 392-344-130 Disbursement of moneys—Sequence of payments. The order in which funds shall be disbursed for school facility construction shall be as follows:

(1) Prior to payment of state funding assistance, the school district shall make payments on all claims submitted

until such time as the total amount of local funds obligated by the district have been expended.

(2) When local funds have been expended as in subsection (1) of this section, payments of state funding assistance shall then be made: Provided, That for projects authorized for state funding assistance pursuant to WAC 392-344-115(2) after June 30, 1993, payment shall be made after receipt of written certification by the school district board of directors that the school facility project authorized for state funding assistance has been or will be completed according to the purposes for which the state funding assistance is being provided.

(3) Payment of state funding assistance for projects receiving small district modernization grant funds authorized under RCW 28A.525.159 may receive payment prior to the expenditure of local funds obligated by the district with the approval of the superintendent of public instruction. The maximum amount of state funding assistance a district may receive prior to the expenditure of local funds obligated by the district is ninety percent.

WSR 21-13-129

PERMANENT RULES

SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed June 22, 2021, 9:30 a.m., effective July 23, 2021]

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

Purpose: The purpose of the rule changes is to apply lean management principles to the school facilities study and survey process as required by section 5015, chapter 413, Laws of 2019. Amending the rules by applying lean management principles is intended to ease the administrative process followed by school districts in conducting school facilities study and surveys.

The original CR-101 (WSR 21-02-084) identified both the study and survey process (chapters 392-341, 392-343, 392-347 WAC) and the "D-Forms" process (chapters 392-342 and 392-344 WAC) as possible subjects of rule making. However, for clarity, the "D-Forms" process will be addressed as a separate rule-making process. For the D-forms lean management rule-making process, the office of superintendent of public instruction filed a CR-01 on April 7, 2021, as WSR 21-08-086.

Citation of Rules Affected by this Order: Repealing WAC 392-341-060, 392-341-065, 392-341-070, 392-341-075, 392-341-080, 392-341-085 and 392-341-090; and amending WAC 392-341-025, 392-341-045, 392-341-200, 392-343-040, 392-343-075, 392-347-015, and 392-347-035.

Statutory Authority for Adoption: RCW 28A.525.020.

Adopted under notice filed as WSR 21-09-091 on April 21, 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 7, Repealed 7.

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 7, Repealed 7.

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: June 22, 2021.

Chris P. S. Reykdal
State Superintendent
of Public Instruction

AMENDATORY SECTION (Amending WSR 10-09-008, filed 4/8/10, effective 5/9/10)

WAC 392-341-025 State study and survey—Content.

The study and survey to be conducted by the superintendent of public instruction with the cooperation of the local school district shall include the following:

(1) An inventory and area analysis of existing school facilities within the district, a description of the types and kinds of systems and subsystems used in those facilities and their physical condition;

(2) A long-range (i.e., minimum of six years) educational and facilities plan setting forth the projected facility needs and priorities of the district based on the educational plan(;

~~(3))~~, including a discussion of the need for adjustments of school attendance areas within the district, and supplemented by the following information:

(a) Demographic data including population projections and projected economic growth and development. OSPI shall provide projected enrollment based on most recent October enrollments. District shall provide most recent October enrollments of developmentally disabled students;

~~((4))~~ (b) The ability of such district to provide capital funds by local effort;

~~((5))~~ (c) The existence of a school housing emergency as defined by RCW 28A.525.166 (5)(a);

~~((6))~~ (d) The need to improve racial balance and/or to avoid creation or aggravation of racial imbalance; OSPI shall provide diversity report based on most recent October enrollments and enrollment data reported by district;

~~((7))~~ (e) The type and extent of new and/or additions to existing school facilities required and the urgency of need for such facilities;

~~((8))~~ (f) A cost/benefit analysis on the need to modernize and/or replace existing school facilities in order to meet current educational needs and the current state building code;

~~((9) The need and the estimated capital cost to restore, to design specifications, the major systems and subsystems in the facilities that have deteriorated due to deferred maintenance.~~

~~(10))~~ (g) A determination of the district's time line for completion of the school facilities project(s); and

~~((11) An inventory of accessible unused or underutilized school facilities in neighboring school districts and the physical condition of such school facilities;~~

~~(12) The need for adjustments of school attendance areas among or within such districts; and~~

~~(13))~~ (3) Such other matters as the superintendent of public instruction deems pertinent to decision making in the allocation of funds for school facilities, or that the applicant district deems relevant. Cooperation by the applicant school district in conducting the study and survey is a requisite for the superintendent of public instruction to complete the study and survey and to establish the eligibility of the district for state funding assistance in school facility construction.

AMENDATORY SECTION (Amending WSR 10-09-008, filed 4/8/10, effective 5/9/10)

WAC 392-341-045 Approval criteria for state funding assistance. The superintendent of public instruction shall conditionally agree to state funding assistance for a school facility or facilities for a school district that demonstrates the following:

(1) The existence of unhoused students which for the purpose of this section shall mean current or projected enrolled students who are in excess of the capacity calculated for existing facilities within the district pursuant to chapter 392-343 WAC: Provided, That current or projected enrolled students shall not be designated as unhoused for a high school district of application which has a student enrollment of four hundred or less in grades nine through twelve, if the students involved or affected can be served without undue inconvenience in a neighboring school, or schools of larger size and the neighboring school district has indicated a willingness to serve, and has the capacity to house the applying district high school students; and

(2) The ability of the district to obtain capital funds to provide the local share required for state funding assistance: Provided, That the existence of unhoused students provision of subsection (1) of this section shall not be required for approval of the following school facilities projects: Interdistrict cooperative centers authorized by chapter 392-345 WAC, interdistrict transportation cooperatives authorized by chapter 392-346 WAC, and modernization and new-in-lieu of modernization construction authorized by chapter 392-347 WAC.

AMENDATORY SECTION (Amending WSR 10-09-008, filed 4/8/10, effective 5/9/10)

WAC 392-341-200 Applications and forms. Applications and forms applicable to provisions of this chapter for school facilities shall be as follows:

(1) Applications for a state study and survey by a district pursuant to WAC 392-341-020 shall be designated as ~~((SPI Form D-1))~~ OSPI D-1 Application.

(2) State planning grants to districts pursuant to WAC 392-341-030 shall be awarded to such districts through ~~((SPI))~~ OSPID-2 Form ((D-2)).

(3) Applications for approval of a school project by a district pursuant to WAC 392-341-040 shall be designated as ~~((SPI Form D-3))~~ OSPI D-3 Application.

(4) Project approval for districts pursuant to WAC 392-341-040 shall be awarded to such district through ~~((SPI))~~ OSPI D-4 Form ((D-4)).

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 392-341-060 Eligibility for state funding assistance for new construction—Definition—Contiguous school district.

WAC 392-341-065 Eligibility for state funding assistance for new construction—Definition—Negotiate in good faith.

WAC 392-341-070 Eligibility for state funding assistance for new construction—Survey of suitable school facilities in contiguous school districts that are unused or underutilized.

WAC 392-341-075 Eligibility for state funding assistance for new construction—Contents of survey.

WAC 392-341-080 Eligibility for state funding assistance for new construction—Application to superintendent of public instruction—Necessary documentation.

WAC 392-341-085 Eligibility for state funding assistance for new construction—Review of survey of available and suitable school plant facilities in contiguous school districts.

WAC 392-341-090 Eligibility for state funding assistance for new construction—Approval by the superintendent of public instruction of applicant's school district certification.

AMENDATORY SECTION (Amending WSR 06-16-032, filed 7/25/06, effective 8/25/06)

WAC 392-343-040 Square foot area analysis. The square foot area analysis, when submitted for review by the superintendent of public instruction shall be calculated in accordance with ~~((the American Institute of Architects, Document D101, *The Architectural Area and Volume of Buildings*, latest edition, except for the following areas which shall not be counted:~~

~~(1) Exterior covered walkways, cantilevered or supported;~~

~~(2) Exterior porches, including loading platforms; and~~

~~(3) Spaces above occupied areas which are either vacant or primarily housing mechanical and/or electrical equipment))~~ WAC 392-343-019.

The analysis shall be reported on a form prepared by the superintendent of public instruction.

AMENDATORY SECTION (Amending WSR 10-09-008, filed 4/8/10, effective 5/9/10)

WAC 392-343-075 Energy conservation report. In compliance with the provisions of chapter 39.35 RCW, school districts constructing school facilities shall complete an energy conservation report for any new construction or for additions to and modernization of existing school facilities, which will be reviewed ~~((by the Washington state department of general administration))~~ in accordance with chapter 39.35 RCW, and approved by the school district board of directors. One copy of the executive summary of said approved energy conservation report ~~((, approved by the district board of directors,))~~ shall be filed with the office of the superintendent of public instruction. The amount of state funding assistance for which a district is eligible for the preparation of the energy conservation report shall be the state funding assistance percentage multiplied ~~((by ten thousand dollars. The amount of state funding assistance for which a district is eligible shall be the state funding assistance percentage multiplied))~~ by the fee charged, up to a maximum of the state funding assistance percentage multiplied by ten thousand dollars.

AMENDATORY SECTION (Amending WSR 10-09-008, filed 4/8/10, effective 5/9/10)

WAC 392-347-015 Eligibility for state funding assistance. (1) In order to be eligible for state funding assistance, a modernization project shall have as its principal purpose one or more of the following:

(a) Bringing a facility into compliance with current building and health codes when so required by state or local health or safety officials;

(b) Changing the grade span grouping by facility by the addition, deletion, or combination thereof of two or more grades within the affected facility;

(c) The reduction of the number of operating school facilities in a district by combining the remaining school facilities through modernization and new capital construction so as to achieve more cost effective and efficient operation in the combined school facility or facilities. In order to be eligible for state funding assistance, such a project shall result in additional space for at least ~~((100))~~ one hundred additional pupils and the following enrollment in any combined facility:

(i) Elementary school facility—~~((500))~~ Five hundred pupils;

(ii) Middle or junior high school facility—~~((700))~~ Seven hundred pupils;

(iii) Senior high school facility—~~((850))~~ Eight hundred fifty pupils;

Provided, That modernization projects in school districts with a high school enrollment of less than ~~((850))~~ eight hundred fifty pupils need not comply with the enrollment figures set forth above: Provided further, That unless the district demonstrates the existence of unhoused students, state funding assistance for the new construction component of a combined modernization and new construction project shall be limited to the provision of WAC 392-347-040; or

(d) Meeting the educational program of the facility.

(2) School districts shall certify that a proposed modernization project will extend the life of the modernized school facility by at least ~~((twenty))~~ thirty years.

(3) School districts shall be ineligible for state funding assistance for modernization of any school facility accepted by the school district board of directors prior to January 1, 1993, where the principal purpose of that modernization project is to:

(a) ~~((Restore building systems and subsystems that have deteriorated due to deferred maintenance;~~

~~((b)))~~ Perform piecemeal work on one section or system of a school facility;

~~((c)))~~ (b) Modernize a facility or any section thereof which has been constructed within the previous twenty years;

~~((d)))~~ (c) Modernize a facility or any section thereof which has received state funding assistance under the authority of this chapter within the previous twenty years;

~~((e))~~ (d) Modernize a senior high school facility in a district with a senior high school where there is existing space available to serve the students involved or affected in a neighboring senior high school without, in the judgment of the superintendent of public instruction, an undue increase in the cost of transporting the students to and from school, decrease in educational opportunity, or proportional increase in the cost of instruction pursuant to chapter 392-341 WAC.

(4) School facilities accepted by the school district board of directors after January 1, 1993, shall be ineligible for state funding assistance for modernization of the facility or any section thereof where:

(a) The facility was constructed and occupied within the previous thirty years;

(b) The facility received state funding assistance under the authority of this chapter within the previous thirty years.

AMENDATORY SECTION (Amending WSR 10-09-008, filed 4/8/10, effective 5/9/10)

WAC 392-347-035 Minimum project—Forty percent of replacement costs. (1) State funding assistance in modernization of school facilities shall be limited to projects which may include an entire facility or one or more complete buildings within a facility for which the estimated cost of major structural change is not less than forty percent of the estimated cost of replacement. ~~((The estimated cost of major structural change shall not include the estimated capital costs associated with restoring building systems or subsystems due to deterioration as determined in the study and survey to be caused by deferred maintenance.))~~ The estimated cost of replacement shall be derived from multiplication of the total square foot area of the facility or facilities proposed for modernization by the construction cost allocation for the fiscal year funded as in WAC 392-343-045 set forth.

(2) The superintendent of public instruction may grant a waiver from subsection (1) of this section in the event of an unanticipated increase in the construction cost allocation that might cause prior approved projects expecting state funding assistance to become disqualified for such assistance.

WSR 21-13-130
PERMANENT RULES
UTILITIES AND TRANSPORTATION
COMMISSION

[Filed June 22, 2021, 10:34 a.m., effective July 23, 2021]

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

Purpose: To revise adoption-by-reference dates in Title 480 WAC to incorporate the most recent version of adopted federal rules and other adopted publications.

Citation of Rules Affected by this Order: Amending WAC 480-14-999, 480-15-999, 480-30-999, 480-31-999, 480-62-999, 480-70-999, 480-73-999, 480-75-100, 480-75-999, 480-90-999, 480-93-005, 480-93-999, 480-100-999, 480-108-999, 480-109-999, 480-120-999, and 480-123-999.

Statutory Authority for Adoption: RCW 80.10.040, 80.04.160, 81.04.160, and 34.05.353.

Adopted under notice filed as WSR 21-09-064 on April 19, 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 17, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: June 22, 2021.

Mark L. Johnson
 Executive Director and Secretary

AMENDATORY SECTION (Amending WSR 19-14-118, filed 7/3/19, effective 8/3/19)

WAC 480-14-999 Adoption by reference. In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available for inspection at the commission library. The publication, effective dates, references within this chapter, and availability of the resource is within Title 49 Code of Federal Regulations (C.F.R.), including all appendices and amendments is published by the United States Government Printing Office.

(1) The commission adopts the version in effect on December 31, (~~(2018)~~) 2020, for 49 C.F.R. Parts 171, 172 and 173.

(2) This publication is referenced in WAC 480-14-250 (Insurance requirements).

(3) Copies of Title 49 C.F.R. are available from the U.S. Government Online Bookstore, <https://bookstore.gpo.gov/>, and from various third-party vendors.

AMENDATORY SECTION (Amending WSR 19-14-118, filed 7/3/19, effective 8/3/19)

WAC 480-15-999 Adoption by reference. In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available for inspection at the commission library. The publications, effective dates, references within this chapter, and availability of the resources are as follows:

(1) *North American Standard Out-of-Service Criteria* (OOSC) is published by the Commercial Vehicle Safety Alliance (CVSA).

(a) The commission adopts the version in effect on April 1, (~~(2019)~~) 2021.

(b) This publication is referenced in WAC 480-15-560 (Equipment safety requirements).

(c) The *North American Out-of-Service Criteria* is a copyrighted document. Copies are available from CVSA.

(2) **Title 49 Code of Federal Regulations**, cited as 49 C.F.R., including all appendices and amendments is published by the United States Government Printing Office.

(a) The commission adopts the version in effect on December 31, (~~(2018)~~) 2020.

(b) This publication is referenced in WAC 480-15-560 (Equipment safety requirements) and WAC 480-15-570 (Driver safety requirements).

(c) Copies of Title 49 Code of Federal Regulations are available from the U.S. Government Online Bookstore, <https://bookstore.gpo.gov/>, and from various third-party vendors.

AMENDATORY SECTION (Amending WSR 19-14-118, filed 7/3/19, effective 8/3/19)

WAC 480-30-999 Adoption by reference. In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available for inspection at the commission library. The publications, effective dates, references within this chapter, and availability of the resources are as follows:

(1) *North American Standard Out-of-Service Criteria* (OOSC) is published by the Commercial Vehicle Safety Alliance (CVSA).

(a) The commission adopts the version in effect on April 1, (~~(2019)~~) 2021.

(b) This publication is referenced in WAC 480-30-221 (Vehicle and driver safety requirements).

(c) The *North American Out-of-Service Criteria* is a copyrighted document. Copies are available from CVSA.

(2) **Title 49 Code of Federal Regulations**, cited as 49 C.F.R., including all appendices and amendments is published by the United States Government Printing Office.

(a) The commission adopts the version in effect on December 31, (~~(2018)~~) 2020.

(b) This publication is referenced in WAC 480-30-221 (Vehicle and driver safety requirements) and WAC 480-30-226 (Intrastate medical waivers).

(c) Copies of Title 49 Code of Federal Regulations are available from the U.S. Government Online Bookstore, <https://bookstore.gpo.gov/>, and from various third-party vendors.

AMENDATORY SECTION (Amending WSR 19-14-118, filed 7/3/19, effective 8/3/19)

WAC 480-31-999 Adoption by reference. In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available for inspection at the commission library. The publications, effective dates, references within this chapter, and availability of the resources are as follows:

(1) *North American Standard Out-of-Service Criteria* (OOSC) is published by the Commercial Vehicle Safety Alliance (CVSA).

(a) The commission adopts the version in effect on April 1, ((2019)) 2021.

(b) This publication is referenced in WAC 480-31-120 (Equipment—Inspection—Ordered for repairs).

(c) The *North American Out-of-Service Criteria* is a copyrighted document. Copies are available from CVSA.

(2) **Title 49 Code of Federal Regulations**, cited as 49 C.F.R., including all appendices and amendments is published by the United States Government Printing Office.

(a) The commission adopts the version in effect on December 31, ((2018)) 2020.

(b) This publication is referenced in WAC 480-31-100 (Equipment—Safety), WAC 480-31-120 (Equipment—Inspection—Ordered for repairs), and WAC 480-31-130 (Operation of motor vehicles).

(c) Copies of Title 49 Code of Federal Regulations are available from the U.S. Government Online Bookstore, <https://bookstore.gpo.gov/>, and from various third-party vendors.

AMENDATORY SECTION (Amending WSR 19-14-118, filed 7/3/19, effective 8/3/19)

WAC 480-62-999 Adoption by reference. In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available for inspection at the commission library. The publications, effective dates, references within this chapter, and availability of the resources are as follows:

(1) **Title 49 Code of Federal Regulations**, cited as 49 C.F.R., including all appendices and amendments is published by the United States Government Printing Office.

(a) The commission adopts the version in effect on December 31, ((2018)) 2020.

(b) This publication is referenced in WAC 480-62-160 (Compliance policy), WAC 480-62-200 (Roadway worker safety and operating rules and statutes), WAC 480-62-205 (Track safety standards), WAC 480-62-210 (Crossing signal circuitry), WAC 480-62-215 (Hazardous materials regulations), WAC 480-62-235 (Flaggers), WAC 480-62-240 (Railroad owned or operated passenger carrying vehicles—Equipment), WAC 480-62-278 (Contract crew transportation vehicle and driver safety requirements), and WAC 480-62-293 (Contract crew transportation enforcement).

(c) Copies of Title 49 Code of Federal Regulations are available from the U.S. Government Online Bookstore, <https://bookstore.gpo.gov/>, and from various third-party vendors.

(2) **Manual on Uniform Traffic Control Devices**, cited as Manual on Uniform Traffic Control Devices, or MUTCD, is published by the United States Government Printing Office.

(a) The commission adopts the version in effect on December 31, ((2018)) 2020.

(b) This publication is referenced in WAC 480-62-230 (Traffic control devices), WAC 480-62-235 (Flaggers), and WAC 480-62-245 (Railroad owned or operated passenger carrying vehicles—Operation).

(c) Copies of the MUTCD are available from the U.S. Government Online Bookstore, <https://bookstore.gpo.gov/>, and from various third-party vendors.

(3) **ANSI/ISEA Z308.1 - 2015 American National Standard for Minimum Requirements for Workplace First Aid Kits** is published by the American National Standards Institute.

(a) The commission adopts the version in effect on December 31, ((2018)) 2020.

(b) This publication is referenced in WAC 480-62-240 (Passenger carrying vehicles—Equipment).

(c) Copies of ANSI/ISEA Z308.1 - 2015 American National Standard for Minimum Requirements for Workplace First Aid Kits and Supplies are available from IHS Global Engineering Documents in Englewood, Colorado.

(4) **ANSI/ISEA 207-2011 - American National Standard for High-Visibility Public Safety Vests** is published by the American National Standards Institute.

(a) The commission adopts the version in effect on December 31, ((2018)) 2020.

(b) This publication is referenced in WAC 480-62-235 (Flaggers).

(c) Copies of ANSI/ISEA 207-2011 - American National Standard for High-Visibility Public Safety Vests are available from IHS Global Engineering Documents in Englewood, Colorado.

(5) *North American Standard Out-of-Service Criteria* (OOSC) is published by the *Commercial Vehicle Safety Alliance* (CVSA).

(a) The commission adopts the version in effect on April 1, ((2019)) 2021.

(b) This publication is referenced in WAC 480-62-278 (Contract crew transportation vehicle and driver safety requirements).

(c) The *North American Out-of-Service Criteria* is a copyrighted document. Copies are available from CVSA.

AMENDATORY SECTION (Amending WSR 19-14-118, filed 7/3/19, effective 8/3/19)

WAC 480-70-999 Adoption by reference. In this chapter, the commission adopts by reference all, or portions of, regulations and standards identified below. They are available for inspection at the commission library. The publications, effective dates, references within this chapter, and availability of the resources are as follows:

(1) *The North American Standard Out-of-Service Criteria* is published by the Commercial Vehicle Safety Alliance (CVSA).

(a) The commission adopts the version in effect on April 1, ~~((2019))~~ 2021.

(b) This publication is referenced in WAC 480-70-201 (Vehicle and driver safety requirements).

(c) The *North American Out-of-Service Criteria* is a copyrighted document. Copies are available from CVSA.

(2) **Title 40 Code of Federal Regulations**, cited as 40 C.F.R., including all appendices and amendments is published by the United States Government Printing Office.

(a) The commission adopts the version in effect on December 31, ~~((2018))~~ 2020.

(b) This publication is referenced in WAC 480-70-041 (Definitions, general).

(c) Copies of Title 40 Code of Federal Regulations are available from the U.S. Government Online Bookstore, <https://bookstore.gpo.gov/>, and from various third-party vendors.

(3) **Title 49 Code of Federal Regulations**, cited as 49 C.F.R., including all appendices and amendments is published by the United States Government Printing Office.

(a) The commission adopts the version in effect on December 31, ~~((2018))~~ 2020.

(b) This publication is referenced in WAC 480-70-201 (Vehicle and driver safety requirements), WAC 480-70-431 (Biomedical waste, adoption of federal regulations), and WAC 480-70-486 (Hazardous waste, adoption of federal regulations).

(c) Copies of Title 49 Code of Federal Regulations are available from the U.S. Government Online Bookstore, <https://bookstore.gpo.gov/>, and from various third-party vendors.

AMENDATORY SECTION (Amending WSR 19-14-118, filed 7/3/19, effective 8/3/19)

WAC 480-73-999 Adoption by reference. In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available for inspection at the commission library. The publications, effective date, references within this chapter, and availability of the resources are as follows:

(1) **Title 18 Code of Federal Regulations**, cited as 18 C.F.R., is published by the United States Government Printing Office.

(2) The commission adopts the version in effect on ~~((April 1, 2018))~~ December 31, 2021.

(3) This publication is referenced in WAC 480-73-130 (Accounting system requirements), WAC 480-73-150 (Retaining and preserving records and reports), and WAC 480-73-160 (Annual reports).

(4) Copies of Title 18 Code of Federal Regulations are available from the U.S. Government Online Bookstore, <https://bookstore.gpo.gov/>, and from various third-party vendors.

AMENDATORY SECTION (Amending WSR 08-12-045, filed 5/30/08, effective 6/30/08)

WAC 480-75-100 Definitions. "**Backfill**" means the material filled over the pipe after the pipe is lowered into a trench.

"Bedding" means the material placed in the bottom of a trench prior to laying a pipe.

"Breakout tank" means a tank that is used to relieve surges in a hazardous liquid pipeline system, or a tank used to receive and store hazardous liquid transported by a pipeline for reinjection and continued transportation by pipeline.

"Hazardous liquid" means (a) petroleum, petroleum products, or anhydrous ammonia as those terms are defined in 49 C.F.R. Part 195 and (b) carbon dioxide.

"Hazardous liquid pipeline" or **"pipeline"** means all parts of a pipeline facility through which hazardous liquid moves in transportation, including, but not limited to, line pipe, valves, and other appurtenances connected to line pipe, pumping units, fabricated assemblies associated with pumping units, metering and delivery stations and fabricated assemblies therein, and breakout tanks. It does not include all parts of a pipeline facility through which a hazardous liquid moves in transportation through refining or manufacturing facilities or storage or in-plant piping systems associated with such facilities, a pipeline subject to safety regulations of the United States Coast Guard, or a pipeline that serves refining, manufacturing, or truck, rail or vessel terminal facilities, if the pipeline is less than one mile long, measured outside facility grounds, and does not cross an offshore area or a waterway used for commercial navigation.

"Hazardous liquid pipeline company" or **"pipeline company"** means a person or entity constructing, owning, or operating a hazardous liquid pipeline, but does not include excavation contractors or other contractors that contract with a hazardous liquid pipeline company.

"Independent level alarm" means an alarm function actuated by a primary level sensing device that is separate and independent from any tank gauging equipment on the tank.

"Line pipe" or **"pipe"** means a tube, usually cylindrical, through which a hazardous liquid is transported from one point to another.

"Major construction" means any change in pipeline routing, either horizontally or depth, or replacement of existing pipe of one hundred feet or more in length.

"Maximum operating pressure (MOP)" means the maximum operating pressure at which a pipeline may be operated under 49 C.F.R. Part 195.

"New pipeline" means a new hazardous liquid pipeline that did not previously exist, or an extension of an existing pipeline of one hundred feet or longer.

"Person" means an individual, partnership, franchise holder, association, corporation, a state, a city, a county, or any political subdivision or instrumentality of a state, and its employees, agents, or legal representatives.

"Release" means when hazardous liquid escapes from the pipeline.

"Subsoiling" means the agricultural practice of breaking compact subsoil.

"Telephonic notification" means verbal notification by telephone to the Washington utilities and transportation commission, pipeline safety division using the pipeline safety incident notification telephone number ~~((1-888-321-9146))~~ (1-888-321-9144).

AMENDATORY SECTION (Amending WSR 19-14-118, filed 7/3/19, effective 8/3/19)

WAC 480-75-999 Adoption by reference. In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available for inspection at the commission library. The publications, effective dates, references within this chapter, and availability of the resources are as follows:

(1) **Title 49 Code of Federal Regulations**, cited as 49 C.F.R., Parts 190.221, 190.223, 195, 196, 198, and 199 including all appendices and amendments except for 49 C.F.R. Sections 195.0, 195.1, 199.1, 199.2, and 196.1 published by the United States Government Printing Office.

(a) The commission adopts the version in effect on ~~(March 1, 2019)~~ January 11, 2021.

(b) This publication is referenced in WAC 480-75-100 (Definitions), WAC 480-75-370 (Design factor (*F*) for steel pipe), WAC 480-75-250 (Civil penalty for violation of chapter 81.88 RCW), WAC 480-75-650 (Annual reports), and WAC 480-75-660 (Procedural manual for operations, maintenance, and emergencies).

(c) Copies of Title 49 Code of Federal Regulations are available from the U.S. Government Online Bookstore, <https://bookstore.gpo.gov/>.

(2) **The American Society of Mechanical Engineers (ASME) B31.4**, 2006 edition, October 20, 2006.

(a) This publication is referenced in WAC 480-75-350 (Design specifications for new pipeline projects), WAC 480-75-440 (Pipeline repairs), and WAC 480-75-450 (Construction specifications).

(b) Copies of ASME B31.4 are available from ASME, <https://www.asme.org/codes/>. It is also available for inspection at the commission.

(3) The 2007 edition, July 2007, of **Section IX of the ASME Boiler and Pressure Vessel Code**.

(a) This publication is referenced in WAC 480-75-430 (Welding procedures).

(b) Copies of the 2007 edition, of *Section IX of the ASME Boiler and Pressure Vessel Code* are available from ASME, <https://www.asme.org/codes/>. It is also available for inspection at the commission.

(4) The commission adopts **American Petroleum Institute (API) standard 1104** (20th edition 2005, including errata/addendum July 2007 and errata 2 (December 2008)).

(a) This publication is referenced in WAC 480-75-430 (Welding procedures) and WAC 480-75-460 (Welding inspection requirements).

(b) Copies of API standard 1104 (20th edition 2005, including errata/addendum July 2007 and errata December 2008) are available from the Office of API Publishing Services, <https://www.api.org/>. It is also available for inspection at the commission.

AMENDATORY SECTION (Amending WSR 19-14-118, filed 7/3/19, effective 8/3/19)

WAC 480-90-999 Adoption by reference. In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available for inspection at the commission library. The publications,

effective date, references within this chapter, and availability of the resources are as follows:

(1) **Title 18 Code of Federal Regulations**, cited as 18 C.F.R., including all appendices and amendments is published by the United States Government Publishing Office.

(a) The commission adopts the version in effect on April 1, ~~(2018)~~ 2021.

(b) The accounting and reporting for the types of transactions and events covered by the amendment should not be construed as indicative of their treatment by this commission for ratemaking purposes.

(c) This publication is referenced in WAC 480-90-203 (Accounting system requirements), WAC 480-90-244 (Transferring cash or assuming obligations), WAC 480-90-252 (Federal Energy Regulatory Commission (FERC) Form No. 2), and WAC 480-90-268 (Essential utilities services contracts report).

(d) Copies of Title 18 Code of Federal Regulations are available from the U.S. Government Publishing Office in Washington, D.C., or online at <https://www.gpo.gov/>, and from various third-party vendors. It is also available for inspection at the commission branch of the state library.

(2) **The Regulations to Govern the Preservation of Records of Electric, Gas, and Water Utilities** is published by the National Association of Regulatory Utility Commissioners (NARUC).

(a) The commission adopts the version in effect in 2007.

(b) This publication is referenced in WAC 480-90-228 (Retention and preservation of records and reports).

(c) The *Regulations to Govern the Preservation of Records of Electric, Gas, and Water Utilities* is a copyrighted document. Copies are available from NARUC, in Washington, D.C. or at NARUC publications store online: <https://www.naruc.org/resolutions-index/2007-annual-meeting-resolutions/>. It is also available for inspection at the commission branch of the state library.

AMENDATORY SECTION (Amending WSR 08-12-046, filed 5/30/08, effective 6/30/08)

WAC 480-93-005 Definitions. (1) **"Bar hole"** means a hole made in the soil or paving for the specific purpose of testing the subsurface atmosphere with a combustible gas indicator.

(2) **"Building"** means any structure that is normally or occasionally entered by humans for business, residential, or other purposes and where gas could accumulate.

(3) **"Business district"** means an area where the public regularly congregates or where the majority of the buildings on either side of the street are regularly utilized, for financial, commercial, industrial, religious, educational, health, or recreational purposes.

(4) **"C.F.R."** means the Code of Federal Regulations.

(5) **"Combustible gas indicator" (CGI)** means a device capable of detecting and measuring gas concentrations in air.

(6) **"Commission"** means the Washington utilities and transportation commission.

(7) **"Enclosed space"** means any subsurface structure of sufficient size that could accommodate a person and within

which gas could accumulate, e.g., vaults, catch basins, and manholes.

(8) **"Emergency notification line"** means ((1-888-321-9146)) 1-888-321-9144.

(9) **"Follow-up inspection"** means an inspection performed after a repair has been completed in order to determine the effectiveness of the repair.

(10) **"Gas"** means natural gas, flammable gas, or gas that is toxic or corrosive.

(11) **"Gas associated substructures"** means those devices or facilities utilized by a gas pipeline company which are not intended for storing, transporting, or distributing gas, such as valve boxes, vaults, test boxes, and vented casing pipe.

(12) **"Gas pipeline"** means all parts of a pipeline facility through which gas moves in transportation, including, but not limited to, line pipe, valves, and other appurtenances connected to line pipe, compressor units, metering stations, regulator stations, delivery stations, holders and fabricated assemblies. "Gas pipeline" does not include any pipeline facilities, other than a master meter system, owned by a consumer or consumers of the gas, located exclusively on the consumer or consumers' property, and none of the gas leaves that property through a pipeline.

(13) **"Gas pipeline company"** means a person or entity constructing, owning or operating a gas pipeline for transporting gas. "Gas pipeline company" includes a person or entity owning or operating a master meter system. "Gas pipeline company" does not include excavation contractors or other contractors that contract with a gas pipeline company.

(14) **"High occupancy structure or area"** means a building or an outside area (such as a playground, recreation area, outdoor theater, or other place of public assembly) that is occupied by twenty or more persons on at least five days a week for ten weeks in any twelve-month period. (The days and weeks need not be consecutive.)

(15) **"Indication"** means a response indicated by a gas detection instrument that has not been verified as a reading.

(16) **"LEL"** means the lower explosive limit of the gas being transported.

(17) **"Line pipe" or "pipe"** means a tube, usually cylindrical, through which a hazardous liquid or gas is transported from one point to another.

(18) **"MAOP"** means maximum allowable operating pressure.

(19) **"Master meters system"** means a pipeline system for distributing gas within, but not limited to, a definable area, such as a mobile home park, housing project, or apartment complex, where the operator purchases metered gas from an outside source for resale through a gas distribution pipeline system. The gas distribution pipeline system supplies the ultimate consumer who either purchases the gas directly through a meter or by any other means, such as by rents.

(20) **"Prompt action"** means to dispatch qualified personnel without undue delay.

(21) **"Psig"** means pounds per square inch gauge.

(22) **"Reading"** means a repeatable representation on a combustible gas indicator or equivalent instrument expressed in percent LEL or gas-air ratio.

(23) **"Record(s)"** means any electronic or paper document, map, database, report or drawing created by or kept by a gas pipeline company.

(24) **"Sniff test"** means a qualitative test utilizing both threshold and readily detectable methods for determining proper concentrations of odorant.

(25) **"Transmission line"** means a gas pipeline as defined in 49 C.F.R. § 192.3 on the date specified in WAC 480-93-999.

(26) **"Weak link"** means a device or method used when pulling polyethylene pipe to ensure that damage will not occur to the pipeline by exceeding the maximum tensile stresses allowed.

(27) Other terms that correspond to those used in 49 C.F.R. Parts 191, 192 and 199 (Minimum Federal Safety Standards for Gas Pipelines) must be construed as used therein on the date specified in WAC 480-93-999.

AMENDATORY SECTION (Amending WSR 19-14-118, filed 7/3/19, effective 8/3/19)

WAC 480-93-999 Adoption by reference. In this chapter, the commission adopts by reference each of the regulations and/or standards identified below. Each regulation or standard is listed by publication, publisher, scope of what the commission is adopting, effective date of the regulation or standard, the place within the commission's rules the regulation or standard is referenced, and where to obtain the regulation or standard.

(1) Parts 190.221, 190.223, 191, 192, 193, 196, 198, and 199 of Title 49 Code of Federal Regulations, including all appendices and amendments thereto as published by the United States Government Printing Office.

(a) The commission adopts the version of the above regulations that were in effect on (~~March 1, 2019~~) January 11, 2021, except the following sections are not adopted by reference: 191.1, 192.1(a), 193.2001(a), 196.1, 198.1, 199.1. In addition, please note that in WAC 480-93-013, the commission includes "new construction" in the definition of "covered task," as defined in 49 C.F.R. Sec. 192.801 (b)(2).

(b) This publication is referenced in WAC 480-93-005 (Definitions), WAC 480-93-015 (Odorization of gas), WAC 480-93-018 (Records), WAC 480-93-080 (Welder and plastic joiner identification and qualification), WAC 480-93-100 (Valves), WAC 480-93-110 (Corrosion control), WAC 480-93-124 (Pipeline markers), WAC 480-93-160 (Reporting requirements of proposed construction), WAC 480-93-170 (Tests and reports for gas pipelines), WAC 480-93-180 (Plans and procedures), WAC 480-93-223 (Civil penalty for violation of chapter 81.88 RCW and commission gas safety rules), and WAC 480-93-18601 (Leak classification and action criteria—Grade—Definition—Priority of leak repair).

(c) Copies of Title 49 Code of Federal Regulations are available from the U.S. Government Online Bookstore, <https://bookstore.gpo.gov/>. It is also available for inspection at the commission.

(2) Section IX of the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code.

(a) The commission adopts the 2007 edition, July 1, 2007, of Section IX of the ASME Boiler and Pressure Vessel Code.

(b) This publication is referenced in WAC 480-93-080.

(c) Copies of Section IX of the ASME Boiler and Pressure Vessel Code (2007 edition, including addenda through July 1, 2005) are available from ASME, <https://www.asme.org/codes/>. It is also available for inspection at the commission.

(3) The American Petroleum Institute (API) standard 1104 (20th edition October 2005, including errata/addendum July 2007 and errata 2 (2008)).

(a) The commission adopts the 20th edition 2005, including errata/addendum July 2007 and errata 2 (2008) of this standard.

(b) This standard is referenced in WAC 480-93-080.

(c) Copies of API standard 1104 (20th edition 2005, including errata/addendum July 2007 and errata December 2008) are available from the Office of API Publishing Services, <https://www.api.org/>. It is also available for inspection at the commission.

AMENDATORY SECTION (Amending WSR 19-14-118, filed 7/3/19, effective 8/3/19)

WAC 480-100-999 Adoption by reference. In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. The publications, effective date, references within this chapter, and availability of the resources are as follows:

(1) **Title 18 Code of Federal Regulations**, cited as 18 C.F.R., including all appendices and amendments is published by the United States Government Publishing Office.

(a) The commission adopts the version in effect on April 1, ~~((2018))~~ 2021.

(b) The accounting and reporting for the types of transactions and events covered by the amendment should not be construed as indicative of their treatment by this commission for ratemaking purposes.

(c) This publication is referenced in WAC 480-100-203 (Accounting system requirements), WAC 480-100-244 (Transferring cash or assuming obligations), WAC 480-100-252 (Federal Energy Regulatory Commission (FERC) Form No. 1), and WAC 480-100-268 (Essential utilities services contracts report).

(d) Copies of Title 18 Code of Federal Regulations are available from the U.S. Government Publishing Office in Washington D.C., or online at <https://www.gpo.gov/>, and from various third-party vendors. It is also available for inspection at the commission library.

(2) **The Regulations to Govern the Preservation of Records of Electric, Gas, and Water Utilities** is published by the National Association of Regulatory Utility Commissioners (NARUC).

(a) The commission adopts the version in effect in 2007.

(b) This publication is referenced in WAC 480-100-228 (Retention and preservation of records and reports).

(c) The *Regulations to Govern the Preservation of Records of Electric, Gas, and Water Utilities* is a copyrighted document. Copies are available from NARUC in Washing-

ton, D.C. or at NARUC publications store online: <https://www.naruc.org/resolutions-index/2007-annual-meeting-resolutions/>. It is also available for inspection at the commission branch of the state library.

(3) The **National Electrical Code** is published by the National Fire Protection Association (NFPA).

(a) The commission adopts the edition effective in 2017, including errata 70-17-1 published September 29, 2016, errata 70-17-2 published December 16, 2016, 70-17-3 published January 11, 2017, ~~((and))~~ 70-17-4 published March 13, 2017, errata 70-21-1 published October 10, 2019, errata 70-20-2 published December 23, 2019, and errata 70-20-3 published March 10, 2020.

(b) This publication is referenced in WAC 480-100-163 (Service entrance facilities).

(c) The National Electrical Code is a copyrighted document. Copies are available from the NFPA at 1 Batterymarch Park, Quincy, Massachusetts 02169, or at internet address <https://www.nfpa.org/>.

(4) **The American National Standard for Electric Meters: Code for Electricity Metering**, ANSI C12.1 is published by the American National Standards Institute.

(a) The commission adopts the version published in 2016.

(b) This publication is referenced in WAC 480-100-318 (Meter readings, multipliers, and test constants), WAC 480-100-338 (Accuracy requirements for electric meters), and WAC 480-100-343 (Statement of meter test procedures).

(c) The ANSI C12.1 is a copyrighted document. ANSI C12.1 - 2016 is available at American National Standards Institute website <https://webstore.ansi.org/> (PDF) or at IHS Standards Store website <https://global.ih.com/> (PDF and print).

AMENDATORY SECTION (Amending WSR 19-14-118, filed 7/3/19, effective 8/3/19)

WAC 480-108-999 Adoption by reference. In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. The publications, effective date, references within this chapter, and availability of the resources are as follows:

(1) The National Electrical Code is published by the National Fire Protection Association (NFPA).

(a) The commission adopts the edition effective ~~((2017))~~ 2020, including errata ~~((70-17-4))~~ 70-20-1 published ~~((September 29, 2016))~~ October 10, 2019, errata ~~((70-17-2))~~ 70-20-2 published December ~~((16, 2016, 70-17-3 published January 11, 2017, 70-17-4 published March 13, 2017, 70-17-5 published May 9, 2018, and 70-17-06 published July 5, 2018))~~ 23, 2019, errata published March 10, 2020, and errata on NEC Handbook published February 6, 2020.

(b) This publication is referenced in WAC 480-108-040 (General terms and conditions of interconnection).

(c) The National Electrical Code is a copyrighted document. Copies are available from the NFPA at 1 Batterymarch Park, Quincy, Massachusetts, 02169 or at internet address <https://www.nfpa.org/>.

(2) National Electrical Safety Code (NESC).

(a) The commission adopts the 2017 edition.

(b) This publication is referenced in WAC 480-108-040 (General terms and conditions of interconnection).

(c) Copies of the National Electrical Safety Code are available from the Institute of Electrical and Electronics Engineers at <https://standards.ieee.org/nesc>.

(3) Institute of Electrical and Electronics Engineers (IEEE) Standard 1547-2018, Standard for Interconnection and Interoperability of Distributed Energy Resources with Associated Electric Power Systems Interfaces.

(a) The commission adopts the version published April 6, 2018.

(b) This publication is referenced in WAC 480-108-040 (General terms and conditions of interconnection).

(c) Copies of IEEE Standard 1547 are available from the Institute of Electrical and Electronics Engineers at <https://www.ieee.org>.

(4) Institute of Electrical and Electronics Engineers (IEEE) Standard C37.90, IEEE Standard for Relays and Relay Systems Associated with Electric Power Apparatus.

(a) The commission adopts the version published in 2005 and reaffirmed in 2011.

(b) This publication is referenced in WAC 480-108-040 (General terms and conditions of interconnection).

(c) Copies of IEEE Standard C37.90 are available from the Institute of Electrical and Electronics Engineers at <https://www.ieee.org>.

(5) Institute of Electrical and Electronics Engineers (IEEE) Standard 519, Recommended Practices and Requirements for Harmonic Control in Electrical Power Systems.

(a) The commission adopts the version published June 11, 2014.

(b) This publication is referenced in WAC 480-108-040 (General terms and conditions of interconnection).

(c) Copies of IEEE Standard 519 are available from the Institute of Electrical and Electronics Engineers at <https://www.ieee.org>.

(6) Institute of Electrical and Electronics Engineers (IEEE) Standard 141, Recommended Practice for Electric Power Distribution for Industrial Plants.

(a) The commission adopts the version published in 1993 and reaffirmed in 1999.

(b) This publication is referenced in WAC 480-108-040 (General terms and conditions of interconnection).

(c) Copies of IEEE Standard 141 are available from the Institute of Electrical and Electronics Engineers at <https://www.ieee.org>.

(7) Institute of Electrical and Electronics Engineers (IEEE) Standard 142, Recommended Practice for Grounding of Industrial and Commercial Power Systems.

(a) The commission adopts the version published in 2007.

(b) This publication is referenced in WAC 480-108-040 (General terms and conditions of interconnection).

(c) Copies of IEEE Standard 142 are available from the Institute of Electrical and Electronics Engineers at <https://www.ieee.org>.

(8) Underwriters Laboratories (UL), including UL Standard 1741, Inverters, Converters, Controllers and Interconnection Systems Equipment for Use with Distributed Energy Resources.

(a) The commission adopts the version published January 28, 2010.

(b) This publication is referenced in WAC 480-108-040 (General terms and conditions of interconnection).

(c) UL Standard 1741 is available from Underwriters Laboratory at <https://www.ul.com>.

(9) Occupational Safety and Health Administration (OSHA) Standard at 29 C.F.R. 1910.269.

(a) The commission adopts the version published on (~~November 18, 2016~~) February 18, 2020, effective (~~January 17, 2017~~) February 18, 2020.

(b) This publication is referenced in WAC 480-108-040 (General terms and conditions of interconnection).

(c) Copies of Title 29 Code of Federal Regulations are available from the U.S. Government Online Bookstore, <https://bookstore.gpo.gov/>, and from various third-party vendors.

AMENDATORY SECTION (Amending WSR 19-14-118, filed 7/3/19, effective 8/3/19)

WAC 480-109-999 Adoption by reference. In this chapter, the commission adopts by reference all, or portions of, the publications identified below. They are available for inspection at the commission library. The publications, publication dates, references within this chapter, and availability of the resources are as follows:

(1) *Northwest Conservation and Electric Power Plan* as published by the Northwest Power and Conservation Council.

(a) The commission adopts the seventh version published in 2016.

(b) This publication is referenced in WAC 480-109-100 Energy efficiency resource standard.

(c) Copies of *Seventh Northwest Conservation and Electric Power Plan* are available from the Northwest Power and Conservation Council at (~~(<https://www.nwecouncil.org/energy/powerplan/7/plan/>)~~) <https://www.nwecouncil.org/reports/seventh-power-plan>.

(2) *Weatherization Manual* as published by the Washington state department of commerce.

(a) The commission adopts the version published in (~~November 2018~~) January 2021.

(b) This publication is referenced in WAC 480-109-100 Energy efficiency resource standard.

(c) Copies of *Weatherization Manual* are available from the Washington state department of commerce at (~~(<https://www.commerce.wa.gov/wp-content/uploads/2013/01/Wx-Manual-2018-Nov-1.docx>)~~) <https://www.commerce.wa.gov/growing-the-economy/energy/weatherization-and-energy-efficiency/weatherization-program-documents/>.

(3) The unit energy savings values as published by the Northwest Power and Conservation Council's Regional Technical Forum.

(a) The commission adopts the unit energy savings with status of "Active" or "Under Review" on (~~January 10, 2019~~) February 24, 2021.

(b) This information is referenced in WAC 480-109-100 Energy efficiency resource standard.

(c) The spreadsheets containing the unit energy savings values are available for download at <https://rtf.nwcouncil.org/measures>.

(4) The standard protocols as published by the Northwest Power and Conservation Council's Regional Technical Forum.

(a) The commission adopts the standard protocols with status of "Active" or "Under Review" on ~~(January 10, 2019)~~ February 24, 2021.

(b) This information is referenced in WAC 480-109-100 Energy efficiency resource standard.

(c) The spreadsheets containing the standard protocols are available for download at <https://rtf.nwcouncil.org/standard-protocols>.

AMENDATORY SECTION (Amending WSR 19-14-118, filed 7/3/19, effective 8/3/19)

WAC 480-120-999 Adoption by reference. In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available for inspection at the commission library. The publications, effective dates, references within this chapter, and availability of the resources are as follows:

(1) **American National Standards for Telecommunications** - "*Network Performance Parameters for Dedicated Digital Services for Rates Up To and Including DS3 - Specifications*" (ATIS 0100510) is published by the American National Standards Institute (ANSI).

(a) The commission adopts the version in effect on December 29, 1999, and reaffirmed 2013.

(b) This publication is referenced in WAC 480-120-401 (Network performance standards).

(c) The American National Standards for Telecommunications "*Network Performance Parameters for Dedicated Digital Services for Rates Up To and Including DS3 - Specifications*" is a copyrighted document. Copies are available from ANSI in Washington, D.C. and from various third-party vendors.

(2) **The Institute of Electrical And Electronic Engineers (IEEE) Standard Telephone Loop Performance Characteristics** (ANSI/IEEE Std 820-2005) is published by the ANSI and the IEEE.

(a) The commission adopts the version in effect as published in 2005.

(b) This publication is referenced in WAC 480-120-401 (Network performance standards).

(c) *The IEEE Standard Telephone Loop Performance Characteristics* is a copyrighted document. Copies are available from ANSI and IEEE in Washington, D.C. and from various third-party vendors.

(3) **The National Electrical Safety Code** is published by the IEEE.

(a) The commission adopts the 2017 edition.

(b) This publication is referenced in WAC 480-120-402 (Safety).

(c) *The National Electrical Safety Code* is a copyrighted document. Copies are available from IEEE in Washington, D.C. and from various third-party vendors.

(4) **Title 47 Code of Federal Regulations**, cited as 47 C.F.R., is published by the United States Government Printing Office.

(a) For this publication as referenced in WAC 480-120-359 (Accounting requirements for companies not classified as competitive) and WAC 480-120-349 (Retaining and preserving records and reports), the commission adopts the version of the relevant sections in effect on October 1, ~~(2018)~~ 2020.

(b) For this publication as referenced in WAC 480-120-202 (Customer proprietary network information), WAC 480-120-146 (Changing service providers from one local exchange company to another), and any other reference in chapter 480-120 WAC, the commission adopts the version of the relevant sections in effect on October 1, ~~(2018)~~ 2020.

(c) The ~~(2018)~~ 2020 version of C.F.R. Title 47 is available from the U.S. Government Online Bookstore, <https://bookstore.gpo.gov/>, and from various third-party vendors.

AMENDATORY SECTION (Amending WSR 19-14-118, filed 7/3/19, effective 8/3/19)

WAC 480-123-999 Adoption by reference. In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available for inspection at the commission branch of the Washington state library. The publications, effective dates, references within this chapter, and availability of the resources are as follows:

(1) The Cellular Telecommunications and Internet Association's (CTIA) Consumer Code for Wireless Service.

(a) The commission adopts the version in effect on January 1, 2017.

(b) This publication is referenced in WAC 480-123-030 (contents of petition for eligible telecommunications carriers).

(c) Copies of the CTIA Consumer Code for Wireless Service are available at <https://www.ctia.org/initiatives/voluntary-guidelines/consumer-code-for-wireless-service>.

(2) Title 47, Code of Federal Regulations, cited as 47 C.F.R., is published by the United States Government Printing Office.

(a) The commission adopts the version in effect on October 1, ~~(2018)~~ 2020.

(b) This publication is referenced in WAC 480-123-010 (Federal universal service contracts), WAC 480-123-060 (Annual certification of eligible telecommunications carriers), WAC 480-123-070 (Annual certifications and reports), WAC 480-123-100 (Prerequisites for requesting program support), and WAC 480-123-110 (Petitions for eligibility to receive program support).

(c) The ~~(2018)~~ 2020 version of C.F.R. Title 47 is available from the U.S. Government Online Bookstore, <https://bookstore.gpo.gov/>, and from various third-party vendors.

WSR 21-13-136
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed June 22, 2021, 10:58 a.m., effective July 23, 2021]

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

Purpose: The purpose of this adoption is to update the self-insurance financial rules to:

- Ensure self-insured employers can accurately and timely provide workers' compensation benefits to their workers;
- Protect and safeguard the Insolvency Trust Fund;
- Promote transparency for the department of labor and industries actions when a firm is placed on financial watch;
- Make the rules relevant to current financial conditions and business models; and
- Create efficient and adaptable standards for employers' overall financial management.

This adoption updates the rules for the financial qualification and maintenance of self-insurance certification making the rules consistent with modern business practices.

Citation of Rules Affected by this Order: Repealing WAC 296-15-024; and amending WAC 296-15-021, 296-15-121, 296-15-123, 296-15-151, 296-15-161, and 296-15-221.

Statutory Authority for Adoption: RCW 51.14.020, 51.14.020(7).

Adopted under notice filed as WSR 21-08-069 on April 6, 2021.

A final cost-benefit analysis is available by contacting Brian Schmidlkofer, 310 Israel Road S.E., Tumwater, WA 98501, phone 360-902-6839, fax 360-902-6900, email Brian.Schmidlkofer@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 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 6, Repealed 1.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 6, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 6, Repealed 1.

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: June 22, 2021.

Joel Sacks
Director

AMENDATORY SECTION (Amending WSR 09-01-177, filed 12/23/08, effective 1/23/09)

WAC 296-15-021 Self-insurance ((~~certification requirements and application process~~)) qualifications.
((~~1~~)) ~~What requirements must an employer meet to apply~~

~~**for self insurance certification?** An employer must meet all the following minimum criteria:~~

~~(a) Be in business for three years prior to applying for self insurance.~~

~~(b) Have a written accident prevention program in place in Washington state for at least six months prior to making application.~~

~~(c) Have total assets worth at least twenty five million dollars as verified by audited financial statements prepared by independent certified accountants.~~

~~(d) Demonstrate positive earnings in the current year and two out of the last three years. The overall earnings for the last three years must also be positive.~~

~~(e) Have a current liquidity ratio of at least 1.3 to 1, and a debt to net worth ratio of not greater than 4 to 1.~~

~~(2) **When are applications processed?** The department processes applications for certification the quarter after the application is accepted. Self insurance certification for approved applicants will be effective the quarter following processing.~~

~~(3) **What documentation must be submitted with an application?** The following documentation must be submitted with each self insurance application:~~

~~(a) A completed application form (Form F207-001-000) with a nonrefundable application fee. The application fee is reviewed annually by the department and is based on the administrative costs incurred in processing an application; but in no instance will it be less than two hundred fifty dollars.~~

~~(b) Three years of audited financial statements prepared by independent certified accountants. The audited financial statements must be in the name of the applicant.~~

~~(c) A list of all of the applicant's physical locations and addresses in Washington state, including all subsidiary operations.~~

~~(d) A copy of the written accident prevention program for each of the applicant's operations in Washington. If the applicant or any of its subsidiaries has multiple locations; more than one copy of the accident prevention program may be required.~~

~~(e) A completed Self Insurance Certification Questionnaire (Form 207-176-000).~~

~~(f) A completed self insurance electronic data reporting system (SIEDRS) enrollment form (Form F207-193-000).~~

~~(4) **What happens during the application review process?** The department:~~

~~(a) Assesses the accident prevention program at department selected sites.~~

~~(b) Analyzes the financial information supplied by the applicant. The department may also consider relevant information obtained from other sources to assess the applicant's financial strength.~~

~~(c) Reviews the completed Claims Administration Questionnaire and attachments. Additional information may be requested.~~

~~The department determines whether the application is denied or tentatively approved. The department notifies each applicant of its decision. If the department denies an application, it will state the reasons for the denial in its notification.~~

~~(5) If the application is denied, when may the applicant submit a new application?~~ If an application is denied for deficiencies in its accident prevention program, the applicant may submit a new application for certification after the corrections to the program are made and have been in place for six months.

If the application is denied for financial reasons, the applicant may submit a new application for certification after the next annual audited financial statement is available.

If the application is denied because the claims administration organization is deficient, the applicant may submit a new application for certification after corrections to the program are made.

~~(6) What if the application is tentatively approved?~~ The applicant must submit the following:

(a) Surety in the amount determined by the department and issued on the department form.

(b) A signed copy of the service agreement with a third-party administrator, if applicable.

(i) The contract copy may delete clauses(s) relating to payment of services.

(ii) However, if payment for services is based on the number of claims filed by the self-insurer's workers, this must be explained in detail.

(c) A copy of any excess insurance (reinsurance) policy including Washington state endorsements, if obtained.

(d) A signed copy of the Acknowledgement of Self-Insurance Responsibilities form.

(e) Payment of any outstanding premium of the applicant's state industrial insurance account.

(f) Payment of the applicant's estimated portion of the deficit, if a deficit condition in the state industrial insurance fund exists at the time of application.

(g) Adequate electronic test data to SIEDRS, to demonstrate the ability to submit claim data electronically in the required format. Requirements are defined in the SIEDRS enrollment package (Publication F207-194-000). The department may waive the testing requirement if the applicant has a service agreement with a third-party administrator that already submits data to SIEDRS.

If the required items are not received prior to the end of the quarter, the application may be denied. If the application is denied, the applicant must reapply in order to be considered for self-insurance.

~~(7) How is the initial surety requirement established?~~ The initial surety requirement is established at the highest of the following:

(a) The annual premiums the applicant pays (or would pay) into the state industrial insurance fund; or

(b) The annual average of the last five years of developed incurred costs to the state industrial insurance fund; or

(c) The minimum surety requirement as established annually by the department. The minimum surety requirement is equal to the average total cost of one permanent total disability award.

The applicant has the option of submitting an independent actuarial analysis of its projected liability. The department reserves the right to accept or reject this analysis. In no event will the surety requirement be established at less than the minimum surety in force at that time.)) (1) **What factors**

does the department consider whether an employer qualifies for self-insurance certification? The department will consider whether:

(a) An employer satisfactorily demonstrates:

(i) Stability: Has been in business for three years prior to applying for self-insurance without substantial changes in principle ownership, structure, or operations.

(ii) Safety: Has a written accident prevention program in place in accordance with DOSH standards in Washington state for at least six months prior to making application.

(iii) Sufficiency: Has net worth of twenty-five million dollars, or revenue of fifty million dollars, or annual workers compensation premium payments or loss costs of one million dollars, to be adjusted once every five years as indexed to the U.S. Consumer Price Index beginning in 2025. This subsection does not apply to cities and counties, or groups, authorized under RCW 51.14.150.

(b) Credit ratings of investment grade or higher, or, in the case of authorized groups, an actuarially determined low likelihood of default:

(i) A publicly traded business' credit analysis shows a credit rating of investment grade or higher (Moody's Baa3 or higher, Standard and Poor's BBB- or higher), and carries excess insurance.

(ii) A privately held business' credit analysis shows a credit rating of investment grade or higher as determined by self-insurance credit rating procedures, and carries excess insurance.

(iii) A public entity, such as a county or city, that shows a credit rating of investment grade or higher as determined by self-insurance credit rating procedures, has adequate monetary reserves as determined under accepted actuarial practices, and carries excess insurance.

(iv) An authorized group such as a hospital district, or an educational service district, has adequate monetary reserves as determined under accepted actuarial practices, and carries excess insurance.

(c) In addition, other factors can be considered to establish, to the director's satisfaction, the employer has the ability to make certain the prompt payment of all compensation under Title 51 RCW, and all assessments that may become due to the department from the employer. For publicly traded companies, this may require providing up to one hundred twenty-five percent of the initial surety amount when credit ratings are below investment grade.

(2) What factors does the department consider when determining whether an employer qualifies for self-insurance if there are special circumstances with principle ownership, structure, or operations? If there are special circumstances, the department will consider the factors in subsection (1)(a) through (c) of this section, and an analysis that includes the following for:

(a) **Joint venture:** A joint venture is defined as two or more employers that have signed a contractual agreement to operate as a single unit for a specified period of time for the completion of a specific task. The department will consider a joint venture's application for self-insurance if the joint venture is sponsored by a current self-insurer. Applications must include:

(i) The name of a sponsoring party. The sponsoring party must be a certified self-insurer in good standing with the department and have a majority financial interest in the assets and profits of the joint venture.

(ii) A list of named participants. Each named participant must also demonstrate that it has at least twenty percent interest in the joint venture.

(iii) Submit three years' worth of audited financial statements prepared by certified independent accountants.

(iv) A written acknowledgment from each named participant of its joint and several liability for continuing compensation if any participant of the joint venture defaults. This responsibility continues until the department grants a written release to the joint venture or the remaining participant(s) of the joint venture. A written release from the department is granted only after the contract has been completed and final settlement of the joint venture account has been made.

(v) A written description of the obligations of each participant for the industrial insurance program of the joint venture.

(vi) A written acknowledgment of the sponsoring party's responsibilities for the management of all claims and payment of all compensation incurred during the period of the joint venture's self-insurance certification and after the joint venture is dissolved. This acknowledgment must include the sponsor's continuation of benefits if the joint venture or any of the other parties of the joint venture defaults.

(b) **Employee stock ownership program (ESOP):** An employee stock ownership program is defined as a firm in which the employees have purchased a majority of the financial interest. If the employees purchase an existing self-insured company, that company would be required to return to the state industrial insurance fund for a minimum of one year before the department would consider its application for self-insurance.

(c) **Partnership:** A partnership is defined as a business operation between two or more individuals who share management and profits. Applications must include:

(i) A copy of the partnership agreement; and

(ii) An explanation of allowed withdrawal of funds by partners.

(d) **Group:** A group is defined as a group of employers authorized under chapter 51.14 RCW to form self-insurance groups. Applications must include:

(i) A copy of the group's bylaws;

(ii) A current audited consolidated financial statement of the group (if the group exists at the time of the application);

(iii) An indemnity agreement jointly and severally binding the group and each member to comply with the provisions of Title 51 RCW; and

(iv) A detailed budget of all projected administrative revenues and expenses for the first year of operation.

(e) When the application for a group is tentatively approved, the applicant must submit the following:

(i) Initial surety, established at one hundred twenty-five percent of the standard industrial insurance premiums; and

(ii) A copy of the excess insurance coverage policy and a copy of any aggregate stop loss coverage policy.

AMENDATORY SECTION (Amending WSR 99-23-107, filed 11/17/99, effective 12/27/99)

WAC 296-15-121 Surety for a self-insurance program. (1) **What is surety?** Surety is the legal financial guarantee each self-insurer must provide to the department for its self-insured workers' compensation program. Failure to provide surety in the amount required by the department will result in the withdrawal of the self insurer's certification. If a self-insurer defaults on (stops payment of) benefits and assessments, the department will use its surety to cover these costs.

(a) Surety for all entities must be provided on the department's form. The original will be kept by the department. Surety must cover all ~~((past, present and future self insurance liabilities))~~ self-insurance claims liabilities associated with the claims occurring during the time an employer functions as a self-insurer. Excluding public entities and groups. Surety amounts for public entities and groups are covered by WAC 296-15-151 and 296-15-161 respectively.

(b) Surety may not be used by a self-insurer to:

(i) Pay its workers' compensation benefits; or

(ii) Serve as collateral for any other banking transactions.

(c) Surety is not an asset of the self-insurer and will not be released by the department if the self-insurer files a petition for dissolution or relief under bankruptcy laws.

(d) The department will determine the amount of surety each self-insurer must provide annually. ~~((The surety level may be increased or decreased to maintain its adequacy when necessary))~~ Surety can also be determined by an independent qualified actuary (associate or fellow of the casualty actuarial society). The surety estimate is subject to the approval of the department's actuary.

(e) Surety may be increased by a maximum of twenty-five percent of the estimated claim liabilities. These increases will be based on the self-insurer's credit rating or the director's discretion.

(f) Surety for privately held entities are required to submit audited financial reports prepared by a certified public accountant annually. Failure to provide timely updates will result in increased surety requirements. If the latest financial reports are older than twelve months past their fiscal year, surety will be increased by ten percent over the required surety calculated by the department. If the latest financial reports are older than twenty-four months, surety will be increased by twenty-five percent over the required surety calculated by the department and the department will proceed to decertify the employer from self-insurance.

(2) **What types of self-insurance surety will the department accept?** The department will accept the following types of surety:

(a) Cash, corporate, or governmental securities deposited with a department approved escrow agent and administered by a written agreement L&I form F207-039-000 between the department, self-insurer and escrow agent. Use L&I form F207-137-000 for any rider/amendment to the escrow account.

An escrow account may not be used by the self-insurer to satisfy any other obligation to the bank which maintains the escrow account.

(b) A bond on L&I form F207-068-000 written by a company approved to transact surety business in Washington. Use L&I form F207-134-000 for any rider/amendment to the bond.

(c) An irrevocable standby letter of credit (LOC) on L&I form F207-112-000 if the self-insurer has a net worth of at least 500 million dollars. Use L&I form F207-111-000 for any rider/amendment. LOCs are subject to acceptance by the department. Acceptance includes, but is not limited to, approval of the financial condition of the issuing or confirming bank.

(i) The issuing or confirming bank must have a location in Washington. The bank must provide the department with an audited financial statement or call report made to the banking regulatory agencies for the most recent fiscal year. An audited statement/call report is due at LOC issuance and annually while the LOC is in effect.

(ii) The self-insurer must provide the department a memorandum of understanding on L&I form F207-113-000 showing the self-insurer's agreement with the following conditions:

(A) The department will automatically extend an LOC for an additional year unless notified otherwise by registered mail at least sixty days prior to expiration.

(B) If the department is notified an LOC will not be replaced, and the self-insurer fails to provide acceptable replacement surety within thirty days of notice:

(I) The department will draw the full value of the LOC. All proceeds of the LOC will be deposited with the department;

(II) Accrued interest in excess of the surety requirement will be returned semiannually to the self-insurer; and

(III) If acceptable replacement surety is later provided, the proceeds of the LOC and accrued interest will be returned to the self-insurer.

(C) If the self-insurer defaults on the payment of workers' compensation benefits and has failed to provide acceptable replacement surety for an expired LOC:

(I) The title to the proceeds will be transferred to the department; and

(II) The proceeds and accrued interest will be used to pay the self-insurer's workers' compensation benefits.

(D) If the self-insurer defaults on the payment of workers' compensation benefits and has an LOC in force:

(I) The department will draw the full value of the LOC. All proceeds of the LOC will be deposited with the department; and

(II) The proceeds and accrued interest will be used to pay the self-insurer's workers' compensation benefits.

(iii) If the self-insurer provides another acceptable type of surety in the amount required by the department, the department's interest in the LOC will be released.

(iv) All legal proceedings regarding a self-insurer's LOC will be subject to Washington laws and courts.

~~(3) **(How often is each self-insurer's surety requirement reviewed?** Each self-insurer's surety requirement is reviewed annually based on the self-insurer's annual report.~~

~~(4)) **When could a self-insurer's surety level change?**~~

(a) Surety will be maintained at the current level unless the department's estimate or an independent qualified actu-

ary's estimate of the self-insurer's outstanding claim liabilities changes by more than ~~((twenty-five))~~ one hundred thousand dollars.

(b) Surety changes are due by July 1 of each year.

~~((5))~~ **(4) How does the department determine the required surety level?** The department analyzes each self-insurer's loss history using incurred development, paid development or other department approved actuarial methods of loss development~~((The following factors also may influence the surety determination:~~

~~(a) Pension claims.~~

~~(b) Reinsurance.~~

~~(c) Inconsistency in reserving practices.~~

~~(d) Independent qualified actuarial estimate.~~

~~(e) Surety cap)).~~

~~((6))~~ **(5) What is considered reinsurance?** For the purposes of Title 51 RCW, excess insurance and reinsurance mean the same thing.

~~((7))~~ **(6) May a self-insurer reinsure part of its liability?**

(a) A self-insurer may reinsure up to eighty percent of its liability under Title 51 RCW.

(b) The reinsuring company and its personnel are prohibited from participating in the administration of the responsibilities of the self-insurer.

(c) Reinsurance policies issued after July 1, 1975, must include endorsements which state (a) and (b) of this subsection.

(d) The self-insurer must:

(i) Notify the department of the name of the insurance carrier, the extent and coverage period of the policy; and

(ii) Submit copies of all reinsurance policies in force including all modifications and renewal provisions.

(e) The department may accept a certificate of insurance on L&I form F207-095-000 in place of the policy if the certificate certifies all coverage conditions and exceptions and that the reinsurance company and its personnel do not participate in the administration of the responsibilities of the self-insurer under Title 51 RCW.

~~((8))~~ **(7) What if a self-insurer ends its self-insured workers' compensation program?** If a self-insurer voluntarily surrenders certification or has its certificate involuntarily withdrawn by the department, the former self-insurer must continue to do all of the following:

(a) Pay benefits on claims incurred during its period of self-insurance. Claim reopenings and new claims filed for occupational diseases incurred during the period of self-insurance remain the obligation of the former self-insurer.

(b) File quarterly and annual reports as long as quarterly reporting is required. A former self-insurer may ask the department to release it from quarterly reporting after it has had no claim activity with the exception of pension or death benefits for a full year.

(c) Provide surety at the department required level. The department may require an increase in surety based on annual reports as they continue to be filed. Surety will not be reduced from the last required level (while self-insured) until three full calendar years after the certificate was terminated. A bond may be ~~((cancelled))~~ canceled for future obligations,

but it continues to provide surety for claims occurring prior to its cancellation.

(d) Pay insolvency trust assessments for three years after surrender or withdrawal of certificate.

(e) Pay all expenses for a final audit of its self-insurance program.

~~((9))~~ **(8) When could the department consider releasing surety to a former self-insurer or its successor?**

(a) The department may consider releasing surety to a former self-insurer or its successor when all of the following have occurred:

(i) All claims against the self-insurer are closed; and

(ii) The self-insurer has been released from quarterly reporting for at least ten years.

(b) If the department releases surety, the former self-insurer remains responsible for claim reopenings and new claims filed for occupational disease incurred during the period of self-insurance.

AMENDATORY SECTION (Amending WSR 06-07-141, filed 3/21/06, effective 5/1/06)

WAC 296-15-123 ((Financial watch.)) Monitoring certification. ~~((1) What is financial watch? Financial watch occurs when the department has concerns regarding a self-insured employer's ability to promptly provide benefits to its injured workers based on an analysis of the audited financial statements provided by that employer.~~

The purpose of financial watch is two fold:

(a) It serves to alert the employer that the department is concerned with its ability to provide benefits to its injured workers; and

(b) It enforces the due diligence that the department must exercise in preserving the financial integrity of each self-insurer.

(2) What factors can lead to a firm being placed on financial watch? Contributing factors that can lead to a firm being placed on financial watch are negative changes in the following ratios and trends:

(a) Net losses;

(b) Ratio of debt to equity;

(c) Liquidity ratios;

(d) Ratios of debt and equity to total assets;

(e) Ratio of net income to revenue;

(f) Trends in earnings;

(g) Trends in liquidity;

(h) Trends in levels of debt;

(i) Ratio of tangible net worth to levels of debt.

To assess an employer's ability to promptly provide any and all required benefits to its injured workers, the department will utilize these and other analytical ratios. The department may also utilize industry standards and other relevant information in its analysis.

(3) What are the consequences of being placed on financial watch? At the department's discretion, the surety requirement for a firm being placed on financial watch may be increased by up to twenty-five percent. No reduction in surety will be allowed while an employer is on financial watch.

(4) How long can a firm remain on financial watch? The status of a firm on financial watch will be re-evaluated annually upon receipt of its audited financial statements. The department may request interim financial information in addition to the annual audited financial statement.

If significant improvement is not demonstrated to the department's satisfaction after three years of being placed on financial watch, the department may undertake action to withdraw the self-insurance certification of that employer.))

(1) To maintain certification, a self-insured employer must remain in good standing with department reporting requirements and payment of assessments, and continue to demonstrate they have the ability to promptly provide benefits to its injured workers based on an analysis of the audited financial statements and related information for that employer.

(2) Credit rating evaluation for financial monitoring.

(a) Credit rating equal to or below B+/B1: Self-insurer must increase their surety by ten percent of estimated claim liabilities.

(b) Credit rating equal to or below CCC+/Caa1: Self-insurer must increase their surety by twenty-five percent of estimated claim liabilities.

(c) Credit rating equal to or below CCC-/Caa3: Self-insurer will be placed on corrective action for one year. If no improvement in credit rating, then certification may be withdrawn.

(d) To assess an employer's ability to promptly provide any and all required benefits to its injured workers, the department will utilize these and other financial information. The department may also utilize industry standards and other relevant information in its analysis.

(e) In addition to the actions and other relevant information utilized in (a) through (d) of this subsection, the department, with the director's discretion, may consider general economic conditions to evaluate whether a self-insurer's certification may be maintained or withdrawn.

AMENDATORY SECTION (Amending WSR 99-23-107, filed 11/17/99, effective 12/27/99)

WAC 296-15-151 Surety for a public entity's self-insurance program. ~~((1) How does the department determine the required surety level for a public entity? The required surety level for a public entity will be its estimated claim costs for all claims during the upcoming fiscal year. The minimum surety amount will be determined annually by the department.~~

~~(2) How does a public entity provide surety? By July 1 of each year, each public entity must submit its public entity surety certification. A public entity's surety certification must demonstrate that it has sufficient revenues in its next budget to meet its estimated claim costs for the next fiscal year by documenting:~~

~~(a) The estimated claim liabilities;~~

~~(b) Source of revenues, detailing accounts identified for self-insurance obligations; and~~

~~(c) How the cumulative reserve (twenty-five percent of the required surety) is funded. Show the account balance.~~

~~(3) What type of surety may a public entity use for its cumulative reserve? A public entity may provide surety for~~

its cumulative reserve using any of the surety types listed in WAC 296-15-221-)) (1) Surety for public entities must be provided on a department developed form consistent with WAC 296-15-121(2). The original will be kept by the department. Required surety must cover at a minimum one hundred twenty-five percent of the expected workers' compensation claim costs occurring in the next calendar year or five hundred thousand dollars, whichever is higher. The surety required may be increased up to the total outstanding liabilities associated with claims occurring during the time an employer functions as a self-insurer based on the credit rating of the employer.

(2) Public entities must provide a public entity surety certification which will provide an estimate of the next calendar year's expected claim costs and the current estimate of the outstanding claim liabilities.

(3) Credit rating evaluation for financial monitoring.

(a) For entities with acceptable credit ratings above B+/B1, the surety requirement will be one hundred twenty-five percent of the next calendar year's expected claim costs or five hundred thousand dollars, whichever is higher.

(b) For entities with credit ratings at or below B+/B1, the surety requirement will be the highest of the above amount, but not less than fifty percent of the current estimate of outstanding claim liabilities.

(c) For entities with credit ratings at or below CCC+/Caa1, the surety requirement will be the highest of the above amount, but not less than one hundred percent of the current estimate of outstanding claim liabilities.

(d) In addition to the actions and other relevant information utilized in (a) through (c) of this subsection, the department, with the director's discretion, may consider general economic conditions to evaluate whether a self-insurer's certification may be maintained or withdrawn.

AMENDATORY SECTION (Amending WSR 99-23-107, filed 11/17/99, effective 12/27/99)

WAC 296-15-161 Surety for a group self-insurance program. (1) **How does the department determine the required surety level for a group self-insurer?** ~~((After the initial five years of certification, the department will annually calculate the surety requirement for a group self-insurer by comparing its original liability estimate to its reserve fund. If the difference is:~~

(a) ~~Less than fifteen percent, the department will accept the stated reserves of the group as the required surety level.~~

(b) ~~Greater than fifteen percent, the department will establish the group's required surety level.~~

(2) **What type of surety is acceptable for a group self-insurer's reserve fund?** A group self-insurer's reserve fund must be cash:

~~((3))~~ The department will require that each group provide an actuarial report prepared by an independent qualified actuary (associate or fellow of the casualty actuarial society) that shows the following:

(a) Development of the next year's rates and allocation to members;

(b) Calculation of outstanding claims liabilities cover all years after being certified to self-insure; and

(c) Statement of the adequacy of the group's contingency reserve (assets and liabilities).

(2) **May a group self-insurer pay expenses from its reserve fund?** A group self-insurer may pay only the following items from its cash reserve fund:

(a) Administrative expenses for operating the group self-insurance program, including claims handling expenses, legal, investigative or administrative costs and department administrative assessments.

(b) Claim expenditures. Supplemental pension fund (SPRF) benefits may also be paid from the reserve fund if the group redeposits SPRF reimbursements into the reserve account. Interest earned by the reserve account must remain in the account while this method is in effect.

(c) Reinsurance premiums. All recoveries from these policies must be redeposited into the reserve fund. Within eighteen months of premium payment, the group must return the amount paid for premiums if reinsurance recoveries were not sufficient to return the account to its original amount.

~~((4))~~ (3) **How can a group self-insurer assess its members for reserve fund costs?** A group self-insurer may determine how it will assess members for required reserve fund costs. The group's bylaws must describe the procedures it will use to collect these costs.

~~((5))~~ (4) **Must a group self-insurer purchase reinsurance?** A group self-insurer must obtain reinsurance for each year of operation to ensure adequate protection against catastrophic or unexpected loss.

~~((6))~~ (5) **What if a group self-insurer collects excess premiums during a fund year and has a surplus?** A group self-insurer may refund surplus money from a fund year if it retains sufficient money to fulfill all of its workers' compensation obligations. This includes maintaining the required reserve fund.

~~((7))~~ (6) **What if a group self-insurer collects insufficient premiums during a fund year and has a deficit?** The department will demand a group self-insurer ~~((may))~~ to cover a deficit by:

(a) ~~((After receiving department approval, using:~~
~~((i))~~ Unencumbered surplus from a different fund year;
~~((ii))~~ (b) An alternative method; or
~~((b))~~ (c) Assessing the membership. ~~((The department may require the group to use this method.))~~

AMENDATORY SECTION (Amending WSR 09-13-018, filed 6/5/09, effective 7/6/09)

WAC 296-15-221 Self-insurers' reporting requirements. (1) **What information must self-insurers report to the department?** Each self-insurer must provide the department:

(a) The name, title, address and phone number of the single contact person who is the liaison with the department in all self-insurance matters. This contact will be sent all department correspondence and is responsible for forwarding information to appropriate parties for timely action.

(b) A copy of its current policy of applying sick leave, health and welfare benefits or any other compensation in conjunction with, or as a substitute for, time loss benefits.

(2) **When must self-insurers notify the department of business status changes?** Self-insurers must notify the department in writing:

(a) Immediately, of any plans to:

(i) Cease business entirely or cease business in Washington; or

(ii) Dispose of controlling financial interest of the original self-insurer. The self-insurer must surrender its certificate for cancellation if requested by the department.

(b) Within thirty days, of any:

(i) Amendment(s) or modification(s) to the self-insurer's articles, charter or agreement of incorporation, association, copartnership or sole proprietorship which will materially change the business identity or structure originally certified.

(A) The department may require additional documentation.

(B) If the self-insurer becomes a subsidiary to another firm, the parent must provide the department with its written guarantee on L&I form F207-040-001 to assume responsibility for all workers' compensation liabilities of the subsidiary if the subsidiary defaults on its liabilities. See WAC 296-15-021 for additional information.

(ii) Separation (for example, divestiture or spinoff) of any part of the original self-insurer.

(A) The original self-insurer remains responsible for claims liability of the separated part up to the date of separation unless the department approves an alternative.

(B) If the separating part wishes to continue being self-insured, it must submit an application for self-insurance certification (L&I Form F207-001-000) to the department at least thirty days before separation.

(C) If certification cannot be granted before separation, industrial insurance coverage must be purchased from the state fund effective the date of separation.

(iii) Relocation, addition or closure of physical locations.

(3) **When must self-insurers notify the department of administrative changes?** A self-insurer must notify the department in writing within ten days, of any change to its:

(a) Single contact person who is the liaison with the department in all self-insurance matters. The self-insurer must include the contact's title, address and phone number.

(b) Contract with a service organization or third party administrator independent of the self-insurer which will participate in the self-insurer's responsibilities. The self-insurer must submit a copy of the new or updated service contract. See WAC 296-15-021 for additional information.

(c) Administrator of its workers' compensation program, if the self-insurer is self-administered instead of contracting with a service organization or third party administrator.

(4) **What reports must self-insurers submit to the department?** Each self-insurer must submit:

(a) Complete and accurate quarterly reports summarizing worker hours and claim costs paid the previous quarter. Self-insurers must use a form substantially similar to the pre-printed Quarterly Report for Self-Insured Business, L&I form F207-006-000, form sent by the department. This report is the basis for determining the administrative, second injury fund, supplemental pension, asbestosis and insolvency trust assessments. Payment is due by the date specified on the pre-printed report sent by the department.

(i) Worker hours must be reported as defined in chapter 296-17 WAC General reporting rules, audit and recordkeeping, rates and rating system for Washington workers' compensation insurance.

(ii) Claim costs include, but are not limited to:

(A) Time loss compensation. Include the amount of time loss the worker would have been entitled to if kept on full salary.

(B) Permanent partial disability (PPD) awards.

(C) Medical bills.

(D) Prescriptions.

(E) Medical appliances.

(F) Independent medical examinations and/or consultations.

(G) Loss of earning power.

(H) Travel expenses for treatment or rehabilitation.

(I) Vocational rehabilitation expenses.

(J) Penalties paid to injured workers.

(K) Interest on board orders.

(b) A complete and accurate annual report of all claim costs paid for each year of liability with an estimate of future claim costs. The self-insurer must use a form substantially similar to the Annual Report for Self-Insured Businesses (SIF-7), L&I form F207-007-000. This report is due March 1 of each year. The department uses this for the annual determination of each self-insurer's surety requirement.

(c) ~~((A fully audited financial statement within six months after the end of the self-insurer's fiscal year. This report demonstrates the self-insurer's continued ability to provide benefits and pay assessments as required. The department will consider a written request for filing time extension.))~~ Privately held entities are required to submit annually audited financial statements within six months of their fiscal year end, unless the department grants an extension. Failure to provide financial statements will result in increased surety requirements and may result in decertification as a self-insured.

(i) This statement must be prepared by a certified public accountant.

(ii) A self-insurer with a parental guarantee may submit the parent's fully audited financial statement if the parent's audited statement includes the financial condition of all subsidiaries, including the self-insurer.

(iii) A political subdivision of the state may submit a state auditor's report if it includes the self-insurer's audited financial statement. If the state auditor does not audit the self-insurer annually, the self-insurer must submit financial statements prepared internally for any year a report by the state auditor is not available.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 296-15-024 Additional certification requirements.

WSR 21-13-142
PERMANENT RULES
REDISTRICTING COMMISSION

[Filed June 22, 2021, 11:56 a.m., effective July 23, 2021]

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

Purpose: The redistricting commission has reestablished itself since the last redistricting exercise in 2011-2012 and its administrative procedures need to be updated. The proposal: (1) Updates the commission's office location and telephone/fax number to remain in effect for 2021-2022; (2) eliminates the need for a commission vote and chair authorization for the payment of necessary expenses of witnesses invited by the commission to testify; and (3) gives the executive director, rather than the chair, the authority to execute contracts and leases and approve expenditures and reimbursements up to \$30,000 without the need for prior approval of the commission. The first change will alert the public to the commission's new contact information, while the second and third changes will increase operational efficiencies.

Citation of Rules Affected by this Order: Amending WAC [417-01-125, 417-01-140, and 417-01-155].

Statutory Authority for Adoption: RCW 44.05.080.

Adopted under notice filed as WSR 21-09-048 on April 15, 2021.

A final cost-benefit analysis is available by contacting Lisa McLean, P.O. Box 40948, Olympia, WA 98504-0948, phone 360-522-0373, email Lisa.McLean@redistricting.wa.gov, website redistricting.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 3, Repealed 0.

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

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

Date Adopted: June 21, 2021.

Lisa McLean
Executive Director

AMENDATORY SECTION (Amending WSR 11-15-010, filed 7/7/11, effective 8/7/11)

WAC 417-01-125 Offices. (1) The commission office is located at ~~((1063 Capitol Way South, Suite 16,))~~ 1007 Washington Street S.E., Olympia, Washington. The mailing address is: Washington State Redistricting Commission, P.O. Box 40948, Olympia, WA ~~((98504-0948. Telephone and facsimile number: ((360-786-0770. Facsimile number: 360-586-0433))~~) 98504-0948. Telephone and facsimile number: 360-524-4390. Internet address: www.redistricting.wa.gov. Electronic mail address: contact@redistricting.wa.gov.

wa.gov. Office hours for the commission shall be from 8 a.m. to 5 p.m. on all normal business days. Office hours for inspection and copying of public records shall be as provided in chapter two hereof.

(2) The commission address and contact information shall remain in effect for the duration of the ~~((2011-2012))~~ 2021-2022 commission. Inquiries after that date shall be directed to the secretary of state.

AMENDATORY SECTION (Amending WSR 91-20-006, filed 9/19/91, effective 10/20/91)

WAC 417-01-140 Professional advisors. The commission may, by majority vote, appoint attorneys, advisors and others to assist it in the conduct of its duties, and they shall have such duties and receive such compensation and reimbursement as the commission may from time to time, by majority vote, determine. ~~((The chair, upon approval by a majority of the commission's voting members, shall authorize the payment of necessary expenses of a witness incurred in testifying at the invitation of the commission.))~~

AMENDATORY SECTION (Amending WSR 11-15-010, filed 7/7/11, effective 8/7/11)

WAC 417-01-155 Conduct of commission business. (1) Three voting members of the commission shall constitute a quorum for the conduct of business.

(2) The votes of any three of the commissioners shall be required for any official action of the commission: Provided, That the ~~((chair))~~ executive director shall have the authority on behalf of the commission to execute contracts and leases, and approve expenditures and reimbursements, related to the business of the commission. The ~~((chair))~~ executive director may, without the prior approval of the commission, authorize expenditures ~~((for equipment and supplies))~~ not to exceed ~~((15,000))~~ \$30,000. Expenditures made pursuant to this section shall be reported as a separate item on the agenda at the next commission meeting.

(3) The chair shall not have a vote at any meeting of the commission.

(4) Commission meetings shall be conducted in accordance with the Open Public Meetings Act (chapter 42.30 RCW).

(5) The commission shall not adopt any redistricting plan, or partial redistricting plan, except at a public meeting, notice of which has been given in accordance with these rules.

(6) The commission shall not take any action by secret ballot.

(7) Motions shall not require a second in order to be placed before the commission for a vote.

(8) All public meetings of the commission shall be electronically recorded. The minutes and tapes thereof shall be available to the public in accordance with the rules regarding access to public records held by the commission. At all meetings of the commission where public testimony regarding redistricting boundaries is a scheduled agenda item, the commission shall provide for the presence of a court reporter to record such testimony. A typewritten transcript of such testimony shall be prepared as soon as possible after such hear-

ings and shall be made available to the public in accordance with the rules regarding access to public records held by the commission. The transcript of a court reporter prepared pursuant to this section shall become part of the official records of the commission.

(9) Except as provided in this section, the chair shall preside at all meetings. In the event of the chair's absence the commission shall select from among the voting members a temporary chair to preside in the chair's absence. The position of temporary chair shall alternate between a member of the two parties represented on the commission.

WSR 21-13-150
PERMANENT RULES
DEPARTMENT OF ECOLOGY

[Order 19-10—Filed June 22, 2021, 1:59 p.m., effective July 23, 2021]

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

Purpose: Chapter 173-224 WAC, Water quality permit fees, the purpose of this chapter is to establish a permit fee system for state waste discharge and National Pollutant Discharge Elimination System (NPDES) permits issued by ecology pursuant to RCW 90.48.160, 90.48.162, or 90.48.260.

RCW 90.48.465 requires ecology to establish, by rule, annual permit fees to recover the cost of administering the wastewater and stormwater permit programs. Ecology is adopting chapter 173-224 WAC, Water quality permit fees, in response to this law.

Ecology is adopting this rule amendment to continue recovering expenses in operating and managing the permit programs. Given the unprecedented changes to our state and the economy during the pandemic, ecology will maintain permit fees at their current rate for the next two years.

Citation of Rules Affected by this Order: Amending chapter 173-224 WAC.

Statutory Authority for Adoption: RCW 90.48.465.

Adopted under notice filed as WSR 20-23-022 [21-07-061] on June 22, 2021 [March 15, 2021].

Changes Other than Editing from Proposed to Adopted Version: Minor edits considered not-significant to WAC 173-224-040 (3)(h) to clarify the legal limitation on ecology's ability to assess a fee against municipal wastewater facilities in excess of the statutory cap.

A final cost-benefit analysis is available by contacting Ligeia Heagy, Department of Ecology, Water Quality Program, P.O. Box 47600, Olympia, WA 98504-7600, phone 360-280-3697, people with speech disability may call TTY at 877-833-6341. People with impaired hearing may call Washington relay service at 711, email wqfee_unit@ecy.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 5, Repealed 0.

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

Date Adopted: June 22, 2021.

Laura Watson
 Director

AMENDATORY SECTION (Amending WSR 19-14-040, filed 6/26/19, effective 7/27/19)

WAC 173-224-030 Definitions. "Administrative expenses" means those costs associated with issuing and administering permits under RCW 90.48.160, 90.48.162, and 90.48.260.

"Aluminum and magnesium reduction mills" means the electrolytic reduction of alumina or magnesium salts to produce aluminum or magnesium metal.

"Animal unit" means the following:

Animal Type	Number of Animals per Animal Unit
Dairy Cows	
Jersey Breed	
Milking Cow	0.900
Dry Cow	0.900
Heifer	0.220
Calf	0.220
Other Breeds	
Milking Cow	1.400
Dry Cow	1.000
Heifer	0.800
Calf	0.500
Feedlot Beef	0.877
Horses	0.500
Sheep	0.100
Swine for breeding	0.375
Swine for slaughter	0.110
Laying hens & pullets > 3 months	0.004
Broilers & pullets < 3 months	0.002

For those concentrated animal feeding operations not listed on the above table, the department will use 1,000 pounds of live animal weight and the weight of the type of animal in determining the number of animal units.

"Annual permit fee" means the fee charged by the department for annual expenses associated with activities specified in RCW 90.48.465. This annual fee is based on the state's fiscal year (July 1 - June 30).

"bbls/d" means barrels per day of feedstock for petroleum refineries.

"bins/yr" means total standard bins used during the last complete calendar year by a facility in the fruit packing industry. The bins measure approximately 47.5 inches x 47.4 inches x 29.5 inches and hold approximately 870 pounds of fruit.

"Chemical pulp mill w/chlorine bleaching" means any pulp mill that uses chlorine or chlorine compounds in their bleaching process.

"Combined food processing waste treatment facility" means a facility that treats wastewater from more than one separately permitted food processor and receives no domestic wastewater or waste from industrial sources other than food processing.

"Combined industrial waste treatment" means a facility which treats wastewater from more than one industry in any of the following categories: Inorganic chemicals, metal finishing, ore concentration, organic chemicals, or photofinishers.

"Combined sewer overflow (CSO)" means the event during which excess combined sewage flow caused by inflow is discharged from a combined sewer, rather than conveyed to the sewage treatment plant because either the capacity of the treatment plant or the combined sewer is exceeded.

"Concentrated animal feeding operation" means an "animal feeding operation" that meets the criteria in Appendix B of 40 C.F.R. 122 as presently enacted and any subsequent modifications thereto.

"Contaminants of concern" means a chemical for which an effluent limit is established (this does not include pH, flow, temperature, or other "nonchemical parameters"). Petroleum constituents are considered as one contaminant of concern even if more than one effluent limit is established (e.g., Total Petroleum Hydrocarbons and BTEX).

"Crane" means a machine used for hoisting and lifting ship hulls.

"cu. yds/yr" means the cubic yards per year for total production from a sand and gravel facility during the most recent completed calendar year.

"Department" means the department of ecology.

"Director" means the director of the department of ecology.

"Disturbed acres" means the total area which will be disturbed during all phases of the construction project or common plan of development or sale. This includes all clearing, grading, and excavating, and any other activity which disturbs the surface of the land.

"Domestic wastewater" means water carrying human wastes, including kitchen, bath, and laundry wastes from residences, buildings, industrial establishments or other places, together with any groundwater infiltration or surface waters that may be present.

"Domestic wastewater facility" means all structures, equipment, or processes required to collect, carry away, treat, reclaim or dispose of domestic wastewater together with such industrial waste as may be present.

"EPA" means the United States Environmental Protection Agency.

"Fin fish rearing and hatching" means the raising of fin fish for fisheries enhancement or sale, by means of hatcheries, net pens, or other confined fish facilities.

"Flavor extraction" means the recovery of flavors or essential oils from organic products by steam distillation.

"Food processing" means the preparation of food for human or animal consumption or the preparation of animal by-products, excluding fruit packing. This category includes, but is not limited to, fruit and vegetable processing, meat and poultry products processing, dairy products processing, beer production, rendering and animal feed production. Food processing wastewater treatment plants that treat wastes from only one separately permitted food processor must be treated as one facility for billing purposes.

"Fruit packing" means preparing fruit for wholesale or retail sale by washing and/or other processes in which the skin of the fruit is not broken and in which the interior part of the fruit does not come in direct contact with the wastewater.

"gpy" means gallons per year and is used to calculate winery production levels for the most recent completed calendar year.

"Gross revenue for business" means the gross income from Washington business activities.

"Hazardous waste clean up sites" means any facility where there has been confirmation of a release or threatened release of a hazardous substance that requires remedial action other than RCRA corrective action sites.

"Industrial facility" means any facility not included in the definition of municipal/domestic facility.

"Industrial gross revenue" means the annual amount of the sales of goods and services produced using the processes regulated by the wastewater discharge permit.

"Industrial stormwater" means a stormwater discharge from an operation required to be covered under ecology's NPDES and state waste discharge general permit for stormwater discharges associated with industrial activities or modifications to that permit or having an individual wastewater permit for stormwater only.

"Manufacturing" means making goods and articles by hand or machine into a manufactured product.

"Median household income" means the most recent available census data, updated yearly based on inflation rates as measured by the Federal Bureau of Labor Statistics and published as the Consumer Price Index.

"Metal finishing" means preparing metal surfaces by means of electroplating, electroless plating, anodizing, coating (chromating, phosphating and coloring), chemical etching and milling, and printed circuit board manufacture.

"MGD" means million gallons per day.

"Municipal/domestic facility" means a publicly owned facility treating domestic wastewater together with any industrial wastes that may be present, or a privately owned facility treating solely domestic wastewater.

"Municipal gross revenue" means gross receipts from monthly, bimonthly, and/or quarterly user charges for sewer services received from all classes of customers;

Included in these user charges are user charges and fees based on wastewater constituents' strengths and characteristics including high-strength surcharges and charges based on biochemical oxygen demand, suspended solids, oil and grease, toxicants, heavy metals, and flow, etc.

Municipal gross revenue includes charges for receipt and treatment of septic tank wastes, holding tank wastes, chemical toilet wastes, etc.

Municipal gross revenue includes all amounts received from other municipalities for sewage interception, treatment, collection, or disposal.

Gross revenue excludes:

Amounts derived by municipalities directly from taxes levied for the support or maintenance of sewer services.

Late charges, penalties for nontimely payment by customers, interest on late payments, and all other penalties and fines.

Permit fees and compliance monitoring fees for wastewater discharge permits issued by municipalities with local pretreatment programs. Permit fees which are charged to cover the cost of providing sewer service are not excluded from municipal gross revenue.

Receipts by a municipality of special assessments or installments thereof and interests and penalties thereon, and charges in lieu of assessments.

Connection charges.

Revenues from sales of by-products such as sludge, processed wastewater, etc.

"Municipality" means a city, town, county, district, association, or other public body created by or in accordance with state law and that has jurisdiction over disposal of sewage, industrial wastes, or other wastes, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under 33 U.S.C. Sec. 1288. State government agencies are not included in this definition.

"Noncontact cooling water with additives" means water used for cooling that does not come into direct contact with any raw materials, intermediate product, waste product or finished product, but which may contain chemicals or additives added by the permittee to control corrosion or fouling of the cooling system.

"Noncontact cooling water without additives" means water used for cooling that does not come into direct contact with any raw material, intermediate product, waste product or finished product, and which does not contain chemicals added by the permittee. The noncontact cooling water fee without additives category applies to those facilities which discharge only noncontact cooling water and which have no other wastewater discharges required to be permitted under RCW 90.48.160, 90.48.162, and 90.48.260.

"Nonferrous metals forming" means manufacturing semifinished products from pure metal or metal alloys other than iron or steel or of metals not otherwise classified in WAC 173-224-040(2).

"Nonoperating sand and gravel site" means a location where previous mining or processing has occurred; that has not been fully reclaimed; that conducts mining or processing fewer than ninety days per year, and that may include stockpiles of raw materials or finished products. The permittee may add or withdraw raw materials or finished products from the stockpiles for transportation off-site for processing, use, or sale and still be considered a nonoperating site.

"NPDES permit" means a National Pollutant Discharge Elimination System permit issued by the department under

Section 402 of the federal Clean Water Act and RCW 90.48.260.

"Person" means any political subdivision, government agency, municipality, industry, public or private corporation, partnership, association, firm, individual, or any other entity whatever.

"Portable facility" means a facility that is designed for mobility and is moved from site to site for short term operations. A portable facility applies only to an asphalt batch plant, portable concrete batch plant and portable rock crusher.

"RCRA" means Resource Conservation Recovery Act clean up sites required to have a wastewater discharge permit resulting from a corrective action under relevant federal authorities or under chapters (~~(70.105 and 70.105D)~~) 70A.300 and 70A.305 RCW including chapters 173-303 and 173-340 WAC, and are not subject to cost recovery.

"Residential equivalent" means a single-family residence or a unit of sewer service that yields an amount of gross revenue equal to the annual user charge for a single-family residence. In cases where the permit holder does not maintain data on gross revenue, user charges, and/or the number of single-family residences that it serves, "residential equivalent" means an influent flow of two hundred fifty gallons per day.

"Sand and gravel" means mining or quarrying sand, gravel, or rock, or producing concrete, asphalt, or a combination thereof.

"Seafood processing" means:

(a) Preparing fresh, cooked, canned, smoked, preserved, or frozen seafoods, including marine and freshwater animals (fish, shellfish, crustaceans, etc.) and plants, for human or animal consumption; or

(b) Washing, shucking, and/or packaging of mollusks or crustaceans.

"Sewer service" means receiving sewage deposited into and transported by a system of sewers, drains, and pipes to a common point, or points, for disposal or for transfer to treatment for disposal, and activities involving the interception, transfer, storage, treatment, and/or disposal of sewage, or any of these activities.

"State waste discharge permit" means a permit required under RCW 90.48.160 or 90.48.162.

"Stormwater" means precipitation that flows from an industrial operation or construction activity discharging stormwater runoff as defined in 40 C.F.R. 122.26 (b)(14) or facilities that are permitted as a significant contributor of pollutants as allowed in the federal Clean Water Act at Section 402 (p)(2)(E).

"Tons/yr." means the total production from an asphalt production facility in tons during the most recent completed calendar year.

"Vegetable/bulb washing" means washing, packing, and/or shipping fresh vegetables and bulbs when there is no cooking or cutting of the product before packing.

AMENDATORY SECTION (Amending WSR 19-14-040, filed 6/26/19, effective 7/27/19)

WAC 173-224-040 Permit fee schedule. (1) Application fee. In addition to the annual fee, first time applicants

(except those applying for coverage under a general permit) will pay a one time application fee of twenty-five percent of the annual permit fee, or \$250.00, whichever is greater. An application fee is assessed for RCRA sites regardless of

whether a new permit is issued or an existing permit for other than the discharge resulting from the RCRA corrective action, is modified.

(2) ~~(Industrial facility categories:)~~ INDUSTRIAL FACILITY CATEGORIES.

<u>INDUSTRIAL FACILITY CATEGORIES</u>	<u>FY (2020) 2022 ANNUAL PERMIT FEE</u>	<u>FY (2021) 2023 ANNUAL PERMIT FEE & BEYOND</u>
Aluminum Alloys	(\$21,768.00) <u>\$22,950.00</u>	\$22,950.00
Aluminum and Magnesium Reduction Mills		
a. NPDES Permit	115,785.00	115,785.00
b. State Permit	57,895.00	57,895.00
Aluminum Forming	(65,304.00) <u>68,850.00</u>	68,850.00
Aquaculture		
a. Finfish hatching and rearing - Individual Permit	5,889.00	5,889.00
b. Finfish hatching and rearing - General Permit Coverage	4,125.00	4,125.00
c. Shellfish hatching	223.00	223.00
Aquatic Pest Control		
a. Irrigation Districts	(647.00) <u>682.00</u>	682.00
b. Mosquito Control Districts	(647.00) <u>682.00</u>	682.00
c. Invasive Moth Control	(647.00) <u>682.00</u>	682.00
d. Aquatic Species Control & Eradication	(647.00) <u>682.00</u>	682.00
e. Oyster Growers	(647.00) <u>682.00</u>	682.00
f. Rotenone Control	(647.00) <u>682.00</u>	682.00
Boat Yards - Individual Permit Coverage		
a. With stormwater only discharge	(558.00) <u>588.00</u>	588.00
b. All others	(1,113.00) <u>1,173.00</u>	1,173.00
Boat Yards - General Permit Coverage		
a. With stormwater only discharge	(509.00) <u>537.00</u>	537.00
b. All others	(1,031.00) <u>1,087.00</u>	1,087.00
Bridge Washing		
a. Single-site Permit	(3,839.00) <u>4,047.00</u>	4,047.00
b. WSDOT Annual Fee	(12,757.00) <u>13,450.00</u>	13,450.00
Coal Mining and Preparation		

INDUSTRIAL FACILITY CATEGORIES		FY (2020) 2022 ANNUAL PERMIT FEE	FY (2021) 2023 ANNUAL PERMIT FEE & BEYOND
a.	< 200,000 tons per year	((8,702.00)) <u>9,175.00</u>	9,175.00
b.	200,000 - < 500,000 tons per year	((19,593.00)) <u>20,657.00</u>	20,657.00
c.	500,000 - < 1,000,000 tons per year	((34,827.00)) <u>36,718.00</u>	36,718.00
d.	1,000,000 tons per year and greater	((65,304.00)) <u>68,850.00</u>	68,850.00
Combined Industrial Waste Treatment			
a.	< 10,000 gpd	3,972.00	3,972.00
b.	10,000 - < 50,000 gpd	9,816.00	9,816.00
c.	50,000 - < 100,000 gpd	19,636.00	19,636.00
d.	100,000 - < 500,000 gpd	39,266.00	39,266.00
e.	500,000 gpd and greater	58,901.00	58,901.00
Combined Food Processing Waste Treatment Facilities			
		18,797.00	18,797.00
Combined Sewer Overflow System			
a.	< 50 acres	3,927.00	3,927.00
b.	50 - < 100 acres	9,816.00	9,816.00
c.	100 - < 500 acres	11,783.00	11,783.00
d.	500 acres and greater	15,704.00	15,704.00
Commercial Laundry			
		((526.00)) <u>555.00</u>	555.00
Concentrated Animal Feeding Operation			
a.	<u>Nondairy CAFOs</u>		
	<u>1.</u> < 200 Animal Units	((292.00)) <u>308.00</u>	308.00
	((b.)) <u>2.</u> 200 - < 400 Animal Units	((732.00)) <u>772.00</u>	772.00
	((c.)) <u>3.</u> 400 - < 600 Animal Units	((1,466.00)) <u>1,546.00</u>	1,546.00
	((d.)) <u>4.</u> 600 - < 800 Animal Units	((2,198.00)) <u>2,317.00</u>	2,317.00
	((e.)) <u>5.</u> 800 Animal Units and greater	((2,935.00)) <u>3,094.00</u>	3,094.00
b.	((Dairies)) <u>Dairy CAFOs \$0.50 per Animal Unit for FY 2022, FY 2023 and beyond, not to exceed (((\$1,969.00 for FY 2020 and)) \$2,076.00 ((for FY 2021 & beyond))</u>		
Facilities Not Otherwise Classified - Individual Permit Coverage			
a.	< 1,000 gpd	1,963.00	1,963.00
b.	1,000 - < 10,000 gpd	3,927.00	3,927.00
c.	10,000 - < 50,000 gpd	9,817.00	9,817.00
d.	50,000 - < 100,000 gpd	15,704.00	15,704.00
e.	100,000 - < 500,000 gpd	31,258.00	31,258.00
f.	500,000 - < 1,000,000 gpd	39,266.00	39,266.00

INDUSTRIAL FACILITY CATEGORIES		FY ((2020)) 2022 ANNUAL PERMIT FEE	FY ((2021)) 2023 ANNUAL PERMIT FEE & BEYOND
g.	1,000,000 gpd and greater	58,900.00	58,900.00
((Facilities Not Otherwise Classified – General Permit Coverage			
a.	<1,000 gpd	1,377.00	1,377.00
b.	1,000 - < 10,000 gpd	2,849.00	2,849.00
e.	10,000 - < 50,000 gpd	6,874.00	6,874.00
d.	50,000 - < 100,000 gpd	10,997.00	10,997.00
e.	100,000 - < 500,000 gpd	21,987.00	21,987.00
f.	500,000 - < 1,000,000 gpd	27,484.00	27,484.00
g.	1,000,000 gpd and greater	41,232.00	41,232.00))
Flavor Extraction			
a.	Steam Distillation	202.00	202.00
Food Processing			
a.	< 1,000 gpd	1,961.00	1,961.00
b.	1,000 - < 10,000 gpd	5,003.00	5,003.00
c.	10,000 - < 50,000 gpd	8,934.00	8,934.00
d.	50,000 - < 100,000 gpd	14,036.00	14,036.00
e.	100,000 - < 250,000 gpd	19,633.00	19,633.00
f.	250,000 - < 500,000 gpd	25,819.00	25,819.00
g.	500,000 - < 750,000 gpd	32,393.00	32,393.00
h.	750,000 - < 1,000,000 gpd	39,266.00	39,266.00
i.	1,000,000 - < 2,500,000 gpd	48,374.00	48,374.00
j.	2,500,000 - < 5,000,000 gpd	53,993.00	53,993.00
k.	5,000,000 gpd and greater	58,901.00	58,901.00
Fruit Packing - Individual Permit Coverage			
a.	0 - < 1,000 bins/yr.	392.00	392.00
b.	1,000 - < 5,000 bins/yr.	786.00	786.00
c.	5,000 - < 10,000 bins/yr.	1,570.00	1,570.00
d.	10,000 - < 15,000 bins/yr.	3,144.00	3,144.00
e.	15,000 - < 20,000 bins/yr.	5,199.00	5,199.00
f.	20,000 - < 25,000 bins/yr.	7,264.00	7,264.00
g.	25,000 - < 50,000 bins/yr.	9,717.00	9,717.00
h.	50,000 - < 75,000 bins/yr.	10,800.00	10,800.00
i.	75,000 - < 100,000 bins/yr.	12,564.00	12,564.00
j.	100,000 - < 125,000 bins/yr.	15,704.00	15,704.00
k.	125,000 - < 150,000 bins/yr.	19,633.00	19,633.00
l.	150,000 bins/yr. and greater	23,524.00	23,524.00
Fruit Packing - General Permit Coverage			
a.	0 - < 1,000 bins/yr.	274.00	274.00
b.	1,000 - < 5,000 bins/yr.	550.00	550.00
c.	5,000 - < 10,000 bins/yr.	1,100.00	1,100.00
d.	10,000 - < 15,000 bins/yr.	2,201.00	2,201.00

INDUSTRIAL FACILITY CATEGORIES		FY ((2020)) 2022 ANNUAL PERMIT FEE	FY ((2021)) 2023 ANNUAL PERMIT FEE & BEYOND
e.	15,000 - < 20,000 bins/yr.	3,643.00	3,643.00
f.	20,000 - < 25,000 bins/yr.	5,085.00	5,085.00
g.	25,000 - < 50,000 bins/yr.	6,800.00	6,800.00
h.	50,000 - < 75,000 bins/yr.	7,557.00	7,557.00
i.	75,000 - < 100,000 bins/yr.	8,788.00	8,788.00
j.	100,000 - < 125,000 bins/yr.	10,997.00	10,997.00
k.	125,000 - < 150,000 bins/yr.	13,744.00	13,744.00
l.	150,000 bins/yr. and greater	16,491.00	16,491.00
Fuel and Chemical Storage			
a.	< 50,000 bbls	1,963.00	1,963.00
b.	50,000 - < 100,000 bbls	3,927.00	3,927.00
c.	100,000 - < 500,000 bbls	9,816.00	9,816.00
d.	500,000 bbls and greater	19,636.00	19,636.00
Hazardous Waste Clean Up Sites			
a.	Leaking Underground Storage Tanks (LUST)		
	1. State Permit	5,149.00	5,149.00
	2. NPDES Permit Issued pre 7/1/94	5,148.00	5,148.00
	3. NPDES Permit Issued post 7/1/94	10,298.00	10,298.00
b.	Non-LUST Sites		
	1. 1 or 2 Contaminants of concern	10,069.00	10,069.00
	2. > 2 Contaminants of concern	20,137.00	20,137.00
Ink Formulation and Printing			
a.	Commercial Print Shops	3,021.00	3,021.00
b.	Newspapers	5,035.00	5,035.00
c.	Box Plants	8,055.00	8,055.00
d.	Ink Formulation	10,070.00	10,070.00
Inorganic Chemicals Manufacturing			
a.	Lime Products	9,816.00	9,816.00
b.	Fertilizer	11,816.00	11,816.00
c.	Peroxide	15,704.00	15,704.00
d.	Alkaline Earth Salts	19,636.00	19,636.00
e.	Metal Salts	27,482.00	27,482.00
f.	Acid Manufacturing	38,942.00	38,942.00
g.	Chlor-alkali	78,533.00	78,533.00
Iron and Steel			
a.	Foundries	((21,768.00)) <u>22,950.00</u>	22,950.00
b.	Mills	((43,573.00)) <u>45,939.00</u>	45,939.00
Metal Finishing			
a.	< 1,000 gpd	((2,609.00)) <u>2,751.00</u>	2,751.00

INDUSTRIAL FACILITY CATEGORIES		FY ((2020)) 2022 ANNUAL PERMIT FEE	FY ((2021)) 2023 ANNUAL PERMIT FEE & BEYOND
b.	1,000 - < 10,000 gpd	((4,351.00)) <u>4,587.00</u>	4,587.00
c.	10,000 - < 50,000 gpd	((10,879.00)) <u>11,470.00</u>	11,470.00
d.	50,000 - < 100,000 gpd	((21,767.00)) <u>22,949.00</u>	22,949.00
e.	100,000 - < 500,000 gpd	((43,530.00)) <u>45,894.00</u>	45,894.00
f.	500,000 gpd and greater	((65,299.00)) <u>68,845.00</u>	68,845.00
Noncontact Cooling Water With Additives - Individual Permit Coverage			
a.	< 1,000 gpd	1,229.00	1,229.00
b.	1,000 - < 10,000 gpd	((1,713.00)) <u>1,716.00</u>	((1,713.00)) <u>1,716.00</u>
c.	10,000 - < 50,000 gpd	3,685.00	3,685.00
d.	50,000 - < 100,000 gpd	8,593.00	8,593.00
e.	100,000 - < 500,000 gpd	14,721.00	14,721.00
f.	500,000 - < 1,000,000 gpd	20,863.00	20,863.00
g.	1,000,000 - < 2,500,000 gpd	27,001.00	27,001.00
h.	2,500,000 - < 5,000,000 gpd	32,993.00	32,993.00
i.	5,000,000 gpd and greater	39,266.00	39,266.00
Noncontact Cooling Water With Additives - General Permit Coverage			
a.	< 1,000 gpd	861.00	861.00
b.	1,000 - < 10,000 gpd	1,716.00	1,716.00
c.	10,000 - < 50,000 gpd	2,579.00	2,579.00
d.	50,000 - < 100,000 gpd	6,015.00	6,015.00
e.	100,000 - < 500,000 gpd	10,307.00	10,307.00
f.	500,000 - < 1,000,000 gpd	14,606.00	14,606.00
g.	1,000,000 - < 2,500,000 gpd	18,899.00	18,899.00
h.	2,500,000 - < 5,000,000 gpd	23,191.00	23,191.00
i.	5,000,000 gpd and greater	27,484.00	27,484.00
Noncontact Cooling Water Without Additives - Individual Permit Coverage			
a.	< 1,000 gpd	984.00	984.00
b.	1,000 - < 10,000 gpd	1,963.00	1,963.00
c.	10,000 - < 50,000 gpd	2,948.00	2,948.00
d.	50,000 - < 100,000 gpd	6,874.00	6,874.00
e.	100,000 - < 500,000 gpd	11,783.00	11,783.00
f.	500,000 - < 1,000,000 gpd	16,687.00	16,687.00
g.	1,000,000 - < 2,500,000 gpd	21,511.00	21,511.00
h.	2,500,000 - < 5,000,000 gpd	26,503.00	26,503.00
i.	5,000,000 gpd and greater	31,414.00	31,414.00
Noncontact Cooling Water Without Additives - General Permit Coverage			

INDUSTRIAL FACILITY CATEGORIES		FY ((2020)) 2022 ANNUAL PERMIT FEE	FY ((2021)) 2023 ANNUAL PERMIT FEE & BEYOND
a.	< 1,000 gpd	688.00	688.00
b.	1,000 - < 10,000 gpd	1,377.00	1,377.00
c.	10,000 - < 50,000 gpd	2,064.00	2,064.00
d.	50,000 - < 100,000 gpd	4,811.00	4,811.00
e.	100,000 - < 500,000 gpd	8,246.00	8,246.00
f.	500,000 - < 1,000,000 gpd	11,683.00	11,683.00
g.	1,000,000 - < 2,500,000 gpd	15,117.00	15,117.00
h.	2,500,000 - < 5,000,000 gpd	18,554.00	18,554.00
i.	5,000,000 gpd and greater	21,987.00	21,987.00
Nonferrous Metals Forming		((21,768.00)) <u>22,950.00</u>	22,950.00
Ore Mining			
a.	Ore Mining	((4,352.00)) <u>4,588.00</u>	4,588.00
b.	Ore mining with physical concentration processes	((8,704.00)) <u>9,177.00</u>	9,177.00
c.	Ore mining with physical and chemical concentration processes	((34,827.00)) <u>36,718.00</u>	36,718.00
Organic Chemicals Manufacturing			
a.	Fertilizer	19,636.00	19,636.00
b.	Aliphatic	39,266.00	39,266.00
c.	Aromatic	58,901.00	58,901.00
Petroleum Refining			
a.	< 10,000 bbls/d	39,266.00	39,266.00
b.	10,000 - < 50,000 bbls/d	77,853.00	77,853.00
c.	50,000 bbls/d and greater	157,075.00	157,075.00
Photofinishers			
a.	< 1,000 gpd	1,570.00	1,570.00
b.	1,000 gpd and greater	3,927.00	3,927.00
Power and/or Steam Plants			
a.	Steam Generation - Nonelectric	7,924.00	7,924.00
b.	Hydroelectric	7,924.00	7,924.00
c.	Nonfossil Fuel	11,781.00	11,781.00
d.	Fossil Fuel	31,414.00	31,414.00
Pulp, Paper and Paper Board			
a.	Fiber Recyclers/Nonwood Pulp Mills	19,632.00	19,632.00
b.	Paper Mills	39,266.00	39,266.00
c.	Groundwood Pulp Mills		
	1. < 300 tons per day	58,901.00	58,901.00
	2. > 300 tons per day	117,813.00	117,813.00
d.	Chemical Pulp Mills		

INDUSTRIAL FACILITY CATEGORIES	FY (2020) 2022 ANNUAL PERMIT FEE	FY (2021) 2023 ANNUAL PERMIT FEE & BEYOND
w/o Chlorine Bleaching	157,068.00	157,068.00
e. Chemical Pulp Mills		
w/Chlorine Bleaching	176,697.00	176,697.00
Radioactive Effluents and Discharges (RED)		
a. < 3 waste streams	37,986.00	37,986.00
b. 3 - < 8 waste streams	65,965.00	65,965.00
c. 8 waste streams and greater	108,648.00	108,648.00
RCRA Corrective Action Sites	27,597.00	27,597.00
Sand and Gravel - Individual Permit Coverage		
a. Mining Activities		
1. Mining, screening, washing and/or crushing	3,581.00	3,581.00
2. Nonoperating site (fee per site)	147.00	147.00
b. Asphalt Production		
1. 1 - < 50,000 tons/yr.	1,492.00	1,492.00
2. 50,000 - < 300,000 tons/yr.	3,582.00	3,582.00
3. 300,000 tons/yr. and greater	4,480.00	4,480.00
4. Nonoperating Asphalt	147.00	147.00
c. Concrete Production		
1. 1 - < 25,000 cu. yds/yr.	1,492.00	1,492.00
2. 25,000 - < 200,000 cu. yds/yr.	3,582.00	3,582.00
3. 200,000 cu. yds/yr. and greater	4,480.00	4,480.00
4. Nonoperating Concrete	147.00	147.00
<p>The fee for a facility in the sand and gravel production category is the sum of the applicable fees in the mining activities and concrete and asphalt production categories.</p>		
d. Portable Operations		
1. Rock Crushing	3,581.00	3,581.00
2. Asphalt	3,581.00	3,581.00
3. Concrete	3,581.00	3,581.00
4. Nonoperating Site	147.00	147.00
Sand and Gravel - General Permit Coverage		
a. Mining Activities		
1. Mining, screening, washing and/or crushing	2,505.00	2,505.00
2. Nonoperating site (fee per site)	103.00	103.00
b. Asphalt Production		
1. 0 - < 50,000 tons/yr.	1,046.00	1,046.00
2. 50,000 - < 300,000 tons/yr.	2,507.00	2,507.00
3. 300,000 tons/yr. and greater	3,135.00	3,135.00
4. Nonoperating Asphalt	103.00	103.00
c. Concrete Production		
1. 0 - < 25,000 cu. yds/yr.	1,046.00	1,046.00
2. 25,000 - < 200,000 cu. yds/yr.	2,507.00	2,507.00

INDUSTRIAL FACILITY CATEGORIES	FY ((2020)) 2022 ANNUAL PERMIT FEE	FY ((2021)) 2023 ANNUAL PERMIT FEE & BEYOND
3. 200,000 cu. yds/yr. and greater	3,135.00	3,135.00
4. Nonoperating Concrete	103.00	103.00
The fee for a facility in the sand and gravel production category is the sum of the applicable fees in the mining activities and concrete and asphalt production categories.		
d. Portable Operations		
1. Rock Crushing	2,507.00	2,507.00
2. Asphalt	2,507.00	2,507.00
3. Concrete	2,507.00	2,507.00
4. Nonoperating	103.00	103.00
Seafood Processing		
a. < 1,000 gpd	1,963.00	1,963.00
b. 1,000 - < 10,000 gpd	5,003.00	5,003.00
c. 10,000 - < 50,000 gpd	8,934.00	8,934.00
d. 50,000 - < 100,000 gpd	14,036.00	14,036.00
e. 100,000 gpd and greater	19,636.00	19,636.00
Shipyards		
a. Per crane, travel lift, small boat lift	((4,352.00)) <u>4,588.00</u>	4,588.00
b. Per drydock under 250 ft in length	((4,352.00)) <u>4,588.00</u>	4,588.00
c. Per graving dock	((4,352.00)) <u>4,588.00</u>	4,588.00
d. Per marine way/ramp	((6,528.00)) <u>6,882.00</u>	6,882.00
e. Per syncrolift	((6,528.00)) <u>6,882.00</u>	6,882.00
f. Per drydock 250 ft and over in length	((8,704.00)) <u>9,177.00</u>	9,177.00
g. In-water vessel maintenance	((8,704.00)) <u>9,177.00</u>	9,177.00
The fee for a facility in the shipyard category is the sum of the fees for the applicable units in the facility.		
Solid Waste Sites (nonstormwater)		
a. Nonputrescible	7,850.00	7,850.00
b. < 50 acres	15,703.00	15,703.00
c. 50 - < 100 acres	31,414.00	31,414.00
d. 100 - < 250 acres	39,266.00	39,266.00
e. 250 acres and greater	58,901.00	58,901.00
Textile Mills	78,533.00	78,533.00
Timber Products		
a. Log Storage	3,927.00	3,927.00
b. Veneer	7,850.00	7,850.00

INDUSTRIAL FACILITY CATEGORIES		FY ((2020)) 2022 ANNUAL PERMIT FEE	FY ((2021)) 2023 ANNUAL PERMIT FEE & BEYOND
c.	Sawmills	15,704.00	15,704.00
d.	Hardwood, Plywood	27,482.00	27,482.00
e.	Wood Preserving	37,706.00	37,706.00
Vegetable/Bulb Washing Facilities			
a.	< 1,000 gpd	130.00	130.00
b.	1,000 - < 5,000 gpd	262.00	262.00
c.	5,000 - < 10,000 gpd	517.00	517.00
d.	10,000 - < 20,000 gpd	1,042.00	1,042.00
e.	20,000 and greater	1,721.00	1,721.00
Vehicle Maintenance and Freight Transfer			
a.	< 0.5 acre	3,927.00	3,927.00
b.	0.5 - < 1.0 acre	7,850.00	7,850.00
c.	1.0 acre and greater	11,781.00	11,781.00
Vessel Deconstruction			
		((19,157.00	20,197.00))
a.	<u>Base fee</u>	<u>3,100.00</u>	<u>3,100.00</u>
b.	<u>On land (per project)</u>	<u>3,500.00</u>	<u>3,500.00</u>
c.	<u>On barge or drydock (per project)</u>	<u>4,800.00</u>	<u>4,800.00</u>
d.	<u>In-water (per project)</u>	<u>18,700.00</u>	<u>18,700.00</u>
<u>The fee for a facility in the vessel deconstruction category is the sum of the base fee and number and type of projects completed in the previous calendar year.</u>			
Water Plants - Individual Permit Coverage		5,359.00	5,359.00
Water Plants - General Permit Coverage		3,752.00	3,752.00
Wineries - Individual Permit Coverage			
a.	< 24,999 gallons per year (gpy)	423.00	423.00
b.	25,000 - < 39,999 gpy	621.00	621.00
c.	40,000 - < 54,999 gpy	960.00	960.00
d.	55,000 - < 69,999 gpy	1,297.00	1,297.00
e.	70,000 - < 99,999 gpy	1,636.00	1,636.00
f.	100,000 - < 299,999 gpy	2,370.00	2,370.00
g.	300,000 - < 699,999 gpy	7,111.00	7,111.00
h.	700,000 - < 999,999 gpy	16,594.00	16,594.00
i.	1,000,000 - < 1,999,999 gpy	23,762.00	23,762.00
j.	2,000,000 gpy and greater	47,470.00	47,470.00
Wineries - General Permit Coverage			
a.	< 24,999 gpy	296.00	296.00
b.	25,000 - < 39,999 gpy	434.00	434.00
c.	40,000 - < 54,999 gpy	671.00	671.00
d.	55,000 - < 69,999 gpy	907.00	907.00
e.	70,000 - < 99,999 gpy	1,144.00	1,144.00
f.	100,000 - < 299,999 gpy	1,657.00	1,657.00
g.	300,000 - < 699,999 gpy	4,973.00	4,973.00

INDUSTRIAL FACILITY CATEGORIES		FY ((2020)) 2022 ANNUAL PERMIT FEE	FY ((2021)) 2023 ANNUAL PERMIT FEE & BEYOND
h.	700,000 - < 999,999 gpy	11,604.00	11,604.00
i.	1,000,000 - < 1,999,999 gpy	16,617.00	16,617.00
j.	2,000,000 gpy and greater	33,196.00	33,196.00

(a) Facilities other than those in the sand and gravel, shipyard, or RCRA categories that operate within several fee categories or subcategories, shall be charged from that category or subcategory with the highest fee.

(b) The total annual permit fee for a water treatment plant that primarily serves residential customers may not exceed three dollars per residential equivalent. The number of residential equivalents is determined by dividing the facility's annual gross revenue in the previous calendar year by the annual user charge for a single family residence that uses nine hundred cubic feet of water per month.

(c) Fruit packer, sand and gravel, and winery permit holders are required to submit information to the department certifying annual production (calendar year) or unit processes. The permit holder shall submit the information to the department by the required due date. Failure to provide this information results in a fee determination based on the highest subcategory the facility has received permit coverage in.

(i) Information submitted shall bear a certification of correctness and be signed:

(A) In the case of a corporation, by an authorized corporate officer;

(B) In the case of a limited partnership, by an authorized partner;

(C) In the case of a general partnership, by an authorized general partner; or

(D) In the case of a sole proprietorship, by the proprietor.

(ii) The department may verify information submitted and, if it determines that false or inaccurate statements have been made, it may, in addition to taking other actions provided by law, revise both current and previously granted fee determinations.

(d) Fees for fruit packers discharging only noncontact cooling water without additives shall pay the lesser of the applicable fee in the fruit packing or noncontact cooling water without additives categories.

(e) Where no clear industrial facility category exists for placement of a permit holder, the department may elect to place the permit holder in a category with dischargers or permit holders that contain or use similar properties or processes and/or a category which contains similar permitting complexities to the department.

(f) Hazardous waste cleanup sites and EPA authorized RCRA corrective action sites with whom the department has begun cost recovery through chapter ~~((70.105D))~~ 70A.305 RCW shall not pay a permit fee under chapter 173-224 WAC until such time as the cost recovery under chapter ~~((70.105D))~~ 70A.305 RCW ceases.

(g) Any permit holder, with the exception of nonoperating sand and gravel operations or a permitted portable facility, who has not been in continuous operation within a consecutive eighteen-month period or who commits to not being

in operation for a consecutive eighteen-month period or longer can have their permit fee reduced to twenty-five percent of the fee that they would be otherwise assessed. This nonoperating mode may be verified by the appropriate ecology staff. Once operations resume, the permit fee returns to the full amount.

Facilities who commit to the minimum eighteen-month nonoperating mode but go back into operation during the same eighteen-month period are assessed permit fees as if they were active during the entire period.

(h) Facilities with subcategories based on gallons per day (gpd) shall have their annual permit fee determined by using the maximum daily flow or maximum monthly average permitted flow in gallons per day as specified in the waste discharge permit, whichever is greater.

(i) RCRA corrective action sites requiring a waste discharge permit are assessed a separate permit fee regardless of whether the discharge is authorized by a separate permit or by a modification to an existing permit for a discharge other than that resulting from the corrective action.

(3) MUNICIPAL/DOMESTIC FACILITIES

(a) The annual permit fee for a permit held by a municipality for a domestic wastewater facility issued under RCW 90.48.162 or 90.48.260 is determined as follows:

Residential Equivalents (RE)	FY ((2020)) 2022 Annual Permit Fee	FY ((2021)) 2023 Annual Permit Fee & Beyond
< 250,000	\$2.16	\$2.16
> 250,000	((2.07)) 2.16	2.16

(b) The annual permit fee under RCW 90.48.162 or 90.48.260 that is held by a municipality which:

(i) Holds more than one permit for domestic wastewater facilities; and

(ii) Treats each domestic wastewater facility as a separate accounting entity, is determined as in (a) of this subsection.

A separate accounting entity is one that maintains separate funds or accounts for each domestic wastewater facility. Revenues are received from the users to pay for the costs of operating that facility.

(c) The sum of the annual permit fees for permits held by a municipality that:

(i) Holds more than one permit for domestic wastewater facilities issued under RCW 90.48.162 or 90.48.260; and

(ii) Does not treat each domestic wastewater facility as a separate accounting entity, as described in (b) of this subsection, is determined as in (a) of this subsection.

(d) The permit fee for a privately owned and public-owned domestic wastewater facility that primarily serves residential customers is determined as in (a) of this subsection. Residential customers are those whose lot, parcel or real estate, or building is primarily used for domestic dwelling purposes.

(e) The annual permit fee for privately owned or public-owned domestic wastewater facilities must be determined by using the maximum daily flow or maximum monthly average permitted flow in million gallons per day, whichever is greater, as specified in the waste discharge permit. Permit fees for privately owned or public-owned domestic wastewater facilities that do not serve primarily residential customers and for state-owned domestic wastewater facilities are the following:

Permitted Flows	FY ((2020)) 2022 Annual Permit Fee	FY ((2021)) 2023 Annual Permit Fee & Beyond
.1 MGD and Greater	((\$14,299.00) <u>15,075.00</u>)	\$15,075.00
.05 MGD to < .1 MGD	((\$,721.00) <u>6,032.00</u>)	6,032.00
.0008 MGD to < .05 MGD	((2,861.00) <u>3,016.00</u>)	3,016.00
< .0008 MGD	((863.00) <u>910.00</u>)	910.00

(f) The number of residential equivalents is calculated in the following manner:

(i) If the facility serves only single-family residences, the number of residential equivalents is the number of single-family residences that it served on January 1 of the previous calendar year.

(ii) If the facility serves both single-family residences and other classes of customers, the number of residential equivalents is calculated in the following manner:

(A) Calculation of the number of residential equivalents that the facility serves in its own service area. Subtract from the previous calendar year's gross revenue:

(I) Any amounts received from other municipalities for sewage interception, treatment, collection, or disposal; and

(II) Any user charges received from customers for whom the permit holder pays amounts to other municipalities for sewage treatment or disposal services. Divide the resulting figure by the annual user charge for a single-family residence.

(B) Calculation of the number of residential equivalents that the facility serves in other municipalities which pay amounts to the facility for sewage interception, treatment, collection, or disposal:

(I) Divide any amounts received from other municipalities during the previous calendar year by the annual user

charge for a single-family residence. In this case "annual user charge for a single-family residence" means the annual user charge that the facility charges other municipalities for sewage interception, treatment, collection, or disposal services for a single-family residence. If the facility charges different municipalities different single-family residential user fees, then the charge used in these calculations must be that which applies to the largest number of single-family residential customers. Alternatively, if the facility charges different municipalities different single-family residential user fees, the permit holder may divide the amount received from each municipality by the annual user charge that it charges that municipality for a single-family residence and sum the resulting figures.

(II) If the facility does not charge the other municipality on the basis of a fee per single-family residence, the number of residential equivalents in the other municipality is calculated by dividing its previous calendar year's gross revenue by its annual user fee for a single-family residence. If the other municipality does not maintain data on its gross revenue, user fees, and/or the number of single-family residences that it serves, the number of residential equivalents is calculated as in (f)(iv) of this subsection.

(III) If the other municipality serves only single-family residences, the number of residential equivalents may be calculated as in (f)(i) of this subsection.

The sum of the resulting figures is the number of residential equivalents that the facility serves in other municipalities.

(C) The number of residential equivalents is the sum of the number of residential equivalents calculated in (f)(ii)(A) and (B) of this subsection.

(iii) The annual user fee for a single-family residence is calculated by either of the following methods, at the choice of the permit holder:

(A) The annual user fee for a single-family residence using nine hundred cubic feet of water per month. If users are billed monthly, this is calculated by multiplying by twelve the monthly user fee for a single-family residence using nine hundred cubic feet of water per month. If users are billed bimonthly, the annual user fee is calculated by multiplying by six the bimonthly user fee for a single-family residence using one thousand eight hundred cubic feet of water per two-month period. If the user fee for a single-family residence varies, depending on age, income, location, etc., then the fee used in these calculations must be that which applies to the largest number of single-family residential customers.

(B) The average annual user fee for a single-family residence. This average is calculated by dividing the previous calendar year's gross revenue from provision of sewer services to single-family residences by the number of single-family residences served on January 1 of the previous calendar year. If the user fee for a single-family residence varies, depending on age, income, location, etc., then the gross revenue and number of single-family residences used in making this calculation must be those for all the single-family residential customers.

In either case, (f)(iii)(A) or (B) of this subsection, the permit holder must provide the department with a copy of its complete sewer rate schedule for all classes of customers.

(iv) If a permit holder does not maintain data on its gross revenue, user fees, and/or the number of single-family residences that it serves, and therefore cannot use the methods described in (f)(i) or (ii) of this subsection to calculate the number of residential equivalents that it serves, then the number of residential equivalents that it serves is calculated by dividing the average daily influent flow to its facility for the previous calendar year by two hundred fifty gallons. This average is calculated by summing all the daily flow measurements taken during the previous calendar year and then dividing the resulting sum by the number of days on which flow was measured. Data for this calculation must be taken from the permit holder's discharge monitoring reports. Permit holders using this means of calculating the number of their residential equivalents must submit with their application a complete set of copies of their discharge monitoring reports for the previous calendar year.

(g) Fee calculation procedures for holders of permits for domestic wastewater facilities.

(i) Municipalities holding permits for domestic wastewater facilities issued under RCW 90.48.162 and 90.48.260, and holders of permits for privately owned domestic wastewater facilities that primarily serve residential customers must complete a form certifying the number of residential equivalents served by their domestic wastewater system. The form must be completed and returned to the department within thirty days after it is mailed to the permit holder by the

department. Failure to return the form could result in permit termination.

(ii) The form shall bear a certification of correctness and be signed:

(A) In the case of a corporation, by an authorized corporate officer;

(B) In the case of a limited partnership, by an authorized partner;

(C) In the case of a general partnership, by an authorized partner;

(D) In the case of a sole proprietorship, by the proprietor; or

(E) In the case of a municipal or other public facility, by either a ranking elected official or a principal executive officer.

(iii) The department may verify the information contained in the form and, if it determines that the permit holder has made false statements, may, in addition to taking other actions provided by law, revise both current and previously granted fee determinations.

(h) The annual permit fee for a domestic wastewater facility with a Puget Sound nutrient general permit will be calculated at the rate of \$0.31 per residential equivalent per year. The number of residential equivalents will be calculated as described in (g) of this subsection. The permit fee in this subsection will not be assessed for municipal domestic wastewater treatment facilities unless the legislature amends RCW 90.48.465(2) to authorize this fee.

(4) STORMWATER PERMIT COVERAGES (UNLESS SPECIFICALLY CATEGORIZED ELSEWHERE IN WAC 173-224-040(2))

	FY ((2020)) 2022 Annual Permit Fee	FY ((2021)) 2023 Annual Permit Fee & Beyond
a. Individual Construction or Industrial Stormwater Permits		
1. < 50 acres	(\$5,721.00) <u>6,032.00</u>	\$6,032.00
2. 50 -< 100 acres	((11,433.00)) <u>12,054.00</u>	12,054.00
3. 100 -< 500 acres	((17,163.00)) <u>18,095.00</u>	18,095.00
4. 500 acres and greater	((22,880.00)) <u>24,122.00</u>	24,122.00
b. Facilities Covered Under the Industrial Stormwater General Permit		
1. Municipalities and state agencies	((1,874.00)) <u>1,976.00</u>	1,976.00
2. New permit holders without historical gross revenue information	((982.00)) <u>1,035.00</u>	1,035.00
3. The permit fee for all other permit holders shall be based on the gross revenue of the business for the previous calendar year		
Gross Revenue		
Less than \$100,000	((182.00)) <u>192.00</u>	192.00
\$100,000 -< \$1,000,000	((789.00)) <u>832.00</u>	832.00

	FY ((2020)) 2022 Annual Permit Fee	FY ((2021)) 2023 Annual Permit Fee & Beyond
\$1,000,000 -< \$2,500,000	((944.00)) 995.00	995.00
\$2,500,000 -< \$5,000,000	((1,577.00)) 1,663.00	1,663.00
\$5,000,000 -< \$10,000,000	((2,365.00)) 2,493.00	2,493.00
\$10,000,000 and greater	((2,857.00)) 3,012.00	3,012.00

To be eligible for less than the maximum permit fee, the permit holder must provide documentation to substantiate the gross revenue claims. Documentation shall be provided annually in a manner prescribed by the department. The documentation shall bear a certification of correctness and be signed:

- (a) In the case of a corporation, by an authorized corporate officer;
- (b) In the case of a limited partnership, by an authorized general partner;
- (c) In the case of a general partnership, by an authorized partner; or
- (d) In the case of a sole proprietorship, by the proprietor.

The department may verify the information contained in the submitted documentation and, if it determines that the permit holder has made false statements, may deny the adjustment, revoke previously granted fee adjustments, and/or take such other actions deemed appropriate or required under state or federal law.

Permitted Amount of Disturbed Acreage	FY 2022 Annual Permit Fee	FY 2023 Annual Permit Fee & Beyond
c. Construction Activities Covered Under the Construction Stormwater General Permit(s)		
1. Less than 5 acres disturbed area	((740.00)) \$780.00	\$780.00
2. 5 -< 7 acres of disturbed area	((1,203.00)) 1,268.00	1,268.00
3. 7 -< 10 acres of disturbed area	((1,624.00)) 1,712.00	1,712.00
4. 10 -< 20 acres of disturbed area	((2,216.00)) 2,336.00	2,336.00
5. 20 acres and greater of disturbed area	((2,756.00)) 2,906.00	2,906.00

(5) MUNICIPAL SEPARATE STORM SEWER SYSTEM PERMITS

(a) Except as provided for in (d) of this subsection, the municipal stormwater permit annual fee for the entities listed below is:

Name of Entity	FY ((2020)) 2022 Annual Permit Fee	FY ((2021)) 2023 Annual Permit Fee & Beyond
King County	((65,157.00)) \$68,695.00	\$68,695.00
Snohomish County	((65,157.00)) 68,695.00	68,695.00

Name of Entity	FY ((2020)) 2022 Annual Permit Fee	FY ((2021)) 2023 Annual Permit Fee & Beyond
Pierce County	((65,157.00)) 68,695.00	68,695.00
Tacoma, City of	((65,157.00)) 68,695.00	68,695.00
Seattle, City of	((65,157.00)) 68,695.00	68,695.00
Washington Department of Transportation	((65,157.00)) 68,695.00	68,695.00

Name of Entity	FY ((2020)) <u>2022</u> Annual Permit Fee	FY ((2021)) <u>2023</u> Annual Permit Fee & Beyond
Clark County	((65,157.00)) <u>68,695.00</u>	68,695.00

(b) Municipal stormwater general permit fees for cities and counties, except as otherwise provided for in (a), (c), and (d) of this subsection, are determined in the following manner: ((For fiscal year 2020, ecology will charge \$1.89 per housing unit inside the geographic area covered by the permit for those cities and counties whose median household income exceeds the state average. Cities and counties whose median household income is less than the state average will have their fee per housing unit reduced to \$.93 per housing unit inside the geographic area covered by the permit.)) For fiscal years ((~~2021~~)) 2022 and 2023 and beyond, ecology will charge \$1.99 per housing unit inside the geographic area covered by the permit for those cities and counties whose median household income exceeds the state average. Cities and counties whose median household income is less than the state average will have their fee per housing unit reduced to \$.98 per housing unit inside the geographic area covered by the permit. Fees will not exceed ((~~\$65,157.00 for fiscal year 2020 and~~)) \$68,695.00 for fiscal years ((~~2021~~)) 2022 and 2023 and beyond. The minimum annual fee will not be lower than ((~~\$2,709.00 for fiscal year 2020 and~~)) \$2,856.00 for fiscal years ((~~2021~~)) 2022 and 2023 and beyond unless the permitted city or county has a median household income less than the state average. In this case, the city or county will pay a fee totaling ((~~\$.93~~)) \$.98 per housing unit for fiscal years ((~~2020~~)). The fee amount for FY 2021 is \$.98 per housing unit)) 2022 and 2023 and beyond.

(c) Other entities required to have permit coverage under a municipal stormwater general permit will pay an annual fee based on the entities' previous year's annual operating budget as follows:

Annual Operating Budget	FY ((2020)) <u>2022</u> Annual Permit Fee	FY ((2021)) <u>2023</u> Annual Permit Fee & Beyond
Less than \$100,000	((189.00)) <u>199.00</u>	\$199.00
\$100,000 - < \$1,000,000	((764.00)) <u>805.00</u>	805.00
\$1,000,000 - < \$5,000,000	((1,906.00)) <u>2,009.00</u>	2,009.00
\$5,000,000 - < \$10,000,000	((2,860.00)) <u>3,015.00</u>	3,015.00
\$10,000,000 and greater	((4,765.00)) <u>5,024.00</u>	5,024.00

For the purposes of determining the annual permit fee category, the annual operating budget shall be the entities' annual operating budget for the entities' previous fiscal year and shall be determined as follows:

(i) For diking, drainage, irrigation, and flood control districts, the district's annual operating budget.

(ii) For ports, the annual operating budget for the port district.

(iii) For colleges, schools, and universities, the portion of the operating budget related to plant or facilities operation and maintenance for the site or sites subject to the permit.

(iv) For state agencies, the annual operating budget for the site or sites subject to the permit.

(v) For other entities not listed, ecology will consider annual revenue, and the noncapital operating budget for the site subject to the permit.

(d) Municipal stormwater permits written specifically for a single entity, such as a single city, county, or agency, issued after the effective date of this rule will have its annual fee determined in the following manner:

(i) For cities and counties listed in (a) of this subsection, the fee shall be five times the amount identified.

(ii) For cities and counties whose median household income exceeds the state average, the fee shall be the higher of either five times the otherwise applicable general permit fee or \$30,000. For municipalities whose median household income is less than the state average, the fee shall be the higher of 2.5 times the otherwise applicable general permit fee or \$15,000.

(iii) For entities that would otherwise be covered under a municipal stormwater general permit as determined in (c) of this subsection, the fiscal years ((~~2020~~)) 2022 and 2023 annual fee and beyond for a permit written for a specific entity is ((~~\$13,554.00. For fiscal year 2021, the annual fee is~~)) \$14,290.00.

(e) Ecology will assess a single permit fee for entities which apply only as copermitees or coapplicants. The permit fee shall be equal to the highest single permit fee which would have been assessed if the copermitees had applied separately.

AMENDATORY SECTION (Amending WSR 19-14-040, filed 6/26/19, effective 7/27/19)

WAC 173-224-050 Permit fee computation and payments. (1) The department shall charge permit fees based on the permit fee schedule contained in WAC 173-224-040. The department may charge fees at the beginning of the fiscal year to which they apply. The department shall notify permit holders of fee charges by sending an invoice to the permittee on record. The department must receive permit fee payments within forty-five days after the department sends a billing statement. The department may elect to bill permit holders a prorated portion of the annual fee on a monthly, quarterly, or other periodic basis.

(2) Permit fee computation shall begin on the first day of each fiscal year. In the case of facilities or activities not previously covered by permits, fee computation begins on the permit issuance date. In the case of applicants for state waste discharge permits who are deemed to have a temporary per-

mit under RCW 90.48.200, computation shall begin on the sixty-first day after the department accepts a completed application. In the case of NPDES permit holders who submit a new, updated permit application containing information that could change their assigned permit fee, computation and permit fee category reassignment begins upon the date the department accepts the application. Any facility that obtains permit coverage but fails to operate will still be obligated to pay the annual permit fee assessment until the department terminates permit coverage. Permits terminated during the fiscal year will pay the annual fee assessment regardless of the permit termination date.

(3) Permit fees for sand and gravel general permit holders are assessed as in subsection (2) of this section and:

(a) Nonoperating sites. A facility conducting mining, screening, washing and/or crushing activities excluding portable rock crushing operations is considered nonoperating for fee purposes if they are conducting these activities for less than ninety cumulative days during a calendar year. A facility producing no asphalt and/or concrete during the calendar year is also considered nonoperating for fee purposes.

(b) Nonoperating sites that become active for only concrete and/or asphalt production are assessed a prorated fee for the actual time inactive. For the actual time a concrete and/or asphalt facility is active excluding asphalt portable batch plants and concrete portable batch plants, fees are based on total production of concrete and/or asphalt.

(c) Fees for continuously active sites that produce concrete and/or asphalt excluding asphalt portable batch plants and concrete portable batch plants, are based on the previous calendar year production totals. Existing facilities must provide the department with the production totals for concrete and/or asphalt produced during the previous calendar year. New facilities with no historical asphalt and/or concrete production data will have their first year fee based on the production levels reported on the application for coverage under the National Pollutant Discharge Elimination System and State Waste Discharge Permit for Process Water, Stormwater, and Mine Dewatering Water Discharges Associated with Sand and Gravel Operations, Rock Quarries and Similar Mining Facilities including Stockpiles of Mined Materials, Concrete Batch Operations and Asphalt Batch Operations general permit.

(4) Fees for fruit packer general permit holders are assessed as in subsection (2) of this section and are computed based on the three previous calendar years production totals. Existing facilities must provide the department with the production totals in the manner described in WAC 173-224-040 (2)(c). New facilities with no historical production data will have their first year fee based on the estimated production level for that year. The second year fee is determined based on the actual production during the first year. Fee calculation for subsequent years will be based on the average production values of previous years.

(5) Facilities with construction and industrial stormwater general permit coverage will have their annual permit fees begin on the permit issuance date.

(6) Permit fee accrual will continue until the permit has been terminated by the department regardless if the activity covered under the permit has already ceased.

(7) Facilities with an existing NPDES and/or state wastewater discharge permit who also have obtained industrial and/or construction stormwater general permit coverage shall only pay an annual fee based on the permit with the highest permit fee category assessment.

(8) Computation of fees shall end on June 30th, the last day of the state's fiscal year regardless of the permit termination date.

(9) The applicable permit fee shall be paid using ecology's online payment software or by check or money order payable to the "Department of Ecology" and mailed to the Water Quality Permit Fee Program, P.O. Box 47611, Olympia, Washington 98504-7611.

(10) In the event a check is returned due to insufficient funds, the department shall consider the permit fee to be unpaid.

(11) Delinquent accounts. Permit holders are considered delinquent in the payment of fees if the fees are not received by the first invoice billing due date. Delinquent accounts are processed in the following manner:

(a) Municipal and government entities shall be notified by regular mail that they have forty-five days to bring the delinquent account up-to-date. Accounts that remain delinquent after forty-five days may receive a permit revocation letter for nonpayment of fees.

(b) Nonmunicipal or nongovernment permit holders shall be notified by the department by regular mail that they have forty-five days to bring the delinquent account up-to-date. Accounts that remain delinquent after forty-five days may be turned over for collection. In addition to the amount owed, the collection agent ~~((will))~~ may add a ~~((surcharge totaling twenty percent of))~~ fee to the delinquent amount owed as authorized by RCW 19.16.500. ~~((The surcharge is to recover the costs for collection.))~~ If the collection agency fails to recover the delinquent fees after twelve months, the permit holder may receive a permit revocation letter for nonpayment of fees.

AMENDATORY SECTION (Amending WSR 89-12-027 and 90-07-015, filed 5/31/89 and 3/13/90, effective 4/13/90)

WAC 173-224-080 Transfer of ~~((ownership or control))~~ permit coverage. ~~((The department shall charge permit fees from the permit holder on record with the department.))~~ In the event that ~~((ownership or control of a permitted facility or activity))~~ a permit is transferred, ~~((it shall not be the responsibility of the department to transfer funds between a new and previous permit holder, and))~~ the department shall not refund permit fees ~~((charges prospectively in the event of a transfer))~~. Fees paid by a previous permit holder shall be ~~((deemed))~~ applied to ~~((satisfy))~~ the corresponding fee payment requirements of a new permit holder. Unpaid permit fees owed by a previous permit holder are the liability of a new permit holder. Agreements between a new and previous permit holder are not binding on the department.

AMENDATORY SECTION (Amending WSR 19-14-040, filed 6/26/19, effective 7/27/19)

WAC 173-224-090 Permit fee reductions. With the exception of facilities covered under the construction and

industrial stormwater general permits who are not eligible to apply for a fee reduction, any business required to pay a fee may receive a reduction of its permit fee.

(1) Market research and development.

(a) To qualify for the fee reduction, the operation under permit must be:

(i) A research facility with the primary purpose of researching market viability for products and/or processes that reduce or eliminate wastewater pollutants or wastewater pollutant generating activity;

(ii) Covered under an individual permit issued within the past three fiscal years;

(iii) Assessed a fee under an established fee category, excluding facility not otherwise classified.

(b) To receive a fee reduction, the permit holder must submit an application in a manner prescribed by the department demonstrating that the conditions in (a) of this subsection are met. The application shall bear a certification of correctness and be signed:

(i) In the case of a corporation, by an authorized corporate officer;

(ii) In the case of a limited partnership, by an authorized general partner;

(iii) In the case of a general partnership, by an authorized partner;

(iv) In the case of a sole proprietorship, by the proprietor; or

(v) In the case of a municipality, state, or other public entity, by either a principal executive officer or a ranking elected official.

(c) The department may verify the information contained in the application and, if it determines that the permit holder has made false statements, may deny the fee reduction request and revoke previously granted fee reductions.

(d) The permit fee for market research and development determined to be eligible under (a) of this subsection shall be reduced to twenty-five percent of the assessed annual permit fee.

(e) A site can only be eligible for this reduction for three consecutive fiscal years.

(2) Small business fee reduction.

(a) To qualify for the fee reduction, a business must:

(i) Be a corporation, partnership, sole proprietorship, or other legal entity formed for the purpose of making a profit;

(ii) Be independently owned and operated from all other businesses (i.e., not a subsidiary of a parent company);

(iii) Have annual sales of one million dollars or less of the goods or services produced using the processes regulated by the waste discharge or individual stormwater discharge permit; and

(iv) Have an original annual fee assessment totaling five hundred dollars or greater.

(b) To receive a fee reduction, the permit holder must submit an application in a manner prescribed by the department demonstrating that the conditions in (a) of this subsection are met. The application shall bear a certification of correctness and be signed:

(i) In the case of a corporation, by an authorized corporate officer;

(ii) In the case of a limited partnership, by an authorized general partner;

(iii) In the case of a general partnership, by an authorized partner; or

(iv) In the case of a sole proprietorship, by the proprietor.

(c) The department may verify the information contained in the application and, if it determines that the permit holder has made false statements, may deny the fee reduction request and revoke previously granted fee reductions.

(d) The permit fee for small businesses determined to be eligible under (a) of this subsection shall be reduced to fifty percent of the assessed annual permit fee.

Extreme hardship fee reduction. Any small business with annual gross revenue totaling one hundred thousand dollars or less from goods and services produced using the processes regulated by the waste discharge or individual stormwater discharge permit may apply for an extreme hardship fee reduction. The small business must provide sufficient evidence to support its claim of an extreme hardship. In no case will a permit fee be reduced below \$128.00.

WSR 21-13-151

PERMANENT RULES

SKAGIT VALLEY COLLEGE

[Filed June 22, 2021, 2:10 p.m., effective July 23, 2021]

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

Purpose: To bring chapter 132D-150 WAC, Code of student conduct, into compliance with Title IX federal law changes that went into effect August 14, 2020.

Citation of Rules Affected by this Order: New code of student conduct, WAC 132D-150-500, 132D-150-510, 132D-150-520, 132D-150-530, 132D-150-540, 132D-150-550, 132D-150-560, 132D-150-570 and 132D-150-580; and amending WAC 132D-150-010, 132D-150-020, 132D-150-030, 132D-150-090, 132D-150-110, 132D-150-130, 132D-150-150, 132D-150-170, 132D-150-230, 132D-150-250, 132D-150-270, 132D-150-290, 132D-150-310, and 132D-150-410.

Statutory Authority for Adoption: RCW 28B.50.150.

Adopted under notice filed as WSR 21-11-043 on May 13, 2021.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 9, Amended 15, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 9, Amended 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: June 22, 2021.

Lisa Radeleff
Rules Coordinator

AMENDATORY SECTION (Amending WSR 16-04-102, filed 2/2/16, effective 3/4/16)

WAC 132D-150-010 Authority. The board of trustees, acting pursuant to RCW 28B.50.140(14), delegates to the president of the college the authority to administer disciplinary action. Administration of the disciplinary procedures is the responsibility of the vice president for student ~~((affairs))~~ services or designee. The student conduct officer shall serve as the principal investigator and administrator for alleged violations of this code.

AMENDATORY SECTION (Amending WSR 16-04-102, filed 2/2/16, effective 3/4/16)

WAC 132D-150-020 Statement of jurisdiction. (1) The code of student conduct 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
- (c) To off-campus conduct that in the judgment of the college adversely affects the college community or the pursuit of its objectives.

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

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

(4) These standards shall apply to a student's conduct even if the student withdraws from college while a disciplinary matter is pending. The college 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 16-04-102, filed 2/2/16, effective 3/4/16)

WAC 132D-150-030 Definitions. The following definitions shall apply for purpose of this student conduct code:

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

(2) "Conduct review officer" is the vice president for student services or other college administrator designated by the president to be responsible for receiving and for reviewing or referring appeals of student disciplinary actions in accor-

dance with the procedures of this code. The president is authorized to reassign any and all of the conduct review officer's duties or responsibilities as set forth in this chapter as may be reasonably necessary.

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

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

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

(6) "Respondent" is the student against whom disciplinary action is initiated.

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

- (a) Hand delivery of the document to the party; or
- (b) By sending the document via first class mail to the party's last known address; or
- (c) By sending the document by email via Skagit Valley College's online student conduct software. It is the responsibility of each student to regularly check their official Skagit Valley College email address.

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

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

- (a) Hand delivery of the document to the specified college official or college official's assistant; or
- (b) By sending the document by email and first class mail to the specified college official's office and college email address.

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

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

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

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

(12) "Calendar day" means days on the calendar including weekends and holidays.

(13) "Sexual misconduct" has the meaning ascribed to this term in WAC 132D-150-050.

Note: "Day" refers to calendar days unless otherwise specified.

AMENDATORY SECTION (Amending WSR 16-04-102, filed 2/2/16, effective 3/4/16)

WAC 132D-150-090 Initiation of disciplinary action.

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

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

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

(4) Within ten 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 his or her decision, the specific student conduct code provisions found to have been violated, the discipline imposed, if any, and a notice of any appeal rights with an explanation of the consequences of failing to file a timely appeal.

~~((4))~~ (5) The student conduct officer may take any of the following disciplinary actions:

(a) Exonerate the respondent and terminate the proceedings.

(b) Impose a disciplinary sanction(s), as described in WAC 132D-150-070.

(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.

AMENDATORY SECTION (Amending WSR 16-04-102, filed 2/2/16, effective 3/4/16)

WAC 132D-150-110 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 conduct officer's decision. Failure to timely file a notice of appeal constitutes a waiver of the right to appeal and the student conduct officer's decision shall be deemed final.

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

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

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

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

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

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

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

(b) Dismissals; and

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

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

(a) Suspensions of ten instructional days or less;

(b) Disciplinary probation;

(c) Written reprimands; and

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

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

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

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

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

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

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

AMENDATORY SECTION (Amending WSR 16-04-102, filed 2/2/16, effective 3/4/16)

WAC 132D-150-150 Brief adjudicative proceedings—Initial hearing. (1) Brief adjudicative proceedings shall be conducted by a conduct review officer. The conduct review officer shall not participate in any case in which he or she is a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

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

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

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

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

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

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

AMENDATORY SECTION (Amending WSR 16-04-102, filed 2/2/16, effective 3/4/16)

WAC 132D-150-170 Brief adjudicative proceedings—Review of an initial decision. (1) An initial decision is subject to review by the president, provided the respondent files a written request for review with the conduct review officer within twenty-one days of service of the initial decision.

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

(3) During the review, the president shall give each party an opportunity to file written responses explaining their view of the matter and shall make any inquiries necessary to ascertain whether the sanctions should be modified or whether the proceedings should be referred to the student conduct committee for a formal adjudicative hearing.

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

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

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

AMENDATORY SECTION (Amending WSR 16-04-102, filed 2/2/16, effective 3/4/16)

WAC 132D-150-230 Appeal—Student conduct committee. (1) Proceedings of the student conduct committee shall be governed by the Administrative Procedure Act, chapter 34.05 RCW, and by the model rules of procedure, chapter 10-08 WAC. To the extent there is a conflict between these rules and chapter 10-08 WAC, these rules shall control.

(2) The student conduct committee chair shall serve all parties with written notice of the hearing no less than seven days in advance of the hearing date ~~(, as further specified in RCW 34.05.434 and WAC 10-08-040 and 10-08-045)~~. The chair may shorten this notice period if both parties agree, and also may continue the hearing to a later time for good cause shown.

(3) The committee chair is authorized to conduct prehearing conferences and/or to make prehearing decisions concerning the extent and form of any discovery, issuance of protective decisions, and similar procedural matters.

(4) Upon request filed at least five days before the hearing by any party or at the direction of the committee chair, the parties shall exchange, no later than the third day prior to the hearing, lists of potential witnesses and copies of potential exhibits that they reasonably expect to present to the committee. Failure to participate in good faith in such a requested exchange may be cause for exclusion from the hearing of any witness or exhibit not disclosed, absent a showing of good cause for such failure.

(5) The committee chair may provide to the committee members in advance of the hearing copies of:

(a) The conduct officer's notification of imposition of discipline, or referral to the committee; and

(b) The notice of appeal, or any response to referral, by the respondent. If doing so, however, the chair should remind

the members that these "pleadings" are not evidence of any facts they may allege.

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

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

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

(9) Each party may be accompanied at the hearing by a nonattorney assistant of his/her choice. ~~((A respondent may elect to be represented by an attorney at his or her))~~ The respondent in all appeals before the committee, or a complainant in an appeal involving allegations of sexual misconduct before the committee, may elect to be represented by an attorney at their own cost, but will be deemed to have waived that right unless, at least four business days before the hearing, written notice of the attorney's identity and participation is filed with the committee chair with a copy to the student conduct officer. The committee will ordinarily be advised by an assistant attorney general. If the respondent and/or the complainant is represented by an attorney, the student conduct officer may also be represented by a second, appropriately screened assistant attorney general.

AMENDATORY SECTION (Amending WSR 16-04-102, filed 2/2/16, effective 3/4/16)

WAC 132D-150-250 Student conduct committee hearings—Presentations of evidence. (1) Upon the failure of any party to attend or participate in a hearing, the student conduct committee may either:

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

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

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

(3) The chair shall cause the hearing to be recorded by a method that he/she selects, in accordance with RCW 34.05.449. That recording, or a copy, shall be made available to any party upon request. The chair shall assure maintenance of the record of the proceeding that is required by RCW 34.05.476, which shall also be available upon request for inspection and copying by any party. Other recording shall also be permitted, in accordance with WAC 10-08-190.

(4) The chair shall preside at the hearing and decide procedural questions that arise during the hearing, except as overridden by majority vote of the committee.

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

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

(7) In cases involving allegations of sexual misconduct, no party shall directly question or cross examine one another. Attorneys for the parties are also prohibited from questioning the opposing party absent express permission from the committee chair. Subject to this exception, all cross-examination questions shall be directed to the committee chair, who in their discretion shall pose the questions on the party's behalf.

AMENDATORY SECTION (Amending WSR 16-04-102, filed 2/2/16, effective 3/4/16)

WAC 132D-150-270 Student conduct committee—Initial decision. (1) At the conclusion of the hearing, the student conduct committee shall permit the parties to make closing arguments in whatever form it wishes to receive them. The committee also may permit each party to propose findings, conclusions, and/or a proposed decision for its consideration.

(2) Within twenty days following the later of the conclusion of the hearing or the committee's receipt of closing arguments, the committee shall issue an initial decision in accordance with RCW 34.05.461 and WAC 10-08-210. The initial decision shall include findings on all material issues of fact and conclusions on all material issues of law, including which, if any, provisions of the student conduct code were violated. Any findings based substantially on the credibility of evidence or the demeanor of witnesses shall be so identified.

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

(4) The committee chair shall cause copies of the initial decision to be served on the parties and their legal counsel of record. The committee chair shall also promptly transmit a copy of the decision and the record of the committee's proceedings to the president.

(5) In cases involving allegations of sexual misconduct, the chair of the student conduct committee, on the same date as the initial decision is served on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the

respondent. Complainant may appeal the student conduct committee's initial decision to the president subject to the same procedures and deadlines applicable to other parties. The notice will also inform the complainant of their appeal rights.

AMENDATORY SECTION (Amending WSR 16-04-102, filed 2/2/16, effective 3/4/16)

WAC 132D-150-290 Appeal from student conduct committee initial decision. (1) A ~~((respondent))~~ party who is aggrieved by the findings or conclusions issued by the student conduct committee may appeal the committee's initial decision to the president by filing a notice of appeal with the president's office within ~~((twenty-one))~~ ten days of service of the committee's initial decision. Failure to file a timely appeal constitutes a waiver of the right and the initial decision shall be deemed final.

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

(3) The president shall provide a written decision to all parties within ~~((forty-five))~~ twenty days after receipt of the notice of appeal. The president's decision shall be final and shall include a notice of any rights to request reconsideration and/or judicial review.

(4) In cases involving allegations of sexual misconduct, the 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) The president shall not engage in an ex parte communication with any of the parties regarding an appeal.

AMENDATORY SECTION (Amending WSR 16-04-102, filed 2/2/16, effective 3/4/16)

WAC 132D-150-310 Summary suspension. (1) Summary suspension is a temporary exclusion from specified college premises or denial of access to all activities or privileges for which a respondent might otherwise be eligible, while an investigation and/or formal disciplinary procedures are pending.

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

(a) Has violated any provision of the code of conduct; and

(b) Presents an immediate danger to the health, safety, or welfare of members of the college community; or

(c) Poses an ongoing threat of substantial disruption of, or interference with, the operations of the college.

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

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

(a) The reasons for imposing the summary suspension, including a description of the conduct giving rise to the summary suspension and reference to the provisions of the student conduct code or the law allegedly violated;

(b) The date, time, and location when the respondent must appear before the conduct review officer for a hearing on the summary suspension; and

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

(5) The conduct review officer shall conduct a hearing on the summary suspension as soon as practicable after imposition of the summary suspension.

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

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

(c) If the ~~((student))~~ 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 in the same day that the summary suspension notice is served on the respondent. The college will also provide the complainant with timely notice of any subsequent changes to the summary suspension order.

NEW SECTION

WAC 132D-150-500 Order of precedence. This supplemental procedure applies to allegations of sexual harassment subject to Title IX jurisdiction pursuant to regulations promulgated by the United States Department of Education. See 34 C.F.R. Part 106. To the extent these supplemental hearing procedures conflict with the Skagit Valley College's standard disciplinary procedures, WAC 132D-150-010 through 132D-150-410, these supplemental procedures shall take precedence.

NEW SECTION

WAC 132D-150-510 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 Skagit Valley 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 132D-150-520 Title IX jurisdiction. (1) This supplemental procedure applies only if the alleged misconduct:

(a) Occurred in the United States;

(b) Occurred during a Skagit Valley 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, WAC 132D-150-010 through 132D-150-410.

(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 office 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 132D-150-530 Initiation of discipline. (1) Upon receiving the Title IX investigation report from the Title IX coordinator, the student conduct officer will independently review the report to determine whether there are sufficient

grounds to pursue a disciplinary action against the respondent for engaging in prohibited conduct under Title IX.

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

- (a) Set forth the basis for Title IX jurisdiction;
 - (b) Identify the alleged Title IX violation(s);
 - (c) Set forth the facts underlying the allegation(s);
 - (d) Identify the range of possible sanctions that may be imposed if the respondent is found responsible for the alleged violation(s); and
 - (e) Explain that the parties are entitled to be accompanied by their chosen advisors during the hearing and that:
 - (i) The advisors will be responsible for questioning all witnesses on the party's behalf;
 - (ii) An advisor may be an attorney; and
 - (iii) 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 132D-150-540 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 132D-150-230. 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 132D-150-550 Rights of parties. (1) The college's student conduct procedures, WAC 132D-150-010 through 132D-150-410, 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 Skagit Valley College's choosing on the party's behalf at no expense to the party.

NEW SECTION

WAC 132D-150-560 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 132D-150-570 Initial order. (1) In addition to complying with WAC 132D-150-270, 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 132D-150-580 Appeals. 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 132D-150-290.

(1) 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).

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

WSR 21-13-154

PERMANENT RULES

HIGHLINE COLLEGE

[Filed June 22, 2021, 2:14 p.m., effective July 23, 2021]

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

Purpose: On May 19, 2020, the Federal Register printed amendments to Title IX regulations (85 F.R. 30575). The new regulations address the grievance process for formal complaints of sexual harassment and became effective on August 14, 2020. In order for the college's Title IX policy and procedures to be compliant with federal regulations, we request the permanent repeal of the WAC that addresses Title IX. The language in the WAC no longer aligns with the new regulations. Updated Title IX policy and procedures have been adopted locally

Citation of Rules Affected by this Order: Amending WAC 132I-300-010 and 132I-300-020.

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

Adopted under notice filed as WSR [21-06-108] on [March 3, 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 2; or

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

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

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

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

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

Date Adopted: June 22, 2021.

Summer Korst
Executive Director
of Human Resources

AMENDATORY SECTION (Amending WSR 12-16-111, filed 8/1/12, effective 9/1/12)

WAC 132I-300-010 Statement of policy. (~~The college provides equal opportunity in education and employment and does not discriminate on the basis of race, color, national origin, age, disability, sex, sexual orientation, marital status, creed, religion, or status as a veteran of war as required by Title IX of the Educational Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, RCW 49.60.030 and their implementing regulations. Prohibited sex discrimination includes sexual harassment (unwelcome sexual conduct of various types).~~

~~Sexual harassment is a form of sex discrimination. It occurs in a variety of situations which share a common element: The inappropriate introduction of sexual activities or comments into the work or learning situation, the creation of relationships of unequal power and/or elements of coercion, such as requests for sexual favors as a criterion for granting work, study, or grading benefits. Sexual harassment may also involve relationships among peers of repeated sexual advances or demeaning verbal behavior resulting in a harmful effect on a person's ability to study or work in the academic setting. In addition, third parties may submit claims if a sexual relationship unfairly confers preferential treatment to participant(s) in the relationship.)~~ (1) Highline College recognizes its responsibility to investigate, resolve, implement corrective measures, and monitor the educational environment and workplace to stop, remediate, and prevent discrimination on the basis of sex, as required by Title IX of the Educational Amendments Act of 1972, Title VII of the Civil Rights Act of 1964, the Violence Against Women Reauthorization Act, and Washington state's law against discrimination, and their implementing regulations. To this end, Highline College has enacted and adopted the Title IX grievance procedure for receiving and investigating sexual harassment allegations arising during education programs and activities. Any individual found responsible for violating Highline College's Title IX policy is subject to disciplinary action up to and including dismissal from the Highline College educa-

tional programs and activities and/or termination of employment.

(2) Application of this Title IX grievance procedure WAC 132I-300-020 is restricted to allegations of "sexual harassment," as that term is defined in 34 C.F.R. Part 106.30. Nothing in this procedure limits or otherwise restricts Highline College's ability to investigate and pursue discipline based on alleged violations of other federal, state, and local laws, their implementing regulations, and other college policies prohibiting gender discrimination through processes set forth in Highline College's code of student conduct, employment contracts, employee handbooks, and collective bargaining agreements.

(3) Any employee, student, applicant, or visitor who believes that they have been the subject of sexual harassment should report the incident or incidents to Highline College's Title IX coordinator identified below. If the complaint is against that Title IX coordinator, the complainant should report the matter to the president's office for referral to an alternate designee.

(4) Complaints may be submitted in writing or verbally. For complainants who wish to submit a written complaint, a formal complaint form is available online at incident reporting form.

TITLE IX/EEO Coordinator

Title: Title IX Coordinator

Office: Human Resources, Building 99, Room 200

Phone: 206-592-3812

(5) The responsibilities of the Title IX/EEO coordinator or designee include:

(a) Accepting and processing all Title IX reports, referrals, and formal complaints.

(b) Executing and submitting a formal complaint when appropriate and necessary.

(c) Handling requests for confidentiality.

(d) Determining during the grievance procedure:

(i) Whether a formal complaint should be dismissed either in whole or in part, and if so:

(ii) Providing notice to both parties about why dismissal was necessary or desirable; and

(iii) Referring the complaint to the appropriate disciplinary authority for proceedings outside the jurisdiction of Title IX.

(e) Maintaining accurate records of all complaints, reports, and referrals, and retaining investigation files, complaints, reports, and referrals in compliance with the applicable records retention schedules or federal or state law, whichever is longer.

(f) Assigning and overseeing investigations.

(g) Engaging in an interactive process with both parties to identify and provide supportive measures that ensure during the investigation and disciplinary processes that the parties have equitable access to education programs and activities and are protected from further discrimination or retaliation.

(h) Upon completion of an investigation, issuing or overseeing the issuance of a final investigation report to the parties and the appropriate disciplinary authority in compliance with this grievance procedure.

(i) Recommending nondisciplinary corrective measures to stop, remediate, and/or prevent recurrence of discriminatory conduct to disciplinary authorities and other college administrators.

(6) Individuals experiencing harassment or discrimination also have the right to file a formal grievance with government authorities:

Equal Employment Opportunity Commission
909 First Avenue, Suite 400
Seattle, WA 98104-1061
www.eeoc.gov

Washington State Human Rights Commission
1511 Third Avenue, Suite 921
Seattle, WA 98101
www.hum.wa.gov

Office for Civil Rights
U.S. Department of Education
915 Second Avenue
Seattle, WA 98171-1099
www.ed.gov

(7) In the event that an incident involves alleged misconduct by the Title IX/EEO coordinator, reports should be made directly to the vice president of human resources.

AMENDATORY SECTION (Amending WSR 12-16-111, filed 8/1/12, effective 9/1/12)

WAC 132I-300-020 Discrimination and sexual harassments complaints—Procedure. ~~((1) Any student or employee who believes that he or she has been the subject of discrimination or sexual harassment, should report the incident or incidents to the chief human resources officer, the administrator so designated by the college president, hereafter referred to as the CHRO. If the complaint is against that official, the complainant should report the matter to the president's office for referral to an alternate designee. The college encourages the timely reporting of any incident(s) of discrimination or sexual harassment.~~

~~(2) All reports of incident(s) will be forwarded to the CHRO for coordination and a determination on how to process the complaint.~~

~~(3) The student or employee who files a complaint alleging discrimination or sexual harassment (the complainant) may submit a brief written statement of allegations to the CHRO. If the complainant does not submit a written statement, the CHRO shall prepare a statement of facts which is approved by the complainant. That statement will be forwarded as well to the subject of the complaint, who may choose to submit a response.~~

~~(4) The CHRO shall appoint a college employee to investigate the complaint. The CHRO shall inform the complainant and respondent(s) of the appointment.~~

~~(5) The college representative shall conduct an investigation based upon the written statement submitted by the complainant and, if applicable, respondent(s). If the complainant did not file a written statement, the representative shall conduct an investigation based upon the statement prepared by the CHRO.~~

(6) The college representative shall conduct a thorough investigation. The investigation shall include, but is not limited to, providing the complainant and the respondent the opportunity to state their positions, interviewing witness, and reviewing relevant documents. The investigation shall be concluded within a reasonable time, normally thirty days.

(7) At the conclusion of the investigation the college representative shall set forth his or her findings and recommendations in writing. The representative shall send a copy of the findings and recommendations to the CHRO.

(8) The CHRO shall consider the findings and recommendations of the representative. The CHRO shall determine whether disciplinary action may be appropriate. If the CHRO so recommends, he or she will consult with the respondent's appointing authority regarding possible personnel action. These options may include voluntary training/counseling, development of a remediation plan, or formal discipline. The CHRO shall advise the complainant and respondent of the college's decision.

(9) If the CHRO and respondent's appointing authority determine that disciplinary actions should be instituted against an employee the applicable provisions of employee rights and responsibilities shall be followed. These provisions include but are not limited to, state and federal constitutional and statutory provisions, rules Washington office of financial management, collective bargaining agreements, and college policies.

(10) If the CHRO determines that disciplinary action should be instituted against a student, the applicable provisions of the college student code shall be followed.

(11) If the CHRO determines that disciplinary action is not appropriate and the complainant disagrees, the complainant may appeal, in writing, to the president.

(12) The procedures regarding complaints of discrimination shall be published and distributed as determined by the president or president's designee. Any person who believes he or she has been subjected to sexual harassment will be provided a copy of this policy and procedure.) (1) **Purpose.**

Highline College recognizes its responsibility to investigate, resolve, implement corrective measures, and monitor the educational environment and workplace to stop, remediate, and prevent discrimination on the basis of sex, as required by Title IX of the Education Amendments Act of 1972, Title VII of the Civil Rights Act of 1964, the Violence Against Women Reauthorization Act, and Washington state's law against discrimination, and their implementing regulations. To this end, Highline College has enacted the Highline College Policy XXXX - Discrimination, Harassment and Retaliation and adopted the following Title IX grievance procedure for receiving and investigating sexual harassment allegations arising during educational programs and activities. Any individual found responsible for violating the college's Title IX policy is subject to disciplinary action up to and including dismissal from the college's educational programs and activities and/or termination of employment.

Application of this Title IX grievance procedure is restricted to allegations of "sexual harassment," as that term is defined in 34 C.F.R. Part 106.30. Nothing in this procedure limits or otherwise restricts the college's ability to investigate and pursue discipline based on alleged violations of other

federal, state and local laws, their implementing regulations, and other college policies prohibiting gender discrimination through processes set forth in the college's code of student conduct, employment contracts, discrimination, harassment and retaliation policy, and collective bargaining agreements.

(2) Definitions.

For purposes of this Title IX grievance procedure, the following terms are defined as follows:

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

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

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

(b) **Complainant** - An individual who is alleged to be the victim of conduct that could constitute sexual harassment.

(c) **Respondent** - An individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

(d) **Formal complaint** - A writing submitted by the complainant or signed by the Title IX coordinator alleging sexual harassment against a respondent and requesting that the college conduct an investigation.

(e) **Educational program or activity** includes locations, events, or circumstances over which the college exercised substantial control over both the respondent and the context in which the alleged sexual harassment occurred. It also includes any building owned or controlled by a student organization officially recognized by the college.

(f) **Grievance procedure** - The process the college uses to initiate, informally resolve, and/or investigate allegations that an employee or student has violated Title IX provisions prohibiting sexual harassment.

(g) **Supportive measures** are nondisciplinary, nonpunitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent regardless of whether the complainant or the Title IX coordinator has filed a formal complaint. Supportive measures restore or preserve a party's access to the college's educational programs and activities without unreasonably burdening the other party, as determined through an interactive process between the Title IX coordinator and the party. Supportive measures include measures designed to protect the safety of all parties and/or the college's educational environment and/or to deter sexual harassment or retaliation. Supportive measures may include, but are not limited to: (i) Counseling and other medical assistance; (ii) extensions of deadlines or other course-related adjustments; (iii) modifications of work or class schedules; (iv) leaves of

absence; (v) increased security or monitoring of certain areas of campus; and (vi) imposition of orders prohibiting the parties from initiating contact with one another in housing or work situations at Highline College as well as at college-sponsored events or activities. Determinations about whether to impose a one-way no contact order must be made on a case-by-case basis. If supportive measures are not provided, the Title IX coordinator must document in writing why this was clearly reasonable under the circumstances.

(h) Summary suspension means an emergency suspension of a student respondent pending investigation and resolution of disciplinary proceedings pursuant to the procedure and standards set forth in WAC 132I-125-350.

(i) Sexual harassment - For purposes of these Title IX grievance procedures, sexual harassment occurs when a respondent engages in the following discriminatory conduct on the basis of sex:

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

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

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

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

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

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

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

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

family violence laws of the state of Washington, RCW 26.50.010.

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

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

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

(aa) The length of the relationship;

(bb) The type of relationship; and

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

(G) Stalking. Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

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

(II) Suffer substantial emotional distress.

(j) Title IX administrators are the Title IX coordinator, Title IX investigators, the student conduct manager, student conduct committee members, deputy Title IX coordinator, deputy safety coordinator, hearing officer, employee disciplinary officer, and college-provided advisors assigned to the parties by the college during Title IX disciplinary proceedings.

(k) Title IX coordinator is responsible for processing Title IX complaints and conducting and/or overseeing formal investigations and informal resolution processes under this grievance procedure. Among other things, the Title IX coordinator is responsible for:

(i) Accepting and processing all Title IX reports, referrals, and formal complaints.

(ii) Executing and submitting a formal complaint when appropriate and necessary.

(iii) Handling requests for confidentiality.

(iv) Determining during the grievance procedure:

(A) Whether a formal complaint should be dismissed either in whole or in part, and if so;

(B) Providing notice to both parties about why dismissal was necessary or desirable; and

(C) Referring the complaint to the appropriate disciplinary authority for proceedings outside the jurisdiction of Title IX.

(v) Maintaining accurate records of all complaints, reports, and referrals, and retaining investigation files, complaints, reports, and referrals in compliance with the applicable records retention schedules or federal or state law, whichever is longer.

(vi) Assigning and overseeing investigations.

(vii) Engaging in an interactive process with both parties to identify and provide supportive measures that ensure during the investigation and disciplinary processes that the parties have equitable access to educational programs and activities and are protected from further discrimination or retaliation.

(viii) Upon completion of an investigation, issuing or overseeing the issuance of a final investigation report to the parties and the appropriate disciplinary authority in compliance with this grievance procedure.

(ix) Recommending nondisciplinary corrective measures to stop, remediate, and/or prevent recurrence of discrimina-

tory conduct to disciplinary authorities and other college administrators.

(3) Principles for Title IX grievance procedure.

(a) Respondent shall be presumed not responsible for the alleged conduct unless or until a determination of responsibility is reached after completion of the grievance and disciplinary processes.

(b) Before imposing discipline, the college is responsible for gathering and presenting evidence to a neutral and unbiased decision maker establishing responsibility for a Title IX violation by a preponderance of the evidence.

(c) The college shall treat both the complainant and respondent equitably by providing complainant with remedies against respondent who has been found responsible for sexual harassment through application of the institution's Title IX grievance and applicable Title IX disciplinary procedures and by providing respondent with Title IX procedural safeguards contained in this Title IX grievance procedures and in the applicable Title IX disciplinary procedures.

(d) The investigator shall base investigation results on all relevant evidence, including both exculpatory and inculpatory evidence.

(e) Formal and informal resolutions will be pursued within reasonably prompt time frames with allowances for temporary delays and extensions for good cause shown. The Title IX coordinator or designee will respond to reports of sexual harassment within three business days. It is expected that complaints addressed through an informal process will be resolved within ninety days. It is expected that complaints addressed through the formal investigation and hearing process will be resolved in one hundred five days. Grounds for temporary delay include, but are not limited to, breaks in the academic calendar, unusual circumstances where employees are unable to work on campus, weather conditions, a natural disaster, or lack of participation from the complainant or respondent. Good cause supporting a request for an extension includes, but is not limited to: A college party, a party's advisor or a witness being unavailable, concurrent law enforcement activity, the need for language assistance or accommodation of disabilities, or unforeseen circumstances causing the Title IX coordinator to be unavailable for more than three business days during the grievance process. Both parties will receive written notice of any temporary delay or extension for good cause with an explanation of why the action was necessary.

(f) A respondent found responsible for engaging in sexual harassment may receive discipline up to and including dismissal from the college. A description of other possible disciplinary sanctions and conditions that may be imposed against students can be found in WAC 132-125-125.

An employee found responsible for sexual harassment may receive discipline up to and including dismissal from employment. A description of possible disciplinary sanctions and conditions that may be imposed against employees can be found at Supplemental Title IX Employee Disciplinary Hearing Procedures, Article 806 of the Highline College Education Association (HCEA) Bargaining Agreement, and Article 27 of the Washington public employees association (WPEA) bargaining agreement.

In proceedings against an employee respondent, the parties may appeal the employee disciplinary decision to the president pursuant to the Supplemental Title IX Employee Disciplinary Procedures.

(g) Title IX administrators may not require, allow, rely upon, or otherwise use questions or evidence that seeks disclosure of privileged communications, unless the privilege has been effectively waived by the holder. This provision applies, but is not limited to, information subject to the following:

(i) Spousal/domestic partner privilege;

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

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

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

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

(vi) Other legal privileges identified in RCW 5.60.060.

(4) Title IX administrators - Free from bias - Training requirements.

(a) Title IX administrators shall perform their duties free from bias or conflicts.

(b) Title IX administrators shall undergo training on the following topics:

(i) The definition of sexual harassment under these procedures;

(ii) The scope of the college's educational programs and activities;

(iii) How to conduct an investigation;

(iv) How to serve impartially without prejudgment of facts, conflicts of interest or bias;

(v) Use of technology used during any investigation or hearing;

(vi) The relevance of evidence and questions; and

(vii) Effective report writing.

(c) All Title IX administrator training materials shall be available on the college's Title IX web page.

(5) Filing a complaint.

Any employee, student, applicant, or visitor who believes that they have been the subject of sexual harassment should report the incident or incidents to the college's Title IX coordinator identified below. If the complaint is against that Title IX coordinator, the complainant should report the matter to the president's office for referral to an alternate designee.

Complaints may be submitted in writing or verbally. For complainants who wish to submit a written complaint, a formal complaint form is available online at incident reporting form.

Name: Summer Korst

Title: Title IX Coordinator

Office: Human Resources, Building 99, Room 200

Email: skorst@highline.edu

Phone: 206-592-3812

(6) Confidentiality.

(a) The college will seek to protect the privacy of the complainant to the fullest extent possible, consistent with the

legal obligation to investigate, take appropriate remedial and/or disciplinary action, and comply with the federal and state law, as well as college policies and procedures. Although the college will attempt to honor complainants' requests for confidentiality, it cannot guarantee complete confidentiality. Determinations regarding how to handle requests for confidentiality will be made by the Title IX coordinator.

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

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

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

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

(7) Complaint resolution.

The Title IX resolution processes are initiated when the Title IX coordinator's office receives a written complaint alleging that a respondent(s) sexually harassed a complainant and requesting that the college initiate an investigation (a formal complaint). A formal complaint must be either submitted by the complainant or signed by the Title IX coordinator on behalf of the complainant. Formal complaints submitted to the Title IX coordinator may be resolved through either informal or formal resolution processes. The college will not pro-

ceed with either resolution process without a formal complaint.

For purposes of this Title IX grievance procedure, the complainant must be participating in or attempting to participate in a college education program or activity at the time the formal complaint is filed.

(a) Informal resolution.

Under appropriate circumstances and if the impacted and responding parties agree, they may voluntarily pursue informal resolution during the investigation of a concern. Informal resolution is not appropriate when the allegations involve a mandatory reporting situation, an immediate threat to the health, safety or welfare of a member of the college community, or in cases where an employee is alleged to have sexually harassed a student.

If an informal resolution is appropriate, the impacted party and the responding party may explore remedies or resolution through:

- (i) Guided conversations or communications conducted by the Title IX coordinator/HRO representative or a mutually agreed upon third party;
- (ii) Structured resolution process conducted by a trained mediator; or
- (iii) Voluntarily agreed on alterations to either or both of the parties' work or class schedules or student housing arrangements.

If the parties agree to an informal resolution process, the college will commence the process within ten days after the parties agree to this option and conclude within ninety days of beginning that process, subject to reasonable delays and extensions for good cause shown. The informal process is voluntary. Either the impacted or responding party may withdraw from the informal resolution process at any time, at which point the formal investigation process will resume.

If the impacted and responding party voluntarily resolve a report, the college will record the terms of the resolution in a written agreement signed by both parties and provide written notice to both parties that the report has been closed.

(b) Formal resolution.

Formal resolution means that the complainant's allegations of sexual harassment will be subjected to a formal investigation by an impartial and unbiased investigator. The investigator will issue a report of the investigation findings. Upon completion of the investigation, the investigator will submit the final investigation report to the appropriate disciplinary authority to determine whether disciplinary proceedings are warranted.

(8) Emergency removal.

If a student respondent poses an immediate threat to the health and safety of the college community or an immediate threat of significant disruption to college operations, the college's student conduct officer may summarily suspend a respondent pursuant to WAC 132-125-350, pending final resolution of the allegations. Nothing in this grievance procedure prohibits the college from placing nonstudent employees on administrative leave pending final resolution of the allegations.

(9) Investigation notices.

Upon receiving a formal complaint and determining that allegations comport with Title IX claims, the college will

provide the parties with the following notices containing the following information:

(a) Notice of formal and informal resolution processes. A description of the college's grievance resolution procedures, including the informal resolution procedure.

(b) The investigator will serve the respondent and the complainant with a notice of investigation in advance of the initial interview with the respondent to allow the respondent sufficient time to prepare a response to the allegations and to inform the complainant that the college has commenced an investigation. The investigation notice will:

(i) Include the identities of the parties (if known), a description of the conduct alleged constituting Title IX sexual harassment, and the time and location of the incident (if known).

(ii) Confirm that the respondent is presumed not responsible for the alleged conduct and that the college will not make a final determination of responsibility until after the grievance and disciplinary processes have been completed.

(iii) Inform parties that they are both entitled to have an advisor of their own choosing, who may be an attorney.

(iv) Inform parties they have a right to review and inspect evidence.

(v) Inform parties about student conduct code provisions and employment policies that prohibit students and employees from knowingly submitting false information during the grievance and disciplinary processes.

(c) Amended investigation notice. If during the course of the investigation, the college decides to investigate Title IX sexual harassment allegations about the complainant or respondent that are not included in the investigation notice, the college will issue an amended notice of investigation to both parties that includes this additional information.

(d) Interview and meeting notices. Before any interviewing or meeting with a party about Title IX allegations, the college shall provide the party with a written notice identifying the date, time, location, participants, and purpose of the interview or meeting with sufficient time, at least five days, for the party to prepare for the interview or meeting.

(10) Investigation process - Dismissal.

(a) Mandatory dismissal - The Title IX coordinator will dismiss the Title IX allegations, if during the course of a formal investigation under the Title IX grievance process, the investigator determines that the alleged misconduct in the formal complaint:

(i) Does not meet the definition of sexual harassment under Title IX, even if proved; or

(ii) Did not occur in the context of a college educational program or activity; or

(iii) Occurred outside the United States.

(b) Discretionary dismissal - The college may dismiss a Title IX claim in whole or in part, if:

(i) The complainant notifies the Title IX coordinator in writing that they would like to withdraw the formal complaint in whole or in part;

(ii) Respondent is no longer enrolled with or employed by the college; or

(iii) Specific circumstances prevent the college from gathering evidence sufficient to complete the investigation of the Title IX allegations in whole or in part.

(c) The Title IX coordinator will provide both parties written notice if Title IX allegations are dismissed with an explanation for the dismissal.

(d) Mandatory or discretionary dismissal of a Title IX claim does not preclude the college from investigating and pursuing discipline based on allegations that a respondent violated other federal or state laws and regulations, college conduct policies, and/or other codes and contractual provisions governing student and employee conduct.

(11) Investigation process - Consolidation of formal complaints.

When multiple sexual harassment allegations by or against different parties arise out of the same facts or circumstances, the college may consolidate the investigation of formal complaints, provided consolidation can be accomplished in compliance with confidentiality protections imposed by the Family Educational Records and Privacy Act (FERPA). This includes instances in which complainant and respondent have lodged formal complaints against one another or when allegations of sexual assault are lodged by a single complainant against multiple respondents, or when multiple complainants lodge sexual assault complaints against single or multiple respondents.

(12) Investigation process - Required procedures.

During the investigation, the investigator:

(a) Will provide the parties with equal opportunity to present relevant statements, and other evidence in the form of fact or expert witnesses and inculpatory or exculpatory evidence.

(b) Will not restrict the ability of either party to discuss the allegations under investigation or gather and present relevant evidence, except when a no contact order has been imposed based on an individualized and fact specific determination that a party poses a threat to the health, safety or welfare of another party and/or witnesses or when contact with a party and/or witness is prohibited by court order. A college-imposed no contact shall be no broader than is necessary to protect the threatened party or witness and must provide the impacted party or their advisor with alternative means of gathering and presenting relevant evidence from the protected witness and/or party.

(c) Will allow each party to be accompanied by an advisor of their choosing, who may be an attorney, to any grievance related meeting or interview. Advisors' roles during the investigation meetings or interviews will be limited to providing support and advice to the party. Advisors will not represent or otherwise advocate on behalf of the parties during the investigation process. An attorney representing a party must enter a notice of appearance with the Title IX coordinator and the investigator at least five days before the initial interview or meeting they plan to attend, so that the college can secure its own legal representation, if necessary.

(d) The investigator will provide both parties and their respective advisors with an equal opportunity to review the draft investigation report and to inspect and review any evidence obtained during the investigation that is directly related to the allegations raised in the formal complaint, including inculpatory or exculpatory evidence, regardless of its source, as well as evidence the investigator does not intend to rely in the final investigation report. After disclosure, each party will

receive ten days in which to submit a written response, which the investigator will consider prior to completion of the investigation report. If a party fails to submit a written response within ten days, the party will be deemed to have waived their right to submit comments and the investigator will finalize the report without this information.

(e) The investigator will forward the final report to the Title IX coordinator, who distributes the report and evidence to the parties, as well as the disciplinary authority responsible for determining whether pursuing disciplinary action is warranted.

WSR 21-13-164
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Developmental Disabilities Administration)
 [Filed June 23, 2021, 8:28 a.m., effective August 1, 2021]

Effective Date of Rule: August 1, 2021.

Purpose: The developmental disabilities administration (DDA) amended these rules to align with changes to the Diagnostic Statistical Manual, extend the age range for acceptable evidence of onset as requested by a nongovernmental entity, remove the severity level criteria requirement, and add more full-scale intellectual quotient assessment types.

Citation of Rules Affected by this Order: Amending WAC 388-823-0500, 388-823-0510, and 388-823-0720.

Statutory Authority for Adoption: RCW 71A.12.030.

Other Authority: RCW 71A.12.020, 71A.16.020.

Adopted under notice filed as WSR 21-09-054 on April 16, 2021.

Changes Other than Editing from Proposed to Adopted Version: DDA replaced the placeholder language under WAC 388-823-0500 (1)(b)(ii) with a specific date. The placeholder said "[six months after the effective date of this rule]." DDA revised that language to say "February 1, 2022."

A final cost-benefit analysis is available by contacting Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, fax 360-407-0955, TTY 1-800-833-6388, email Chantelle.Diaz@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 1, 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: June 23, 2021.

Donald Clintsman
Acting Secretary

AMENDATORY SECTION (Amending WSR 19-19-061, filed 9/16/19, effective 10/17/19)

WAC 388-823-0500 How do I show that I have autism as an eligible condition? (1) To be considered for eligibility under the condition of autism:

(a) You must be age four or older ((and have a diagnosis by a qualified professional which meets the conditions in subsection (1) or (2) of this section, as well as subsections (3), (4), and (5) of this section:

(1) Autistic disorder 299.00 per the diagnostic and statistical manual of mental disorders, fourth edition, text revision (DSM-IV-TR); or

(2));

(b) You must have been diagnosed with:

(i) Autism spectrum disorder 299.00 ((per)) under the diagnostic and statistical manual of mental disorders, fifth edition (DSM-5)((, with a severity level of 2 or 3 in both columns of the severity level scale.

(3) The condition is expected to continue indefinitely with evidence of onset before age three.

(4) An acceptable diagnostic report includes documentation of all diagnostic criteria specified in the DSM-IV-TR or DSM-5.

(5) DDA will accept a diagnosis from any of the following professionals); or

(ii) Autistic disorder 299.00 under the diagnostic and statistical manual of mental disorders, fourth edition, text revision (DSM-IV-TR) before February 1, 2022;

(c) You must have been diagnosed by:

((a)) (i) A board certified neurologist;

((b)) (ii) A board certified psychiatrist;

((c)) (iii) A licensed psychologist;

((d)) (iv) An advanced registered nurse practitioner (ARNP) associated with an autism center, developmental center, or center of excellence;

((e)) (v) A licensed physician associated with an autism center, developmental center, or center of excellence; or

((f)) (vi) A board certified developmental and behavioral pediatrician.

(d) The condition must be expected to continue indefinitely; and

(e) You must provide evidence of onset before age five.

AMENDATORY SECTION (Amending WSR 14-12-046, filed 5/29/14, effective 7/1/14)

WAC 388-823-0510 ((If I have)) What constitutes substantial limitation due to autism((-how do I meet the definition of substantial limitations))? ((If you have an eligible condition of autism, in order to meet the definition of substantial limitations you must meet the criteria in subsections (1) and (2) in this section:))

(1) ((Documentation of)) To establish substantial limitation due to autistic disorder diagnosed under the DSM-IV-TR, you must have an adaptive skills test score ((of)) more

than two standard deviations below the mean as described in WAC 388-823-0740 and subject to all of WAC 388-823-0740 and WAC 388-823-0750(~~and~~).

(2) ~~((If your diagnosis is)) To establish substantial limitation due to autism spectrum disorder ((per)) diagnosed under the DSM-5(~~documentation of a FSIQ of more than one standard deviation below the mean as described in WAC 388-823-0720 and subject to all of WAC 388-823-0720 and 388-823-0730.~~~~

~~(a) If you have a FSIQ score of one standard deviation below the mean or higher as described in WAC 388-823-0720, you may present additional documentation described in subitem (i) or (ii) in this subsection, signed by the diagnosing professional, which shows that you meet the criteria for autistic disorder 299.00 per the DSM-IV-TR:~~

~~(i) A completed autistic disorder confirmation form (available from DDA), or~~

~~(ii) Other documentation that provides the same information as required on the autistic disorder confirmation form.~~

~~(b) If you are unable to complete a FSIQ test, you may provide a)) you must:~~

~~(a) Have an adaptive-skills test score more than two standard deviations below the mean as described in WAC 388-823-0740 and subject to WAC 388-823-0740 and WAC 388-823-0750; and~~

~~(b) Have either:~~

~~(i) A full-scale intellectual quotient (FSIQ) score more than one standard deviation below the mean as described in WAC 388-823-0720 and subject to WAC 388-823-0720 and WAC 388-823-0730; or~~

~~(ii) A written statement ((by the diagnosing)) from a professional qualified to administer intellectual tests stating that your ((condition is so severe that you are unable to demonstrate the minimal skills required to complete)) autism prevents you from completing the testing.~~

AMENDATORY SECTION (Amending WSR 14-12-046, filed 5/29/14, effective 7/1/14)

WAC 388-823-0720 What evidence do I need of my FSIQ? Evidence of a qualifying FSIQ is derived from one of the tests listed in the table below.

Assessment	Qualifying score at more than 2 standard deviations	Qualifying score at more than 1.5 standard deviations	Qualifying score at more than 1 standard deviation
Stanford-Binet 4th edition or earlier editions	67 or less	75 or less	83 or less
Stanford-Binet 5th edition	69 or less	77 or less	84 or less

Assessment	Qualifying score at more than 2 standard deviations	Qualifying score at more than 1.5 standard deviations	Qualifying score at more than 1 standard deviation
Wechsler intelligence scales (Wechsler)	69 or less	77 or less	84 or less
Differential abilities scale (DAS)	69 or less	77 or less	84 or less
Kaufman assessment battery for children (K-ABC)	69 or less	77 or less	84 or less
Das-Naglieri cognitive assessment system (CAS)	69 or less	77 or less	84 or less
Woodcock-Johnson-Test of achievement III ((test of cognitive abilities (WJ-III))) or IV	69 or less	77 or less	84 or less
Reynolds intellectual assessment scales, 2nd edition (RIAS 2)	69 or less	77 or less	84 or less

(1) The test must be administered by a licensed psychologist or Washington certified school psychologist or other school psychologist certified by the National Association of School Psychologists.

(2) The FSIQ score cannot be attributable to mental illness or other psychiatric condition occurring at any age; or other illness or injury occurring after age eighteen:

(a) If you are dually diagnosed with a qualifying condition and mental illness, other psychiatric condition, or other illness or injury, you must provide acceptable documentation that your intellectual impairment, measured by a FSIQ test, would meet the requirements for DDA eligibility without the influence of the mental illness, other psychiatric condition, or other illness or injury.

(b) "Acceptable documentation" means written reports or statements that are directly related to the subject at issue, reasonable in light of all the evidence, and from a source of appropriate authority. The determination of whether a document is acceptable is made by DDA.

(c) If no documentation is provided or DDA determines that the documentation is not acceptable DDA will deny eligibility. The determination may be challenged through an administrative appeal.

(3) If you have a vision impairment that prevents completion of the performance portion of the IQ test, the administering professional may estimate an FSIQ using only the verbal IQ score of the appropriate Wechsler.

(4) If you have a significant hearing impairment, English is not your primary language, or you are nonverbal your FSIQ may be estimated using one of the tests shown in the table below.

Assessment	Qualifying score at more than 2 standard deviations	Qualifying score at 1.5 or more standard deviations	Qualifying score more than 1 standard deviation
Wechsler intelligence scales (WISC, WAIS, WNV)	69 or less on the performance scale, or, on both the perceptual reasoning index and processing speed index	77 or less on the performance scale, or, on both the perceptual reasoning index and the processing speed index	84 or less on the performance scale, or, on both the perceptual reasoning index and the processing speed index
Leiter international performance scale-revised (Leiter-R)	69 or less	77 or less	84 or less
Comprehensive test of nonverbal intelligence (C-TONI)	69 or less on full scale (NVIQ)	77 or less on full scale (NVIQ)	84 or less on full scale (NVIQ)
Kaufman assessment battery for children (K-ABC)	Nonverbal scale index of 69 or less	Nonverbal scale index of 77 or less	Nonverbal scale index of 84 or less

(5) If you are over the age of nineteen at the time of your determination you must have a valid FSIQ obtained at age thirteen or older.

WSR 21-13-168
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Economic Services Administration)
 [Filed June 23, 2021, 10:34 a.m., effective August 1, 2021]

Effective Date of Rule: August 1, 2021.

Purpose: The department is amending WAC 388-412-0025 How do I receive my benefits?, to align our processes and procedures with federal rules when suspending electronic benefit transfer (EBT) benefits for incarcerated individuals and recouping unused benefits on EBT cards.

Citation of Rules Affected by this Order: Amending WAC 388-412-0025.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090.

Other Authority: 7 C.F.R. 274.2(i).

Adopted under notice filed as WSR 21-11-060 on May 14, 2021.

Changes Other than Editing from Proposed to Adopted Version: Subsection (3)(d) was left in errantly and is removed. New subsection (5) replaces subsection (3)(d).

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

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

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

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

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

Date Adopted: June 23, 2021.

Katherine I. Vasquez
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 12-14-052, filed 6/28/12, effective 8/1/12)

WAC 388-412-0025 How do I receive my benefits?

- (1) You can choose to get your cash benefits by:
 - (a) Electronic benefit transfer (EBT), which is a direct deposit into a DSHS account that you access with a debit card called the Washington EBT Quest card;
 - (b) Electronic funds transfer (EFT), which is a direct deposit into your own bank account;
 - (c) A warrant (check) to an approved authorized representative (AREP);
 - (d) A warrant (check) to a payee who is not approved for direct deposit; or
 - (e) A warrant (check) to you if you get:
 - (i) Diversion cash assistance (DCA) that is not paid directly to a vendor;

(ii) Ongoing additional requirements (OAR) that cannot be paid directly to a vendor; or

(iii) Clothing and personal incidentals (CPI) payments.

(2) We send your **basic food** benefits to you by EBT.

(3) EBT accounts:

(a) We set up an EBT account for the head of household of each assistance unit (AU) that receives benefits by EBT.

(b) You use a Quest debit card to access your benefits in your EBT account. You select a personal identification number (PIN) that you must enter when using this card.

(c) You must use your cash and basic food benefits from your EBT account. We cannot transfer cash to your bank account or change cash or basic food benefits to checks.

~~((d) Unused EBT benefits: If you do not use your EBT account within three hundred sixty-five days, we cancel the cash and basic food benefits on your account.))~~

(4) Suspended EBT benefits:

(a) We suspend access to benefits from your EBT account if:

(i) You are a single-person household; and

(ii) We are notified that you are incarcerated over thirty days.

(b) You must contact the department upon release to activate your EBT account for use within forty-eight hours.

(5) Unused EBT benefits:

(a) If you do not use your EBT account within two-hundred seventy-four days, we cancel the cash and basic food on your account; or

(b) Benefits on your account will be canceled upon verification you and all members of your household are deceased.

(6) Replacing benefits:

(a) Replacing basic food benefits:

(i) We **can replace** cancelled benefits we deposited **less than three hundred sixty-five days** from the date you ask for us to replace your benefits.

(ii) We **cannot replace** cancelled benefits deposited **three hundred sixty-five or more days** from the date you ask us to replace your benefits.

(b) **Replacing cash benefits:** We **can replace** cancelled cash benefits for you or another member of your assistance unit. Cash benefits are not transferable to someone outside of your assistance unit.

(c) Replacing cash warrants:

(i) If we issued you cash benefits as a warrant we can replace these benefits for you or a member of your assistance unit. Cash benefits are not transferable to someone outside of your assistance unit.

(ii) If we issued the benefits as a warrant one hundred sixty or fewer days ago, your local office can replace the warrant.

(iii) If we issued the benefits as a warrant more than one hundred sixty days ago, the Office of Accounting Services (OAS) can replace the warrant. We will contact OAS with the request.

~~((5))~~ **(7) Correcting your EBT balance:** When you make a purchase with your EBT card a system error can occur where the purchase amount is not deducted from your EBT account. When the error is discovered the following will happen:

(a) You will be notified in writing of the system error before the money is removed from your account; and

(b) You will have ninety days to request an administrative hearing. If you ask for an administrative hearing within ten calendar days, the money will not be removed from your EBT account unless:

(i) You withdraw your administrative hearing request in writing;

(ii) You do not follow through with the administrative hearing process; or

(iii) The administrative law judge tells us in writing to remove the money.