

WSR 21-12-031
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Developmental Disabilities Administration)
 [Filed May 24, 2021, 5:34 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-20-100.

Title of Rule and Other Identifying Information: Chapter 388-845 WAC, Home and community-based services waivers.

Hearing Location(s): On July 27, 2021, at 10:00 a.m. Due to the COVID[-19] pandemic, the hearing will be virtual. Please see the department of social and health services (DSHS) website for the most current information on how to connect.

Date of Intended Adoption: Not earlier than July 28, 2021.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., July 27, 2021.

Assistance for Persons with Disabilities: Contact Katherine Vasquez, rules coordinator, phone 360-664-6097, fax 360-663-6185, TTY 711 relay, email DSHSRPAURulesCoordinator@dshs.wa.gov, by July 13, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amendments to chapter 388-845 WAC align rules with the amendments approved by the Centers for Medicare and Medicaid Services (CMS). The amendments affect all five of developmental disabilities administration's (DDA) home and community-based services (HCBS) waivers and: Update service definitions and service names; change some service limits; add services to various waivers; remove services from various waivers; change eligibility criteria for specific services; change qualified provider criteria for various services; and repeal several sections.

Reasons Supporting Proposal: DDA must comply with federal medicaid rules to continue to receive federal funding. When CMS approves DDA's waiver applications, DDA's rules must align with those approved waiver applications. To enforce federal waiver application requirements, service definitions, service limits, and explanations must be codified in Washington Administrative Code.

Statutory Authority for Adoption: RCW 71A.12.030.

Statute Being Implemented: RCW 71A.12.040.

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

Name of Proponent: DSHS, DDA, governmental.

Name of Agency Personnel Responsible for Drafting: Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, 360-407-1589; Implementation and Enforcement: Ann Vasilev, P.O. Box 45310, Olympia, WA 98504-5310, 360-407-1551.

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

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by

contacting 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.

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

Is exempt under RCW 19.85.025(4) because the rules do not affect small businesses.

Explanation of exemptions: The proposed amendments impose no new or disproportionate costs on small businesses so a small business economic impact statement is not required.

May 21, 2021
 Katherine I. Vasquez
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 18-14-001, filed 6/20/18, effective 7/21/18)

WAC 388-845-0001 Definitions. "Aggregate services" means a combination of services subject to the dollar limits in the basic plus waiver.

"Allocation" means the amount of individual and family services (IFS) waiver funding available to a client for a maximum of twelve months.

"CARE" means comprehensive assessment and reporting evaluation.

"Client" means a person who has a developmental disability under RCW 71A.10.020(5) and has been determined eligible to receive services from the administration under chapter 71A.16 RCW.

~~("Community crisis stabilization services" or "CCSS" means a state-operated program that provides short-term supports to clients who are in crisis, or who are at risk of hospitalization or institutional placement.))~~

"DDA" means the developmental disabilities administration, of the department of social and health services.

"DDA assessment" refers to the standardized assessment tool under chapter 388-828 WAC, used by DDA to measure the support needs of people with developmental disabilities.

"Department" means the department of social and health services (DSHS).

"Evidence-based treatment" means the use of physical, mental, and behavioral health interventions for which systematic, empirical research has provided evidence of statistically significant effectiveness as treatments for specific conditions. Alternate terms with the same meaning are evidence-based practice (EBP) and empirically supported treatment (EST).

"Family" means one or more of the following relatives: Spouse or registered domestic partner; natural, adoptive or step parent; grandparent; child; stepchild; sibling; stepsibling; uncle; aunt; first cousin; niece; or nephew.

"Family home" means the residence where you and your family live.

"Gainful employment" means employment that reflects achievement of or progress towards a living wage.

"General utility" describes something used by people in the absence of illness, injury, or disability.

"HCBS waiver" is a home and community based services waiver program under section 1915(c) of the Social Security Act.

"Home" means present (~~(or intended)~~) place of long-term residence.

"ICF/IID" means an intermediate care facility for individuals with intellectual disabilities.

"Integrated business settings" means a setting that enables participants to either work alongside or interact with individuals who do not have disabilities, or both.

"Integrated settings" mean typical community settings not designed specifically for individuals with disabilities in which the majority of persons employed and participating are individuals without disabilities.

"Legal representative" means a parent of a person who is under eighteen years of age, a person's legal guardian, a person's limited guardian when the subject matter is within the scope of limited guardianship, a person's attorney at law, a person's attorney in fact, or any other person who is authorized by law to act for another person.

"Living wage" means the amount of earned wages needed to enable an individual to meet or exceed his or her living expenses.

"Necessary supplemental accommodation representative" means an individual who receives copies of DDA planned action notices (PANs) and other department correspondence in order to help a client understand the documents and exercise the client's rights. A necessary supplemental accommodation representative is identified by a client of DDA when the client does not have a legal guardian and the client is requesting or receiving DDA services.

"Participant" means a client who is enrolled in a home and community based services waiver program.

"Person-centered service plan" is a document that identifies your goals and assessed health and welfare needs. Your person-centered service plan also indicates the paid services and natural supports that will assist you to achieve your goals and address your assessed needs.

"Primary caregiver" means the person who provides the majority of your care and supervision.

"Provider" means an individual or agency who meets the provider qualifications and is contracted with DSHS to provide services to you.

"Respite assessment" means an algorithm within the DDA assessment that determines the number of hours of respite care you may receive per year if you are enrolled in the basic plus, children's intensive in-home behavioral support, or core waiver.

"SSI" means supplemental security income, an assistance program administered by the federal Social Security Administration for blind, disabled and aged individuals.

"SSP" means state supplementary payment program, a state-paid cash assistance program for certain clients of the developmental disabilities administration.

"State-funded services" means services that are funded entirely with state dollars.

"You" means the client or participant.

"Waiver year" means the twelve-month period starting from the initial or annual plan effective date in the client's person-centered service plan.

AMENDATORY SECTION (Amending WSR 20-05-080, filed 2/18/20, effective 3/20/20)

WAC 388-845-0030 Do I meet criteria for HCBS waiver-funded services? (1) You meet criteria for DDA HCBS waiver-funded services if you meet all of the following:

(a) You have been determined eligible for DDA services per RCW 71A.10.020.

(b) You have been determined to meet ICF/IID level of care per WAC 388-845-0070, 388-828-3060 and 388-828-3080.

(c) You meet disability criteria established in the Social Security Act.

(d) You meet financial eligibility requirements as defined in WAC 182-515-1510.

(e) You choose to receive services in the community rather than in an ICF/IID facility.

(f) You have a need for monthly waiver services or monthly monitoring as identified in your person-centered service plan(~~(/individual support plan)~~).

(g) You are not residing in hospital, jail, prison, nursing facility, ICF/IID, or other institution.

(h) Additionally, for the children's intensive in-home behavioral support (CIIBS) waiver-funded services:

(i) You are age eight or older and under the age of eighteen for initial enrollment and under age twenty-one for continued enrollment;

(ii) You have been determined to meet CIIBS program eligibility per chapter 388-828 WAC prior to initial enrollment only;

(iii) You live with your family; and

(iv) Your parent/guardian(s) and primary caregiver(s), if other than parent/guardian(s), have signed the participation agreement.

(2) For the individual and family services waiver, you must meet the criteria in subsection (1) of this section and also live in your family home.

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-845-0041 What is DDA's responsibility to provide your services under the DDA HCBS waivers administered by DDA? If you are enrolled in an HCBS waiver administered by DDA.

(1) DDA will provide an annual comprehensive assessment to evaluate your health and welfare needs. Your person-centered service plan(~~(/individual support plan)~~), as specified in WAC 388-845-3055, will document:

(a) Your identified health and welfare needs; and

(b) Your HCBS waiver services and nonwaiver services authorized to meet your assessed need.

(2) You have access to DDA paid services that are provided within the scope of your waiver, subject to the limitations in WAC 388-845-0110 and 388-845-0115.

(3) DDA will provide waiver services you need and qualify for within your waiver.

(4) DDA will not deny or limit, based on lack of funding, the number of waiver services for which you are eligible.

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-845-0045 When there is capacity to add people to a waiver, how does DDA determine who will be enrolled? When there is capacity on a waiver and available funding for new waiver participants, DDA may enroll people from the statewide database in a waiver based on the following priority considerations:

(1) First priority will be given to current waiver participants assessed to require a different waiver because their identified health and welfare needs have increased and these needs cannot be met within the scope of their current waiver.

(2) DDA may also consider any of the following populations in any order:

(a) Priority populations as identified and funded by the legislature.

(b) Persons DDA has determined to be in immediate risk of ICF/IID admission due to unmet health and welfare needs.

(c) Persons identified as a risk to the safety of the community.

(d) Persons currently receiving services through state-only funds.

(e) Persons on an HCBS waiver that provides services in excess of what is needed to meet their identified health and welfare needs.

(f) Persons who were previously on an HCBS waiver since April 2004 and lost waiver eligibility per WAC (~~388-845-0060 (1)(i))~~ 388-845-0060 (1)(k).

(3) DDA may consider persons who need the waiver services available in the basic plus or IFS waivers to maintain them in their family's home or in their own home.

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-845-0052 What is the process if I am already on a DDA HCBS waiver and request enrollment onto a different DDA HCBS waiver? (1) If you are already enrolled in a DDA HCBS waiver and you request to be enrolled in a different waiver DDA will do the following:

(a) Assess your needs to determine whether your health and welfare needs can be met with services available on your current waiver or whether those needs can only be met through services offered on a different waiver.

(b) If DDA determines your health and welfare needs can be met by services available on your current waiver your enrollment request will be denied.

(c) If DDA determines your health and welfare needs can only be met by services available on a different waiver your service need will be reflected in your person-centered service plan (~~individual support plan~~).

(d) If DDA determines there is capacity on the waiver that is determined to meet your needs, DDA will place you on that waiver.

(2) You will be notified in writing of DDA's decision under subsection (1)(a) of this section and if your health and welfare needs cannot be met on your current waiver, DDA will notify you in writing whether there is capacity on the waiver that will meet your health and welfare needs and whether you will be enrolled on that waiver. If current capac-

ity on that waiver does not exist, your eligibility for enrollment onto that different waiver will be tracked on a statewide database.

AMENDATORY SECTION (Amending WSR 20-05-080, filed 2/18/20, effective 3/20/20)

WAC 388-845-0055 How do I remain eligible for the waiver? (1) Once you are enrolled in a DDA HCBS waiver, you can remain eligible if you continue to meet eligibility criteria in WAC 388-845-0030, and:

(a) You complete a reassessment with DDA at least once every twelve months to determine if you continue to meet all of these eligibility requirements;

(b) You must either receive a waiver service at least once in every thirty consecutive days, as specified in WAC 182-513-1320(3), or your health and welfare needs require monthly monitoring, which will be documented in your client record;

(c) You complete an in-person DDA assessment/reassessment interview per WAC 388-828-1520.

(2) For the children's intensive in-home behavioral supports waiver, you must meet the criteria in subsection (1) of this section and you must:

(a) Be under age twenty-one;

(b) Live with your family; (~~and~~)

(c) Have an annual participation agreement signed by your parent/guardian(s) and primary caregiver(s), if other than parent/guardian(s); and

(d) Continue to participate in the program as outlined in the annual participation agreement.

(3) For the individual and family services waiver, you must meet the criteria in subsection (1) of this section and live in your family home.

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-845-0060 Can your waiver enrollment be terminated? DDA may terminate your waiver enrollment if DDA determines that:

(1) Your health and welfare needs cannot be met in your current waiver or for one of the following reasons:

(a) You no longer meet one or more of the requirements listed in WAC 388-845-0030;

(b) You do not have an identified need for a waiver service at the time of your annual person-centered service (~~plan/individual support~~) plan;

(c) You do not use a waiver service at least once in every thirty consecutive days and your health and welfare do not require monthly monitoring to avoid institutionalization;

(d) You are on the community protection waiver and:

(i) You choose not to be served by a certified residential community protection provider-intensive supported living services (CP-ISLS);

(ii) You engage in any behaviors identified in WAC 388-831-0240 (1) through (4); and

(iii) DDA determines that your health and safety needs or the health and safety needs of the community cannot be met in the community protection program;

(e) You choose to unenroll from the waiver;

- (f) You reside out-of-state;
- (g) You cannot be located or do not make yourself available for the annual waiver reassessment of eligibility;
- (h) Your needs exceed the maximum funding level or scope of services under the basic plus waiver as specified in WAC 388-845-3080;
- (i) Your needs exceed what can be provided under WAC 388-845-3085;
 - (j) You refuse to participate with DDA in:
 - (i) Service planning;
 - (ii) Required quality assurance and program monitoring activities; or
 - (iii) Accepting services agreed to in your person-centered service plan(~~(individual support plan)~~) as necessary to meet your health and welfare needs; or
 - ~~((+))~~ (k) You are (~~residing~~) in a hospital, jail, prison, nursing facility, ICF/IID, or other institution (~~and remain in residence~~) for at least one full calendar month, and (~~are still in residence~~) are under the care of that institution or entity:
 - (i) At the end of that full calendar month(~~;~~) and there is no immediate plan for you to return to the community;
 - (ii) At the end of the twelfth month following the effective date of your current person-centered service (~~plan/individual support~~) plan, as described in WAC 388-845-3060; or
 - (iii) At the end of the waiver fiscal year, whichever date occurs first(~~;~~
 - ~~(j) Your needs exceed the maximum funding level or scope of services under the basic plus waiver as specified in WAC 388-845-3080; or~~
 - ~~(k) Your needs exceed what can be provided under WAC 388-845-3085).~~
- (2) Services offered on a different waiver can meet your health and welfare needs and DDA enrolls you on a different waiver.

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-845-0105 What criteria determine assignment to the community protection waiver? DDA may assign you to the community protection waiver only if you are at least eighteen years of age, not currently residing in a hospital, jail or other institution, and meet the following criteria:

- (1) You have been identified by DDA as a person who meets one or more of the following:
 - (a) You have been convicted of or charged with a crime of sexual violence as defined in chapter 71.09 RCW;
 - (b) You have been convicted of or charged with acts directed towards strangers or individuals with whom a relationship has been established or promoted for the primary purpose of victimization, or persons of casual acquaintance with whom no substantial personal relationship exists;
 - (c) You have been convicted of or charged with a sexually violent offense and/or predatory act, and may constitute a future danger as determined by a qualified professional;
 - (d) You have not been convicted and/or charged, but you have a history of stalking, violent, sexually violent, predatory and/or opportunistic behavior which demonstrates a likelihood to commit a sexually violent and/or predatory act based

- on current behaviors that may escalate to violence, as determined by a qualified professional; or
- (e) You have committed one or more violent offense, as defined in RCW 9.94A.030;
- (2) You receive or agree to receive residential services from certified residential community protection provider-intensive supported living services (CP-ISLS); and
- (3) You comply with the specialized supports and restrictions in one or more of the following:
 - (a) Your person-centered service plan(~~(individual support plan)~~);
 - (b) Your individual instruction and support plan (IISP); or
 - (c) Your treatment plan provided by DDA approved certified individuals and agencies.

AMENDATORY SECTION (Amending WSR 18-14-001, filed 6/20/18, effective 7/21/18)

WAC 388-845-0110 What are the limits to the waiver services you may receive? The following limits apply to the waiver services you may receive:

- (1) A service must be available in your waiver and address an unmet need identified in your person-centered service plan.
- (2) (~~Behavioral health~~) Stabilization services may be added to your person-centered service plan after the services have been provided.
- (3) Waiver services are limited to services required to prevent placement in an intermediate care facility for individuals with intellectual disabilities (ICF/IID).
- (4) The daily cost of your waiver services must not exceed the average daily cost of care in an ICF/IID.
- (5) Waiver services must not replace or duplicate other available paid or unpaid supports or services. Before DDA will cover a service through waiver services, you must first request and be denied all applicable (~~services~~) covered benefits through private insurance, medicare, the medicaid state plan, and other resources.
- (6) Waiver funding must not be authorized for treatments determined by DSHS to be experimental or investigational under WAC 182-531-0050.
- (7) For the individual and family services (IFS) (~~and~~) waiver, basic plus (~~waivers~~) waiver, and children's intensive in-home behavior support waiver, services must not exceed the yearly limits specified in these programs for specific services or combinations of services.
- (8) Your choice of qualified providers and services is limited to the most cost-effective option that meets your unmet need identified in your person-centered service plan.
- (9) Services provided out-of-state, other than in recognized bordering cities, are limited to respite care and personal care during vacations of not more than thirty consecutive days.
- (10) You may receive services in a recognized out-of-state bordering city under WAC 182-501-0175.
- (11) Other out-of-state waiver services require an approved exception to rule before DDA will authorize payment.
- (12) Waiver services do not cover:

- (a) Copays;
- (b) Deductibles;
- (c) Dues;
- (d) Membership fees; or
- (e) Subscriptions.

(13) Waiver services do not cover a product unless the product is:

- (a) ~~((Necessary to meet a))~~ The most basic model of the product available that can meet your health and safety need related to your intellectual or developmental disability; ~~((and))~~
- (b) The least restrictive means for meeting that need; and
- (c) Requested by you.

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-845-0200 What waiver services are available to you? Each of the DDA HCBS waivers has a different scope of service and your person-centered service plan(~~(individual support plan))~~) defines the waiver services available to you.

AMENDATORY SECTION (Amending WSR 18-14-001, filed 6/20/18, effective 7/21/18)

WAC 388-845-0210 What services are available under the basic plus waiver? The following services are available under the basic plus waiver:

SERVICE	YEARLY LIMIT
AGGREGATE SERVICES: ((Chemical)) Extermination of cimex lectularius (bedbugs) Community ((guide)) <u>engagement</u> Environmental adaptations Occupational therapy Physical therapy Positive behavior support and consultation Skilled nursing Specialized ((medical)) equipment and supplies Specialized ((psychiatric services)) <u>habilitation</u> Speech, hearing, and language services Staff and family consultation ((and training)) Transportation Wellness education	Total costs must not exceed six thousand one hundred ninety-two dollars per year per participant

SERVICE	YEARLY LIMIT
<u>Therapeutic adaptations</u>	<u>Limited to a single one-time authorization every five years and limited to funds available in the client's aggregate and emergency funding</u>
EMPLOYMENT SERVICES: Individual technical assistance ((Prevocational services)) Supported employment	Limits determined by DDA assessment and employment status ((; no new enrollment in prevocational services after September 1, 2015))
Community inclusion	Limits determined by ((DDA assessment)) <u>the person-centered service plan</u>
((BEHAVIORAL HEALTH)) STABILIZATION SERVICES: ((Behavioral health)) Crisis diversion bed ((services Positive behavior support and consultation) Specialized habilitation Staff and family consultation	Limits determined by a ((behavioral health professional or DDA)) <u>the person-centered service plan</u>
((Specialized psychiatric services))	
((Personal care))	((Limits determined by the CARE tool used as part of the DDA assessment))
Respite care	Limits determined by DDA assessment
Risk assessment	Limits determined by DDA
((Emergency assistance is only for basic plus waiver aggregate services)) <u>Community engagement</u> <u>Environmental adaptations</u> <u>Occupational therapy</u> <u>Physical therapy</u>	<u>Six thousand dollars per year</u> ((; preauthorization required)) <u>for emergency assistance funding</u>

SERVICE	YEARLY LIMIT
<u>Positive behavior support</u>	
<u>Specialized equipment and supplies</u>	
<u>Speech, hearing, and language services</u>	
<u>Skilled nursing</u>	
<u>Staff and family consultation</u>	
<u>Transportation</u>	

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

AMENDATORY SECTION (Amending WSR 18-14-001, filed 6/20/18, effective 7/21/18)

WAC 388-845-0215 What services are available under the core waiver? (1) The following services are available under the core waiver:

SERVICE	YEARLY LIMIT
((Chemical)) Extermination of cimex lectularius (bedbugs)	Determined by the person-centered service plan
Community ((guide)) <u>engagement</u>	
Community transition	
Environmental ((adaptions)) <u>adaptations</u>	
Occupational therapy	
Physical therapy	
Positive behavior support and consultation	
Residential habilitation	
Risk assessment	
Skilled nursing	
Specialized ((medical)) equipment and supplies	
((Specialized psychiatric services))	

SERVICE	YEARLY LIMIT
Speech, hearing, and language services	
Staff and family consultation ((and training))	
Transportation	
Wellness education	
<u>Specialized habilitation</u>	<u>Limited to four thousand dollars per waiver year</u>
EMPLOYMENT SERVICES: Individualized technical assistance ((Prevocational services)) Supported employment	Limits determined by DDA assessment and employment status ((; no new enrollment in prevocational services after September 1, 2015))
Community inclusion	Limits determined by ((DDA assessment)) <u>the person-centered service plan</u>
((BEHAVIORAL HEALTH)) STABILIZATION SERVICES: ((Behavioral health)) Crisis diversion bed ((services)) ((Positive behavior support and consultation)) Specialized ((psychiatric services)) <u>habilitation</u> <u>Staff and family consultation</u>	Limits determined by ((a behavioral health professional or DDA)) <u>the person-centered service plan</u>
Respite care	Limits determined by DDA assessment

(2) A participant's core waiver services are subject to additional limits under this chapter.

(3) The total cost of a participant's core waiver services must not exceed the average cost of care at an intermediate care facility for individuals with intellectual disabilities (ICF/IID).

AMENDATORY SECTION (Amending WSR 18-14-001, filed 6/20/18, effective 7/21/18)

WAC 388-845-0220 What services are available under the community protection waiver? (1) The following services are available under the community protection waiver:

SERVICE	YEARLY LIMIT
((Chemical)) Extermination of cimex lectularius (bedbugs) Community transition Environmental adaptations Occupational therapy Physical therapy Positive behavior support and consultation Residential habilitation Risk assessment Skilled nursing Specialized ((medical)) equipment and supplies ((Specialized psychiatric services)) Speech, hearing, and language services Staff and family consultation ((and training)) Transportation	Determined by the person-centered service plan
EMPLOYMENT SERVICES: Individual technical assistance ((Prevocational services)) Supported employment	Limits determined by DDA assessment and employment status ((no new enrollment in prevocational services after September 1, 2015))
((BEHAVIORAL HEALTH)) STABILIZATION SERVICES: ((Behavioral health)) Crisis diversion bed ((services)) ((Positive behavior support and consultation)) Specialized ((psychiatric services)) <u>habilitation</u> <u>Staff and family consultation</u>	Limits determined by ((a behavioral health professional or DDA)) <u>the person-centered service plan</u>

(2) A participant's community protection waiver services are subject to additional limits under this chapter.

(3) The total cost of a participant's community protection waiver services must not exceed the average cost of care at an intermediate care facility for individuals with intellectual disabilities (ICF/IID).

AMENDATORY SECTION (Amending WSR 18-14-001, filed 6/20/18, effective 7/21/18)

WAC 388-845-0225 What services are available under the children's intensive in-home behavioral support (CIIBS) waiver? (1) The following services are available under the children's intensive in-home behavioral support (CIIBS) waiver:

SERVICE	YEARLY LIMIT
Assistive technology Environmental adaptations Nurse delegation ((Positive behavior support and consultation)) Specialized clothing Specialized ((medical)) equipment and supplies <u>Specialized habilitation</u> Staff and family consultation ((and training)) ((Therapeutic equipment and supplies)) Transportation Vehicle modifications	((Determined by the person-centered service plan. Total cost of waiver services must not exceed the average cost of four thousand dollars per month per participant.)) <u>Fifteen thousand dollars per year for any combination of services</u>
Respite care	Limits determined by the DDA assessment. ((Costs are included in the total average cost of four thousand dollars per month per participant for all waiver services.))
((BEHAVIORAL HEALTH)) STABILIZATION SERVICES: ((Behavioral health)) Crisis diversion bed ((services)) ((Positive behavior support and consultation)) <u>Specialized habilitation</u> <u>Staff and family consultation</u>	Limits determined by ((behavioral health professional or DDA)) <u>the person-centered service plan</u>
Risk assessment <u>Positive behavior support</u>	Limits determined by DDA
<u>Environmental adaptations (Accessibility and repairs)</u> <u>Specialized habilitation</u> <u>Staff and family consultation</u> <u>Vehicle modifications</u>	<u>Six thousand dollars per year for emergency assistance funding</u>

SERVICE	YEARLY LIMIT
Music therapy Equine therapy	Five thousand dollars per year for combination of services
Therapeutic adaptations	Limited to a single, one-time authorization not to exceed fifteen thousand dollars every five waiver years

(2) A participant's CIIBS waiver services are subject to additional limits under this chapter.

AMENDATORY SECTION (Amending WSR 20-05-080, filed 2/18/20, effective 3/20/20)

WAC 388-845-0230 What services are available under the individual and family services (IFS) waiver? (1) The following services are available under the individual and family services (IFS) waiver:

SERVICE	YEARLY LIMIT
Assistive technology Community engagement Environmental ((adaptations)) adaptations Occupational therapy Peer mentoring Person-centered plan facilitation Physical therapy Positive behavior support and consultation Respite care Skilled nursing Specialized clothing Specialized ((medical)) equipment and supplies Specialized ((psychiatric-services)) habilitation Speech, hearing, and language services Staff and family consultation ((and training)) Supported parenting services Transportation	Total cost of waiver services must not exceed annual allocation determined by the person-centered service plan

SERVICE	YEARLY LIMIT
Vehicle modifications Wellness education	
Therapeutic adaptations	Limited to a one-time authorization every five years and limited to funds available in the client's aggregate and emergency services
Risk assessment	Limits determined by ((DDA. Costs are excluded from the annual allocation.)) the person-centered service plan
((BEHAVIORAL HEALTH)) STABILIZATION SERVICES: Crisis diversion bed ((services)) ((Positive behavior support and consultation)) Specialized ((psychiatric-services)) habilitation Staff and family consultation	Limits determined by ((behavioral health professional or DDA)) the person-centered service plan. Costs are excluded from the annual allocation.

(2) Your IFS waiver services annual allocation is based upon the DDA assessment under chapter 388-828 WAC. The DDA assessment determines your service level and annual allocation based on your assessed need. Annual allocations are as follows:

- (a) Level 1 = one thousand two hundred dollars;
- (b) Level 2 = one thousand eight hundred dollars;
- (c) Level 3 = two thousand four hundred dollars; or
- (d) Level 4 = three thousand six hundred dollars.

AMENDATORY SECTION (Amending WSR 20-05-080, filed 2/18/20, effective 3/20/20)

WAC 388-845-0425 Are there limits to the assistive technology you may receive? The assistive technology you may receive has the following limits:

(1) Assistive technology is limited to additional services not otherwise covered under the medicaid state plan, including EPSDT, but consistent with waiver objectives of avoiding institutionalization.

(2) Clinical and support needs for assistive technology must be identified in your DDA assessment and documented in the person-centered service plan.

(3) DDA requires ~~((your))~~ a treating professional's written recommendation regarding your need for the technology. This recommendation must take into account that:

- (a) The treating professional has personal knowledge of and experience with the requested assistive technology; and
- (b) The treating professional has recently examined you, reviewed your medical records, and conducted a functional evaluation of your use of the equipment and determined its effectiveness in meeting your identified need.

(4) Assistive technology requires prior approval by the DDA regional administrator or designee.

(5) DDA may require a written second opinion from a DDA-selected professional.

(6) The dollar amounts for your individual and family services (IFS) waiver annual allocation limit the amount of assistive technology you are authorized to receive.

(7) Assistive technology excludes any item that is for recreational or diversion purposes such as a television, cable, or DVD player.

AMENDATORY SECTION (Amending WSR 18-14-001, filed 6/20/18, effective 7/21/18)

WAC 388-845-0500 What is positive behavior support and consultation? (1) Positive behavior support and consultation ~~((may be provided to persons on any))~~ is available on all of the DDA HCBS waivers ((and)). A participant is eligible for positive behavior support and consultation if the participant is:

(a) Under age 21 and currently authorized to receive positive behavior support and consultation for the support of behavioral health or autism treatment when unable to access through the medicaid state plan; or

(b) On the community protection waiver and requires behavior support to address sexual aggression, arson, or assaultive behaviors which make the client eligible for the community protection waiver.

(2) Positive behavior support and consultation includes the development and implementation of programs designed to support waiver participants using:

(a) Individualized strategies for effectively relating to caregivers and other people in the waiver participant's life; and

(b) Direct interventions with the person to decrease aggressive, destructive, and sexually inappropriate or other behaviors that compromise their ability to remain in the community (i.e., training, specialized cognitive counseling, conducting a functional assessment, and development and implementation of a positive behavior support plan).

~~((2) Positive behavior support and consultation may also be provided as a behavioral health stabilization service in accordance with WAC 388-845-1150 through 388-845-1160.))~~

AMENDATORY SECTION (Amending WSR 18-14-001, filed 6/20/18, effective 7/21/18)

WAC 388-845-0510 Are there limits to the positive behavior support and consultation you may receive? (1) Clinical and support needs for positive behavior support and consultation must be identified in your DDA assessment and documented in the person-centered service plan.

(2) DDA determines the amount of positive behavior support and consultation you may receive based on your needs and information from your treating professional.

(3) The dollar amounts for aggregate services in your basic plus waiver or the dollar amounts in the annual allocation for the individual and family services (IFS) waiver limit the amount of service unless provided as a ~~((behavioral health))~~ stabilization service.

(4) DDA may require a second opinion from a DDA-selected provider.

(5) Positive behavior support and consultation ~~((not provided as a behavioral health stabilization service))~~ requires prior approval by the DDA regional administrator or designee for the following waivers:

(a) Basic plus;

(b) Core;

(c) Children's intensive in-home behavior support (CIIBS); and

(d) IFS.

(6) Positive behavior support and consultation services are limited to services:

(a) Consistent with waiver objectives of avoiding institutionalization; and

(b) That are not ((otherwise)) a covered benefit under the medicaid state plan.

AMENDATORY SECTION (Amending WSR 18-14-001, filed 6/20/18, effective 7/21/18)

WAC 388-845-0515 What is ((chemical)) extermination of bedbugs? (1) ~~((Chemical))~~ Extermination of cimex lectularius (bedbugs) is professional ~~((chemical))~~ extermination of bedbugs.

(2) DDA covers professional ~~((chemical))~~ extermination of bedbugs in your primary residence if you:

(a) Receive residential habilitation services; or

(b) Live in a private house or apartment for which you are financially responsible.

AMENDATORY SECTION (Amending WSR 18-14-001, filed 6/20/18, effective 7/21/18)

WAC 388-845-0520 Who are qualified providers of ((chemical)) extermination of bedbugs? A qualified ~~((chemical extermination))~~ provider must be(=

~~(1) Licensed as a chemical pesticide applicator by the Washington state department of agriculture; and~~

~~(2)) contracted with DDA to provide ((chemical)) extermination of bedbugs.~~

AMENDATORY SECTION (Amending WSR 18-14-001, filed 6/20/18, effective 7/21/18)

WAC 388-845-0525 Are there limits to the ((chemical)) extermination of bedbugs services I may receive? (1) ~~((Chemical))~~ Extermination of bedbugs services covers only:

(a) The assessment or inspection by the qualified provider;

(b) The application of chemical-based pesticide or heat treatment; and

(c) One follow-up visit.

(2) ~~((Chemical))~~ Extermination of bedbugs is limited to two treatments cycles per plan year.

(3) ~~((Chemical))~~ Extermination of bedbugs excludes:

(a) Lodging during the ~~((chemical))~~ extermination process; and

(b) Preparatory housework associated with the extermination process.

(4) DDA does not cover ~~((chemical))~~ extermination of bedbugs for a participant who lives:

(a) With their family; or

(b) In an adult family home, assisted living, group home, group training home, licensed staffed residential home, or other facility contractually obligated to provide housing.

~~((5) DDA requires prior approval by the regional administrator or designee for ((chemical)) extermination of bedbugs.))~~

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-845-0650 What ~~((are))~~ is community engagement ~~((services))~~? (1) Community engagement ~~((services are services))~~ is designed to increase a waiver participant's connection to and engagement in formal and informal community supports by connecting the participant to community resources.

(2) ~~((Services are))~~ Community engagement is designed to develop creative, flexible, and supportive community resources and relationships for individuals with developmental disabilities.

(3) Waiver participants are introduced to the community resources and supports that are available in their area.

(4) Participants are supported to develop identified skills that will facilitate integration into their community as described in the person-centered service plan.

~~((5) ((Outcomes for this service include skill development, opportunities for socialization, valued community roles, and involvement in community activities, organizations, groups, projects, and other resources.~~

~~((6))~~ This service is available ~~((in))~~ on the:

(a) IFS waiver;

(b) Basic plus waiver; and

(c) Core waiver when the participant is not receiving residential habilitation services.

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-845-0655 Who are qualified providers of community engagement ~~((services))~~? Qualified providers of community engagement ~~((services))~~ must be contracted with DSHS to provide this service and must be an individual or organization that has specialized training to provide services to people with developmental disabilities. Qualified provider types include:

(1) Registered recreational therapists in the state of Washington; or

(2) Organizations that provide services that promote skill development, improved functioning, increased independence, as well as reducing or eliminating the effects of illness or disability, including, but not limited to:

(a) Community centers;

(b) Municipal parks and recreation programs;

(c) Therapeutic recreation camps and programs; and

(d) Organizations that provide supports for ~~((individuals))~~ people with developmental disabilities.

AMENDATORY SECTION (Amending WSR 18-14-001, filed 6/20/18, effective 7/21/18)

WAC 388-845-0660 Are there limits to the community engagement ~~((services))~~ you may receive? (1) Community engagement ~~((services are))~~ is limited to the support needs identified in your DDA assessment and documented in your person-centered service plan.

(2) The dollar amounts in the annual allocation for the individual and family services ~~((IFS))~~ waiver limit the amount of community engagement ~~((services))~~ you may receive.

(3) Community engagement ~~((services are))~~ is limited to the community where you live.

(4) Community engagement ~~((services do))~~ does not cover:

(a) Membership fees or dues;

(b) Equipment related to activities; or

(c) The cost of any activities.

AMENDATORY SECTION (Amending WSR 18-14-001, filed 6/20/18, effective 7/21/18)

WAC 388-845-0800 What is emergency assistance?

Emergency assistance is a temporary increase of ninety days or less to the yearly basic plus or CIIBS waiver aggregate dollar limit when additional waiver aggregate services under WAC 388-845-0820 are required to ~~((prevent))~~ avoid placement in an intermediate care facility for individuals with intellectual disabilities (ICF/IID).

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

WAC 388-845-0810 How do I qualify for emergency assistance? You qualify for emergency assistance only if you have used all of your ~~((waiver))~~ CIIBS or basic plus aggregate funding and your current situation meets one of the following criteria:

(1) You involuntarily lose your present residence for any reason either temporary or permanent;

(2) You lose your present caregiver for any reason, including death;

(3) There are changes in your caregiver's mental or physical status resulting in the caregiver's inability to perform effectively for the individual; or

(4) There are significant changes in your emotional or physical condition that requires a temporary increase in the amount of a waiver service.

AMENDATORY SECTION (Amending WSR 18-14-001, filed 6/20/18, effective 7/21/18)

WAC 388-845-0820 Are there limits to your use of emergency assistance funding? All of the following limits apply to the emergency assistance you may receive~~((s))~~.

(1) Prior approval by the DDA regional administrator or designee is required based on a reassessment of your person-centered service plan to determine the need for emergency ~~((services;))~~ assistance.

(2) Payment authorizations are reviewed every thirty days and must not exceed six thousand dollars per twelve months based on the effective date of your current person-centered service plan((s)).

(3) Emergency assistance ~~((services are))~~ is limited to the following ~~((basic plus waiver))~~ aggregate services when on the basic plus waiver:

- (a) Community ~~((guide))~~ engagement;
- (b) Environmental adaptations;
- (c) Occupational therapy;
- (d) Physical therapy;
- (e) Positive behavior support and consultation;
- (f) Skilled nursing;
- (g) Specialized ~~((medical))~~ equipment and supplies;
- (h) ~~((Specialized psychiatric services;~~
- ~~((i))~~ Speech, hearing, and language services;
- ~~((j))~~ (i) Staff and family consultation ~~((and training)),~~
which excludes individual and family counseling;
- ~~((k))~~ (j) Transportation; and
- (k) Therapeutic adaptations.

(4) Emergency assistance is limited to the following services when on the CIIBS waiver:

- (a) Environmental adaptations;
- (b) Specialized habilitation;
- (c) Staff and family consultation; and
- (d) Vehicle modifications.

(5) Emergency assistance may be used for interim services until:

- (a) The emergency situation has been resolved;
- (b) You are transferred to alternative supports that meet your assessed needs; or
- (c) You are transferred to an alternate waiver that provides the service you need.

AMENDATORY SECTION (Amending WSR 20-05-080, filed 2/18/20, effective 3/20/20)

WAC 388-845-0900 What are environmental adaptations? (1) Environmental adaptations provide minimum necessary physical adaptations to the ~~((dwelling))~~ existing home and existing rooms within the home required by the individual's person-centered service plan needed to:

- (a) Ensure the health, welfare, and safety of the individual;
- (b) Enable the individual who would otherwise require institutionalization to function with greater independence in the ~~((dwelling))~~ home; and
- (c) Increase the individual's independence inside ~~((the dwelling))~~ or outside the ~~((dwelling))~~ home to ~~((provide access to the dwelling))~~ allow the individual to physically enter and move within the home.

(2) Examples of environmental ~~((adaptions))~~ adaptations include installing stair lifts, installing ramps and grab bars, widening doorways, modifying the individual's primary bathroom, or installing specialized electrical or plumbing systems necessary to accommodate the medical equipment and supplies that are necessary for the welfare of the individual.

(3) Environmental ~~((adaptions))~~ adaptations are available in all of the DDA HCBS waivers.

(4) Only the children's intensive in-home behavioral support (CIIBS) and individual and family services (IFS) waivers may include adaptations to the ~~((dwelling))~~ home necessary to prevent or repair ~~((property destruction))~~ damage to the structure of the home caused by the participant's behavior, as addressed in the participant's ~~((positive))~~ behavior support plan.

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-845-0905 Who is a qualified provider for environmental adaptations? ~~((1) For adaptations that do not require installation, qualified providers are retail vendors with a valid business license contracted with DDA to provide this service.~~

~~((2) For adaptations requiring installation,))~~ A qualified ~~((providers))~~ provider must be a registered contractor per chapter 18.27 RCW and contracted with DDA. The contractor ~~((or subcontractor))~~ must be licensed and bonded to perform the specific type of work ~~((they are providing))~~ being provided.

~~((3) For debris removal, qualified providers must be contracted with DDA.))~~

AMENDATORY SECTION (Amending WSR 20-05-080, filed 2/18/20, effective 3/20/20)

WAC 388-845-0910 What limits apply to environmental adaptations? The following service limits apply to environmental adaptations:

(1) Clinical and support needs for an environmental adaptation must be identified in the waiver participant's DDA assessment and documented in the person-centered service plan.

(2) Environmental adaptations require prior approval by the DDA regional administrator or designee and must be supported by itemized and written bids from licensed contractors. For an adaptation that costs:

- (a) One thousand five hundred dollars or less, one bid is required;
- (b) More than one thousand five hundred dollars and equal to or less than five thousand dollars, two bids are required; or
- (c) More than five thousand dollars, three bids are required.

(3) All bids must include:

- (a) The cost of all required permits and sales tax; and
- (b) An itemized and clearly outlined scope of work.

(4) DDA may require an occupational therapist, physical therapist, or ~~((construction consultant))~~ other professional to review and recommend an appropriate environmental adaptation statement of work prior to the waiver participant soliciting bids or purchasing adaptive equipment.

(5) Environmental adaptations to the home are excluded if they are of general utility without direct benefit to the individual as related to the individual's developmental disability, such as cosmetic improvements to the ~~((dwelling))~~ home, or general home improvements, such as carpeting, roof repair, or central air conditioning.

(6) Environmental adaptations must meet all local and state building codes. Evidence of any required completed inspections must be submitted to DDA prior to final payment for work.

~~((7))~~ ~~((The condition of the dwelling or other projects in progress in the dwelling may prevent or limit some or all environmental adaptations at the discretion of DDA))~~ Environmental adaptations must not be performed while other adaptations or remodeling projects are in process.

~~((8))~~ Environmental adaptations must not be approved if the existing residence condition is impacted by hazardous mold, asbestos, or home dilapidation.

~~((9))~~ Location of the ~~((dwelling))~~ home in a flood plain, landslide zone, or other hazardous area may limit or prevent any environmental adaptations at the discretion of DDA.

~~((10))~~ (10) Written consent from the ~~((dwelling))~~ home's landlord is required prior to starting any environmental adaptations for a rental property. The landlord must not require removal of the environmental adaptations at the end of the waiver participant's tenancy as a condition of the landlord approving the environmental adaptation to the waiver participant's ~~((dwelling))~~ home.

~~((11))~~ (11) Environmental adaptations must not add to the total square footage of the ~~((dwelling))~~ home, convert nonliving space to living space, or create a new room.

~~((12))~~ (12) The amount of service you may receive is limited to the dollar amounts for aggregate services in your basic plus waiver, CIIBS waiver, or the dollar amount of your annual IFS waiver allocation ((limit the amount of service you may receive)).

~~((13))~~ (13) For core~~((:))~~ and community protection wavers, ((and CHBS wavers,)) annual environmental adaptation costs must not exceed twelve thousand one hundred ninety-two dollars.

~~((14))~~ (14) Damage prevention and repairs under the CIIBS and IFS waivers are subject to the following restrictions:

(a) Limited to the cost of restoration to the original function;

(b) Limited to the dollar amounts of the ~~((IFS waiver))~~ participant's annual allocation;

(c) Behaviors of waiver participants that resulted in damage to the ~~((dwelling))~~ home must be addressed in a positive behavior support plan prior to the repair of damages;

(d) Repairs to personal property such as furniture and appliances are excluded; and

(e) Repairs due to normal wear and tear are excluded.

~~((15))~~ (15) Noncovered environmental adaptations ((are not covered as an environmental adaptation)) include:

(a) Building fences and fence repairs;

(b) Carpet or carpet replacement;

(c) Air conditioning, heat pumps, generators, or ceiling fans;

(d) Roof repair or siding;

(e) Deck construction or repair; and

(f) Jetted tubs or saunas.

~~((16))~~ (16) Environmental ~~((adaptions))~~ adaptations are limited to additional services not otherwise covered under

the medicaid state plan, including EPSDT, but consistent with waiver objectives of avoiding institutionalization.

NEW SECTION

WAC 388-845-0920 What is equine therapy? (1)

Equine therapy is the use of horses to provide experiences that support mental health and emotional well-being.

(2) Services may include horsemanship as part of a therapeutic team and participation in other activities associated with preparing a horse for a client's riding lesson.

(3) Equine therapy is available only on the CIIBS waiver.

NEW SECTION

WAC 388-845-0930 Who are qualified providers of equine therapy? (1) The provider of equine therapy must be a certified therapeutic horseback riding instructor and contracted with DDA to provide this service.

(2) The provider of equine therapy must have one year of experience working with individuals with developmental disabilities.

NEW SECTION

WAC 388-845-0940 Are there limits to the equine therapy I may receive? The following limits apply to your receipt of equine therapy:

(1) Support needs for equine therapy are limited to those identified in your DDA assessment and documented in the person-centered service plan.

(2) The department requires your behavior specialist's written recommendation regarding your need for the service. This recommendation must take into account that the service is expected to complement the existing behavior support plan to address behavior support needs.

(3) Equine therapy requires prior approval by the DDA regional administrator or designee.

(4) DDA may require a second opinion by the department-selected provider.

(5) Equine therapy services must not exceed the CIIBS combined specialized-hourly services allocation of five thousand dollars per plan year.

(6) Equine therapy services must not be used to provide hippotherapy, which is an occupational therapy service.

(7) The department reserves the right to terminate the authorization for equine therapy services if there is not a demonstrable improvement in behavior as documented by the contracted equine therapist or other treatment provider.

AMENDATORY SECTION (Amending WSR 20-05-080, filed 2/18/20, effective 3/20/20)

WAC 388-845-1100 What are ~~((behavioral health))~~ stabilization services - crisis diversion bed ((services))? ~~((Behavioral health))~~ (1) Crisis diversion ~~((bed services))~~ beds are ~~((short term emergent residential services that may be provided in a client's home, licensed or certified setting, or state operated setting. These services are available to eligible clients whose current living situation is disrupted and the eli~~

ent is at risk of institutionalization. These services are)) available in all five HCBS waivers administered by DDA as ((behavioral health)) a stabilization ((services)) service in accordance with WAC 388-845-1150 through 388-845-1160.

(2) Crisis diversion beds are short-term residential habilitative supports provided by trained specialists and include direct care, supervision or monitoring, habilitative supports, referrals, and consultation. Crisis diversion beds are available to individuals determined by DDA to be at risk of institutionalization.

NEW SECTION

WAC 388-845-1101 Where may stabilization services - crisis diversion bed be provided? Stabilization services - crisis diversion beds may be provided in a client's home or a licensed or certified setting.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

WAC 388-845-1105 Who is a qualified provider of ((behavioral health)) stabilization services - crisis diversion bed ((services))? Providers of ((behavioral health)) stabilization services - crisis diversion ((bed services)) beds must be:

- (1) DDA certified residential agencies per chapter 388-101 WAC;
- (2) Other department licensed or certified agencies; or
- (3) State-operated ((agency)) agencies.

AMENDATORY SECTION (Amending WSR 20-05-080, filed 2/18/20, effective 3/20/20)

WAC 388-845-1110 What are the limits of ((behavioral health)) stabilization services - crisis diversion bed ((services))? (1) ((Clinical and)) Support needs for ((behavioral health)) stabilization services - crisis diversion ((bed services)) beds are limited to those identified in the waiver participant's DDA assessment and documented in the person-centered service plan.

(2) ((Behavioral health)) Stabilization services - crisis diversion ((bed services)) beds are intermittent and temporary. A behavioral health professional may make a recommendation about your need for ((behavioral health)) stabilization services - crisis diversion ((bed services)) beds. The DDA person-centered service plan determines the duration and amount of ((behavioral health)) stabilization services - crisis diversion ((bed services)) beds you will receive.

(3) The costs of ((behavioral health)) stabilization services - crisis diversion ((bed services)) beds do not count toward the dollar amounts for aggregate services in the basic plus or CIIBS waiver or the annual allocation in the individual and family services waiver.

(4) Stabilization services - crisis diversion beds are limited to additional services not otherwise covered under the state plan, including EPSDT, but consistent with waiver objectives of avoiding institutionalization.

AMENDATORY SECTION (Amending WSR 20-05-080, filed 2/18/20, effective 3/20/20)

WAC 388-845-1150 What are ((behavioral health)) stabilization services? (1) ((Behavioral health)) Stabilization services assist persons who are experiencing a ((behavioral health)) crisis.

(2) ((Behavioral health)) Stabilization services are available in the basic plus, core, children's intensive in-home behavior support (CIIBS), individual and family services (IFS), and community protection waivers.

(3) A participant may be eligible for ((behavioral health)) stabilization services if:

(a) A behavioral health professional ((or)) and DDA has determined the participant is at risk of institutionalization or hospitalization; and

(b) The participant needs short-term:

(i) ((Positive behavior support and consultation)) Specialized habilitation;

(ii) ((Specialized psychiatric services for people age twenty-one and older)) Staff and family consultation; or

(iii) ((Behavioral health)) Crisis diversion ((bed services available to participants on the individual and family services, basic plus, core, CIIBS, and community protection waivers)) beds.

AMENDATORY SECTION (Amending WSR 13-04-005, filed 1/24/13, effective 2/24/13)

WAC 388-845-1155 Who are qualified providers of ((behavioral health)) stabilization services? Providers of these ((behavioral health)) stabilization services are listed in the rules in this chapter governing the specific services listed in WAC 388-845-1150.

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-845-1160 Are there ((limitations)) limits to the ((behavioral health)) stabilization services that you can receive? (1) ((Clinical and support needs for behavioral health)) Stabilization services are limited to those identified in your DDA assessment and documented in the person-centered service ((plan/individual support)) plan.

(2) ((Behavioral health)) Stabilization services are intermittent and ((temporary)) last for ninety days or less. ((The duration and amount of services you need to stabilize your crisis is determined by a behavioral health professional and/or DDA.))

(3) The costs of ((behavioral health)) stabilization services do not count toward the dollar amounts for aggregate services in the basic plus or CIIBS waiver or the annual allocation in the IFS waiver.

(((4) Behavioral health stabilization services require prior approval by DDA or its designee.))

NEW SECTION

WAC 388-845-1161 What is music therapy?

(1) Music therapy is the use of musical interventions to pro-

mote the accomplishment of individualized goals within a therapeutic relationship.

(2) Services may include music improvisation, receptive music listening, song writing, lyric discussion, music and imagery, music performance, or other expressive musical forms.

(3) Music therapy is available in the CIIBS waiver.

NEW SECTION

WAC 388-845-1162 Who are qualified providers of music therapy? (1) Qualified providers of music therapy are agencies or individuals who are or employ board certified music therapists (MT-BC) as defined by the certification board for music therapists;

(2) Are contracted with DDA to provide this service; and

(3) Have one year of experience working with individuals with developmental disabilities.

NEW SECTION

WAC 388-845-1163 Are there limits to the music therapy I may receive? The following limits apply to your receipt of music therapy:

(1) Support needs for music therapy are limited to those identified in your DDA assessment and documented in the person-centered service plan.

(2) The department requires your behavior specialist's written recommendation regarding your need for the service. This recommendation must take into account that music therapy is expected to complement the existing behavior support plan to address behavior support needs.

(3) Music therapy requires prior approval by the DDA regional administrator or designee.

(4) DDA may require a second opinion by a department-selected provider.

(5) Music therapy must not exceed the CIIBS combined specialized-hourly services allocation of five thousand dollars per year.

(6) The department reserves the right to terminate the service authorization for music therapy if there is not a demonstrable improvement in behavior as documented by the certified music therapist or other treatment provider.

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-845-1180 Are there limitations to the nurse delegation services that you receive? The following limitations apply to receipt of nurse delegation services:

(1) Clinical and support needs for nurse delegation are limited to those identified in your DDA assessment and documented in the person-centered service plan(~~(individual support plan)~~).

(2) The department requires the delegating nurse's written recommendation regarding your need for the service. This recommendation must take into account that the nurse has recently examined you, reviewed your medical records, and conducted a nursing assessment.

(3) The department may require a written second opinion from a department selected nurse delegator that meets the same criteria in subsection (2) of this section.

(4) The following tasks must not be delegated:

(a) Injections, other than insulin;

(b) Central lines;

(c) Sterile procedures; and

(d) Tasks that require nursing judgment.

(5) The dollar amounts for aggregate services in your basic plus waiver or the dollar amounts for your annual allocation in your IFS waiver limit the amount of nurse delegation service you are authorized to receive.

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-845-1197 What limitations are there for person-centered plan facilitation? (1) Support needs for person-centered planning facilitation are limited to those identified in the waiver participant's DDA assessment and documented in the person-centered service plan(~~(individual support plan)~~).

(2) Person-centered plan facilitation may include follow up contacts with the waiver participant and his or her family to consult on plan implementation.

(3) The dollar amounts for the waiver participants' annual allocation in the IFS waiver limit the amount of person-centered plan facilitation service the individual is authorized to receive.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

WAC 388-845-1505 Who are qualified providers of residential habilitation services for the core waiver? Providers of residential habilitation services for participants in the core waiver must be one of the following:

(1) Individuals contracted with DDA to provide residential support as a "companion home" provider;

(2) Individuals contracted with DDA to provide training as an "alternative living provider";

(3) Agencies contracted with DDA and certified per chapter 388-101 WAC;

(4) State-operated living alternatives (SOLA); or

(5) Licensed and contracted;

(a) Group care facilities and staffed residential homes((;)) under chapter 110-145 WAC;

(b) Child foster homes((;)) under chapter 110-148 WAC;

or

(c) Child placing agencies ((or staffed residential homes per chapter 388-148)) under chapter 110-147 WAC.

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-845-1607 Can someone who lives with you be your respite provider? ((Someone)) A person who lives with you ((may)) must not be your respite care provider ((as long as he or she is not)) if the person is:

(1) Your primary care provider ((and is not contracted to provide));

(2) Providing any other DSHS paid service to you (~~the limitations~~) in the month that person provides respite care to you; or

(3) Unqualified to provide waiver services based on the limits listed in WAC 388-845-0111 (~~also apply~~).

AMENDATORY SECTION (Amending WSR 18-14-001, filed 6/20/18, effective 7/21/18)

WAC 388-845-1700 What is waiver skilled nursing?

(1) Waiver skilled nursing means long-term, intermittent, and hourly skilled nursing services consistent with waiver objectives of avoiding institutionalization.

(2) Waiver skilled nursing services are available in the basic plus, community protection (CP), core, and individual and family services (IFS) waivers, and are limited to participants age twenty-one and older unless skilled nursing is authorized as nurse delegation.

(3) Waiver skilled nursing services include nurse delegation services provided by a registered nurse under WAC 388-845-1170.

AMENDATORY SECTION (Amending WSR 20-05-080, filed 2/18/20, effective 3/20/20)

WAC 388-845-1800 What are specialized (~~medical~~) equipment and supplies? (1) Specialized (~~medical~~) equipment and supplies are durable and nondurable medical equipment, or nonmedical equipment necessary to prevent institutionalization, not available through the medicaid state plan or are in excess of what is available through the medicaid state plan benefit, which enables individuals:

(a) To increase their abilities to perform their activities of daily living;

(b) To perceive, control, or communicate with the environment in which they live; or

(c) (~~On the IFS waiver only,~~) To improve daily functioning through sensory integration (~~when prescribed~~) identified in a written therapeutic plan by the current treating professional.

(2) Specialized equipment and supplies are available in all DDA HCBS waivers.

(3) Durable medical equipment and medical supplies are defined in WAC 182-543-1000 and 182-543-5500, respectively.

(~~(3)~~) (4) Also included in specialized equipment and supplies are items necessary for life support and ancillary supplies and equipment necessary to the proper functioning of the equipment and supplies described in subsection (1) of this section.

(~~(4)~~) (5) Specialized (~~medical~~) equipment and supplies include the maintenance and repair of specialized (~~medical~~) equipment not covered through the medicaid state plan.

(~~(5)~~ Specialized medical equipment and supplies are available in all DDA HCBS waivers.)

AMENDATORY SECTION (Amending WSR 20-05-080, filed 2/18/20, effective 3/20/20)

WAC 388-845-1805 Who are the qualified providers of specialized (~~medical~~) equipment and supplies? (1) (~~The~~) To be a qualified provider of (~~specialized~~) durable or nondurable medical equipment (~~and supplies~~), the provider must be a medical equipment supplier contracted:

(a) With DDA (~~or have a state contract~~); and

(b) As a Title XIX vendor.

(2) (~~For IFS only,~~) The provider of nonmedical equipment may be a provider contracted with DDA as a goods and services shopper or a provider who satisfies the requirements of WAC 388-845-1805(1).

(3) The provider of specialized (~~medical~~) equipment and supplies under WAC 388-845-1800 (1)(c) (~~must~~) may be contracted with DDA as a provider of specialized goods and services or specialized equipment and supplies for IFS and CIIBS waiver clients only.

AMENDATORY SECTION (Amending WSR 20-05-080, filed 2/18/20, effective 3/20/20)

WAC 388-845-1810 Are there limits to the specialized (~~medical~~) equipment and supplies you may receive? The following limits apply to the specialized (~~medical~~) equipment and supplies you may receive:

(1) Habilitative support needs for specialized (~~medical~~) equipment and supplies are limited to those identified in your DDA person-centered assessment and documented in your person-centered service plan.

(2) Specialized (~~medical~~) equipment and supplies require prior approval by the DDA regional administrator or designee for each authorization.

(3) When your medical professional recommends specialized equipment and supplies for you, DDA may require a second opinion by a DDA-selected provider.

(4) Items must be of direct medical or remedial benefit to you or required to prevent institutionalization and necessary as a result of your disability.

(5) Medications, first aid supplies, antiseptic supplies, personal hygiene products, supplements, and vitamins are excluded.

(6) The dollar amounts for aggregate services in your basic plus waiver limit the amount of service you may receive.

(7) The dollar amounts for your annual allocation in your individual and family services (IFS) waiver limit the amount of service you may receive.

(8) Items excluded from specialized equipment and supplies include:

(a) Items of general utility; and

(b) Nonspecialized recreational or exercise equipment, (~~such as~~) including but not limited to trampolines, treadmills, swing sets, and hot tubs.

(9) Specialized equipment and supplies are limited to additional services not otherwise covered under the medicaid state plan, including EPSDT, but consistent with waiver objectives of avoiding institutionalization.

NEW SECTION

WAC 388-845-1870 What are specialized habilitation services? (1) Specialized habilitation services provide community-based and individualized support with the intent of reaching an identified habilitative goal in the person-centered service plan.

(2) Service must assist a client to learn or maintain skills in the category of self-empowerment, safety awareness, self-advocacy, interpersonal effectiveness, effective social communication, appropriate coping strategies for everyday life changes, managing daily tasks, or adaptive skills.

(3) Specialized habilitation must promote inclusion in the community.

(4) Specialized habilitation services are available on the basic plus, IFS, core, and CIIBS waivers.

(5) Specialized habilitation, when authorized as a stabilization service, is available on all five HCBS waivers.

NEW SECTION

WAC 388-845-1880 Who are qualified providers of specialized habilitation services? To provide specialized habilitation services, a provider must be contracted with DDA for this service, have one year of experience working with people with a developmental or intellectual disability, and be one of the following licensed, registered, or certified professionals:

(1) Certified life skills coach;

(2) Individuals with bachelor's, master's, or doctoral degrees in social work, sociology, psychology, education, child development, gerontology, nursing, or other related field; or

(3) In a university internship program for social work, sociology, psychology, education, child development, gerontology, sociology, gerontology, or nursing.

NEW SECTION

WAC 388-845-1890 Are there limits to the specialized habilitation I may receive? The following limits apply to your receipt of specialized habilitation:

(1) Specialized habilitation is limited to address a maximum of three goals at a time.

(2) Specialized habilitation support needs must be identified in your DDA assessment and specialized habilitation must be documented in your person-centered service plan.

(3) Specialized habilitation must not exceed:

(a) Four-thousand dollars of your basic plus aggregate funding;

(b) Your IFS annual allocation in combination with other waiver services; or

(c) Fifteen thousand dollars within your total CIIBS aggregate budget and six thousand dollars emergency funding when eligible per WAC 388-845-0800 and 388-845-0820.

(4) Specialized habilitation does not cover education, vocational, skills acquisition training through community first choice, behavioral health, ABA, skilled nursing, occupational therapy, physical therapy, or speech, language, and hearing services that are covered benefits through the medic-

aid state plan, including early and periodic screening, diagnosis, and treatment and part B special education services.

(5) Specialized habilitation must not be authorized to clients enrolled in residential habilitation.

(6) Habilitation plans must be documented as formal plans as outlined in the provider's contract.

(7) Specialized habilitation, not provided as a stabilization service, requires prior approval by the DDA regional administrator or designee.

AMENDATORY SECTION (Amending WSR 20-05-080, filed 2/18/20, effective 3/20/20)

WAC 388-845-2000 What is staff and family consultation ((and training))? (1) Staff and family consultation ((and training)) is ((professional)) assistance, not covered by the medicaid state plan, to families or direct service providers to help them meet the individualized and specific needs of a participant as outlined in the participant's person-centered service plan and necessary to improve the participant's independence and inclusion in their community.

(2) Staff and family consultation ((and training)) is available in all DDA HCBS waivers.

(3) Staff and family consultation ((and training)) is consultation and guidance to a staff member or family member about one or more of the following:

(a) Health and medication monitoring to track and report to healthcare provider;

(b) Positioning and transfer;

(c) Basic and advanced instructional techniques;

(d) ~~((Positive behavior support))~~ Consultation with potential referral resources;

(e) Augmentative communication systems;

(f) Diet and ~~((nutrition))~~ nutritional guidance;

(g) Disability information and education;

(h) Strategies for effectively and therapeutically interacting with the participant;

(i) Environmental ~~((safety))~~ consultation;

(j) Assistive technology safety; ~~((and))~~

(k) An existing plan of care; and

(l) For the basic plus, IFS, and CIIBS waivers only, individual and family counseling.

AMENDATORY SECTION (Amending WSR 20-05-080, filed 2/18/20, effective 3/20/20)

WAC 388-845-2005 Who is a qualified provider of staff and family consultation ((and training))? To provide staff and family consultation ((and training)), a provider must be contracted with DDA and be one of the following licensed, registered, or certified professionals:

(1) Audiologist;

(2) Licensed practical nurse;

(3) Marriage and family therapist;

(4) Mental health counselor;

(5) Occupational therapist;

(6) Physical therapist;

(7) Registered nurse;

(8) Sex offender treatment provider;

(9) Speech-language pathologist;

(10) Social worker;

- (11) Psychologist;
- (12) Certified American Sign Language instructor;
- (13) Nutritionist;
- (14) Counselors registered or certified in accordance with chapter 18.19 RCW;
- (15) Certified dietician;
- (16) Recreation therapist registered in Washington and certified by the national council for therapeutic recreation;
- (17) Providers listed in WAC 388-845-0506 and contracted with DDA to provide CIIBS intensive services;
- (18) Certified music therapist (for CIIBS only);
- (19) Psychiatrist;
- (20) Professional advocacy organization; or
- (21) Teacher certified under chapter 181-79A WAC.

AMENDATORY SECTION (Amending WSR 20-05-080, filed 2/18/20, effective 3/20/20)

WAC 388-845-2010 Are there limits to the staff and family consultation (~~and training~~) you may receive? (1) Staff and family consultation (~~and training~~) are limited to supports identified in your DDA assessment and documented in the person-centered service plan.

(2) Expenses to the family or provider for room and board or attendance, including registration, at conferences are excluded as a service under staff and family consultation (~~and training~~).

(3) The dollar amounts for aggregate service in your basic plus waiver or the dollar amount of the annual allocation in your individual and family services (IFS) waiver limit the amount of staff and family consultation (~~and training~~) you may receive.

(4) Under the basic plus waiver, individual and family counseling is limited to family members who:

- (a) Live with the participant; and
- (b) Have been assaulted by the participant and the assaultive behavior was:
 - (i) Documented in the participant's person-centered service plan; and
 - (ii) Addressed in the participant's positive behavior support plan or therapeutic plan.

(5) Staff and family consultation (~~and training~~) does not provide training or consultation necessary to meet a provider's or staff's contractual licensing or certification requirements or to complete the necessary functions of their job.

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-845-2140 Are there any limitations on your receipt of supported parenting services? The following limitations apply to your receipt of supported parenting services:

(1) Clinical and support needs for supported parenting services are limited to those identified in your DDA assessment and documented in your person-centered service plan (~~individual support plan~~); and

(2) The dollar amount of your annual allocation in your IFS waiver limit the amount of supported parenting service you are authorized to receive.

NEW SECTION

WAC 388-845-2145 What are therapeutic adaptations? (1) Therapeutic adaptations available on the basic plus, IFS, and CIIBS waiver are modifications to an existing room in the waiver participant's current home and are necessary to reduce or eliminate environmental sensory stressors, enable effective social support, or give a sense of control to the waiver participant in order for a therapeutic plan to be implemented.

(2) Therapeutic adaptations include one-time room modifications not related to physical accessibility such as:

- (a) Noise reduction or enhancement;
- (b) Lighting adjustment;
- (c) Wall softening;
- (d) Anchored and nonremovable tactile accents; or
- (e) Anchored and nonremovable visual accents.

NEW SECTION

WAC 388-845-2150 Who is a qualified provider of therapeutic adaptations? (1) A qualified provider of therapeutic adaptations is a person who is contracted with DDA and:

(a) A registered contractor per chapter 18.27 RCW and licensed and bonded to perform the specific type of work they are providing; or

(b) A medical equipment supplier with a state contract as a Title XIX vendor.

(2) A qualified provider of therapeutic adaptations may also be someone who is contracted with DDA as:

- (a) A purchasing goods and services contractor; or
- (b) A CIIBS goods and services contractor.

NEW SECTION

WAC 388-845-2155 Are there limits to the therapeutic adaptations I may receive? The following limits apply to your receipt of therapeutic adaptations:

(1) Therapeutic adaptations are limited to one adaptation request every five waiver years.

(2) Funding is limited to the aggregate budget in the basic plus and IFS waiver or fifteen thousand dollars on the CIIBS waiver.

(3) Modifications may not add square footage to the home or convert nonliving space into living space.

(4) The department requires a written recommendation by a behavioral health provider, occupational therapist, or physical therapist within the waiver participant's current therapeutic plan.

(5) Therapeutic adaptations are limited to items not otherwise covered under the state plan, including EPSDT, but consistent with waiver objectives of avoiding institutionalization.

(6) Therapeutic adaptations require prior approval by the DDA regional administrator or designee.

(7) Therapeutic adaptations are limited to those identified in the client's person-centered service plan.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

WAC 388-845-2200 What are transportation services? Transportation services provide reimbursement to a provider when the transportation is required and specified in the waiver (~~((individual support))~~ person-centered service plan). This service is available in all DDA HCBS waivers if the cost and responsibility for transportation is not already included in your provider's contract and payment.

(1) Transportation provides you access to waiver services, specified by your (~~((individual support))~~ person-centered service plan).

(2) Whenever possible, you must use family, neighbors, friends, or community agencies that can provide this service without charge.

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-845-2210 Are there limitations to the transportation services you can receive? The following limitations apply to transportation services:

(1) Support needs for transportation services are limited to those identified in your DDA assessment and documented in your person-centered service plan (~~((individual support plan))~~).

(2) Transportation is limited to travel to and from a waiver service. When the waiver service is supported employment, transportation is limited to days when you receive employment support services.

(3) Transportation does not include the purchase of a bus pass.

(4) Reimbursement for provider mileage requires prior authorization by DDA and is paid according to contract.

(5) This service does not cover the purchase or lease of vehicles.

(6) Reimbursement for provider travel time is not included in this service.

(7) Reimbursement to the provider is limited to transportation that occurs when you are with the provider.

(8) You are not eligible for transportation services if the cost and responsibility for transportation is already included in your provider's contract and payment.

(9) The dollar limitations for aggregate services in your basic plus waiver or the dollar amount of your annual allocation in the IFS waiver limit the amount of service you may receive.

(10) If your individual waiver personal care provider uses his or her own vehicle to provide transportation to you for essential shopping and medical appointments as a part of your personal care service, your provider may receive up to one hundred miles per month in mileage reimbursement. If you work with more than one individual personal care provider, your limit is still a total of one hundred miles per month. This cost is not counted toward the dollar limitation for aggregate services in the basic plus waiver.

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-845-2270 Are there limitations to your receipt of vehicle modification services? Vehicle modification services are only available on the CIIBS or IFS waiver. The following limitations apply:

(1) Clinical and support needs for vehicle modification services are limited to those identified in your DDA assessment and documented in the person-centered service plan (~~((individual support plan))~~).

(2) Vehicle modifications are excluded if they are of general utility without direct medical or remedial benefit to you.

(3) If you are eligible for or enrolled with division of vocational rehabilitation (DVR) you must pursue this benefit through DVR first.

(4) Vehicle modifications must be the most cost effective modification based upon a comparison of contractor bids as determined by DDA.

(5) Modifications will only be approved for a vehicle that serves as your primary means of transportation and is owned by you, your family, or both.

(6) DDA requires your treating professional's written recommendation regarding your need for the service. This recommendation must take into account that the treating professional has recently examined you, reviewed your medical records, and conducted a functional evaluation.

(7) The department may require a second opinion from a department selected provider that meets the same criteria as subsection (6) of this section.

(8) The dollar amount for your annual allocation in your IFS waiver limits the amount of vehicle modification service you are authorized to receive.

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-845-3000 What is the process for determining the services you need? Your service needs are determined through the DDA assessment and the service planning process as defined in chapter 388-828 WAC. Only identified health and welfare needs will be authorized for payment in the person-centered service plan (~~((individual support plan))~~).

(1) You receive an initial and annual assessment of your needs using a department-approved form.

(a) You meet the eligibility requirements for ICF/IID level of care.

(b) The comprehensive assessment reporting evaluation (CARE) tool will determine your eligibility and amount of personal care services.

(c) If you are in the basic plus, CIIBS, or core waiver, the DDA assessment will determine the amount of respite care available to you.

(2) From the assessment, DDA develops your waiver person-centered service plan (~~((individual support plan (ISP)))~~) with either you, or you and your legal representative, and others who are involved in your life such as your parent or guardian, advocate, and service providers.

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-845-3055 What is a waiver person-centered service plan(~~(individual support plan (ISP))~~)? (1) The person-centered service plan(~~(individual support plan (ISP))~~) is the primary tool DDA uses to determine and document your needs and to identify the services to meet those needs.

(2) Your person-centered service plan(~~(ASP)~~) must include:

- (a) Your identified health and welfare needs;
- (b) Both paid and unpaid services and supports approved to meet your identified health and welfare needs as identified in WAC 388-828-8040 and 388-828-8060; and
- (c) How often you will receive each waiver service, how long you will need it, and who will provide it.

(3) For any person-centered service plan(~~(ASP)~~), you or your legal representative must sign the plan indicating your agreement to the receipt of services.

(4) You may choose any qualified provider for the service, who meets all of the following:

- (a) Is able to meet your needs within the scope of their contract, licensure, and certification;
- (b) Is reasonably available;
- (c) Meets provider qualifications in chapters 388-845 and 388-825 WAC for contracting; and
- (d) Agrees to provide the service at department rates.

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-845-3056 What if you need assistance to understand your person-centered service plan(~~(individual support plan)~~)? If you are unable to understand your person-centered service plan(~~(individual support plan)~~) and the individual who has agreed to provide assistance to you as your necessary supplemental accommodation representative is unable to assist you with understanding your (~~(individual support)~~) person-centered service plan, DDA will take the following steps:

(1) Consult with the office of the attorney general to determine if you require a legal representative or guardian to assist you with your (~~(individual support)~~) person-centered service plan;

(2) Continue your current waiver services; and

(3) If the office of the attorney general or a court determines that you do not need a legal representative, DDA will continue to try to provide necessary supplemental accommodations in order to help you understand your person-centered service plan(~~(individual support plan)~~).

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-845-3060 When is your person-centered service plan(~~(individual support plan)~~) effective? Your person-centered service plan(~~(individual support plan)~~) is effective the last day of the month in which DDA signs and dates it.

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-845-3061 Can a change in your person-centered service plan(~~(individual support plan)~~) be effective before you sign it? If you verbally request a change in service to occur immediately, DDA can sign the person-centered service plan(~~(individual support plan)~~) and approve it prior to receiving your signature.

(1) Your person-centered service plan(~~(individual support plan)~~) will be mailed to you for signature.

(2) You retain the same appeal rights as if you had signed the person-centered service plan(~~(individual support plan)~~).

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-845-3062 Who is required to sign the person-centered service plan(~~(individual support plan)~~)? (1) If you do not have a legal representative, you must sign the person-centered service plan(~~(individual support plan)~~).

(2) If you have a legal representative, your legal representative must sign the person-centered service plan(~~(individual support plan)~~).

(3) If you need assistance to understand your person-centered service plan(~~(individual support plan)~~), DDA will follow the steps outlined in WAC 388-845-3056 (1) and (3).

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-845-3063 Can your person-centered service plan(~~(individual support plan)~~) be effective before the end of the month? You may request to DDA to have your person-centered service plan(~~(individual support plan)~~) effective prior to the end of the month. The effective date will be the date DDA signs and dates it.

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-845-3065 How long is your plan effective? Your person-centered service plan(~~(individual support plan)~~) is effective through the last day of the twelfth month following the effective date or until another (~~(ISP)~~) person-centered service plan is completed, whichever occurs sooner.

AMENDATORY SECTION (Amending WSR 18-14-001, filed 6/20/18, effective 7/21/18)

WAC 388-845-3070 What happens if you do not sign your person-centered service plan? (1) If you do not sign your initial person-centered service plan (PCSP), DDA must not provide waiver services to you until you sign the PCSP.

(2) If you do not sign your PCSP and it is a reassessment or review, DDA will:

(a) Continue providing services identified in your current PCSP until the end of the notice period under WAC 388-825-105; and

(b) Return your PCSP to you for your signature.

(3) If you do not return your signed PCSP within two months of your reassessment or review, DDA (~~(must)~~) may terminate your services.

(4) Your appeal rights are under:

(a) WAC 388-845-4000; and

(b) WAC 388-825-120 through 388-825-165.

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-845-3075 What if your needs change? You may request a review of your person-centered service plan(~~(individual support plan)~~) at any time by calling your case manager. If there is a significant change in your condition or circumstances, DDA must reassess your person-centered service plan(~~(individual support plan)~~) with you and amend the plan to reflect any significant changes. This reassessment does not affect the end date of your annual person-centered service plan(~~(individual support plan)~~).

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 388-845-0300 What are adult family home (AFH) services?
- WAC 388-845-0305 Who is a qualified provider of AFH services?
- WAC 388-845-0310 Are there limits to the AFH services I can receive?
- WAC 388-845-0400 What are adult residential care (ARC) services?
- WAC 388-845-0405 Who is a qualified provider of ARC services?
- WAC 388-845-0410 Are there limits to the ARC services I can receive?
- WAC 388-845-0700 What are community guide services?
- WAC 388-845-0705 Who may be a qualified provider of community guide services?
- WAC 388-845-0710 Are there limits to the community guide services I may receive?
- WAC 388-845-1300 What are personal care services?
- WAC 388-845-1305 Who are the qualified providers of personal care services?
- WAC 388-845-1310 Are there limits to the personal care services you can receive?
- WAC 388-845-1400 What are prevocational services?
- WAC 388-845-1405 Who are the qualified providers of prevocational services?
- WAC 388-845-1410 Are there limits to the prevocational services you may receive?
- WAC 388-845-1900 What are specialized psychiatric services?

- WAC 388-845-1905 Who are qualified providers of specialized psychiatric services?
- WAC 388-845-1910 Are there limitations to the specialized psychiatric services you can receive?
- WAC 388-845-2160 What is therapeutic equipment and supplies?
- WAC 388-845-2165 Who are qualified providers of therapeutic equipment and supplies?
- WAC 388-845-2170 Are there limits to your receipt of therapeutic equipment and supplies?

WSR 21-12-048

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Administration)

[Filed May 26, 2021, 10:12 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-08-058.

Title of Rule and Other Identifying Information: Chapter 388-828 WAC, DDA assessment.

Hearing Location(s): On July 27, 2021, at 10:00 a.m. Due to the COVID[-19] pandemic, the hearing will be virtual. Please see the department of social and health services (DSHS) website for the most current information on how to connect.

Date of Intended Adoption: September 11, 2021.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m. on July 27, 2021.

Assistance for Persons with Disabilities: Contact Katherine Vasquez, rules coordinator, phone 360-664-6097, fax 360-664-6185, TTY 711 relay, email DSHSRPAURulesCoordinator@dshs.wa.gov, by July 13, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Developmental disabilities administration (DDA) is amending this chapter to update the DDA assessment rules to reflect the switch from a desktop application to a web-based application. These changes do not affect any algorithms in the assessment that determine eligibility for a service or a client's benefit level.

DDA also amended the definition of "contracted provider" to include both CDE-employed individual providers.

Additional amendments replace outdated terminology, such as "DDD," "ISP," "ADSA," "ICF/MR," "SSPS," etc., and update and clarify language that was inaccurate or ambiguous.

Reasons Supporting Proposal: These changes are necessary to: Remove concepts no longer applicable to the assessment after the switch to a web-based application; align with amendments to other rules establishing the consumer-

directed employer; and replace, update, and clarify language that was inaccurate or ambiguous.

Statutory Authority for Adoption: RCW 71A.12.030.

Statute Being Implemented: Chapter 71A.16 RCW.

Rule is necessary because of federal law, 42 C.F.R. 441.725 for WAC 388-828-1500.

Name of Proponent: DSHS, DDA, governmental.

Name of Agency Personnel Responsible for Drafting: Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, 360-407-1589; Implementation and Enforcement: Erin Fatland, P.O. Box 45310, Olympia, WA 98504-5310, 253-372-5806.

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

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting 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.

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

Is exempt under RCW 19.85.025(4) because the rules do not affect small businesses.

Explanation of exemptions: The proposed amendments impose no new or disproportionate costs on small businesses so a small business economic impact statement is not required.

May 26, 2021

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

WAC 388-828-1000 What is the purpose and scope of this chapter? This chapter establishes rules governing the ~~((administration of the division of))~~ developmental disabilities ~~((DDD))~~ administration (DDA) assessment ~~((to persons))~~ of people determined eligible to be clients of the ~~((division))~~ administration per chapter 71A.16 RCW.

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-828-1020 What definitions apply to this chapter? The following definitions apply to this chapter:

"AAIDD" means the American Association on Intellectual and Developmental Disabilities.

"Acuity Scale" refers to an assessment tool that is intended to provide a framework for documenting important assessment elements and for standardizing the key questions that should be asked as part of a professional assessment. The design helps provide consistency from client to client by minimizing subjective bias and assists in promoting objective assessment of a person's support needs.

"Administration" ~~((or "DDA"))~~ means the developmental disabilities administration of the department of social and health services.

"Adult family home" or "AFH" means a residential home in which a person or persons provide personal care, special care, room and board to more than one but not more than six adults who are not related by blood or marriage to the person or persons providing the services per chapter 388-76 WAC.

"Agency provider" means a business that is licensed, certified, or both, and that is contracted with the department or a county to provide DDA services ~~((such as personal care, respite care, residential services, therapy, nursing, and employment)).~~

"Algorithm" means a numerical formula used by the DDA assessment for one or more of the following:

(1) Calculation of assessed information to identify a client's relative level of need; and

(2) ~~((Determination regarding which assessment modules a client receives as part of his or her DDA assessment; and~~

~~∅))~~ Assignment of a service level to support a client's assessed need.

"Authorization" means DDA approval of funding for a service as identified in the ~~((individual support))~~ person-centered service plan or evidence of payment for a service.

"CARE" refers to the comprehensive assessment reporting evaluation assessment per chapter 388-106 WAC.

"Client" means a person who:

(1) Has a developmental disability as defined in RCW 71A.10.020(3) who also has been determined eligible to receive services by the administration under chapter 71A.16 RCW; or

(2) Is under age eighteen and is eligible to receive Medicaid personal care or community first choice services under chapter 388-106 WAC.

"Collateral contact" means a person or agency that is involved in the client's life such as legal guardian, family member, care provider, or friend.

"Companion home" is a DDA contracted residential service that provides twenty-four hour training, support, and supervision, to one adult living with a paid provider.

"Contracted provider" means an individual provider contracted with the department, individual provider employed by the consumer directed employer, or an individual or agency who is one or more of the following: Licensed, certified, or contracted by the department to provide services to DDA clients.

"DDA" means the developmental disabilities administration of the department of social and health services.

"Department" means the department of social and health services (DSHS).

"Group home" or "GH" means a licensed adult family home or assisted living facility contracted and certified to provide residential services and support to adults with developmental disabilities.

"ICF/IID" means a facility certified as an intermediate care facility for individuals with intellectual disabilities to provide habilitation services to DDA clients.

"ICF/IID level of care" is a standardized assessment of a client's need for ICF/IID level of care per 42 C.F.R. Sec. 440 and 42 C.F.R. Sec. 483. In addition, ICF/IID level of care refers to one of the standards used by DDA to determine

whether a client meets minimum eligibility criteria for one of the DDA HCBS waivers or the community first choice program.

"Legal guardian" means a person/agency, appointed by a court, who is authorized to make some or all decisions for a person determined by the court to be incapacitated. In the absence of court intervention, parents remain the legal guardians for their child until the child reaches the age of eighteen.

"LOC score" means a level of care score for answers to questions in the support needs assessment for children that are used in determining if a client meets eligibility requirements for ICF/IID level of care.

~~("Modules" refers to three sections of the DDA assessment. They are: The support assessment, the service level assessment, and the person-centered service plan/individual support plan (ISP).)~~

"Panel" refers to the visual user-interface in the DDA assessment computer application where assessment questions are typically organized by topic and you and your respondents' answers are recorded.

"Person-centered service plan ~~(/individual support plan)~~ (PCSP) ~~(or "ISP")~~ is a document that identifies your goals and assessed health and welfare needs. Your person-centered service plan ~~(/individual support plan)~~ also indicates the paid services and natural supports that will assist you to achieve your goals and address your ~~(addressed)~~ assessed needs.

~~("Plan of care" or "POC" refers to the paper-based assessment and service plan for clients receiving services on one of the DDA HCBS waivers prior to June 1, 2007.)~~

"Raw score" means the numerical value when adding a person's "frequency of support," "daily support time," and "type of support" scores for each activity in the support needs and supplemental protection and advocacy scales of the supports intensity scale (SIS) assessment.

"Residential habilitation center" or "RHC" is a state-operated facility certified to provide ICF/IID ~~(and/or)~~ or nursing facility level of care for persons with developmental disabilities per chapter 71A.20 RCW.

"Respondent" means the adult client ~~(and/or)~~ or another person familiar with the client who participates in the client's DDA assessment by answering questions and providing information. Respondents may include DDA contracted providers.

"SIS" means the supports intensity scale developed by the American Association of Intellectual and Developmental Disabilities (AAIDD). ~~(The SIS is in the support assessment module of the DDA assessment.)~~

"Service provider" refers to a department contracted agency or person who provides services to DDA clients. Also refers to state operated living alternative programs (SOLA).

"SOLA" means a state operated living alternative program for adults that is operated by DDA.

"State supplementary payment" or "SSP" is the state paid cash assistance program for certain DDA eligible Social Security income clients per chapter 388-827 WAC.

"Supported living" or "SL" refers to residential services provided by DDA certified residential agencies to clients living in homes that are owned, rented, or leased by the clients or their legal representatives.

~~("Waiver personal care" means physical or verbal assistance with activities of daily living (ADL) and instrumental activities of daily living (IADL) due to your functional limitations per chapter 388-106 WAC to individuals who are authorized to receive services available in the basic plus waiver per chapter 388-845 WAC.)~~

"Waiver respite care" means short-term intermittent relief for persons normally providing care to individuals who are authorized to receive services available in the individual and family services (IFS), children's intensive in-home behavioral support (CIIBS), basic plus, and core waivers per chapter 388-845 WAC.

"You ~~(/You)~~" and "your" means the client.

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

WAC 388-828-1040 What is the ~~(DDD)~~ DDA assessment? (1) The ~~(DDD)~~ DDA assessment is an assessment tool designed to measure the support needs of persons with developmental disabilities.

(2) The ~~(DDD)~~ DDA assessment ~~(has three modules)~~ consists of:

(a) The support assessment (see WAC 388-828-2000 to 388-828-6020);

(b) The service level assessment (see WAC 388-828-7000 to 388-828-7080); and

(c) The ~~(individual support plan (ISP))~~ person-centered service plan (PCSP) (see WAC 388-828-8000 to 388-828-8060).

(3) The ~~(DDD)~~ DDA assessment is part of the ~~(aging and disability services administration's (ADSA))~~ comprehensive assessment reporting evaluation system (CARE).

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-828-1060 What is the purpose of the DDA assessment? The purpose of the DDA assessment is to provide a comprehensive assessment process that:

(1) Collects a common set of assessment information for reporting purposes to the legislature and the department.

(2) Promotes consistency in evaluating client support needs for purposes of planning, budgeting, and resource management.

(3) Identifies a level of service ~~(and/or)~~ or number of hours that is used to support the assessed needs of clients who have been authorized ~~(by DDA)~~ to receive ~~(one or more of the following:~~

~~(a) Medicaid personal care services or community first choice services per chapter 388-106 WAC;~~

~~(b) Waiver respite care services per chapter 388-845 WAC;~~

~~(c) Services in the voluntary placement program (VPP) per chapter 388-826 WAC;~~

~~(d) Supported living residential services per chapter 388-101 WAC;~~

~~(e) Group home residential services per chapter 388-101 WAC;~~

~~(f) Group training home residential services per chapter 388-101 WAC;~~

~~(g) Companion home residential services per chapter 388-829C WAC;~~

~~(h) Individual and family services per chapter 388-832 WAC;~~

~~(i) Individual and family services waiver per chapter 388-845 WAC;~~

~~(j) State supplementary program per chapter 388-827 WAC.~~

(4) Records your service requests)) DDA services.

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

WAC 388-828-1080 Who must administer the ~~((DD))~~ DDA assessment? Only ~~((DD))~~ DDA employees can administer the ~~((DD))~~ DDA assessment.

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

WAC 388-828-1100 Who receives the ~~((DD))~~ DDA assessment? ~~((DD))~~ DDA must administer a ~~((DD))~~ DDA assessment when you meet any of the following conditions:

(1) You are currently approved by ~~((DD))~~ DDA to receive a ~~((DD))~~ DDA paid service evidenced by meeting one of the conditions in WAC 388-828-1440;

(2) You request enrollment in one of the ~~((DD))~~ DDA HCBS waivers per chapter 388-845 WAC;

(3) You ~~((are age three or older))~~ have been determined to be DDA eligible and request a ~~((DD))~~ DDA assessment;

(4) You have been determined eligible for categorically needy medical coverage per WAC 388-475-0100 and requested one of the following medicaid state plan services:

(a) You are under age eighteen and have requested an assessment for community first choice or medicaid personal care services ~~((per))~~ under chapter 388-106 WAC; or

(b) You have been approved to receive private duty nursing services for clients seventeen years of age and younger per WAC 388-551-3000.

(5) You are receiving SSP in lieu of a ~~((DD))~~ DDA paid service per chapter 388-827 WAC;

(6) You request admission to ~~((a))~~ an RHC per Title 42 C.F.R. 440, Title 42 C.F.R. 483, and Title 71A RCW;

(7) You reside in ~~((a))~~ an RHC or community ~~((ICF/MR))~~ ICF/IID and you are involved in discharge planning for community placement; or

(8) You do not meet any of the conditions listed in WAC 388-828-1120.

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

WAC 388-828-1120 Who does not receive the ~~((DD))~~ DDA assessment? ~~((DD))~~ DDA will not administer the ~~((DD))~~ DDA assessment when you meet any of the following conditions:

(1) You have not identified a person willing to receive notice or correspondence on your behalf regarding specific ~~((DD))~~ DDA decisions as required per RCW 71A.10.060 and ~~((DD))~~ DDA does not believe you are capable of under-

standing department decisions that may affect your care (see WAC 388-828-1140); ~~((or))~~

(2) A respondent cannot be identified to participate in your ~~((DD))~~ DDA assessment (see WAC 388-828-1540(c));

(3) You reside in ~~((a))~~ an RHC and are not currently involved in discharge planning for community placement; or

(4) You reside in a community ~~((ICF/MR))~~ ICF/IID and are not authorized by ~~((DD))~~ DDA to receive employment/community services paid through the counties~~((or~~

~~((5) You are under the age of three and do not meet any of the conditions in WAC 388-828-1100)).~~

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

WAC 388-828-1140 What will ~~((DD))~~ DDA do if there is no one willing to receive notice on your behalf regarding specific ~~((DD))~~ DDA decisions? If there is no one available to receive notice or correspondence on your behalf regarding specific ~~((DD))~~ DDA decisions, ~~((DD))~~ DDA will do all of the following:

(1) Consult with the assistant attorney general to determine if:

(a) You are able to represent yourself; or

(b) You require a legal representative/guardian.

(2) Continue current services until the issue is resolved per section (1) above.

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

WAC 388-828-1180 How will your assessed unmet need(s) be met if there is no approved funding to provide a ~~((DD))~~ DDA paid service? If you complete the ~~((DD))~~ DDA assessment and are assessed to have an unmet need and there is no approved funding to support that need, ~~((DD))~~ DDA will offer you referral information for ~~((ICF/MR))~~ ICF/IID services per Title 71A RCW, chapter 388-825 WAC, and chapter 388-837 WAC. In addition, ~~((DD))~~ DDA may:

(1) Provide information and referral for ~~((non-DD))~~ non-DDA community based supports; and

(2) Add your name to the waiver database, if you have requested enrollment in a ~~((DD))~~ DDA HCBS waiver per chapter 388-845 WAC~~((; and~~

~~((3) Authorize short-term emergency services as an exception to rule (ETR) per WAC 388-440-0001)).~~

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

WAC 388-828-1320 What happens if you are approved to receive a ~~((DD))~~ DDA paid service and you refuse to have a ~~((DD))~~ DDA assessment administered? If you are approved to receive a ~~((DD))~~ DDA paid service and refuse to have a ~~((DD))~~ DDA assessment administered, ~~((DD))~~ DDA is unable to authorize new or current ~~((DD))~~ DDA paid services and will do all of the following:

(1) Explain what happens if you refuse to allow ~~((DD))~~ DDA to administer the ~~((DD))~~ DDA assessment to you,

your respondents, and the person you have identified to receive notice on your behalf per RCW 71A.10.060.

(2) Consult with the assistant attorney general when you have not identified a person to receive notice on your behalf per RCW 71A.10.060 to determine if:

- (a) You are able to represent yourself; or
- (b) You require a legal representative/guardian.

(3) Terminate existing ~~((DDD))~~ DDA paid services when they reach their authorized end date.

(4) Provide you notice and appeal rights for a denied ~~((and/or))~~ or terminated ((service(s) per)) service under WAC 388-825-100 and 388-825-120.

(5) Provide you with information on how to contact ~~((DDD))~~ DDA in case you later decide you want a ~~((DDD))~~ DDA assessment administered.

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

WAC 388-828-1340 After administering the ~~((DDD))~~ DDA assessment, ~~((how long does DDD have to complete your DDD assessment))~~ when will DDA inform me of the services I am eligible to receive? ~~((+ DDD))~~ DDA will ~~((complete your DDD assessment as soon as possible after it is administered.~~

~~((2) DDD will complete your DDD assessment no later))~~ inform you of the services you are eligible to receive no more than thirty days ((from the date it was created in CARE)) after DDA administers your assessment.

NEW SECTION

WAC 388-828-1345 When will I receive the services for which I have been determined eligible? You will begin receiving a service for which you have been determined eligible after:

- (1) Your DDA assessment is complete;
- (2) You are found financially and functionally eligible for services;
- (3) You have given consent for services and approved your plan of care;
- (4) You have chosen a qualified provider; and
- (5) DDA has authorized the qualified provider to provide services.

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

WAC 388-828-1420 What is your responsibility when selecting ~~((an ADSA contracted agency))~~ a provider? You or your legal representative/guardian has the responsibility of choosing ~~((an agency))~~ a provider. ~~((DDD or the county))~~ DDA will provide you information on contracted and qualified ~~((agency))~~ providers. If you are receiving services through a county, the county will provide you with information on contracted providers.

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

WAC 388-828-1440 What is the definition of ~~((DDD))~~ DDA "paid service" in chapter 388-828 WAC? For the purpose of this chapter, a ~~((DDD))~~ DDA paid service is defined as an authorization of a program and/or service as evidenced by one or more of the following:

(1) An open ~~((social service payment system (SSPS)))~~ ProviderOne authorization within the past ninety days used for payment of a service or SSP; ~~((or))~~

(2) A current county service authorization ~~((for one of the following services:~~

- ~~((a) Person to person; or~~
- ~~((b) Individual employment; or~~
- ~~((c) Group supported employment; or~~
- ~~((d) Prevocational/specialized industries; or~~
- ~~((e) Community access); ((or~~
- ~~((f) Individual and family assistance.))~~

(3) ~~((A current waiver POC or waiver ISP; or~~

(4) Residence in a state operated living alternative (SOLA) program; or

(5) Authorization of family support services within the last twelve months per chapter 388-825 WAC; or

~~((6))~~ Documentation of ~~((DDD))~~ DDA approval of your absence from ~~((DDD))~~ DDA paid services for more than ninety days with available funding for your planned return to services; ~~((or~~

~~((7))~~ (4) Evidence of approval for funding of a ~~((DDD))~~ DDA service or enrollment in a ~~((DDD))~~ DDA HCBS waiver; or

~~((8))~~ (5) Authorization and payment of services using form A-19 state of Washington invoice voucher ~~((for receipt of:~~

- ~~((a) Dangerous mentally ill offender funds;~~
- ~~((b) Crisis stabilization services;~~
- ~~((c) Specialized psychiatric services; or~~
- ~~((d) Diversion bed services)).~~

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

WAC 388-828-1460 When will you receive ~~((an initial DDD))~~ a DDA assessment? ~~((DDD intends to assess all clients per WAC 388-828-1100 by June 30, 2008. DDD))~~ DDA must administer ~~((an initial DDD))~~ a DDA assessment when:

(1) You are receiving a ~~((DDD))~~ DDA paid service and your annual reassessment is due for continuation of the ~~((DDD))~~ DDA paid service; ~~((or))~~

(2) You are receiving a ~~((DDD))~~ DDA paid service and a reassessment is needed due to a significant change that may affect your support needs; ~~((or))~~

(3) You are receiving SSP in lieu of a ~~((DDD))~~ DDA paid service and your eligibility for SSP needs to be redetermined per WAC 388-827-0120;

(4) You are approved for funding of a ~~((DDD))~~ DDA paid service and an assessment must be performed prior to the authorization of services; ~~((or))~~

(5) You make a request to have a ~~((DDD))~~ DDA assessment administered and meet the criteria in WAC 388-828-1100; or

(6) You are contacted by ~~((DDD))~~ DDA and offered an opportunity to have a ~~((DDD))~~ DDA assessment.

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-828-1500 When does DDA conduct a reassessment? (1) DDA must conduct a reassessment:

(a) On an annual basis if you are receiving a paid service ~~((or SSP));~~

(b) When a significant change is reported that may affect your need for support; ~~((or))~~

(c) Before the next ~~((ISP))~~ person-centered service plan date of your current assessment; or

(d) At your request.

(2) DDA will provide you with notice in advance of your next ~~((ISP))~~ person-centered service plan date so you may schedule the assessment at a time that is convenient to you.

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-828-1540 Who participates in your DDA assessment? (1) You choose the people who participate in your assessment and person-centered service plan ~~((individual support plan))~~ meeting.

(2) DDA requires that at a minimum: You, one of your respondents, and a DDA employee participate in your DDA assessment interview. In addition:

(a) If you are under the age of eighteen, your parent(s) or legal guardian(s) must participate in your DDA assessment interview.

(b) If you are age eighteen or older, your court appointed legal representative/guardian must be consulted if he/she does not attend your DDA assessment interview.

(c) If you are age eighteen and older and have no legal representative/guardian, DDA will assist you to identify a respondent.

(d) DDA may consult with other people who were not present at your DDA assessment interview, if needed, to obtain complete and accurate information.

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

WAC 388-828-1580 Why does ~~((DDD))~~ DDA require ~~((all questions on mandatory panels to be answered in the DDD))~~ an assessment? ~~((DDD))~~ DDA requires ~~((that all questions on mandatory panels be answered))~~ an assessment because:

(1) ~~((The legislature has directed DDD to assess all eligible))~~ DDA assesses clients with a common, standardized assessment process that measures the support needs of individuals with developmental disabilities.

(2) The ~~((DDD))~~ DDA assessment algorithms ~~((in the support assessment module))~~ are designed to:

(a) Determine acuity scores and acuity levels for a variety of client needs; and

(b) Provide a valid measure of each client's support needs relative to the support needs of other clients who have received the ~~((DDD))~~ DDA assessment.

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

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

WAC 388-828-1600 What happens if you refuse to answer a question ~~((on a mandatory panel))~~ in the ~~((DDD))~~ DDA assessment? If you refuse to answer a DDA assessment question ~~((on a mandatory panel in the DDD assessment, DDD))~~ that is necessary to determine your service level and DDA is unable to complete your ~~((DDD))~~ DDA assessment ~~((and will do all of the following:-~~

~~(1) Explain what happens if you refuse to answer a question on a mandatory panel to you, your respondents, and the person you have identified to receive notice on your behalf per RCW 71A.10.060.~~

~~(2) Consult with the assistant attorney general when you have not identified a person to receive notice on your behalf per RCW 71A.10.060 to determine if:~~

~~(a) You are able to represent yourself; or~~

~~(b) You require a legal representative/guardian.~~

~~(3) Terminate existing DDD paid services when they reach their authorized end date;~~

~~(4) Provide you notice and appeal rights for denied and/or terminated service(s) per WAC 388-825-100 and 388-825-120; and~~

~~(5) Provide you with information on how to contact DDD in case you later decide you want a DDD assessment administered), DDA will send you or your legal representative notice as required under chapter 388-825 WAC.~~

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

WAC 388-828-2000 What is the support assessment ~~((module))~~? The support assessment ~~((module))~~ is the ~~((first section of the DDD assessment and is administered to all DDD clients));~~

(1) Supports intensity scale for clients sixteen and older; and

(2) Support assessment for children under sixteen.

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

WAC 388-828-2020 What is the purpose of the support assessment ~~((module))~~? The purpose of the support assessment ~~((module))~~ is to:

(1) Collect a common set of assessment information that is scored for all persons who are eligible to receive a ~~((DDD))~~ DDA assessment per WAC 388-828-1100;

(2) Promote a consistent process to evaluate client support needs; and

(3) Determine whether a person meets the ~~((ICF/MR))~~ ICF/IID level of care standard for potential waiver eligibility ~~((; and~~

(4) Identify the persons receiving, or approved for, ~~DDD~~ paid services or SSP who will need the additional two assessment modules:

- (a) The service level assessment module; and
- (b) The individual support plan module).

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

WAC 388-828-2040 What components are contained in the support assessment ((~~module~~))? The support assessment ((~~module~~)) contains the following components:

- (1) The support assessment for children;

- (2) The supports intensity scale (SIS) assessment;
- (3) ((~~DDD~~)) DDA protective supervision acuity scale;
- (4) ((~~DDD~~)) DDA caregiver status acuity scale;
- (5) ((~~DDD~~)) DDA activities of daily living (ADL) acuity scale;
- (6) ((~~DDD~~)) DDA behavioral acuity scale;
- (7) ((~~DDD~~)) DDA medical acuity scale;
- (8) ((~~DDD~~)) DDA interpersonal support acuity scale;
- (9) ((~~DDD~~)) DDA mobility acuity scale;
- (10) ((~~DDD~~)) DDA respite assessment; and
- (11) Programs and services component.

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

WAC 388-828-2060 How does your assessment age affect the support assessment ((~~module~~))? Age guidelines are incorporated into the support assessment ((~~module~~)) to exclude age appropriate supports unrelated to a disability. The following table illustrates which components ((~~DDD~~)) DDA includes in your support assessment ((~~module~~)) based on your assessment age:

Components contained in the Support Assessment ((module))	Age (0-15)	Age (16+)
The Support Assessment for Children	Yes	No
SIS Support Needs and Supplemental Protection and Advocacy Scales	No	Yes
SIS Exceptional Medical and Behavior Support Needs Scales	Yes	Yes
((DDD)) <u>DDA</u> Protective Supervision Acuity Scale	Yes	Yes
((DDD)) <u>DDA</u> Caregiver Status Acuity Scale	Yes	Yes
((DDD)) <u>DDA</u> Activities of Daily Living Acuity Scale	Yes	Yes
((DDD)) <u>DDA</u> Behavioral Acuity Scale	Yes	Yes
((DDD)) <u>DDA</u> Medical Acuity Scale	Yes	Yes
((DDD)) <u>DDA</u> Interpersonal Support Acuity Scale	Yes	Yes
((DDD)) <u>DDA</u> Mobility Scale	Yes	Yes
Current Programs and Services component	Yes	Yes

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

WAC 388-828-2080 How does ((~~DDD~~)) DDA determine your assessment age? If you are within thirty calendar days of your next birthday, ((~~DDD~~)) DDA determines your assessment age to be that of your next birthday.

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

WAC 388-828-3020 What is the purpose of the support assessment for children? The purpose of the support assessment for children ages fifteen or younger is to determine:

- (1) Your ((~~ICF/MR~~)) ICF/IID level of care score for ((~~DDD~~)) DDA HCBS waiver eligibility;
- (2) The health and welfare needs that must be addressed in your individual support plan if you are enrolled in a ((~~DDD~~)) DDA HCBS waiver; and
- (3) Your support need levels for:
 - (a) The ((~~DDD~~)) DDA activities of daily living acuity scale;

- (b) The ((~~DDD~~)) DDA interpersonal support acuity scale; and
- (c) The ((~~DDD~~)) DDA mobility acuity scale.

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

WAC 388-828-3040 What questions are asked in the support assessment for children and how are they scored? ((~~DDD~~)) DDA scores the answers to each of the following questions in the support assessment for children based on the respondent information:

- (1) Dress and groom self: What support does the child need to dress and groom self as expected of others of same age?

Answers	Definitions	LOC Score	Acuity Score
Physical Assistance	Needs major support in the form of total physical assistance, intensive training and/or therapy for dressing and grooming.	1	4
Training	Needs moderate support in the form of some physical assistance and/or training and/or therapies to dress and groom self.	0	3
Reminders/Prompts	Needs reminders or prompts to dress and groom self appropriately.	0	2
No support needed or at age level	At age level (may have physical supports) in dressing and grooming.	0	0

(2) Toilet self: What support does the child need to toilet self as expected of others in his/her age group?

Answers	Definitions	LOC Score	Acuity Score
Total physical support	Needs major support in the form of total physical support. Intensive training intervention and/or daily therapy to toilet self.	1	4
Partial physical assistance, training	Needs moderate support in the form of some physical assistance, standard training and/or regular therapy.	0	3
Reminders/prompts	Needs reminders or prompts.	0	2
No support needed or at age level	Toilets self or has physical support in place to toilet self.	0	0

(3) Eat at age level: What support does the child need to eat at age level?

Answers	Definitions	LOC Score	Acuity Score
Total physical support	Needs major support in the form of total physical assistance, intensive training and/or daily therapy.	1	4
Partial physical assistance, training	Needs moderate support in the form of some physical assistance, standard training, and/or regular therapy.	1	3
Reminders/prompts	Needs help with manners and appearance when eating, in the form of reminders and prompts.	0	2
No support needed or at age level	At age level (may have physical supports) in eating.	0	0

(4) Move around: What support does the child need to move around in the same ways as other children of same age?

Answers	Definitions	LOC Score	Acuity Score
Total physical support	Needs major intervention in the form of total physical support to move around, intensive training and/or daily therapy.	1	4
Partial physical assistance, training	Needs moderate support such as someone's help to move around or may use or learn to use adaptive device or may require standard training.	1	3
Reminders/prompts	Needs mild intervention in the form of training and physical prompting for scooting/crawling/walking behaviors.	0	2
No support needed or at age level	No supports needed - child is scooting/crawling/walking at age level	0	0

(5) Communicate: What support does the child need to communicate as others of same age?

Answers	Definitions	LOC Score	Acuity Score
Total physical support	Currently someone else must always determine and communicate child's needs.	1	4
Training/therapy	With intensive training or therapy support, child may learn sufficient verbal and/or signing skills to make self easily understandable to others. May include partial physical support.	1	3

Answers	Definitions	LOC Score	Acuity Score
Adaptive device/interpreter	With physical support (adaptive device, interpreter), child is always able to communicate.	0	2
No support needed or at age level	No supports needed and/or at age level.	0	0

(6) Learn about and use money: What support does the child need to learn about and use money?

Answers	Definitions	LOC Score	Acuity Score
Total physical support	Child is not old enough to know about money.	0	4
Partial physical assistance, training	Family must devise special opportunities for child to earn/or spend money.	0	3
Create opportunities, reminders/prompts	Needs to learn about earning and/or spending money in typical age-level ways.	0	2
No support needed or at age level	Needs no support. Independently uses opportunities typical to his/her age group to earn and/or spend money.	0	0

(7) Make choices and take responsibility: What support does the child need to make choices and take responsibility?

Answers	Definitions	LOC Score	Acuity Score
Total physical support	Needs major support in the form of special and/or technical help to and from family/teachers to create opportunities for making choices and taking responsibility.	1	4
Partial physical assistance, training	Needs moderate support in the form of family/teachers creating and explaining a variety of opportunities for making choices and taking responsibility.	1	3
Create opportunities, reminders/prompts	Needs some support in the form of explanation of available options for making choices and taking responsibility.	1	2
No support needed or at age level	Needs no support. Readily uses a variety of opportunities to indicate choices (activity, food, etc.) and take responsibility for tasks, self, etc.	0	0

(8) Explore environment: What support does the child need to explore environment?

Answers	Definitions	LOC Score	Acuity Score
Total physical support	Needs major support in the form of specialized technical help to and from family/teachers to create ways which support/encourage child to explore and reach out.	1	4
Partial physical assistance, training	Needs moderate support in the form of some training/physical help to and from family and teachers to create ways and opportunities for child to explore environment and reach out.	1	3
Reminders/prompts	Needs some support in the form of verbal encouragement or presence of someone child trusts to explore environment and reach out.	0	2
No support needed or at age level	Needs no support and/or is at age level. Readily explores environment (may have adaptive device) and reaches out in ways typical to child's age group.	0	0

(9) Meet therapy health needs: What supports are necessary to get child's therapy health needs met?

Answers	Definitions	LOC Score	Acuity Score
Daily intervention by professionals	Child requires medical/health intervention or monitoring by professionals at least daily.	1	4

Answers	Definitions	LOC Score	Acuity Score
Monitoring by health professionals	Child needs regular (weekly, monthly) monitoring by health professionals.	1	3
Monitoring by trained others	Child needs daily support and/or monitoring by training others.	1	2
Community health system	Needs regular on-going therapy and/or monitoring of health needs through typical community health systems.	0	1
No support needed or at age level	No specialized supports or ongoing therapies necessary.	0	0

(10) Help family continue to meet child's needs: What support services should the system provide to help family continue to meet child's needs?

Answers	Definitions	LOC Score	Acuity Score
Urgent extensive support	Substantial significant supports to child and parents needed. Child in, or at risk of, out-of-home placement at this time.	1	4
Substantial support/referrals needed	Substantial support needed/requested; (e.g., requests for more than two days per month respite, referral to homemakers, home-builders; request for long term behavior management training, need extensive and/or expensive environmental modification or equipment; request frequent contact with case manager.)	1	3
Moderate support	Moderate external support needed/requested; (e.g., requests for regular respite, intensive but short-term behavior management, referral for parent training help, referral to day care services; and/or request for regular contact with case manager.)	0	2
Minimal support	Minimal external support needed/requested; (e.g., requests for occasional respite, referrals to parent support group, and/or case manager helps obtain adaptive equipment.)	0	1
No support needed or at age level	No external supports are necessary. Family has obtained any necessary adaptive equipment.	0	0

(11) Have relationships with family members: What support does the child need to make the kind of relationships with family members expected of nondisabled children of the same age?

Answers	Definitions	LOC Score	Acuity Score
Total physical support	Opportunities for contributing to family life totally dependent on others to maintain, interpret child's role to other family members.	0	4
Partial physical assistance, training	Requires major support in the form of daily/weekly creation of opportunities to be seen as a contributing member and assume typical family responsibilities.	0	3
Reminders/prompts	Requires moderate support in the form of adaptive device, training and/or reminders to be seen as contributing member and assume typical family responsibilities.	0	2
No support needed or at age level	Needs no support to form positive family relationship.	0	0

(12) Explore and use typical community resources: What support does the child need to explore and use typical community resources such as stores, parks, and playgrounds?

Answers	Definitions	LOC Score	Acuity Score
Total physical support	Family needs major support (perhaps respite) to continue to provide child total physical support to use typical resources.	0	4
Partial physical assistance, training	Moderate support is needed - family must create ways for child to use these resources in ways typical to child's age group.	0	3

Answers	Definitions	LOC Score	Acuity Score
Reminders/prompts	Minimal support needed - family may wish suggestions or some support on ways to enable child's regular use of typical resources.	0	2
No support needed or at age level	Needs no support and/or at age level. Uses these resources regularly.	0	0

(13) Play with others: What supports are needed for the child to develop age-level skills in playing with others?

Answers	Definitions	LOC Score	Acuity Score
Total physical support	Major support needed by others to help child play. Parents may request special adaptive equipment and training to foster child's playing skills.	0	4
Partial physical assistance training	Moderate support needed in the form of a verbal and/or some physical intervention to help child play. Parents may be requesting suggestions instruction in ways to help child develop playing skills.	0	3
Reminders/prompts	Minimal support needed.	0	2
No support needed or at age level	No supports needed and/or at age level. Child's playing skills developing at age level.	0	0

(14) Have opportunities to play with typically developing children: What supports does the child need to have opportunities to play with typically developing children?

Answers	Definitions	LOC Score	Acuity Score
Total physical support	Substantial system support (e.g., system must set up "programs" that allow for interaction with typically developing children and the "programs").	0	4
Partial physical assistance, training	Moderate supports (e.g., parents have to create opportunities for contacts). Parents may ask for instruction in how to facilitate such contacts. System may need to provide structural supports (e.g., transportation, barrier-free public play environments, etc).	0	3
Reminders/prompts	Minimal support (e.g., some monitoring). Parents may request help on how to broaden child's range of contacts or to increase the age appropriateness of contacts.	0	2
No support needed or at age level	No support needed.	0	0

(15) Identify and respond safely to emergencies: What support does the child need to identify and respond safely to emergencies?

Answers	Definitions	LOC Score	Acuity Score
Total physical support	Needs total physical support to respond to emergencies.	1	4
Always needs help to identify and respond	Needs help all of the time to identify emergencies and to respond.	1	3
Sometimes needs help to identify and respond	Needs help some of the time to identify emergencies and to respond.	1	2
Can identify, needs help to respond	Independently identifies emergencies; needs help from others to respond.	1	1
No help needed or at age level	Needs no help from others in emergencies.	0	0

(16) Practice age-level safety measures: What support does the child need to practice age-level safety measures?

Answers	Definitions	LOC Score	Acuity Score
Total physical support	Needs total physical support for safety measures in daily activities and routines.	1	4
Partial physical assistance, training	Does not recognize own safety needs and requires help in most safety areas.	1	3
Reminders/prompts	Knows importance of safety measures. Needs training and/or physical support in many areas.	1	2
No support needed or at age level	Needs no support in providing for own safety.	0	0

(17) Effectively relate to other students/peers: What support does the child need to most effectively relate to fellow students and/or peers?

Answers	Definitions	LOC Score	Acuity Score
Total physical support	Needs physical support by others in the form of interpretation of self to others to interact with peers.	1	4
Partial physical assistance, training	Needs physical intervention in the form of modeling to enable child to reach out to peers to give and take support.	1	3
Reminders/prompts	Needs much encouragement, supervision and guidance in how to give and ask for support and interact with peers.	0	2
No support needed or at age level	Without support, child relates to others as a valued member of work/learning unit.	0	0

(18) Have behaviors which promote being included: What support is needed for this child to have behaviors which promote being included?

Answers	Definitions	LOC Score	Acuity Score
Continuous behavioral interventions	Needs major tolerance and control. Could include being dangerous to self and/or others.	1	4
Major behavior modifications	Needs major behavior modifications to be perceived as typical. Child's behaviors are extremely disagreeable to others.	1	3
Modeling, reminders, prompts	Needs participation in typical settings with typically developing others to model desirable behaviors. Child's behaviors cause him/her to be easily recognized as different from others.	0	2
Minor support	Needs interactions with typically developing others. Child's behaviors are different from others in minor ways and the child may not immediately be perceived as different.	0	1
No support needed or at age level	Needs no support. Behaviors are similar to others in general community of same age and culture.	0	0

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

WAC 388-828-3060 How does ~~((DDD))~~ **DDA** determine your total LOC score for ~~((ICF/MR))~~ **ICF/IID** level of care if you are age birth through fifteen years old? ~~((DDD))~~ **DDA** determines your total LOC score for ~~((ICF/MR))~~ **ICF/IID** level of care by adding all of your LOC scores on questions one through eighteen in the support assessment for children.

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

WAC 388-828-3080 How does ~~((DDD))~~ **DDA** determine if you meet the eligibility requirements for ~~((ICF/MR))~~ **ICF/IID** level of care (LOC) if you are age birth through fifteen years old? ~~((DDD))~~ **DDA** determines you are eligible for ~~((ICF/MR))~~ **ICF/IID** level of care when:

- (1) You are age birth through five years old and the total of your LOC scores is five or more; or
- (2) You are age six through fifteen years old and the total of your LOC scores is seven or more.

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

WAC 388-828-4020 What is the purpose of the supports intensity scale (SIS) assessment? The purpose of the supports intensity scale assessment in the ~~((DD))~~ DDA assessment is to determine all of the following:

(1) Your ~~((ICF/MR))~~ ICF/IID level of care score for ~~((DD))~~ DDA HCBS waiver eligibility;

(2) The health and welfare needs that must be addressed in your individual support plan if you are enrolled in a ~~((DD))~~ DDA HCBS waiver;

(3) Your ~~((DD))~~ DDA behavioral and medical acuity levels regardless of your age; and

(4) Your support need acuity levels specific to the:

(a) ~~((DD))~~ DDA activities of daily living acuity scale;

(b) ~~((DD))~~ DDA interpersonal support acuity scale;

and

(c) ~~((DD))~~ DDA mobility acuity scale.

AMENDATORY SECTION (Amending WSR 19-02-020, filed 12/21/18, effective 2/1/19)

WAC 388-828-4400 How does DDA determine if you meet the eligibility requirements for ICF/IID level-of-care if you are age sixteen or older? If you are age sixteen or older, DDA determines you to be eligible for ICF/IID level-of-care from your SIS scores. Eligibility for ICF/IID level-of-care requires that your scores meet at least one of the following:

(1) You have a percentile rank over nine percent for three or more of the six subscales in the SIS support needs scale;

(2) You have a percentile rank over twenty-five percent for two or more of the six subscales in the SIS support needs scale;

(3) You have a percentile rank over fifty percent in at least one of the six subscales in the SIS support needs scale;

(4) You have a support score of one or two for any of the questions listed in the SIS exceptional medical support needs scale;

(5) You have a support score of one or two for at least one of the following items in the SIS exceptional behavior support needs scale:

(a) Prevention of assaults or injuries to others;

(b) Prevention of property destruction (e.g., fire setting, breaking furniture);

(c) Prevention of self-injury;

(d) Prevention of PICA (ingestion of inedible substances);

(e) Prevention of suicide attempts;

(f) Prevention of sexual aggression; or

(g) Prevention of wandering.

(6) You have a support score of two for any of the questions listed in the SIS exceptional behavior support needs scale; or

(7) You meet or exceed any of the qualifying scores for one or more of the following SIS questions:

Question # of SIS support needs scale	Text of question	Your score for "Type of support" is:	And your score for "Frequency of support" is:
A2	Bathing and ((take)) <u>taking</u> care of personal hygiene and grooming needs	2 or more	4
		3 or more	2
A3	Using the toilet	2 or more	4
		3 or more	2
A4	Dressing	2 or more	4
		3 or more	2
A5	Preparing food	2 or more	4
		3 or more	2
A6	Eating food	2 or more	4
		3 or more	2
A7	Taking care of clothes, including laundering	2 or more	2 or more
		3 or more	1
A8	Housekeeping and cleaning	2 or more	2 or more
		3 or more	1
B6	Shopping and purchasing goods and services	2 or more	2 or more
		3 or more	1
C1	Learning and using problem-solving strategies	2 or more	3 or more
		3 or more	2
C5	Learning self-management strategies	2 or more	3 or more
		3 or more	2

Question # of SIS support needs scale	Text of question	Your score for "Type of support" is:	And your score for "Frequency of support" is:
E1	Taking medications	2 or more	4
		3 or more	2
E2	Ambulating and moving about	2 or more	4
		3 or more	2
E3	Avoiding health and safety hazards	2 or more	3 or more
		3 or more	2
E6	Maintaining a nutritious diet	2 or more	2 or more
		3 or more	1
E8	Maintaining emotional well-being	2 or more	3 or more
		3 or more	2
F1	Using appropriate social skills	2 or more	3 or more
		3 or more	2
G7	Managing money and personal finances	2 or more	2 or more
		3 or more	1

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

WAC 388-828-6020 What is the purpose of the programs and services component? The purpose of the programs and services component is to document:

- (1) ~~((DDD))~~ DDA services you are currently receiving;
- (2) ~~((DDD))~~ DDA services you have been approved to receive; and
- (3) ~~((H))~~ Whether you currently meet the ~~((ICF/MR))~~ ICF/IID level of care requirements for ~~((continued DDD))~~ CFC or for DDA HCBS waiver eligibility ~~((or for potential DDD HCBS waiver services if resources become available))~~.

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

WAC 388-828-7000 What is the purpose of the service level assessment ~~((module))~~? The purpose of the service level assessment ~~((module))~~ is to determine a service level and the number of hours you are eligible to receive for medicaid ~~((or waiver))~~ personal care services ~~((per))~~ or community first choice under chapter 388-106 WAC.

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

WAC 388-828-7020 What components contained in the service level assessment ~~((module))~~ determine a service level ~~((and/or))~~ or number of hours? The service level assessment ~~((module))~~ contains two components that are used to determine a service level ~~((and/or))~~ or number of hours for the following:

- (1) The CARE assessment for medicaid ~~((or waiver))~~ personal care services ~~((or))~~ or community first choice as defined in chapter 388-106 WAC; and
- (2) The ~~((DDD))~~ DDA seizure acuity scale as defined in WAC 388-828-7040 through 388-828-7080.

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-828-8000 What is the purpose of the person-centered service plan ~~((individual support plan (ISP) module))~~? The purpose of the person-centered service plan ~~((individual support plan module))~~ is to create a written plan that includes:

- (1) Your goals and desired outcomes;
- (2) The services and supports, both paid and unpaid, that will assist you to achieve your identified goals;
- (3) Your acuity scores generated from the support assessment;
- (4) Referral information;
- (5) The SSP, if any, you are approved to receive in lieu of a DDA paid service; ~~((and))~~
- (6) DDA paid services you are authorized to receive ~~((or))~~; and
- ~~((or))~~ (7) If you are enrolled in a DDA waiver, ~~((the ISP must address all the))~~ your PCSP must address all of your assessed health and welfare needs ~~((identified in your ICF/HD level of care assessment and the supports used to meet your assessed needs; or~~
- (b) If you are not enrolled in a DDA waiver, DDA is only required to address the DDA paid services you are approved to receive).

AMENDATORY SECTION (Amending WSR 19-02-020, filed 12/21/18, effective 2/1/19)

WAC 388-828-8040 How does DDA determine which health and welfare needs must be addressed in your ((~~individual support~~)) person-centered service plan if you are age birth through fifteen? If you are age birth through fifteen and are receiving DDA HCBS waiver services or reside in a state only residential setting, DDA uses the following tables to determine the health and welfare needs that must be addressed in your ((~~individual support~~)) person-centered service plan:

(1) Activities from the support needs assessment for children:

#	Questions in the Support Needs Assessment for Children:	DDA must address in your PSCP if you have an acuity score of:	Health and Welfare Category
1	Dress and groom self	2 or more	Home Living
2	Toilet self	2 or more	Home Living
3	Eat at age level	3 or more	Home Living
4	Move around	3 or more	Home Living
5	Communicate	2 or more	Home Living
7	Make choices and take responsibility	2 or more	Protection and Advocacy
8	Explore environment	3 or more	Community Living
9	Meet therapy health needs	1 or more	Medical Supports
10	Help family continue to meet child's needs	1 or more	Protection and Advocacy
15	Identify and respond safely to emergencies	1 or more	Health and Safety
16	Practice age-level safety measures	2 or more	Protection and Advocacy
17	Effectively relate to other students/peers	3 or more	Employment
18	Have behaviors which promote being included	3 or more	Behavior Supports

(2) Medical supports from the SIS exceptional medical support needs scale

#	Questions in the Exceptional Medical Support Needs Scale	DDA must address in your PSCP if you have an acuity score of:	Health and Welfare Category
1	Inhalation or oxygen therapy	1 or more	Medical Supports
2	Postural drainage	1 or more	Medical Supports
3	Chest PT	1 or more	Medical Supports
4	Suctioning	1 or more	Medical Supports
5	Oral Stimulation or Jaw Repositioning	1 or more	Medical Supports
6	Tube feeding (e.g., nasogastric)	1 or more	Medical Supports
7	Parenteral feeding (e.g., IV)	1 or more	Medical Supports
8	Turning or positioning	1 or more	Medical Supports
9	Dressing of open wound(s)	1 or more	Medical Supports
10	Protection from infectious diseases due to immune system impairment	1 or more	Medical Supports
11	Seizure management	1 or more	Medical Supports
12	Dialysis	1 or more	Medical Supports
13	Ostomy care	1 or more	Medical Supports
14	Lifting and/or transferring	1 or more	Medical Supports
15	Therapy services	1 or more	Medical Supports
16	Hypertension	1 or more	Medical Supports
17	Allergies	1 or more	Medical Supports
18	Diabetes	1 or more	Medical supports
19	Other(s)-Specify	1 or more	Medical Supports

(3) Behavioral supports from the SIS exceptional behavior support needs scale

#	Questions in the Exceptional Behavior Support Needs Scale:	DDA must address in your PSCP if you have an acuity score of:	Health and Welfare Category
1	Prevention of emotional outbursts	1 or more	Behavioral Supports
2	Prevention of assault or injury to others	1 or more	Behavioral Supports
3	Prevention of property destruction (e.g., fire setting, breaking furniture)	1 or more	Behavioral Supports
4	Prevention of stealing	1 or more	Behavioral Supports
5	Prevention of self-injury	1 or more	Behavioral Supports
6	Prevention of suicide attempts	1 or more	Behavioral Supports
7	Prevention of PICA (ingestion of inedible substances)	1 or more	Behavioral Supports
8	Prevention of nonaggressive but inappropriate behavior (e.g., exposes self in public, exhibitionism, inappropriate touching or gesturing)	1 or more	Behavioral Supports
9	Prevention of sexual aggression	1 or more	Behavioral Supports
10	Prevention of substance abuse	1 or more	Behavioral Supports
11	Prevention of wandering	1 or more	Behavioral Supports
12	Maintenance of mental health treatments	1 or more	Behavioral Supports
13	Managing attention-seeking behavior	1 or more	Behavioral Supports
14	Managing uncooperative behavior	1 or more	Behavioral Supports
15	Managing agitated/over-reactive behavior	1 or more	Behavioral Supports
16	Managing obsessive/repetitive behavior	1 or more	Behavioral Supports
17	Prevention of other serious behavior problem(s)-Specify	1 or more	Behavioral Supports

(4) Caregiver from the SIS exceptional behavior support needs scale

#	Question in the DDA Caregiver Status Acuity Scale:	DDA must address in your PSCP if you have a score:	Health and Welfare Category
6	How long do you think you expect to continue providing care?	1 to 6 months or less than 1 month	DDA Caregiver Status

AMENDATORY SECTION (Amending WSR 19-02-020, filed 12/21/18, effective 2/1/19)

WAC 388-828-8060 How does DDA determine which health and welfare needs must be addressed in your ((~~individual support~~)) person-centered service plan if you are age sixteen or older? (1) If you are age sixteen or older and receiving DDA HCBS waiver services or reside in a state-only residential setting, DDA uses the following table to determine the health and welfare needs that must be addressed in your ((~~individual support~~)) person-centered service plan:

#	SIS Activity	DDA must address in the PSCP if your Type of Support score is:	Health and Welfare Category
A1	Operating home appliances	3 or more	Home Living
A2	Bathing and taking care of personal hygiene and grooming needs	3 or more	
A3	Using the toilet	3 or more	
A4	Dressing	3 or more	
A5	Preparing food	3 or more	
A6	Eating food	3 or more	
A7	Taking care of clothes, including laundering	3 or more	
A8	Housekeeping and cleaning	3 or more	

#	SIS Activity	DDA must address in the PSCP if your Type of Support score is:	Health and Welfare Category
A9	Using currently prescribed equipment or treatment	3 or more	
B1	Getting from place to place throughout the community (transportation)	2 or more	Community Living
B2	Participating in recreation/leisure activities in the community	2 or more	
B4	Accessing public buildings and settings	2 or more	
B5	Using public services in the community	2 or more	
B6	Shopping and purchasing goods and services	2 or more	
B7	Interacting with community members	4	
B8	Going to visit friends and family	4	
D3	Interacting with co-workers	3 or more	
D4	Interacting with supervisors and or coaches	3 or more	
E1	Taking medications	2 or more	Health ((and)) and Safety
E2	Ambulating and moving about	3 or more	
E3	Avoiding health and safety hazards	3 or more	
E4	Obtaining health care services	3 or more	
E6	Maintaining a nutritious diet	3 or more	
E7	Maintaining physical health and fitness	3 or more	
F2	Participating in recreation/leisure activities with others	2 or more	Social Activities
F4	Making and keeping friends	4	
F6	Socializing within the household	4	
G2	Making choices and decisions	2 or more	Protection and Advocacy
G3	Protecting self from exploitation	2 or more	
G7	Managing money and personal finances	2 or more	

(2) If you have a support score of one or more for any of the questions in the SIS exceptional medical support needs scale, DDA must address your support need using the medical supports category.

(3) If you have a support score of one or more for any of the questions in the SIS exceptional behavior support needs scale, DDA must address your support need using the behavior supports category.

AMENDATORY SECTION (Amending WSR 10-07-019, filed 3/8/10, effective 4/8/10)

WAC 388-828-8500 What is the children's intensive in-home behavioral support (CIIBS) program algorithm? The children's intensive in-home behavioral support (CIIBS) program algorithm is a formula in the ~~((DDD))~~ DDA assessment that calculates your out-of-home placement risk score to determine your eligibility for the CIIBS waiver per chapter 388-845 WAC.

AMENDATORY SECTION (Amending WSR 10-07-019, filed 3/8/10, effective 4/8/10)

WAC 388-828-8505 When does the ~~((DDD))~~ DDA assessment run the CIIBS algorithm to determine your eligibility for the CIIBS waiver? The ~~((DDD))~~ DDA assessment runs the CIIBS algorithm to determine your eligibility

for the CIIBS waiver when your support assessment is moved to current and:

- (1) You are the assessed age of eight or older and under age eighteen;
- (2) Your behavior acuity level is high per WAC 388-828-5640;
- (3) Your caregiver's risk score is medium, high or immediate per WAC 388-828-5300; and
- (4) Your ~~((ICF/MR))~~ ICF/IID score is eligible per WAC 388-828-4400(~~;-and~~
- ~~(5) You are not enrolled in the CIIBS waiver).~~

AMENDATORY SECTION (Amending WSR 10-07-019, filed 3/8/10, effective 4/8/10)

WAC 388-828-8510 What elements does the CIIBS algorithm use to calculate your out-of-home placement

risk score? The CIIBS algorithm uses the following elements to determine your out-of-home placement risk score:

- (1) The ~~((DDD))~~ DDA protective supervision acuity scale (WAC 388-828-5000 to 388-828-5100);
- (2) The ~~((DDD))~~ DDA caregiver status acuity scale (WAC 388-828-5120 to 388-828-5360);
- (3) The ~~((DDD))~~ DDA behavioral acuity scale (WAC 388-828-5500 to 388-828-5640);

(4) The ~~((DDD))~~ DDA activities of daily living (ADL) acuity scale (WAC 388-828-5380 to 388-828-5480);

(5) The ~~((DDD))~~ DDA mobility acuity scale (WAC 388-828-5380 to 388-828-5480); and

(6) Eligible condition of "autism" as indicated in the ~~((DDD))~~ DDA determination (WAC 388-823-0500).

AMENDATORY SECTION (Amending WSR 10-07-019, filed 3/8/10, effective 4/8/10)

WAC 388-828-8515 How does ~~((DDD))~~ DDA determine your CIIBS out-of-home placement risk score? Your CIIBS out-of-home placement risk score is calculated using the following table:

Section and WAC reference	If you meet the following criteria:	Then adjust your score by:	Score if you meet criteria
	Clients meeting eligibility criteria in WAC 388-828-8505		Beginning Score = 0
((DDD)) <u>DDA</u> Determination WAC 388-823-0500	Eligible condition of autism in the ((DDD)) <u>DDA</u> determination.	Adding 40 points	=
ADL Acuity Level WAC 388-828-5480	Your ADL support needs level = high, medium or low	Subtracting 54 points	=
Behavior Acuity Scale WAC 388-828-5500 through 388-828-5640	Your most prominent behavior = assault/injury and Severity of your most prominent behavior = "potentially dangerous" or "life threatening"	Adding 14 points	=
Protective Supervision Acuity Scale WAC 388-828-5060	Your answer to the following question: "What level of monitoring does the client typically require during awake hours?" = "Line of sight/earshot"	Adding 13 points	=
((DDD)) <u>DDA</u> Caregiver Status Acuity WAC 388-828-5300	Your caregiver risk level = high or immediate	Adding 136 points	=
Backup Caregiver Status WAC 388-828-5320	Your answer to the following question: "Under what conditions are other caregiver(s) available?" = "No other caregiver available"	Adding 33 points	=
Mobility Acuity Scale WAC 388-828-5900	Your mobility acuity level = high, medium or low	Subtracting 15 points	=
		Sum of all of scores above is your CIIBS out-of-home placement risk score	=

AMENDATORY SECTION (Amending WSR 10-07-019, filed 3/8/10, effective 4/8/10)

WAC 388-828-8520 How does ~~((DDD))~~ DDA determine if I am eligible for the CIIBS waiver? ~~((DDD))~~ DDA uses the following table to determine if you are eligible for the CIIBS waiver based on your CIIBS out-of-home placement risk score per WAC 388-828-8510:

If your CIIBS out-of-home placement risk score is:	Then your CIIBS eligibility is:
96 or greater	Yes - Severe
17 through 95	Yes - High
Less than 17	No - (not eligible)

AMENDATORY SECTION (Amending WSR 08-16-121, filed 8/5/08, effective 9/5/08)

WAC 388-828-9000 What is the individual and family services assessment? The individual and family services assessment is an algorithm in the ~~((DD))~~ DDA assessment that determines an award amount that you may receive if ~~((DD))~~ DDA has authorized you to receive individual and family services per chapter 388-832 WAC.

AMENDATORY SECTION (Amending WSR 08-16-121, filed 8/5/08, effective 9/5/08)

WAC 388-828-9020 What is the purpose of the individual and family services assessment? The purpose of the individual and family services assessment is to determine

your individual and family services level and score using your assessed support levels from:

- (1) The ~~((DD))~~ DDA protective supervision acuity scale (See WAC 388-828-5000 to 388-828-5100);
- (2) The ~~((DD))~~ DDA caregiver status acuity scale (See WAC 388-828-5120 to 388-828-5360);
- (3) The ~~((DD))~~ DDA behavioral acuity scale; (See WAC 388-828-5500 to 388-828-5640);
- (4) The ~~((DD))~~ DDA medical acuity scale; (See WAC 388-828-5660 to 388-828-5700); and
- (5) The ~~((DD))~~ DDA activities of daily living (ADL) acuity scale (See WAC 388-828-5380 to 388-828-5480).

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

AMENDATORY SECTION (Amending WSR 09-21-033, filed 10/13/09, effective 11/13/09)

WAC 388-828-9040 How does ~~((DD))~~ DDA determine your individual and family services level? (1) ~~((DD))~~ DDA determines your individual and family services level using the following table:

If your protective supervision support level is:	And your primary caregiver risk level is:	And your backup caregiver risk score is:	And your behavioral acuity level is:	Then your unadjusted individual and family services level is:
0	None	1	None	1
0	None	1	Low	1
0	None	1	Medium	1
0	None	1	High	2
0	None	2 or 3	None	1
0	None	2 or 3	Low	1
0	None	2 or 3	Medium	2
0	None	2 or 3	High	2
0	Low	1	None	1
0	Low	1	Low	1
0	Low	1	Medium	1
0	Low	1	High	2
0	Low	2 or 3	None	1
0	Low	2 or 3	Low	1
0	Low	2 or 3	Medium	2
0	Low	2 or 3	High	2
0	Medium	1	None	1
0	Medium	1	Low	1
0	Medium	1	Medium	1
0	Medium	1	High	2
0	Medium	2 or 3	None	1
0	Medium	2 or 3	Low	1
0	Medium	2 or 3	Medium	2
0	Medium	2 or 3	High	2
0	High	1	None	1
0	High	1	Low	1

If your protective supervision support level is:	And your primary caregiver risk level is:	And your backup caregiver risk score is:	And your behavioral acuity level is:	Then your unadjusted individual and family services level is:
0	High	1	Medium	2
0	High	1	High	2
0	High	2 or 3	None	2
0	High	2 or 3	Low	2
0	High	2 or 3	Medium	2
0	High	2 or 3	High	3
0	Immediate	1	None	1
0	Immediate	1	Low	1
0	Immediate	1	Medium	2
0	Immediate	1	High	2
0	Immediate	2 or 3	None	2
0	Immediate	2 or 3	Low	2
0	Immediate	2 or 3	Medium	2
0	Immediate	2 or 3	High	3
1	None	1	None	1
1	None	1	Low	1
1	None	1	Medium	1
1	None	1	High	2
1	None	2 or 3	None	1
1	None	2 or 3	Low	1
1	None	2 or 3	Medium	2
1	None	2 or 3	High	3
1	Low	1	None	1
1	Low	1	Low	1
1	Low	1	Medium	1
1	Low	1	High	2
1	Low	2 or 3	None	1
1	Low	2 or 3	Low	1
1	Low	2 or 3	Medium	2
1	Low	2 or 3	High	3
1	Medium	1	None	1
1	Medium	1	Low	1
1	Medium	1	Medium	2
1	Medium	1	High	3
1	Medium	2 or 3	None	1
1	Medium	2 or 3	Low	2
1	Medium	2 or 3	Medium	2
1	Medium	2 or 3	High	3
1	High	1	None	2
1	High	1	Low	2
1	High	1	Medium	2

If your protective supervision support level is:	And your primary caregiver risk level is:	And your backup caregiver risk score is:	And your behavioral acuity level is:	Then your unadjusted individual and family services level is:
1	High	1	High	3
1	High	2 or 3	None	2
1	High	2 or 3	Low	2
1	High	2 or 3	Medium	3
1	High	2 or 3	High	4
1	Immediate	1	None	2
1	Immediate	1	Low	2
1	Immediate	1	Medium	2
1	Immediate	1	High	3
1	Immediate	2 or 3	None	2
1	Immediate	2 or 3	Low	2
1	Immediate	2 or 3	Medium	3
1	Immediate	2 or 3	High	4
2 or 3	None	1	None	1
2 or 3	None	1	Low	1
2 or 3	None	1	Medium	2
2 or 3	None	1	High	3
2 or 3	None	2 or 3	None	2
2 or 3	None	2 or 3	Low	2
2 or 3	None	2 or 3	Medium	2
2 or 3	None	2 or 3	High	4
2 or 3	Low	1	None	1
2 or 3	Low	1	Low	1
2 or 3	Low	1	Medium	2
2 or 3	Low	1	High	3
2 or 3	Low	2 or 3	None	2
2 or 3	Low	2 or 3	Low	2
2 or 3	Low	2 or 3	Medium	2
2 or 3	Low	2 or 3	High	4
2 or 3	Medium	1	None	2
2 or 3	Medium	1	Low	2
2 or 3	Medium	1	Medium	2
2 or 3	Medium	1	High	3
2 or 3	Medium	2 or 3	None	2
2 or 3	Medium	2 or 3	Low	2
2 or 3	Medium	2 or 3	Medium	3
2 or 3	Medium	2 or 3	High	4
2 or 3	High	1	None	2
2 or 3	High	1	Low	2
2 or 3	High	1	Medium	2
2 or 3	High	1	High	3

If your protective supervision support level is:	And your primary caregiver risk level is:	And your backup caregiver risk score is:	And your behavioral acuity level is:	Then your unadjusted individual and family services level is:
2 or 3	High	2 or 3	None	2
2 or 3	High	2 or 3	Low	2
2 or 3	High	2 or 3	Medium	3
2 or 3	High	2 or 3	High	4
2 or 3	Immediate	1	None	2
2 or 3	Immediate	1	Low	2
2 or 3	Immediate	1	Medium	2
2 or 3	Immediate	1	High	3
2 or 3	Immediate	2 or 3	None	2
2 or 3	Immediate	2 or 3	Low	2
2 or 3	Immediate	2 or 3	Medium	3
2 or 3	Immediate	2 or 3	High	4
4	None	1	None	2
4	None	1	Low	2
4	None	1	Medium	2
4	None	1	High	3
4	None	2 or 3	None	2
4	None	2 or 3	Low	2
4	None	2 or 3	Medium	3
4	None	2 or 3	High	4
4	Low	1	None	2
4	Low	1	Low	2
4	Low	1	Medium	2
4	Low	1	High	3
4	Low	2 or 3	None	2
4	Low	2 or 3	Low	2
4	Low	2 or 3	Medium	3
4	Low	2 or 3	High	4
4	Medium	1	None	2
4	Medium	1	Low	2
4	Medium	1	Medium	3
4	Medium	1	High	3
4	Medium	2 or 3	None	2
4	Medium	2 or 3	Low	3
4	Medium	2 or 3	Medium	3
4	Medium	2 or 3	High	4
4	High	1	None	2
4	High	1	Low	2
4	High	1	Medium	3
4	High	1	High	3
4	High	2 or 3	None	2

If your protective supervision support level is:	And your primary caregiver risk level is:	And your backup caregiver risk score is:	And your behavioral acuity level is:	Then your unadjusted individual and family services level is:
4	High	2 or 3	Low	3
4	High	2 or 3	Medium	4
4	High	2 or 3	High	4
4	Immediate	1	None	2
4	Immediate	1	Low	2
4	Immediate	1	Medium	3
4	Immediate	1	High	3
4	Immediate	2 or 3	None	2
4	Immediate	2 or 3	Low	3
4	Immediate	2 or 3	Medium	4
4	Immediate	2 or 3	High	4
5	None	1	None	2
5	None	1	Low	2
5	None	1	Medium	3
5	None	1	High	4
5	None	2 or 3	None	3
5	None	2 or 3	Low	3
5	None	2 or 3	Medium	4
5	None	2 or 3	High	5
5	Low	1	None	2
5	Low	1	Low	2
5	Low	1	Medium	3
5	Low	1	High	4
5	Low	2 or 3	None	3
5	Low	2 or 3	Low	3
5	Low	2 or 3	Medium	4
5	Low	2 or 3	High	5
5	Medium	1	None	2
5	Medium	1	Low	2
5	Medium	1	Medium	3
5	Medium	1	High	4
5	Medium	2 or 3	None	3
5	Medium	2 or 3	Low	3
5	Medium	2 or 3	Medium	4
5	Medium	2 or 3	High	5
5	High	1	None	2
5	High	1	Low	2
5	High	1	Medium	3
5	High	1	High	4
5	High	2 or 3	None	3
5	High	2 or 3	Low	3

If your protective supervision support level is:	And your primary caregiver risk level is:	And your backup caregiver risk score is:	And your behavioral acuity level is:	Then your unadjusted individual and family services level is:
5	High	2 or 3	Medium	4
5	High	2 or 3	High	5
5	Immediate	1	None	2
5	Immediate	1	Low	2
5	Immediate	1	Medium	3
5	Immediate	1	High	4
5	Immediate	2 or 3	None	3
5	Immediate	2 or 3	Low	3
5	Immediate	2 or 3	Medium	4
5	Immediate	2 or 3	High	5
6	None	1	None	2
6	None	1	Low	3
6	None	1	Medium	3
6	None	1	High	4
6	None	2 or 3	None	3
6	None	2 or 3	Low	3
6	None	2 or 3	Medium	4
6	None	2 or 3	High	5
6	Low	1	None	2
6	Low	1	Low	3
6	Low	1	Medium	3
6	Low	1	High	4
6	Low	2 or 3	None	3
6	Low	2 or 3	Low	3
6	Low	2 or 3	Medium	4
6	Low	2 or 3	High	5
6	Medium	1	None	3
6	Medium	1	Low	3
6	Medium	1	Medium	3
6	Medium	1	High	4
6	Medium	2 or 3	None	3
6	Medium	2 or 3	Low	4
6	Medium	2 or 3	Medium	4
6	Medium	2 or 3	High	5
6	High	1	None	3
6	High	1	Low	3
6	High	1	Medium	4
6	High	1	High	4
6	High	2 or 3	None	4
6	High	2 or 3	Low	4
6	High	2 or 3	Medium	5

If your protective supervision support level is:	And your primary caregiver risk level is:	And your backup caregiver risk score is:	And your behavioral acuity level is:	Then your unadjusted individual and family services level is:
6	High	2 or 3	High	5
6	Immediate	1	None	3
6	Immediate	1	Low	3
6	Immediate	1	Medium	4
6	Immediate	1	High	4
6	Immediate	2 or 3	None	4
6	Immediate	2 or 3	Low	4
6	Immediate	2 or 3	Medium	5
6	Immediate	2 or 3	High	5

(2) ~~((DDD))~~ DDA adds one level to your individual and family services level when your individual and family services level is determined to be:

(a) Level one, two, three, or four; and

(b) You have a score of four for question two "Other caregiving for persons who are disabled, seriously ill, or under five" in the ~~((DDD))~~ DDA caregiver status acuity scale. See WAC 388-828-5260.

AMENDATORY SECTION (Amending WSR 15-22-039, filed 10/28/15, effective 11/28/15)

WAC 388-828-9060 How does ~~((DDD))~~ DDA determine your individual and family services support rating? Your individual and family services support rating is determined by using the following table:

If your unadjusted individual and family services level is:	Then your individual and family services support rating is:
1	0
2	240
3	336
4	432
5	528

AMENDATORY SECTION (Amending WSR 15-22-039, filed 10/28/15, effective 11/28/15)

WAC 388-828-9100 How does ~~((DDD))~~ DDA determine the number to use in the adjustment of your individual and family services support rating? ~~((DDD))~~ DDA determines the amount of the adjustment for your individual and family services support rating using the following table:

If your individual and family services level is 1, 2, 3, 4, or 5.		And your ADL support needs level for the SIS per WAC 388-828-5480			
		None	Low	Medium	High
And your medical acuity level per WAC 388-828-5700	None	57	57	76	85
	Low	57	57	76	85
	Medium	57	88	122	145
	High	57	145	245	287

Example: If your individual and family service level is 3 and your ADL support needs level is "low" and your medical acuity level is "medium," the amount of your adjustment is 88.

AMENDATORY SECTION (Amending WSR 15-22-039, filed 10/28/15, effective 11/28/15)

WAC 388-828-9120 How does ~~((DDD))~~ DDA determine your individual and family services score? ~~((DDD))~~ DDA adds your individual and family services support rating from WAC 388-828-9060 to the adjustment amount in WAC 388-828-9100 to determine your individual and family services score.

Example: If your individual and family services support rating is 336 and the amount of your adjustment is 122, your individual and family services score is 458.

AMENDATORY SECTION (Amending WSR 14-07-028, filed 3/10/14, effective 4/10/14)

WAC 388-828-9140 How does ~~((DDD))~~ DDA determine the amount of your individual and family service

award? ((DD)) DDA uses the following table to determine the amount of your individual and family services award:

If your individual and family services score is:	The award level will be	The amount of your award is up to:
0 to 60	Not eligible	No Award
61 to 240	Level 1	\$1,200
241 to 336	Level 2	\$1,800
337 to 527	Level 3	\$2,400
528 or more	Level 4	\$3,600

AMENDATORY SECTION (Amending WSR 11-13-039, filed 6/8/11, effective 7/9/11)

WAC 388-828-9200 What is the ((DD)) DDA employment acuity scale? The ((DD)) DDA employment acuity scale is an algorithm that determines your employment acuity score and employment support level.

AMENDATORY SECTION (Amending WSR 11-13-039, filed 6/8/11, effective 7/9/11)

WAC 388-828-9205 How does ((DD)) DDA determine your employment support level? ((DD)) DDA determines your employment support level using the following table:

If your employment acuity score in WAC 388-828-9210 is:	Your employment support level is:
0 or less	None
Greater than 0 and less than 1.5	Low
1.5 to less than 2.5	Medium
2.5 or greater	High

AMENDATORY SECTION (Amending WSR 11-13-039, filed 6/8/11, effective 7/9/11)

WAC 388-828-9210 How does ((DD)) DDA determine your employment acuity score? ((DD)) DDA determines your employment acuity support score by combining your employment support scores for:

- (1) Activities of daily living (see WAC 388-828-9215);
- (2) Behavioral support (see WAC 388-828-9220);
- (3) Interpersonal support (see WAC 388-828-9225);
- (4) Environmental support (see WAC 388-828-9230);
- (5) Level of monitoring (see WAC 388-828-9240);
- (6) Employment support (see WAC 388-828-9245);
- (7) Completing tasks with acceptable speed (see WAC 388-828-9255);
- (8) Completing tasks with acceptable quality (see WAC 388-828-9260);
- (9) Medical support (see WAC 388-828-9265); and
- (10) Seizure support (see WAC 388-828-9270).

Example:

Acuity scales and questions used in determining employment acuity score:	If employment support scores are:
Activities of daily living	0.20607
Behavioral support	0.08372
Interpersonal support	0.47326
Environmental support	0.13596
Level of monitoring	0.7311
Employment support	0.43562
Completing tasks with acceptable speed	0.18855
Completing tasks with acceptable quality	0.10836
Medical support	0.135
Seizure support	-0.15393
Your employment acuity score is:	2.34371

AMENDATORY SECTION (Amending WSR 11-13-039, filed 6/8/11, effective 7/9/11)

WAC 388-828-9215 How does ((DD)) DDA determine your employment acuity scale score for activities of daily living? ((DD)) DDA determines your employment acuity score for activities of daily living by multiplying your ADL support needs level score by 0.06869.

If your ADL support needs level in WAC 388-828-5480 is:	Then your ADL support needs level score is:
None	0
Low	1
Medium	2
High	3

Example: An ADL support needs level score of 3 is multiplied by 0.06869 resulting in an employment acuity scale score for activities of daily living of 0.20607.

AMENDATORY SECTION (Amending WSR 11-13-039, filed 6/8/11, effective 7/9/11)

WAC 388-828-9220 How does ((DD)) DDA determine your employment acuity scale score for behavioral support? ((DD)) DDA determines your employment acuity scale score for behavioral support by multiplying your behavioral acuity level score (see WAC 388-828-5640) by 0.04186.

If your behavioral acuity level in WAC 388-828-5640 is:	Then your behavioral acuity level score is:
None	0
Low	1

If your behavioral acuity level in WAC 388-828-5640 is:	Then your behavioral acuity level score is:
Medium	2
High	3

Example: A behavioral acuity level score of 2 is multiplied by 0.04186 resulting in an employment acuity scale score for behavioral support of 0.08372.

AMENDATORY SECTION (Amending WSR 11-13-039, filed 6/8/11, effective 7/9/11)

WAC 388-828-9225 How does ~~((DDD))~~ **DDA** determine your employment acuity scale score for interpersonal support? ~~((DDD))~~ **DDA** determines your employment acuity scale score for interpersonal support by multiplying your interpersonal support needs level score (see WAC 388-828-5820) by 0.23663.

If your interpersonal support needs level in WAC 388-828-5820 is:	Then your interpersonal support needs level score is:
None	0
Low	1
Medium	2
High	3

Example: An interpersonal support needs level score of 2 is multiplied by 0.23663 resulting in an employment acuity scale score for interpersonal support of 0.47326.

AMENDATORY SECTION (Amending WSR 11-13-039, filed 6/8/11, effective 7/9/11)

WAC 388-828-9230 How does ~~((DDD))~~ **DDA** determine your employment acuity scale score for environmental support? ~~((DDD))~~ **DDA** determines your employment acuity scale score for environmental support by multiplying your environmental support level by 0.06798.

If your environmental support score from WAC 388-828-9235 is:	Then your environmental support level is:	
0	0	None
1 or 2	1	Low
3 or 4	2	Medium
5 or more	3	High

Example: An environmental support score of 3 equals an environmental support level of 2. The environmental support level of 2 is then multiplied by 0.06798 resulting in an employment acuity scale score for environmental support of 0.13596.

AMENDATORY SECTION (Amending WSR 11-13-039, filed 6/8/11, effective 7/9/11)

WAC 388-828-9235 How does ~~((DDD))~~ **DDA** determine your environmental support score? ~~((DDD))~~ **DDA** determines your environmental support score by adding the sum of your assessment responses to employment support limitations in the following table:

Response	Employment Support/ Limitations	Score
1	Behaviors impact workplace	1
2	Employment goals too specific	1
3	Fearful/scared of new situations	0
4	Frequent job changes	1
5	High turnover of natural supports	1
6	Hygiene issues unresolved	1
7	Lacks social skills	1
8	Little work history	1
9	Narrow scope of job requirements	1
10	Needs support arranging childcare	1
11	Others not supportive of employment goals	1
12	Others unable to support employment goals	1
13	Transportation	1
14	Unable to regularly get to work on time	1
15	Uncertain about work	0
16	Uncooperative/lacks motivation	0
Maximum employment support limitation score is:		13

Example: If you have selected responses 1, 3, 8, 13, and 15, the sum of your scores for employment support limitations would be 3, resulting in an environmental support score of 3 for WAC 388-828-9230.

AMENDATORY SECTION (Amending WSR 11-13-039, filed 6/8/11, effective 7/9/11)

WAC 388-828-9240 How does ~~((DDD))~~ **DDA** determine your employment support score for level of monitoring? ~~((DDD))~~ **DDA** determines your employment support score for level of monitoring by multiplying your level of monitoring score in WAC 388-828-5060(1) by 0.14622.

Example: If you level of monitoring is "onsite (e.g., on property) your level of monitoring score is 5. Multiplying a "level of monitoring score" of 5 by 0.14622 results in an employment support score for level of monitoring of 0.7311.

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

AMENDATORY SECTION (Amending WSR 11-13-039, filed 6/8/11, effective 7/9/11)

WAC 388-828-9245 How does ((~~DDD~~)) DDA determine your employment acuity scale score for employment support? ((~~DDD~~)) DDA determines your employment acuity score for employment support by multiplying your ~~DDD~~ ((~~employment~~)) DDA support score in WAC 388-828-9250 by 0.21781.

Example: A ((~~DDD~~)) DDA employment support score of 2 is multiplied by 0.21781 resulting in an employment acuity scale score for employment support of 0.43562.

AMENDATORY SECTION (Amending WSR 11-13-039, filed 6/8/11, effective 7/9/11)

WAC 388-828-9250 How does ((~~DDD~~)) DDA determine your ((~~DDD~~)) DDA employment support score? ((~~DDD~~)) DDA determines your ((~~DDD~~)) DDA employment support score using the following table:

If your total raw score for the SIS employment activities subscale in WAC 388-828-4260 is:	Then your ((DDD)) <u>DDA</u> employment level is:	And your ((DDD)) <u>DDA</u> employment support score is:
0	None	0
1 through 35	Low	1
36 through 59	Medium	2
60 or more	High	3

AMENDATORY SECTION (Amending WSR 11-13-039, filed 6/8/11, effective 7/9/11)

WAC 388-828-9255 How does ((~~DDD~~)) DDA determine your employment acuity score for completing tasks with acceptable speed? ((~~DDD~~)) DDA determines your employment acuity score for completing tasks with acceptable speed by using your "type of support" score for question "D5" in WAC 388-828-4260 and multiplying it by 0.06285.

Example: A "type of support" score of 3 (partial physical assistance) is multiplied by 0.06285 resulting in an employment acuity score for completing tasks with acceptable speed of 0.18855.

AMENDATORY SECTION (Amending WSR 11-13-039, filed 6/8/11, effective 7/9/11)

WAC 388-828-9260 How does ((~~DDD~~)) DDA determine your employment acuity score for completing tasks with acceptable quality? ((~~DDD~~)) DDA determines your employment acuity score for completing tasks with acceptable quality by using your "type of support" score for question "D6" in WAC 388-828-4260 and multiplying it by 0.05418.

Example: A "type of support" score of 2 (verbal/gestural prompting) is multiplied by 0.05418 resulting in an employment acuity score for completing tasks with acceptable quality of 0.10836.

AMENDATORY SECTION (Amending WSR 11-13-039, filed 6/8/11, effective 7/9/11)

WAC 388-828-9265 How does ((~~DDD~~)) DDA determine your employment acuity scale score for medical support? ((~~DDD~~)) DDA determines your employment acuity scale score for medical support by multiplying your medical support needs level score (see WAC 388-828-5700) by 0.06750.

If your medical support needs level in WAC 388-828-5700 is:	Then your medical support needs level score is:
None	0
Low	1
Medium	2
High	3

Example: A medical support needs level score of 2 is multiplied by 0.06750 resulting in an employment acuity scale score for medical support of 0.135.

AMENDATORY SECTION (Amending WSR 11-13-039, filed 6/8/11, effective 7/9/11)

WAC 388-828-9270 How does ((~~DDD~~)) DDA determine your employment acuity scale score for seizure support? ((~~DDD~~)) DDA determines your employment acuity scale score for seizure support by multiplying your seizure support score in WAC 388-828-9275 by negative 0.05131.

Example: A seizure support score of 3 is multiplied by -0.05131 resulting in an employment acuity scale score for seizure support of -0.15393.

AMENDATORY SECTION (Amending WSR 11-13-039, filed 6/8/11, effective 7/9/11)

WAC 388-828-9275 How does ((~~DDD~~)) DDA determine your seizure support score? ((~~DDD~~)) DDA determines your seizure support score using the following table:

If your assessment indicates the following:	Your seizure support level is:	And your seizure support score is:
(1) Does the client have a history of seizures equals "no"	None	0
(2) Does the client have a history of seizures equals "yes"; and (3) Client does not meet requirements for seizure support level of "medium" or "high"	Low	1

If your assessment indicates the following:	Your seizure support level is:	And your seizure support score is:
(4) Client has convulsive seizures (tonic-clonic or atonic); and (5) Frequency is quarterly, monthly, weekly or multiple times per week; and (6) Seizure duration is 5 minutes or less	Medium	2
(7) Two ore more emergency room visits/911 calls in past year; or (8) Has convulsive seizures (tonic-clonic or atonic); and (9) Frequency is quarterly, monthly, weekly or multiple times per week; and (10) Seizure duration is greater than 5 minutes or requires medical intervention to stop	High	3

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

AMENDATORY SECTION (Amending WSR 11-13-039, filed 6/8/11, effective 7/9/11)

WAC 388-828-9280 Why does ((DD)) DDA multiply your seizure support score by a negative factor? ((DD)) DDA multiplies your seizure support score by a negative factor because the ((DD)) DDA employment acuity scale tends to over-predict employment support needs for persons with seizures. This is because seizures can often be controlled with medication and the relationship between a person's seizure acuity and employment support needs may have already been partially taken into account by other variables in the algorithm, such as the medical acuity scale.

AMENDATORY SECTION (Amending WSR 13-01-076, filed 12/18/12, effective 1/18/13)

WAC 388-828-9325 How does ((DD)) DDA determine the number of hours you may receive for employment support services? ((DD)) DDA determines the number of hours you may receive for employment services using information from the following:

- (1) Your employment support level determined as described in WAC 388-828-9205;
- (2) Your employment status determined as described in WAC 388-828-9330;
- (3) Your employment service level and employment service hours determined as described in WAC 388-828-9335;
- (4) Your employment service type;
- (5) You meet one of the conditions identified as described in WAC 388-828-9345 and require add-on hours identified in WAC 388-828-9350.

AMENDATORY SECTION (Amending WSR 13-01-076, filed 12/18/12, effective 1/18/13)

WAC 388-828-9355 How many add-on hours are you eligible to receive? ((DD)) DDA uses the following table to determine the maximum number of add-on hours you are eligible to receive.

If you meet one of the conditions in WAC 388-828-9350 and your employment level is:	You are eligible to receive up to the following amount of add-on hours:
A	0
B	0
C	5
D	7
E	5
F	7
G	12
H	14

AMENDATORY SECTION (Amending WSR 08-15-091, filed 7/17/08, effective 7/17/08)

WAC 388-828-9500 What is the residential algorithm? The residential algorithm is a formula in the ((DD)) DDA assessment that determines the level of residential services and supports you may expect to receive based on your assessed support needs.

AMENDATORY SECTION (Amending WSR 09-06-047, filed 2/25/09, effective 3/28/09)

WAC 388-828-9520 Where does the residential algorithm obtain your support needs information? The residential algorithm obtains your support needs information from the following components of your current ((DD)) DDA assessment:

- (1) The supports intensity scale assessment (SIS) per WAC 388-828-4000 through 388-828-4320;
- (2) The ((DD)) DDA protective supervision acuity scale per WAC 388-828-5000 through 388-828-5100;
- (3) The ((DD)) DDA behavioral acuity scale per WAC 388-828-5500 through 388-828-5640;
- (4) The ((DD)) DDA medical acuity scale per WAC 388-828-5660 through 388-828-5700;
- (5) The program and services panel per WAC 388-828-6020;
- (6) The ((DD)) DDA seizure acuity scale per WAC 388-828-7040 through 388-828-7080; and
- (7) The ((DD)) DDA sleep panel per WAC 388-828-9640.

AMENDATORY SECTION (Amending WSR 09-06-047, filed 2/25/09, effective 3/28/09)

WAC 388-828-9530 How does the residential algorithm identify your residential support needs score? The residential algorithm uses the support needs information from

your current ((~~DDD~~)) DDA assessment to identify the following residential support needs scores:

- (1) Community protection program enrollment as defined in WAC 388-828-9590;
- (2) Daily support needs score as defined in WAC 388-828-9560;
- (3) Mid-frequency support needs score as defined in WAC 388-828-9580;
- (4) Behavior support needs score as defined in WAC 388-828-9590;
- (5) Medical support needs score as defined in WAC 388-828-9600;

- (6) Seizure support needs score as defined in WAC 388-828-9610;
- (7) Protective supervision support needs score as defined in WAC 388-828-9620;
- (8) Ability to seek help score as defined in WAC 388-828-9630;
- (9) Nighttime support needs score as defined in WAC 388-828-9640;
- (10) Toileting support needs score as defined in WAC 388-828-9650; and
- (11) Total critical support time as defined in WAC 388-828-9660 through 388-828-9690.

AMENDATORY SECTION (Amending WSR 09-06-047, filed 2/25/09, effective 3/28/09)

WAC 388-828-9540 What residential service levels of support does ((~~DDD~~)) DDA use? ((~~DDD~~)) DDA uses the following residential service levels of support which correspond with your assessed support needs (see WAC 388-828-9530):

Support Need Level	Typical Support Need Characteristics from the ((DDD)) <u>DDA</u> Assessment	Expected Level of Support*
Weekly or less Support Level 1	Client requires supervision, training, or physical assistance in areas that typically occur weekly or less often, such as shopping, paying bills, or medical appointments. Client is generally independent in support areas that typically occur daily or every couple of days.	Clients assessed to need this level receive support on a weekly basis or less frequently.
Multiple times per week Support Level 2	Client is able to maintain health and safety for a full day or more at a time AND needs supervision, training, or physical assistance with tasks that typically occur every few days, such as light housekeeping, menu planning, or guidance and support with relationships. Client is generally independent in support areas that must occur daily.	Clients assessed to need this level receive support multiple times per week.
Intermittent daily - Low Support Level 3A	Client is able to maintain health and safety for short periods of time (i.e., hours, but not days) OR needs supervision, training, or physical assistance with activities that typically occur daily, such as bathing, dressing, or taking medications.	Clients assessed to need this level receive daily support.
Intermittent daily - Moderate Support Level 3B	Client requires supervision, training, or physical assistance with multiple tasks that typically occur daily OR requires frequent checks for health and safety or due to disruptions in routines.	Clients assessed to need this level receive daily support and may receive checks during nighttime hours as needed.
Close proximity Support Level 4	Client requires support with a large number of activities that typically occur daily OR is able to maintain health and safety for very short periods of time (i.e., less than 2 hours, if at all) AND requires occasional health and safety checks or support during overnight hours.	Clients assessed to need this level receive supports in close proximity 24 hours per day. Support hours may be shared with neighboring households.
Continuous day and continuous night Support Level 5	Client is generally unable to maintain health and safety OR requires support with a large number of activities that occur daily or almost every day AND requires nighttime staff typically within the household.	Clients assessed to need this level receive support 24 hours per day.
Community Protection Support Level 6	Client is enrolled in the community protection program.	Clients assessed to need this level of support will receive 24 hour per day supervision per community protection program policy.

*Emergency access to residential staff is available to all clients, 24-hours per day, regardless of the residential service level of support the assessment indicates.

AMENDATORY SECTION (Amending WSR 08-15-091, filed 7/17/08, effective 7/17/08)

WAC 388-828-9550 How does the residential algorithm determine if you are enrolled in the community protection program? The residential algorithm determines that you are enrolled in the community protection program if your current ((~~DD~~)) DDA assessment (see WAC 388-828-6020) shows that you are:

- (1) On the community protection waiver; or
- (2) Considered for the community protection waiver.

AMENDATORY SECTION (Amending WSR 08-15-091, filed 7/17/08, effective 7/17/08)

WAC 388-828-9570 How does ((~~DD~~)) DDA define mid-frequency support? ((~~DD~~)) DDA defines mid-frequency support as support for selected SIS activities that most people perform every two to four days.

AMENDATORY SECTION (Amending WSR 08-15-091, filed 7/17/08, effective 7/17/08)

WAC 388-828-9640 How does the residential algorithm determine your nighttime support needs score? The residential algorithm scores the answers to each of the five following questions from the ((~~DD~~)) DDA sleep panel in the service level assessment to determine your nighttime support needs:

(1)

((DD)) <u>DDA</u> Sleep Panel Question	If you answer to the question is:	Then your support needs score for this question is:
Nighttime Assistance*needed? Frequency	0 = None or less than monthly	Less than daily
	1 = At least once a month but not once a week	Less than daily
	2 = At least once a week but not once a day	Less than daily
	3 = At least once a day but not once an hour	Daily or more frequently
	4 = Hourly or more frequently	Daily or more frequently
* Nighttime assistance needed means that the person wakes in the night and requires assistance with toileting, mobility, medical issues, behaviors, guidance through sleepwalking, or other support requiring intervention.		

(2)

((DD)) <u>DDA</u> Sleep Panel Question	If your answer to this question is:	Then your support needs score for this question is:
Nighttime assistance needed? Daily support time	0 = None	Less than (<) 30 minutes
	1 = Less than 30 minutes	Less than (<) 30 minutes
	2 = 30 minutes to less than 2 hours	30 minutes or more
	3 = 2 hours to less than 4 hours	30 minutes or more
	4 = 4 hours or more	30 minutes or more

(3)

((DD)) <u>DDA</u> Sleep Panel Question	If your answer to this question is:	Then your support needs score for this question is:
Can toilet self at night?	Yes	Yes
	No	No

(4)

((DD)) <u>DDA</u> Sleep Panel Question	If your answer to this question is:	Then your support needs score for this question is:
Wakes to toilet most nights?	Yes	Yes
	No	No

(5)

((DDD)) DDA Sleep Panel Question	If your answer to this question is:		Then your support needs score for this question is:
Nighttime behavioral/anxiety issues?	None	Defined as: No behavioral or anxiety issues at night.	No
	Minor	Defined as: You experience low to medium behavioral or anxiety issues when left alone at night, but can manage the behaviors/anxiety with minimal or no intervention.	No
	Moderate	Defined as: You experience intense behavioral or anxiety issues when left alone at night, but you are managing to cope, even if only minimally, by yourself or with remote or occasional onsite help as needed.	No
	Severe	Defined as: You experience intense behavioral or anxiety issues on most nights if left alone and require a support person within your home during all overnight hours in order to maintain yours and/or other's health and safety.	Yes

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

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 388-828-1160 Does everyone receive all three modules of the DDD assessment?
- WAC 388-828-1200 Who does DDD ask to disclose financial information?
- WAC 388-828-1220 Will DDD require the reported annual gross income to be verified with supporting documentation?
- WAC 388-828-1300 How will your access to, or receipt of, DDD paid services, private duty nursing services, or SSP be affected if income information is not reported?
- WAC 388-828-1360 Are there any exceptions to completing your DDD assessment within thirty days?
- WAC 388-828-1380 What will DDD do if you are unable to identify an ADSA contracted provider?
- WAC 388-828-1400 What is your responsibility when selecting and/or hiring an ADSA contracted individual provider?
- WAC 388-828-1560 Do all questions in the DDD assessment have to be answered?
- WAC 388-828-1620 How does DDD determine which panels are mandatory in your DDD assessment?

- WAC 388-828-1640 What are the mandatory panels in your DDD assessment?
- WAC 388-828-8020 What components contained in the individual support plan module determine a service level and/or number of hours?

**WSR 21-13-011
PROPOSED RULES
HUMAN RIGHTS COMMISSION**
[Filed June 4, 2021, 2:46 p.m.]

Original Notice.
Preproposal statement of inquiry was filed as WSR 21-09-049.
Title of Rule and Other Identifying Information: These proposed rules are in Title 162 WAC, Human rights commission, and chapter 162-04 WAC, General provisions. Changes are made to WAC 162-04-030 Public access to records, which has been updated, and to 162-04-035 Protective orders to seal produced documents, which has been eliminated as obsolete, and the WAC 162-04-035 caption is changed to Processing of public records requests—Electronic record. New sections added include WAC 162-04-032 Agency contact information—Public records officer, 162-04-033 Availability of public records, 162-04-034 Processing of public records requests—General, 162-04-036 Exemptions, 162-04-037 Costs of providing copies of public records, and 162-04-038 Review of Denials of Public Records.
Hearing Location(s): On July 27, 2021, at 2 p.m. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the human rights commission will not pro-

vide a physical location for this hearing to promote social distancing and the safety of the citizens of Washington state. A virtual public hearing, without a physical meeting space, will be held instead. All involved will participate remotely. The public may login using a computer or device, or call-in using a phone, to listen to the hearing. The public may provide verbal comments during the specified time for public comment. For more information about how to attend this virtual meeting, please visit <https://www.hum.wa.gov/rule-making>. You can also email policy@hum.wa.gov to receive an email with login information for the hearing.

Date of Intended Adoption: July 30, 2021.

Submit Written Comments to: Laura Lindstrand, Policy Analyst, 711 South Capitol Way, Suite 402, P.O. Box 42490, Olympia, WA 98504, email policy@hum.wa.gov, fax 360-586-2282, by July 9, 2021.

Assistance for Persons with Disabilities: Contact Laura Lindstrand, phone 360-878-4106, fax 360-586-2282, email policy@hum.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These proposed rules update information on requesting and obtaining public records from the human rights commission, and provide a method for having the denial of a public records reviewed within the agency. These rules will also allow charging the statutory default costs for providing public records. The language of WAC 164-04-030 has been substituted with new language, and additional WAC sections have been added. The updates reflect the Public Records Act model rules, chapter 44-14 WAC, and reflect the costs incurred by the agency in providing copies of public records. The subject of the original WAC 162-04-035 is no longer relevant, as the process does not conform to current records release exemptions.

Reasons Supporting Proposal: The original rules are out of date. The proposed rules reflect the language in the Public Records Act model rules chapter 44-14 WAC. There is also no mechanism within the original rules for charging for copies of public records requests. As a small agency with limited resources and a large volume of public records requests, the human rights commission is struggling with covering those costs and dealing with voluminous requests. The proposed rules will allow the agency to charge the statutory default costs for copying and mailing records.

Statutory Authority for Adoption: RCW 42.56.120, 42.56.040.

Statute Being Implemented: RCW 42.56.120.

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

Name of Proponent: Human rights commission, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Laura Lindstrand, 711 South Capitol Way, Suite 402, Olympia, WA 98504, 360-359-4923.

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

A cost-benefit analysis is not required under RCW 34.05.328. This agency does not fall within any category outlined in RCW 34.05.328(5).

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

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

June 4, 2021
Laura Lindstrand
Policy Analyst

AMENDATORY SECTION (Amending WSR 89-23-019, filed 11/7/89, effective 12/8/89)

WAC 162-04-030 Public access to records. (((+)) Records available.

~~(a) General rule and exceptions.~~ All public records as defined by chapter 42.17 RCW (this includes photographs, tapes, and other materials as well as written documents) prepared, owned, used or retained by the Washington state human rights commission shall be available for public inspection and copying during normal office hours in the office where they are located, except for the following:

~~(i) Personal information in files maintained for the commission's employees or members to the extent that disclosure would violate their right to privacy.~~

~~(ii) The file, except for the complaint, compiled in investigating a complaint filed under RCW 49.60.230, during the time until a finding as provided by RCW 49.60.240 or settlement is adopted by the commission or the case is referred to the attorney general for preparation for public hearing. Specific records in the file may be kept sealed and not made available after this time if the executive director has issued a protective order which states the general nature of the records and the reason why they are not open to inspection, and the records are exempt from public inspection under RCW 42.17.310.~~

~~(iii) Preliminary drafts, notes, recommendations, and intra-agency memorandums in which opinions are expressed or policies formulated or recommended, except that a specific record shall not be exempt when publicly cited by the commission or another agency in connection with any agency action.~~

~~(iv) Records which are relevant to a controversy to which the commission is a party but which records would not be available to another party under the rules of pretrial discovery for causes pending in the superior courts.~~

~~(v) Any other information which is exempt from public inspection under RCW 42.17.310 and where disclosure would violate personal privacy or vital government interest.~~

~~(b) Conditions which override the exceptions.~~ Even where it comes within one of the above exceptions to public access, a particular record shall nevertheless be available for inspection and copying if:

~~(i) Its disclosure would not violate personal privacy or impair a vital governmental interest;~~

~~(ii) The information which would violate personal privacy or impair a vital governmental interest can be deleted from the record; or~~

(iii) ~~The record contains statistical information not descriptive of any readily identifiable person or persons.~~

(2) **Copying.** Persons may copy any record which may be inspected. In offices where a copying machine is kept by the commission, machine copies shall be made available to a person on request. No charge shall be made for up to ten sheets in connection with a single request, but ten cents a sheet shall be charged for each sheet beyond ten. Copying facilities may be denied when making them available would unreasonably disrupt the operation of the office, because of the volume of copying or other valid reasons. The absence or unavailability of agency copying facilities shall be given weight in determining whether there are special circumstances justifying removal of a record from the office as provided in subsection (3) of this section.

(3) **Protection of records.** No record shall be allowed to be removed from a commission office by anyone other than a staff member or other officially authorized person unless special circumstances make the removal necessary or desirable, and protection of the record is reasonably assured. Before such removal is allowed a receipt itemizing the contents of the record and giving the address and telephone number of the place where it will be kept shall be signed by the person taking the record and approved in writing by the person in charge of the office or division responsible for the record.

(4) **Personnel records.** Requests for inspection of materials in the personnel files of commission employees or members shall be referred to the executive director, or in his or her absence, the deputy director, and promptly acted upon by him or her. When inspection is denied, it shall be the responsibility of the person making that decision to issue within twenty-four hours the written statement required by RCW 42.17.310 (4) and 42.17.320 identifying RCW 42.17.310 (1)(b) as the exemption authorizing withholding of the record, and explaining how inspection of the record would violate the employee's or commissioner's right of privacy. The decision of the executive director or deputy director shall be final agency action for purposes of judicial review.

(5) **Other records; review of denial.** Requests for inspection of records not in the personnel files of commission employees or members (that is, not covered by subsection (4) of this section) shall be acted upon immediately by the staff person who has charge of the record at the time the request is made. When that person believes that a request to inspect a record must be denied, he or she shall immediately contact his or her supervisor by telephone and obtain concurrence from the supervisor before denying inspection. The supervisor shall then issue, or cause to be issued, the written statement required by RCW 42.17.310(4) and chapter 42.17 RCW identifying the specific exemption authorizing the withholding of the record (or part) and briefly explaining how the exemption applies to the record withheld. A copy of the statement shall be immediately delivered or mailed to the deputy director.

(6) **Interpretation.** It is the policy of the Washington state human rights commission to carry out the spirit as well as the letter of chapter 42.17 RCW, and thus to afford the public maximum access to its records, subject to necessary respect for the right of individuals to privacy and the need for efficient administration of government. This regulation shall

~~be interpreted in light of that spirit and this policy.~~) (1) RCW 42.56.070(1) requires the human rights commission to make available for inspection and copying nonexempt "public records" in accordance with published rules. The act defines "public record" at RCW 42.56.010(3) to include any "writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained" by the agency. RCW 42.56.010(3) excludes from the definition of "public record" the records of volunteers that are not otherwise required to be retained by the agency and which are held by volunteers who do not serve in an administrative capacity; have not been appointed by the agency to an agency board, commission or internship; and do not have a supervisory role or delegated authority.

(2) The purpose of these rules is to establish the procedures that the human rights commission will follow in order to provide full access to public records. These rules provide information to persons wishing to request access to public records of the human rights commission and establish processes for both requestors and human rights commission staff that are designed to best assist members of the public in obtaining such access.

(3) The purpose of the act is to provide the public full access to information concerning the conduct of government, mindful of individuals' privacy rights and the desirability of the efficient administration of government. The act and these rules will be interpreted in favor of disclosure. In carrying out its responsibilities under the act, the human rights commission will be guided by the provisions of the act describing its purposes and interpretation.

NEW SECTION

WAC 162-04-032 Agency contact information—Public records officer. (1) The human rights commission central office is located at 711 S. Capitol Way, Ste. 402, P.O. Box 42490, Olympia, Washington 98504.

(2) The public records officer will oversee compliance with the act but another human rights commission staff member may process the request. Therefore, these rules will refer to the public records officer or "designee." The public records officer or designee and the human rights commission will provide full assistance to requestors; create and maintain for use by the public and human rights commission officials an index to public records of the human rights commission (if applicable); ensure that public records are protected from damage or disorganization; and prevent fulfilling public records requests from causing excessive interference with essential functions of the human rights commission.

(3) Any person wishing to request access to public records of the human rights commission, or seeking assistance in making such a request should contact the public records officer designee of the human rights commission:

Records Analyst
Human Rights Commission
711 S. Capitol Way, Ste. 402
P.O. Box 42490
Olympia, WA 98504-2490
360-359-4925

360-586-2282

records@hum.wa.gov

Information is also available at the human rights commission's website at www.hum.wa.gov.

(4) The human rights commission will provide members of the public with a form to make a public records request. This form is available through the public records officer designee or the website at www.hum.wa.gov.

NEW SECTION

WAC 162-04-033 Availability of public records. (1) Hours for inspection of records. Public records are available for inspection and copying during normal business hours of the human rights commission, Monday through Friday, 8:00 a.m. to 5:00 p.m., excluding legal holidays. Records must be inspected at the Olympia office of the human rights commission. Many public records are also available for inspection and copying on the human rights commission's website at any time, at no cost.

(2) **Organization of records.** The human rights commission will maintain its records in a reasonably organized manner. The human rights commission will take reasonable actions to protect records from damage and disorganization. A requestor shall not take human rights commission records from the human rights commission. A variety of records is available on the human rights commission's website at www.hum.wa.gov. Requestors are encouraged to view the documents available on the website prior to submitting a records request.

(3) **Making a request for public records.**

(a) Any person wishing to inspect or copy public records of the human rights commission should make the request in writing on the human rights commission's request form, or by letter, fax, or email addressed to the public records officer designee at the email address record@hum.wa.gov, or by submitting the request in person at the human rights commission, 711 S. Capitol Way, Ste. 402, P.O. Box 42490, Olympia, Washington 98504 and including the following information:

- Name of requestor;
- Address of requestor;
- Other contact information, including telephone number and any email address;
- Identification of the public records adequate for the public records officer or designee to locate the records;
- Any limitations to the records request, such as by date that the record was created, by respondent entity, or by statutorily covered area such as employment or housing;
- The date and time of day of the request.

(b) If the requestor wishes to have copies of the records made instead of simply inspecting them, they should so indicate and make arrangements to pay for copies of the records or a deposit. Pursuant to WAC 132-04-037 charges for copies are provided in a fee schedule available at 711 S. Capitol Way, Ste. 402, P.O. Box 42490, Olympia, Washington 98504, or at www.hum.wa.gov.

(c) A records request form is available for use by requestors at the office of the public records officer designee and online at www.hum.wa.gov.

(d) The public records officer designee may accept requests for public records that contain the above information by telephone or in person. If the public records officer designee accepts such a request, they will confirm receipt of the information and the substance of the request in writing.

(e) If requestors refuse to identify themselves or provide sufficient contact information, the agency will respond to the extent feasible and consistent with the law.

NEW SECTION

WAC 162-04-034 Processing of public records requests—General. (1) Providing "fullest assistance."

The human rights commission is charged by statute with adopting rules which provide for how it will "provide full access to public records"; "protect records from damage or disorganization"; "prevent excessive interference with other essential functions of the agency"; provide "fullest assistance" to requestors; and provide the "most timely possible action" on public records requests. The public records officer or designee will process requests in the order allowing the most requests to be processed in the most efficient manner.

(2) Upon receipt of a request, the public records officer designee will log the text of the request, the name of the requestor, and the date of the request.

(3) The public records officer or designee will evaluate the request according to the nature of the request, volume, and availability of requested records.

(4) Access to public records can be provided by allowing inspection of the record, providing a copy, or posting the record on the human rights commission's website and assisting the requestor with finding it.

(5) A requestor must request an "identifiable record" or "class of records" before the human rights commission must respond to it. RCW 42.56.080 and 42.56.550(1). An "identifiable record" is one that is existing at the time of the request and which agency staff can reasonably locate. A request for all or substantially all records prepared, owned, used, or retained by an agency is not a valid request for identifiable records.

(6) **Acknowledging receipt of request.** Following the initial evaluation of the request under subsection (3) of this section, and within five business days of receipt of the request, the public records officer or designee will do one or more of the following:

(a) Make the records available for inspection or copying including:

(i) If copies are available on the human rights commission's internet website, provide an internet address and link on the website to specific records requested;

(ii) If copies are requested and payment of a deposit for the copies, if any, is made or other terms of payment are agreed upon, send the copies to the requestor;

(b) Acknowledge receipt of the request and provide a reasonable estimate of when records or an installment of records will be available (the public records officer or designee may revise the estimate of when records will be available);

(c) Acknowledge receipt of the request and ask the requestor to provide clarification for a request that is unclear,

and then to provide, to the greatest extent possible, a reasonable estimate of time the human rights commission will require to respond to the request if it is not clarified.

(i) Such clarification may be requested and provided by telephone and memorialized in writing.

(ii) If the requestor fails to respond to a request for clarification and the entire request is unclear, the human rights commission need not respond to it. The human rights commission will respond to those portions of a request that are clear; or

(d) Deny the request.

(7) **Consequences of failure to respond.** If the human rights commission does not respond in writing within five business days of receipt of the request for disclosure, the requestor should contact the public records officer to determine the reason for the failure to respond.

(8) **Protecting rights of others.** In the event that the requested records contain information that may affect rights of others and may be exempt from disclosure, the public records officer may, prior to providing the records, give notice to such others whose rights may be affected by the disclosure. Such notice should be given so as to make it possible for those other persons to contact the requestor and ask him or her to revise the request, or, if necessary, seek an order from a court to prevent or limit the disclosure. The notice to the affected persons will include a copy of the request.

(9) **Records exempt from disclosure.** Some records are exempt from disclosure, in whole or in part. If the human rights commission believes that a record is exempt from disclosure and should be withheld, the public records officer will state the specific exemption and provide a brief written explanation of why the record or a portion of the record is being withheld. If only a portion of a record is exempt from disclosure, but the remainder is not exempt, the public records officer will redact the exempt portions, provide the nonexempt portions, and indicate to the requestor why portions of the record are being redacted. A description of the records being withheld and the reasons for withholding, and the date of the final disposition of the request shall be logged.

(10) Inspection of records.

(a) A requestor may request to inspect records at the human rights commission office in Olympia. The records will be assembled and redacted of exempt information. Consistent with other demands, the human rights commission shall then provide space to inspect public records. No member of the public may remove a document from the viewing area or disassemble or alter any document.

(b) The requestor must review the assembled records within thirty days of the human rights commission's notification to them that the records are available for inspection or copying. The agency will notify the requestor in writing of this requirement and inform the requestor that they should contact the agency to make arrangements to review the records. If the requestor or a representative of the requestor fails to review the records within the thirty-day period or make other arrangements, the human rights commission may close the request and refile the assembled records. Other public records requests can be processed ahead of a subsequent request by the same person for the same or almost identical records, which can be processed as a new request.

(c) **Providing copies of records.** After inspection is complete, the requestor requests copies of documents, the public records officer or designee shall make the requested copies or arrange for copying. If documents are copied, the copying charges outlined in WAC 162-04-037 will apply.

(11) **Providing records in installments.** When the request is for a large number of records, the public records officer or designee will provide access for inspection and copying in installments, if they reasonably determine that it would be practical to provide the records in that way. If, within thirty days, the requestor fails to inspect or provide payment for one or more of the installments, the public records officer or designee may stop searching for the remaining records and close the request.

(12) **Completion of inspection.** When the inspection of the requested records is complete and all requested copies are provided, the public records officer or designee will indicate on the log and in the last communication with the requestor that the human rights commission has completed a reasonable search for the requested records and made any located nonexempt records available for inspection or has provided the requested copies or electronic documents.

(13) **Closing withdrawn or abandoned request.** When the requestor either withdraws the request, or fails to clarify an entirely unclear request, or fails to fulfill their obligations to inspect the records, pay the deposit, pay the required fees for an installment, or make final payment for the requested copies, the public records officer or designee will close the request and, unless the agency has already indicated in previous correspondence that the request would be closed under the above circumstances, indicate to the requestor that the human rights commission has closed the request.

(14) **Later discovered documents.** If, after the human rights commission has informed the requestor that it has provided all available records, the human rights commission becomes aware of additional responsive documents existing at the time of the request, it will promptly inform the requestor of the additional documents and provide them on an expedited basis.

AMENDATORY SECTION (Amending WSR 89-23-019, filed 11/7/89, effective 12/8/89)

WAC 162-04-035 (~~Protective orders to seal produced documents.~~) Processing of public records requests—Electronic record. ~~((1) May be requested. Any person who is asked or compelled to produce records may request a protective order to have a particular document or part of document that has been produced or will be produced kept confidential for official use only, without public access.~~

~~(2) **To whom addressed.** Prior to notice of hearing, a request for a protective order shall be made to the chairperson of the commission pursuant to the procedures established in WAC 162-08-020. After notice of hearing, a request for a protective order shall be made by motion to the administrative law judge, as provided in WAC 162-08-263(3).~~

~~(3) **Form of request.** Requests for a protective order shall be in written affidavit form and shall state the requestor's reasons why a protective order should be issued for the documents covered.~~

(4) **Grounds for issuance.** A protective order may be made only upon findings that:

(a) The document or part of document is exempt from public disclosure under RCW 42.17.260 and 42.17.310 (Initiative 276) and the commission's implementing regulation, WAC 162-04-030, and;

(b) The requestor has shown legitimate need for confidentiality of the document or part of document.

(5) **Form of order.** The protective order shall be in writing and shall bear the caption of the case, date of entry of the order, and signature of the executive director or other authorized staff person or the administrative law judge. The text of the order shall contain:

(a) A description in general terms of each document covered by the order. *Example:* "Report dated of Dr. to respondent on results of physical examination of the complainant, two pages."

(b) A statement of the specific exemption from the disclosure provisions of chapter 42.17 RCW authorizing the withholding of the record or part of record and a brief explanation of how the exemption applies to what is withheld. See RCW 42.17.310(4).

(c) A statement of why there is need for confidentiality of the document or part of document.

(6) **Filing of order.** The protective order shall be affixed to a sealed envelope containing the protected document and both shall be kept in the case file, or, alternatively, the original order and protected document may be kept at another place and a copy of the protective order placed in the case file along with a notation as to where the original order and protected document are kept.

(7) **Effect of order.** Except as may be provided in the protective order, documents covered by the protective order shall not be revealed to anyone other than commissioners, members of the commission's staff, and the commission's legal counsel for official purposes and shall not become public when the rest of the file becomes public as provided in WAC 162-04-030 (1)(a)(ii), but:

(a) Nothing shall prevent the use of a protected document in an administrative hearing or court case, including admission of the document into the public record of the hearing or case, and;

(b) Nothing herein is intended to prevent a court from ordering production of a protected document under RCW 42.17.310(3) or other authority.

(8) **Other protective orders.** Issuance of other kinds of protective orders concerning discovery is governed by WAC 162-08-096.) (1) **Requesting electronic records.** The process for requesting electronic public records is the same as for requesting paper public records.

(2) **Providing electronic records.** When a requestor requests records in an electronic format, the public records officer designee will provide the nonexempt records or portions of such records that are reasonably locatable in an electronic format that is used by the human rights commission and is generally commercially available, or in a format that is reasonably translatable from the format in which the agency keeps the record. Costs for providing electronic records are governed by WAC 162-04-037. The fee schedule is available

at 711 S. Capitol Way, Ste. 402, P.O. Box 42490, Olympia, Washington 98504 and www.hum.wa.gov.

(3) **Customized electronic access services.** While not required, and with the consent of the requestor, the human rights commission may decide to provide customized electronic access services and assess charges under RCW 42.56.120 (2)(f). A customized service charge applies only if the human rights commission estimates that the request would require the use of information technology expertise to prepare data compilations, or provide customized electronic access services when such compilations and customized access services are not used by the agency for other purposes. The human rights commission may charge a fee consistent with RCW 42.56.120 (2)(f) for such customized access.

NEW SECTION

WAC 162-04-036 Exemptions. (1) The Public Records Act provides that a number of types of documents are exempt from public inspection and copying. The human rights commission will exempt these records from inspection and copying.

(2) The human rights commission is prohibited by statute from disclosing lists of individuals for commercial purposes.

NEW SECTION

WAC 162-04-037 Costs of providing copies of public records. (1) **Inspection.** There is no fee for inspecting public records, including inspecting records on the human rights commission's website.

(2) **Statutory default costs.** The human rights commission is not calculating actual costs for copying its records because to do so would be unduly burdensome for the following reasons: Funds were not allocated for performing a study to calculate such actual costs and the human rights commission does not have the resources to conduct a study to determine actual copying costs for all its records; staff resources are insufficient to perform a study and to calculate such actual costs; to conduct such a study would interfere with other essential agency functions; and, through the legislative process, the public and requestors have commented on and been informed of authorized fees and costs provided in the Public Records Act, including RCW 42.56.120 and other laws. Therefore, in order to timely implement a fee schedule consistent with the Public Records Act, it is more cost efficient, expeditious and in the public interest for the human rights commission to adopt the state legislature's approved fees and costs for most of the human rights commission's records, as authorized in RCW 42.56.120 and as published in the agency's fee schedule.

(3) **Fee schedule.** The fee schedule is available at 711 S. Capitol Way, Ste. 402, P.O. Box 42490, Olympia, Washington 98504 and on the human rights commission's website at www.hum.wa.gov.

(4) **Estimate of costs for requestor.** If a requestor asks, the human rights commission will provide a summary of the applicable charges before copies are made, and the requestor may revise the request to reduce the number of copies to be made. The human rights commission will also provide a

requestor, in advance, information concerning customized service charges if the request involves customized service.

(5) **Processing payments.** Before beginning to make the copies or processing a customized service, the public records officer or designee may require a deposit of up to ten percent of the estimated costs of copying all the records selected by the requestor. The public records officer or designee may also require the payment of the remainder of the copying costs before providing all the records, or the payment of the costs of copying an installment before providing that installment. The human rights commission will not charge sales tax when it makes copies of public records.

(6) **Costs of mailing.** The human rights commission may also charge actual costs of mailing, including the cost of the shipping container.

(7) **Payment.** Payment may be made by cash, check, or money order to the human rights commission.

NEW SECTION

WAC 162-04-038 Review of denials of public records. (1) **Petition for internal administrative review of denial of access.** Any person who objects to the initial denial or partial denial of a records request may petition in writing (including email) to the public records officer for a review of that decision. The petition shall include a copy of or reasonably identify the written statement by the public records officer or designee denying the request.

(2) **Consideration of petition for review.** The public records officer shall promptly provide the petition and any other relevant information to the agency executive director. That person will immediately consider the petition and either affirm or reverse the denial within two business days following the human rights commission's receipt of the petition, or within such other time as the human rights commission and the requestor mutually agree to.

(3) **Review by the attorney general's office.** Pursuant to RCW 42.56.530, if the human rights commission denies a requestor access to public records because it claims the record is exempt in whole or in part from disclosure, the requestor may request the attorney general's office to review the matter. The attorney general has adopted rules on such requests in WAC 44-06-160.

(4) **Judicial review.** Any person may obtain court review of denials of public records requests pursuant to RCW 42.56.550 at the conclusion of two business days after the initial denial regardless of any internal administrative appeal.

Hearing Location(s): On August 5, 2021, at 11:00 a.m. - 12:00 p.m., Zoom, meeting URL <https://zoom.us/j/99917205175?from=addon>, Meeting ID 999 1720 5175; One Tap Mobile US +12532158782,,99917205175# or +12063379723,,99917205175#, Dial US +1 253 215 8782 or +1 206 337 9723, Meeting ID 999 1720 5175. Join from an H.323/SIP room system H.323: 162.255.37.11 (US West), 162.255.36.11 (US East), 115.114.131.7 (India Mumbai), 115.114.115.7 (India Hyderabad), 213.19.144.110 (Amsterdam Netherlands), 213.244.140.110 (Germany), 103.122.166.55 (Australia Sydney), 103.122.167.55 (Australia Melbourne), 149.137.40.110 (Singapore), 64.211.144.160 (Brazil), 69.174.57.160 (Canada Toronto), 65.39.152.160 (Canada Vancouver), 207.226.132.110 (Japan Tokyo), 149.137.24.110 (Japan Osaka), Meeting ID 999 1720 5175, SIP 99917205175@zoomcrc.com.

Date of Intended Adoption: September 10, 2021.

Submit Written Comments to: Richerson Chen, 206-934-4436, email Wacinput@seattlecolleges.edu, by August 3, 2021.

Assistance for Persons with Disabilities: Contact Richerson Chen, phone 206-934-4436, email Wacinput@seattlecolleges.edu, by August 3, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amend WAC to be in compliance with HB [2SHB] 2513 and RCW 28B.10.-293 stating colleges can no longer withhold transcripts for any purposes system-wide.

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

Statute Being Implemented: Not applicable.

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

Name of Proponent: Seattle Colleges, public.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Kurt Buttlemann, Siegal Center, 206-934-4111.

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

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

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

Is exempt under RCW 34.05.328.

Explanation of exemptions: Pursuant to RCW 34.05.328 (5)(a)(i), this agency is not an agency mandated to comply with RCW 34.05.328. Further, the agency does not voluntarily make that section applicable to the adoption of this rule pursuant to subsection (5)(a)(ii), and to date, the joint administrative rules review committee has not made the section applicable to the adoption of this rule.

WSR 21-13-012
PROPOSED RULES
SEATTLE COLLEGES
[Filed June 4, 2021, 5:33 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-07-080.

Title of Rule and Other Identifying Information: Library regulations.

June 4, 2021

Shouan Pan

Chancellor

AMENDATORY SECTION (Amending Order 17, filed 5/22/73)

WAC 132F-162-010 Purpose of the library's existence. ~~((The instructional resources center exists to further the objectives of the college.))~~

The library serves the information needs of students, faculty, staff, and the college community in an environment which nurtures learning and fosters freedom of intellectual activity; the access, retrieval, management, application, and distribution of information are central to the colleges' mission.

AMENDATORY SECTION (Amending Order 17, filed 5/22/73)

WAC 132F-162-020 ~~((Basis of policies and procedures.))~~ Materials selection. ~~((Policies and procedures are based on the belief that the needs of the college community as a whole take precedence over the individual convenience.))~~

Information resources are selected and deselected according to the principles and practices embodied in the library's collection development policy.

AMENDATORY SECTION (Amending WSR 15-02-072, filed 1/6/15, effective 2/6/15)

WAC 132F-162-040 Borrower classification. ~~((Within the college community there are several readily identifiable library material user groups for which the character and intensity of use differs.))~~ The primary ~~((groups))~~ borrowers are credit and noncredit students, faculty, administrative personnel and nonacademic staff. Borrowers are classified as:

- (1) Credit students;
- (2) Employees of the district;
- (3) Continuing education, noncredit students.

The ~~((instructional resources center))~~ library may extend services on proper identification to persons not affiliated with the college. Borrowing privileges may be extended to such persons if they reside within Seattle College District VI, or if they are a duly enrolled student or faculty member of one of the other state community colleges ~~((, or if they are spouses of College faculty, administrative or nonacademic staff members. The instructional resources center.))~~. The library extends services to other libraries through the "interlibrary loan" process. ~~((These borrowers are classified as:~~

- ~~(4) Community patrons;~~
- ~~(5) Reciprocal students and faculty from other state community colleges;~~
- ~~(6) Spouses of borrower class (2);~~
- ~~(7) Retired faculty of College;~~
- ~~(8) Other libraries through the "interlibrary loan" process.))~~

AMENDATORY SECTION (Amending Order 17, filed 5/22/73)

WAC 132F-162-170 ~~((When fines will be levied.))~~ Fines and charges. ~~((Fines may be levied on:~~

- ~~(1) Circulating material when:~~

~~(a) The library materials are not returned when called in for reserve, or there is a HOLD or RECALL and they are or become overdue, such fines are to be calculated from the first day library materials are overdue.~~

~~(2) Overdue reserve, reference and other circulating materials from special collections, and equipment, whether or not such material has been requested by another borrower.))~~ A schedule of fees for late, damaged, and lost items will be available from the library circulation desk.

(1) Damage charges. Damage charges will be levied for the repair of damaged library materials up to the cost of replacement.

(2) Replacement charges. Replacement charges will be levied for nonreturned items, and for damaged items where the cost of repair exceeds the cost of replacement. Replacement charges will be based on the current purchase price of the item or comparable item.

AMENDATORY SECTION (Amending Order 17, filed 5/22/73)

WAC 132F-162-180 Failure to return materials, or to pay fines or charges. A failure to return materials or to pay fines or charges may result in:

- (1) Loss or suspension of borrowing privileges.
- (2) ~~((Delay in registration until account is clear~~
- (3) ~~Holds being placed on borrowers in classification 1 (see WAC 132F-162-040) with respect to grades, transcript and college records, and/or~~
- (4) ~~Other appropriate action ((for borrower classifications 2 through 8))~~ in accordance with regulations and applicable laws.

AMENDATORY SECTION (Amending Order 17, filed 5/22/73)

WAC 132F-162-190 Appeals of fines and charges. Appeals of fines or charges, or both, may be filed with the circulation supervisor ~~((by securing appropriate forms from the circulation desk.))~~. All disputed appeals are adjudicated by the ~~((director of instructional resources))~~ administrator in charge of the library.

NEW SECTION

The following sections of the Washington Administrative Code are decodified and recodified as follows:

Old WAC Number	New WAC Number
132F-162-170	132F-162-045
132F-162-180	132F-162-055
132F-162-190	132F-162-065

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 132F-162-030 Modification of these regulations.
- WAC 132F-162-050 Identification card.

WAC 132F-162-060	Loan time periods.
WAC 132F-162-070	Special collections.
WAC 132F-162-080	Number of items that may be borrowed.
WAC 132F-162-090	Date library materials are due.
WAC 132F-162-100	Renewal of library materials.
WAC 132F-162-110	Holds, recalls, and searches.
WAC 132F-162-120	Return of library materials.
WAC 132F-162-130	Schedule of fines and charges.
WAC 132F-162-140	System-wide applicability of fines.
WAC 132F-162-150	Notice of overdue materials.
WAC 132F-162-160	Accrual date or time of fines.

WSR 21-13-049**PROPOSED RULES****HEALTH CARE AUTHORITY**

[Filed June 11, 2021, 11:41 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-15-077.

Title of Rule and Other Identifying Information: WAC 182-507-0115 Alien emergency medical program and 182-507-0120 Alien medical for dialysis and cancer treatment, and treatment of life-threatening benign tumors.

Hearing Location(s): On July 27, 2021, at 10:00 a.m. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the health care authority (HCA) is not providing a physical location for this hearing. This promotes social distancing and the safety of the residents of Washington state. A virtual public hearing, without a physical meeting space, will be held instead.

To attend the virtual public hearing, you must register in advance for this public hearing https://zoom.us/webinar/register/WN_wMJYBsAHT2zJLDCJYIPhw. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: Not sooner than July 28, 2021.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by July 27, 2021.

Assistance for Persons with Disabilities: Contact Amber Lougheed, phone 360-725-1349, fax 360-586-9727, telecommunication[s] relay service 711, email amber.lougheed@hca.wa.gov, by July 16, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is amending WAC 182-507-0115 to change the alien emergency medical program's scope of covered services to include testing, assessment, and treatment of conditions that pose a potential threat to public health. The agency is amending both WAC 182-507-0115 and 182-507-0120 to make housekeeping changes to rule language related to behavioral health.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Brian Jensen, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-0815; Implementation and Enforcement: Ariel Pyrttek, P.O. Box 45534, Olympia, WA 98504-5534, 360-725-1919.

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

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

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

June 11, 2021

Wendy Barcus

Rules Coordinator

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

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

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

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

(i) Inpatient;

(ii) Outpatient surgery;

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

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

(d) As clinically indicated, the person is receiving medically necessary diagnosis and treatment of the COVID-19 virus. The agency covers one physician visit provided in any outpatient setting, including the office or clinic setting, or via telemedicine/telehealth, to diagnose/treat and test as follows:

(i) If the test is positive, in addition to the services described in (b) of this subsection and subsection (2)(b) of

this section, any medically necessary services (following applicable agency authorization requirements) to treat, including:

(A) Up to two follow-up office visits;

(B) Medications;

(C) Respiratory services and supplies; and

(D) Medical supplies.

(ii) If a test is negative, one follow-up office visit and any treatment described in (d)(i)(B) through (D) of this subsection, as a precautionary measure for an anticipated positive test result.

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

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

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

(i) Medications;

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

(iii) Medical equipment and supplies;

(iv) Anesthesia, surgical, and recovery services;

(v) Physician consultation, treatment, surgery, or evaluation services;

(vi) Therapy services;

(vii) Emergency medical transportation; and

(viii) Nonemergency ambulance transportation to transfer the person from a hospital to a long term acute care (LTAC) or an inpatient physical medicine and rehabilitation (PM&R) unit, if that admission is prior authorized by the agency or its designee as described in subsection (3) of this section.

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

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

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

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

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

(a) For inpatient hospital admissions to treat COVID-19 or complications thereof, the agency will cover up to two postdischarge follow-up visits and any medically necessary services under subsection (1)(d) of this section.

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

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

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

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

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

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

(8) Under this program, any visit or service not meeting the criteria described in subsection (1) of this section is considered not within the scope of service categories as described in WAC 182-501-0060. This includes, but is not limited to:

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

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

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

(iii) Hospital clinic services; or

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

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

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

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

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

(ii) Prenatal care, except labor and delivery;

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

(iv) School-based services;

(v) Personal care services;

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

(vii) Waiver services;

(viii) Nursing facility services;

(ix) Home health services;

(x) Hospice services;

(xi) Vision services;
 (xii) Hearing services;
 (xiii) Dental services;
 (xiv) Durable and nondurable medical supplies;
 (xv) Nonemergency medical transportation;
 (xvi) Interpreter services; and
 (xvii) Pharmacy services, except as described in subsection (4) of this section.

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

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

AMENDATORY SECTION (Amending WSR 15-05-008, filed 2/5/15, effective 3/8/15)

WAC 182-507-0120 Alien medical for dialysis and cancer treatment, and treatment of life-threatening benign tumors. In addition to the provisions for emergency care described in WAC 182-507-0115, the medicaid agency also considers the conditions in this section as an emergency, as defined in WAC 182-500-0030.

(1) A person nineteen years of age or older who is not pregnant and meets the eligibility criteria under WAC 182-507-0110 may be eligible for the scope of service categories under this program if the condition requires:

(a) Surgery, chemotherapy, and/or radiation therapy to treat cancer or life-threatening benign tumors;
 (b) Dialysis to treat acute renal failure or end stage renal disease (ESRD); or
 (c) Antirejection medication, if the person has had an organ transplant.

(2) When related to treating the qualifying medical condition, covered services include but are not limited to:

(a) Physician and ARNP services, except when providing a service that is not within the scope of this medical program (as described in subsection (7) of this section);
 (b) Inpatient and outpatient hospital care;
 (c) Dialysis;
 (d) Surgical procedures and care;
 (e) Office or clinic based care;
 (f) Pharmacy services;
 (g) Laboratory, X-ray, or other diagnostic studies;
 (h) Oxygen services;
 (i) Respiratory and intravenous (IV) therapy;
 (j) Anesthesia services;
 (k) Hospice services;
 (l) Home health services, limited to two visits;
 (m) Durable and nondurable medical equipment;
 (n) Nonemergency transportation; and
 (o) Interpreter services.

(3) All hospice, home health, durable and nondurable medical equipment, oxygen and respiratory, IV therapy, and dialysis for acute renal disease services require prior authorization. Any prior authorization requirements applicable to the other services listed above must also be met according to specific program rules.

(4) To be qualified and eligible for coverage for cancer treatment or treatment of life-threatening benign tumors under this program, the diagnosis must be already established or confirmed. There is no coverage for cancer screening or diagnostics for a workup to establish the presence of cancer or life-threatening benign tumors.

(5) Coverage for dialysis under this program starts the date the person begins dialysis treatment, which includes fistula placement and other required access. There is no coverage for diagnostics or predialysis intervention, such as surgery for fistula placement anticipating the need for dialysis, or any services related to preparing for dialysis.

(6) Certification for eligibility will range between one to twelve months depending on the qualifying condition, the proposed treatment plan, and whether the client is required to meet a spenddown liability.

(7) The following are not within the scope of service categories for this program:

(a) Cancer screening or work-ups to detect or diagnose the presence of cancer or life-threatening benign tumors;

(b) Fistula placement while the person waits to see if dialysis will be required;

(c) Services provided by any health care professional to treat a condition not related to, or medically necessary to, treat the qualifying condition;

(d) Organ transplants, including preevaluations and post operative care;

(e) Health department services;

(f) School-based services;

(g) Personal care services;

(h) Physical, occupational, and speech therapy services;

(i) Audiology services;

(j) Neurodevelopmental services;

(k) Waiver services;

(l) Nursing facility services;

(m) Home health services, more than two visits;

(n) Vision services;

(o) Hearing services;

(p) Dental services, unless prior authorized and directly related to dialysis or cancer treatment;

(q) Mental health services;

(r) Podiatry services;

(s) Substance ((~~abuse~~) use disorder (SUD)) services; and

(t) Smoking cessation services.

(8) The services listed in subsection (7) of this section are not within the scope of service categories for this program. The exception to rule process is not available.

(9) Providers must not bill the agency for visits or services that do not meet the qualifying criteria described in this section.

WSR 21-13-082
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Developmental Disabilities Administration)
 [Filed June 16, 2021, 10:08 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-09-085.

Title of Rule and Other Identifying Information: WAC 388-101D-0500 Community protection—Client home location.

Hearing Location(s): On July 27, 2021, at 10:00 a.m., virtually. Due to the COVID-19 pandemic, hearings are being held virtually. Please see the department of social and health services (DSHS) website for the most current information.

Date of Intended Adoption: July 28, 2021.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by July 27, 2021, 5:00 p.m.

Assistance for Persons with Disabilities: Contact Katherine Vasquez, DSHS rules coordinator, phone 360-664-6097, fax 360-664-6185, TTY 711 relay service, email DSHSRPAURulesCoordinator@dshs.wa.gov, by July 13, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The developmental disabilities administration (DDA) is amending this section primarily to require approval of a community protection (CP) client's home location by the CP provider's administrator. Other proposed amendments require documentation of: The administrator's approval; the client's new address; and the security precautions the provider will implement.

Reasons Supporting Proposal: To allow providers to act quickly when a lease signing opportunity arises, DDA is requiring home approval from the provider administrator rather than from DDA.

Statutory Authority for Adoption: RCW 71A.12.030.

Statute Being Implemented: RCW 71A.12.280.

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

Name of Proponent: DSHS, DDA, governmental.

Name of Agency Personnel Responsible for Drafting: Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, 360-407-1589; Implementation and Enforcement: Jeff Green, P.O. Box 45310, Olympia, WA 98504-5310, 360-407-1580.

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

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting 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.

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

Is exempt under RCW 19.85.025(4) because the rules do not affect small businesses.

Explanation of exemptions: The proposed amendments impose no new or disproportionate costs on small businesses so a small business economic impact statement is not required.

June 16, 2021

Katherine I. Vasquez
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 16-14-058, filed 6/30/16, effective 8/1/16)

WAC 388-101D-0500 Community protection—
~~((Program residential))~~ Client home location. ~~((Before securing and using a residence to provide support to the community protection program))~~ (1) When assisting a client in selecting a home, the ~~((community protection service))~~ provider must~~((:~~

~~((1))~~ conduct and document site checks of the proposed residence at different days and times of the week~~((:))~~.

~~((2))~~ ~~((Consider))~~ After selecting a home, and before the client moves into the home, the provider must document and provide to DDA:

(a) The address of the home;

(b) The reasons the home is appropriate considering the client's specific ~~((offense patterns))~~ risk factors;

~~((3))~~ Determine appropriate and necessary ~~((c))~~ Restrictive procedures~~((, including security precautions))~~ and security precautions the provider will implement; and

~~((4))~~ Obtain written ~~((d))~~ Approval ~~((for the residential site from the division of developmental disabilities))~~ from the provider's administrator.

WSR 21-13-087

PROPOSED RULES

THE EVERGREEN STATE COLLEGE

[Filed June 17, 2021, 11:40 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-10-034.

Title of Rule and Other Identifying Information: Parking, chapter 174-116 WAC.

Hearing Location(s): On Tuesday, July 27, 2021, at 10:00 a.m., via Zoom <https://evergreen.zoom.us/j/87202155473>. Hearing will be conducted virtually via Zoom due to COVID-19 protocols. Any person interested in providing comments must either attend the virtual session, or provide written comment to Bryce Winkelman at winkelmb@evergreen.edu. Comments must be received prior to the hearing on July 27.

Date of Intended Adoption: July 28, 2021.

Submit Written Comments to: Bryce Winkelman, 2700 Evergreen Parkway N.W., L1125, Olympia, WA 98505, email winkelmb@evergreen.edu, phone 360-867-6385, by July 27, 2021.

Assistance for Persons with Disabilities: Contact access services, The Evergreen State College, phone 360-867-6384, email accessservices@evergreen.edu, by July 19, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The college has moved parking services to a different organizational division and will be implementing parking permits by license plate number versus physical decals and permits. Rules reflect updated processes and procedures that align with the new organizational structure and procedures.

Reasons Supporting Proposal: Code will reflect updated parking services organizational division and the use of license plate reader technology and related software to enhance customer service and enhance efficiencies in parking services operations and user procedures.

Statutory Authority for Adoption: RCW 28B.40.120.

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

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

Name of Proponent: The Evergreen State College, business services, public.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Bryce Winkelman, The Evergreen State College, Olympia Campus, 360-867-6385.

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

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

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

Is exempt under RCW 19.85.025(3) as the rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

June 14, 2021
Daniel B. Ralph
Rules Coordinator

AMENDATORY SECTION (Amending WSR 17-02-076, filed 1/3/17, effective 2/3/17)

WAC 174-116-220 Authority. (1) The college through its board of trustees is authorized to establish traffic and parking regulations as stated in RCW 28B.10.560.

(2) The college is authorized to issue permits, as defined in WAC 174-116-240, to park on the campus. All outstanding ~~((campus))~~ college parking violations must be satisfactorily settled before a quarterly, academic, or annual permit will be issued or renewed.

AMENDATORY SECTION (Amending WSR 17-02-076, filed 1/3/17, effective 2/3/17)

WAC 174-116-225 Emergencies. The vice president for ~~((student affairs.))~~ finance and operations or their designee, has the authority to suspend, modify or repeal any or all provisions in this chapter for an authorized college event or in the event of an emergency, disaster or other like contingency. Such action must be limited in duration and scope to meet the

institutional needs of the college and/or address the dangers of the contingency.

AMENDATORY SECTION (Amending WSR 17-02-076, filed 1/3/17, effective 2/3/17)

WAC 174-116-230 Liability of college. The college assumes no liability for motor vehicles or their contents when such motor vehicles are on campus. The college offers parking permits to those desiring to park on campus. A parking permit licenses the holder (licensee) to park one motor vehicle ~~((in the lots designated on the permit))~~ on campus within the respective designated parking area. The college is not responsible for fire, theft, damage, or loss of vehicle or any article left in such vehicle. A parking permit is a license to park and no bailment is created. A "motor vehicle" is defined as a vehicle that is self-propelled; for example cars, trucks, and motorcycles. Motor vehicles include a neighborhood electric vehicle as defined in RCW 46.04.357 and a medium-speed electric vehicle as defined in RCW 46.04.295. Electric personal assistive mobility devices and power wheelchairs are not considered motor vehicles.

AMENDATORY SECTION (Amending WSR 17-02-076, filed 1/3/17, effective 2/3/17)

WAC 174-116-235 Enforcement. (1) Whenever an unattended vehicle is parked in violation of these regulations, the college may take the registration number and other identifiable information and may affix to such vehicle a parking citation in a conspicuously visible location.

(2) When an attended vehicle is parked in violation of these regulations, and upon request of a ~~((designated college official))~~ parking enforcement officer or police services officer, the driver may be required to move the vehicle immediately to a designated parking area or off ~~((college property))~~ campus. Refusal to move the vehicle is a violation of these regulations and may warrant a parking citation.

AMENDATORY SECTION (Amending WSR 17-02-076, filed 1/3/17, effective 2/3/17)

WAC 174-116-240 Parking permits—General information. (1) Parking permits are issued by the college following application and the payment of the appropriate fees. A permit is defined as an authorization to park in designated areas and issued by the parking services office and associated with a vehicle's license plate number. All privately owned motor vehicles parked or left unattended on ~~((college property))~~ campus are required to ~~((display a currently))~~ have a valid Evergreen parking permit during specified days and hours. These hours are posted in each parking area at the entrance to the parking areas, or along the roadways where parking is indicated. The college maintains the authority to sell and require ~~((the display of))~~ special event parking permits during times and days, including weekends, as established by the college. Vehicles parked on campus are required to ~~((display))~~ have valid parking permits at all times and days of the week as established by these rules. A complete list of parking permits issued by the college is available

in the parking services office and on the ~~((college))~~ college's parking services website.

(2) Fees for parking and the effective date thereof, will be approved by the president of the college. ~~((Prior to approval by the president, the college will, after notice, hold a hearing on the proposed fee schedule. The hearing will be open to the public, and will be presided over by a presiding officer designated by the president. The presiding officer will prepare a memorandum for consideration by the president, summarizing the contents of the presentations made at the hearing.))~~ Approved fee schedules will be available in the public area of the parking services office and on the college's parking services website.

AMENDATORY SECTION (Amending WSR 17-02-076, filed 1/3/17, effective 2/3/17)

WAC 174-116-241 Parking permits—Special exceptions. All persons parking vehicles on campus will park in an available space as established by the college parking regulations and will pay the established parking fee except as follows:

(1) Vehicles with government tax exempt licenses will be allowed to park without charge.

(2) ~~((Members of the press, television, radio and wire services, on official business, after obtaining a permit from the parking office, may park without charge.~~

~~((3))~~ Taxis and commercial delivery vehicles may enter the campus without payment of the parking fee only for pick-up and delivery of passengers, supplies and equipment.

~~((4))~~ (3) Permanently and temporarily disabled persons may request a disability parking placard from the parking office. Vehicles parked in handicapped-accessible spaces must ~~((display))~~ have a paid parking permit and a state of Washington or college-issued temporary disabled parking placard to be valid.

AMENDATORY SECTION (Amending WSR 17-02-076, filed 1/3/17, effective 2/3/17)

WAC 174-116-242 Parking permits—Issuance and display. (1) All ~~((parking permits must be entirely visible and displayed on the vehicle in accordance with the instructions printed on the permit, with permit numbers and relevant dates visible. Vehicles that do not have visible and properly displayed permits may be cited for the violation of improperly displaying a))~~ vehicles, attended or unattended, must be associated with a valid parking permit. Vehicles that are not associated with a valid permit may be cited for violation of a no paid permit.

(2) Ownership of permits is not transferable except when approved by parking services. If a registered vehicle is sold, the ~~((permit must be removed and returned to parking services for a replacement or any refund))~~ selling party should notify parking services so the vehicle can be disassociated with the permit holder. The permit holder may associate a different vehicle to the permit upon disassociation of the sold vehicle.

(3) Persons not residing on campus may apply for a ~~((duplicate))~~ second vehicle permit for a second car either personally, family, or employer owned. Proof of ownership

or appropriate authorization must be presented prior to issuance of a second permit. Two vehicles ~~((displaying))~~ using the same ~~((numbered))~~ permit may not be parked on campus at the same time unless one is also ~~((displays))~~ associated with a valid daily permit.

(4) Vehicles ~~((displaying))~~ with a valid permit may be parked in any designated campus parking lot authorized by the permit. ~~((Vehicle parking in the modular housing area is restricted to residents and other users authorized by parking services. F lot parking permits are valid in B, C, and F lots. Modular housing permits are valid in all of the campus parking lots.))~~

(5) Permit holders may obtain a complimentary temporary daily permit for a vehicle being used as a temporary replacement.

(6) No vehicle may be parked on campus for the purpose of using such vehicle as a living unit. Any exception must be approved by the director of police services or their designee.

AMENDATORY SECTION (Amending WSR 17-02-076, filed 1/3/17, effective 2/3/17)

WAC 174-116-243 Parking permits—Validity and revocation. (1) Parking permits will be valid from the date of purchase through the expiration date and/or time stated on the permit or expiration of time purchased from short term parking pay station, coin-operated parking meter, or mobile parking payment application.

(2) Parking permits are licenses and remain the property of the college. Parking permits may be revoked for any of the following reasons:

(a) When the purpose for which the permit was issued changes or no longer exists.

(b) When a permit is used in an unauthorized manner.

(c) Falsification of a second car parking permit application.

~~((d) Counterfeiting or altering a permit.))~~

AMENDATORY SECTION (Amending WSR 17-02-076, filed 1/3/17, effective 2/3/17)

WAC 174-116-250 Responsibility and presumption in reference to illegal parking. (1) The registered owner or permit holder will be responsible for all parking violations involving the vehicle ~~((on which the permit is displayed)).~~

(2) In any review, appeal or hearing alleging the violation of any parking regulation, proof of the following will create a presumption that the registered owner or permit holder was the person who parked or placed the vehicle in the location where the violation occurred:

(a) Proof that the vehicle described was stopped, standing or parked in violation of a regulation; and

(b) Proof that the person named in the citation was the registered owner or permit holder of the vehicle when the citation was issued.

AMENDATORY SECTION (Amending WSR 17-02-076, filed 1/3/17, effective 2/3/17)

WAC 174-116-255 Designated and assigned parking areas. (1) The motor vehicle laws of the state of Washington

and these rules will be applicable at all times in areas covered under the scope of this policy including all college-owned property.

(2) No vehicle may be parked on the campus except in those areas set aside and designated as parking areas.

(3) No vehicle may be parked in any parking area without a valid, current permit for that area issued by parking services.

(4) Vehicles may park only within marked spaces provided in each parking lot.

(5) Metered parking spaces require appropriate payment in the corresponding parking meter for valid parking, regardless of any ~~((passes or))~~ permits ~~((displayed on))~~ associated with the vehicle.

(6) Vehicles parked in electric vehicle charging spaces are required to ~~((display))~~ have a valid parking permit~~((;))~~ and must be actively charging as indicated by the charging station.

AMENDATORY SECTION (Amending WSR 17-02-076, filed 1/3/17, effective 2/3/17)

WAC 174-116-262 Impounding and immobilization of vehicles. (1) The expense of such impounding and storage will rest solely on the owner or permit holder of the vehicle. Neither the college nor its employees will be liable for loss or damage of any kind resulting from impounding and/or storage services provided by a private vendor.

(2) Any vehicle parked upon property of the college in violation of these regulations, including the motor vehicle and other traffic laws of the state of Washington, with at least three unpaid citations, with the oldest being at least thirty days old, may be either immobilized or impounded and removed for storage.

(3) Notice of intent to impound will be posted on the vehicle twenty-four hours prior to impound.

(4) If the vehicle is parked in a metered or timed space, notice of intent to impound will be posted on the vehicle for four hours prior to impound.

(5) Any vehicle that blocks, hinders, or obstructs a legally parked vehicle, crosswalk, sidewalk, disability access area, service drive, or loading zone may be cited, and after the college has made a reasonable attempt to contact the owner, the vehicle may be impounded immediately.

(6) Immobilization is defined as impounding the vehicle in place through the installation of a wheel boot, which is a device designed to prevent vehicles from being moved. It consists of a clamp that surrounds a vehicle wheel, and designed to prevent removal of both itself and the wheel. Immobilization may also be defined as impounding the vehicle in place through the use of a windshield covering device that uses powerful suction cups to adhere to the windshield and is designed to prevent unauthorized removal as well as preventing a clear view through the windshield prohibiting lawful driving of the vehicle. Release from in-place immobilization is contingent on payment of all outstanding fines and charges.

AMENDATORY SECTION (Amending WSR 17-02-076, filed 1/3/17, effective 2/3/17)

WAC 174-116-266 Disabled or inoperative vehicle. No disabled or inoperative vehicle will be parked on the campus for a period in excess of seventy-two hours without approval of parking services. Vehicles which have been parked for periods in excess of seventy-two hours and which appear to be disabled or inoperative may be impounded and stored at the expense of the registered owner. It is the responsibility of the owner or permit holder of a disabled vehicle to notify police or parking services of the vehicle's location and estimated time of removal or repair. A valid parking permit ~~((or pass))~~ must be ~~((displayed on))~~ associated to the disabled vehicle while it is parked on campus.

AMENDATORY SECTION (Amending WSR 17-02-076, filed 1/3/17, effective 2/3/17)

WAC 174-116-280 Citations, late fees and fines. (1) Payment.

(a) Persons cited for violation of these regulations are required to pay a fine within ten days of the date of issuance of the citation. All parking fines and fees are due upon issuance. Thirty days after the issuance of the citation, a late fee will be added to the unpaid parking fine. For example, a parking citation issued on May 1st would be assessed a late fee on May 31st.

(b) All fines are payable ~~((at the cashier's office or other designated locations on campus. Fines may be paid in person or by telephone during normal business hours or by mail or online))~~ via the parking services website or in person at the parking services office during normal business hours or other designated locations on campus. The notice of citation, citation number or vehicle license plate number must accompany any fine payment.

(2) Types of citations:

- (a) No valid permit;
- (b) Overtime parking;
- (c) Improper position;
- (d) Parking in a restricted space;
- (e) Disabled zone;
- (f) Parked at painted curb;
- (g) Prohibited zone;
- (h) Obstructing traffic;
- (i) Parking in bus zone;
- (j) Fire lane;
- (k) Parked on grass;
- (l) Altered permit;
- (m) Nondesignated parking space;
- (n) Expired meter; ~~((and))~~
- (o) Wheel-lock; and
- (p) Expired hourly parking.

(3) Fine amounts:

(a) When a citation is issued, fines are determined in accordance with a fine schedule. The fine schedule and the effective date thereof is approved by the vice president for ~~((student affairs))~~ finance and operations or their designee, and available in the parking services office and on the ~~((college))~~ college's parking services website.

(b) Adjustments: When mitigating circumstances exist, the vice president for (~~(student affairs)~~) finance and operations or their designee may reduce or dismiss fines.

(4) Unpaid fines. If any fine remains unpaid after sixty days from the date of the notice of citation, the account may be referred for collection and subject to the college policy for accounts receivable collection process.

(5) Appeals: Citations may be appealed by submitting a written appeal to parking services within ten calendar days of the date the citation was issued. Appeals must be submitted to parking services (~~(in person, mail, or using the college)~~) via the citation appeal link on the parking services website. If a timely appeal is not filed, the citation becomes final. Appeals (~~(will be reviewed by a board consisting of voting members from the following groups: Students, classified staff, faculty, and exempt staff. A parking services representative will act as a consultant to the board and will vote only to break a tie. The board may uphold or dismiss the citation. If the board upholds the citation, it may reduce the fine amount. In no event may the board impose a fine exceeding the amount set forth in the fine schedule. Within ten calendar days following the board's review, parking services will notify the appellant, by mail or by email, of the board's determination))~~) decisions may dismiss, uphold the fine, reduce the fine amount if upheld, or turn the citation to a warning without a fine. Within ten calendar days following the appeal being reviewed, parking services will notify the appellant of the appeal decision. The appellant may request a second level review of the citation appeal within ten days notice of the initial appeal decision. The second level review will be conducted by the conference and parking services manager. The appellant must pay all fines before the secondary appeal will be reviewed. The citation may be dismissed, upheld, upheld with reduction in fines, or converted to a warning with no fines. If the secondary appeal decision results in citation dismissal or reduction in fines, a refund will be issued to the appellant in the amount paid. Additional appeal rights are governed by RCW 28B.10.560.

WSR 21-13-092

PROPOSED RULES

BELLINGHAM TECHNICAL COLLEGE

[Filed June 18, 2021, 7:25 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-10-069.

Title of Rule and Other Identifying Information: WAC 495B-121-350, 495B-121-365, 495B-121-370, and 495B-121-385 to update language to allow the college to hire an outside decision maker as well as amend the committee titles.

Hearing Location(s): On August 24, 2021, at 11:00 a.m., at Bellingham Technical College, College Services, Room 215, 3028 Lindbergh Avenue, Bellingham, WA 98225. Join Zoom meeting <https://btc-tech.zoom.us/j/87942320267>, Meeting ID 879 4232 0267, +12532158782,,84479784399# US (Tacoma), +12063379723,,84479784399# US (Seattle).

Date of Intended Adoption: September 16, 2021.

Submit Written Comments to: Ronda Laughlin, 3028 Lindbergh Avenue, Bellingham, WA 98225, email rlaughterlin@btc.edu, fax 360-752-7134, by August 17, 2021.

Assistance for Persons with Disabilities: Contact Mary Gerard, phone 360-752-8576, fax 360-752-7376, email ar@btc.edu, by August 17, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: On April 19, 2021, the college received additional revisions for the Title IX section of the student conduct code that will authorize the college to contract with an administrative law judge (ALJ) or some other vendor to serve as presiding officers and/or decision makers during disciplinary proceedings. The new language is more expansive in that it provides authority for an ALJ or other vendor to replace the student conduct committee or the chair of the committee, or both, during disciplinary proceedings. Additionally, the language used to refer to the committee that oversees Title IX hearings should be the student conduct committee rather than the Title IX hearing committee, which is what is currently used. Updating this language will help ensure prompt, impartial administrative proceedings consistent with state and federal law.

Reasons Supporting Proposal: If Bellingham Technical College does not update its student conduct code to include the recommended language, it would be unable to hire ALJs and Grand River Solutions, with whom they are already contracted, to assist with Title IX cases.

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.

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

Name of Proponent: Bellingham Technical College, public.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Michele Waltz, CS 201, 360-752-8440.

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

A cost-benefit analysis is not required under RCW 34.05.328. There are no costs imposed with the amendments to these rules.

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

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

June 18, 2021
Ronda Laughlin
Executive Assistant
to the President

AMENDATORY SECTION (Amending WSR 21-07-085, filed 3/18/21, effective 4/18/21)

WAC 495B-121-350 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 Bellingham Technical College's standard disciplinary procedures, WAC 495B-121-230 through 495B-121-345, these supplemental procedures shall take precedence. Bellingham Technical College may, at its discretion, contract with an administrative law judge or other person to act as presiding officer and assign such presiding officer to exercise any or all of the duties in lieu of the student conduct committee and committee chair.

AMENDATORY SECTION (Amending WSR 21-07-085, filed 3/18/21, effective 4/18/21)

WAC 495B-121-365 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 ((~~Title IX hearing~~)) 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; and
- (f) Explain that if a party fails to appear at the hearing, a decision of responsibility may be made in their absence.

AMENDATORY SECTION (Amending WSR 21-07-085, filed 3/18/21, effective 4/18/21)

WAC 495B-121-370 Prehearing procedure. (1) Upon receiving the disciplinary notice, the chair of the ((~~Title IX hearing~~)) student conduct committee will send a hearing notice to all parties, in compliance with WAC 495B-121-315. 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.

AMENDATORY SECTION (Amending WSR 21-07-085, filed 3/18/21, effective 4/18/21)

WAC 495B-121-385 Initial order. (1) In addition to complying with WAC 495B-121-325 the ((~~Title IX hearing~~)) 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, the complainant is entitled to remedies designed to restore or preserve complainant's equal access to the college educational programs or activities; and
 - (h) Describes the process for appealing the initial order to the college president.
- (2) The committee chair will serve the initial order on the parties simultaneously.

WSR 21-13-097
PROPOSED RULES
ENVIRONMENTAL AND
LAND USE HEARINGS OFFICE

[Filed June 18, 2021, 1:15 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR [21-09-065].

Title of Rule and Other Identifying Information: Changes to chapter 242-03 WAC procedural rules for the growth management hearings board (GMHB).

Hearing Location(s): On August 11, 2021, at 9:00 a.m. This will be a Zoom hearing and not in person. Go to eluho.wa.gov and find GMHB meeting notices. Open August 11, 2021, agenda for Zoom information.

Date of Intended Adoption: August 11, 2021.

Submit Written Comments to: Nina Carter, Director, Environmental and Land Use Hearings Office (ELUHO), P.O. Box 40903, Olympia, WA 98504-0953, email eluho@eluho.wa.gov, fax 360-586-2253, by August 9, 2021.

Assistance for Persons with Disabilities: Contact Nancy Coverdell, ELUHO administrative office manager, phone 360-664-9160, fax 360-586-2253, TTY 360-664-9160, email nancy.coverdell@eluho.wa.gov, by August 10, 2021.

June 18, 2021

Nina Carter

Director

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: GMHB is conducting a routine review and update of its procedures for hearings before the board.

The changes include reducing the number of board members from seven to five; implements 2020 legislation changing the title of the board's administrative officer to chair and clarifying the chair's duties; adding statutory references to ELUHO and correct email and contact information; deletes outdated or inaccurate references; adds remote site meetings to telephonic meetings; clarifies procedural requirements when practicing before the GMHB; implements with 2021 legislative bills on court of appeals procedures and transmitting noncompliant cases to department of commerce for technical assistance.

Reasons Supporting Proposal: The GMHB must periodically update its procedural regulations to reflect legislative changes made to the board or other administrative changes. This proposal reflects 2020 and 2021 legislative changes to GMHB membership, appeals filed in the higher courts, and technical assistance by department of commerce.

Statutory Authority for Adoption: RCW 36.70A.270.

Statute Being Implemented: Chapter 36.70A RCW.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: These changes reflect statutory changes made by the 2020 legislative session. Assists the public in submitting appeals to the proper United States Post Office and email addresses. Changes a few procedural steps in the GMHB's proceedings to clarify the process.

Name of Proponent: Nina Carter, director, ELUHO, governmental.

Name of Agency Personnel Responsible for Drafting: Nina Carter, 1111 Israel Road, Suite 301, Tumwater, WA 98501, <https://www.eluho.wa.gov/>, 360-664-9170; Implementation and Enforcement: Jim McNamara, Chair, GMHB, 360-878-0902.

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

A cost-benefit analysis is not required under RCW 34.05.328. GMHB hears appeals of county or city land use decisions in their comprehensive plans or development regulations. This WAC establishes the processes used by the board to conduct hearings and issue orders. The benefits of these WAC changes are to provide correct information about number of board members and proper appeal procedures (no cost), information about where to submit appeals (no cost), allowing remote site hearings through electronic means (no cost). This rule update does not impose costs on the agency, parties or the public.

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

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

AMENDATORY SECTION (Amending WSR 11-13-109, filed 6/21/11, effective 7/22/11)

WAC 242-03-010 Organization. The growth management hearings board was established pursuant to chapter 36.70A RCW. The board is an independent quasi-judicial agency of the state of Washington with ~~((seven))~~ five members appointed by the governor who are qualified by experience or training in matters pertaining to land use planning. These rules were developed, adopted, and amended by the board pursuant to RCW 36.70A.270(7). They should be read in conjunction with the act and the Administrative Procedure Act, chapter 34.05 RCW.

AMENDATORY SECTION (Amending WSR 13-01-026, filed 12/11/12, effective 1/11/13)

WAC 242-03-015 Regional panels. (1) Each petition for review that is filed with the growth management hearings board shall be heard and decided by a regional panel of growth management hearings board members. From the ~~((seven))~~ five board members, regional panels shall be constituted as follows:

(a) Central Puget Sound region. A three-member Central Puget Sound panel shall be selected to hear matters pertaining to cities and counties located within the region comprised of King, Pierce, Snohomish, and Kitsap counties.

(b) Eastern Washington region. A three-member Eastern Washington panel shall be selected to hear matters pertaining to cities and counties that are required or choose to plan under RCW 36.70A.040 and are located east of the crest of the Cascade mountains.

(c) Western Washington region. A three-member Western Washington panel shall be selected to hear matters pertaining to cities and counties that are required or choose to plan under RCW 36.70A.040, are located west of the crest of the Cascade mountains, and are not included in the Central Puget Sound region. Skamania County, if it is required or chooses to plan under RCW 36.70A.040, may elect to be included within either the Western Washington region or the Eastern Washington region.

(2)(a) Each regional panel selected to hear and decide cases shall consist of three board members, at least a majority of whom shall reside within the region in which the case arose, unless such regional members cannot sit on a particular case because of recusal or disqualification, or unless the board ~~((administrative officer))~~ chair determines ~~((that there is an emergency including, but not limited to,))~~ otherwise due to caseload management determinations or the unavailability of a board member due to illness, absence, or vacancy ~~((or significant workload imbalance))~~.

(b) The presiding officer of each case shall reside within the region in which the case arose, unless the board ~~((administrative officer))~~ chair determines that there is an emergency.

(c) Except as provided otherwise in (d) of this subsection, each regional panel shall:

- (i) Include at least one member admitted to practice law in this state;
- (ii) Include at least one member who has been a city or county elected official; and
- (iii) Reflect the political composition of the board.
- (d) The requirements of (c) of this subsection may be waived by the board (~~(administrative officer)~~) chair due to member unavailability, significant workload imbalances, or other reasons.

AMENDATORY SECTION (Amending WSR 11-13-109, filed 6/21/11, effective 7/22/11)

WAC 242-03-030 Definitions. As used in this title, the following terms shall have the following meaning:

(1) "Act" means the Growth Management Act, chapter 36.70A RCW, and subsequent amendments.

~~(2) ("Administrative officer" means the board member annually elected by the board pursuant to RCW 36.70A.270 (10) to handle day-to-day administrative, budget and personnel matters on behalf of the board and to make case assignments to board members in accordance with the board's rules of procedure.~~

~~(3))~~ "Board" means the growth management hearings board or a panel of the board hearing a matter as established in RCW 36.70A.260.

(3) "Chair" means the board member annually elected by the board pursuant to RCW 36.70A.270(11). The duties and responsibilities of the chair include, developing board procedures, making case assignments to board members in accordance with the board's rules of procedure in order to achieve a fair and balanced workload among all board members, and managing board meetings.

(4) "Compliance participant" means any person with standing to challenge legislation taken in response to a board order, as provided in RCW 36.70A.330(2).

(5) "Consolidation" means the combining of all petitions involving review of the same comprehensive plan or development regulation into a single case for hearing and decision, as provided in RCW 36.70A.290(5).

(6) "Coordination" means provision of parallel case schedules for cases involving related matters in the interest of efficient resolution and to avoid duplication of evidence and argument.

(7) "Environmental and land use hearings office" means the administrative office of the board established pursuant to RCW 36.70A.252.

(8) "Ex parte communication" is communication about issues in a pending case between a party and a board member without including or providing notice to all other parties to the matter. Ex parte communication is prohibited.

~~((8))~~ (9) "Filing" of a document means actual receipt by the board during regular office hours, as specified in WAC 242-03-230 (for a petition for review) or WAC 242-03-240 (for all other documents).

~~((9))~~ (10) "Final decision" means:

- (a) Any final order as provided in RCW 36.70A.300; or
- (b) Any other written finding, determination or order of the board which finally determines a legal right, duty, or other legal interest of the parties in the case and which clearly

states in such written finding, determination or order that it is a final decision subject to appeal to superior court.

~~((10) "Office of the growth management hearings board" means the administrative office of the board established pursuant to RCW 36.70A.270(2).)~~

(11) "Panel" means the three board members assigned to hear and decide a particular case pursuant to RCW 36.70A.-260.

(12) "Party" means the petitioner(s) and respondent(s) in a case before the board and, if admitted in the case, intervenor(s), amicus, and compliance participant(s).

(13) "Person" means any individual, partnership, corporation, association, state agency, governmental subdivision or unit, or public or private organization or entity of any character.

(14) "Petitioner" means a person who files a petition for review pursuant to RCW 36.70A.290 or who brings a petition for rule making to the board.

(15) "Presiding officer" means any member of the board who is designated to conduct a conference or hearing as directed by the board. The presiding officer shall be designated pursuant to WAC 242-03-525 and have authority as provided by WAC 242-03-530.

(16) "Publication" means:

(a) For a city, the date the city publishes the ordinance or summary of the ordinance adopting a comprehensive plan, development regulations or subsequent amendment, as is required to be published, or the date the department of ecology publishes notice that the shoreline master program or amendment has been approved or disapproved by final action of the department of ecology;

(b) For a county, the date the county publishes the notice that it has adopted a comprehensive plan, development regulations, or subsequent amendment pursuant to RCW 36.70A.290(2), or the date the department of ecology publishes notice that the shoreline master program or amendment has been approved or disapproved by final action of the department of ecology.

(17) "Respondent" means the city, county, or state agency whose action is challenged in a petition for review before the board.

(18) "Service" of a document means delivery of the document to the other parties to the appeal, as specified in WAC 242-03-230 (for the petition for review) or WAC 242-03-240 (for all other documents).

(19) "Shoreline master program" means the comprehensive use plan for a described shoreline area, the use regulations together with maps, diagrams, charts, or other descriptive material and text, a statement of desired goals, and standards developed in accordance with the policies in RCW 90.58.020 and applicable guidelines. Pursuant to RCW 36.70A.480(1), an approved shoreline master program is a component of the city or county's comprehensive plan and development regulations.

(20) "Shoreline Management Act" means chapter 90.58 RCW and subsequent amendments.

(21) "State Environmental Policy Act" means chapter 43.21C RCW and subsequent amendments.

AMENDATORY SECTION (Amending WSR 11-13-109, filed 6/21/11, effective 7/22/11)

WAC 242-03-035 Rules. These rules shall govern the board's adoption or amendment of rules, and all practice and procedure for hearings before the board. ~~((Where a time frame is different in these rules from those in chapter 10-08 WAC, it is because the board is required to act pursuant to the time frames set forth in the act.))~~

AMENDATORY SECTION (Amending WSR 11-13-109, filed 6/21/11, effective 7/22/11)

WAC 242-03-050 Quorum. (1) Board quorum. For the purpose of adopting, amending, or repealing these rules or transacting other administrative business, at least ~~((four))~~ three members of the board shall constitute a quorum of the board. A quorum being present, any action may be taken upon the vote of the majority of the board members.

(2) Panel quorum. For purposes of making orders or decisions in a case, two members of a panel shall constitute a quorum and may act even though one panel member is absent. One member may hold conferences or hearings. The findings of such member shall not become final until approved by a majority of the panel. A panel member who does not attend a hearing may participate in the decision and shall review a transcript or recording of the hearing before signing the decision.

AMENDATORY SECTION (Amending WSR 13-01-026, filed 12/11/12, effective 1/11/13)

WAC 242-03-060 Board office. (1) The administration of the board is consolidated in one office - The ~~((office of the growth management hearings))~~ environmental and land use hearings office. All correspondence shall be mailed to the physical address of the board:

Growth Management Hearings Board
c/o Environmental and Land Use Hearings Office
 1111 Israel Road S.W., Suite 301
 Tumwater, WA 98501
 P.O. Box ~~((40953))~~ 40903
 Olympia, WA 98504-0953
website: www.eluho.wa.gov
~~((360-664-9170))~~
ELUHO Main Office: 360-664-9160
Fax: 360-586-2253 ~~((Fax))~~
Regional Email Inboxes
 email: eastern@eluho.wa.gov
 email: western@eluho.wa.gov
 email: central@eluho.wa.gov
~~((web site: www.gmhb.wa.gov))~~

(2) The filing of all petitions, briefs, exhibits, and other documents related to any proceeding before a regional panel shall be made to the ~~((office of the growth management hearings board, with specific indication of))~~ board, through its administrative office, the environmental and land use hearings office. However, each filing must be sent to the appropriate regional panel email inbox and must indicate the

appropriate regional panel's name - Eastern, Western, or Central Puget Sound.

AMENDATORY SECTION (Amending WSR 11-13-109, filed 6/21/11, effective 7/22/11)

WAC 242-03-075 Special meeting. (1) A special meeting of the board may be called at the request of any two of the board members. To call a special meeting, a written notice of the meeting shall be posted on the board's website, prominently displayed on the main entrance of the board's principal office location and personally emailed to:

- (a) Each member of the board; and
 - (b) Each general circulation newspaper, television or radio station which has on file with the board a written request to be notified of special meetings.
- (2) The written notice shall state the date and time of the meeting, and shall specify the business to be transacted by the board. The board will not take final action on any matter that is not specified in the written notice.

- (3) Notices of special meetings shall be sent by email:
 - (a) One day (twenty-four hours) before the scheduled meeting; except
 - (b) When a special meeting is called to consider rule changes pursuant to chapter 34.05 RCW, the notice shall be sent at least twenty days prior to the meeting; and except
 - (c) In the event of an emergency requiring board action, the notice and timing requirements may be waived as provided in RCW 42.30.080.

(4) The special meeting shall be chaired by the ~~((administrative officer))~~ board chair.

(5) A special meeting may be held by telephone conference call or other remote meeting systems. During a remote meeting, members of the board may appear or attend by phone or by other electronic means that allows real-time verbal communication without being in the same physical location.

(6) Members of the public may attend a special meeting by appearing at the board office, or the location of the special meeting, or online if held via electronic remote meeting device at the date and time set for the meeting.

AMENDATORY SECTION (Amending WSR 11-13-109, filed 6/21/11, effective 7/22/11)

WAC 242-03-145 Form and size of documents. Documents ~~((, other than exhibits,))~~ shall be provided in the manner indicated in the board's prehearing order.

AMENDATORY SECTION (Amending WSR 11-13-109, filed 6/21/11, effective 7/22/11)

WAC 242-03-210 Petition for review—Forms—Contents. A petition for review shall substantially contain:

- (1) A caption in the following form:

BEFORE THE GROWTH MANAGEMENT
 HEARINGS BOARD
 _____ REGION
 STATE OF WASHINGTON

Petitioner, Case No.

v.

Respondent. PETITION FOR
REVIEW

(2) Numbered paragraphs stating:

(a) Petitioner's name, mailing address, telephone number, and electronic mail address, and those of the attorney or other authorized representative, if any;

(b) Date of the challenged order, determination, publication, or other action or, in the case of an alleged failure to act under the Growth Management Act or the Shoreline Management Act, the date by which the action was required to be taken;

(c) A detailed and concise statement of the issues presented for resolution by the board (~~(that specifies)~~). Each issue statement should not exceed seventy-five words and shall specify the provision(s) of the act or other statute allegedly being violated and, if applicable, the provision(s) of the document that is being appealed;

(d) A statement specifying the type and the basis of the petitioner's standing before the board pursuant to RCW 36.70A.280(2);

(e) The relief sought, including the specific nature and extent;

(f) A statement that the petitioner has read the petition for review and believes the contents to be true, followed by the petitioner's signature or signature of the attorney(s) or other authorized representative(s), if any.

(3) One copy of the applicable (~~(provisions of the document being appealed, if any,))~~ ordinance, resolution, or other official action being appealed shall be attached to the petition for review. (~~(Petitioner shall provide the board with a copy of the entire document being appealed within thirty days of filing a petition for review, unless otherwise directed by the board.))~~)

AMENDATORY SECTION (Amending WSR 16-02-114, filed 1/6/16, effective 2/6/16)

WAC 242-03-240 Filing and service of all other papers. (1) Filing of papers: All pleadings and briefs shall be filed with the board by electronic mail unless a petitioner does not have the technological capacity to do so. The original and three copies of all documents shall be filed with the board personally, or by mail or commercial parcel delivery service and must be postmarked or sent on the same date as the electronic filing. Filings less than fifteen pages may be made by fax transmission. The original and three copies must be postmarked or sent on the same date as the fax transmission to be deemed filed.

Filings made by electronic mail and/or fax transmission shall be deemed filed upon actual receipt during office hours of 8:00 a.m. to 5:00 p.m. excluding Saturdays, Sundays, and legal holidays. Any transmission not completed before 5:00 p.m. will be stamped received on the following business day. The date and time indicated by the board's fax machine or receiving computer shall be presumptive evidence of the date and time of receipt of transmission. All papers will be deemed filed with the board on the date received by elec-

tronic mail provided that the original document and three copies are postmarked or commercially sent on the same date as the fax transmission or electronic mail filing. See WAC 242-03-060 for contact information.

(2) Service: Parties shall serve copies of all filings on all other named parties by electronic mail, on or before the date filed with the board, unless a party lacks technical capability. Service is accomplished when the document is transmitted electronically, or, by agreement among the parties or exception granted by the presiding officer, is postmarked or commercially sent by the required date.

(3) Filing and service requirements may be altered in emergency situations, in which the governor declares a state-wide emergency.

AMENDATORY SECTION (Amending WSR 11-13-109, filed 6/21/11, effective 7/22/11)

WAC 242-03-550 Motions—General requirements.

(1) A motion is an application for an order or ruling. Every motion shall be filed separately in writing, and not contained within a brief, unless made during a hearing; shall state with particularity the grounds; and shall set forth the relief or order sought.

(2) The deadline for filing certain motions is established in the prehearing order. No written motion may be filed after the date specified in the order without written permission of the presiding officer which may be granted for good cause shown.

(3) Unless the prehearing order or other order in the case establishes a different deadline, a party served with a motion shall have ten days from the date of service of the motion to respond to it. The presiding officer may allow the moving party to reply to the response.

(4) A party filing a motion on a routine matter is encouraged to inform other parties and to indicate in the motion whether it is filed with the concurrence of other parties.

(5) A motion on procedural matters will generally be decided by the presiding officer without a hearing.

(6) The presiding officer, taking into consideration the complexity and finality of the issues raised in a motion, may, in the officer's discretion, schedule a telephonic hearing for argument of the motion to the board or may defer consideration of the motion until the hearing on the merits.

AMENDATORY SECTION (Amending WSR 11-13-109, filed 6/21/11, effective 7/22/11)

WAC 242-03-555 Dispositive motions. (1) Dispositive motions on a limited record to determine the board's jurisdiction, the standing of a petitioner, or the timeliness of the petition are permitted. The board rarely entertains a motion for summary judgment except in a case of failure to act by a statutory deadline or a procedural challenge to the State Environmental Policy Act (SEPA) compliance.

(2) Dispositive motions and responses shall be filed by the dates established in the prehearing order. The board may refuse to hear a motion that is not timely filed, except where good cause is shown.

(3) The presiding officer, taking into consideration the complexity and finality of the issues raised, may, in the pre-

siding officer's discretion, request a reply brief from the moving party, schedule a telephonic hearing for argument of the motion or may defer the board's consideration of the motion until the hearing on the merits.

(4) Unless the order on dispositive motions is a final order pursuant to WAC 242-03-030(9), no motion for reconsideration will be allowed.

AMENDATORY SECTION (Amending WSR 11-13-109, filed 6/21/11, effective 7/22/11)

WAC 242-03-570 Motion to disqualify for cause—Challenge to panel. (1) A motion to disqualify a board member from serving on a panel or to challenge the composition of the panel shall be brought at least seven days before the board holds a prehearing conference, or if facts establishing grounds for disqualification are subsequently discovered, promptly after discovery of such facts. In the event a new panel assignment is made during the course of the proceedings on a matter, any motion for disqualification or challenge to panel composition shall be brought no later than seven days after the board issues its notice of panel assignment.

(2) Any board member designated to serve on a panel is subject to disqualification for bias, prejudice, interest, or any other cause as provided in RCW 34.05.425. The board member whose disqualification is requested shall promptly determine whether to grant the motion, stating facts and reasons for the determination.

(3) If a party brings a motion challenging the composition of the panel for noncompliance with the requirements of RCW 36.70A.260, the presiding officer shall promptly forward the motion to the (~~administrative officer~~) board chair who will prepare a response.

(4) If a motion for disqualification or challenge to composition of the panel is granted, a new panel assignment and/or presiding officer designation will be promptly made. The parties will be informed at the prehearing conference and the resolution of the matter will be included in the prehearing order or other written order of the board issued within twenty days of the filing of the motion.

AMENDATORY SECTION (Amending WSR 11-13-109, filed 6/21/11, effective 7/22/11)

WAC 242-03-590 Briefs. (1) A petitioner, or a moving party when a motion has been filed, shall submit a brief addressing each legal issue it expects the board to determine. Failure by such a party to brief an issue shall constitute abandonment of the unbrieffed issue. Briefs shall enumerate and set forth the legal issue(s) as specified in the prehearing order.

(2) Briefs shall be filed according to the requirements and schedule in the prehearing order or any subsequent order amending the briefing schedule.

(3) Clarity and brevity are expected to assist the board in meeting its statutorily imposed time limits. A presiding officer may limit the length of a brief and impose format restrictions.

(4) A copy of any development regulation provision cited in the brief shall be included as an appendix, unless the provision is quoted verbatim in the brief.

(5) Where there is a map in the record that helps illustrate the material facts, petitioner shall include a copy of that map as an exhibit to the brief.

AMENDATORY SECTION (Amending WSR 11-13-109, filed 6/21/11, effective 7/22/11)

WAC 242-03-600 Hearing—Recording—Recording devices. (1) All hearings shall be (~~officially~~) recorded by manual, electronic, or other type of recording device.

(2) Photographic and recording equipment of others shall be permitted at hearings; however, the presiding officer may impose such conditions upon their use as deemed necessary to prevent disruption of the hearing, or when a statute or common law limits such use.

AMENDATORY SECTION (Amending WSR 11-13-109, filed 6/21/11, effective 7/22/11)

WAC 242-03-630 Official notice—Matters of law. The board or presiding officer (~~may officially~~) will take official notice of:

(1) Federal law. The Constitution; congressional acts, resolutions, records, journals, and committee reports; decisions of federal courts and administrative agencies; executive orders and proclamations; and all rules, orders, and notices published in the Federal Register.

(2) Washington state law. The Constitution of the state of Washington; decisions of the state courts; acts, resolutions, records, journals, and committee reports of the legislature; decisions of administrative agencies of the state of Washington; executive orders and proclamations by the governor; all rules, orders, and notices filed with the code reviser; and codes or standards that have been adopted by an agency of this state or by a nationally recognized organization or association.

(3) Laws of other states. The constitutions of other states; decisions of state courts; acts, resolutions, records, journals and committee reports of other state legislatures; decisions of other states administrative agencies; executive orders and proclamations issued by a governor of another state; and codes or standards that have been adopted by an agency of another state.

(4) Counties and cities. Ordinances, resolutions, and motions enacted by cities, counties, or other municipal subdivisions of the state of Washington, including adopted plans, adopted regulations, and administrative decisions.

(5) Federally recognized Indian tribes. Constitutions, ordinances, resolutions and motions enacted by federally recognized Indian tribes.

(6) Growth management hearings board. Orders and decisions of the board and the board's rules of practice and procedure.

AMENDATORY SECTION (Amending WSR 11-13-109, filed 6/21/11, effective 7/22/11)

WAC 242-03-720 Dismissal of action. (1) Any action shall be dismissed by the board:

(a) Upon petitioner's withdrawal of the petition for review before entry of a final decision and order; or

(b) Upon stipulation for dismissal by petitioner(s) and respondent(s).

(2) Any action may be dismissed by the board:

(a) Upon motion of the respondent alleging that the petitioner has failed to prosecute the case, failed to comply with these rules, or failed to follow any order of the board; or

(b) Upon the board's own motion for failure by the parties to comply with these rules or any order of the board.

(c) Upon the board's own motion for petitions that are frivolous, not within the jurisdiction of the board, or the petitioner's lack of standing.

NEW SECTION

WAC 242-03-805 Preparation of findings, conclusions and orders. Upon request of the board or presiding officer, findings, conclusions and orders shall be prepared by the parties. The board or presiding officer may adopt, in whole or in part, the parties' findings, conclusions and orders or the board may prepare its own findings, conclusions and orders.

AMENDATORY SECTION (Amending WSR 11-13-109, filed 6/21/11, effective 7/22/11)

WAC 242-03-870 Publication of final decisions and orders. Copies of all final decisions and orders are available from the ~~((office of the growth management hearings board. The growth management hearings board's web site is www.gmhb.wa.gov))~~ environmental and land use hearings office at eluho.wa.gov. The board posts final orders, compliance orders, and other decisions on its website and maintains a digest of its decisions by region.

AMENDATORY SECTION (Amending WSR 11-13-109, filed 6/21/11, effective 7/22/11)

WAC 242-03-900 Determination of noncompliance—Compliance schedule and notice of compliance hearing. (1) In those cases where the board, in a final order, has made a determination of noncompliance pursuant to RCW 36.70A.300 (3)(b), the board shall remand the matter to the affected state agency, county, or city.

(2) The board's final decision and order shall specify a reasonable time not in excess of one hundred eighty days, or such longer time as determined by the board in cases of unusual scope or complexity, within which the state agency, county, or city shall comply. In its order the board shall establish a compliance schedule, including a schedule for briefing and hearing, and may require periodic reports on the progress the state agency, county, or city is making toward compliance.

(3) The compliance schedule in the board's order shall set a hearing date for the purpose of determining whether compliance has been achieved and shall constitute notice of the compliance hearing. The compliance hearing shall be given the highest priority of business.

(4) The board may notify the department of a finding of noncompliance. The purpose of the notification is for the department to provide technical assistance to the noncompli-

ant jurisdiction to facilitate speedy resolution of the finding of noncompliance.

AMENDATORY SECTION (Amending WSR 16-02-114, filed 1/6/16, effective 2/6/16)

WAC 242-03-970 Appeals of a board's final decision.

(1) Any party aggrieved by a final decision of the board may appeal the decision to superior court as provided in RCW 34.05.514 and 34.05.542 or 36.01.050 within thirty days of service of the final decision of the board.

(2) The petition for review of a final decision of the board shall be served on the board, however, it is not necessary to name the board as a party.

~~(3) ((In the event that direct appellate review is sought, within thirty days of the filing of a petition for review in the superior court, a party may request a certificate of appealability for direct review by the court of appeals. If the issue on review is the jurisdiction of the board, the board may file an application for direct review.))~~ Application for direct appellate review of a decision of the board is governed by the procedures and criteria of RCW 34.05.518.

WSR 21-13-119

PROPOSED RULES

DEPARTMENT OF HEALTH

(Board of Physical Therapy)

[Filed June 21, 2021, 1:28 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-19-142.

Title of Rule and Other Identifying Information: WAC 246-915-085 Continuing competency, physical therapists and physical therapist assistants. The board of physical therapy (board) is proposing general updates, revisions, and housekeeping amendments.

Hearing Location(s): On August 2, 2021, at 10:00 a.m. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the board will not provide a physical location for this hearing to promote social distancing and the safety of the citizens of Washington state. A virtual public hearing, without a physical meeting space, will be held instead.

Physical therapy board meeting and rules hearing, August 2, 2021, at 10:00 a.m. PDT, a Microsoft Teams meeting, call in (audio only) +1 564-999-2000, 787948424# United States, Olympia, phone conference ID 787 948 424#. Join on your computer or mobile app https://teams.microsoft.com/dl/launcher/launcher.html?url=%2F_%23%2F1%2Fmeetup-join%2F19%3Ameeting_OWY2MThmN2EtMjM4M00ZjMwLTgwZmYtODM3Y2U2NmJhYzFi%40thre.ad.v2%2F0%3Fcontext%3D%257b%2522Tid%2522%253a%25221d0e217-264e-400a-8ba0-57dcc127d72d%2522%252c%2522Oid%2522%253a%2522179ae2cc-af7d-41c0-9005-8be98625ea56%2522%257d%26anon%3Dtrue&type=meetup-join&deeplinkId=029b27ca-c931-4209-8f0c-495e2fe5e5b8&directDl=true&msLaunch=true&enableMobilePage=true&suppressPrompt=true.

Date of Intended Adoption: August 2, 2021.

Submit Written Comments to: Kris Waidely, Program Manager, P.O. Box 47852, Olympia, WA 98504-7852, email <https://fortress.wa.gov/doh/policyreview>, fax 360-236-2901, by July 15, 2021.

Assistance for Persons with Disabilities: Contact Kris Waidely, program manager, phone 360-236-4847, fax 360-236-2901, TTY 711, email kris.waidely@doh.wa.gov, by July 23, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The board is proposing updates, revisions, and housekeeping amendments to the continuing competency requirements as a prerequisite to renewing a license as a physical therapist or physical therapist assistant. The current rules are not clearly defined in some instances which leaves the rule up for interpretation. The board is proposing updates to the rules to provide more clarity to some of the listed continuing education activities. Also, some of the activities listed in these rules are no longer available to licensees, therefore the board is proposing to remove those activities from the rules.

Reasons Supporting Proposal: The purpose of chapter 18.74 RCW is to protect the public health, safety, and welfare and to provide for state administrative control, supervision, licensure, and regulation of the practice of physical therapy. It is the intent of the legislature that only individuals who meet and maintain prescribed standards of competence and conduct be allowed to engage in the practice of physical therapy as defined and authorized by this chapter. Reasons supporting the proposal are to: (1) Ensure physical therapists and physical therapist assistants clearly understand required standard of care and current minimum standards in order to proactively protect patients in Washington state; and (2) ensure compliance with statutory requirements.

Statutory Authority for Adoption: RCW 18.74.023.

Statute Being Implemented: Chapter 18.74 RCW.

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

Name of Proponent: Board of physical therapy, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Kris Waidely, Program Manager, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4847.

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

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Kris Waidely, P.O. Box 47877, Olympia, WA 98504-7877, phone 360-236-4847, fax 360-236-7901, TTY 711, email kris.waidely@doh.wa.gov.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The rules do no [not] impact businesses; these rules pertain only to providers.

June 21, 2021
Renee Fullerton
Executive Director

AMENDATORY SECTION (Amending WSR 20-06-029, filed 2/26/20, effective 3/28/20)

WAC 246-915-085 Continuing competency. (1) Every two years, a physical therapist shall complete thirty-two hours of continuing education (CE) through any of the following means:

	CE Type	Maximum Hours Allowed	Documentation Requirements
a.	Participation in a course, live or online, <u>including recorded.</u>	No limit	Keep certificates of completion for each course, and, if not contained in the certificate of completion, information describing the course sponsors, the goals and objectives of the course, the credentials of the presenter as a recognized authority on the subject presented, dates of attendance, and total hours for all continuing education courses being reported.
b.	Live or recorded instructional electronic media <u>relating to the practice of physical therapy</u> that does not include specific goals and objectives <u>((relating to the practice of physical therapy))</u> .	Four hours	Instead of course goals, objectives and certificate of completion, the PT shall write and submit to the department a <u>((one page synopsis in twelve point font))</u> <u>minimum of two takeaways</u> for each hour of running time.
c.	Books or articles reviewed.	Eight hours (reading time only)	The PT shall write and submit to the department a one-page synopsis in twelve-point font for each hour of reading time. The time spent writing a synopsis is not reportable.
d.	Preparation and presentation of professional physical therapy courses or lectures.	((Ten)) <u>Sixteen</u> hours	The PT shall submit to the department <u>((an outline of))</u> <u>a description and objectives of the presentation</u> <u>((materials))</u> , date, and location of presentation.
e.	Written <u>preparation and</u> publication of original scholarly research or work published in a peer-review journal.	Ten hours	The PT shall submit to the department proof of publication which may include poster presentations.

	CE Type	Maximum Hours Allowed	Documentation Requirements
f.	Clinical instruction of physical therapy students enrolled in a physical therapy educational program accredited by the American Physical Therapy Association's Commission on Accreditation in Physical Therapy Education (CAPTE) or clinical instruction in a postgraduate residency or fellowship through the American Board of Physical Therapy Residency and Fellowship Education (ABPTRFE).	Ten hours	The PT shall obtain and submit to the department a letter or certificate from the student's academic institution verifying that the student has completed the course of clinical instruction. Each thirty-two hours of student mentorship equals one hour for purposes of CE credit.
g.	((Completion of Option, which is a self-assessment tool created by the Federation of State Boards of Physical Therapy.)) Courses required for <u>professional certification such as to work in public schools.</u>	((Five)) <u>Fifteen</u> hours	The PT shall submit a copy of the completion certificate to the department.
h.	Courses provided by an accredited institution of higher education which may include, but are not limited to, courses leading to an advanced degree in physical therapy or other courses that advance the PT's competence.	No limit	The PT shall submit a transcript to the department verifying courses taken. One quarter credit is equal to ten hours; one trimester is equal to twelve hours; and one semester credit is equal to fifteen hours.
i.	((Participation in the use of the Federation of State Boards of Physical Therapy's aptitude continuing competence resource.)) <u>Attendance at science-based conferences.</u>	((Two hours)) <u>No limit</u>	((The PT shall submit verification of completion by FSBPT.)) <u>Certificate of attendance.</u>
j.	<u>Preparing for and successfully taking and passing board certification exams through the American Board of Physical Therapy Specialties.</u>	<u>No limit</u>	<u>Certificate of certification.</u>

(2) Every two years a physical therapist who holds a spinal manipulation endorsement shall complete at least ten hours of continuing education directly related to spinal manipulation with at least five hours related to procedural techniques and application of spinal manipulation. For docu-

mentation, refer to the documentation required for the particular type of continuing education chosen. The hours spent completing spinal manipulation continuing education count toward meeting any applicable continuing competency requirements.

(3) Every two years, a physical therapist assistant shall complete twenty-four hours of continuing education through any of the following means:

	CE Type	Hours Allowed	Documentation Requirements
a.	Participation in a course, live or online, <u>including recorded.</u>	No limit	Keep certificates of completion for each course, and, if not contained in the certificate of completion, information describing the course sponsors, the goals and objectives of the course, the credentials of the presenter as a recognized authority on the subject presented, dates of attendance, and total hours for all continuing education courses being reported.
b.	Live or recorded instructional electronic media <u>relating to the practice of physical therapy</u> that does not include specific goals and objectives ((relating to the practice of physical therapy)).	Four hours	Instead of course goals, objectives and certificate of completion, the PTA shall ((write and submit a one-page synopsis in twelve-point font)) <u>submit to the department a minimum of two takeaways</u> for each hour of running time.
c.	Books or articles reviewed.	Eight hours (reading time only)	The PTA shall write and submit a one-page synopsis in twelve-point font for each hour of reading time. The time spent writing a synopsis is not reportable.
d.	Preparation and presentation of professional physical therapy courses or lectures.	((Ten)) <u>Sixteen</u> hours	The PTA shall submit ((an outline)) <u>to the department a description and objectives of the presentation</u> ((materials)) , date, and location of presentation.
e.	Written <u>preparation and</u> publication of original scholarly research or work published in a peer-review journal.	Ten hours	The PTA shall submit proof of publication which may include poster presentations.

	CE Type	Hours Allowed	Documentation Requirements
f.	Clinical instruction of physical therapist assistant students enrolled in a physical therapy assistant program accredited by the American Physical Therapy Association's Commission on Accreditation in Physical Therapy Education (CAPTE) or clinical instruction in a postgraduate residency or fellowship through the American Board of Physical Therapy Residency and Fellowship Education (ABPTRFE).	Ten hours	The PTA shall obtain and submit to the department a letter or certificate from the student's academic institution verifying that the student has completed the course of clinical instruction. Each thirty-two hours of student mentorship equals one hour for purposes of CE credit.
g.	((Completion of Option, which is a self-assessment tool created by the Federation of State Boards of Physical Therapy.)) Courses required for professional certification such as to work in public schools.	((Five)) Fifteen hours	The PTA shall submit a copy of the completion certificate.
h.	Courses provided by an accredited institution of higher education which may include, but are not limited to, courses leading to an advanced degree in physical therapy or other courses that advance the PTA's competence.	No limit	The PTA shall submit a transcript verifying courses taken. One quarter credit is equal to ten hours; one trimester credit is equal to twelve hours; and one semester credit is equal to fifteen hours.
i.	((Participation in the use of the Federation of State Boards of Physical Therapy's aptitude continuing competence resource.)) Attendance at science-based conferences.	((Two hours)) No limit	((The PTA shall submit verification of completion by FSBPT.)) Certificate of attendance.
j.	Preparing for and successfully taking and passing board certification exams through the American Board of Physical Therapy Specialties.	No limit	Certificate of certification.

(4) Each physical therapist and physical therapist assistant shall complete a one-time, three hour suicide assessment training described in WAC 246-915-086.

(5) Every two years, each physical therapist and physical therapist assistant shall complete two hundred hours involv-

ing the application of physical therapy knowledge and skills which may be obtained in the clinical practice of physical therapy or in the nonclinical activities which include, but are not limited to, the following:

	Clinical Activities	Hours Allowed	Documentation
a.	Physical therapy clinical practice.	No limit	Documentation of physical therapy employment, the PT or PTA shall provide copies of employment records or other proof acceptable to the board of employment for the hours being reported.

	Nonclinical Activities	Hours Allowed (within the two hundred hours required)	Documentation
b.	Physical therapy teaching of: <ul style="list-style-type: none"> • Patient/client management, prevention and wellness. • Physical therapy ethics and standards of practice. • Professional advocacy/involvement. 	No limit	The PT or PTA shall provide documentation of such activities as acceptable to the board.
c.	Active service on boards or participation in professional or government organizations, or attendance at professional or government organizations meetings specifically related to the practice of physical therapy.	No limit	The PT or PTA shall provide documentation of such activities as acceptable to the board.
d.	Developing course work in physical therapy schools or education programs or physical therapy continuing education courses.	No limit	The PT or PTA shall provide documentation of such activities as acceptable to the board.
e.	Physical therapy research as a principal or associate researcher.	No limit	The PT or PTA shall provide documentation of such activities as acceptable to the board.
f.	Physical therapy consulting.	No limit	The PT or PTA shall provide documentation of such activities as acceptable to the board.
g.	Management of physical therapy services.	No limit	The PT or PTA shall provide documentation of such activities as acceptable to the board.

	Nonclinical Activities	Hours Allowed (within the two hundred hours required)	Documentation
h.	Physical therapy volunteer hours or observation in physical therapy practice.	No limit	The PT or PTA shall provide documentation verifying volunteer or observation hours.

WSR 21-13-125
PROPOSED RULES
BENTON CLEAN AIR AGENCY

[Filed June 21, 2021, 3:10 p.m.]

Original Notice.

Proposal is exempt under RCW 70A.15.2040(1).

Title of Rule and Other Identifying Information: Benton Clean Air Agency Regulation 1.

Hearing Location(s): On September 23, 2021, at 5:30 p.m., at Benton Clean Air Agency, 526 South Steptoe Street, Kennewick, WA 99336.

Date of Intended Adoption: September 23, 2021.

Submit Written Comments to: Tyler Thompson, Benton Clean Air Agency, 526 South Steptoe Street, Kennewick, WA 99336, email tyler.thompson@bentoncleanair.org, fax 509-783-6562, by September 23, 2021.

Assistance for Persons with Disabilities: Contact 711 relay, or Tyler Thompson, phone 509-783-1304, fax 509-783-6562, email tyler.thompson@bentoncleanair.org, by September 23, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The changes to Regulation 1 are administrative in nature. The changes consist of removing references to outdated RCW and replacing them with the current RCW. References to fees and fee tables that are no longer part of Regulation 1 will be removed. Variance language will be added to clarify consistency with the WAC. The changes are primarily to clarify where the agency's authority is delegated from.

Reasons Supporting Proposal: The changes to Regulation 1 are proposed to clarify where the agency's authority is delegated within the RCW and WAC, and to make Regulation 1 more consistent.

Statutory Authority for Adoption: RCW 70A.15.2040, 70A.15.3050(2).

Statute Being Implemented: Chapter 70A.15 RCW; and 42 U.S.C. 7401 et. seq., 42 U.S.C. 7412.

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

Name of Proponent: Benton Clean Air Agency, governmental.

Name of Agency Personnel Responsible for Drafting: Tyler Thompson, 526 South Steptoe Street, Kennewick, WA 99336, 509-783-1304; Implementation and Enforcement: Rob Rodger, 526 South Steptoe Street, Kennewick, WA 99336, 509-783-1304.

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

A cost-benefit analysis is not required under RCW 34.05.328. This is a local agency rule and pursuant to RCW 70A.15.2040(1); RCW 34.05.328 does not apply to this rule.

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

Is exempt under RCW 70A.15.2040(1).

Explanation of exemptions: A small business economic impact statement was not prepared under RCW 19.85. This is a local agency rule and pursuant to RCW 70A.15.2040(1); chapter 19.85 RCW does not apply.

June 8, 2021
 Tyler Thompson
 Air Quality Specialist

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 21-15 issue of the Register.

WSR 21-13-127
PROPOSED RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed June 22, 2021, 9:08 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-21-112.

Title of Rule and Other Identifying Information: Chapter 392-401 WAC, Statewide definition of absence, excused and unexcused.

Hearing Location(s): On July 27, 2021, at 11:00 a.m., webinar via Zoom (call-in option will be available).

Due to the public health emergency related to the COVID-19 virus pandemic, this public hearing will take place by webinar via Zoom (with a call-in option).

There will be no physical location for the hearing. For information on registering and participating, please visit the office of superintendent of public instruction's (OSPI) website at k12.wa.us/policyfunding/ospi-rulemaking-activity. For questions, please email kristin.murphy@k12.wa.us.

Date of Intended Adoption: July 30, 2021.

Submit Written Comments to: Krissy Johnson, OSPI, P.O. Box 47200, Olympia, WA 98504-7200, email krissy.johnson@k12.wa.us, by July 27, 2021.

Assistance for Persons with Disabilities: Contact Kristin Murphy, phone 360-725-6133, fax 360-754-4201, TTY 360-664-3631, email Kristin.murphy@k12.wa.us, by July 20, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Through this proposed rule, OSPI intends to (1) establish a definition of absence from synchronous and asynchronous instruction, (2) establish excused absences that pertain only during times of emergency school facility closures where districts are required to provide synchronous and asynchronous, and (3) establish the minimum criteria of a district's multi-tiered system of support for attendance.

Reasons Supporting Proposal: These proposed rules regarding absences are a continued effort to support school districts in addressing the challenge of chronic absenteeism, improving learning outcomes and success in school for all students, and supporting the whole child. Because health and safety considerations for staff and students related to the COVID-19 pandemic may continue to require school districts to provide instruction remotely for a subset of families for health and safety reasons, OSPI proposes these rules to adjust the statewide definition of absence to reflect districts' ongoing need to provide remote learning for the 2021-22 school year and beyond.

Statutory Authority for Adoption: RCW 28A.300.046, 28A.225.015, 28A.225.018, and 28A.225.020.

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

Name of Agency Personnel Responsible for Drafting and Implementation: Krissy Johnson, OSPI, 600 South Washington Street, Olympia, WA, 360-725-6045.

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

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

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

Is exempt under RCW 19.85.030.

Explanation of exemptions: No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendment does not have an impact on small business and therefore does not meet the requirements for a statement under RCW 19.85.030 (1) or (2).

June 22, 2021
Chris P. S. Reykdal
State Superintendent
of Public Instruction

AMENDATORY SECTION (Amending WSR 18-11-011, filed 5/3/18, effective 8/1/18)

WAC 392-401-005 Purpose. Attendance is a critical building block for student learning. Attendance is a leading indicator of equity that signals areas for system and school improvement or when students might need additional support.

The purpose of this chapter is to ~~((provide a definition of))~~:

(1) Define student absence ~~((to))~~ for school districts ~~((that))~~ in order to support ~~((s))~~ accurate and consistent attendance data collection across the state; and

(2) Establish the minimum criteria of a multitiered system of support for attendance that each school district must implement in order to address barriers to student attendance, provide timely interventions and best practices to reduce chronic absenteeism and truancy as required under chapter 28A.225 RCW.

~~((This effort will))~~ These rules support the state and school districts to address the challenge of chronic absenteeism, ~~((in an effort to improve))~~ improving learning outcomes

and success in school for all students and ~~((to support))~~ supporting the whole child.

AMENDATORY SECTION (Amending WSR 18-11-011, filed 5/3/18, effective 8/1/18)

WAC 392-401-010 Authority. The authority for this chapter is RCW 28A.300.046, which requires the superintendent of public instruction to adopt rules establishing a standard definition of student absence from school. Additional authority for this chapter is in RCW 28A.225.015, 28A.225.018, and 28A.225.020, which require the superintendent of public instruction to adopt rules pertaining to required actions on the part of school districts to address barriers to student attendance and truancy.

NEW SECTION

WAC 392-401-011 Scope and application. (1) This chapter applies to common school districts, charter public schools, and state-tribal education compact schools.

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

NEW SECTION

WAC 392-401-012 General definitions. (1) "Asynchronous instruction" means instruction prepared by a certificated teacher that occurs away from the physical school setting without two-way interactive communication.

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

(3) "Parent" has the same meaning as in WAC 392-172A-01125.

(4) "Synchronous online instruction" means scheduled real-time instruction between the student and a certified teacher or a district staff supervised by a certified teacher that provides opportunities for live two-way interactive communication online.

AMENDATORY SECTION (Amending WSR 18-11-011, filed 5/3/18, effective 8/1/18)

WAC 392-401-015 Definition of ~~((absent or))~~ absence from in-person instruction. ~~((+))~~ A student is absent from in-person instruction when ~~((they are))~~ the student is:

~~((+))~~ (1) Not physically present on school grounds; and
~~((b))~~ (2) Not participating in the following activities at an approved location:

~~((+))~~ (a) Instruction; or
~~((+))~~ (b) Any instruction-related activity; or
~~((+))~~ (c) Any other district or school approved activity that is regulated by an instructional/academic accountability system, such as participation in district-sponsored sports.

~~((2))~~ Students shall not be absent if:
(a) They have been suspended, expelled, or emergency expelled pursuant to chapter 392-400 WAC;

(b) Are receiving educational services as required by RCW 28A.600.015 and chapter 392-400 WAC; and

~~(e) The student is enrolled in qualifying "course of study" activities as defined in WAC 392-121-107.~~

~~(3) A full day absence is when a student is absent for fifty percent or more of their scheduled day.~~

~~(4) A school or district shall not convert or combine tardies into absences that contribute to a truancy petition.)~~

NEW SECTION

WAC 392-401-016 Definition of absence from synchronous and asynchronous instruction. (1) A student is absent from synchronous online instruction when the student does not log in to the synchronous meeting/class.

(2) A student is absent from asynchronous instruction when there is no evidence that the student accessed the planned asynchronous activity.

(3) Evidence of student participation in asynchronous activities must occur daily, within a twenty-four-hour time frame of when the participation is planned or expected.

NEW SECTION

WAC 392-401-018 Daily attendance taking. School districts must take daily attendance for all enrolled students whether the instructional modality is in-person, synchronous or asynchronous.

For secondary schools, attendance must be taken daily in each course with planned instruction. In elementary schools, attendance must be taken at least twice a day.

AMENDATORY SECTION (Amending WSR 18-11-011, filed 5/3/18, effective 8/1/18)

WAC 392-401-020 Excused absences. (1) Absences due to the following reasons must be excused:

~~((1))~~ (a) Illness, health condition or medical appointment (including, but not limited to, medical, counseling, dental, optometry, pregnancy, and in-patient or out-patient treatment for chemical dependency or mental health) for the student or person for whom the student is legally responsible;

~~((2))~~ (b) Family emergency including, but not limited to, a death or illness in the family;

~~((3))~~ (c) Religious or cultural purpose including observance of a religious or cultural holiday or participation in religious or cultural instruction;

~~((4))~~ (d) Court, judicial proceeding, court-ordered activity, or jury service;

~~((5))~~ (e) Post-secondary, technical school or apprenticeship program visitation, or scholarship interview;

~~((6))~~ (f) State-recognized search and rescue activities consistent with RCW 28A.225.055;

~~((7))~~ (g) Absence directly related to the student's homeless or foster care/dependency status;

~~((8))~~ (h) Absences related to deployment activities of a parent or legal guardian who is an active duty member consistent with RCW 28A.705.010;

~~((9))~~ (i) Absences due to suspensions, expulsions or emergency expulsions imposed pursuant to chapter 392-400 WAC if the student is not receiving educational services and is not enrolled in qualifying "course of study" activities as defined in WAC 392-121-107;

~~((10))~~ (j) Absences due to student safety concerns, including absences related to threats, assaults, or bullying;

~~((11))~~ (k) Absences due to a student's migrant status;

~~(and~~
~~(12))~~ (l) Absences due to an approved activity that is consistent with district policy and is mutually agreed upon by the principal or designee and a parent, guardian, or emancipated youth; and

(m) Absences due to the student's lack of necessary instructional tools, including internet access or connectivity.

(2) In the event of emergency school facility closure due to COVID-19, other communicable disease outbreak, natural disaster, or other event when districts are required to provide synchronous and asynchronous instruction, absences due to the following reasons must be excused:

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

(b) Absences related to caring for a family member who has an illness, health condition, or medical appointment due to COVID-19, other communicable disease, or other emergency health condition related to school facility closures;

(c) Absences related to the student's family obligations during regularly scheduled school hours that are temporarily necessary because of school facility closures, until other arrangements can be made; and

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

(3) Districts may define additional categories or criteria for excused absences. A school principal or designee has the authority to determine if an absence meets the ~~((above))~~ criteria in subsections (1) and (2) of this section and school district policy for an excused absence. ~~((Districts may define additional categories or criteria for excused absences.))~~

NEW SECTION

WAC 392-401-038 Data reporting. School districts must report student absences to the office of superintendent of public instruction through the comprehensive education data and research system (CEDARS) as provided in the CEDARS data manual.

NEW SECTION

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

(a) The student has been suspended, expelled, or emergency expelled pursuant to chapter 392-400 WAC;

(b) Are receiving educational services as required by RCW 28A.600.015 and chapter 392-400 WAC; and

(c) The student is enrolled in qualifying "course of study" activities as defined in WAC 392-121-107.

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

NEW SECTION

WAC 392-401-045 Multitiered system of support for attendance. (1) School districts must implement a multi-

tiered system of support for attendance to address barriers to student attendance, provide timely interventions and best practices to reduce chronic absenteeism and truancy.

(2) Multitiered systems of support under this section must include:

(a) Monitoring daily attendance data for all students who are absent, whether the absence is excused or unexcused;

(b) A process to contact families and verify current contact information for each enrolled student that includes multiple attempts and modalities in the parent's home language;

(c) Differentiated supports that address the barriers to attendance and participation that includes universal supports for all students and tiered interventions for students at-risk of and experiencing chronic absence, including school and district attendance or engagement teams, connecting to community resources, and community engagement boards; and

(d) A process for outreach and reengagement for students who have been withdrawn due to nonattendance and there is no evidence that the student is enrolled elsewhere. This outreach and reengagement process must include:

(i) A school and/or district point person/people to maintain the list, keep it updated, and coordinate the outreach;

(ii) District staff assigned to conduct the outreach and attempts at reengagement;

(iii) Multiple methods of communication and outreach in a language or mode of communication that the parent understands including phone calls, texts, letters, and home visits;

(iv) Referral to community-based organizations, juvenile court or department of children, youth, and families, as appropriate;

(v) Documentation of the attempts to reach student and family; and

(vi) File a petition in accordance with chapter 28A.225 RCW, even if the student has been withdrawn due to nonattendance.

WSR 21-13-137
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed June 22, 2021, 10:59 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-06-089.

Title of Rule and Other Identifying Information: Outpatient hospitals (medical aid rules), WAC 296-23A-0700 What is the "ambulatory payment classification" (APC) payment system? and 296-23A-0740 How does the department calculate payments for covered outpatient services through the outpatient prospective payment system (OPPS)?

Hearing Location(s): On July 29, 2021, at 1:30 p.m., virtual and telephonic hearing only. To join Zoom meeting, please connect on your computer or mobile app <https://us02web.zoom.us/j/82544602841>, Meeting ID 825 4460 2841, Passcode Hearing#12. One tap mobile +12532158782,,82544602841#,,,,*4901623718# US (Tacoma), +14086380968,,82544602841#,,,,*4901623718# US (San Jose), or call

in (audio only), Dial by your location +1 253 215 8782 US (Tacoma), Meeting ID 825 4460 2841, Passcode 490162 3718. Find your local number <https://us02web.zoom.us/j/82544602841>. Audio/visual Zoom meeting starts at 1:30 p.m. and will continue until all oral comments are received.

Date of Intended Adoption: August 31, 2021.

Submit Written Comments to: Dee Hahn, Department of Labor and Industries (L&I), Health Services Analysis, P.O. Box 44322, Olympia, WA 98504-4322, email Dee.Hahn@Lni.wa.gov, fax 360-902-4249, by 5:00 p.m. on July 29, 2021.

Assistance for Persons with Disabilities: Contact Dee Hahn, phone 360-902-6828, fax 360-902-4249, email Dee.Hahn@Lni.wa.gov, by July 22, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed language will clarify the outpatient hospital payment process used by L&I and remove any potential conflict between the two WAC that set the payment policies for outpatient services. The effect will be to help our providers gain a clear understanding of our payment policies.

Reasons Supporting Proposal: The proposed language clarifies parts of our hospital outpatient WAC that a provider had problems understanding. By adopting the proposed language, we are making ourselves more transparent to the provider community.

Statutory Authority for Adoption: RCW 51.04.020(1) and 51.04.030.

Statute Being Implemented: RCW 51.36.080.

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

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting: Dee Hahn, Tumwater, 360-902-6828; Implementation and Enforcement: Vickie Kennedy, Tumwater, 360-902-4997.

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

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Dee Hahn, L&I, Health Services Analysis, P.O. Box 44322, Olympia, WA 98504-4322, phone 360-902-6828, fax 360-902-4249, email Dee.Hahn@Lni.wa.gov.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. There is no cost associated with the rule. The rule is being updated to provide clarity to health care providers who provide services to injured workers and seek payment from L&I what system and billing policies are used by L&I. The proposed changes state in better terms the current standards used by L&I for reimbursing health care providers. While a provider may qualify as a small business under chapter 19.85 RCW the compliance with this section of law is only if that provider decides to provide services to injured workers.

June 22, 2021

Joel Sacks

Director

AMENDATORY SECTION (Amending WSR 01-24-045, filed 11/29/01, effective 1/1/02)

WAC 296-23A-0700 What is the "ambulatory payment classification" (APC) payment system? The APC outpatient prospective payment system (OPPS) is a reimbursement method that categorizes outpatient visits into groups according to the clinical characteristics, the typical resource use, and the costs associated with the diagnoses and the procedures performed. The groups are called Ambulatory Payment Classifications (APCs). ~~((The department uses a modified version of the Centers for Medicare and Medicaid Services' (CMS) Prospective Payment System for Hospital Outpatient Department Services))~~ Unless otherwise stated in departmental payment policies, the department follows billing policies used by the Centers for Medicare and Medicaid Services (CMS) for the hospital outpatient prospective payment system to pay some hospitals for covered outpatient services provided to injured workers. The department will utilize CMS' current outpatient code editor to categorize outpatient visits.

The payment system methodology uses CMS' outpatient prospective payment system's relative weight factor for each APC group and a blend of statewide and hospital-specific rates for each APC.

For a complete description of CMS' Prospective Payment System for Hospital Outpatient Department Services see 42 C.F.R., Chapter IV, Part 419, et al.

AMENDATORY SECTION (Amending WSR 01-24-045, filed 11/29/01, effective 1/1/02)

WAC 296-23A-0740 How does the department calculate payments for covered outpatient services through the outpatient prospective payment system (OPPS)? (1) Billed services that are reimbursed by the OPPS are grouped into one or more APCs using the outpatient code editor software.

(2) Additional payment may be made for services classified by CMS as transitional pass-through.

(3) Incidental services are grouped within an APC and are not paid separately.

(4) The OPPS APC payment method uses an APC relative weight for each classification group (APC) and the current hospital-specific blended rate to determine the APC payment for an individual service.

(5) For each additional APC listed on a single claim for services, the payment is calculated with the same formula and then discounted. L&I follows all discounting policies used by CMS for the Medicare Prospective Payment System for Hospital Outpatient Department Services.

(6) APC payment for each APC = (APC relative weight x hospital-specific blended rate)* discount factor (if applicable) x units (if applicable).

(7) The total payment on an APC claim is determined mathematically as follows:

- (a) Sum of APC payments for each APC +
- (b) Additional payment for each transitional pass-through (if applicable) +
- (c) Additional outlier payment (if applicable).

(8) ~~((L&I follows all billing policies used by CMS for the Medicare Prospective Payment System for Hospital Outpatient Department Services))~~ Unless otherwise indicated in departmental payment policies, the department follows billing policies used by the Centers for Medicare and Medicaid Services (CMS) for the hospital outpatient prospective pricing system with respect to:

- (a) Billing of units of service;
- (b) Outlier claims;
- (c) Use of modifiers;
- (d) Distinguishing between single and multiple visits during a span of time and reporting a single visit on one claim, but multiple visits with unrelated medical conditions on multiple claims; and
- (e) For paying terminated procedures based on services actually provided and documented in the medical record, and properly indicated by the hospital through the CPT codes and modifiers submitted on the claim.

WSR 21-13-139

PROPOSED RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Filed June 22, 2021, 11:02 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-21-057 on October 14, 2020.

Title of Rule and Other Identifying Information: WAC 220-200-100 Wildlife classified as protected shall not be hunted or fished and 220-610-010 Wildlife classified as endangered species.

Hearing Location(s): On August 6-7, 2021, at 8:00 a.m., webinar. This meeting will take place by webinar. The public may participate in the meeting. Visit our website at <http://wdfw.wa.gov/about/commission/meetings> or contact the commission office at 360-902-2267 or commission@dfw.wa.gov for instruction on how to join the meeting.

Date of Intended Adoption: August 27, 2021.

Submit Written Comments to: Wildlife Program, P.O. Box 43200, Olympia, WA 98504, email 24884@PublicInput.com, fax 360-902-2162. Website for public comments <https://publicinput.com/T4554>. Questions about this rule proposal heather.bonagofski@dfw.wa.gov, by July 15, 2021.

Assistance for Persons with Disabilities: Contact title VI/ADA compliance coordinator, phone 360-902-2349, TTY 711, email Title6@dfw.wa.gov. For more information see <https://wdfw.wa.gov/accessibility/requests-accommodation>, by July 30, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule proposal reclassifies the ferruginous hawk from threatened to endangered in the state of Washington under WAC 220-610-010. Anticipated effects include the additional recognition and prioritization of the conservation need and actions around ferruginous hawk. If the status change is adopted, ferruginous hawk will be removed from WAC 220-200-100 "Wildlife classified as protected shall not be hunted or fished," and

added to WAC 220-610-010 "Wildlife classified as endangered species."

Reasons Supporting Proposal: The ferruginous hawk is largely restricted to grasslands and shrubsteppe habitats. Conversion of native grasslands and arid shrublands to agriculture, urbanization, and the degradation of rangelands have contributed to the loss of nesting and foraging habitat on its breeding range in Washington. Degradation of fall and winter ranges frequented by Washington's hawks in migration and the nonbreeding period has been documented through satellite monitoring. Reductions in prey base on the breeding range and depressed prey populations encountered during migration on fall and winter ranges are likely a significant factor in the decline of Washington's breeding population of ferruginous hawks.

The breeding population of ferruginous hawks in Washington is in sustained decline. Between 1974 and 2016, there have been significant declines in nesting territory occupancy, nest success, and productivity. Additionally, the percentage of surveyed nesting territories supporting breeding pairs has significantly declined in the core breeding range of the species in Benton and Franklin counties. The distribution of breeding pairs statewide also appears to have contracted since the 1990s. There has been no improvement in habitat conditions or amelioration of primary threats, and therefore the recommendation is to reclassify the ferruginous hawk from threatened to endangered status in Washington.

For more information see the *Periodic Status Review for the Ferruginous Hawk* at <https://wdfw.wa.gov/publications/02210>.

An environmental review under the State Environmental Policy Act has been done for this proposal. These documents are at <https://wdfw.wa.gov/licenses/environmental/sepa/open-comments>.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.[0]13, 77.04.055, 77.12.020, and 77.12.047.

Statute Being Implemented: RCW 77.04.012, 77.04.-[0]13, 77.04.055, 77.12.020, and 77.12.047.

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

Name of Proponent: Washington department of fish and wildlife, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Eric Gardner, 1111 Washington Street S.E., Olympia, WA 98501, 360-902-2515; Enforcement: Steve Bear, 1111 Washington Street S.E., Olympia, WA 98501, 360-902-2373.

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

A cost-benefit analysis is not required under RCW 34.05.328. The proposed period status review for the ferruginous hawk does not require a cost-benefit analysis per RCW 34.05.328.

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

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: The proposed rule does not affect small businesses because the change from threatened

to endangered status does not result in additional costs or regulatory requirements for any businesses.

June 22, 2021
Annie Szvetcz
Rules Coordinator

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>

Common Name	Scientific Name
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>Pooecetes 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>

Common Name	Scientific Name
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>Dermochelys 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 taylori</i>
Streaked horned lark	<i>Eremophila alpestris strigata</i>
Tufted puffin	<i>Fratercula 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 kamtschatkana</i>
Greater sage grouse	<i>Centrocercus urophasianus</i>
<u>Ferruginous hawk</u>	<u><i>Buteo regalis</i></u>

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

WSR 21-13-143
PROPOSED RULES
HEALTH CARE AUTHORITY

[Filed June 22, 2021, 12:34 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-05-065.

Title of Rule and Other Identifying Information: New chapter 182-135 WAC, Recovery residence revolving loan; WAC 182-135-0100 General and 182-135-0200 Operating fund.

Hearing Location(s): On July 27, 2021, at 10:00 a.m. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the agency will not provide a physical location for this hearing. This promotes social distancing and

the safety of the citizens of Washington state. A virtual public hearing, without a physical meeting space, will be held.

To attend the virtual public hearing, you must register at the following link https://zoom.us/webinar/register/WN_wMJYBsAHT2zJLDCJYIphw. After registering, you will receive a confirmation email containing information about joining the webinar.

Date of Intended Adoption: Not sooner than July 28, 2021.

Submit Written Comments to: Health Care Authority (HCA), Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by July 27, 2021.

Assistance for Persons with Disabilities: Contact Amber Lougheed, phone 360-725-1349, fax 360-586-9727, telecommunication[s] relay service 711, email amber.lougheed@hca.wa.gov, by July 16, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is developing rules to establish a revolving fund for loans to operators of group homes supporting individuals recovering from substance use disorder. The rules describe the program and how the loan operates. In addition, these rules set out requirements for eligible recipients, loan repayments, penalties for nonpayment, and appeal rights.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160, 41.05.762.

Statute Being Implemented: RCW 41.05.021, 41.05.160, 41.05.762.

Rule is necessary because of federal law, 42 U.S.C. § 300x-25(a).

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Melinda Froud, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1408; Implementation and Enforcement: Kira Schneider, P.O. Box 42740 [42730], Olympia, WA 98504-2730, 360-725-1634.

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

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

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

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

June 22, 2021
Wendy Barcus
Rules Coordinator

Chapter 182-135 WAC

RECOVERY RESIDENCE REVOLVING LOAN

NEW SECTION

WAC 182-135-0100 General. The health care authority operates programs to support people who are in recovery from substance use disorder as described in RCW 41.05.760.

NEW SECTION

WAC 182-135-0200 Operating fund. (1) **Purpose.** The health care authority has established the recovery residence operating revolving loan to maintain an ongoing revolving fund, as authorized by 42 U.S.C. Sec. 300x-25(a) and as described in RCW 41.05.762.

(2) **Fund.** The fund identified in subsection (1) of this section lends money to pay for the operating start-up costs associated with recovery residence programs. These costs include, but are not limited to:

- (a) One-time rent or mortgage payments;
- (b) Utility security deposits;
- (c) Salaries for on-site staff;
- (d) Minimal maintenance costs; and
- (e) Furnishings purchased for recovery residences.

(3) **Maximum loan amount.** A loan from the fund is for an amount of up to four thousand dollars.

(4) **Eligible recipients.** To be an eligible recovery residence recipient, an entity must:

- (a) Be on the recovery residence registry published on the authority's website or be actively seeking certification and registration under RCW 41.05.760;
- (b) Be a Washington state nonprofit organization;
- (c) Operate a recovery residence for a group of at least six people;
- (d) Prohibit the use of alcohol, marijuana, or any illegal drug in the residence;
- (e) Have a policy in place to address any use of alcohol, marijuana, or an illegal drug by residents; and
- (f) Allow the use of any prescribed medication for physical health, mental health, and substance use disorders.

(5) **Requirements for residents.** Residents must:

- (a) Pay for the cost of recovery residence housing, including any rent or fees; and
- (b) Through a majority vote, establish policies governing residence in the housing, including how residence applications are approved.

(6) **Application requirement.** To be an applicant, an entity that meets the requirements of subsection (4) of this section must apply for a recovery residence operating loan using the application process described on the authority's website.

(7) **Loan repayments.**

(a) Each recovery residence loan made under this section must be repaid by the residents of the recovery residence that received the funds. The loan must be paid in full within two years from the date the loan was made.

(b) Residents must repay the loan through monthly installments set by the authority.

(8) **Assessment of penalties.** The authority may assess a penalty for each failure to pay the monthly installment described in subsection (7) of this section by the date specified in the loan agreement between the authority and the recovery residence operator involved in the agreement.

(9) **Appeals.**

(a) An applicant or recipient may appeal an adverse decision notice and request an administrative hearing under chapter 182-526 WAC by following the instructions included in the notice.

(i) An applicant may appeal a denial of a loan request as described in (a) of this subsection.

(ii) A recipient may appeal the following actions including, but not limited to:

(A) Late payment fees;

(B) Default due to nonpayment; or

(C) Default due to losing Washington alliance for quality recovery residences accreditation.

(b) An applicant or recipient of this program has ninety days from the receipt of the adverse decision to appeal and must follow the process contained in the notice.

WSR 21-13-147

PROPOSED RULES

DEPARTMENT OF LICENSING

[Filed June 22, 2021, 1:41 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-09-072.

Title of Rule and Other Identifying Information: Real estate fee increases, specifically WAC 308-124A-775 Real estate fees and 308-124H-990 Real estate course, school, and instructor approval fees.

Hearing Location(s): On July 28, 2021, at 2:00 p.m. This public hearing will be held on Zoom. Zoom can be accessed via the internet or by calling in. If you are using the call-in number to access the hearing, please email rulescoordinator@dol.wa.gov with your name, phone number, yes or no to testifying. Internet users link <https://dol-wa.zoom.us/j/94976833363?pwd=M1psQitrWDhCT2RXcXRrdGdpN1dWUT09>, Internet Passcode 057347, Call In Number +1253 2158782, Call In Passcode 057347#.

Date of Intended Adoption: July 29, 2021.

Submit Written Comments to: Ellis Starrett, 1125 Washington Street S.E., Olympia, WA 98371, email RulesCoordinator@dol.wa.gov.

Assistance for Persons with Disabilities: Contact Ellis Starrett, phone 360-902-3846, email RulesCoordinator@dol.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to raise fees at a level necessary to defray the costs of administering the real estate program. We anticipate this will be difficult for some individuals and businesses within the real estate industry, but it is necessary to ensure the department is able to effectively implement the program. The department intends to raise most of the fees listed in WAC 308-124A-775 and all fees listed in WAC 308-124H-990.

Reasons Supporting Proposal: The department is required to set fees for each professional, occupational, or business licensing program at "a sufficient level to defray the costs of administering [that] program," in accordance with RCW 43.24.086. The real estate program has not had an increase in fees since 2010. The department is increasing fees to continue covering the cost of administering this program, as costs have increased over the years.

Statutory Authority for Adoption: RCW 43.24.086 Fee policy for professions, occupations, and businesses—Determination by rule.

Statute Being Implemented: Not applicable.

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

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

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting: Ellis Starrett, 1125 Washington Street S.E., Olympia, WA 98506, 360-902-3846; Implementation: JR Richards, 405 Black Lake Boulevard S.W., BLK LK 2, FL 2, 360-664-6608; and Enforcement: Lynn Briscoe, 405 Black Lake Boulevard S.W., BLK LK 2, FL 2, 360-664-6524.

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

A cost-benefit analysis is not required under RCW 34.05.328. RCW 43.24.086 requires the department to set fees at a sufficient level to defray the costs of administering the real estate program. This is explicitly dictated by statute (RCW 34.05.310 (4)(e)) and is to adjust fees (RCW 34.05-310 (4)(f)).

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

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute; and rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

June 22, 2021

Ellis Starrett

Rules Coordinator

AMENDATORY SECTION (Amending WSR 16-05-064, filed 2/12/16, effective 3/14/16)

WAC 308-124A-775 Real estate fees. These fees are applicable to all original licenses, examination services, and fee generating services issued or performed on or after ((July 1, 2010)) September 1, 2021, and all renewals for existing licenses with expiration date on or after ((July 1, 2010)) September 1, 2021. The fees for an original license and renewal include a ten dollar fee which is assessed for the real estate research center for the real estate broker and the real estate managing broker licenses. The following fees shall be charged by the department of licensing:

Title of Fee	Fee
Real estate broker:	
Application/examination	\$(138.25) <u>210.00</u>
Reexamination	((138.25)) <u>210.00</u>
Original license	((146.25)) <u>223.00</u>
License renewal	((146.25)) <u>223.00</u>
Late renewal with penalty	((172.75)) <u>263.00</u>
((Duplicate)) License print fee	((26.50)) <u>5.00</u>
Certification	((26.50)) <u>40.00</u>
Name or address change, transfer or license activation	0.00
Real estate managing broker:	
Application/examination	\$(138.25) <u>210.00</u>
Reexamination	((138.25)) <u>210.00</u>
Original license	((210.00)) <u>320.00</u>
License renewal	((210.00)) <u>320.00</u>
Late renewal with penalty	((236.50)) <u>360.00</u>
((Duplicate)) License print fee	((26.50)) <u>5.00</u>
Certification	((26.50)) <u>40.00</u>
Name or address change, transfer or license activation	0.00
Real estate firm and assumed name license:	
Original license	\$(200.00) <u>304.00</u>
License renewal	((200.00)) <u>304.00</u>
Late renewal with penalty	((226.50)) <u>345.00</u>
Name or address change	0.00
((Duplicate)) License print fee	((26.50)) <u>5.00</u>
Certification	((26.50)) <u>40.00</u>

Title of Fee	Fee
Real estate branch:	
Original license	\$(189.50) <u>288.00</u>
License renewal	((189.50)) <u>288.00</u>
Late renewal with penalty	((216.50)) <u>329.00</u>
Certification	((26.50)) <u>40.00</u>
((Duplicate)) License print fee	((26.50)) <u>5.00</u>
Name or address change, transfer or license activation	0.00
Fingerprint processing	per vendor schedule
Subsequent fingerprint processing	per vendor schedule

Fingerprints rejected by the department, Washington state patrol or FBI may necessitate subsequent fingerprint processing fees.

Fingerprint rolling fee per vendor schedule.

AMENDATORY SECTION (Amending WSR 14-16-054, filed 7/29/14, effective 8/29/14)

WAC 308-124H-990 Real estate course, school, and instructor approval fees. (1) The following fees shall be charged for applications for approval of real estate courses, schools, and instructors. An application fee shall accompany each application. Approval for schools and instructors, if granted, shall be two years from the date of approval. Approval for courses, except for the core course, if granted, shall be four years from the date of approval. Applications submitted and disapproved may be resubmitted at no additional fee.

(2) Application for course content approval - A fee of ~~((five dollars))~~ seven dollars and sixty cents per clock hour credit being offered, with a minimum fee of ~~((fifty))~~ seventy-six dollars per core course. A fee of ~~((ten dollars))~~ fifteen dollars and twenty cents per clock hour credit being offered, with a minimum of one hundred fifty-two dollars per course other than the core course. Except, the application fee for approval of the sixty clock hour course in real estate fundamentals shall be ~~((three hundred))~~ four hundred fifty-six dollars.

(3) Application for school approval - A fee of ~~((two hundred fifty))~~ three hundred eighty dollars.

(4) Application for instructor approvals:

(a) Approval to teach a specific course on one occasion - A fee of ~~((fifty))~~ seventy-six dollars;

(b) Approval to teach as many subject areas as requested at time of initial application - A fee of ~~((seventy five))~~ one hundred fourteen dollars. Approval shall be for two years from the approval date;

(c) Approval to teach additional subject area(s) not requested at time of initial application or renewal - A fee of ((twenty-five)) ~~thirty-eight~~ dollars for each application to teach additional subject area(s). Approval, if granted, shall be for remainder of two year approval period. Applications submitted under (a), (b) and (c) of this section and disapproved may be resubmitted at no additional fee.

WSR 21-13-153
PROPOSED RULES
DEPARTMENT OF ECOLOGY
 [Order 20-04—Filed June 22, 2021, 2:14 p.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05-330(1).

Title of Rule and Other Identifying Information: Ecology is revising two rules:

- Chapter 173-423 WAC, Low emission vehicles. The rule implements the California Advanced Clean Cars Program that combines the control of smog-causing (criteria) pollutants and greenhouse gas (GHG) emissions into a coordinated package of regulations.
- Chapter 173-400 WAC, General regulations for air pollution sources, specifically WAC 173-400-025 Adoption of federal rules. This section adopts federal rules by reference mentioned in the chapter.

This rule making meets the criteria to file a rule proposal notice without first filing a rule-making notice (RCW 34.05-310 (4)(e)).

For more information on this rule making visit <https://ecology.wa.gov/Regulations-Permits/Laws-rules-rulemaking/Rulemaking/WAC-173-400>.

Hearing Location(s): On July 27, at 1:30 p.m., webinar. Virtual presentation, question and answer session followed by the hearing. We are holding this hearing via webinar. This is an online meeting that you can attend from any computer using internet access. Join online and see instructions <https://watech.webex.com/watech/onstage/g.php?MTID=eb0aec95dcf9d08a7d51e4c900b2dc180>. For audio call US Toll number 1-855-929-3239 and enter access code 133 161 6550. Or to receive a free call back, provide your phone number when you join the event; and on July 29, at 6:00 p.m., webinar. Virtual presentation, question and answer session followed by the hearing.

We are holding this hearing via webinar. This is an online meeting that you can attend from any computer using internet access. Join online and see instructions <https://watech.webex.com/watech/onstage/g.php?MTID=e5edde214b35d76efe04ae62b78c09c95>. For audio call US Toll number 1-855-929-3239 and enter access code 133 423 8126. Or to receive a free call back, provide your phone number when you join the event.

Date of Intended Adoption: November 29, 2021.

Submit Written Comments to: Elena Guilfoil, send US mail to Department of Ecology, Air Quality Program, P.O. Box 47600, Olympia, WA 98504-7600; or send parcel deliv-

ery services to Department of Ecology, Air Quality Program, 300 Desmond Drive S.E., Lacey, WA 98503, submit comments by mail, online, or at the hearing(s), online <https://aq.ecology.commentinput.com/?id=SdA6s>, by August 9, 2021.

Assistance for Persons with Disabilities: Contact ecology ADA coordinator, phone 360-407-6831, Washington relay service call 711, TTY call 877-833-6341, email ecyADACoordinator@ecy.wa.gov, visit <https://ecology.wa.gov/accessibility> for more information, by July 20, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: **Amending chapter 173-423 WAC, Low emission vehicles:** Washington is expanding our program by adopting California's more protective vehicle emission standards for new vehicles, starting with model year 2025 and later, sold in Washington. Motor vehicles are the largest source of air pollution in Washington. Transportation contributes about twenty-two percent of total air pollution and forty-five percent of greenhouse gas emissions throughout the state.

Washington's current program includes requirements for low emission vehicles:

- Passenger cars: Vehicles designed to transport up to twelve people.
- Light-duty trucks: Vehicles weighing less than eight thousand five hundred pounds.
- Medium-duty passenger vehicles: Vehicles weighing less than ten thousand pounds designed to transport people.

This rule making expands vehicle emission standards to include:

- Zero emission vehicle (ZEV) requirements that apply to passenger cars, light-duty trucks, and medium-duty vehicles (vehicles with a gross vehicle weight rating between eight thousand five hundred one and fourteen thousand pounds).
- Zero-emission vehicle (ZEV) requirements that apply to vehicles greater than eight thousand five hundred pounds gross vehicle weight rating.
- Low emission vehicle requirements that apply to medium-duty vehicles.

Zero emission vehicles (ZEV) - passenger cars, light-duty trucks, and medium-duty vehicles: The rule proposes to adopt California's ZEV emission standards that apply to passenger cars, light-duty trucks, and medium-duty vehicles (vehicles with a gross vehicle weight rating between eight thousand five hundred one and fourteen thousand pounds such as trucks, SUVs, and vans). This program will expand ZEV options for consumers to buy in Washington. Right now consumer ZEV choices are limited in Washington.

Automakers must meet a sales requirement, through a credit system, starting with model year 2025. The sales requirement means that out of the total number of new vehicles an automaker sells in Washington, about eight percent of those must meet zero emission vehicle standards. Automakers that do not meet their sales requirement can:

- Buy or trade credits from another automaker.

- Pay a penalty.

The rule does not provide credits for vehicles before model year 2025 that are sold in Washington. Current and projected ZEV sales in Washington show that demand is expected to meet the sales requirement of eight percent.

Vehicle technologies that earn credits to help automakers meet the ZEV requirements include:

- Battery-powered electric vehicles.
- Plug-in hybrid electric vehicles.
- Fuel cell electric vehicles - which run on compressed liquid hydrogen.

Zero-emission vehicles (ZEV) - vehicles greater than eight thousand five-hundred pounds gross vehicle weight rating: The rule proposes to adopt California's ZEV emission standards that apply to vehicles greater than eight thousand five hundred pounds gross vehicle weight rating. These are delivery vans, work trucks, long-haul trucks, drayage trucks, transit buses, garbage trucks, and other commercial work vehicles. California calls this the Advanced Clean Trucks Regulation. This program expands ZEV options for these vehicles for consumers to buy in Washington. Right now these ZEV options are limited.

Manufacturers must meet a sales requirement for Class 2b-8 vehicles starting with model year 2025. The sales requirement means that a certain percentage of these vehicles sold in Washington must be zero emission. Their annual ZEV sales gradually increase each year until 2035.

Manufacturers that do not meet their annual sales requirement must:

- Buy or trade credits from another truck manufacturer.
- Pay a penalty.
- Remove deficits within one year or pay an additional penalty.

Vehicle technologies that earn credits to help automakers meet the ZEV requirements include:

- Battery-powered electric vehicles.
- Plug-in hybrid electric vehicles.
- Fuel cell electric vehicles - which run on compressed liquid hydrogen.

Low emission vehicles - medium-duty vehicles: The rule proposes to adopt California's vehicle emission standards that apply to medium-duty vehicles with a gross vehicle weight rating between eight thousand five hundred-one and fourteen thousand pounds, such as trucks, SUVs, and vans. The rule expands Washington's program so it now includes California's complete low emission vehicles program. Currently, California and federal emission standards are the same for medium-duty vehicles.

Other changes: This rule making makes other edits identified or necessary to support the above items, the overall objectives of the statute or chapter, or the goals of the program.

The proposed rule:

- Changes the name of the rule, Clean vehicles program, to reflect the expanded scope of the program.

- Deletes sections where content is relocated to WAC 173-423-060 or information duplicates a California regulation adopted by reference:
 - WAC 173-423-050 Requirement to meet California vehicle emission standards.
 - WAC 173-423-080 Fleet average nonmethane organic gas (NMOG) and NMOG Plus NOx exhaust emission requirements, reporting and compliance.
 - WAC 173-423-090 Fleet average greenhouse gas exhaust emission requirements, reporting and compliance.
 - WAC 173-423-100 Manufacturer delivery reporting requirements.
 - WAC 173-423-110 Warranty requirements.
 - WAC 173-423-120 Recalls.
- Revises WAC 173-423-030 Incorporation by reference:
 - Changes section title to Adoption by reference.
 - Relocates adoption of California Code of Regulations to this section.
 - Links the adoption date of California Code of Regulations to the date in WAC 173-400-235(1).
 - Clarifies the meaning of terms in California's rules.
- Revises WAC 173-423-040 Definitions by adding, removing, and editing definitions for clarity.
- Revises WAC 173-423-070 Emission standards, warranty, recall and other California provisions adopted by reference:
 - Changes section title to low emission vehicles.
 - Relocates requirements for low emission vehicles located throughout the rule to this section and removes requirements that duplicate California's Code of Regulations.
 - Changes section number to WAC 173-423-060 because sections were deleted.
 - Edits requirements for clarity.
 - Deletes Table (1) and relocates adoption by reference of California Code of Regulations to WAC 173-423-030.

Amending WAC 173-400-025 Adoption of federal rules: The proposed rule:

- Updates the adoption date of federal rules in chapter 173-400 WAC from January 24, 2018, to June 22, 2021. Until we update this adoption date, we can only enforce the federal rules as they existed on January 24, 2018. We cannot enforce any federal rule changes made after that date.
- Excludes PSD and major new source review changes promulgated in 85 F.R. 74890 (November 24, 2020). EPA adopted less stringent emissions accounting requirements so the rule retains the pre-2020 requirements.
- Adopts by reference a new federal rule for existing municipal solid waste landfills in 40 C.F.R. Part 62, Subpart OOO.
- Moves the adoption date to its own subsection to reduce rule maintenance in WAC 173-423-030.
- Changes the section title to "Adoption by reference" to align with the section title of WAC 173-423-030. Using the same section title in both rules reduces confusion.

- Edits requirements for clarity.
- Makes other edits identified or necessary to support the above items, the overall objectives of the statute or chapter, or the goals of the program.

Reasons Supporting Proposal: See Purpose of the proposal.

Chapter 173-423 WAC reflects 2005 statutory authority (section 2, chapter 295, Laws of 2005) directing ecology to:

- Adopt California's vehicle emission standards for passenger cars, light-duty trucks, and medium-duty passenger vehicles.
- Exclude zero-emission vehicle requirements.

2020 Legislation (section 1005, chapter 143, Laws of 2020):

- Adopts the California vehicle emission standards.
- Directs ecology to adopt rules implementing California's vehicle emission standards in Title 13, including the ZEV program.
- Directs ecology to amend its rules to maintain consistency with California's rules and 42 U.S.C. Section 7507 (Section 177 of the Clean Air Act).

42 U.S.C. Section 7507 allows states to adopt and enforce California's vehicle emission standards if they are identical to the California standards. The Clean Air Act requires a state to provide manufacturers two-years' advance notice by vehicle model year. The rule proposes to start with model year 2025 vehicles which could be available starting January 1, 2024.

Statutory Authority for Adoption: Chapter 70A.30 RCW, Motor vehicle emission standards.

Statute Being Implemented: Chapter 70A.30 RCW, Motor vehicle emission standards.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: More information is available in the Determination of Nonsignificance and Environmental Checklist prepared to comply with the State Environmental Policy Act (SEPA). Refer to the rule-making web page for a link to these documents <https://ecology.wa.gov/Regulations-Permits/Laws-rules-rulemaking/Rulemaking/WAC-173-423>.

This rule making does not include California's Heavy-Duty Omnibus Regulation because the rule is not yet final. California's rule will update emission standards and other emission-related requirements for heavy-duty engines and vehicles (including long-haul trucks, drayage trucks, transit buses, garbage trucks, and other commercial work vehicles). Ecology intends to amend this rule again to maintain consistency with California's rules once California has adopted theirs.

Public information sessions: Ecology is holding two online public information sessions to explain the proposed rule. The agenda is a presentation, followed by a question-and-answer session. To protect everyone's health during the COVID-19 pandemic, we are only holding online meetings.

[Meeting on] Tuesday, July 13, 2021, at 1:30 - 3:00 p.m., webinar (online only), join online and see instructions

<https://watech.webex.com/watech/onstage/g.php?MTID=eaa3989f3fdcc882ec4a5dbf5f058a37d>. To hear the webinar better or to call in only, use your phone (instead of the computer) to call 1-855-929-3239.

[Meeting on] Thursday, July 15, 2021, at 6:00 - 7:30 p.m., webinar (online only), join online and see instructions <https://watech.webex.com/watech/onstage/g.php?MTID=e7b6ed27617dabf165f4f835efe25af2a>. To hear the webinar better or to call in only, use your phone (instead of the computer) to call 1-855-929-3239.

To ask for ADA accommodation, email Margaret Plummer at margaret.plummer@ecy.wa.gov or call 360-407-7112, 711 relay service, or TTY 877-833-6341, by July 8, 2021.

Name of Proponent: Department of ecology, governmental.

Name of Agency Personnel Responsible for Drafting: Elena Guilfoil, Lacey, 360-972-5166; Implementation and Enforcement: Dustin Watson, Lacey, 360-764-6785.

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

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 (5)(b)(v) exempts rules from a cost-benefit analysis when the content is explicitly and specifically dictated by statute. RCW 70A.30.010 directs ecology to adopt rules to implement the motor vehicle emission standards of the state of California, including the zero emission vehicle program. The law also directs ecology to amend its rules to maintain consistency with California's rules and 42 U.S.C. Section 7507 (Section 177 of the Clean Air Act). 42 U.S.C. Section 7507 allows a state to adopt and enforce vehicle emission standards if they are identical to California's standards.

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

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

June 22, 2021
Heather R. Bartlett
Deputy Director

AMENDATORY SECTION (Amending WSR 18-17-111, filed 8/16/18, effective 9/16/18)

WAC 173-400-025 Adoption ((of federal rules)) by reference. (1) Adoption by reference date: June 22, 2021.

(2) Federal rules mentioned in this rule are adopted as they exist on ((January 24, 2018)) the date in subsection (1) of this section. ((Adopted or adopted)) Adoption by reference means the federal rule applies as if it was copied into this rule.

(3) Exceptions to adopting 40 C.F.R. 51.165, 51.166, and 52.21 by reference. Ecology is not adopting the changes promulgated in 85 FR 74890 (November 24, 2020) so the following paragraphs replace the designated paragraphs.

(a) The following paragraphs replace the designated paragraphs of 40 C.F.R. 51.165 (a)(2)(ii)(F) and (G):

(i) 40 C.F.R. 51.165 (a)(2)(ii)(F): Hybrid test for projects that involve multiple types of emissions units. A significant

emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in paragraphs IV.I.1 (iii) through (iv) of this ruling as applicable with respect to each emissions unit, for each type of emissions unit equals or exceeds the significant amount for that pollutant (as defined in paragraph II.A.10 of this ruling).

(ii) 40 C.F.R. 51.165 (a)(2)(ii)(G) is not adopted by reference.

(b) The following paragraphs replace the designated paragraphs of 40 C.F.R. 51.166 (a)(7)(iv)(f) and (g):

(i) 40 C.F.R. 51.166 (a)(7)(iv)(f): Hybrid test for projects that involve multiple types of emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in paragraphs IV.I.1(iii) through (iv) of this ruling as applicable with respect to each emissions unit, for each type of emissions unit equals or exceeds the significant amount for that pollutant (as defined in paragraph II.A.10 of this ruling).

(ii) 40 C.F.R. 51.166 (a)(7)(iv)(f) is not adopted by reference.

(c) The following paragraphs replace the designated paragraph of Appendix S (Emission offset interpretive ruling) to 40 C.F.R. Part 51 in section IV.I.1.(v) and (iv):

(i) Section IV.I.1.(v): Hybrid test for projects that involve multiple types of emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in paragraphs IV.I.1(iii) through (iv) of this ruling as applicable with respect to each emissions unit, for each type of emissions unit equals or exceeds the significant amount for that pollutant (as defined in paragraph II.A.10 of this ruling).

(ii) Section IV.I.1.(iv) is not adopted by reference.

(d) The following paragraphs replace the designated paragraphs of 40 C.F.R. 52.21 (a)(2)(iv)(f) and (g):

(i) 40 C.F.R. 52.21 (a)(2)(iv)(f): Hybrid test for projects that involve multiple types of emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in paragraphs (a)(2)(iv) (c) through (d) of this section as applicable with respect to each emissions unit, for each type of emissions unit equals or exceeds the significant amount for that pollutant (as defined in paragraph (b)(23) of this section).

(ii) 40 C.F.R. 52.21 (a)(2)(iv)(g) is not adopted by reference.

(4) Adoption by reference. Municipal solid waste landfills that commenced construction on or before July 17, 2014, and have not been modified or reconstructed since July 17, 2014, must comply with the requirements in 40 C.F.R. Part 62, Subpart OOO (in effect on the date in subsection (1) of this section).

Chapter 173-423 WAC

~~((LOW EMISSION VEHICLES))~~ CLEAN VEHICLES PROGRAM

AMENDATORY SECTION (Amending WSR 12-24-033, filed 11/28/12, effective 12/29/12)

WAC 173-423-010 Purpose. The purpose of this chapter is to establish rules ~~((implementing the California motor vehicle emission standards adopted by the 2005 legislature and codified in chapters 70.120A and 46.16A RCW))~~ as authorized by RCW 70A.30.010.

AMENDATORY SECTION (Amending WSR 05-24-044, filed 11/30/05, effective 12/31/05)

WAC 173-423-020 Applicability. This chapter applies to all ~~((2009 and subsequent model year))~~ passenger cars, light-duty trucks ~~((and)),~~ medium-duty passenger vehicles, medium-duty vehicles, and heavy-duty vehicles registered, leased, rented or sold for use in ~~((the state of))~~ Washington, except as provided in WAC 173-423-060(~~;~~) Exemptions.

AMENDATORY SECTION (Amending WSR 05-24-044, filed 11/30/05, effective 12/31/05)

WAC 173-423-025 Effective date. This chapter is effective on January 1, 2006, provided the ~~((state of Oregon has adopted the California motor vehicle emission standards as provided in RCW 70.120A.010))~~ U.S. Environmental Protection Agency has granted a waiver under 42 U.S.C. Sec. 7543 for the California motor vehicle emission standards adopted by reference in this chapter.

AMENDATORY SECTION (Amending WSR 05-24-044, filed 11/30/05, effective 12/31/05)

WAC 173-423-030 ~~((Incorporation))~~ Adoption by reference. (1) This chapter ~~((incorporates))~~ adopts by reference ~~((certain sections of the))~~ California Code of Regulations, Title 13, ~~((relating to implementing the California motor vehicle emission standards in the state of Washington. Table 070(1) found in WAC 173-423-070 lists the sections of the California Code of Regulations, Title 13 incorporated by reference and the California effective date for each section))~~ sections 1900, 1956.8 (g) and (h), 1960.1, 1961, 1961.1 to 1961.3, 1962.2, 1962.3, 1963, 1963.1 to 1963.5, 1965, 1968.2, 1968.5, 1976, 1978, 2035 to 2040, 2046, 2109, 2111 to 2120, 2122 to 2133, 2135, 2141 to 2149, 2235, and Appendix A to Article 2.1 in section 2112.

(2) Adoption or adoption by reference means the rule applies as if it was copied into this rule. California Code of Regulations mentioned in this rule are adopted as they exist on June 22, 2021, or the adoption date in WAC 173-400-025 (1), whichever is later.

~~((2))~~ (3) Copies of the relevant sections of ((the)) California Code of Regulations((, Title 13 incorporated)) adopted by reference in this chapter are available on ecology's website or by contacting:

Washington State Department of Ecology

Air Quality Program
300 Desmond Drive
Lacey, ((Washington)) WA 98503
360-407-6800

~~((3))~~ (4) For purposes of applying the ~~((incorporated))~~ adopted sections of ~~((the))~~ California Code of Regulations ~~(; Title 13))~~ in Washington, unless the context requires otherwise:

(a) "California" means "Washington" ~~((unless otherwise specified in this chapter or clearly inappropriate.))~~;

(b) "CARB," "ARB," or "air resources board" means "ecology"; and

(c) "Executive officer" means "ecology."

AMENDATORY SECTION (Amending WSR 12-24-033, filed 11/28/12, effective 12/29/12)

WAC 173-423-040 Definitions and abbreviations.

The following definitions apply to the administration of this chapter. Any term that is not defined in this section ~~((shall))~~ must be as defined or described in ~~((the))~~ California Code of Regulations, Title 13, section 1900 or 1963, as applicable. Definitions in ~~((the))~~ California Code of Regulations, Title 13, section 1900 or 1963 will prevail if any discrepancy arises ~~((between them and those set forth in this section)).~~

(1) ~~((("Emission credits" are earned when a manufacturer's reported fleet average is less than the required fleet average. Credits are calculated according to formulas contained in the California Code of Regulations, Title 13, section 1961(e), 1961.1(b), 1961.2(c), and 1961.3(b), as appropriate.~~

~~((2) "Emission debits" are earned when a manufacturer's reported fleet average exceeds the required fleet average. Debits are calculated according to formulas contained in the California Code of Regulations, Title 13, section 1961(e), 1961.1(b), 1961.2(c), and 1961.3(b), as appropriate.~~

~~((3) "Fleet average greenhouse gas emission requirements" are generally referred to as limitations on greenhouse gas exhaust mass emission values from passenger cars, light-duty trucks and medium-duty passenger vehicles. The fleet average greenhouse gas emission requirements are set forth in CCR, Title 13, section 1961.1 and 1961.3, and incorporated herein by reference.~~

~~((4))~~ "Ecology" means the department of ecology.

(2) "Gross vehicle weight rating" or "GVWR" is the value specified by the manufacturer as the maximum design loaded weight of a single vehicle.

~~((5))~~ "Independent low volume manufacturer" is defined in the California Code of Regulations, Title 13, section 1900 and incorporated herein by reference.

~~((6))~~ "Intermediate volume manufacturer" is defined in the California Code of Regulations, Title 13, section 1900 and incorporated herein by reference.

(7) "Large volume manufacturer" is defined in the California Code of Regulations, Title 13, section 1900 and incorporated herein by reference.

(8)) (3) "Light-duty truck" ~~((is any 2000 and subsequent model motor vehicle certified to the standards in Title 13, CCR, section 1961 (a)(1) rated at 8,500 pounds gross vehicle weight or less, and any other motor vehicle rated at 6,000 pounds gross vehicle weight or less, which is designed pri-~~

~~marily for the purposes of transportation of property or is a derivative of such vehicle, or is available with special features enabling off-street or off-highway operation and use))~~ is defined as provided in California Code of Regulations, Title 13, section 1900.

~~((9))~~ (4) "Medium-duty passenger vehicle" ~~((MDPV))~~ is any medium-duty vehicle with a gross vehicle weight rating of less than 10,000 pounds that is designed primarily for the transportation of persons. The medium-duty passenger vehicle definition does not include any vehicle which:

(a) Is an "incomplete truck," i.e., is a truck that does not have the primary load-carrying device or container attached; or

(b) Has a seating capacity of more than twelve persons; or

(c) Is designed for more than nine persons in seating rearward of the driver's seat; or

(d) Is equipped with an open cargo area of 72.0 inches in interior length or more. A covered box not readily accessible from the passenger compartment will be considered an open cargo area for the purpose of this definition) is defined as provided in California Code of Regulations, Title 13, section 1900.

(5) "Medium-duty vehicle" is defined as provided in California Code of Regulations, Title 13, section 1900.

~~((10))~~ (6) "Model year" ~~((is))~~; Means the manufacturer's annual production period ((which)) that includes January 1st of a calendar year((-)), or if the manufacturer has no annual production period, ((("model year" is)) the calendar year. ((In the case of any)) The model year for a motor vehicle manufactured in two or more stages((; the time of manufacture shall be the date of completion of the chassis)) is the model year in which the chassis is completed, except for a vehicle subject to California Code of Regulations, Title 13, sections 1963 through 1963.5 (Advanced Clean Trucks): Is defined as provided in California Code of Regulations, Title 13, section 1963(c).

~~((11))~~ "Nonmethane organic gas" or "NMOG" is the sum of nonoxygenated and oxygenated hydrocarbons contained in a gas sample as measured in accordance with the "California Non-Methane Organic Gas Test Procedures," and incorporated herein by reference.

(12) "NMOG fleet average emissions" is a motor vehicle manufacturer's average vehicle emissions of all nonmethane organic gases from passenger cars and light-duty trucks in any model year delivered in Washington that are subject to this regulation.

~~((13))~~ (7) "Manufacturer" means an independent low volume manufacturer, intermediate volume manufacturer, large volume manufacturer, or a small volume manufacturer defined as provided in California Code of Regulations, Title 13, section 1900.

(8) "Passenger car" ~~((is any motor vehicle designed primarily for transportation of persons and having a design capacity of twelve persons or less))~~ is defined as provided in California Code of Regulations, Title 13, section 1900.

~~((14))~~ "Small volume manufacturer" is defined as set forth in the California Code of Regulations, Title 13, section 1900 and incorporated herein by reference.)

(9) "Zero-emission vehicle" or "ZEV" is defined as provided in California Code of Regulations, Title 13, section 1962.2(a).

AMENDATORY SECTION (Amending WSR 12-24-033, filed 11/28/12, effective 12/29/12)

WAC 173-423-060 Exemptions. The following vehicles are not subject to this chapter:

- (1) Military tactical vehicles;
- (2) Vehicles sold for registration and use out-of-state;
- (3) Previously registered vehicles where the mileage at the time of sale exceeds seven thousand five hundred miles, provided that for vehicle dealers, the mileage at the time of sales is determined by the odometer statement at the time the vehicle dealer acquired the vehicle;
- (4) Vehicles ~~(which)~~ that are only available for rent to a final destination outside of Washington;
- (5) Vehicles purchased by a nonresident prior to establishing residency in ~~((the state of))~~ Washington, regardless of the mileage on the vehicle;
- (6) Vehicles transferred by inheritance or as a result of divorce, dissolution or legal separation; ~~((and))~~
- (7) Motor vehicles purchased for use by a local police department, county sheriff, fire district, or the Washington state patrol; and
- (8) Motor vehicles acquired by a resident who is a member of the military stationed outside Washington pursuant to military orders.

AMENDATORY SECTION (Amending WSR 19-02-056, filed 12/27/18, effective 1/27/19)

WAC 173-423-070 ~~((Emission standards, warranty, recall and other California provisions adopted by reference.))~~ **Low emission vehicles.** ~~((Each manufacturer and each new 2009 and subsequent model year passenger car, light duty truck and medium duty passenger vehicle subject to this chapter shall comply with each applicable standard set forth in Table 070(1) and incorporated by reference:))~~

Table 070(1)
California Code of Regulations (CCR)
Title 13
Provisions Incorporated by Reference
Effective in Washington starting January 14, 2009

Title 13 CCR Division 3 Air Resources Board	Title	California Effective Date
Chapter 1 Motor Vehicle Pollution Control Devices		
Article 1 General Provisions		
Section 1900	Definitions	10/8/15
Article 2 Approval of Motor Vehicle Pollution Control Devices (New Vehicles)		

Title 13 CCR Division 3 Air Resources Board	Title	California Effective Date
Section 1956.8 (g) and (h)	Exhaust Emission Standards and Test Procedures – 1985 and Subsequent Model Heavy Duty Engines and Vehicles	10/16/17
Section 1960.1	Exhaust Emission Standards and Test Procedures – 1981 and through 2006 Model Passenger Cars, Light Duty and Medium-Duty Vehicles	12/31/12
Section 1961	Exhaust Emission Standards and Test Procedures – 2004 through 2019 Model Passenger Cars, Light Duty Trucks and Medium-Duty Vehicles	12/31/12
Section 1961.1	Greenhouse Gas Exhaust Emission Standards and Test Procedures – 2009 through 2016 Model Passenger Cars, Light Duty Trucks and Medium-Duty Vehicles	8/7/12
Section 1961.2	Exhaust Emission Standards and Test Procedures – 2015 and Subsequent Model Passenger Cars, Light Duty Trucks and Medium-Duty Vehicles	12/12/18
Section 1961.3	Greenhouse Gas Exhaust Emission Standards and Test Procedures – 2017 and Subsequent Model Passenger Cars, Light Duty Trucks and Medium-Duty Vehicles	12/12/18

Title 13 CCR Division 3 Air Resources Board	Title	California- Effective Date
Section 1965	Emission Control, Smog Index, and Environmental Performance Labels—1979 and Subsequent Model-Year Motor Vehicles	10/8/15
Section 1968.2	Malfunction and Diagnostic System Requirements—2004 and Subsequent Model-Year Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles and Engines	7/25/16
Section 1968.5	Enforcement of Malfunction and Diagnostic System Requirements for 2004 and Subsequent Model-Year Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles and Engines	7/25/16
Section 1976	Standards and Test Procedures for Motor Vehicle Fuel Evaporative Emissions	10/8/15
Section 1978	Standards and Test Procedures for Vehicle Refueling Emissions	10/8/15
Article 6 Emission Control System Warranty		
Section 2035	Purpose, Applicability and Definitions	11/9/07
Section 2036	Defects Warranty Requirements for 1979 through 1989 Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles; 1979 and Subsequent Model Motorcycles and Heavy-Duty Vehicles; and Motor Vehicle Engines Used in Such Vehicles	12/5/14

Title 13 CCR Division 3 Air Resources Board	Title	California- Effective Date
Section 2037	Defects Warranty Requirements for 1990 and Subsequent Model-Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles and Motor Vehicle Engines Used in Such Vehicles	12/5/14
Section 2038	Performance Warranty Requirements for 1990 and Subsequent Model-Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles and Motor Vehicle Engines Used in Such Vehicles	8/7/12
Section 2039	Emission Control System Warranty Statement	12/26/90
Section 2040	Vehicle Owner Obligations	12/26/90
Section 2046	Defective Catalyst	2/15/79
Chapter 2 Enforcement of Vehicle Emission Standards and Enforcement Testing		
Article 2 Enforcement of New and In-Use Vehicle Standards		
Section 2109	New Vehicle Recall Provisions	12/30/83
Article 2.1 Procedures for In-Use Vehicle Voluntary and Influenced Recalls		
Section 2111	Applicability	12/8/10
Section 2112	Definitions	12/5/14
	Appendix A to Article 2.1	12/5/14
Section 2113	Initiation and Approval of Voluntary and Influenced Emission-Related Recalls	1/26/95
Section 2114	Voluntary and Influenced Recall Plans	11/27/99
Section 2115	Eligibility for Repair	1/26/95
Section 2116	Repair Label	1/26/95
Section 2117	Proof of Correction Certificate	1/26/95

Title 13 CCR Division 3 Air Resources Board	Title	California Effective Date
Section 2118	Notification	1/26/95
Section 2119	Recordkeeping and Reporting Requirements	11/27/99
Section 2120	Other Requirements Not Waived	1/26/95
Article 2.2 Procedures for In-Use Vehicle Ordered Recalls		
Section 2122	General Provisions	12/8/10
Section 2123	Initiation and Notification of Ordered Emission-Related Recalls	1/26/95
Section 2124	Availability of Public Hearing	1/26/95
Section 2125	Ordered Recall Plan	1/26/95
Section 2126	Approval and Implementation of Recall Plan	1/26/95
Section 2127	Notification of Owners	1/26/95
Section 2128	Repair Label	1/26/95
Section 2129	Proof of Correction Certificate	1/26/95
Section 2130	Capture Rates and Alternative Measures	11/27/99
Section 2131	Preliminary Tests	1/26/95
Section 2132	Communication with Repair Personnel	1/26/95
Section 2133	Recordkeeping and Reporting Requirements	1/26/95
Section 2135	Extension of Time	1/26/95
Article 2.4 Procedures for Reporting Failure of Emission-Related Components		
Section 2141	General Provisions	12/8/10
Section 2142	Alternative Procedures	2/23/90
Section 2143	Failure Levels Triggering Recall	11/27/99
Section 2144	Emission Warranty Information Report	11/27/99
Section 2145	Field Information Report	8/7/12
Section 2146	Emissions Information Report	11/27/99

Title 13 CCR Division 3 Air Resources Board	Title	California Effective Date
Section 2147	Demonstration of Compliance with Emission Standards	12/5/14
Section 2148	Evaluation of Need for Recall	11/27/99
Section 2149	Notification and Subsequent Action	2/23/90
Chapter 4.4 Specifications for Fill Pipes and Openings of Motor Vehicle Fuel Tanks		
Section 2235	Requirements	8/8/12))

(1) **Requirement to meet California vehicle emission standards.** All vehicles subject to this chapter must be certified to the standards adopted by reference in WAC 173-423-030 to be registered, leased, rented, licensed, or sold for use in Washington:

(a) Starting with model year 2009: Passenger car, light-duty truck, or medium-duty passenger vehicle; and

(b) Starting with model year 2025: Medium-duty vehicle.

(2) **Fleet average emissions - Nonmethane organic gas (NMOG) plus oxides of nitrogen exhaust.**

(a) Effective model year 2009 through 2014, except as provided in this subsection, each motor vehicle manufacturer's NMOG fleet average emissions from passenger cars and light-duty trucks delivered for sale in Washington must not exceed the fleet average NMOG exhaust emission requirement in California Code of Regulations, Title 13, section 1961(b). For the 2014 model year only, a manufacturer may comply with the fleet average NMOG + NOx values in (b) of this subsection in lieu of complying with the NMOG fleet average emissions in this subsection. A manufacturer must either comply with the NMOG + NOx fleet average requirements for both its PC/LDT1 fleet and its LDT2/MDPV fleet or comply with the NMOG fleet average requirements for both its PC/LDT1 fleet and its LDT2/MDPV fleet. A manufacturer must calculate its fleet average NMOG + NOx values using the applicable full useful life standards.

(b) Starting with model year 2015, a motor vehicle manufacturer must comply with the fleet average nonmethane organic gas plus oxides of nitrogen emission values as provided in California Code of Regulations, Title 13, section 1961.2(b). Compliance must be based on the number of vehicles subject to this regulation delivered for sale in Washington.

(c) Emission credits and debits may be accrued and used as provided in California Code of Regulations, Title 13, section 1961.2(c).

(d) Each manufacturer must submit a report to ecology by March 1st of the calendar year containing the fleet average emissions for the model year that ended most recently. The report must follow California Code of Regulations, Title 13,

section 1961.2 and must be in the same format used to report the information to the California air resources board.

(e) If a report submitted by the manufacturer under (c) of this subsection demonstrates that the manufacturer does not comply with the fleet average emission standard, the manufacturer must submit to ecology within sixty days a fleet average enforcement report. The fleet average enforcement report must:

(i) Describe how the manufacturer intends to equalize any accrued debits, as required in California Code of Regulations, Title 13, section 1961.2 (c)(3):

(ii) Identify all vehicle models delivered for sale in Washington, their corresponding certification standards, and the percentage of each model delivered for sale in Washington and California in relation to total fleet sales in the respective state:

(iii) Describe how the manufacturer plans to achieve compliance with the fleet average in future model years.

(3) Fleet average emissions - Greenhouse gas exhaust.

(a) Starting with model year 2009, a motor vehicle manufacturer must comply with the emission standards, fleet average greenhouse gas exhaust emission requirements, and other requirements provided in California Code of Regulations, Title 13, sections 1961.1 and 1961.3.

(b) Emissions credits and debits may be accrued and used in accordance with California Code of Regulations, Title 13, sections 1961.1(b) and 1961.3(b).

(c) Greenhouse gas vehicle test groups that are certified under California Code of Regulations, Title 13, section 1961.1(a)(1)(B)2.a in California may receive equivalent credit if delivered for sale and use in Washington. A manufacturer must submit to ecology the data in California Code of Regulations, Title 13, section 1961.1(a)(1)(B)2.a.i to receive this credit.

(d) Each manufacturer must submit a report to ecology by March 1st that includes end-of-model year data calculating the fleet average greenhouse gas emissions for the model year that has just ended. The report must include the number of greenhouse gas vehicle test groups, delineated by model type, certified pursuant to California Code of Regulations, Title 13, sections 1961.1 and 1961.3. The report must follow the procedures in California Code of Regulations, Title 13, sections 1961.1 and 1961.3 and must be in the same format used to report this information to the California air resources board.

(e) If the report submitted by the manufacturer under this subsection demonstrates that the manufacturer does not comply with the fleet average emission standards, the manufacturer must submit to ecology within sixty days a fleet average enforcement report. The fleet average enforcement report must:

(i) Describe how the manufacturer intends to equalize any accrued debits, as required in California Code of Regulations, Title 13, sections 1961.1(b) and 1961.3(b), as appropriate.

(ii) Identify all vehicle models delivered for sale in Washington, their corresponding certification standards, and the percentage of each model delivered for sale in Washington and California in relation to total fleet sales in the respective state.

(iii) Describe how the manufacturer plans to achieve compliance with the fleet average in future model years.

(4) Manufacturer delivery reporting requirements.

(a) The manufacturer must submit to ecology one copy of the California executive order and certificate of conformity for certification of new motor vehicles for each engine family to be sold in Washington within thirty days of ecology's request. If these reports are available electronically, the manufacturer must send the record in an electronic format acceptable to ecology.

(b) Commencing with the 2009 model year and prior to the beginning of each model year, upon request, each manufacturer must submit to ecology a list of all models of medium-duty vehicles and medium-duty passenger vehicles that will be delivered to Washington dealers.

(c) Upon request, each manufacturer must report to ecology the vehicle identification numbers (VIN) of each passenger car, light-duty truck, medium-duty passenger vehicle, and medium-duty vehicle delivered to each Washington dealer that is not certified to California emission standards.

(d) For the purposes of determining compliance with this chapter, ecology may require a vehicle manufacturer to submit documentation ecology deems necessary to the effective administration and enforcement of this chapter, including all certification materials submitted to the California air resources board.

(5) Warranty requirements.

(a) For all 2009 and subsequent model year vehicles subject to the provisions of this chapter, each manufacturer must provide, to the ultimate purchaser and each subsequent purchaser, a warranty that complies with the requirements in California Code of Regulations, Title 13, sections 2035 through 2038, 2040, and 2046.

(b) For all 2009 and subsequent model year vehicles subject to the provisions of this chapter, each manufacturer must include the emission control system warranty statement that complies with the requirements in California Code of Regulations, Title 13, section 2039. Manufacturers may modify this statement as necessary to inform Washington vehicle owners of the applicability of the warranty. The manufacturer must provide a telephone number appropriate for Washington residents.

(c) All manufacturers must submit to ecology failure of emission-related components reports as defined in California Code of Regulations, Title 13, section 2144 for vehicles subject to this chapter. For purposes of compliance with this requirement, manufacturers may submit copies of the failure of emission-related components reports that are submitted to the California air resources board, in lieu of submitting reports for vehicles subject to this chapter. Manufacturers may discontinue submitting these reports if notified by ecology.

NEW SECTION

WAC 173-423-075 Zero-emission vehicle standards.
(1) Requirement to meet California vehicle emission standards - Passenger cars, light-duty trucks, and medium-duty vehicles.

(a) Applicability. Starting with model year 2025, a manufacturer's sales fleet of passenger cars, light-duty trucks, and medium-duty vehicles delivered for sale or lease in Washington must comply with California Code of Regulations, Title 13, sections 1962.2 and 1962.3, adopted by reference in WAC 173-423-030.

(b) Reporting requirements. Beginning with model year 2025, a manufacturer must submit a report to ecology for each on-road vehicle produced and delivered for sale in Washington for each model year as required by California Code of Regulations, Title 13, section 1962.3.

(c) ZEV credits. New vehicles delivered for sale in Washington before model year 2025 cannot earn ZEV credits.

(2) Requirement to meet California vehicle emission standards - On-road vehicles over 8,500 GVWR. (California advanced clean trucks regulation)

(a) Applicability. Starting with model year 2025, any manufacturer that certifies on-road vehicles over 8,500 pounds GVWR for sale or lease in Washington must comply with California Code of Regulations, Title 13, sections 1963 through 1963.5, adopted by reference in WAC 173-423-030.

(b) Reporting requirements. Beginning with model year 2025, a manufacturer must submit a report to ecology for each on-road vehicle produced and delivered for sale in Washington for each model year as required by California Code of Regulations, Title 13, section 1963.4.

AMENDATORY SECTION (Amending WSR 05-24-044, filed 11/30/05, effective 12/31/05)

WAC 173-423-130 Surveillance. (1)~~((The department of))~~ Ecology may inspect new and used motor vehicles and related records for the purposes of determining compliance with the requirements of this chapter. ~~((Department of))~~ Ecology inspections ~~((shall))~~ **must** occur during regular business hours and on any premises owned, operated or used by any dealer or rental car agency.

(2) For the purposes of determining compliance with this chapter, ~~((the department of))~~ ecology may require ~~((any))~~ a vehicle dealer or rental car agency to submit ~~((any))~~ documentation ~~((the department of))~~ ecology deems necessary to the effective administration and enforcement of this chapter. This provision does not require creation of new records.

AMENDATORY SECTION (Amending WSR 05-24-044, filed 11/30/05, effective 12/31/05)

WAC 173-423-140 Enforcement. Any person who violates any provision of this chapter ~~((shall be))~~ **is** liable for a civil penalty not to exceed five thousand dollars per vehicle. Penalties provided in this section ~~((shall))~~ **are to** be imposed pursuant to RCW 43.21B.300.

AMENDATORY SECTION (Amending WSR 05-24-044, filed 11/30/05, effective 12/31/05)

WAC 173-423-150 Severability. Each section of this regulation ~~((shall be deemed))~~ **is intended to be** severable, and in the event that any section of this regulation is held

invalid, the remainder ~~((shall))~~ **is intended to** continue in full force and effect.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 173-423-050 Requirement to meet California vehicle emission standards.

WAC 173-423-080 Fleet average nonmethane organic gas (NMOG) and NMOG Plus NO_x exhaust emission requirements, reporting and compliance.

WAC 173-423-090 Fleet average greenhouse gas exhaust emission requirements, reporting and compliance.

WAC 173-423-100 Manufacturer delivery reporting requirements.

WAC 173-423-110 Warranty requirements.

WAC 173-423-120 Recalls.

WSR 21-13-161

PROPOSED RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed June 22, 2021, 5:00 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-10-047.

Title of Rule and Other Identifying Information: Adding WAC 192-500-200 Pandemic leave assistance, 192-510-095 How will certain moneys owed to the trust be considered when calculating the premium rate?, 192-530-100 Are voluntary plans required to pay pandemic leave assistance benefits?, 192-560-011 What small business grants are available under pandemic leave assistance? and 192-610-100 What is the attestation required for an employee claiming pandemic leave assistance?; and amending WAC 192-610-035 Documenting a family relationship.

Hearing Location(s): On July 27, 2021, at 9:00 a.m., Microsoft TEAMS. Join online, link available at wa.gov/rulemaking under "Upcoming Meetings." Join by phone 564-999-2000, PIN 204472260#. Hearing will be held remotely due to COVID-19.

Date of Intended Adoption: July 29, 2021.

Submit Written Comments to: April Amundson, Employment Security Department, P.O. Box 9046, Olympia, WA 98507-9046, email rules@esd.wa.gov, by July 27, 2021.

Assistance for Persons with Disabilities: Contact Teresa Eckstein, state EO officer, phone 360-480-5708, TTY 711, email Teckstein@esd.wa.gov, by July 20, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The rules are necessary to align the paid family and medical leave program with new requirements created by the state legislature in the

2021 legislative session, specifically regarding the passage of HB 1073 and SB 5097.

Reasons Supporting Proposal: Adopting the rules will provide enhanced direction to the public. Failing to do so will create confusion on changes to the program's operation in light of the new statutory requirements.

Statutory Authority for Adoption: RCW 50A.05.060.

Statute Being Implemented: Chapter 109, Laws of 2021 (HB 1073), and chapter 232, Laws of 2021 (SB 5097).

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

Name of Proponent: Employment security department, leave and care division, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: April Amundson, Lacey, Washington, 360-485-2816.

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

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

WAC Section	Section Title	Exempting reason	Exempting statute(s)
WAC 192-500-200	Pandemic leave assistance.	The rule is interpretive and sets forth the agency's interpretation of statutory provisions.	RCW 34.05.328 (5)(c)(ii)
WAC 192-510-095	How will certain moneys owed to the trust be considered when calculating the premium rate?	The rule relates only to internal governmental operations that are not subject to violation by a nongovernment party.	RCW 34.05.328 (5)(b)(ii)
WAC 192-530-100	Are voluntary plans required to pay pandemic leave assistance benefits?	The rule is interpretive and sets forth the agency's interpretation of statutory provisions.	RCW 34.05.328 (5)(c)(ii)
WAC 192-560-011	What small business grants are available under pandemic leave assistance?	The rule adopts or incorporates by reference without material change Washington state statutes; and is a rule the content of which is explicitly and specifically dictated by statute.	RCW 34.05.328 (5)(b)(iii); 34.05.328 (5)(b)(v)
WAC 192-610-035	Documenting a family relationship.	The rule corrects references and clarifies language without changing the effect of the rule.	RCW 34.05.328 (5)(b)(iv)
WAC 192-610-100	What is the attestation required for an employee claiming pandemic leave assistance?	The rule adopts or incorporates by reference without material change Washington state statutes; and is a rule the content of which is explicitly and specifically dictated by statute.	RCW 34.05.328 (5)(b)(iii); 34.05.328 (5)(b)(v)

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

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; and rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Explanation of exemptions:

WAC Section	Section Title	Exempting reason	Exempting statute(s)
WAC 192-510-095	How will certain moneys owed to the trust be considered when calculating the premium rate?	The rule relates only to internal governmental operations that are not subject to violation by a nongovernment party.	RCW 34.05.310 (4)(b)
WAC 192-560-011	What small business grants are available under pandemic leave assistance?	The rule adopts or incorporates by reference without material change Washington state statutes; and is a rule the content of which is explicitly and specifically dictated by statute.	RCW 34.05.310 (4)(c); RCW 34.05.310 (4)(e)
WAC 192-610-035	Documenting a family relationship.	The rule corrects references and clarifies language without changing the effect of the rule.	RCW 34.05.310 (4)(d)
WAC 192-610-100	What is the attestation required for an employee claiming pandemic leave assistance?	The rule adopts or incorporates by reference without material change Washington state statutes; and is a rule the content of which is explicitly and specifically dictated by statute.	RCW 34.05.310 (4)(c); RCW 34.05.310 (4)(e)

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. WAC 192-500-200 serves as a general definition of the grant established by the passage of HB 1073 and acts as a reference point to establish the scope of all related rules. This rule creates no costs for employers. WAC 192-530-100 exempts voluntary plan employers from grant liability. This rule creates no costs for employers.

June 22, 2021
 April Amundson
 Policy and Rules Manager
 Leave and Care Division

NEW SECTION

WAC 192-500-200 Pandemic leave assistance. (1) "Pandemic leave assistance" is a temporary grant authorized by the legislature that is only available for employees who:

(a) Do not meet the eight hundred twenty hours threshold in the qualifying period defined in RCW 50A.05.010; and

(b) Are unable to do so due to the impacts of the COVID-19 pandemic.

(2) A pandemic leave assistance qualifying period is either:

(a) The first through fourth completed calendar quarters of 2019; or

(b) If eligibility is not established, the second through fourth completed calendar quarters of 2019 and first completed calendar quarter of 2020.

(3) Pandemic leave assistance is only available for claim years beginning between January 1, 2021, and March 31, 2022.

(4) Employees who receive pandemic leave assistance are subject to all rights and responsibilities of family or medical leave taken under Title 50A RCW.

(5) Employers with employees who receive pandemic leave assistance are subject to all rights and responsibilities associated with an employee's family or medical leave under Title 50A RCW.

NEW SECTION

WAC 192-510-095 How will certain moneys owed to the trust be considered when calculating the premium rate? For the purposes of premium rate calculation under RCW 50A.10.030(6), any benefit moneys that have been paid to employees, but have not yet been reimbursed pursuant to section 4, chapter 232, Laws of 2021 (SB 5097), will be included in the balance of the family and medical leave insurance account.

NEW SECTION

WAC 192-530-100 Are voluntary plans required to pay pandemic leave assistance benefits? (1) Voluntary plans are not required to pay pandemic leave assistance benefits to employees.

(2) Employees eligible for pandemic leave assistance who work for an employer with an approved voluntary plan may apply to the state for benefits.

NEW SECTION

WAC 192-560-011 What small business grants are available under pandemic leave assistance? (1) An employer may apply for one small business assistance grant based on an employee taking leave under pandemic leave assistance.

(2) An application for a small business grant for an employee taking leave under pandemic leave assistance does not count toward an employer's maximum number of applications for small business grants permitted under RCW 50A.24.010(4).

(3) An employer may not use additional grant applications permitted under RCW 50A.24.010(4) to receive more than one grant for an employee taking leave under pandemic leave assistance.

(4) The application process for a small business grant for an employee taking leave under pandemic leave assistance must follow the same process as described in WAC 192-560-020.

AMENDATORY SECTION (Amending WSR 19-08-016, filed 3/22/19, effective 4/22/19)

WAC 192-610-035 Documenting a family relationship. The department may request documentation or information from the employee that ~~((is sufficient to establish the familial relationship))~~ sufficiently demonstrates that the individual for whom leave is being taken is a "family member" as defined by RCW 50A.05.010 for the purposes of benefit eligibility and program integrity.

NEW SECTION

WAC 192-610-100 What is the attestation required for an employee claiming pandemic leave assistance? (1) Employees applying for pandemic leave assistance will be required to attest in a manner approved by the department that they did not meet the hours worked threshold for eligibility under RCW 50A.15.010 or 50A.30.020(1) due to reasons related to the COVID-19 pandemic.

(2) Employees must attest that they were not:

(a) Separated from employment due to misconduct; or

(b) Voluntarily separated from employment for reasons not related to the COVID-19 pandemic.

EXAMPLE 1

An employee had a part time job in 2019 resulting in 1,000 hours reported to the department for that calendar year. The employee's workplace closed in 2020 due to the COVID-19 pandemic and the employee was unable to find additional work. The employee experiences a qualifying event in June, 2021, and applies in August, 2021. The department determines that the employee would not qualify under the normal qualifying period but would qualify under the pandemic leave assistance qualifying period. As a part of the application process, the employee must attest that the lack of qualifying hours for their normal qualifying period is attributable to the COVID-19 pandemic before they can be approved.

EXAMPLE 2

An employee had a part time job in the second, third, and fourth quarters of 2019 and the first quarter of 2020 resulting in 800 hours reported to the department for those four quarters. The employee's child care facility was closed in April, 2020, due to the COVID-19 pandemic. The employee had to end their employment to care for their child. The employee

experiences a qualifying event in August, 2021, and applies for leave. The department determines that the employee would not qualify under the normal qualifying period but would qualify under the pandemic leave assistance qualifying period. As a part of the application process, the employee must attest that the lack of qualifying hours for their normal qualifying period is attributable to the COVID-19 pandemic before they can be approved.

WSR 21-13-163
PROPOSED RULES
HEALTH CARE AUTHORITY

[Filed June 23, 2021, 8:27 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-03-068.

Title of Rule and Other Identifying Information: WAC 182-509-0365 MAGI income—Self-employment income, 182-509-0370 MAGI income—How self-employment income is counted, and 182-509-0375 MAGI income—Lump sums.

Hearing Location(s): On July 27, 2021, at 10:00 a.m. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the agency will not provide a physical location for this hearing. This promotes social distancing and the safety of the citizens of Washington state. A virtual public hearing, without a physical meeting space, will be held. To attend the virtual public hearing, you must register at the following link https://zoom.us/webinar/register/WN_YBsAHTh2zJLDCJYIPhw. After registering, you will receive a confirmation email containing information about joining the webinar.

Date of Intended Adoption: Not sooner than July 28, 2021.

Submit Written Comments to: Health Care Authority (HCA), Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by July 27, 2021.

Assistance for Persons with Disabilities: Contact Amber Loughheed, phone 360-725-1349, fax 360-586-9727, telecommunication[s] relay service 711, email amber.loughheed@hca.wa.gov, by July 16, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is making amendments to update these rules and align them with the Internal Revenue Code.

Changes to WAC 182-509-0365: Subsection (1) includes examples of self-employment business structures, and new subsection (2) states that self-employment income is counted as earned income and lists exceptions.

In subsection (3)(d), the agency added several tax schedules that a self-employed person may use to report income, to align with the IRS Code.

In subsection (5), the agency removed examples of self-employment, as these fall under the more general income descriptions in subsection (1).

The agency removed former **subsection (6)** regarding American Indian/Alaska Native excluded income because this is already addressed in WAC 182-509-0340.

The agency removed former **subsection (7)** regarding job duties not considered to be self-employed, which was redundant with proposed subsections (2) and (3). Former **subsection (8)** has been moved to subsection (2).

Changes to WAC 182-509-0370: In subsections (1) and (2), the agency removed language about working at a business long enough to file a tax return because some people may not be required to file, regardless of the time worked.

The agency removed **subsection (3)**, which was not needed with the new language in subsections (1) and (2).

Changes to WAC 182-509-0375: The agency revised subsection (2) to clarify when a lump sum payment is counted as income.

The agency removed **subsection (4)** regarding lump sums received by members of federally recognized tribes because this income is already addressed in WAC 182-509-0340.

The agency also removed **subsection (5)** regarding tax refunds because this income is already addressed in WAC 182-509-0320.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Melinda Froud, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1408; Implementation and Enforcement: Mark Westenhaver, P.O. Box 45543, Olympia, WA 98504-2716, 360-725-1324.

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

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

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

June 23, 2021

Wendy Barcus

Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-01-021, filed 12/9/13, effective 1/9/14)

WAC 182-509-0365 MAGI income—Self-employment income. For purposes of determining eligibility for modified adjusted gross income (MAGI)-based Washington apple health ((~~WAH~~)) (see WAC 182-509-0300):

(1) Self-employment income is income earned by a person from running a business, performing a service, selling items that are made, or reselling items with the intent to make a profit, after deducting allowable IRS self-employment expenses. This income can be earned if the person is carrying on a trade or business as a sole proprietor or an independent contractor; a member of a partnership that carries on a trade or business; or otherwise in business for themselves (including a part-time business). Examples of self-employment business structures include, but are not limited to:

(a) Sole proprietorship - An unincorporated business owned by one person.

(b) Partnership - A relationship between two or more people who conduct a trade or business.

(c) Corporation - An entity that conducts business, realizes net income or loss, pays taxes, and distributes profits to shareholders.

(d) S corporation - Similar to a corporation, but this structure passes corporate income, losses, deductions, and credits through to the shareholders for federal tax purposes.

(e) Limited liability company (LLC) - An entity formed by one or more people or entities through a special written agreement that details the organization of the LLC.

(2) Self-employment income is counted as earned income as described in WAC 182-509-0330, except when it is earned by a child or tax dependent and the income is below the filing threshold, as described in WAC 182-509-0360(1).

(3) A person is considered to be self-employed if they earn income without having an employer/employee relationship with the individual who pays the income. ~~((Factors to consider are))~~ Self-employed people do not work for a specific employer who pays them a consistent salary or wage. Factors to consider are whether:

(a) The person has primary control or has the right to control what they do and how they do their job;

(b) The business aspects of the person's job are controlled by the person and not the payer (this includes things like how the person is paid, whether expenses are reimbursed, or who provides tools/supplies);

(c) The person has a ~~((written))~~ contract stating that ~~((he or she is))~~ they are an independent contractor; or

(d) The person reports ~~((his or her))~~ their income using one or more IRS schedules or forms that include, but are not limited to:

(i) Schedule C((?));

(ii) Schedule C-EZ((?));

(iii) Schedule E;

(iv) Schedule F;

(v) Schedule K-1((,-?));

(vi) Schedule SE;

(vii) Form 940;

(viii) Form 941;

(ix) Form 942;

(x) Form 943;

(xi) Form 1065; or

(xii) Form 1120.

~~((3))~~ (4) A person is considered to have an employer/employee relationship when:

(a) The individual the person provides services for has primary control of how the work is done; or

(b) The person receives an IRS Form W-2 to report the income that is earned.

~~((4))~~ (5) Self-employment does not have to be a licensed business for a person's business or activity to qualify as self-employment. ~~((Some examples of self-employment are:~~

~~(a) Child care that requires a license under chapter 74.15 RCW;~~

~~(b) Driving a taxi cab;~~

~~(c) Farming/fishing;~~

~~(d) Odd jobs such as mowing lawns, house painting, gutter cleaning, or car care;~~

~~(e) Running lodging for roomers or boarders. Roomer income includes money paid to a person for shelter costs by someone not included in the person's household who resides in the same home when:~~

~~(i) The person owns or is buying his or her residence; or~~

~~(ii) The person rents all or a part of the residence and the total rent charged to all others in the home is more than the total rent obligation of the person.~~

~~(f) Running an adult family home;~~

~~(g) Providing services such as a massage therapist or a professional escort;~~

~~(h) Retainer fees to reserve a bed for a foster child;~~

~~(i) Selling home-made items or items that are supplied to the individual;~~

~~(j) Selling or donating biological products such as providing blood or reproductive material for profit;~~

~~(k) Working as an independent contractor; and~~

~~(l) Running a business or trade either as a sole proprietorship or in a partnership.~~

~~(5))~~ (6) A person must keep records of ~~((his or her))~~ their self-employment income and deductions and provide this information to the agency upon request.

~~((6) The agency does not count receipt of money by a member of a federally recognized tribe from exercising federally protected rights or extraction of exempt resources as self-employment income (such as fishing, shell fishing, or selling timber from protected tribal land). This is considered conversion of a resource. See WAC 182-509-0340.~~

(7) A person who is an employee of a company or other individual who does the activities listed in subsection (4) of this section as a part of his or her job duties is not considered to be self-employed.

~~(8) Self-employment income is counted as earned income as described in WAC 182-509-0330.)~~

AMENDATORY SECTION (Amending WSR 14-01-021, filed 12/9/13, effective 1/9/14)

WAC 182-509-0370 MAGI income—How self-employment income is counted. For purposes of determining eligibility for modified adjusted gross income (MAGI)-based Washington apple health ~~((WAH))~~ ~~((see WAC 182-509-0300))~~:

(1) ~~If the person has worked long enough at the business to file a federal tax return for the previous year and it represents his or her current income, the agency determines self-employment income by using the income and deductions claimed on the previous year's tax return.~~

~~(2) If the person has not worked long enough at the business to file a federal tax return in the previous year, the agency permits a determination of monthly self-employment income by:~~

~~(a) Adding together gross self-employment income and any profit made from selling business property or equipment over the period of time the business has been in operation within the last year;~~

~~(b) Subtracting business expenses and income deduction expenses allowed by the Internal Revenue Service that the person would be entitled to if they were filing a full year return; and~~

~~(c) Averaging the income to come up with a monthly amount based on the period of time the business has been in operation within the last year.~~

~~(3) If the person's current income does not represent his or her projected income as evidenced by clear indications of future changes in income, the agency permits the person to estimate a monthly amount by averaging income), the medicaid agency counts self-employment income by:~~

~~(1) Adding together gross self-employment income and any profit made from selling business property or equipment over a period of time; and~~

~~(2) Subtracting business expenses and income deductions allowed by the Internal Revenue Service that the person would be entitled to if they were filing a federal tax return and;~~

~~(a) Averaging the income to come up with a monthly amount based on the period of time the business has been in operation within the last year; or~~

~~(b) Averaging the income over a representative period of time if the current income does not represent the person's projected income as shown by clear indications of future changes in income; or~~

~~(c) By averaging the self-employed income and deductions claimed on the previous year's tax return over a representative period of time.~~

AMENDATORY SECTION (Amending WSR 14-01-021, filed 12/9/13, effective 1/9/14)

WAC 182-509-0375 MAGI income—Lump sums.

For purposes of determining eligibility for modified adjusted gross income (MAGI)-based Washington apple health ((WAH)) (see WAC 182-509-0300):

(1) A lump sum payment is money that a person receives but does not expect to receive on a continuing basis, such as an insurance settlement.

(2) ((Any portion of a lump sum payment that is awarded for wrongful death, personal injury, damage, or loss of property is excluded from income.

(3) Any remaining portion of) A lump sum payment is only counted as income if it is received in the month of application, ((unless it)) and it otherwise qualifies as ((non-counted)) countable income under another rule((, and with the exception of subsections (4) and (5) of this section.

(4) Receipt of a lump sum by a member of a federally recognized tribe from exercising federally protected rights or extraction of exempt resources is considered an exempt

resource in the month of receipt and is not budgeted as income.

(5) Federal, state and local tax refunds (including any interest and penalties) and earned income tax lump sums are not counted as income).

**WSR 21-13-165
PROPOSED RULES
GAMBLING COMMISSION**

[Filed June 23, 2021, 8:46 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-15-154.

Title of Rule and Other Identifying Information: Repealing WAC 230-03-408 Applying for sports wagering prelicensing investigation, 230-05-101 Implementation of new permit and license fees, and 230-16-005 Transporting, displaying, and selling gambling equipment at trade shows; amending WAC 230-03-035 Applying for a license, 230-03-040 Signing the application, 230-03-045 Defining substantial interest holder, 230-03-060 Fingerprinting, 230-03-065 Spouses must also be qualified, 230-03-070 Training required for licensing, 230-03-075 Withdrawing your application, 230-03-195 Additional information required from manufacturer ~~and~~, distributor, and sports wagering vendor license applicants, 230-03-200 Defining "gambling equipment," 230-03-320 Substantial interest holders not required to be licensed as representatives, 230-03-330 Representing one or more licensed businesses, 230-03-335 Representatives must not work before receiving a license, 230-05-110 Defining "gross gambling receipts rate," 230-05-112 Defining "gross gambling receipts," 230-05-120 Paying annual license fee, 230-05-124 Quarterly license reports and quarterly license fees, 230-05-125 Report gross gambling receipts on the quarterly license report, 230-05-126 Online filing and payments required with waivers available upon request for good cause, 230-05-170 Fees for other businesses, 230-05-175 Individual license fees, 230-06-030 Restrictions and conditions for gambling promotions, 230-06-050 Review of electronic or mechanical gambling equipment, 230-06-054 Notification of electronic or mechanical gambling equipment malfunctions, 230-06-082 Manufacturers, distributors, gambling service suppliers, sports wagering vendors, linked bingo prize providers, and call centers for enhanced raffles reporting changes in licensed employees, 230-06-110 Buying, selling, or transferring gambling equipment and 230-06-120 Selling or transferring gambling equipment when no longer licensed; and new WAC 230-03-196 Additional information required for sports wagering vendors, 230-03-229 Applying for a major sports wagering vendor license, 230-03-231 Applying for a mid-level sports wagering vendor license, 230-03-233 Applying for an ancillary sports wagering vendor license, 230-03-234 Sports wagering vendor applicants and associated entities in their corporate structure, 230-03-311 Applying for a major sports wagering vendor representative license, 230-03-312 Applying for a mid-level sports wagering vendor representative license, 230-03-313 Applying for an ancillary sports wagering vendor representa-

tive license, 230-06-084 Submitting sports wagering related contracts and agreements for review, 230-06-116 Transporting, displaying, and selling gambling equipment at trade shows, 230-19-005 Sports wagering definitions, 230-19-010 Sports wagering vendors must ensure sports wagering vendor representatives are licensed, 230-19-015 Accounting records for sports wagering vendors, 230-19-020 Sales invoices for sports wagering vendors, 230-19-025 Sales journals for sports wagering vendors, 230-19-030 Authorized sports wagering menu, 230-19-035 Sports wagering integrity, 230-19-040 Integrity monitoring provider requirements, 230-19-045 Sports wagering system requirements, 230-19-050 Geofence and geolocation requirements, 230-19-055 Sports wagering account requirements, and 230-19-060 Records retention for sports wagering vendors.

Decodified and recodified:

Old WAC Number	New WAC Number
230-03-230	230-03-226
230-03-232	230-03-227

Hearing Location(s): On July 28, 2021, at 9:00 a.m., at Washington State Gambling Commission, 4565 7th Avenue S.E., Lacey, WA 98503. Special public meeting scheduled for the purpose of reviewing sports wagering rules. The meeting time and location is tentative. Visit our website at www.wsgc.wa.gov approximately seven days prior to the meeting, select "The Commission," and then select "Public Meetings" to confirm the hearing date, location, start time, and agenda items.

Date of Intended Adoption: July 28, 2021.

Submit Written Comments to: Ashlie Laydon, P.O. Box 42400, Olympia, WA 98504-2400, email rules.coordinator@wsgc.wa.gov, fax 360-486-3632, by July 23, 2021.

Assistance for Persons with Disabilities: Contact Julie Anderson, phone 360-486-3453, TTY 360-486-3637, email julie.anderson@wsgc.wa.gov, by July 23, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: On March 25, 2020, Governor Jay Inslee signed HB [ESHB] 2638 authorizing sports wagering for Class III tribal facilities under terms negotiated in tribal-state compacts, and adding or amending several sections of the Gambling Act giving the gambling commission the authority to adopt and/or amend rules needed for the state's regulation of sports wagering. Several tribal-state compact amendment agreements have been reached; therefore, the gambling commission needs to adopt and amend existing rules to create a licensing and regulatory framework for sports wagering consistent with the Gambling Act and negotiated tribal-state compact amendments.

Reasons Supporting Proposal: The proposed rules address the following areas consistent with the Gambling Act and recent negotiated tribal-state compact amendments: (1) Licensing and regulation, (2) agency funding, (3) money laundering and criminal enforcement, (4) sport and gambling integrity, and (5) responsible and problem gambling.

Statutory Authority for Adoption: RCW 9.46.070, 9.46.075, 9.46.140, 9.46.153, 9.46.210.

Statute Being Implemented: RCW 9.46.0364, 9.46.0368, 9.46.037, 9.46.038, 9.46.070, 9.46.190, 9.46.240.

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

Name of Proponent: Washington state gambling commission, governmental.

Name of Agency Personnel Responsible for Drafting: Brian Considine, LLM, 4565 7th Avenue S.E., Lacey, WA 98503, 360-486-3469; Implementation: Tina Griffin, Interim Director, 4565 7th Avenue S.E., Lacey, WA 98503, 360-486-3546; and Enforcement: Gary Drumheller, Assistant Director, 4565 7th Avenue S.E., Lacey, WA 98503, 509-325-7904.

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

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis is not required per RCW 34.05.328 (5)(a)(i).

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

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute; rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045; and rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

June 22, 2021
Ashlie Laydon
Rules Coordinator

AMENDATORY SECTION (Amending WSR 18-05-026, filed 2/9/18, effective 5/1/18)

WAC 230-03-035 Applying for a license. (1) You must fully complete the license application form we provide in order to be considered for a license. You must submit it with the appropriate fees online in the manner we require, or return it, along with the appropriate fees, to our headquarters office.

(2) ~~((If your application is incomplete,))~~ You must provide us with the required items within thirty days of notification of an incomplete application or we may administratively close the application.

(3) Applicants for a new organization license or permit will submit the base license fee for each authorized activity they are applying for with their application.

(4) Applicants for a new individual license will submit the new application fee they are applying for with their application.

AMENDATORY SECTION (Amending WSR 07-21-116, filed 10/22/07, effective 1/1/08)

WAC 230-03-040 Signing the application. The applicant signs the application under oath and under penalty of perjury under the laws of the state of Washington. This oath affirms that the information on the application and any accompanying materials is accurate and complete.

(1) The person signing the application must be:

(a) The highest ranking officer, or their designee, of a charitable, nonprofit, or profit-seeking corporation, or limited liability company seeking licensure; or

(b) The owner of a sole proprietorship seeking licensure; or

(c) All partners of a partnership or general partner of a limited partnership seeking licensure.

(2) The person seeking an individual license and a designated officer of the organization for which the person will work must both sign the application.

AMENDATORY SECTION (Amending WSR 13-09-048, filed 4/15/13, effective 5/16/13)

WAC 230-03-045 Defining substantial interest holder. (1) "Substantial interest holder" means a person who has actual or potential influence over the management or operation of any organization, association, or other business entity.

(2) Evidence of substantial interest may include, but is not limited to:

(a) Directly or indirectly owning, operating, managing, or controlling an entity or any part of an entity; or

(b) Directly or indirectly profiting from an entity or assuming liability for debts or expenditures of the entity; or

(c) Being an officer or director or managing member of an entity; or

(d) Owning ten percent or more of any class of stock in a privately or closely held corporation; or

(e) Owning five percent or more of any class of stock in a publicly traded corporation; or

(f) Owning ten percent or more of the membership shares/units in a privately or closely held limited liability company; or

(g) Owning five percent or more of the membership shares/units in a publicly traded limited liability company; or

(h) Providing ten percent or more of cash, goods, or services for the start up of operations or the continuing operation of the business during any calendar year or fiscal year. To calculate ten percent of cash, goods, or services, take the operational expenses of the business over the past calendar or fiscal year, less depreciation and amortization expenses, and multiply that number by ten percent; or

(i) Receiving, directly or indirectly, a salary, commission, royalties, or other form of compensation based on the gambling receipts.

(3) Spouses of officers of charitable or nonprofit organizations and spouses of officers or board members of publicly traded entities or subsidiaries of publicly traded entities are not considered substantial interest holders, unless there is evidence to the contrary. If so, then an investigation will be conducted to determine if they qualify as a substantial interest holder.

(4) Spouses of officers, owners, or shareholders owning ten percent or more of the organizations' shares of a sports wagering organization are not considered substantial interest holders.

AMENDATORY SECTION (Amending WSR 18-05-026, filed 2/9/18, effective 5/1/18)

WAC 230-03-060 Fingerprinting. (1) The following persons must submit fingerprints and undergo a national criminal history background check:

(a) Substantial interest holders of commercial businesses and charitable or nonprofit organizations who live or have lived out of the state in the last ten years; and

(b) Card room employees, commercial and nonprofit gambling managers, and manufacturer, distributor, service supplier, call centers for enhanced raffles, ~~((and))~~ linked bingo prize provider, and sports wagering vendor representatives; and

(c) Any other substantial interest holder when we have information they may not be qualified for licensure or to participate in a gambling activity.

(2) Recreational gaming activity and agricultural fair permit holders do not need to submit fingerprints.

AMENDATORY SECTION (Amending WSR 13-09-048, filed 4/15/13, effective 5/16/13)

WAC 230-03-065 Spouses must also be qualified. (1) Applicants' spouses must also meet the qualifications to hold a gambling license when married persons who maintain a marital community apply for or hold a license to operate gambling activities. This includes, but is not limited to, owners and substantial interest holders of commercial gambling establishments.

(2) If you are a licensed employee of a gambling operation, officer of a charitable or nonprofit organization, or an officer or a board member of a publicly traded entity or subsidiary of a publicly traded entity, your spouse does not need to meet the licensing qualifications, unless they are deemed to be a substantial interest holder.

(3) Spouses of owners and substantial interest holders of a sports wagering organization are not considered substantial interest holders.

AMENDATORY SECTION (Amending WSR 06-07-157, filed 3/22/06, effective 1/1/08)

WAC 230-03-070 Training required for licensing. (1) You must complete a training course we establish if you:

(a) Signed the licensing application; or

(b) Are a manager; or

(c) Are responsible for conducting gambling activities or completing records.

(2) You must complete training within thirty days of the effective date of your license.

(3) We do not require manufacturers ~~((or))~~ manufacturers' representatives, or major sports wagering vendors to complete training. However, all licensees are expected to know and follow all rules upon receiving your license.

AMENDATORY SECTION (Amending WSR 06-07-157, filed 3/22/06, effective 1/1/08)

WAC 230-03-075 Withdrawing your application. (1) You may withdraw your license application for any reason by

sending written or electronic mail notice to us. We must receive your written request at our headquarters office before we issue or deny the license.

(2) Withdrawing an application will not affect any future application for a license.

AMENDATORY SECTION (Amending WSR 06-07-157, filed 3/22/06, effective 1/1/08)

WAC 230-03-195 Additional information required from manufacturer (~~and~~), distributor, and sports wagering vendor license applicants. If you are applying for a manufacturer (~~or~~), distributor, or sports wagering vendor license, you must attach the following to your application form or submit the following in a manner we require:

(1) A list of all businesses or corporations which you, or officers, directors, or substantial interest holders of your business, either directly or indirectly, own or control as a substantial interest holder; and

(2) A list of all businesses or corporations licensed to conduct gambling activities or to supply gambling-related equipment, supplies, or services in which you, officers, directors, or substantial interest holders of your business have any interest; and

(3) A list of all jurisdictions in which you or any of the officers, directors, or substantial interest holders of your business have had a gambling-related license at any level during the previous ten years; and

(4) A statement about whether you, or officers, directors, or substantial interest holders have ever been part of a business that had a gambling-related license denied, revoked, or suspended by any jurisdiction for a period longer than thirty days.

NEW SECTION

WAC 230-03-196 Additional information required for sports wagering vendors. Sports wagering vendor applicants must provide contracts and agreements, or proposed contracts or agreements, with any third parties, excluding contracts or agreements with Washington state tribes, that are part of their sports wagering offerings for review for compliance with chapter 9.46 RCW and Title 230 WAC. Contracts or agreements to be provided for review will relate to the applicant's or third-party vendor's sports wagering equipment, goods, services, and information.

AMENDATORY SECTION (Amending WSR 06-07-157, filed 3/22/06, effective 1/1/08)

WAC 230-03-200 Defining "gambling equipment." "Gambling equipment" means any device, gambling-related software, expendable supply, or any other paraphernalia used as a part of gambling or to make gambling possible. "Gambling equipment" includes, but is not limited to:

- (1) Amusement games;
- (2) Punch boards and pull-tabs;
- (3) Devices for dispensing pull-tabs;
- (4) Electronic devices for conducting, facilitating, or accounting for the results of gambling activities(~~(s)~~) including, but not limited to:

- (a) Components of a tribal lottery system;
- (b) Components of a sports wagering system;
- (c) Electronic devices for reading and displaying outcomes of gambling activities; and
- (~~(e)~~) (d) Accounting systems that are a part of, or directly connected to, a gambling system including, but not limited to:

- (i) Bet totalizers; or
- (ii) Progressive jackpot meters; or
- (iii) Keno systems;
- (5) Bingo equipment;
- (6) Devices and supplies used to conduct card games, fund-raising events, recreational gaming activities, or Class III gaming activities, as defined in the Indian Gaming Regulatory Act at U.S.C. 25 chapter 29 § 2703 and in tribal-state compacts including, but not limited to:

- (a) Gambling chips;
- (b) Cards;
- (c) Dice;
- (d) Card shuffling devices;
- (e) Graphical game layouts for table games;
- (f) Ace finders or no-peek devices;
- (g) Roulette wheels;
- (h) Keno equipment; (~~and~~)
- (i) Tables manufactured exclusively for gambling purposes; and
- (j) Sports wagering systems.

LICENSING SPORTS WAGERING VENDORS

NEW SECTION

WAC 230-03-229 Applying for a major sports wagering vendor license. You must apply for a major sports wagering vendor license if you provide integral sports wagering goods or services in our state. This includes:

- (1) Managing a Tribe's or Tribes' sports wagering operations;
- (2) Being a Tribe's or Tribes' primary consultant who provides substantial sports wagering related services;
- (3) Being a manufacturer or distributor of a sports wagering system(s);
- (4) Providing bookmaking services; or
- (5) Providing sports wagering risk management services.

NEW SECTION

WAC 230-03-231 Applying for a mid-level sports wagering vendor license. You must apply for a mid-level sports wagering vendor license if you provide services or equipment related to data, security, and integrity that include, but are not limited to:

- (1) Integrity monitoring;
- (2) Data to be used by a Tribe(s) or sports wagering vendor, including data to set odds;
- (3) The compilation, furnishing, or storage of data for use in sports wagering;
- (4) Initial or annual wagering system security testing or assessment;
- (5) Geofence and geolocation compliance and monitoring; and

(6) Sports wagering account management, including Software-as-a-Service (SaaS) products.

NEW SECTION

WAC 230-03-233 Applying for an ancillary sports wagering vendor license. You must apply for an ancillary sports wagering vendor license if you provide necessary sports wagering support services that include, but are not limited to:

- (1) Mobile payment processing for use in mobile sports wagering;
- (2) Know your customer or identity verification for use in mobile sports wagering; and
- (3) Marketing or promotional affiliates for a sports wagering vendor or tribal sports wagering operator where the contractual financial arrangement is based on a percentage of an operator's sports wagering revenue.

NEW SECTION

WAC 230-03-234 Sports wagering vendor applicants and associated entities in their corporate structure. You must apply for a sports wagering vendor license if you enter into contracts or agreements to provide sports wagering gaming goods or services to operators or other sports wagering vendors for sports wagering goods or services in our state. Any associated organizations linked to the sports wagering applicant in their corporate structure, who provides sports wagering goods or services to the applicant, must comply with our rules. The applicant will have the ultimate responsibility for any goods or services provided by another legal entity associated to the applicant. This only includes organizations in the applicant's corporate ownership structure.

NEW SECTION

WAC 230-03-311 Applying for a major sports wagering vendor representative license. You must apply for a major sports wagering representative license if you, as an individual, are employed or contracted by a major sports wagering vendor to represent, service, or work in any sports wagering activities in our state or you supervise those who do.

NEW SECTION

WAC 230-03-312 Applying for a mid-level sports wagering vendor representative license. You must apply for a mid-level sports wagering representative license if you, as an individual, are employed or contracted by a mid-level sports wagering vendor to represent, service, or work in any sports wagering activities in our state or you supervise those who do.

NEW SECTION

WAC 230-03-313 Applying for an ancillary sports wagering vendor representative license. You must apply for an ancillary sports wagering representative license if you, as an individual, are employed or contracted by an ancillary

sports wagering vendor to represent, service, or work in any sports wagering activities in our state or you supervise those who do.

AMENDATORY SECTION (Amending WSR 13-19-056, filed 9/16/13, effective 10/17/13)

WAC 230-03-320 Substantial interest holders not required to be licensed as representatives. (1) If you are a substantial interest holder in a business licensed to operate a manufacturer, distributor, gambling service supplier, call centers for enhanced raffles, or linked bingo prize provider or a spouse of the same, you do not have to have an additional license to perform representative duties connected with that licensed business.

(2) If you are a substantial interest holder in a business licensed as a sports wagering vendor, you do not need to have an additional sports wagering vendor representative license to perform representative duties connected with that licensed business.

AMENDATORY SECTION (Amending WSR 18-05-026, filed 2/9/18, effective 5/1/18)

WAC 230-03-330 Representing one or more licensed businesses. (1) If you are a licensed distributor representative, gambling service supplier representative, or a linked bingo prize provider representative or applying for one of these representative licenses, you must represent only one licensed distributor, gambling service supplier, or linked bingo prize provider at a time.

(2) If you are a licensed manufacturer representative, you may represent more than one licensed manufacturer.

(3) Sports wagering vendor representatives may represent more than one licensed sports wagering vendor so long as their representation would not create a conflict that would undermine the integrity of sports wagering or a sporting event.

(4) If the owner you represent owns more than one licensed business, you may represent the owner in all those licensed businesses, including licensed manufacturers.

~~((4))~~ (5) You must submit an application and pay a fee before beginning work at a new or additional employer.

AMENDATORY SECTION (Amending WSR 13-19-056, filed 9/16/13, effective 10/17/13)

WAC 230-03-335 Representatives must not work before receiving a license. If you are applying for a license as a representative for a manufacturer, distributor, gambling services supplier, call centers for enhanced raffles, a sports wagering vendor, or linked bingo prize provider, you must not work until you receive a license from us.

NEW SECTION

The following sections of the Washington Administrative Code are decodified and recodified as follows:

Old WAC Number	New WAC Number
230-03-230	230-03-226
230-03-232	230-03-227

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 230-03-408 Applying for sports wagering preclicensing investigation.

AMENDATORY SECTION (Amending WSR 18-05-026, filed 2/9/18, effective 5/1/18)

WAC 230-05-110 Defining "gross gambling receipts rate." "Gross gambling receipts rate" is the rate listed in this chapter that licensees use to calculate their quarterly license fees, if applicable. This also is the rate used for quarterly license reports.

AMENDATORY SECTION (Amending WSR 20-08-095, filed 3/30/20, effective 4/30/20)

WAC 230-05-112 Defining "gross gambling receipts." (1) "Gross gambling receipts" means the amount due to any operator of an authorized activity as described in subsection (5) of this section.

(2) The amounts must be stated in U.S. currency.

(3) The value must be before any deductions for prizes or other expenses, such as over/short.

(4) "Gross gambling receipts" does not include fees from players to enter player-supported jackpots. However, any portion of wagers deducted for any purpose other than increasing current prizes or repayment of amounts used to seed prizes are "gross gambling receipts."

(5) Gross gambling receipts for authorized activities:

Activity:	Gross gambling receipts include amounts due to any operator for:
(a) Punch board and pull-tab	Purchasing chances to play.
(b) Raffles and enhanced raffles	Purchasing chances to enter.
(c) Bingo	Fees or purchase of cards to participate.
(d) Amusement games	Amounts paid to play amusement games.
(e) Card games	<ul style="list-style-type: none"> • "Net win" from house-banked card games; • Tournament entry fees; • Administrative fees from player-supported jackpots; • Fees to participate in nonhouse-banked card games.

Activity:	Gross gambling receipts include amounts due to any operator for:
(f) Manufacturers and distributors	<p>(i) Fees from sales, rentals, leases, royalties, and service fees collected for the following gambling equipment in Washington to include, but not limited to:</p> <ul style="list-style-type: none"> • Bingo paper or bingo cards; • Punch boards and pull-tabs; • Devices for dispensing pull-tabs; • Electronic devices for conducting, facilitating or accounting for the results of gambling activities; • Cards; • Dice; • Gambling chips; • Cash exchange terminals; • Progressive meters; • Gambling software; • License agreements; • Card shuffling devices; • Graphical game layouts for table games; • Ace finders or no-peek devices; • Roulette wheels; • Keno equipment; • Tables manufactured exclusively for gambling purposes; • Bet totalizers; • Electronic devices for reading or displaying outcomes of gambling activities; • Tribal lottery systems and components thereof. <p>(ii) Fees from the service, repair and modification of gambling equipment in Washington to include, but not limited to:</p> <ul style="list-style-type: none"> • Charges for labor and parts for repairing gambling equipment; • Service fees related to gambling operations; • Training or set-up fees; • Maintenance contract fees related to gambling equipment and operations.

Activity:	Gross gambling receipts include amounts due to any operator for:
(g) Gambling service suppliers	Fees from gambling-related services provided in or to be used in Washington to include, but not limited to: <ul style="list-style-type: none"> • Consulting, advisory or management services related to gambling; • Interest from financing the purchase or lease of gambling equipment, infrastructure or facilities or equipment that supports gambling operations; • Acting as a lending agent, loan services or placement agent; • Assembly of components for gambling equipment to be used under a contract with a licensed manufacturer; • Ongoing financial arrangements for gambling related software with a licensed manufacturer; • Installing, integrating, maintaining, or servicing digital surveillance systems that allow direct access to the operating system; • Training individuals to conduct authorized gambling activities; • Performing testing and certification of tribal lottery systems in meeting requirements specified in the tribal-state compacts; • Providing nonmanagement related recordkeeping or storage services for punch board and pull-tab operators; • Ownership of proprietary games or equipment.
(h) Punch board/pull-tab service businesses	Providing nonmanagement related recordkeeping or storage services for punch board and pull-tab operators.
(i) Fund-raising event distributors	Fees from contracts to organize and conduct recreational gaming activities.
(j) Fund-raising events and agricultural fairs	Fees received from the operation of bingo, amusement games, raffles, lotteries, contests of chance, and/or net win from table games operated at a fund-raising event.

Activity:	Gross gambling receipts include amounts due to any operator for:
(k) Major sports wagering vendor	Fees or revenues received from <u>providing sports wagering goods and services, including management, consulting, sales, rentals, leases, and royalties, for any sports wagering activities in Washington.</u>
(l) Mid-level sports wagering vendor	Fees or revenues received from <u>providing sports wagering goods and services, including sales, rentals, leases, and royalties, for any sports wagering activities in Washington.</u>
(m) Ancillary sports wagering vendor	Fees or revenues from <u>providing sports wagering goods and services, including sales, rentals, leases, and royalties, for any sports wagering activities in Washington.</u>

AMENDATORY SECTION (Amending WSR 18-05-026, filed 2/9/18, effective 5/1/18)

WAC 230-05-120 Paying annual license fee. (1) All licensed organizations will pay annual license fees (~~in up to five payments~~). The annual license fee will be up to five payments and includes:

- (a) A base license fee paid with your:
 - (i) Initial application for a new license or permit; or
 - (ii) License renewal or annual permit application; and
 - (b) Quarterly license fees, if applicable, based on the gross gambling receipts reported on your quarterly license report.
- (2) Licensed organizations starting a new activity will begin paying quarterly license fees, if applicable, on that activity upon completion of the first quarter, whether a partial or full quarter, after your license or annual permit was issued.
- (3) Individual licensees will pay an annual license fee with their initial application or license renewal application.

AMENDATORY SECTION (Amending WSR 20-12-046, filed 5/28/20, effective 6/28/20)

WAC 230-05-124 Quarterly license reports and quarterly license fees. ((A#)) Licensed organizations must submit quarterly license reports ((and)). Licensed organizations must also submit quarterly license fees to us, if applicable, for each licensed gambling activity beginning with the first quarter of their license year. The quarterly license fee is due with the quarterly license report.

The quarterly license reports must be in the format we require and must:

(1)

Cover the period:	Be received by us no later than:
January 1 through March 31	April 30
April 1 through June 30	July 31
July 1 through September 30	October 31
October 1 through December 31	January 31

(2) Be received online at our administrative office or postmarked no later than the dates indicated in subsection (1) of this section; and

(3) Be submitted even if there is no quarterly license fee payable to us; and

(4) Be accurate; and

(5) Be completed by the highest ranking executive officer or a designee. If someone other than the licensee or an employee prepares the report, the preparer must include his or her name and business telephone number on the report; and

(6) Be submitted for any period of time the license was valid, even if there was no gambling activity or the gambling license was not renewed.

AMENDATORY SECTION (Amending WSR 18-11-055, filed 5/10/18, effective 6/10/18)

WAC 230-05-125 Report gross gambling receipts on the quarterly license report. (1) You must report your gross gambling receipts for each of your licensed gambling activities during the previous quarter on your quarterly license report.

(2) You must submit a quarterly license report even if you:

(a) Only need to pay your base license fee;

(b) Have paid the maximum annual license fee for your license year;

~~((b))~~ (c) You do not owe a quarterly license fee for the quarter;

~~((c))~~ (d) Have no gross gambling receipts to report;

~~((d))~~ (e) Close your business;

~~((e))~~ (f) Surrender your license;

~~((f))~~ (g) Do not renew your license; or

~~((g))~~ (h) Your license is revoked or suspended.

AMENDATORY SECTION (Amending WSR 18-05-026, filed 2/9/18, effective 5/1/18)

WAC 230-05-126 Online filing and payments required with waivers available upon request for good cause. (1) All licensees must submit the following online, where applicable:

(a) Renewal application and base license fees; and

(b) Quarterly license fees; and

(c) Quarterly license reports.

(2) We may waive these requirements if a licensed organization can show good cause. The reasons for good cause include:

(a) You do not have access to the internet using your own computer or similar equipment; or

(b) You do not have a bank account; or

(c) Your bank is unable to send electronic fund transactions; or

(d) Some other circumstance or condition exists that, in our judgment, prevents you from submitting online.

(3) We may waive these requirements if a licensed individual can show good cause. The reasons for good cause include:

(a) You do not have access to the internet using your own computer or similar equipment; or

(b) You do not have a bank account or credit card; or

(c) Your bank is unable to send electronic fund transactions; or

(d) Some other circumstance or condition exists that, in our judgment, prevents you from submitting online.

(4) You must request a waiver when applying for a new license or permit.

(5) A waiver will cover all fees and reports required under subsection (1) of this section.

AMENDATORY SECTION (Amending WSR 18-11-055, filed 5/10/18, effective 6/10/18)

WAC 230-05-170 Fees for other businesses. All other business organizations must pay the following fees:

(1) Annual licenses or permits:

License Type	Base License Fee	Gross Gambling Receipts Rate	Maximum Annual License Fee
Agricultural fair bingo (annual permit)	\$200	-	-
Call centers for enhanced raffles	\$4,800	-	-
Commercial amusement games	\$500 plus \$65 per approved location	1.130%	\$11,000
Distributor	\$700	1.430%	\$7,000
Fund-raising event distributor	\$280	1.430%	\$1,000
Linked bingo prize providers	\$1,500	.046%	\$20,000
Manufacturer	\$1,500	1.430%	\$25,000

License Type	Base License Fee	Gross Gambling Receipts Rate	Maximum Annual License Fee
Manufacturer's special sales permit	\$250	-	-
Punch board/pull-tab service business permit	\$250	-	-
Gambling service supplier	\$300	1.430%	\$7,000
<u>Major sports wagering vendor</u>	<u>\$85,000</u>	=	=
<u>Mid-level sports wagering vendor</u>	<u>\$10,000</u>	=	=
<u>Ancillary sports wagering vendor</u>	<u>\$5,000</u>	=	=

(2) Events or permits:

License or Permit Type	Base License Fee	Gross Gambling Receipts Rate	Maximum Annual License Fee
Recreational gaming activity	\$65	-	-
Special property bingo	\$30	-	-

(3) Change fees:

Change of:	Fee
Name	\$100
Location	\$100
Business classification (same owners)	\$100
Corporate stock/limited liability company shares/units	\$100
License transfers	\$100

Transaction	Fee
Add a new amusement game location	\$65
Defective punch board/pull-tab cost recovery fees	Up to \$100
Duplicate license	\$50
Pre- and post-licensing investigations	Cost reimbursement
Review, inspection, and/or evaluation of gambling equipment, supplies, services, games, schemes, or group 12 amusement games	Deposit and cost reimbursement

(4) Other fees:

AMENDATORY SECTION (Amending WSR 18-08-053, filed 3/30/18, effective 5/1/18)

WAC 230-05-175 Individual license fees. Individuals must pay the following fees:

(1) Annual license and additional employer fees:

License Type	New Application Fee	Annual Renewal Fee	Additional or Change of Employer Fee
Call center for enhanced raffle representative	\$275	\$170	-
Card room employee license - Nonhouse-banked (Class A)	\$200	\$95	\$65
Card room employee license - Class F and house-banked (Class B)	\$275 (in-state) \$340 (out-of-state)	\$170	\$65
Charitable or nonprofit gambling manager	\$200	\$95	\$95
Commercial gambling manager	\$200	\$95	\$95
Distributor representative	\$275	\$170	\$65
Linked bingo prize provider representative	\$275	\$170	\$65
Manufacturer representative	\$275	\$170	\$65

License Type	New Application Fee	Annual Renewal Fee	Additional or Change of Employer Fee
Gambling service supplier representative	\$275	\$170	\$65
<u>Major sports wagering vendor representative</u>	<u>\$275</u>	<u>\$170</u>	<u>\$65</u>
<u>Mid-level sports wagering vendor representative</u>	<u>\$275</u>	<u>\$170</u>	<u>\$65</u>
<u>Ancillary sports wagering vendor representative</u>	<u>\$275</u>	<u>\$170</u>	<u>\$65</u>

(2) Class B card room employees must pay the out-of-state application fee if over the last ten years the applicant lived outside of Washington for six nonconsecutive months or more.

(3) Other service fees:

Transaction	Fee
Change of name	\$30
Card room employee emergency waiver request	\$65
Duplicate license	\$30

(4) Military personnel returning from service. If a license expires while an individual is on active military service, the individual may apply to have their license reissued at the renewal fee. The application must be received within six months after completing their active military service. The applicant must provide evidence of the completion date of active military service.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 230-05-101 Implementation of new permit and license fees.

AMENDATORY SECTION (Amending WSR 17-04-009, filed 1/19/17, effective 2/19/17)

WAC 230-06-030 Restrictions and conditions for gambling promotions. Licensees may conduct gambling promotions to encourage players to participate in the gambling activity they are licensed to conduct without our review or approval under these restrictions and conditions:

(1) You must establish rules and restrictions to determine how you will give promotional prizes and items to players; and

(2) You must comply with all applicable federal, state, and tribal laws and rules; and

(3) You must display all rules and restrictions clearly in the gambling area and include them on promotional materials or advertisements; and

~~((3))~~ (4) You must give all players eligible for the promotion an equal opportunity to participate; and

~~((4))~~ (5) Except for members-only progressive raffles conducted as authorized in WAC 230-11-091, you must not give another chance to participate in a gambling activity we regulate as a promotional item; and

~~((5))~~ (6) As part of a gambling promotion, you may add additional merchandise or cash prizes, including increasing

payouts for gambling activities you are licensed to conduct; and

~~((6))~~ (7) Licensed manufacturers, distributors, and service suppliers may give cash or merchandise items to licensed operators to be used as promotional prizes as long as:

(a) The cash or merchandise is offered to all licensed operators; and

(b) The gambling promotion is approved by the director or director's designee when cash or merchandise provided to a licensed operator for a single promotion is over twenty-five thousand dollars; and

~~((7))~~ (8) In order for a licensed manufacturer, distributor, and service supplier to receive approval, the plan for the gambling promotion must be submitted to the director at least ninety days in advance of the intended start date. The promotion must include sufficient information for the director's approval, comply with all applicable federal and state laws, and include:

(a) The gambling promotion rules and restrictions; and

(b) How the operator will safeguard the prizes; and

(c) How the prizes will be given away; and

(d) The beginning and ending dates for the gambling promotion; and

(e) A detailed prize winner's record to be filled out upon completion of the promotion that includes the winner's name, prizes paid out, date the prize was awarded; and

(f) Any other information we request; and

~~((8))~~ (9) You must not give promotional prizes or items based on additional elements of chance except that:

(a) Licensed bingo operators are authorized to give promotional prizes or items as part of a bingo game; and

(b) Licensed card rooms are authorized to give promotional prizes or items as part of a physical drawing, spinning a wheel, or selecting from a group of concealed items; and

~~((9))~~ (10) You must not combine gambling activities and related gambling promotions in any way with a promotional contest of chance as defined in RCW 9.46.0356.

AMENDATORY SECTION (Amending WSR 19-11-047, filed 5/10/19, effective 6/10/19)

WAC 230-06-050 Review of electronic or mechanical gambling equipment. (1) When you are required to submit gambling equipment, supplies, services, or games for our review to verify compliance with chapter 9.46 RCW and Title 230 WAC, you must pay the application deposit before we perform the review. You must also reimburse us for any additional costs of the review. All costs must be paid in full prior to the completion of the review.

(2) The gambling equipment submitted for review must be identical or substantially similar to what will be marketed,

distributed, and deployed in Washington. If the equipment is not sufficient for testing and review, we may require additional equipment or information.

(3) If your application is incomplete or we request additional information, you must provide us with the required items within thirty days of notification or we may administratively close your application.

(4) You can begin accepting orders for gambling equipment when you are licensed.

(5) Only gambling equipment approved by the director or director's designee is allowed in Washington except as provided under WAC 230-16-005 and 230-19-045.

(6) We may include security or surveillance requirements as part of gambling equipment approval.

(7) Gambling equipment must operate as approved by the director or director's designee except as provided under WAC 230-19-045.

(8) We may keep equipment submitted for review to allow for continued testing and training as long as the equipment remains in play in Washington. We are not liable for any damage to equipment while in our possession.

(9) If you do not agree with the director or director's designee's decision, you may file a petition for declaratory order with the commission according to RCW 34.05.240 and chapter 230-17 WAC.

AMENDATORY SECTION (Amending WSR 14-09-037, filed 4/11/14, effective 7/1/14)

WAC 230-06-054 Notification of electronic or mechanical gambling equipment malfunctions. Licensees must notify us, in the format we require, within seventy-two hours of identifying or becoming aware of an electronic or mechanical gambling equipment malfunction except for sports wagering vendors as provided under WAC 230-19-045.

AMENDATORY SECTION (Amending WSR 18-05-029, filed 2/9/18, effective 7/1/18)

WAC 230-06-082 Manufacturers, distributors, gambling service suppliers, sports wagering vendors, linked bingo prize providers, and call centers for enhanced raffles reporting changes in licensed employees. Manufacturers, distributors, gambling service suppliers, sports wagering vendors, linked bingo prize providers and call centers for enhanced raffles licensees must:

(1) Submit an application and the required fees before allowing licensed employees or sports wagering vendor representatives to begin working.

(2) Notify us in the format we require when a licensed employee or sports wagering vendor representative no longer works for them. We must receive the notice at our Lacey office within ten days of the licensed ~~(employee's)~~ employee or representative's last day.

NEW SECTION

WAC 230-06-084 Submitting sports wagering related contracts and agreements. Sports wagering vendors must provide contracts or agreements, or changes to contracts

or agreements, with any third parties, excluding contracts or agreements with Washington state tribes, that are part of their sports wagering offerings within thirty days of the effective date of the contract or agreement. Contracts or agreements to be provided will relate to the applicant's or third-party vendor's sports wagering equipment, goods, services, and information.

AMENDATORY SECTION (Amending WSR 18-05-029, filed 2/9/18, effective 7/1/18)

WAC 230-06-110 Buying, selling, or transferring gambling equipment. (1) All licensees and persons authorized to possess gambling equipment must closely control the gambling equipment in their possession.

(2) Before selling gambling equipment, licensees must ensure that the buyer possesses a valid gambling license or can legally possess the equipment without a license.

(3) Licensees buying, selling, or transferring gambling equipment must ensure that it will be used pursuant to all state laws and rules, or laws and rules in the jurisdiction(s) where the activity is occurring.

(4) Before purchasing gambling equipment, licensees must ensure that the seller possesses a valid gambling license.

~~((4))~~ (5) Applicants for Class F or house-banked card room licenses may purchase and possess gambling equipment during the preclicensing process, but only after receiving written approval from us.

~~((5))~~ (6) Charitable and nonprofit organizations conducting unlicensed bingo games, as allowed by RCW 9.46-0321, may possess bingo equipment without a license.

~~((6))~~ (7) Group 12 amusement games can only be sold or leased to amusement game licensees by a licensed manufacturer or distributor. Amusement game licensees can lease or rent group 12 amusement games for operation at approved amusement game locations.

~~((7))~~ (8) Licensees may transfer gambling equipment as a part of a sale of a business as long as a condition of the sale is that the buyer receives a gambling license before the sale is complete. Licensees must make a complete record of all gambling equipment transferred in this manner, including I.D. stamps. Licensees must report these transfers, including a copy of the inventory record, to us.

NEW SECTION

WAC 230-06-116 Transporting, displaying, and selling gambling equipment at trade shows. (1) "Trade show" when used in this section means an exhibition where licensees can promote their products and services to operators of authorized gambling activities in Washington; the exhibition is not open to the public; and it is of limited duration.

(2) "Gambling equipment" as used in this section has the same meaning as in WAC 230-03-200.

(3) "Demonstration mode" when used in this section means when gambling equipment cannot be used for actual wagering and the equipment's coin or bill acceptor is removed or physically restricted from use.

(4) Licensees may transport, display, and accept orders for the sale or lease of their products at trade shows only under the following conditions:

(a) All products must be manufactured by a licensee for activities authorized by state laws or tribal-state compacts, or is Class II gaming equipment as authorized by federal law for use on tribal lands; and

(b) All gambling equipment physically displayed must be in demonstration mode and either:

(i) Approved for sale or lease in the state; or

(ii) Not approved by us but is only used for authorized activities under state laws or tribal-state compacts, or is Class II gaming equipment as authorized by federal law for use on tribal lands, and is transported into the state no more than ten days before a trade show begins and is removed from the state within ten days following the last day of a trade show.

(c) Gambling equipment must have a sign posted in close proximity to the device that contains the phrase, "No one under 18 years of age is allowed to operate this machine."

(5) Licensees must provide notification that they will be transporting, displaying, or accepting orders for gambling equipment on a form prescribed by us at least ten days before a specified trade show.

(6) Gambling equipment at a trade show is subject to on-site inspection by us.

AMENDATORY SECTION (Amending WSR 07-21-116, filed 10/22/07, effective 1/1/08)

WAC 230-06-120 Selling or transferring gambling equipment when no longer licensed. (1) If we have revoked your operator ((☹)), distributor, or sports wagering vendor license, your license has expired, or you have voluntarily surrendered your license, you may only sell or otherwise transfer gambling equipment to a licensed manufacturer ((☹)), distributor, or sports wagering vendor, as applicable, and consistent with all laws and rules, including WAC 230-06-110.

(2) Transfers of gambling equipment in this manner are subject to the following requirements:

(a) The transfer must be complete within thirty days of the date the license became invalid; and

(b) Distributors must use the cash or credit against amounts they owe manufacturers; and

(c) Operators ((☹)), distributors, or sports wagering vendors selling the equipment must report to us within ten days of the transaction a complete inventory of all the gambling equipment transferred, including commission I.D. stamps; and

(d) Manufacturers ((☹)), distributors, or sports wagering vendors receiving the equipment must prepare a credit memorandum and retain it with their records.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 230-16-005 Transporting, displaying, and selling gambling equipment at trade shows.

Chapter 230-19 WAC

SPORTS WAGERING

NEW SECTION

WAC 230-19-005 Sports wagering definitions. Definitions for sports wagering used in the chapter are:

(1) "Affiliate" means an individual or organization that promotes sports wagering websites in exchange for a commission or fee.

(2) "Authorized sports wagering menu" means the official list of sports, leagues, and types of wagers authorized through the tribal-state sports wagering compact process to be offered for sports wagering in the state.

(3) "Esports" means a video game competition in which players and teams compete against each other.

(4) "Geofence" means a virtual geographic boundary that enables software or other technology to determine geolocation and detect when a mobile device enters or leaves an approved designated area that allows a patron to place a wager for mobile sports wagering.

(5) "Integrity monitoring provider" means an independent organization licensed to receive reports of unusual wagering activity from a sports wagering operation for the purpose of assisting in identifying suspicious wagering activity.

(6) "Minor league" means a lower professional league or division within a sport, such as baseball or hockey, where a professional team has the exclusive contractual rights to promote and relegate players.

(7) "Mobile device" means a portable electronic equipment used in mobile sports wagering, for example a smartphone.

(8) "Mobile sports wagering" means any sports wagering on a platform that is deployed and accessed through the internet or an application installed on a mobile device.

(9) "Prohibited sports wagering participant" means any person who is prohibited pursuant to RCW 9.46.037 and any person whose participation may undermine the integrity of the wagering or the sporting event, or any person who is prohibited for other good cause including, but not limited to, any person placing a wager as an agent or proxy; and person who is an athlete, coach, referee, player, in, or on, any sporting event overseen by that person's sports governing body; any person who holds a position of authority or influence sufficient to exert influence over the participants in a sporting event that is the subject of a wager, or as identified to us or by a tribal gaming agency.

(10) "Sports wagering account" means an electronic account established by a patron for the purpose of sports wagering, including deposits, withdrawals, wagered amounts, payouts on winning wagers, or similar adjustments.

(11) "Sports wagering kiosk" means a self-service automated device used by patrons to make wagers on sporting events, obtain wagering information, redeem sports wagering vouchers and wagering tickets, and any other automated functions used for sports wagering.

(12) "Sports wagering system" means all equipment, hardware, data networks, communications technology, and software used in a sports wagering operation and that directly

affect the wagering and results of sports wagering including, but not limited to:

(a) Interactive components, including all associated equipment and software that comprise the sports wagering platform used by a sports wagering operation or for online or mobile sports wagering;

(b) Sports wagering kiosks; and

(c) Ticket or voucher redemption devices.

This does not include a mobile device owned and used by a patron to place a sports wager.

(13) "Sports wagering vendor" means all three sports wagering license types: Major, mid-level, and ancillary identified in this chapter unless identified otherwise in these rules.

(14) "Suspicious wagering activity" means unusual wagering activity that cannot be explained and is indicative of illegal activity including, but not limited to: Money laundering, match fixing, manipulation of an event, misuse of inside information, or other activity that is prohibited by federal, state, tribal, or local law.

(15) "Unusual wagering activity" means abnormal wagering activity or pattern of behavior exhibited by one or more patrons as a potential indicator of suspicious activity. Abnormal wagering activity may include, but is not limited to, the size of a person's wager or increased wagering volume on a particular event or wager type and/or other deviations readily apparent based on prior wagering history.

NEW SECTION

WAC 230-19-010 Sports wagering vendors must ensure sports wagering vendor representatives are licensed. (1) Sports wagering vendors must ensure all sports wagering vendor representatives are licensed as required by rule.

(2) Sports wagering vendors must take all measures necessary to prevent an unlicensed sports wagering vendor representative from working in our state.

NEW SECTION

WAC 230-19-015 Accounting records for sports wagering vendors. Sports wagering vendors must keep and maintain a complete set of records for their licensed activity in the state and include, at a minimum:

(1) Double entry method accounting updated at least once a month, including a monthly balance for each account; and

(2) Maintain their records in accordance with generally accepted accounting principles and ensure that records can be reconciled to the licensee's federal income tax return; and

(3) Maintain and keep for at least three years following the end of the fiscal year:

(a) **Cash disbursements book (check register)** - Documenting all expenses, both sports wagering and nonsports wagering related, with invoices or other appropriate supporting documents. Information must be entered monthly and include, at least:

(i) The date the check was issued or payment made; and

(ii) The number of the check; and

(iii) The name of the payee; and

(iv) Type of expense; and

(b) **Cash receipts** - Recording cash sales and cash received from all sources. Information must be entered for each payment received monthly and include, at least the:

(i) Date; and

(ii) Name of the person paying; and

(iii) Amount; and

(c) **General ledger** - For sales that are greater than five hundred thousand dollars per year, a general ledger must be kept containing, in addition to all other accounts by month, a separate sales account for each type of sale; and

(d) **Bank reconciliation** - Reconciling their accounts each month. "Reconcile" means the sports wagering vendor must compare the two balances, resolve any differences, and document the comparison and the differences in writing; and

(e) **Copies of all financial data** - Supporting tax reports to governmental agencies; and

(f) Maintain copies of all contracts related to sports wagering they enter into which fully disclose all terms.

NEW SECTION

WAC 230-19-020 Sales invoices for sports wagering vendors. Sports wagering vendors must document each sale of equipment or services, any return or refund, or any other type of transfer of sports wagering equipment in the state, with a standard sales invoice and credit memo. These must:

(1) Be prenumbered sequentially at the time of purchase, using not less than four digits. Computer generated numbering systems may be used if:

(a) The system numbers the invoices and credit memos sequentially; and

(b) The same system is used for all sales; and

(c) A manual override function must not be used; and

(2) Record:

(a) The date of sale. The date of delivery must also be entered if different from the date of sale; and

(b) The customer's name and complete business address; and

(c) A full description of each item sold, or service provided; and

(d) The quantity and price of each item; and

(e) The gross amount of each sale, including all discount terms and the total dollar amount of any discount.

NEW SECTION

WAC 230-19-025 Sales journals for sports wagering vendors. Sports wagering vendors must keep a monthly sales journal for transactions in the state containing, at least:

(1) Each date of sale; and

(2) Each sale invoice number; and

(3) The name of the person paying; and

(4) Sale categorized by the sports wagering goods, equipment, or services sold; and

(5) The total amount of each invoice.

NEW SECTION

WAC 230-19-030 Authorized sports wagering menu.

(1) Sports wagering vendor may only offer, facilitate, or pro-

mote wagering that is on the authorized sports wagering menu.

(2) The authorized sports wagering menu will be updated by us as leagues, organizations, or types of wagers are approved or removed.

(3) The authorized sports wagering menu will be published on the agency's website.

NEW SECTION

WAC 230-19-035 Sports wagering integrity. (1) Sports wagering vendor and vendor representatives must promptly notify us upon any discovery of a violation or a suspected violation of chapter 9.46 RCW, this chapter, or other federal, state, tribal, or local statute, ordinance, administrative rule, or court order.

(2) Sports wagering vendor and vendor representatives must monitor for unusual and suspicious wagering activity.

(3) Sports wagering vendor and vendor representatives must make reasonable efforts to detect and prevent prohibited sports wagering participants from participating in sports wagering.

(4) Sports wagering vendor and vendor representatives must promptly notify us, in the format we require, when unusual wagering activity or suspicious wagering activity is identified, including changes with the status of, or information related to, a previously reported unusual or suspicious wagering activity.

(5) Sports wagering vendor and vendor representatives will provide sports wagering information to us, or an integrity monitoring provider(s), designated by us, when requested.

(6) Sports wagering vendor and vendor representatives will provide us access to their sports wagering system, including hardware and software, if needed, to access specific information or data to assist us with integrity monitoring and investigations.

NEW SECTION

WAC 230-19-040 Integrity monitoring provider requirements. (1) Integrity monitoring providers must have systems to receive and analyze sports wagering data and information to be able to monitor, identify, and report on unusual or suspicious wagering activity.

(2) Integrity monitoring providers will provide us access to required sports wagering information to assist us with integrity monitoring and investigations.

(3) Integrity monitoring providers must immediately notify us when they identify unusual wagering activity or suspicious wagering activity.

(4) Integrity monitoring providers must immediately notify us, and all other integrity monitoring providers, sports wagering operators, and all other agencies or organizations as directed by us, on any previously reported unusual wagering activity it finds rises to the level of suspicious wagering activity.

NEW SECTION

WAC 230-19-045 Sports wagering system requirements. (1) Sports wagering vendors must be licensed before

the sale or delivery of a sports wagering system(s) to be used in our state.

(2) All sports wagering systems, including sports wagering kiosks, must be tested and certified by a licensed independent testing laboratory.

(3) All sports wagering systems must meet or exceed Gaming Laboratory International GLI-33: Standards for Event Wagering Systems, including appendices and amendments; the standards established under tribal-state sports wagering compact amendment appendices, and any applicable provisions of tribal-state compacts and appendices for which the sports wagering system will operate or additional standards agreed to by us and a tribal gaming agency.

(4) All sports wagering systems must be approved by the tribal gaming agency where the system is to be installed and operated.

(5) No substantive modifications to a sports wagering system may be made after an independent test laboratory has certified a sports wagering system without the modification being certified by the independent test laboratory.

(6) A sports wagering system shall have controls in place to review the accuracy and timeliness of any data feeds used to offer or settle wagers.

(7) The primary server for a sports wagering system must be in our state and located within a tribal gaming facility.

(8) Cloud storage for sports wagering data and information may be used for duplicate or backup data. Cloud storage facilities, as specified in the applicable tribal-state sports wagering compact amendment, must be located in our state.

(9) Sports wagering systems, at a minimum, must be capable of generating reports necessary to record the adjusted gross receipts, wagering liability, ticket redemption, and such other information relating to sports wagering as required by us, a tribal gaming agency, or internal controls. These reports include, but are not limited to:

- (a) Gaming operation revenue;
- (b) Gaming operation liability;
- (c) Future event;
- (d) Significant events and alterations;
- (e) Wager record information;
- (f) Market information;
- (g) Contest or tournament information;
- (h) Sports wagering account information;
- (i) Sports wagering system information;
- (j) Significant event information;
- (k) User access information;
- (l) Wagering device information;
- (m) Promotion or bonus information;
- (n) Event game play;
- (o) Expired ticket; and
- (p) Any other reports required by us or a tribal gaming agency.

(10) Sports wagering systems, including sports wagering kiosks and mobile sports wagering will, at a minimum, allow for a display of commitment to responsible gaming and link to, or provide notice of, the tribal sports wagering operator's responsible gaming policies. Responsible gaming solutions include:

- (a) Patron controlled wager and deposit limits; and

(b) Problem gambling resources for patrons.

(11) Sports wagering vendors bringing sports wagering systems, equipment, components, and kiosks, into our state must provide us access to the sports wagering system(s), including hardware, software, or other related sports wagering equipment, as needed, for us to develop our regulatory program and trainings.

NEW SECTION

WAC 230-19-050 Geofence and geolocation requirements. (1) Mobile sports wagering must be contained to an approved tribal gaming facility premises as approved pursuant to each tribal-state sports wagering compact amendment. Sports wagering vendors will have geofence and geolocation compliance and monitoring controls to ensure wagers cannot be placed in violation of federal, state, or tribal laws and rules.

(2) Geofence and geolocation systems will be updated, as needed or required by tribal-state compact, to ensure that the system detects and mitigates existing and emerging location fraud risks.

NEW SECTION

WAC 230-19-055 Sports wagering account requirements. (1) Sports wagering vendor and vendor representatives that manage or have access to a sports wagering account must maintain and produce all sports wagering account information when requested by us or a tribal gaming agency.

(2) A sports wagering account connected to a sports wagering system, or mobile sports wagering, must ensure that a sports wagering patron cannot have more than one active sports wagering account and username for each sports wagering operation authorized through tribal-state compact.

(3) A sports wagering account must be registered and verified in-person at a tribal gaming facility before the acceptance of any wager using that sports wagering account.

(4) A patron's identification for a sports wagering account must be reverified upon reasonable suspicion that the patron's identification has been compromised.

(5) Sports wagering vendors who maintain sports wagering account funds shall hold these funds at a federally regulated financial institution who does business in our state.

(6) Patron funds held in a sports wagering account shall not be allowed to be transferred from an individual's patron account to another different individual's patron account.

(7) Sports wagering vendor and vendor representatives will not require or advise a patron to transfer or maintain sports wagering account funds in order to circumvent or violate any provision or requirement established in any federal, state, tribal, or local statute, ordinance, administrative rule, or court order.

(8) Sports wagering vendor and vendor representatives that direct, assist, or manage sports wagering accounts shall provide a conspicuous and readily accessible method for a patron to close their sports wagering account and any fund balance remaining in a patron's closed sports wagering account will be dispersed pursuant to the internal controls of the tribal sports wagering operator.

(9) Patrons are prohibited from allowing any other patron to access or use their sports wagering account.

NEW SECTION

WAC 230-19-060 Records retention for sports wagering vendors. Where applicable, sports wagering vendors must retain the following records:

(1) For at least five years:

- (a) Suspicious wagering activity; and
- (b) Unusual wagering activity.

(2) For at least three years at the end of their fiscal year:

- (a) All required accounting records;
- (b) Sales invoices;
- (c) Sales journals; and
- (d) Credit memos.

(3) For at least two years:

- (a) Data feeds;
- (b) Sports wagering account information;
- (c) Mobile wagering account information; and
- (d) Geofence or geolocation information.