

## WSR 21-18-006

## PERMANENT RULES

## HEALTH CARE AUTHORITY

[Filed August 18, 2021, 4:22 p.m., effective January 1, 2022]

Effective Date of Rule: January 1, 2022.

Purpose: The health care authority (HCA) is amending these rules to remove all references to interceptive treatment. This change is necessary to align with the planned discontinuance of the current dental terminology code for interceptive treatment, effective January 1, 2022.

In addition to the removal of references to interceptive treatment, HCA also made the following changes:

- **Added subsection (4)(e) in WAC 182-535A-0040.** HCA does not cover removable appliances as part of the limited or comprehensive orthodontic treatment.
- **Added new subsection (4)(d) in WAC 182-535A-0060.** The agency may recoup payment, not limited to services that do not address medical issues as listed in the prior authorization request.
- **Added clarifying language in subsection (6)(c)(i) in WAC 182-535A-0060** regarding the eighth periodic orthodontic treatment visit. For comprehensive full orthodontic treatment, continue follow-up treatment must be billed as periodic orthodontic treatment visits. Payments are allowed once every three months during treatment with the eighth periodic treatment visit covering the last six months of treatment.

Citation of Rules Affected by this Order: Amending WAC 182-535A-0010, 182-535A-0040, 182-535A-0050, and 182-535A-0060.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 21-14-047 on July 1, 2021.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 4, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 4, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 4, Repealed 0.

Date Adopted: August 18, 2021.

Wendy Barcus  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 19-20-047, filed 9/25/19, effective 10/26/19)

**WAC 182-535A-0010 Definitions.** The following definitions and those found in chapter 182-500 WAC apply to this chapter.

**"Adolescent dentition"** means teeth that are present after the loss of primary teeth and prior to the cessation of growth that affects orthodontic treatment.

**"Appliance placement"** means the application of orthodontic attachments to the teeth for the purpose of correcting dentofacial abnormalities.

**"Cleft"** means an opening or fissure involving the dentition and supporting structures, especially one occurring in utero. These can be:

- (a) Cleft lip;
- (b) Cleft palate (involving the roof of the mouth); or
- (c) Facial clefts (e.g., macrostomia).

**"Comprehensive full orthodontic treatment"** means utilizing fixed orthodontic appliances for treatment of adolescent dentition leading to the improvement of a client's severe handicapping craniofacial dysfunction and/or dentofacial deformity, including anatomical and functional relationships.

**"Craniofacial anomalies"** means abnormalities of the head and face, either congenital or acquired, involving disruption of the dentition and supporting structures.

**"Craniofacial team"** means a cleft palate/maxillofacial team or an American Cleft Palate Association-certified craniofacial team. These teams are responsible for the management (review, evaluation, and approval) of patients with cleft palate craniofacial anomalies to provide integrated management, promote parent-professional partnership, and make appropriate referrals to implement and coordinate treatment plans.

**"Crossbite"** means an abnormal relationship of a tooth or teeth to the opposing tooth or teeth, in which normal buccolingual or labiolingual relations are reversed.

**"Dental dysplasia"** means an abnormality in the development of the teeth.

**"Ectopic eruption"** means a condition in which a tooth erupts in an abnormal position or is fifty percent blocked out of its normal alignment in the dental arch.

**"EPSDT"** means the agency's early and periodic screening, diagnostic, and treatment program for clients twenty years of age and younger as described in chapter 182-534 WAC.

**"Hemifacial microsomia"** means a developmental condition involving the first and second brachial arch. This creates an abnormality of the upper and lower jaw, ear, and associated structures (half or part of the face is smaller in size).

~~("Interceptive orthodontic treatment" means procedures to lessen the severity or future effects of a malformation and to affect or eliminate the cause. Such treatment may occur in the primary or transitional dentition and may include such procedures as the redirection of ectopically erupting teeth, correction of isolated dental cross-bite, or recovery of recent minor space loss where overall space is adequate.)~~

**"Limited orthodontic treatment"** means orthodontic treatment with a limited objective, not involving the entire dentition. It may be directed only at the existing problem, or

at only one aspect of a larger problem in which a decision is made to defer or forego more comprehensive therapy.

**"Malocclusion"** means improper alignment of biting or chewing surfaces of upper and lower teeth or abnormal relationship of the upper and lower dental arches.

**"Maxillofacial"** means relating to the jaws and face.

**"Occlusion"** means the relation of the upper and lower teeth when in functional contact during jaw movement.

**"Orthodontics"** means treatment involving the use of any appliance, in or out of the mouth, removable or fixed, or any surgical procedure designed to redirect teeth and surrounding tissues.

**"Orthodontist"** means a dentist who specializes in orthodontics, who is a graduate of a postgraduate program in orthodontics that is accredited by the American Dental Association, and who meets the licensure requirements of the department of health.

**"Permanent dentition"** means those teeth that succeed the primary teeth and the additional molars that erupt.

**"Primary dentition"** means teeth that develop and erupt first in order of time and are normally shed and replaced by permanent teeth.

**"Transitional dentition"** means the final phase from primary to permanent dentition, in which most primary teeth have been lost or are in the process of exfoliating and the permanent successors are erupting.

**AMENDATORY SECTION** (Amending WSR 20-03-042, filed 1/8/20, effective 2/8/20)

**WAC 182-535A-0040 Orthodontic treatment and orthodontic-related services—Covered, noncovered, and limitations to coverage.** Orthodontic treatment and orthodontic-related services require prior authorization.

(1) The medicaid agency covers orthodontic treatment and orthodontic-related services for a client who has one of the medical conditions listed in (a) and (b) of this subsection. Treatment and follow-up care must be performed only by an orthodontist or agency-recognized craniofacial team.

(a) Cleft lip and palate, cleft palate, or cleft lip with alveolar process involvement.

(b) The following craniofacial anomalies including, but not limited to:

- (i) Hemifacial microsomia;
- (ii) Craniosynostosis syndromes;
- (iii) Cleidocranial dental dysplasia;
- (iv) Arthrogyria;
- (v) Marfan syndrome;
- (vi) Treacher Collins syndrome;
- (vii) Ectodermal dysplasia; or
- (viii) Achondroplasia.

(2) The agency authorizes orthodontic treatment and orthodontic-related services when the following criteria are met:

- (a) Severe malocclusions with a Washington Modified Handicapping Labiolingual Deviation (HLD) Index Score of twenty-five or higher as determined by the agency;
- (b) The client has established caries control; and
- (c) The client has established plaque control.

(3) The agency covers orthodontic treatment for dental malocclusions other than those listed in subsections (1) and (2) of this section on a case-by-case basis when the agency determines medical necessity based on documentation submitted by the provider.

(4) The agency does not cover the following orthodontic treatment or orthodontic-related services:

(a) Orthodontic treatment for cosmetic purposes;

(b) Orthodontic treatment that is not medically necessary;

(c) Orthodontic treatment provided out-of-state, except as stated in WAC 182-501-0180 (see also WAC 182-501-0175 for medical care provided in bordering cities); ~~((#))~~

(d) Orthodontic treatment and orthodontic-related services that do not meet the requirements of this section or other applicable WAC; or

(e) Removable appliances as part of limited or comprehensive orthodontic treatment.

(5) The agency covers the following orthodontic treatment and orthodontic-related services:

(a) ~~((Interceptive orthodontic treatment.~~

~~(b)))~~ Limited orthodontic treatment.

~~((#))~~ (b) Comprehensive full orthodontic treatment on adolescent dentition.

~~((#))~~ (c) A case study when done in conjunction with ~~((interceptive,))~~ limited((#)) or comprehensive orthodontic treatment only.

~~((#))~~ (d) Other orthodontic treatment subject to review for medical necessity as determined by the agency.

(6) The agency covers the following orthodontic-related services:

(a) Clinical oral evaluations according to WAC 182-535-1080.

(b) Cephalometric films that are of diagnostic quality, dated, and labeled with the client's name.

(c) Orthodontic appliance removal as a stand-alone service only when:

(i) The client's appliance was placed by a different provider or dental clinic; and

(ii) The provider has not furnished any other orthodontic treatment or orthodontic-related services to the client.

(7) The treatment must meet industry standards and correct the medical issue. If treatment is discontinued prior to completion, or treatment objectives are not achieved, the provider must:

(a) Document in the client's record why treatment was discontinued or not completed, or why treatment goals were not achieved.

(b) Notify the agency by submitting the Orthodontic Discontinuation of Service form (HCA 13-0039).

(8) The agency evaluates a request for orthodontic treatment or orthodontic-related services:

(a) That are in excess of the limitations or restrictions listed in this section, according to WAC 182-501-0169; and

(b) That are listed as noncovered according to WAC 182-501-0160.

(9) The agency reviews requests for orthodontic treatment or orthodontic-related services for clients who are eligible for services under the EPSDT program according to the provisions of WAC 182-534-0100.

AMENDATORY SECTION (Amending WSR 20-03-042, filed 1/8/20, effective 2/8/20)

**WAC 182-535A-0050 Orthodontic treatment and orthodontic-related services—Authorization and prior authorization.** When the medicaid agency authorizes (~~an interceptive orthodontic treatment,~~) a limited orthodontic treatment, full orthodontic treatment, or orthodontic-related services for a client, including a client eligible for services under the EPSDT program, that authorization indicates only that the specific service is medically necessary; authorization is not a guarantee of payment. The client must be eligible for the covered service at the time the service is provided.

AMENDATORY SECTION (Amending WSR 20-03-042, filed 1/8/20, effective 2/8/20)

**WAC 182-535A-0060 Orthodontic treatment and orthodontic-related services—Payment.** (1) The medicaid agency pays providers for furnishing covered orthodontic treatment and orthodontic-related services described in WAC 182-535A-0040 according to this section and other applicable WAC.

(2) A provider who furnishes covered orthodontic treatment and orthodontic-related services to an eligible client accepts the agency's fees as published in the agency's fee schedules according to WAC 182-502-0010.

(3) Providers must deliver services and procedures that are of acceptable quality to the agency.

(4) The agency may recoup payment, not limited to services:

- (a) Determined to be below the standard of care; or
- (b) Of an unacceptable product quality; or
- (c) That are not rendered; or

(d) That do not address medical issue(s) as listed in the prior authorization request.

(5) (~~Interceptive orthodontic treatment. The agency pays for interceptive orthodontic treatment on primary or transitional dentition in one payment that includes all professional fees, laboratory costs, and required follow-up.~~)

~~(6))~~ **Limited orthodontic treatment.** The agency pays for limited orthodontic treatment on transitional or adolescent dentition as follows:

(a) The first three months of treatment starts on the date the initial appliance is placed and includes active treatment for the first three months. The provider must bill the agency with the date of service that the initial appliance is placed.

(b) The agency's initial payment includes:

- (i) The placement of orthodontic appliances;
- (ii) Appliance removal;
- (iii) The initial retainer fee; and
- (iv) The final records (photos, a panoramic X-ray, a cephalometric film, and final trimmed study models).

(c) Continuing follow-up treatment must be billed as periodic orthodontic treatment visits.

(i) Payments are allowed once every three months during treatment.

(ii) Payment for treatment provided in addition to the three periodic orthodontic treatment visits requires a limitation extension. See WAC 182-535A-0040(8).

(ii) If treatment is discontinued or treatment objectives are not achieved, providers must notify the agency. See WAC 182-535A-0040(7).

~~((7))~~ **(6) Comprehensive full orthodontic treatment.** The agency pays for comprehensive full orthodontic treatment on adolescent dentition as follows:

(a) The first three months of treatment starts the date the initial appliance is placed and includes active treatment for the first three months. The provider must bill the agency with the date of service that the initial appliance is placed.

(b) The agency's initial payment includes:

- (i) The placement of orthodontic appliances;
- (ii) Appliance removal;
- (iii) The initial retainer fee; and
- (iv) The final records (photos, a panoramic X-ray, a cephalometric film, and final trimmed study models).

(c) Continuing follow-up treatment must be billed as periodic orthodontic treatment visits.

(i) Payments are allowed once every three months during treatment with the eighth periodic orthodontic treatment visit covering the last six months of treatment.

(ii) Payment for treatment provided in addition to the eight periodic orthodontic treatment visits requires a limitation extension. See WAC 182-535A-0040(8).

(iii) If treatment is discontinued or treatment objectives are not achieved, providers must notify the agency. See WAC 182-535A-0040(7).

~~((8))~~ **(7) Case study.** The agency pays for a case study, which includes:

(a) Preparation of comprehensive diagnostic records (additional photos, study casts, cephalometric examination film and panoramic film);

(b) Formation of diagnosis and treatment plan from such records; and

(c) Formal case conference.

~~((9))~~ **(8)** Payment for orthodontic treatment and orthodontic-related services is based on the agency's published fee schedule.

~~((10))~~ **(9)** Orthodontic providers who are in agency-designated bordering cities must:

- (a) Meet the licensure requirements of their state; and
- (b) Meet the same criteria for payment as in-state providers, including the requirements to contract with the agency.

~~((11))~~ **(10)** If the client's eligibility for orthodontic treatment under WAC 182-535A-0020 ends before the conclusion of the orthodontic treatment, payment for any remaining treatment is the client's responsibility. The agency does not pay for these services.

~~((12))~~ **(11)** The agency does not pay for orthodontic treatment provided after the client's twenty-first birthday. Payment for treatment that continues after the client's twenty-first birthday is the client's responsibility.

~~((13))~~ **(12)** The client is responsible for payment of any orthodontic service or treatment received during any period of medicaid ineligibility, even if the treatment was started when the client was eligible.

~~((14))~~ **(13)** See WAC 182-502-0160 and 182-501-0200 for when a provider or a client is responsible to pay for a covered service.

**WSR 21-18-025**  
**PERMANENT RULES**  
**HUMAN RIGHTS COMMISSION**

Policy Analyst

[Filed August 23, 2021, 11:47 a.m., effective September 23, 2021]

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

Purpose: 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. The original rules are out of date. 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.

Citation of Rules Affected by this Order: New WAC 162-04-032, 162-04-033, 162-04-034, 162-04-036, 162-04-037 and 162-04-038; and amending WAC 162-04-030 and 162-04-035.

Statutory Authority for Adoption: RCW 42.56.120, 42.56.040.

Adopted under notice filed as WSR 21-13-011 on June 4, 2021.

Changes Other than Editing from Proposed to Adopted Version: In WAC 162-04-032, "if" was changed to "when" in subsection (2) in response to public comment related to indexing of records.

In WAC 162-04-033, an email address was corrected in subsection (3)(a).

In WAC 162-04-034, "him or her" was changed to "the person" to utilize more gender inclusive language.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 6, Amended 2, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 6, Amended 2, Repealed 0.

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

Date Adopted: July 30, 2021.

Laura Lindstrand

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 (when 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](http://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](http://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](http://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 [records@hum.wa.gov](mailto:records@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](http://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](http://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 the person 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](http://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](http://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.

#### **WSR 21-18-037**

#### **PERMANENT RULES**

#### **REDISTRICTING COMMISSION**

[Filed August 24, 2021, 10:01 a.m., effective September 24, 2021]

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

Purpose: The redistricting commission has reestablished itself since the last redistricting exercise in 2011-2012 and its third-party submissions rules need to be updated to reflect the technologies being used in this redistricting cycle. The rules also need to reflect the challenges posed to this decennial redistricting cycle given the pandemic. The proposal allows for the submission of written, graphic, audio or video files from individuals or interest groups. Prior to receipt of the P.L. 94-171 data from the Census Bureau, it explains how to submit third-party comments and descriptions of communities of interest. Once data is received, the rule describes the parameters of a formal third-party plan, encouraging the use of the MyDistricting mapping tool or similar programs.

Citation of Rules Affected by this Order: Repealing [WAC 417-06-135]; and amending WAC 417-06-100, 417-06-110, 417-06-130, 417-06-140, 417-06-150, 417-06-160, and 417-06-170.

Statutory Authority for Adoption: RCW 44.05.080(1); the commission is obliged to adopt rules pursuant to the Administrative Procedure Act, chapter 34.05 RCW, to carry out the provisions of Article II, section 43 of the state Constitution and chapter 44.05 RCW.

Adopted under notice filed as WSR 21-13-073 on June 15, 2021.

A final cost-benefit analysis is available by contacting Lisa McLean, P.O. Box 40948, Olympia, WA 98504-0948, phone 360-522-0373, email Lisa.McLean@redistricting.wa.gov, website redistricting.wa.gov.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 7, Repealed 1.

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

Date Adopted: August 23, 2021.

Lisa McLean  
Executive Director

#### **Chapter 417-06 WAC**

#### **THIRD-PARTY SUBMISSIONS**

AMENDATORY SECTION (Amending WSR 91-20-006, filed 9/19/91, effective 10/20/91)

**WAC 417-06-100 Purpose.** The commission encourages individuals and interest groups to submit proposed redistricting plans and descriptions of recognized communities of interest to the commission. The purpose of this chapter is to establish methods by which such plans and descriptions may be submitted to the commission.

AMENDATORY SECTION (Amending WSR 01-13-123, filed 6/20/01, effective 7/9/01)

**WAC 417-06-110 Definitions.** As used in this chapter:

(1) All words and phrases defined in chapter one of this title (WAC 417-01-120) and RCW 44.05.020 shall have the same meaning for the purposes of this chapter.

(2) "Commission plan" means a proposed plan of redistricting, including any amendment to a proposed plan of redistricting, that is submitted to the commission by a commissioner, or by the chair or the staff of the commission. It also means a plan of redistricting, including any amendment to a proposed plan of redistricting, that is prepared by or at the direction of one or more of the commissioners.

(3) "Formal third-party plan" means a redistricting plan other than a commission plan that meets the requirements of WAC 417-06-130 and that covers all of the territory of the state, or that covers at least all of the territory of the state that lies to the east of, or to the west of, the crest of the Cascade range.

(4) "Partial ~~((formal))~~ third-party plan" means a plan other than a commission plan that would qualify as a formal third-party plan except that it covers a smaller geographical area than a formal third-party plan.

(5) "~~((Informal plan))~~ Description of a community of interest" means a ~~((redistricting plan))~~ written, graphic, audio or video file submitted by an individual or interest group other than ~~((a))~~ the commission ~~((plan that does not qualify as a formal plan or a partial formal plan))~~ that explains or portrays an area or areas that make up a recognized community of interest.

(6) "Third-party ~~((amendment))~~ comment" means a written, graphic, audio or video proposal for an amendment to a commission plan or a third-party plan, submitted to the commission by an individual or interest group other than the commissioners or the chair or staff of the commission. A third-party ~~((amendment))~~ comment may be a formal third-party plan, a partial ~~((formal))~~ third-party plan, or ~~((an informal plan))~~ a description of a community of interest.

~~((7))~~ "Third party plan" means a plan of redistricting that is a formal plan, a partial formal plan, an informal plan or a third party amendment, submitted to the commission by an individual or interest group other than the commissioners or the chair or staff of the commission.))

AMENDATORY SECTION (Amending WSR 11-15-010, filed 7/7/11, effective 8/7/11)

**WAC 417-06-130 Format for formal or partial third-party plans.** (1) Any ~~((formal))~~ third-party plan submitted to the commission shall be submitted electronically in the following ~~((approved))~~ formats:

(a) ~~((Electronic submissions: Formal plan electronic submissions from individuals and groups are encouraged, and shall be made on either:~~

(i) ~~CD-ROMs containing a table of equivalencies file giving the census block to district assignments as assignment files in Excel or Access; or~~

(ii) ~~A text file format containing polygon identification and polygon district assignment columns; or~~

~~((iii))~~ ~~As district files containing a district identification number; or~~

~~((iv))~~ ~~As~~ (b) A shape file or geodatabase; or

~~((v))~~ ~~In a format approved by the U.S. Department of Justice.~~

(b) Paper map submissions: The commission will have available for public purchase paper maps, created using current geographic data provided by the U.S. Bureau of the Census. The maps will be sold for an amount (to be established by the executive director) sufficient to cover the cost to the commission of producing the map copies. Map scale may vary, depending on the population density in the area covered. Maps may be purchased singly or in sets. Formal plan paper map submissions from individuals and groups shall be

made on the maps provided by the commission, or on full-size copies thereof. Explanations of the commission's maps, and)) (c) A submission from the MyDistricting tool on the website.

(2) Instructions to users for submission of formal or partial third-party plans, of descriptions of a community of interest, or of a third-party amendment shall be ((made available free of charge from the commission.

Materials explaining these format(s) shall be)) posted on the commission website (www.redistricting.wa.gov), and made available free of charge from the commission.

(3) The commission shall post census and geographic data on the commission website (www.redistricting.wa.gov). ~~((Such data will also be available on CD-ROM at a charge (to be established by the executive director) sufficient to cover the cost to the commission of producing CD-ROM copies of the electronic files.~~

~~Each electronic format))~~ (4) A formal or partial third-party plan submission shall be based upon current and official Census Bureau ((of the Census)) geography and Public Law 94-171 file unique block identity code of state, county, tract, and block((, and shall be accompanied by a full description of its contents, including an identification by name and/or location of each data file that is contained, a detailed record layout for each such file, a record count for each such file, and a full description of the format)).

~~((2))~~ (5) Individuals and groups submitting formal or partial third-party plans shall supplement their ((paper map or electronic)) submissions with the following information: Name, address, and ((telephone number)) email address (if available) of a contact person; ((a submission cover letter; the total number of plans submitted;)) a narrative explanation of the plan's ((compliance)) conformity with the constitutional and statutory requirements identified in WAC 417-06-120; and a description of the original source materials and data used for the submission. They may also include with the formal or partial third-party plan such other supporting materials and data as they deem appropriate.

AMENDATORY SECTION (Amending WSR 01-13-123, filed 6/20/01, effective 7/9/01)

**WAC 417-06-140 Format for ((informal plans)) description of a community of interest.** ~~((The commission requests that))~~ Individuals and interest groups submitting ((informal plans use the paper map or electronic submission formats that are required for formal plans. The commission will accept informal plans that are submitted in nonconforming formats; however, such plans may not be capable of being tested for population data against the official census geography and Public Law 94-171 files that are incorporated in the commission's systems.)) description of a community of interest to the commission may use the following formats:

(1) By sending through the commission website (www.redistricting.wa.gov) a video file, a written comment, or map drawn using the MyDistricting tool; or

(2) By sending an email to the commission's comment box, comment@redistricting.wa.gov; or

(3) By leaving a voicemail message on the commission's comment telephone line, 360-524-4390; or

(4) By sending a written comment, drawn map, or video or audio file to P.O. Box 40948, Olympia, Washington 98504-0948.

AMENDATORY SECTION (Amending WSR 11-15-010, filed 7/7/11, effective 8/7/11)

**WAC 417-06-150 Time and place of submissions.**

Early submission of ~~((third party plans))~~ description of communities of interest is encouraged. All submissions and supporting materials should be mailed ~~((or delivered))~~ to the commission's office ~~((not to a commissioner) in Olympia, or they may be presented to commission staff at any public hearing held by the commission. Submissions may be electronically mailed to the commission's address identified in WAC 417-01-125, or made directly to the commission through any redistricting mapping tool on its web site. The date of the electronically mailed submission shall be the date the delivered materials are received by the commission. The submission envelope, cover letter and all other submission materials should be clearly marked: "Redistricting Plan Submission." The person or organization submitting the plan bears the responsibility and accepts the risk to ensure timely delivery of the plan to the commission. The commission has no responsibility to review untimely or improperly submitted plans.))~~ in Olympia, electronically mailed to the commission's comment inbox (comment@redistricting.wa.gov) or posted on the website, or left as a voicemail message at the commission's comment line at 360-524-4390. Submissions made to a specific commissioner or staff member may not reach the entire commission.

AMENDATORY SECTION (Amending WSR 91-20-006, filed 9/19/91, effective 10/20/91)

**WAC 417-06-160 Public access to third-party ~~((plans))~~ submissions.** Any third-party ~~((plan submitted))~~ submission to the commission, together with any supporting materials or data submitted in connection therewith, will be a public document, subject to inspection and copying in compliance with the commission's rules with respect to public records (chapter 417-02 WAC).

AMENDATORY SECTION (Amending WSR 01-13-123, filed 6/20/01, effective 7/9/01)

**WAC 417-06-170 Public rights in third-party ~~((plans))~~ submissions.** ~~((The submission of))~~ Any third-party ~~((plan))~~ submission to the commission shall be deemed for all purposes a release and waiver, and an unconditional assignment to the state, of any proprietary or ownership rights therein, and in any materials or data submitted in connection therewith. The commission, the state supreme court, and any other person or entity shall have the free and unrestricted right to make any use whatever, without any charge (except for copying charges that may be assessed by the commission in response to public records requests for plans, under WAC 417-06-160 and chapter 417-02 WAC) and free of any trademark, copyright or similar restriction, of all or any part of any such third-party plan, and any such materials or data.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 417-06-135 Format for partial formal plans.

**WSR 21-18-038  
PERMANENT RULES  
OFFICE OF  
FINANCIAL MANAGEMENT**

[Filed August 24, 2021, 11:31 a.m., effective September 24, 2021]

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

Purpose: To protect an employee's seniority date when leave without pay is taken as authorized by a proclamation issued by the governor directly related to health and safety.

Citation of Rules Affected by this Order: Amending WAC 357-46-053 and 357-46-055.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Adopted under notice filed as WSR 21-14-009 on June 24, 2021.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 2, Repealed 0.

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

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

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

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

Date Adopted: August 24, 2021.

Roselyn Marcus  
Assistant Director of  
Legal and Legislative Affairs

AMENDATORY SECTION (Amending WSR 05-12-075, filed 5/27/05, effective 7/1/05)

**WAC 357-46-053 How is a higher education employee's seniority date determined?** For higher education employees, the seniority date is determined as follows:

(1) In accordance with the employer's layoff procedure. The employer's layoff procedure must specify a uniform method for determining the seniority date for employees of the higher education institution or related board who are covered by the civil service rules.

(2) Employees on military leave as provided in WAC 357-31-370 must not have their seniority date adjusted for the time spent on military leave without pay.

(3) Employees on leave without pay as authorized by a proclamation issued by the governor directly related to health

and safety must not have their seniority date adjusted for the time spent on leave without pay.

AMENDATORY SECTION (Amending WSR 14-06-007, filed 2/20/14, effective 3/24/14)

**WAC 357-46-055 How is a general government employee's seniority date determined?** (1) For a full-time general government employee, the seniority date is the employee's most recent date of hire into state service (including exempt service) as adjusted for any period of leave without pay which exceeds fifteen consecutive calendar days except when the leave without pay is taken for:

- (a) Military leave as provided in WAC 357-31-370;
- (b) Compensable work-related injury or illness leave;
- (c) Government service leave not to exceed two years and one month;
- (d) Educational leave, contingent upon successful completion of the coursework; ~~((and/or))~~
- (e) Reducing the effects of layoff~~((:)); and/or~~
- (f) Leave without pay as authorized by a proclamation issued by the governor directly related to health and safety.

(2) When an employee is on leave without pay for more than fifteen consecutive calendar days and the absence is not due to one of the reasons listed above, the employee's seniority date must be moved forward in an amount equal to the number of calendar days on leave without pay.

~~((2))~~ (3) For a part-time general government employee, the seniority date is calculated by determining the number of actual hours worked and/or in paid status, excluding compensatory time off. Actual hours worked includes overtime hours regardless of whether or not the employee receives monetary payment or compensatory time for the hours worked. Time spent in leave without pay status is not credited unless the leave without pay is taken for:

- (a) Military leave as provided in WAC 357-31-370;
- (b) Compensable work-related injury or illness leave;
- (c) Government service leave not to exceed two years and one month;
- (d) Educational leave, contingent upon successful completion of the coursework; ~~((and/or))~~
- (e) Reducing the effects of layoff; and/or
- (f) Leave without pay as authorized by a proclamation issued by the governor directly related to health and safety.

**WSR 21-18-039**  
**PERMANENT RULES**  
**OFFICE OF**  
**FINANCIAL MANAGEMENT**

[Filed August 24, 2021, 11:31 a.m., effective October 1, 2021]

Effective Date of Rule: October 1, 2021.

Purpose: To align chapter 357-31 WAC with the requirements in the new law stemming from chapter 295, Laws of 2021 (SHB 1016). SHB 1016 passed during the 2021 legislative session with an effective date of July 25, 2021. This bill amends RCW 1.16.050 to add Juneteenth (June 19) as a legal holiday that celebrates the emancipation of those who had been enslaved in the United States.

Citation of Rules Affected by this Order: Amending WAC 357-31-005.

Statutory Authority for Adoption: Chapter 41.06 RCW.  
Other Authority: RCW 1.16.050.

Adopted under notice filed as WSR 21-14-008 on June 24, 2021.

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

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

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

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

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

Date Adopted: August 24, 2021.

Roselyn Marcus  
Assistant Director of  
Legal and Legislative Affairs

AMENDATORY SECTION (Amending WSR 14-18-078, filed 9/3/14, effective 10/6/14)

**WAC 357-31-005 For the purpose of chapter 357-31 WAC, what days are recognized as holidays?** The following days are designated as holidays for the purpose of chapter 357-31 WAC:

- (1) The first day of January (New Year's Day);
- (2) The third Monday of January (Martin Luther King, Jr.'s birthday);
- (3) The third Monday of February (Presidents' Day);
- (4) The last Monday of May (Memorial Day);
- (5) The nineteenth day of June (Juneteenth);
- ~~((6))~~ (6) The fourth day of July (Independence Day);
- ~~((7))~~ (7) The first Monday in September (Labor Day);
- ~~((7))~~ (8) The eleventh day of November (Veterans Day);
- ~~((8))~~ (9) The fourth Thursday in November (Thanksgiving Day);
- ~~((9))~~ (10) The Friday immediately following the fourth Thursday in November (Native American Heritage Day); and
- ~~((10))~~ (11) The twenty-fifth day of December (Christmas Day).

Higher education employers may designate other days to be observed in place of the above holidays. Holiday schedules for higher education employers may be determined on a calendar or fiscal year basis. When a higher education employer establishes a modified schedule, paid holidays must be granted based on the modified schedule.

**WSR 21-18-041**  
**PERMANENT RULES**  
**LAKE WASHINGTON**  
**INSTITUTE OF TECHNOLOGY**

[Filed August 24, 2021, 3:04 p.m., effective September 24, 2021]

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

Purpose: On May 19, 2020, the Federal Register printed amendments to Title IX regulations (85 F.R. 30575). The new regulations address the grievance process for formal complaints of sexual harassment and are scheduled to take effect on August 14, 2020. Previously these changes were through the emergency approval process, with extensions and the college now seeks a permanent ruling. In addition, other updates were made to the student code of conduct in alignment with suggestions from the attorney general's office including updates to academic dishonesty, unnecessary gendered language, and a new section on required medical withdrawal.

Citation of Rules Affected by this Order: New WAC 495D-121-680 to 495D-121-760; repealing WAC 495D-121-470 to 495D-121-490; and amending WAC 495D-121-320 through 495D-121-350, 495D-121-380, 495D-121-390, 495D-121-410 through 495D-121-460, 495D-121-500, 495D-121-520, 495D-121-530, 495D-121-540, 495D-121-570, 495D-121-590, 495D-121-600, 495D-121-620, and 495D-131-010.

Statutory Authority for Adoption: Chapter 34.05 RCW; and RCW 28B.50.140(13); 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq.

Adopted under notice filed as WSR 21-14-085 on July 6, 2021.

Number of Sections Adopted in Order to Comply with Federal Statute: New 9, Amended 13, Repealed 3; Federal Rules or Standards: New 9, Amended 13, Repealed 3; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 6, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 19, Repealed 3.

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

Date Adopted: August 18, 2021.

Elsa Gossett  
 Senior Executive  
 Assistant to the President

AMENDATORY SECTION (Amending WSR 14-14-047, filed 6/25/14, effective 7/26/14)

**WAC 495D-121-320 Student conduct code—Jurisdiction.** (1) The student conduct code shall apply to student conduct that occurs:

(a) On college premises;

(b) At or in connection with college sponsored activities;  
 (c) Off-campus when, in the judgment of the college, it adversely affects the college community or the pursuit of its objectives.

(2) Jurisdiction extends to, but is not limited to, locations in which students engage in official college activities including, but not limited to:

- (a) Foreign or domestic travel;
- (b) Activities funded by the associated students;
- (c) Athletic events;
- (d) Training internships;
- (e) Cooperative and distance education;
- (f) Online education;
- (g) Practicums;
- (h) Supervised work experiences;
- (i) Any other college-sanctioned social or club activities.

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

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

AMENDATORY SECTION (Amending WSR 14-14-047, filed 6/25/14, effective 7/26/14)

**WAC 495D-121-330 Student conduct code—Definitions.** The following definitions apply for the purposes of this student conduct code:

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

(2) "College premises" shall include all campuses of the college, wherever located, and includes all land, buildings, facilities, vehicles, equipment, and other property the college owns, uses, or controls.

(3) "Complainant" means an alleged victim of sexual misconduct.

(4) "Conduct review officer" means the vice president of student services or other college administrator the president designates to have responsibility to receive and review or refer appeals of student disciplinary actions consistent with the procedures of this code. The president can reassign any and all of the conduct review officer's duties or responsibilities as set forth in this chapter as reasonably necessary.

~~((4))~~ (5) "Disciplinary action" means the process by which the student conduct officer imposes discipline against a student for ~~((violating))~~ a violation of the student conduct code.

~~((5))~~ (6) "Disciplinary appeal" means the process by which an aggrieved student can appeal the discipline ~~((the student conduct officer imposes))~~ imposed by the student conduct officer. The student conduct committee hears disciplinary appeals for a suspension in excess of ten instructional days or a dismissal. The college will review appeals of all

other appealable disciplinary action through brief adjudicative proceedings.

~~((6))~~ (7) "Filing" means the process by which a document is officially delivered to a college official responsible to facilitate a disciplinary review. Unless otherwise provided, filing shall be accomplished by:

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

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

Papers required for filing are considered filed when the specified college official actually receives the papers during office hours.

~~((7))~~ (8) "President" means the president of the college. The president ~~(can)~~ is authorized to:

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

(b) Reassign any and all duties and responsibilities as set forth in this chapter as may be reasonably necessary.

~~((8))~~ (9) "Respondent" means the student against whom the college initiates disciplinary action.

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

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

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

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

~~((10))~~ (11) "Sexual misconduct" has the meaning ascribed to this term in WAC 495D-121-590(18).

(12) "Student" includes all persons who take classes at or through the college, whether on a full-time or part-time basis, and whether such classes are credit courses, noncredit courses, online courses, or otherwise. People who withdraw after allegedly violating the code, who are not officially enrolled for a particular term but who have a continuing relationship with the college, or who were notified of their acceptance for admission are considered students for purposes of this chapter.

~~((11))~~ (13) "Student conduct committee" means a college committee as described in WAC 495D-121-400.

~~((12))~~ (14) "Student conduct officer" means a college administrator to whom the president or vice president of student services designates responsibility to implement and enforce the student conduct code. The president or vice president can reassign any and all of the student conduct officer's duties or responsibilities as set forth in this chapter as reasonably necessary.

~~((13))~~ (15) "Title IX coordinator" means a college administrator to whom the president designates responsibility to implement and enforce the guidelines of federal Title IX legislation.

AMENDATORY SECTION (Amending WSR 14-14-047, filed 6/25/14, effective 7/26/14)

**WAC 495D-121-340 Student conduct code—Initiation of discipline.** (1) The student conduct officer initiates all disciplinary actions. If that officer is the subject of a complaint the respondent initiates, the president will, upon request and when feasible, designate another person to fulfill any such disciplinary responsibilities that relate to the complainant.

(2) The student conduct officer initiates disciplinary action by personally informing the student of the allegations or serving the respondent with written notice directing ~~(him or her)~~ them to attend a disciplinary meeting. The notice will briefly describe the:

(a) Factual allegations;

(b) Provision(s) of the conduct code the respondent allegedly violated;

(c) Range of possible sanctions for the alleged violation(s);

(d) Time and location of the meeting.

At the meeting, the student conduct officer will present the allegations to the respondent and the respondent will be afforded an opportunity to explain what took place. If the respondent ~~(student)~~ fails or refuses to attend the meeting after proper service of notice, the student conduct officer may take disciplinary action based upon the available information.

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

(4) Within ten calendar days of the initial disciplinary meeting, and after considering the evidence in the case, including any facts or argument presented by the respondent, the student conduct officer will give the respondent a written decision that states:

(a) The facts and conclusions that support the decision;

(b) The specific student conduct code provisions that were violated;

(c) The discipline imposed, if any;

(d) A notice of any appeal rights with an explanation of the consequences of not filing a timely appeal.

~~((4))~~ (5) The student conduct officer may take any of the following disciplinary actions:

(a) Exonerate the respondent and terminate the proceedings;

(b) Impose a disciplinary sanction(s) as described in WAC 495D-121-290;

(c) Refer the matter directly to the student conduct committee for such disciplinary action as the committee deems appropriate. The student conduct officer will make this referral in writing, to the attention of the student conduct committee's chair with a copy served on the respondent.

~~((5) Any college administrator or managing authority of a distance learning course, except the president and the vice president who would hear any appeal, may initiate proceedings and recommend taking any of the disciplinary actions defined in WAC 495D-121-600, except that only the presi-~~

dent, a vice president, or designee may dismiss or suspend a student from the college. Before taking the action, the disciplining official will notify his or her supervisor and meet or attempt to meet with the student to explain the seriousness of the matter and hear any explanation by the student.)) (6) In cases involving allegations of sexual misconduct, the student conduct officer, on the same date that a disciplinary decision is served on the respondent, will serve a written notice informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including disciplinary suspension or dismissal of the respondent. The notice will also inform the complainant of their appeal rights. If protective sanctions and/or conditions are imposed, the student conduct officer shall make a reasonable effort to contact the complainant to ensure prompt notice of the protective disciplinary sanctions and/or conditions.

AMENDATORY SECTION (Amending WSR 14-14-047, filed 6/25/14, effective 7/26/14)

**WAC 495D-121-350 Student conduct code—Appeal from disciplinary action.** (1) The respondent may appeal a disciplinary action by filing a written notice of appeal with the conduct review officer within ~~((twenty-one))~~ ten days of service of the student conduct officer's decision. Failure to timely file a notice of appeal constitutes a waiver of the right to appeal and the student conduct officer's decision shall be deemed final.

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

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

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

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

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

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

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

(b) Dismissals; and

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

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

(a) Suspensions of ten instructional days or less;

(b) Disciplinary probation;

(c) Written reprimands; and

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

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

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

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

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

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

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

AMENDATORY SECTION (Amending WSR 14-14-047, filed 6/25/14, effective 7/26/14)

**WAC 495D-121-380 Student conduct code—Brief adjudicative proceedings—Initial hearing.** (1) Brief adjudicative proceedings shall be conducted by a conduct review officer ~~((designated by the president))~~. The conduct review officer shall not participate in any case in which ~~((he or she is))~~ they are a complainant or witness, or in which ~~((he or she has))~~ they have direct or personal interest, prejudice, or bias, or in which ~~((he or she has))~~ they have acted previously in an advisory capacity.

(2) Before taking action, the conduct review officer shall conduct an informal hearing and provide each party:

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

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

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

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

(5) If the conduct review officer, upon review, determines that the respondent's conduct may warrant imposition of a disciplinary suspension of more than ten instructional

days or ~~((expulsion))~~ dismissal, the matter shall be referred to the student conduct committee for a disciplinary hearing.

AMENDATORY SECTION (Amending WSR 14-14-047, filed 6/25/14, effective 7/26/14)

**WAC 495D-121-390 Student conduct code—Brief adjudicative proceedings—Review of an initial decision.**

(1) An initial decision is subject to review by the president, provided ~~((the respondent))~~ a party files a written request for review with the conduct review officer within ~~((twenty-one))~~ ten days of service of the initial decision.

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

(3) During the review, the president shall give ~~((each party))~~ all parties an opportunity to file written responses explaining their view of the matter and shall make any inquiries necessary to ascertain whether the sanctions should be modified or whether the proceedings should be referred to the student conduct committee for a formal adjudicative hearing.

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

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

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

AMENDATORY SECTION (Amending WSR 14-14-047, filed 6/25/14, effective 7/26/14)

**WAC 495D-121-410 Student conduct code—Appeal—Student conduct committee.** (1) Proceedings of the student conduct committee shall be governed by the Administrative Procedure Act, chapter 34.05 RCW ~~((, and by the Model Rules of Procedure, chapter 10-08 WAC. To the extent there is a conflict between these rules and chapter 10-08 WAC, these rules shall control)).~~

(2) The student conduct committee chair shall serve all parties with written notice of the hearing not less than seven days in advance of the hearing date ~~((, as further specified in RCW 34.05.434 and WAC 10-08-040 and 10-08-045)).~~ The

chair may shorten this notice period if both parties agree, and also may continue the hearing to a later time for good cause shown.

(3) The committee chair is authorized to conduct prehearing conferences and/or to make prehearing decisions concerning the extent and form of any discovery, issuance of protective decisions, and similar procedural matters.

(4) Upon request filed at least five days before the hearing by any party or at the direction of the committee chair, the parties shall exchange, no later than the third day prior to the hearing, lists of potential witnesses and copies of potential exhibits that they reasonably expect to present to the committee. Failure to participate in good faith in such a requested exchange may be cause for exclusion from the hearing of any witness or exhibit not disclosed, absent a showing of good cause for such failure.

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

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

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

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

(9) ((Each party may be accompanied at the hearing by a nonattorney assistant of his/her choice. A respondent)) In cases heard by the committee, each party may be accompanied at the hearing by a nonattorney assistant of their choice. The respondent in all appeals before the committee, or a complainant in an appeal involving allegations of sexual misconduct before the committee, may elect to be represented by an attorney at ((his or her)) their own cost, but will be deemed to have waived that right unless, at least four business days before the hearing, written notice of the attorney's identity and participation is filed with the committee chair with a copy to the student conduct officer. The committee will ordinarily be advised by an assistant attorney general. If the respondent and/or the complainant is represented by an attorney, the student conduct officer may also be represented by a second, appropriately screened assistant attorney general.

AMENDATORY SECTION (Amending WSR 14-14-047, filed 6/25/14, effective 7/26/14)

**WAC 495D-121-420 Student conduct code—Student conduct appeals committee hearings—Presentation of evidence.** (1) Upon the failure of any party to attend or participate in a hearing, the student conduct committee may either:

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

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

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

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

(4) The chair shall preside at the hearing and decide procedural questions that arise during the hearing, except as overridden by majority vote of the committee.

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

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

(7) In cases involving allegations of sexual misconduct, no party shall directly question or cross examine one another. Attorneys for the parties are also prohibited from questioning the opposing party absent express permission from the committee chair. Subject to this exception, all cross-examination questions shall be directed to the committee chair, who in their discretion shall pose the questions on the party's behalf.

AMENDATORY SECTION (Amending WSR 14-14-047, filed 6/25/14, effective 7/26/14)

**WAC 495D-121-430 Student conduct code—Student conduct committee—Initial decision.** (1) At the conclusion of the hearing, the student conduct committee shall permit the parties to make closing arguments in whatever form it wishes to receive them. The committee also may permit each party to propose findings, conclusions, and/or a proposed decision for its consideration.

(2) Within twenty days following the later of the conclusion of the hearing, or the committee's receipt of closing arguments, the committee shall issue an initial decision in accordance with RCW 34.05.461 and WAC 10-08-210. The initial decision shall include findings on all material issues of fact and conclusions on all material issues of law, including which, if any, provisions of the student conduct code were violated. Any findings based substantially on the credibility

of evidence or the demeanor of witnesses shall be so identified.

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

(4) The committee chair shall cause copies of the initial decision to be served on the parties and their legal counsel of record. The committee chair shall also promptly transmit a copy of the decision and the record of the committee's proceedings to the president.

(5) In cases involving allegations of sexual misconduct, the chair of the student conduct committee, on the same date as the initial decision is served on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent. Complainant may appeal the student conduct committee's initial decision to the president subject to the same procedures and deadlines applicable to other parties. The notice will also inform the complainant of their appeal rights.

AMENDATORY SECTION (Amending WSR 14-14-047, filed 6/25/14, effective 7/26/14)

**WAC 495D-121-440 Student conduct code—Appeal from student conduct committee initial decision.** (1) A respondent who is aggrieved by the findings or conclusions issued by the student conduct committee may appeal the committee's initial decision to the president by filing a notice of appeal with the president's office within ~~((twenty-one))~~ ten days of service of the committee's initial decision. Failure to file a timely appeal constitutes a waiver of the right and the initial decision shall be deemed final.

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

(3) The president shall provide a written decision to all parties within ~~((forty-five))~~ twenty days after receipt of the notice of appeal. The president's decision shall be final and shall include a notice of any rights to request reconsideration and/or judicial review.

(4) ((The president may, at his or her discretion, suspend any disciplinary action pending review of the merits of the findings, conclusions, and disciplinary actions imposed.)) In cases involving allegations of sexual misconduct, the president, on the same date that the final decision is served upon

the respondent, shall serve a written notice informing the complainant of the final decision. This notice shall inform the complainant whether the sexual misconduct allegation was found to have merit and describe any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent.

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

**AMENDATORY SECTION** (Amending WSR 14-14-047, filed 6/25/14, effective 7/26/14)

**WAC 495D-121-450 Student conduct code—Summary suspension.** (1) Summary suspension is a temporary exclusion from specified college premises or denial of access to all activities or privileges for which a respondent might otherwise be eligible, while an investigation and/or formal disciplinary procedures are pending.

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

(a) Has violated any provision of the code of conduct; and

(b) Presents an immediate danger to the health, safety or welfare of members of the college community; or

(c) Poses an ongoing threat of substantial disruption of, or interference with, the operations of the college.

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

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

(a) The reasons for imposing the summary suspension, including a description of the conduct giving rise to the summary suspension and reference to the provisions of the student conduct code or the law allegedly violated;

(b) The date, time, and location when the respondent must appear before the conduct review officer for a hearing on the summary suspension; and

(c) The conditions, if any, under which the respondent may physically access the campus or communicate with members of the campus community. If the respondent has been trespassed from the campus, a notice against trespass shall be included that warns the student that ~~((his or her))~~ their privilege to enter into or remain on college premises has been withdrawn, that the respondent shall be considered trespassing and subject to arrest for criminal trespass if the respondent enters the college campus other than to meet with the student conduct officer or conduct review officer, or to attend a disciplinary hearing.

(5) Hearing procedures:

(a) The conduct review officer shall conduct a hearing on the summary suspension as soon as practicable after imposition of the summary suspension.

(b) During the summary suspension hearing, the issue before the conduct review officer is whether there is probable cause to believe that the summary suspension should be con-

tinued pending the conclusion of disciplinary proceedings and/or whether the summary suspension should be less restrictive in scope.

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

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

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

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

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

**AMENDATORY SECTION** (Amending WSR 14-14-047, filed 6/25/14, effective 7/26/14)

**WAC 495D-121-460 Student conduct code—Discipline procedures for cases involving allegations of sexual misconduct—Supplemental sexual misconduct procedures.** Both the respondent and the complainant in cases involving allegations of sexual misconduct shall be provided the same procedural rights to participate in student discipline matters, including the right to participate in the initial disciplinary decision-making process and to appeal any disciplinary decision.

~~((Application of the following procedures is limited to student conduct code proceedings involving allegations of sexual misconduct by a student. In such cases, these procedures shall supplement the student disciplinary procedures in WAC 495D-121-310 through 495D-121-450. In the event of conflict between the sexual misconduct procedures and the student disciplinary procedures, the sexual misconduct procedures shall prevail.))~~

**AMENDATORY SECTION** (Amending WSR 14-14-047, filed 6/25/14, effective 7/26/14)

**WAC 495D-121-500 Student conduct code—Free movement on campus.** The president or designee is authorized in the instance of any event that ~~((he or she))~~ they deem~~((s))~~ impedes the movement of persons or vehicles or which ~~((he or she))~~ they deem~~((s))~~ to disrupt the ingress or egress of persons from the college facilities, to prohibit the entry of, or withdraw the license of, or privileges of a person or persons or any group of persons to enter onto or remain upon any portion of the college facility. The president may

act through the vice president of administrative services or any other person (~~(he or she)~~) they may designate.

AMENDATORY SECTION (Amending WSR 14-14-047, filed 6/25/14, effective 7/26/14)

**WAC 495D-121-520 Student conduct code—Civil disturbances.** In accordance with provisions contained in RCW 28B.10.571 and 28B.10.572:

(1) It shall be unlawful for any person, singly or in concert with others, to interfere by force or violence with any administrator, faculty, staff member, or student of the college who is in the peaceful discharge or conduct of (~~(his/her)~~) their duties or studies.

(2) It shall be unlawful for any person, singly or in concert with others, to intimidate by threat of force or violence any administrator, faculty, staff member, or student of the college who is in the peaceful discharge of (~~(his/her)~~) their duties or studies.

(3) The crimes described in RCW 28B.10.571 and 28B.10.572 shall not apply to any administrator, faculty, or staff member who is engaged in the reasonable exercise of their disciplinary authority.

(4) Any person or persons who violate the provisions of subsections (1) and (2) of this section will be subject to disciplinary action and referred to the authorities for prosecution.

AMENDATORY SECTION (Amending WSR 14-14-047, filed 6/25/14, effective 7/26/14)

**WAC 495D-121-530 Student conduct code—Authority to prohibit trespass.** (1) Individuals who are not students or members of the faculty or staff and who violate Lake Washington Institute of Technology's rules, or whose conduct threatens the safety or security of its students, staff, or faculty will be advised of the specific nature of the violation, and if they persist in the violation, they will be requested by the campus president, or (~~(his or her)~~) their designee, to leave the college property. Such a request will be deemed to prohibit the entry of, withdraw the license or privilege to enter onto or remain upon any portion of the college property by the person or group of persons requested to leave, and subject such individuals to arrest under the provisions of chapter 9A.52 RCW.

(2) Members of the college community, students, faculty, and staff who do not comply with these regulations will be reported to the appropriate college office or agency for action in accord with established college policies.

(3) When the college revokes the license or privilege of any person to be on college property, temporarily or for a stated period of time, that person may file a request for review of the decision with the vice president of administrative services or designee within ten days of receipt of the trespass notice. The request must contain the reasons why the individual disagrees with the trespass notice. The trespass notice will remain in effect during the pendency of any review period. The decision of the vice president of administrative services or designee will be the final decision of the college and should be issued within five business days.

AMENDATORY SECTION (Amending WSR 14-14-047, filed 6/25/14, effective 7/26/14)

**WAC 495D-121-540 Student conduct code—Academic dishonesty and classroom, lab, clinic conduct.** (1) Honest assessment of student performance is of crucial importance to all members of the academic community. The college views acts of dishonesty as serious breaches of honor and will deal with them using the following:

(a) College administration and faculty will provide reasonable and prudent security measures designed to minimize opportunities for acts of academic dishonesty.

(b) Any student who, for the purpose of fulfilling any assignment or task required by a faculty member as part of the student's program of instruction, shall knowingly tender any work product that the student fraudulently represents to the faculty member as the student's work product, shall be deemed to have committed an act of academic dishonesty. Acts of academic dishonesty are cause for disciplinary action.

(c) Any student who aids or abets an act of academic dishonesty, as described in (b) of this subsection, (~~(is)~~) may be subject to disciplinary action.

(d) Faculty may adjust the student's grade on a particular project, paper, test, or class for academic dishonesty. This section shall not be construed as preventing a faculty from taking immediate disciplinary action when (~~(he or she)~~) they must act upon such breach of academic dishonesty to preserve order and prevent disruptive conduct in the classroom.

(2) Instructors have the authority to take whatever summary actions necessary to maintain order and proper conduct in the classroom and to maintain the effective cooperation of the class in fulfilling the course objectives.

(a) Any student who, by any act of misconduct, substantially disrupts a class by engaging in conduct that renders it difficult or impossible to maintain the decorum of the faculty's class is subject to disciplinary action.

(b) The faculty of each course, or the managing authority of distance learning courses, can take steps as necessary to preserve order and to maintain the effective cooperation of the class in fulfilling the course objectives, given that a student shall have the right to appeal the disciplinary action to the faculty's supervisor.

AMENDATORY SECTION (Amending WSR 14-14-047, filed 6/25/14, effective 7/26/14)

**WAC 495D-121-570 Student conduct code—Authority.** The board of trustees, acting pursuant to RCW 28B.50-140(~~((14))~~) (13), delegates to the president of the college the authority to administer disciplinary action. Administration of the disciplinary procedures is the responsibility of the vice president of student (~~(affairs)~~) services or designee. The student conduct officer shall serve as the principal investigator and administrator for alleged violations of this code.

AMENDATORY SECTION (Amending WSR 16-10-092, filed 5/3/16, effective 6/3/16)

**WAC 495D-121-590 Student conduct code—Prohibited student conduct.** The college may impose disciplinary sanctions against a student who commits, or aids, abets,

incites, encourages, or assists another person to commit, an act(s) of misconduct which include, but are not limited to, the following:

(1) **Academic dishonesty.** Any act of academic dishonesty including, but not limited to, cheating, plagiarism, and fabrication.

(a) Cheating includes any attempt to give or obtain unauthorized assistance relating to the completion of an academic assignment.

(b) Plagiarism includes taking and using as one's own, without proper attribution, the ideas, writings, or work of another person in completing an academic assignment. Prohibited conduct may also include the unauthorized submission for credit of academic work that has been submitted for credit in another course.

(c) Fabrication includes falsifying data, information, or citations in completing an academic assignment and also includes providing false or deceptive information to an instructor concerning the completion of an assignment.

(d) Academic consequences for academic dishonesty or abetting in academic dishonesty may be imposed at the discretion of a faculty member up to and including a failing grade for the course. Students should refer to each of their faculty's course syllabus. Further academic consequences may follow consistent with the provisions in any program handbook. Incidents of academic dishonesty may also be referred to the student conduct officer for disciplinary action consistent with this chapter in addition to the academic consequences identified above.

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

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

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

(c) Furnishing false information or failing to furnish correct information, in response to the request or requirement of a college officer or employee.

(3) **Obstructive or disruptive ((activity)) conduct.** ((Participation in any activity that obstructs or disrupts)) Conduct, not otherwise protected by law, that interferes with, impedes, or otherwise unreasonably hinders:

(a) Any instruction, research, administration, disciplinary proceeding, or other college activity;

(b) The free flow of pedestrian or vehicular movement on college property or at a college activity;

(c) Any student's ability to profit from the instructional program; or

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

(4) **Assault, intimidation, and/or harassment.** ((Assault, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, stalking or other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property. For purposes of this subsection:

~~(a) Bullying is physical or verbal abuse, repeated over time, and involving a power imbalance between the aggressor and victim.~~

~~(b) Stalking is intentional and repeated following of another person, which places that person in reasonable fear that the perpetrator intends to injure, intimidate or harass that person. Stalking also includes instances where the perpetrator knows or reasonably should know that the person is frightened, intimidated or harassed, even if the perpetrator lacks such an intent.)) Unwanted touching, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, or other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property. For purposes of this code, "bullying" is defined as repeated or aggressive unwanted behavior, not otherwise protected by law that intentionally humiliates, harms, or intimidates the victim.~~

(5) **Imminent danger.** Where the student presents an imminent danger to college property, or to ~~((himself or herself)) themselves~~, or other students or persons in college facilities on or off campus, or to the education processes of the college.

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

~~(7) **Property violation.** ((Attempted or actual damage to, or theft or misuse of, real or personal property or money of:~~

~~(a) The college or state;~~

~~(b) Any student or college officer, employee, or organization;~~

~~(c) Any other person or organization; or~~

~~(d) Possession of such property or money after it has been stolen.)) Damage to, misappropriation of, unauthorized use or possession of, vandalism, or other nonaccidental damaging or destruction of college property or the property of another person. Property for purposes of this subsection includes computer passwords, access codes, identification cards, personal financial account numbers, other confidential personal information, intellectual property, and college trademarks.~~

(8) **Noncompliance.** Failure to comply with:

(a) The direction of a college officer or employee who is acting in the legitimate performance of ~~((his or her)) their~~ duties, including failure to properly identify oneself to such a person when requested to do so;

(b) ~~((A college attendance policy as published in the student handbook or course syllabus; or~~

(e)) A college rule or policy as set forth in the *Lake Washington Institute of Technology Policies and Procedures Manual* which may be found in the library or online.

(9) **Weapons.** Possession, holding, wearing, transporting, storage, or presence of any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, martial arts weapons, explosive device, dangerous chemicals, or any other weapon apparently capable of producing bodily harm is prohibited on the college campus, subject to the following exceptions:

(a) Commissioned law enforcement personnel or legally authorized military personnel while in performance of their duties; or

(b) A student with a valid concealed weapons permit may store a firearm in ((his or her)) their vehicle parked on campus in accordance with RCW 9.41.050, provided the vehicle is locked and the weapon is concealed from view; or

(c) The president or designee may authorize possession of a weapon on campus upon a showing that the weapon is reasonably related to a legitimate pedagogical purpose. Such permission shall be in advance to bringing weapons to the college, in writing, and shall be subject to such terms or conditions incorporated therein.

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

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

(12) **Alcohol.** Being observably under the influence of any alcoholic beverage, or otherwise using, possessing, selling, or delivering any alcoholic beverage, except as permitted by law and authorized by the college president.

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

(14) **Drugs.** ~~((Being observably under the influence of any legend drug, narcotic drug, or controlled substance as defined in chapters 69.41 and 69.50 RCW, or otherwise using, possessing, delivering, or selling any such drug or substance, except in accordance with a lawful prescription for that student by a licensed health care professional.))~~ The use, possession, delivery, sale, or being observably under the influence of any legend drug, including anabolic steroids, androgens, or human growth hormones as defined in chapter 69.41 RCW, or any other controlled substance under chapter 69.50 RCW, except as prescribed for a student's use by a licensed practitioner. Being observably under the influence

of any lawfully prescribed drug when enrolled in classes that require operation of heavy equipment or other dangerous equipment.

(15) ~~((**Obstruction.** Obstruction of the free flow of pedestrian or vehicular movement on college property or at a college activity.~~

(16)) **Disorderly conduct.** Conduct which is disorderly, lewd, obscene, or a breach of peace on college premises or at college sponsored activities that is not otherwise protected under the law.

~~((17) **Discrimination.** Discriminatory action which harms or adversely affects any member of the college community because of her/his race; color; national origin; sensory, mental, or physical disability; age; religion; creed; genetic information; sexual orientation; gender identity; veteran's status; or any other legally protected classification.~~

(18) **Sexual misconduct.** The term "sexual misconduct" includes sexual harassment, sexual intimidation, and sexual violence.

(a) **Sexual harassment.** The term "sexual harassment" means unwelcome conduct of a sexual nature, including unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature that is sufficiently serious as to deny or limit, and that does deny or limit, based on sex, the ability of a student to participate in or benefit from the college's educational program or that creates an intimidating, hostile, or offensive environment for other campus community members.

(b) **Sexual intimidation.** The term "sexual intimidation" incorporates the definition of "sexual harassment" and means threatening or emotionally distressing conduct based on sex including, but not limited to, noneconsensual recording of sexual activity or the distribution of such recording.

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

(i) Noneconsensual sexual intercourse is any sexual intercourse (anal, oral, or vaginal), however slight, with any object, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.

(ii) Noneconsensual sexual contact is any intentional sexual touching, however slight, with any object, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

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

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

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

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

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

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

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

(17) **Sexual misconduct.** The term "sexual misconduct" includes sexual harassment, sexual intimidation, and sexual violence. Sexual harassment prohibited by Title IX is defined in the supplemental procedures to this code. See WAC 495D-121-680 (supplemental Title IX student conduct procedures).

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

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

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

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

(b) **Sexual intimidation.** The term "sexual intimidation" incorporates the definition of "sexual harassment" and means threatening or emotionally distressing conduct based on sex, including, but not limited to, nonconsensual recording of sexual activity or the distribution of such recording.

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

(d) **Nonconsensual sexual intercourse.** Any actual or attempted sexual intercourse (anal, oral, or vaginal), however

slight, with any object or body part, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.

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

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

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

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

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

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

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

(A) The length of the relationship;

(B) The type of relationship; and

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

(j) For purposes of this code, "consent" means knowing, voluntary, and clear permission by word or action, to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact. A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct. Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

(18) **Harassment.** Unwelcome and offensive conduct, including verbal, nonverbal, or physical conduct, that is

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

~~((20))~~ **(19) Retaliation.** ~~((Retaliation against any individual for reporting, providing information, exercising one's rights or responsibilities, or otherwise being involved in the process of responding to, investigating, or addressing allegations or violations of federal, state or local law, or college policies including, but not limited to, student conduct code provisions prohibiting discrimination and harassment.~~

~~((21))~~ Harming, threatening, intimidating, coercing, or taking adverse action of any kind against a person because such person reported an alleged violation of this code or college policy, provided information about an alleged violation, or participated as a witness or in any other capacity in a college investigation or disciplinary proceeding.

**(20) Misuse of information resources.** Theft or other misuse of computer time or other electronic information resources of the college. Such misuse includes, but is not limited to:

- (a) Unauthorized use of such resources or opening of a file, message, or other item;
- (b) Unauthorized duplication, transfer, or distribution of a computer program, file, message, or other item;
- (c) Unauthorized use or distribution of someone else's password or other identification;
- (d) Use of such time or resources to interfere with someone else's work;
- (e) Use of such time or resources to send, display, or print an obscene or abusive message, text, or image;
- (f) Use of such time or resources to interfere with normal operation of the college's computing system or other electronic information resources;
- (g) Use of such time or resources in violation of applicable copyright or other law;
- (h) Adding to or otherwise altering the infrastructure of the college's electronic information resources without authorization;
- (i) Failure to comply with the college's acceptable use policy.

~~((22))~~ **(21) Breach of campus safety.** Safety violation includes any nonaccidental conduct that interferes with or otherwise compromises any college policy, equipment, or procedure relating to the safety and security of the campus community. Breaching campus safety or security includes, but is not limited to:

- (a) Unauthorized access to college facilities; intentionally damaging door locks; unauthorized possession of college keys or access cards; duplicating college keys or access

cards; ~~((or))~~ propping open of exterior doors; or unauthorized entry onto or into college property;

(b) Tampering with fire safety equipment, such as fire extinguishers, smoke detectors, alarm pull stations or emergency exits or triggering false alarms or other emergency response systems;

(c) Placement of equipment or vehicles, including bicycles, so as to obstruct the means of access to/from college buildings;

(d) Entering or remaining in any closed college facility or entering after the closing time of the college facility without permission of a college official;

(e) Operation of any motor vehicle on college property in an unsafe manner or in a manner which is reasonably perceived as threatening the health or safety of another person.

~~((23))~~ **(22) Abuse of procedures.** Abuse or misuse of any of the procedures relating to student complaints or misconduct including, but not limited to:

- (a) Failure to obey a subpoena;
- (b) Falsification or misrepresentation of information;
- (c) Disruption or interference with the orderly conduct of a proceeding;
- (d) Interfering with someone else's proper participation in a proceeding;
- (e) Destroying or altering potential evidence or attempting to intimidate or otherwise improperly pressure a witness or potential witness;
- (f) Attempting to influence the impartiality of, or harassing or intimidating, a student conduct committee member;
- (g) Failure to comply with any disciplinary sanction(s) imposed under this student conduct code.

~~((24))~~ **(23) Violation of other laws or policies.** Violation of any federal, state, or local law, rule, or regulation or other college rules or policies, including college traffic and parking rules.

~~((25))~~ **(24) Ethical violation.** The breach of any generally recognized and published code of ethics or standards of professional practice that governs the conduct of a particular profession for which the student is taking a course or is pursuing as an educational goal or major.

In addition to initiating discipline proceedings for violation of the student conduct code, the college may refer any violations of federal, state, or local laws to civil and criminal authorities for disposition. The college ~~((shall proceed with))~~ reserves the right to pursue student disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution.

AMENDATORY SECTION (Amending WSR 14-14-047, filed 6/25/14, effective 7/26/14)

**WAC 495D-121-600 Student conduct code—Disciplinary sanctions.** ~~((Disciplinary actions include, but are not limited to, the following sanctions that may be imposed upon students according to the procedure outlined in WAC 495D-121-340.~~

~~(1) Primary sanctions.)~~ (1) The following primary disciplinary sanctions may be imposed upon students found to have violated the student conduct code.

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

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

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

(d) **Disciplinary suspension.** Dismissal from the college and from the student status for a stated period of time. There will be no refund of tuition or fees for the quarter in which the action is taken. The student is not guaranteed readmission at the end of such period of time, but is guaranteed a review of the case and a decision regarding eligibility for readmission.

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

(2) Disciplinary terms and conditions that may be imposed in conjunction with the imposition of a disciplinary sanction include, but are not limited to, the following:

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

(b) **Professional evaluation.** Referral for drug, alcohol, psychological, or medical evaluation by an appropriately certified or licensed professional may be required. The student may choose the professional within the scope of practice and with the professional credentials as defined by the college. The student will sign all necessary releases to allow the college access to any such evaluation. The student's return to college may be conditioned upon compliance with recommendations set forth in such a professional evaluation including, but not limited to, drug and alcohol education, anger management coursework, or ongoing treatment. If the evaluation indicates that the student is not capable of functioning within the college community, the student will remain suspended until future evaluation recommends that the student is capable of reentering the college and complying with the rules of conduct.

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

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

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

(d) **No contact orders and other summary relief.** The college may require a student to refrain from any form of contact with another student or college employee. Other forms or relief include, but are not limited to: Switching to alternate sections of individual classes or programs, delaying admission to an instructional program, assigned seating during a class, or behavioral contracts.

(3) **Secondary sanctions.** No order of severity is established for secondary sanctions:

(a) **Community/college service.** A student may be offered an opportunity to complete a specified number of hours of community/college service in lieu of other sanctions. The type of community/college service must be approved by the hearing officer.

(b) **Educational requirements.** A provision to complete a specific educational requirement directly related to the violation committed. The provision will be clearly defined. Such educational requirements may include, but are not limited to, completion of an alcohol education workshop, a diversity awareness workshop, an anger management class, essays, or reports.

(c) **Restrictions.** The withdrawal of specified privileges for a definite period of time, but without the additional stipulations contained in the imposition of conduct probation. The restrictions involved will be clearly defined.

(d) **Loss of parking privileges on campus.** Revocation of parking privileges.

AMENDATORY SECTION (Amending WSR 14-14-047, filed 6/25/14, effective 7/26/14)

**WAC 495D-121-620 Student conduct code—Refunds and access.** (1) The college's refund policy covers refund of fees for the quarter in which disciplinary action occurs.

(2) The college may deny a student access to all or any part of the campus or other facility if ~~((he or she was))~~ they were suspended on the basis of conduct, which disrupted the orderly operation of the campus or any facility of the district, may be denied.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 495D-121-470 Student conduct code—Discipline procedures for cases involving allegations of sexual misconduct—Supplemental definitions.

- WAC 495D-121-480 Student conduct code—Discipline procedures for cases involving allegations of sexual misconduct—Supplemental complaint process.
- WAC 495D-121-490 Student conduct code—Discipline procedures for cases involving allegations of sexual misconduct—Supplemental appeal rights.

#### NEW SECTION

**WAC 495D-121-680 Student conduct code—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 Lake Washington Institute of Technology's standard disciplinary procedures, WAC 495D-121-320 through 495D-121-670, these supplemental procedures shall take precedence. College may, at its discretion, contract with an administrative law judge or other person to act as presiding officer and assign such presiding officer to exercise any or all of the duties in lieu of the student conduct committee and committee chair.

#### NEW SECTION

**WAC 495D-121-690 Student conduct code—Prohibited conduct under Title IX.** Pursuant to RCW 28B.50.140 (13) and Title IX of the Education Amendments Act of 1972, 20 U.S.C. Sec. 1681, Lake Washington Institute of Technology may impose disciplinary sanctions against a student who commits, attempts to commit, or aids, abets, incites, encourages, or assists another person to commit, an act(s) of "sexual harassment."

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

- (1) Quid pro quo harassment. A Lake Washington Institute of Technology employee conditioning the provision of an aid, benefit, or service of Lake Washington Institute of Technology on an individual's participation in unwelcome sexual conduct.
- (2) Hostile environment. Unwelcome conduct that a reasonable person would find to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to Lake Washington Institute of Technology's educational programs or activities, or employment.
- (3) Sexual assault. Sexual assault includes the following conduct:
  - (a) Nonconsensual sexual intercourse. Any actual or attempted sexual intercourse (anal, oral, or vaginal), however slight, with any object or body part, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.
  - (b) Nonconsensual sexual contact. Any actual or attempted sexual touching, however slight, with any body

part or object, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

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

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

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

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

- (a) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
- (b) Where the existence of such a relationship shall be determined based on a consideration of the following factors:
  - (i) The length of the relationship;
  - (ii) The type of relationship; and
  - (iii) The frequency of interaction between the persons involved in the relationship.

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

#### NEW SECTION

**WAC 495D-121-700 Student conduct code—Prohibited conduct under Title IX jurisdiction.** (1) This supplemental procedure applies only if the alleged misconduct:

- (a) Occurred in the United States;
- (b) Occurred during a Lake Washington Institute of Technology educational program or activity; and
- (c) Meets the definition of sexual harassment as that term is defined in this supplemental procedure.

(2) For purposes of this supplemental procedure, an "educational program or activity" is defined as locations, events, or circumstances over which Lake Washington Institute of Technology exercised substantial control over both the respondent and the context in which the alleged sexual harassment occurred. This definition includes any building owned or controlled by a student organization that is officially recognized by Lake Washington Institute of Technology.

(3) Proceedings under this supplemental procedure must be dismissed if the decision maker determines that one or all of the requirements of subsection (1)(a) through (c) of this section have not been met. Dismissal under this supplemental procedure does not prohibit Lake Washington Institute of Technology from pursuing other disciplinary action based on allegations that the respondent violated other provisions of Lake Washington Institute of Technology's student conduct code, WAC 495D-121-320 through 495D-121-670.

(4) If the student conduct officer determines the facts in the investigation report are not sufficient to support Title IX jurisdiction and/or pursuit of a Title IX violation, the student conduct officer will issue a notice of dismissal in whole or part to both parties explaining why some or all of the Title IX claims have been dismissed.

#### NEW SECTION

**WAC 495D-121-710 Student conduct code—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 either the chair of the student conduct committee or the college's appointed Title IX hearing officer and serving the notice on the respondent and the complainant, and their respective advisors. The notice must:

- (a) Set forth the basis for Title IX jurisdiction;
- (b) Identify the alleged Title IX violation(s);
- (c) Set forth the facts underlying the allegation(s);
- (d) Identify the range of possible sanctions that may be imposed if the respondent is found responsible for the alleged violation(s);
- (e) Explain that the parties are entitled to be accompanied by their chosen advisors during the hearing and that:
  - (i) The advisors will be responsible for questioning all witnesses on the party's behalf;
  - (ii) An advisor may be an attorney; and
  - (iii) Lake Washington Institute of Technology will appoint the party an advisor of Lake Washington Institute of Technology's choosing at no cost to the party, if the party fails to do so.
- (3) Explain that if a party fails to appear at the hearing, a decision of responsibility may be made in their absence.

#### NEW SECTION

**WAC 495D-121-720 Student conduct code—Pre-hearing procedure.** (1) Upon receiving the disciplinary notice, the chair of the student conduct committee or the college's appointed Title IX hearing officer will send a hearing notice to all parties, in compliance with WAC 495D-121-410. 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 Lake Washington Institute of Technology intends to offer the evidence at the hearing.

#### NEW SECTION

**WAC 495D-121-730 Student conduct code—Rights of parties.** (1) Lake Washington Institute of Technology's student conduct procedures, WAC 495D-121-320 through 495D-121-670, and this supplemental procedure shall apply equally to all parties.

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

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

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

#### NEW SECTION

**WAC 495D-121-740 Student conduct code—Evidence.** The introduction and consideration of evidence during the hearing is subject to the following procedures and restrictions:

(1) Relevance: The committee chair or the college's appointed Title IX hearing officer shall review all questions for relevance and shall explain on the record their reasons for excluding any question based on lack of relevance.

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

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

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

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

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

(5) No negative inference: The committee or the college's appointed Title IX hearing officer may not make an inference regarding responsibility solely on a witness's or

party's absence from the hearing or refusal to answer questions.

(6) Privileged evidence: The committee or the college's appointed Title IX hearing officer shall not consider legally privileged information unless the holder has effectively waived the privilege. Privileged information includes, but is not limited to, information protected by the following:

- (a) Spousal/domestic partner privilege;
- (b) Attorney-client and attorney work product privileges;
- (c) Privileges applicable to members of the clergy and priests;
- (d) Privileges applicable to medical providers, mental health therapists, and counselors;
- (e) Privileges applicable to sexual assault and domestic violence advocates; and
- (f) Other legal privileges identified in RCW 5.60.060.

#### NEW SECTION

**WAC 495D-121-750 Student conduct code—Initial order.** (1) In addition to complying with WAC 495D-121-430, the student conduct committee or the college's appointed Title IX hearing officer 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 or the college's appointed Title IX hearing officer's determination of responsibility for each allegation;
- (f) Describes any disciplinary sanction or conditions imposed against the respondent, if any;
- (g) Describes to what extent, if any, complainant is entitled to remedies designed to restore or preserve complainant's equal access to Lake Washington Institute of Technology's education programs or activities; and
- (h) Describes the process for appealing the initial order to the Lake Washington Institute of Technology president.

(2) The committee chair or the college's appointed Title IX hearing officer will serve the initial order on the parties simultaneously.

#### NEW SECTION

**WAC 495D-121-760 Student conduct code—Appeals.** (1) The parties shall have the right to appeal from the initial order's determination of responsibility and/or dismissal of an allegation(s) of sexual harassment in a formal complaint. The right to appeal will be subject to the same procedures and time frames set forth in WAC 495D-121-440.

(2) The president or their delegate will determine whether the grounds for appeal have merit, provide the rationale for this conclusion, and state whether the disciplinary

sanction and condition(s) imposed in the initial order are affirmed, vacated, or amended, and, if amended, set forth any new disciplinary sanction and/or condition(s).

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

AMENDATORY SECTION (Amending WSR 14-14-047, filed 6/25/14, effective 7/26/14)

**WAC 495D-131-010 Scholarships.** The financial aid office keeps detailed information about the criteria, eligibility, procedures for application, and other information on scholarships offered by Lake Washington Institute of Technology or administered by the financial aid office. Detailed information concerning the Lake Washington Foundation Scholarships is located in the Foundation office at the college.

### WSR 21-18-045

#### PERMANENT RULES

#### HEALTH CARE AUTHORITY

[Filed August 25, 2021, 9:40 a.m., effective September 25, 2021]

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

Purpose: The health care authority is amending WAC 182-513-1230 to replace "chemical dependency" with "substance use disorder (SUD)."

Citation of Rules Affected by this Order: Amending WAC 182-513-1230.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 21-13-171 on June 23, 2021.

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

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

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

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

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

Date Adopted: August 25, 2021.

Wendy Barcus  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 17-03-116, filed 1/17/17, effective 2/17/17)

**WAC 182-513-1230 Program of all-inclusive care for the elderly (PACE).** (1) The program of all-inclusive care

for the elderly (PACE) provides long-term services and supports (LTSS), medical, mental health, and ((~~chemical dependency~~) **substance use disorder (SUD)**) treatment through a department-contracted managed care plan using a personalized plan of care for each enrollee.

(2) Program rules governing functional eligibility for PACE are listed under WAC 388-106-0700, 388-106-0705, 388-106-0710, and 388-106-0715.

(3) A person is financially eligible for PACE if the person:

(a) Is age:

(i) Fifty-five or older and disabled under WAC 182-512-0050; or

(ii) Sixty-five or older;

(b) Meets nursing facility level of care under WAC 388-106-0355;

(c) Lives in a designated PACE service area;

(d) Meets financial eligibility requirements under this section; and

(e) Agrees to receive services exclusively through the PACE provider and the PACE provider's network of contracted providers.

(4) Although PACE is not a home and community based (HCB) waiver program, financial eligibility is determined using the HCB waiver rules under WAC 182-515-1505 when a person is living at home or in an alternate living facility (ALF), with the following exceptions:

(a) PACE enrollees are not subject to the transfer of asset rules under WAC 182-513-1363; and

(b) PACE enrollees may reside in a medical institution thirty days or longer and still remain eligible for PACE services. The eligibility rules for institutional coverage are under WAC 182-513-1315 and 182-513-1380.

(5) A person may have to pay third-party resources as defined under WAC 182-513-1100 in addition to the room and board and participation.

### WSR 21-18-046

#### PERMANENT RULES

#### HEALTH CARE AUTHORITY

[Filed August 25, 2021, 9:55 a.m., effective September 25, 2021]

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

Purpose: The health care authority is amending this rule to correct an erroneous cross-reference in subsection (18). The cross-reference should refer to WAC 182-51-0100 (5)(b), rather than subsection (3)(b).

Citation of Rules Affected by this Order: Amending WAC 182-51-0100.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 21-13-167 on June 23, 2021.

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

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

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

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

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

Date Adopted: August 25, 2021.

Wendy Barcus  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 21-10-008, filed 4/22/21, effective 5/23/21)

**WAC 182-51-0100 Definitions.** For the purposes of this chapter:

(1) "Authority" means the health care authority.

(2) "Calendar days" means the same as in WAC 182-526-0010.

(3) "Calendar year" means the period from January 1st to December 31st of each year.

(4) "Confidential information" means information collected by the authority according to RCW 43.71C.020 through 43.71C.080, which is not subject to public disclosure under chapter 42.56 RCW and must be held confidential by all data recipients, according to WAC 182-51-0900.

(5) "Covered drug" means any prescription drug that:

(a) A covered manufacturer intends to introduce to the market in Washington state at a wholesale acquisition cost of ten thousand dollars or more for a course of treatment lasting less than one month or a thirty-day supply, whichever period is longer; or

(b) Meets all of the following:

(i) Is currently on the market in Washington state;

(ii) Is manufactured by a covered manufacturer; and

(iii) Has a wholesale acquisition cost of more than one hundred dollars for a course of treatment lasting less than one month or a thirty-day supply, and, taking into account only price increases that take effect on or after October 1, 2019, the manufacturer increases the wholesale acquisition cost such that:

(A) The new wholesale acquisition cost is twenty percent higher than the wholesale acquisition cost on the same day of the month, twelve months before the date of the proposed increase; or

(B) The new wholesale acquisition cost is fifty percent higher than the wholesale acquisition cost on the same day of the month, thirty-six months before the date of the proposed increase.

(6) "Covered manufacturer" means a person, corporation or other entity engaged in the manufacture of prescription drugs sold in or into Washington state. "Covered manufacturer" does not include a private label distributor or retail pharmacy that sells a drug under the retail pharmacy's store label, or a prescription drug repackager.

(7) "Data" means all data provided to the authority under RCW 43.71C.020 through 43.71C.080 and any analysis provided by the authority.

(8) "Data recipient" means an individual or entity authorized to receive data under RCW 43.71C.100.

(9) "Data submission guide" means the document that identifies the data required under chapter 43.71C RCW, and provides instructions for submitting this data to the authority, including guidance on required format for reporting, for each reporting entity.

(10) "Food and drug administration (FDA) approval date" means the deadline for the FDA to review applications for new drugs or new biologics after the new drug application or biologic application is accepted by the FDA as complete in accordance with the Prescription Drug User Fee Act of 1992 (106 Stat. 4491; P.L. 102-571).

(11) "Health plan," "health carrier," and "carrier" mean the same as in RCW 48.43.005.

(12) "Introduced to market" means marketed in Washington state.

(13) "Pharmacy benefit manager" means the same as defined in RCW 19.340.010.

(14) "Pharmacy services administrative organization" means an entity that:

(a) Contracts with a pharmacy to act as the pharmacy's agent with respect to matters involving a pharmacy benefit manager, third-party payor, or other entities, including negotiating, executing, or administering contracts with the pharmacy benefit manager, third-party payor, or other entities; and

(b) Provides administrative services to pharmacies.

(15) "Pipeline drug" means a drug or biologic product containing a new molecular entity, not yet approved by the Food and Drug Administration, for which a manufacturer intends to seek initial approval from the Food and Drug Administration under an original new drug application under 21 U.S.C. Sec. 355(b) or under a biologics license application under 42 U.S.C. Sec. 262 to be marketed in Washington state.

(16) "Prescription drug" means a drug regulated under chapter 69.41 or 69.50 RCW that is prescribed for outpatient use and distributed in a retail setting, including generic, brand name, specialty drugs, and biological products.

(17) "Private label distributor" means a firm that does not participate in the manufacture or processing of a drug but instead markets and distributes under its own trade name, and labels a drug product made by someone else.

(18) "Qualifying price increase" means a price increase described in subsection ~~((3))~~ (5)(b) of this section.

(19) "Rebate" means negotiated price concessions, discounts, however characterized, that accrue directly or indirectly to a reporting entity in connection with utilization of prescription drugs by reporting entity members including, but not limited to, rebates, administrative fees, market share rebates, price protection rebates, performance-based price concessions, volume-related rebates, other credits, and any other negotiated price concessions or discounts that are reasonably anticipated to be passed through to a reporting entity during a coverage year, and any other form of price concession prearranged with a covered manufacturer, dispensing pharmacy, pharmacy benefit manager, rebate aggregator,

group purchasing organization, or other party which are paid to a reporting entity and are directly attributable to the utilization of certain drugs by reporting entity members.

(20) "Reporting entity" means carriers, covered manufacturers, health carriers, health plans, pharmacy benefit managers, and pharmacy services administrative organizations, which are required to or voluntarily submit data according to chapter 43.71C RCW.

(21) "Wholesale acquisition cost" means, with respect to a prescription drug, the manufacturer's list price for the drug to wholesalers or direct purchasers in the United States, excluding any discounts, rebates, or reductions in price, for the most recent month for which the information is available, as reported in wholesale acquisition cost guides or other publications of prescription drug pricing.

## WSR 21-18-047

### PERMANENT RULES

### PUGET SOUND

### SALMON COMMISSION

[Filed August 25, 2021, 10:25 a.m., effective September 25, 2021]

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

Purpose: The purpose of this rule making is to amend WAC 16-585-020 to allow up to two additional members to the board of the Puget Sound salmon commission. As authorized under RCW 15.65.680, the board may appoint up to two nonvoting members to serve in an advisory capacity. In addition, due to a change in management, the public records provisions in this chapter are being amended to change contact information for records requests.

Citation of Rules Affected by this Order: Amending WAC 16-585-020, 16-585-110, and 16-585-135.

Statutory Authority for Adoption: RCW 15.65.047, 15.65.680, and 42.56.040.

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 21-13-169 on June 23, 2021.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 3, Repealed 0.

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

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

Date Adopted: August 25, 2021.

Derek I. Sandison  
Director

AMENDATORY SECTION (Amending WSR 05-13-008, filed 6/3/05, effective 7/4/05)

**WAC 16-585-020 Puget Sound salmon commodity board.** (1) Administration. The provisions of this marketing order and the applicable provisions of the act shall be administered and enforced by the board as the designee of the director.

(2) Board membership. The board shall consist of seven members, six of whom shall be affected producers appointed or elected as provided in this section. The director shall appoint one additional member to the board who is not an affected producer to represent the director. The position representing the director shall be a voting member.

(a) Director-appointed affected producer positions on the board shall be designated as position one, position two, and position three.

(b) Elected affected producer positions on the board shall be designated as position four, position five, and position six.

(c) The position representing the director who is not an affected producer shall be designated as position seven.

(3) Qualifications for board membership. The producer members of the board must be practical producers of the affected commodity and must be a citizen and resident of this state, over the age of eighteen years. Each affected producer board member must be and have been actually engaged in producing such commodity within the state of Washington for a period of five years and has during that period derived a substantial portion of his/her income therefrom and who is not primarily engaged in business, directly or indirectly, as a handler or other dealer. The qualification of members of the board as herein set forth must continue during their terms of office.

(4) Term of office.

(a) The term of office for members of the board shall be three years. One-third of the membership as nearly as possible shall be appointed or elected each year.

(b) The term of office for the initial board members shall be as follows:

Positions one and four shall be for one year from the date of first election or until the first subsequent annual election is held.

Positions two and five shall be for two years from the date of first election or until the second subsequent annual election is held.

Positions three and six shall be for three years from the date of first election or until the third subsequent annual election is held.

(c) To accomplish the transition to a commodity board structure where the director appoints a majority of the board members, the names of the currently elected board members in positions one, two, and three shall be forwarded to the director for appointment within thirty days of the effective date of this amended marketing order.

(5) Nominations of elected or director-appointed board members. Each year the director shall call a nomination meeting for elected or director-appointed affected producer board members. The meeting(s) shall be held at least thirty days in advance of the date set by the director for the election or advisory vote of board members.

(a) Notice of every nomination meeting shall be published in a newspaper of general circulation within the affected area defined in this marketing order not less than ten days in advance of the date of the meeting; and, in addition, written notice of every meeting shall be given to all affected producers according to the list maintained by the board pursuant to RCW 15.65.295.

(b) Nonreceipt of notice by any interested person shall not invalidate the proceedings at such nomination meeting.

(c) Any qualified affected producer may be nominated orally for membership on the board at a nomination meeting. Nominations may also be made within five days after the meeting by written petition filed with the director signed by not less than five affected producers.

(d) If the board moves and the director approves that the nomination meeting procedure be deleted, the director shall give notice of the open commission position(s) by mail to all affected producers. The notice shall call for nominations in accordance with this marketing order and shall give the final date for filing nominations which shall not be less than twenty days after the notice was mailed.

(e) When only one nominee is nominated by the affected producers for any position, RCW 15.65.250 shall apply.

(f) As authorized under RCW 15.65.680, the voting board may appoint up to two additional nonvoting members to serve in an advisory capacity from among producers, handlers or others with expertise in the Puget Sound salmon industry including, but not limited to, state and tribal fisheries partners. Advisory board member appointments are for a three-year period. A nonvoting advisory member may serve additional consecutive terms of office if reappointed by the board.

(6) Election or advisory vote of board members.

(a) An election or advisory vote shall be conducted by secret ballot under the supervision of the director. Each affected producer shall be entitled to one vote.

(b) Elected affected producer members of the board shall be elected during the month of February of each year by a majority of the votes cast by the affected producers. If a nominee does not receive a majority of the votes on the first ballot, a run-off election shall be held by mail in a similar manner between the two candidates for such position receiving the largest number of votes.

(c) An advisory vote shall be conducted for affected producer board members appointed by the director under the provisions of RCW 15.65.243 during the month of January of each year. The names of the two candidates receiving the most votes in the advisory vote shall be forwarded to the director for potential appointment to the board. In the event there are only two candidates nominated for a board position, an advisory vote may not be held and the candidates' names shall be forwarded to the director for potential appointment.

(d) Notice of every election or advisory vote for board membership shall be published in a newspaper of general circulation within the affected area defined in this marketing order not less than ten days in advance of the date of the election or advisory vote. Not less than ten days prior to every election or advisory vote for board membership, the director shall mail a ballot of the candidates to each affected producer entitled to vote whose name appears upon the list of such

affected producers maintained by the board pursuant to RCW 15.65.295. Any other producer entitled to vote may obtain a ballot by application to the director upon establishing his/her qualifications.

(e) Nonreceipt of a ballot by any person entitled to vote shall not invalidate the election or advisory vote of a board member.

(7) Vacancies.

(a) In the event of a vacancy on the board in an elected position, the board shall appoint a qualified person to fill the unexpired term. The appointment shall be made at the board's first or second meeting after the position becomes vacant.

(b) In the event of a vacancy in a director-appointed position, the position shall be filled as specified in RCW 15.65.270.

(8) Quorum. A majority of the members shall constitute a quorum for the transaction of all business and the carrying out of all duties of the board.

(9) Board compensation. No member of the board shall receive any salary or other compensation, but each member may be compensated for each day in actual attendance at or traveling to and from meetings of the board or on special assignment for the board in accordance with RCW 43.03.230 together with travel expenses in accordance with RCW 43.03.050 and 43.03.060. The board may adopt, by resolution, provisions for reimbursement of actual travel expenses incurred by members of the board in carrying out the provisions of this marketing order pursuant to RCW 15.65.270. A board member may, in the discretion of the board, serve and be compensated as an employee of the commission.

(10) Powers and duties of the board. The board shall have the following powers and duties:

(a) To administer, enforce, and control the provisions of this order as the designee of the director;

(b) To elect a chairperson and other officers as it deems advisable;

(c) To employ and discharge at its discretion such assistance and personnel as the board determines necessary and proper to carry out the purpose of the order and to effectuate the policies of the act;

(d) To pay from moneys collected as assessments or advances thereon the costs arising in connection with the formulation, issuance, administration, and enforcement of the order and rules adopted under the order. Expenses may be paid by check, draft, or voucher in such form and in such manner and upon the signature of the person as the board may prescribe;

(e) To reimburse any applicant who has deposited funds with the director in order to defray the costs of formulating the order;

(f) To establish a fund to be deposited in a bank or banks or financial institution or institutions, approved for the deposit of state funds, in which all money received by the board, except the amount of petty cash for each day's needs, not to exceed one hundred dollars, shall be deposited each day;

(g) To keep or cause to be kept in accordance with accepted standards of good accounting practice, accurate records of all assessments, disbursements, moneys, and other financial transactions made and done pursuant to this order.

Records, books, and accounts shall be audited as provided in the act subject to procedures and methods lawfully prescribed by the state auditor. Books and accounts shall be closed as of the last day of each fiscal year. A copy of the audit shall be delivered within thirty days after the completion thereof to the governor, the director, the state auditor, and each member of the board;

(h) To require bond of board members and employees of the board in positions of trust in an amount the board deems necessary. Premiums for a bond or bonds shall be paid by the board from assessments collected. A bond shall not be necessary if any board member or employee is covered by any blanket bond covering officials or employees of the state of Washington;

(i) To prepare a budget or budgets covering anticipated income and expenses to be incurred in carrying out the provisions of the order during each fiscal year. At least sixty days prior to the beginning of its fiscal year, the board shall prepare and submit to the director for approval its research plan, its commodity-related education and training plan, and its budget;

(j) To establish by resolution, a headquarters which shall continue as such unless and until so changed by the board. All records, books, and minutes of board meetings shall be kept at such headquarters;

(k) To recommend to the director, administrative rules, orders and amendments thereto for the exercise of the director's power in connection with this marketing order;

(l) To carry out the provisions of RCW 15.65.510 covering the obtaining of information necessary to effectuate the provisions of this marketing order and the act, along with the necessary authority and procedure for obtaining such information;

(m) To bring actions or proceedings upon joining the director as a party for specific performance, restraint, injunction, or mandatory injunction against any person who violates or refuses to perform the obligations or duties imposed upon the person by the act or this order;

(n) To confer with and cooperate with the legally constituted authorities of other states of the United States for the purpose of obtaining uniformity in the administration of federal and state marketing regulations, licenses, agreements, or orders;

(o) To carry out any other grant of authority or duty provided designees and not specifically set forth in this section;

(p) To sue or be sued;

(q) To borrow money and incur indebtedness;

(r) To work cooperatively with other local, state, and federal agencies; universities; and national organizations for the purposes provided in this order;

(s) To enter into contracts or interagency agreements with any private or public agency, whether federal, state, or local. Personal service contracts must comply with chapter 39.29 RCW;

(t) To accept and expend or retain any gifts, bequests, contributions, or grants from private persons or private and public agencies;

(u) To enter into contracts or agreements for research in the production, processing, transportation, marketing, use, or distribution of Puget Sound gillnet salmon;

(v) To retain in emergent situations the services of private legal counsel to conduct legal actions on behalf of the commission. The retention of a private attorney is subject to review by the office of the attorney general;

(w) To engage in appropriate fund-raising activities for the purpose of supporting activities authorized by this marketing order;

(x) To participate in international, federal, state, and local hearings, meetings, and other proceedings relating to the production, manufacture, regulation, transportation, distribution, sale, or use of Puget Sound gillnet salmon including activities authorized under RCW 42.17.190, including the reporting of those activities to the public disclosure commission;

(y) To maintain a list of the names and addresses of affected producers that may be compiled from information used to collect assessments under the provisions of this marketing order and data on the value of each affected producer's production for a minimum three-year period pursuant to RCW 15.65.280;

(z) To maintain a list of the names and addresses of persons who handle Puget Sound gillnet salmon within the affected area and data on the amount and value of the Puget Sound gillnet salmon handled for a minimum three-year period by each person pursuant to RCW 15.65.280;

(aa) To maintain a list of names and addresses of all affected persons who produce Puget Sound gillnet salmon and the amount, by unit, of Puget Sound gillnet salmon produced during the past three years pursuant to RCW 15.65.295;

(bb) To maintain a list of all persons who handle Puget Sound gillnet salmon and the amount of Puget Sound gillnet salmon handled by each person during the past three years pursuant to RCW 15.65.295;

(cc) To establish a foundation using commission funds as grant money for the purposes established in this marketing order pursuant to RCW 15.65.043.

(11) Procedures for board.

(a) The board shall hold regular meetings, at least semi-annually, and such meetings shall be held in accordance with chapter 42.30 RCW (Open Public Meetings Act). Notice of the time and place of regular meetings shall be published on or before January of each year in the *Washington State Register*. Notice of any change to the meeting schedule shall be published in the state register at least twenty days prior to the rescheduled meeting date.

(b) The board shall hold an annual membership meeting, at which time an annual report will be presented. The proposed budget shall be presented for discussion at the meeting. Notice of the annual meeting shall be given by the board at least ten days prior to the meeting by written notice to each producer and by notifying the regular news media.

(c) The board shall establish by resolution, the time, place, and manner of calling special meetings of the board with reasonable notice to the board members and affected producers. Notice for special meetings shall be in compliance with chapter 42.30 RCW.

AMENDATORY SECTION (Amending WSR 17-05-036, filed 2/8/17, effective 3/11/17)

**WAC 16-585-110 Requests for public records.** (1) All requests for disclosure of public records must be submitted in writing directly to the commission's public records officer by mail to Puget Sound Salmon Commission, (~~1900 W. Nickerson St., #116, PMB 210, Seattle, WA 98119~~) 6601 W. Deschutes Avenue, Suite C-2, Kennewick, WA 99336. The request may also be submitted by fax to (~~206-542-3930~~) 509-585-2671 or by email to: (~~soundcatch@seanet.com~~) mjohnson@agmgt.com. The written request should include:

(a) The name, address and telephone number or other contact information of the person requesting the records;

(b) The calendar date on which the request is made; and

(c) Sufficient information to readily identify records being requested.

(2) Any person wishing to inspect the commission's public records may make an appointment with the public records officer to inspect the records at the commission office during regular business hours. In order to adequately protect the commission's public records, the following will apply:

(a) Public records made available for inspection may not be removed from the area the commission makes available for inspection.

(b) Inspection of any public record will be conducted in the presence of the public records officer or designee.

(c) Public records may not be marked or altered in any manner during the inspection.

(d) The commission has the discretion to designate the means and the location for the inspection of records. The viewing of those records that require specialized equipment shall be limited to the availability of that equipment located at the commission's office and the availability of authorized staff to operate that equipment.

AMENDATORY SECTION (Amending WSR 17-05-036, filed 2/8/17, effective 3/11/17)

**WAC 16-585-135 Records index.** The commission shall establish a records index, which shall be made available for public review. (~~The records index may be accessed on the commission's web site at <http://soundcatch.org/>~~)

**WSR 21-18-049**

**PERMANENT RULES**

**OFFICE OF THE**

**CORRECTIONS OMBUDS**

[Filed August 25, 2021, 12:23 p.m., effective September 25, 2021]

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

Purpose: The purpose of the proposal is to implement rules that are required under chapter 43.06C RCW related to confidentiality and investigations.

Citation of Rules Affected by this Order: New WAC 138-10-010 through 138-10-050.

Statutory Authority for Adoption: RCW 43.06C.040 (1)(k), 43.06C.040 (2)(c), and 43.06C.060(2).

Adopted under notice filed as WSR 21-07-009 on March 4, 2021.

Changes Other than Editing from Proposed to Adopted Version: Two changes based on public comments: (1) Change of the word "inmate" to "incarcerated individual"; and (2) inclusion within the rules that a person can request a review of a closed investigation.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 5, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: August 25, 2021.

Joanna Carns  
Director

## Chapter 138-10 WAC

### OFFICE OF THE CORRECTIONS OMBUDS

#### NEW SECTION

**WAC 138-10-010 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Abuse" means any act or failure to act by a department employee, subcontractor, or volunteer which was performed, or which was failed to be performed, knowingly, recklessly, or intentionally, and which caused, or may have caused, injury or death to an incarcerated individual.

(2) "Corrections ombuds" or "ombuds" means the corrections ombuds, staff of the corrections ombuds, and volunteers with the office of the corrections ombuds.

(3) "Complaint" means communication relayed to the ombuds through the ombuds' online complaint form or through use of the ombuds' review request form.

(4) "Department" means the department of corrections.

(5) "Incarcerated individual" means a person committed to the physical custody of the department, including persons residing in a correctional institution or facility and persons received from another state, another state agency, a county, or the federal government.

(6) "Neglect" means a negligent act or omission by any department employee, subcontractor, or volunteer which caused, or may have caused, injury or death to an incarcerated individual.

(7) "Office" means the office of the corrections ombuds.

(8) "Secretary" means the secretary of the department of corrections.

(9) "Statewide family council" means the family council maintained by the department that is comprised of representatives from local family councils.

#### NEW SECTION

**WAC 138-10-020 Authority.** Office of the corrections ombuds was created and receives its authority from chapter 43.06C RCW.

#### NEW SECTION

**WAC 138-10-030 Duties.** Office of the corrections ombuds shall:

(1) Establish priorities for use of the limited resources available to the ombuds;

(2) Maintain a statewide toll-free telephone number, a collect telephone number, a website, and a mailing address for the receipt of complaints and inquiries;

(3) Provide information, as appropriate, to incarcerated individuals, family members, representatives of incarcerated individuals, department employees, and others regarding the rights of incarcerated individuals;

(4) Provide technical assistance to support incarcerated individual participation in self-advocacy;

(5) Monitor department compliance with applicable federal, state, and local laws, rules, regulations, and policies as related to the health, safety, welfare, and rehabilitation of incarcerated individuals;

(6) Monitor and participate in legislative and policy developments affecting correctional facilities;

(7) Establish a statewide uniform reporting system to collect and analyze data related to complaints received by the ombuds regarding the department;

(8) Establish procedures to receive, investigate, and resolve complaints;

(9) Establish procedures to gather stakeholder input into the ombuds' activities and priorities, which must include, at a minimum, quarterly public meetings;

(10) Submit annually to the governor's office, the legislature, and the statewide family council, by November 1st of each year, a report that includes, at a minimum, the following information:

(a) The budget and expenditures of the ombuds;

(b) The number of complaints received and resolved by the ombuds;

(c) A description of significant systemic or individual investigations or outcomes achieved by the ombuds during the prior year;

(d) Any outstanding or unresolved concerns or recommendations of the ombuds;

(e) Input and comments from stakeholders, including the statewide family council, regarding the ombuds' activities during the prior year.

(11) Adopt and comply with rules, policies, and procedures necessary to implement this chapter.

#### NEW SECTION

**WAC 138-10-040 Investigations.** (1) The ombuds may initiate and attempt to resolve an investigation upon his or her

own initiative, or upon receipt of a complaint from an incarcerated individual, a family member, a representative of an incarcerated individual, a department employee, or others, regarding any of the following that may adversely affect the health, safety, welfare, and rights of incarcerated individuals:

- (a) Abuse or neglect;
- (b) Department decisions or administrative actions;
- (c) Inactions or omissions;
- (d) Policies, rules, or procedures; or
- (e) Alleged violations of law by the department that may adversely affect the health, safety, welfare, and rights of incarcerated individuals.

(2) Prior to filing a complaint with the ombuds, a person shall have reasonably pursued resolution of the complaint through the internal grievance, administrative, or appellate procedures with the department. However, in no event may an incarcerated individual be prevented from filing a complaint more than ninety business days after filing an internal grievance, regardless of whether the department has completed the grievance process. This subsection does not apply to complaints related to threats of bodily harm including, but not limited to, sexual or physical assaults or the denial of necessary medical treatment.

(3) The ombuds may decline to investigate any complaint or may close any investigation of any complaint for any of the following reasons:

(a) Lack jurisdiction over the complaint. At a minimum, complaints should meet the requirements in RCW 43.06C.-040 and be:

- (i) About an incarcerated individual;
- (ii) About an alleged department action; and
- (iii) Made after the incarcerated individual has reasonably pursued resolution of the issue through the internal grievance, administrative, or appellate procedures with the department.

(b) Department took action to resolve any alleged violations;

(c) The nature and quality of evidence;

(d) The complaint does not allege violation of policy, procedure, or law;

(e) The requested resolution is not within the ombuds' statutory power and authority;

(f) The alleged violation is a past rather than ongoing issue; or

(g) Any other reasons the ombuds deems relevant to the complaint including, but not limited to, the priority and weight given to these and other relevant factors.

(4) If the ombuds does not investigate a complaint, the ombuds shall notify the complainant of the decision not to investigate and the reasons for the decision.

(5) The ombuds may not investigate any complaints relating to an incarcerated individual's underlying criminal conviction.

(6) The ombuds may not investigate a complaint from a department employee that relates to the employee's employment relationship with the department or the administration of the department, unless the complaint is related to the health, safety, welfare, and rehabilitation of incarcerated individuals.

(7) Complainants may request a review of a closed investigation case by the director or designee.

#### NEW SECTION

**WAC 138-10-050 Confidentiality.** (1) Ombuds' investigative records are confidential and exempt from disclosure under the Public Records Act, chapter 42.56 RCW, and RCW 43.06C.060, except so far as disclosures may be necessary to enable the office to perform its duties and to support recommendations resulting from an investigation.

(2) The ombuds shall treat all correspondence and communication as confidential and protect it in the same manner as legal correspondence or communication pursuant to the Public Records Act, chapter 42.56 RCW, and RCW 43.06C.-060(1).

(3) All records exchanged and communications between the ombuds and the department to include the investigative record are confidential and are exempt from public disclosure under chapter 42.56 RCW and RCW 43.06C.060(3).

(4) Confidential records received by the ombuds shall be maintained as provided for under the law.

(5) To the extent the ombuds reasonably believes necessary, the ombuds:

(a) Must reveal information obtained in the course of providing ombuds services to prevent reasonably certain death or substantial bodily harm; and

(b) May reveal information obtained in the course of providing ombuds services to prevent the commission of a crime.

#### **WSR 21-18-053**

#### **PERMANENT RULES**

#### **HEALTH CARE AUTHORITY**

[Filed August 26, 2021, 7:50 a.m., effective September 26, 2021]

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

Purpose: The health care authority (HCA) is amending WAC 182-60-027 to add patient representative to the list of panel members. Patient representatives add value to HCA's patient decision aid (PDA) review advisory panels. After conducting several rounds of certification and recertification, HCA has determined that two years is too short of a time frame between the initial certification of a patient decision aid and its recertification. Therefore, HCA is amending WAC 182-60-040 to change the length of time for certification of PDAs from two years to five years.

Citation of Rules Affected by this Order: Amending WAC 182-60-027 and 182-60-040.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 21-15-099 on July 20, 2021.

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

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

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

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

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

Date Adopted: August 26, 2021.

Wendy Barcus  
Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 17-17-039, filed 8/9/17, effective 9/9/17)

**WAC 182-60-027 Patient decision aid review advisory panel.** (1) The agency's medical director has the authority to establish one or more expert advisory panels to review patient decision aids using established criteria under WAC 182-60-025.

(2) The panel may include the following as necessary:

- (a) Practicing physicians or other relevant licensed health professionals;
- (b) Health literacy and numeracy experts;
- (c) Experts in shared decision making; ~~((and))~~
- (d) Legal experts; and
- (e) Patient representatives.

(3) The agency's medical director may contract with an evidence-based practice center or other appropriate expert to review and advise on the validity or presentation of evidence, other elements of the decision aid, or on developing and updating policies or practices.

(4) Advisory review panel members must meet conflict of interest and disclosure requirements. Each advisory panel member must:

- (a) Complete an advisory panel member agreement, including a conflict of interest disclosure form, and keep disclosure statements current;
- (b) Abide by confidentiality requirements and keep all proprietary information confidential; and
- (c) Not use information gained as a result of advisory panel membership outside of advisory panel responsibilities, unless the information is publicly available.

(5) The agency's medical director makes the final determination on certification.

**AMENDATORY SECTION** (Amending WSR 17-17-039, filed 8/9/17, effective 9/9/17)

**WAC 182-60-040 Agency medical director certification.** (1) Decisions.

(a) The agency's medical director, with input as determined necessary by an advisory review team, or contracted experts, or both, makes a written determination to:

- (i) Certify the decision aid;

(ii) Notify the developer of areas of deficiency and provide an opportunity to remedy deficiencies as described in WAC 182-60-045; or

(iii) Decline to certify the decision aid.

(b) Upon certification, the agency adds the decision aid to a list of certified products posted on the agency website.

(c) Certification determinations are final and not subject to appeal.

(2) Certification period. For patient decision aids certified on January 1, 2021, and after, a certification under this chapter is valid for ~~((two))~~ five years from the date of the written certification determination, except in the case of withdrawal or suspension under subsection (4) of this section.

(3) Recertification.

(a) The developer may request recertification by taking the following steps six months before the current certification expires:

(i) Request recertification;

(ii) Submit any needed updates or modifications using HCA 82-328 form; and

(iii) Pay the required certification fee.

(b) The agency's medical director may limit review to the updated elements of the application and the decision aid, together with associated evidence and may make the determinations described in subsection (1) of this section.

(c) For patient decision aids certified on January 1, 2021, and after, recertification is effective for ~~((two))~~ five years from the date of the written recertification determination.

(4) Withdrawal or suspension of certification.

(a) Developers must notify the agency's medical director when they become aware of information that may materially change the content of an approved decision aid or supporting application materials on file.

(b) The agency's medical director may withdraw or suspend a certification:

(i) On the medical director's own initiative, if information becomes available that may materially change the decision aid's content or supporting application materials; or

(ii) In response to developer notification under (a) of this subsection.

(c) Within ten business days of the agency's withdrawal or suspension of a certification, the agency sends notification to the developer's address on file.

(d) The developer must submit its updated application materials to the agency's medical director within the time frame specified in the agency's notice. The agency charges the developer reasonable costs associated with the recertification.

(e) The agency's medical director may limit review to the updated elements of the decision aid and may make the determinations described in subsection (1) of this section.

(f) If a developer fails to submit updated application materials within the time frame in (d) of this subsection, the agency withdraws the certification.

(g) The agency posts withdrawal, suspension, and recertification decisions on the agency's website.

(5) Effect of certification determination.

(a) Certification under this chapter provides the basis for heightened legal protections under RCW 7.70.065; and

(b) A certified patient decision aid used as part of a shared decision-making process may also be a requirement or preference in contract or arrangements for state-purchased health care.

**WSR 21-18-057**  
**PERMANENT RULES**  
**HEALTH CARE AUTHORITY**

[Filed August 26, 2021, 9:53 a.m., effective September 26, 2021]

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

Purpose: The health care authority (HCA) is amending WAC 182-70-040 Registration requirements, to set the Washington covered person threshold at 1,000 covered persons for data suppliers in the all-payer claims database program. HCA also added the required procedure for determining if the data supplier meets this threshold.

Citation of Rules Affected by this Order: Amending WAC 182-70-040.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 21-15-100 on July 20, 2021.

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

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

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

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

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

Date Adopted: August 26, 2021.

Wendy Barcus  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 19-24-090, filed 12/3/19, effective 1/1/20)

**WAC 182-70-040 Registration requirements. (1) Washington covered persons threshold for data suppliers. Any carrier, third-party administrator, public program, or other potential data supplier identified in RCW 43.371.030 with 1000 or more Washington covered persons, as defined in WAC 182-70-030, as of December 31st of the previous calendar year must submit data in accordance with this chapter.**

**(a) For the purposes of determining whether a potential data supplier is subject to the requirements of this chapter, potential data suppliers must aggregate the number of Washington covered persons for all companies at the group code**

level, as defined by the National Association of Insurance Commissioners.

**(b) Potential data suppliers that offer any combination of medical, dental, or pharmaceutical benefits under separate or combined plans must count all Washington covered persons, regardless of the comprehensiveness of the plan, toward the 1000 Washington covered persons threshold.**

**(2) Initial registration.** Each data supplier required to submit health care data pursuant to chapter 43.371 RCW (~~shall~~) **must** register within thirty days of notification from the lead organization.

~~((2))~~ **(3) Annual registration.** Each data supplier required to submit health care data pursuant to chapter 43.371 RCW (~~shall~~) **must** register by December 31st of each year after the initial registration. If the data supplier initially registers September 1st or later, then the data supplier (~~shall~~) **must** file its annual registration by December 31st of the year following the year of the initial registration.

~~((3))~~ **(4)** Each data supplier newly required to submit health care data under chapter 43.371 RCW, either by a change in law or loss of qualified exemption, (~~shall~~) **must** register with the lead organization within thirty days of being required to submit data.

**WSR 21-18-058**  
**PERMANENT RULES**  
**HEALTH CARE AUTHORITY**

[Filed August 26, 2021, 9:56 a.m., effective September 26, 2021]

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

Purpose: As required in RCW 71.34.670 for family-initiated treatment, the authority is adopting rules to define "appropriately trained professional person" operating within their scope of practice within Title 18 RCW for the purposes of conducting mental health and substance use disorder evaluations under RCW 71.34.600(3) and 71.34.650(1).

Citation of Rules Affected by this Order: New WAC 182-130-0100.

Statutory Authority for Adoption: RCW 71.34.670, 41.05.021, 41.05.160.

Adopted under notice filed as WSR 21-15-014 on July 8, 2021.

Changes Other than Editing from Proposed to Adopted Version:

Proposed/ Adopted	WAC Subsection	Reason
<b>WAC 182-130-0100(1)</b>		
Proposed	An appropriately trained professional person means a psychiatrist, psychologist, psychiatric nurse, social worker, licensed marriage and family therapist, licensed mental health counselor, and other mental health professionals as defined by the department of health under chapter 71.05 RCW.	Psychiatric advanced registered nurse practitioners have different education, training, certification, and continuing education that make them uniquely qualified to provide family initiated treatment.
Adopted	An appropriately trained professional person means a psychiatrist, psychologist, psychiatric nurse, social worker, licensed marriage and family therapist, licensed mental health counselor, <u>psychiatric advanced registered nurse practitioner</u> , and other mental health professionals as defined by the department of health under chapter 71.05 RCW.	
<b>WAC 182-130-0100(3)</b>		
Proposed	The professional person evaluating for mental health must hold mental health or co-occurring credentials.	To clarify admission rather than diagnosis.
Adopted	The professional person evaluating for <u>purposes of admission or outpatient treatment for a mental health disorder</u> must hold mental health or co-occurring credentials.	
<b>WAC 182-130-0100(4)</b>		
Proposed	The professional person evaluating for substance use disorder must hold substance use disorder or co-occurring credentials.	To clarify admission rather than diagnosis.
Adopted	The professional person evaluating for <u>purposes of admission or outpatient treatment for a substance use disorder</u> must hold substance use disorder or co-occurring credentials.	

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

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

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

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

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

Date Adopted: August 26, 2021.

Wendy Barcus  
Rules Coordinator

**Chapter 182-130 WAC**

**FAMILY INITIATED TREATMENT (FIT)**

NEW SECTION

**WAC 182-130-0100 Family initiated treatment (FIT)—Appropriately trained professional person.** (1) An

appropriately trained professional person means a psychiatrist, psychologist, psychiatric nurse, social worker, licensed marriage and family therapist, licensed mental health counselor, and other mental health professionals as defined by the department of health under chapter 71.05 RCW.

(2) An appropriately trained professional person can also be a substance use disorder professional, or those who hold co-occurring substance use disorder and mental health credentials as defined by the department of health under chapter 18.205 RCW.

(3) The professional person evaluating for mental health must hold mental health or co-occurring credentials.

(4) The professional person evaluating for substance use disorder must hold substance use disorder or co-occurring credentials.

**WSR 21-18-059**

**PERMANENT RULES**

**HEALTH CARE AUTHORITY**

[Filed August 26, 2021, 10:12 a.m., effective September 26, 2021]

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

Purpose: The health care authority is adopting these rules to update outdated references, terminology, and language to align with behavioral health integration.

Citation of Rules Affected by this Order: Amending WAC 182-550-1700, 182-550-2900, and 182-550-6250.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 21-15-038 on July 14, 2021.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 3, Repealed 0.

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

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

Date Adopted: August 26, 2021.

Wendy Barcus  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-16-019, filed 7/24/14, effective 8/24/14)

**WAC 182-550-1700 Authorization and utilization review (UR) of inpatient and outpatient hospital services.**

(1) This section applies to the agency's authorization and utilization review (UR) of inpatient and outpatient hospital services provided to Washington apple health ((~~WAH~~) medicaid) clients receiving services through the fee-for-service program. For clients ((~~eligible under other WAH programs~~) enrolled in an agency-contracted managed care organization (MCO), see chapters 182-538 and 182-538D WAC ((~~for managed care organizations, and chapter 388-865 WAC for mental health treatment programs coordinated through the department of social and health services' division of behavioral health and recovery or its designee~~)). See chapter 182-546 WAC for transportation services.

(2) All hospital services paid for by the agency are subject to UR for medical necessity, appropriate level of care, and program compliance.

(3) Authorization for inpatient and outpatient hospital services is valid only if a client is eligible for covered services on the date of service. Authorization does not guarantee payment.

(4) The agency will deny, recover, or adjust hospital payments if the agency or its designee determines, as a result of UR, that a hospital service does not meet the requirements in federal regulations and WAC.

(5) The agency may perform one or more types of UR described in subsection (6) of this section.

(6) The agency's UR:

(a) Is a concurrent, prospective, and/or retrospective (including postpay and prepay) formal evaluation of a client's documented medical care to assure that the services provided

are proper and necessary and of good quality. The review considers the appropriateness of the place of care, level of care, and the duration, frequency or quantity of services provided in relation to the conditions(s) being treated; and

(b) Includes one or more of the following:

(i) "Concurrent utilization review"—An evaluation performed by the agency or its designee during a client's course of care. A continued stay review performed during the client's hospitalization is a form of concurrent UR;

(ii) "Prospective utilization review"—An evaluation performed by the agency or its designee prior to the provision of health care services. Preadmission authorization is a form of prospective UR; and

(iii) "Retrospective utilization review"—An evaluation performed by the agency or its designee following the provision of health care services that includes both a post-payment retrospective UR (performed after health care services are provided and paid), and a prepayment retrospective UR (performed after health care services are provided but prior to payment). Retrospective UR is routinely performed as an audit function.

(7) During the UR process, the agency or its designee notifies the appropriate oversight entity if either of the following is identified:

(a) A quality of care concern; or

(b) Fraudulent conduct.

AMENDATORY SECTION (Amending WSR 19-18-026, filed 8/28/19, effective 9/28/19)

**WAC 182-550-2900 Payment limits—Inpatient hospital services.** (1) To be eligible for payment for covered inpatient hospital services, a hospital must:

(a) Have a core-provider agreement with the medicaid agency; and

(b) Be an in-state hospital, a bordering city hospital, a critical border hospital, or a distinct unit of that hospital, as defined in WAC 182-550-1050; or

(c) Be an out-of-state hospital that meets the conditions in WAC 182-550-6700.

(2) The agency does not pay for any of the following:

(a) Inpatient care or services, or both, provided in a hospital or distinct unit to a client when a managed care organization (MCO) plan is contracted to cover those services.

(b) Care or services, or both, provided in a hospital or distinct unit provided to a client enrolled in the hospice program, unless the care or services are completely unrelated to the terminal illness that qualifies the client for the hospice benefit.

(c) Ancillary services provided in a hospital or distinct unit unless explicitly spelled out in this chapter.

(d) Additional days of hospitalization on a non-DRG claim when:

(i) Those days exceed the number of days established by the agency or ((~~mental health~~) the agency's) designee under WAC 182-550-2600, as the approved length of stay (LOS); and

(ii) The hospital or distinct unit has not received prior authorization for an extended LOS from the agency or ((~~mental health~~) the agency's) designee as specified in WAC 182-

550-4300(4). The agency may perform a prospective, concurrent, or retrospective utilization review as described in WAC 182-550-1700, to evaluate an extended LOS. ((A mental health)) An agency designee may also perform those utilization reviews to evaluate an extended LOS.

(e) Inpatient hospital services when the agency determines that the client's medical record fails to support the medical necessity and inpatient level of care for the inpatient admission. The agency may perform a retrospective utilization review as described in WAC 182-550-1700, to evaluate if the services are medically necessary and are provided at the appropriate level of care.

(f) Two separate inpatient hospitalizations if a client is readmitted to the same or affiliated hospital or distinct unit within fourteen calendar days of discharge and the agency determines that one inpatient hospitalization does not qualify for a separate payment. See WAC 182-550-3000 (7)(f) for the agency's review of fourteen-day readmissions.

(g) Inpatient claims for fourteen-day readmissions considered to be provider preventable as described in WAC 182-550-2950.

(h) A client's day(s) of absence from the hospital or distinct unit.

(i) A nonemergency transfer of a client. See WAC 182-550-3600 for hospital transfers.

(j) Charges related to a provider preventable condition (PPC), hospital acquired condition (HAC), serious reportable event (SRE), or a condition not present on admission (POA). See WAC 182-502-0022.

(k) An early elective delivery as defined in WAC 182-500-0030. The agency may pay for a delivery before thirty-nine weeks gestation, including induction and cesarean section, if medically necessary under WAC 182-533-0400(20).

(3) This section defines when the agency considers payment for an interim billed inpatient hospital claim.

(a) When the agency is the primary payer, each interim billed nonpsychiatric claim must:

(i) Be submitted in sixty-calendar-day intervals, unless the client is discharged before the next sixty-calendar-day interval.

(ii) Document the entire date span between the client's date of admission and the current date of services billed, and include the following for that date span:

(A) All inpatient hospital services provided; and

(B) All applicable diagnosis codes and procedure codes.

(iii) Be submitted as an adjustment to the previous interim billed hospital claim.

(b) When the agency is not the primary payer:

(i) The agency pays an interim billed nonpsychiatric claim when the criteria in (a) of this subsection are met; and

(ii) Either of the following:

(A) Sixty calendar days have passed from the date the agency became the primary payer; or

(B) A client is eligible for both medicare and medicaid and has exhausted the medicare lifetime reserve days for inpatient hospital care.

(c) For psychiatric claims, (a)(i) and (b)(i) of this subsection do not apply.

(4) The agency considers for payment a hospital claim submitted for a client's continuous inpatient hospital admis-

sion of sixty calendar days or less upon the client's formal release from the hospital or distinct unit.

(5) To be eligible for payment, a hospital or distinct unit must bill the agency using an inpatient hospital claim:

(a) Under the current national uniform billing data element specifications:

(i) Developed by the National Uniform Billing Committee (NUBC);

(ii) Approved or modified, or both, by the Washington state payer group or the agency; and

(iii) In effect on the date of the client's admission.

(b) Under the current published international classification of diseases clinical modification coding guidelines;

(c) Subject to the rules in this section and other applicable rules;

(d) Under the agency's published billing instructions and other documents; and

(e) With the date span that covers the client's entire hospitalization. See subsection (3) of this section for when the agency considers and pays an initial interim billed hospital claim and any subsequent interim billed hospital claims;

(f) That requires an adjustment due to, but not limited to, charges that were not billed on the original paid claim (e.g., late charges), through submission of an adjusted hospital claim. Each adjustment to a paid hospital claim must provide complete documentation for the entire date span between the client's admission date and discharge date, and include the following for that date span:

(i) All inpatient hospital services provided; and

(ii) All applicable diagnosis codes and procedure codes; and

(g) With the appropriate NUBC revenue code specific to the service or treatment provided to the client.

(6) When a hospital charges multiple rates for an accommodation room and board revenue code, the agency pays the hospital's lowest room and board rate for that revenue code. The agency may request the hospital's charge master. Room charges must not exceed the hospital's usual and customary charges to the general public, as required by 42 C.F.R. Sec. 447.271.

(7) The agency allows hospitals an administrative day rate for those days of a hospital stay in which a client no longer meets criteria for the acute inpatient level of care, as provided in WAC 182-550-4550.

(8) The agency pays for observation services according to WAC 182-550-6000, 182-550-7200, and other applicable rules.

(9) The agency determines its actual payment for an inpatient hospital admission by making any required adjustments from the calculations of the allowed covered charges. Adjustments include:

(a) Client participation (e.g., spenddown);

(b) Any third-party liability amount, including medicare part A and part B; and

(c) Any other adjustments as determined by the agency.

(10) The agency pays hospitals less for services provided to clients eligible under state-administered programs, as provided in WAC 182-550-4800.

(11) All hospital providers must present final charges to the agency according to WAC 182-502-0150.

AMENDATORY SECTION (Amending WSR 15-18-065, filed 8/27/15, effective 9/27/15)

Katherine I. Vasquez  
Rules Coordinator

**WAC 182-550-6250 Pregnancy—Enhanced outpatient benefits.** The medicaid agency will provide outpatient ((chemical dependency)) substance use disorder treatment in programs qualified under ((chapter 388-810)) WAC 182-538C-230 and certified under chapter ((388-805 WAC or its successor)) 246-341 WAC or its successor. See RCW 71.24.-385.

**WSR 21-18-062  
PERMANENT RULES  
DEPARTMENT OF**

**SOCIAL AND HEALTH SERVICES**

(Aging and Long-Term Support Administration)

[Filed August 26, 2021, 2:13 p.m., effective September 26, 2021]

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

Purpose: The department is adding a new section in chapter 388-112A WAC, Residential long-term care services training, to establish minimum qualifications for high school teachers with certain endorsements and experience to teach long-term care worker basic training to high school students.

Providing training at the high school level represents the aging and long-term support administration's ongoing commitment to increase the long-term care workforce to fully serve the growing population of individuals who require those services in Washington state. Since most high school teachers do not come from a long-term care work environment, different minimum qualifications need to be established for those instructors.

Citation of Rules Affected by this Order: New WAC 388-112A-1245.

Statutory Authority for Adoption: RCW 74.08.090, 70.128.060.

Adopted under notice filed as WSR 21-14-098 on July 7, 2021.

A final cost-benefit analysis is available by contacting David Chappell, P.O. Box 45600, Olympia, WA 98504-5600, phone 360-725-2516, email David.chappell@dshs.wa.gov.

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

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

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

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

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

Date Adopted: August 26, 2021.

NEW SECTION

**WAC 388-112A-1245 What are the requirements and minimum qualifications for high school instructors and programs that offer core basic, population specific, nurse delegation, and specialty trainings?** (1) A high school instructor teaching core basic, population specific, nurse delegation core, nurse delegation special focus on diabetes, specialty and expanded specialty trainings must meet the following minimum qualifications:

(a) Be at least twenty-one years of age;

(b) Not have had a professional, adult family home, assisted living facility, or social services license or certification revoked in Washington state;

(c) Meet the following education and work experience requirements upon initial approval or hire:

(i) Have a valid teaching credential with a related endorsement such as career and technical education, science, health, or special education; and

(A) Have caregiving experience within the last five years in a school, community-based, or home setting; or

(B) Be a registered nurse with direct care experience within the last five years; or

(C) Be certificated under the vocational code V511614; or

(D) Have successfully completed core basic training taught by a DSHS approved instructor; or

(E) Have taught forty hours of basic training while being mentored by an instructor who is approved to teach basic training;

(d) Have at least 100 hours teaching experience;

(e) Be knowledgeable in caregiving practices and demonstrate competency for teaching the course content or units being taught; and

(f) Have successfully completed any specialty or expanded specialty training classes before training others;

(2) In addition to requirements under subsection (1) of this section, an instructor for nurse delegation core or diabetes must have a current Washington registered nurse (RN) license in good standing without practice restrictions.

(3) A high school home care aide training program must be approved and contracted by the department as a community instructor program.

**WSR 21-18-063**

**PERMANENT RULES**

**HEALTH CARE AUTHORITY**

[Filed August 26, 2021, 2:27 p.m., effective September 26, 2021]

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

Purpose: The agency is amending procedural rules applicable to adjudicative proceedings to permit the use of electronic means to file and serve documents and conduct and attend hearings.

Citation of Rules Affected by this Order: Amending WAC 182-526-0010, 182-526-0030, 182-526-0040, 182-526-0070, and 182-526-0340.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 21-15-056 on July 15, 2021.

Changes Other than Editing from Proposed to Adopted Version:

Date Adopted: August 26, 2021.

Wendy Barcus  
Rules Coordinator

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

**WAC 182-526-0010 Definitions.** The following definitions and those found in RCW 34.05.010 apply to this chapter:

**"Administrative law judge (ALJ)"** - An impartial decision-maker who is an attorney and presides at an administrative hearing. ALJs are employed by the office of administrative hearings (OAH), which is a separate state agency, as defined in RCW 34.05.010. ALJs are not department of social and health services or health care authority (HCA) employees or representatives.

**"Agency"** - See WAC 182-500-0010.

**"Appellant"** - A person or entity who requests a hearing about an action of HCA or its designee.

**"Applicant"** - Any person who has made a request, or on whose behalf a request has been made, to HCA, or HCA's authorized agent on HCA's behalf, for assistance through a medical service program established under chapter 74.09 RCW.

**"Authorized agent"** - A person or agency, as defined in RCW 34.05.010, acting on HCA's behalf under an agreement authorized by RCW 41.05.021 to act as an HCA hearing representative. An authorized agent may be an employee of the department of social and health services or its contractors but may not be an employee of an HCA-contracted managed care organization.

**"Board of appeals" or "BOA"** - The HCA's board of appeals.

**"Business days"** - All days except Saturdays, Sundays, and designated holidays under WAC 357-31-005.

**"Calendar days"** - All days including Saturdays, Sundays, and designated holidays under WAC 357-31-005.

**"Continuance"** - A change in the date or time of a pre-hearing conference, hearing, or the deadline for other action.

**"Date of the health care authority (HCA) action"** - The date when the HCA's decision is effective.

**"Deliver"** - Giving a document to a person or entity in person or placing the document into the person or entity's possession as authorized by the rules in this chapter or chapter 34.05 RCW.

**"Department"** - The department of social and health services.

**"Documents"** - Papers, letters, writings, emails, or other printed or written items.

**"Electronic service"** - The service of documents sent or received through electronic communications, cloud services, or other electronic means established by the agency. For the purpose of effectuating service, as defined below, on HCA or OAH (but not BOA), service via OAH's PRISM participant portal is an acceptable method of "electronic service."

**"Filing"** - The act of delivering documents to the office of administrative hearings (OAH) or the board of appeals (BOA).

**"Final order"** - An order that is the final HCA decision.

Proposed/ Adopted	WAC Subsection	Reason
<b>WAC 182-526-0010</b>		
Proposed	<b>"Electronic service"</b> - <u>The service of documents sent or received through electronic communications, cloud services, or other electronic means established by the agency.</u>	The agency added the second sentence to specifically state that service via office of administrative hearings' (OAH) PRISM participant portal is an acceptable method of effectuating electronic service on health care authority (HCA) and OAH (although not board of appeals (BOA)).
Adopted	<b>"Electronic service"</b> - <u>The service of documents sent or received through electronic communications, cloud services, or other electronic means established by the agency. For the purpose of effectuating service, as defined below, on HCA or OAH (but not BOA), service via OAH's PRISM participant portal is an acceptable method of "electronic service."</u>	

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

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

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

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

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

**"HCA"** - The health care authority.

**"Health care authority (HCA) hearing representative"** - An employee of HCA, an authorized agent of HCA, HCA contractor or a contractor of HCA's authorized agent, or an assistant attorney general authorized to represent HCA in an administrative hearing. The HCA hearing representative may or may not be an attorney. An employee of an HCA contracted managed care organization is not an HCA hearing representative.

**"Hearing"** - Unless context clearly requires a different meaning, a proceeding before an ALJ, HCA-employed presiding officer, or a review judge that gives a party an opportunity to be heard in disputes about medical services programs established under chapter 74.09 RCW. For purposes of this chapter, hearings include administrative hearings, adjudicative proceedings, and any other similar term referenced under chapter 34.05 RCW, the Administrative Procedure Act, Titles 182 and 388 WAC, chapter 10-08 WAC, or other law.

**"Initial order"** - A hearing decision entered (made) by an ALJ that may be reviewed by a review judge at any party's request.

**"Intermediary interpreter"** - An interpreter who:

- (1) Is a certified deaf interpreter (CDI); and
- (2) Is able to assist in providing an accurate interpretation between spoken and sign language or between types of sign language by acting as an intermediary between a person with hearing loss and a qualified interpreter.

**"Judicial review"** - Review of a final order as provided under RCW 34.05.510 through 34.05.598.

**"Limited-English proficient (LEP)"** - Includes limited-English-speaking persons or other persons unable to communicate in spoken English because of hearing loss.

**"Limited-English-speaking (LES) person"** - A person who, because of non-English-speaking cultural background or disability, cannot readily speak or understand the English language.

**"Mail"** - Placing a document in the United States Postal system, or commercial delivery service, properly addressed and with the proper postage.

**"Managed care organization" or "MCO"** - An organization having a certificate of authority or certificate of registration from the office of insurance commissioner that contracts with HCA under a comprehensive risk contract to provide prepaid health care services to eligible recipients under HCA's managed care programs.

**"OAH"** - The office of administrative hearings.

**"Order of default"** - An order entered by an administrative law judge (ALJ) or review judge when the appellant fails to appear in a prehearing conference or a hearing. Once the order of default becomes a final order, it terminates the appellant's request for a hearing and ends the hearing process.

**"Order of dismissal"** - An order from the administrative law judge (ALJ) or review judge ending the hearing process.

**"Party":**

- (1) The health care authority (HCA);
- (2) HCA-contracted managed care organization (MCO) (if applicable); and
- (3) A person or entity;

(a) Named in the action;

(b) To whom the action is directed; or

(c) Is allowed to participate in a hearing to protect an interest as authorized by law or rule.

**"Person with hearing loss"** - A person who, because of a loss of hearing, cannot readily speak, understand, or communicate in spoken language.

**"Prehearing conference"** - A formal proceeding scheduled and conducted by an ALJ or other reviewing officer on the record for the purposes identified in WAC 182-526-0195.

**"Prehearing meeting"** - An informal, voluntary meeting that may be held before any prehearing conference or hearing.

**"Program"** - An organizational unit and the services that it provides, including services provided by HCA staff, its authorized agents, and through contracts with providers and HCA-contracted managed care organizations.

**"Qualified interpreter"** - Includes qualified interpreters for a limited-English-speaking person or a person with hearing loss.

**"Qualified interpreter for a limited-English-speaking person"** - A person who is readily able to interpret or translate spoken and written English communications to and from a limited-English-speaking person effectively, accurately, and impartially. If an interpreter is court certified, the interpreter is considered qualified.

**"Qualified interpreter for a person with hearing loss"** - A visual language interpreter who is certified by the Registry of Interpreters for the Deaf (RID) or National Association of the Deaf (NAD) and is readily able to interpret or translate spoken communications to and from a person with hearing loss effectively, accurately, and impartially.

**"Recipient"** - Any person receiving assistance through a medical service program established under chapter 74.09 RCW.

**"Reconsideration"** - Asking a review judge to reconsider a final order entered because the party believes the review judge made a mistake.

**"Record"** - The official documentation of the hearing process. The record includes recordings or transcripts, admitted exhibits, decisions, briefs, notices, orders, and other filed documents.

**"Review"** - A review judge evaluating initial orders entered by an ALJ and making the final HCA decision as provided by RCW 34.05.464, or issuing final orders.

**"Review judge"** - A decision-maker with expertise in program rules who serves as the reviewing officer under RCW 34.05.464. The review judge reviews initial orders and the hearing record exercising decision-making power as if hearing the case as a presiding officer. In some cases, review judges conduct hearings under RCW 34.05.425 as a presiding officer. After reviewing initial orders or conducting hearings, review judges enter final orders. Review judges are employed by HCA but may be physically located at the board of appeals (BOA). The review judge must not have been involved in the initial HCA action.

**"Rule"** - A regulation adopted by a state agency. Rules are found in the Washington Administrative Code (WAC).

**"Service"** - The delivery of documents as explained in WAC 182-526-0040.

**"Should"** - That an action is recommended but not required.

**"Stay"** - An order temporarily halting the HCA decision or action.

**"Witness"** - For the purposes of this chapter, means any person who makes statements or gives testimony that becomes evidence in a hearing. One type of witness is an expert witness. An expert witness is qualified by knowledge, skill, experience, training, and education to give opinions or evidence in a specialized area.

AMENDATORY SECTION (Amending WSR 15-04-102, filed 2/3/15, effective 3/6/15)

**WAC 182-526-0030 Contacting the board of appeals.**

The information included in this section is current at the time of rule adoption, but may change. Current information and additional contact information are available on the health care authority's internet site, in person at the board of appeals (BOA) office, or by a telephone call to the BOA's main public number.

Board of Appeals	
Location	626 8th Avenue S.E. Olympia, Washington
Mailing address	P.O. Box 42700 Olympia, WA 98504-2700
Toll free telephone	1-844-728-5212
Fax	360-507-9018
<u>Electronic service</u>	<u>HCABoardofAppeals@hca.wa.gov</u>
Internet website	www.hca.wa.gov/appeals

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

**WAC 182-526-0040 Service of documents on another party.** (1) When the rules in this chapter or in other program rules or statutes require a party to serve copies of documents on other parties, the party must send copies of the documents to all other parties or their representatives.

(2) When sending documents to the office of administrative hearings (OAH) or the board of appeals (BOA), the party must file the documents at one of the locations listed in WAC 182-526-0025(2) for OAH or in WAC 182-526-0030 for BOA.

(3) When sending documents to the assigned OAH field office, the parties should use the address of the assigned OAH listed on the notice of hearing. If a field office has not been assigned, all written communication about the hearing must be sent to the OAH Olympia field office, which sends the communication to the correct office. Documents may be sent only as described in this section to accomplish service.

(4) Unless otherwise stated in law, a party may serve someone by:

- (a) Personal service (hand delivery);
- (b) First class, registered, or certified mail;
- (c) Fax;
- (d) Electronic service;
- (e) Commercial delivery service; or

~~((e))~~ (f) Legal messenger service.

(5) A party must serve all other parties or their representatives whenever the party files a pleading, brief, or other document with the office of administrative hearings (OAH) or the board of appeals (BOA), or when required by law.

(6) Service is complete when:

- (a) Personal service is made;
- (b) Mail is properly stamped, addressed, and deposited in the United States mail;
- (c) A fax produces proof of transmission;
- (d) Electronic service is sent;
- (e) A parcel is delivered to a commercial delivery service with charges prepaid; or

~~((e))~~ (f) A parcel is delivered to a legal messenger service with charges prepaid.

(7) A party may prove service by providing any of the following:

- (a) A sworn statement;
- (b) The certified mail receipt signed by the person who received the envelope;
- (c) An affidavit or certificate ~~((e))~~ of mailing;
- (d) A signed receipt from the person who accepted the commercial delivery service or legal messenger service package; or
- (e) Proof of fax or electronic service transmission.

(8) ~~((A party))~~ The OAH or BOA may serve documents, including notices, initial orders, and final orders, by email only if the other parties have agreed to accept electronically served documents.

AMENDATORY SECTION (Amending WSR 17-23-201, filed 11/22/17, effective 12/23/17)

**WAC 182-526-0070 Filing documents.** (1) Filing is the act of delivering documents to the office of administrative hearings (OAH) or the board of appeals (BOA).

(2) The date of filing is the date documents are received by OAH or BOA.

(3) Filing is complete when the documents are received by OAH or BOA during business days between 8:00 a.m. to 5:00 p.m. If the documents are received after 5:00 p.m. on a business day, the filing is effective the next business day.

(4) A party may file documents by delivering them to OAH or BOA by:

- (a) Personal service (e.g., hand delivery);
- (b) First class, registered, or certified mail;
- (c) Fax transmission;
- (d) Electronic service;
- (e) Other secure electronic means established by the agency or OAH;
- (f) Electronic cloud sharing service approved by the agency;

(g) Commercial delivery service; or

~~((e))~~ (h) Legal messenger service.

(5) ~~((A party may deliver documents for filing by email only if OAH or BOA staff agreed to accept electronically filed documents.))~~ A party ~~((must))~~ may obtain confirmation of receipt of the filing from the OAH or BOA staff to prove that the documents were successfully filed electronically.

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

**WAC 182-526-0340 Hearing location.** (1) The office of administrative hearings (OAH) may schedule ~~((an))~~ a hearing to be conducted in-person ((hearing or a telephonic hearing)), by telephone, or by video.

(2) A telephonic or video hearing is where the appellant appears by telephone, video, or other electronic means.

(3) An in-person hearing is where the appellant appears face-to-face with the ALJ. The other parties may choose to appear either in person ~~((or))~~ by telephone, or by video.

(4) Whether a hearing is held in-person, by video, or telephonically, each party has the right to see all documents, hear all testimony, and question all witnesses.

(5) If a hearing is originally scheduled as an in-person hearing, the appellant may ask that the ALJ change it to a telephonic or video hearing. Once a telephonic or video hearing begins, the ALJ may stop, reschedule, and change the hearing to an in-person hearing if any party makes such a request.

**WSR 21-18-068**

**PERMANENT RULES**

**TRANSPORTATION COMMISSION**

[Filed August 26, 2021, 3:30 p.m., effective September 26, 2021]

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

Purpose: The purpose of this rule is to adjust toll rates for the State Route (SR) 520 bridge to mitigate a reduction in revenue resulting from the COVID-19 pandemic and to ensure that long-term financial obligations can be met. Pursuant to RCW 47.56.870, Washington state transportation com-

mission, as the state tolling authority, must consider toll rates that will help maintain travel time, speed, and reliability on the SR 520 corridor, and must set and adjust toll rates and policies on the SR 520 Bridge to generate revenue sufficient and necessary to cover costs and obligations described in RCW 47.56.830 and 47.56.850. Toll rates must also be set to meet requirements contained in the SR 520 master bond resolution.

Citation of Rules Affected by this Order: Amending WAC 468-270-071.

Statutory Authority for Adoption: RCW 47.56.030, 47.56.795, 47.56.850, and 47.56.862.

Adopted under notice filed as WSR 21-15-120 on July 21, 2021.

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

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

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

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

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

Date Adopted: August 24, 2021.

Reema Griffith  
Executive Director

AMENDATORY SECTION (Amending WSR 18-17-163, 19-01-066 and 19-10-006, filed 8/21/18, 12/14/18, and 4/18/19, effective 8/1/19)

**WAC 468-270-071 What are the toll rates on the SR 520 Bridge?** Tables 2 through 6 show the applicable toll rates by vehicle axles, day and time of travel, and method of payment.

**TABLE 2, Effective July 1, ~~((2017))~~ 2023**  
**SR 520 BRIDGE**  
**TWO-AXLE VEHICLE TOLL RATES**

<b>Mondays through Fridays</b>	<b>Good To Go!™ Pass<sup>1</sup></b>	<b>Pay By Mail<sup>1</sup></b>	<b>Good To Go!™ Pay By Plate<sup>2</sup></b>
Midnight to 5 a.m.	\$1.25	\$3.25	\$1.50
5 a.m. to 6 a.m.	<del>((2.00))</del> <u>\$2.50</u>	<del>((4.00))</del> <u>\$4.50</u>	<del>((2.25))</del> <u>\$2.75</u>
6 a.m. to 7 a.m.	<del>((3.40))</del> <u>\$3.80</u>	<del>((5.40))</del> <u>\$5.80</u>	<del>((3.65))</del> <u>\$4.05</u>
<del>((7 a.m. to 9 a.m.))</del> 7 a.m. to 10 a.m.	<del>((4.30))</del> <u>\$4.50</u>	<del>((6.30))</del> <u>\$6.50</u>	<del>((4.55))</del> <u>\$4.75</u>
<del>((9 a.m. to 10 a.m.))</del> 10 a.m. to 11 a.m.	<del>((3.40))</del> <u>\$3.80</u>	<del>((5.40))</del> <u>\$5.80</u>	<del>((3.65))</del> <u>\$4.05</u>
<del>((10 a.m. to 2 p.m.))</del> 11 a.m. to 2 p.m.	<del>((2.70))</del> <u>\$3.25</u>	<del>((4.70))</del> <u>\$5.25</u>	<del>((2.95))</del> <u>\$3.50</u>
2 p.m. to 3 p.m.	<del>((3.40))</del> <u>\$3.80</u>	<del>((5.40))</del> <u>\$5.80</u>	<del>((3.65))</del> <u>\$4.05</u>

<b>Mondays through Fridays</b>	<b>Good To Go!™ Pass<sup>1</sup></b>	<b>Pay By Mail<sup>1</sup></b>	<b>Good To Go!™ Pay By Plate<sup>2</sup></b>
((3 p.m. to 6 p.m.)) 3 p.m. to 7 p.m.	(( <del>\$4.30</del> ) <u>\$4.50</u> )	(( <del>\$6.30</del> ) <u>\$6.50</u> )	(( <del>\$4.55</del> ) <u>\$4.75</u> )
((6 p.m. to 7 p.m.)) 7 p.m. to 8 p.m.	(( <del>\$3.40</del> ) <u>\$3.80</u> )	(( <del>\$5.40</del> ) <u>\$5.80</u> )	(( <del>\$3.65</del> ) <u>\$4.05</u> )
((7 p.m. to 9 p.m.)) 8 p.m. to 9 p.m.	(( <del>\$2.70</del> ) <u>\$3.25</u> )	(( <del>\$4.70</del> ) <u>\$5.25</u> )	(( <del>\$2.95</del> ) <u>\$3.50</u> )
9 p.m. to 11 p.m.	(( <del>\$2.00</del> ) <u>\$2.50</u> )	(( <del>\$4.00</del> ) <u>\$4.50</u> )	(( <del>\$2.25</del> ) <u>\$2.75</u> )
11 p.m. to 11:59 p.m.	\$1.25	\$3.25	\$1.50

  

<b>Saturdays and Sundays<sup>3</sup></b>	<b>Good To Go!™ Pass<sup>1</sup></b>	<b>Pay By Mail<sup>1</sup></b>	<b>Good To Go!™ Pay By Plate<sup>2</sup></b>
Midnight to 5 a.m.	\$1.25	\$3.25	\$1.50
5 a.m. to 8 a.m.	(( <del>\$1.40</del> ) <u>\$1.60</u> )	(( <del>\$3.40</del> ) <u>\$3.60</u> )	(( <del>\$1.65</del> ) <u>\$1.85</u> )
8 a.m. to 11 a.m.	(( <del>\$2.05</del> ) <u>\$2.35</u> )	(( <del>\$4.05</del> ) <u>\$4.35</u> )	(( <del>\$2.30</del> ) <u>\$2.60</u> )
11 a.m. to 6 p.m.	(( <del>\$2.65</del> ) <u>\$3.05</u> )	(( <del>\$4.65</del> ) <u>\$5.05</u> )	(( <del>\$2.90</del> ) <u>\$3.30</u> )
6 p.m. to 9 p.m.	(( <del>\$2.05</del> ) <u>\$2.35</u> )	(( <del>\$4.05</del> ) <u>\$4.35</u> )	(( <del>\$2.30</del> ) <u>\$2.60</u> )
9 p.m. to 11 p.m.	(( <del>\$1.40</del> ) <u>\$1.60</u> )	(( <del>\$3.40</del> ) <u>\$3.60</u> )	(( <del>\$1.65</del> ) <u>\$1.85</u> )
11 p.m. to 11:59 p.m.	\$1.25	\$3.25	\$1.50

Notes: <sup>1</sup>The rate for electronic tolls has been rounded to the nearest five cents, as needed.  
<sup>2</sup>For this type of payment method, the customer is charged the Good to Go!™ Pass toll rate plus a \$0.25 fee as provided in WAC 468-270-300.  
<sup>3</sup>The weekend rates will be assessed on the days on which holidays are observed: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

**TABLE 3, Effective July 1, (~~2017~~) 2023**  
**SR 520 BRIDGE**  
**THREE-AXLE VEHICLE TOLL RATES**

<b>Mondays through Fridays</b>	<b>Good To Go!™ Pass<sup>1</sup></b>	<b>Pay By Mail<sup>1</sup></b>	<b>Good To Go!™ Pay By Plate<sup>2</sup></b>
Midnight to 5 a.m.	\$1.90	\$4.90	\$2.15
5 a.m. to 6 a.m.	(( <del>\$3.00</del> ) <u>\$3.75</u> )	(( <del>\$6.00</del> ) <u>\$6.75</u> )	(( <del>\$3.25</del> ) <u>\$4.00</u> )
6 a.m. to 7 a.m.	(( <del>\$5.10</del> ) <u>\$5.70</u> )	(( <del>\$8.10</del> ) <u>\$8.70</u> )	(( <del>\$5.35</del> ) <u>\$5.95</u> )
((7 a.m. to 9 a.m.)) 7 a.m. to 10 a.m.	(( <del>\$6.45</del> ) <u>\$6.75</u> )	(( <del>\$9.45</del> ) <u>\$9.75</u> )	(( <del>\$6.70</del> ) <u>\$7.00</u> )
((9 a.m. to 10 a.m.)) 10 a.m. to 11 a.m.	(( <del>\$5.10</del> ) <u>\$5.70</u> )	(( <del>\$8.10</del> ) <u>\$8.70</u> )	(( <del>\$5.35</del> ) <u>\$5.95</u> )
((10 a.m. to 2 p.m.)) 11 a.m. to 2 p.m.	(( <del>\$4.05</del> ) <u>\$4.90</u> )	(( <del>\$7.05</del> ) <u>\$7.90</u> )	(( <del>\$4.30</del> ) <u>\$5.15</u> )
2 p.m. to 3 p.m.	(( <del>\$5.10</del> ) <u>\$5.70</u> )	(( <del>\$8.10</del> ) <u>\$8.70</u> )	(( <del>\$5.35</del> ) <u>\$5.95</u> )
((3 p.m. to 6 p.m.)) 3 p.m. to 7 p.m.	(( <del>\$6.45</del> ) <u>\$6.75</u> )	(( <del>\$9.45</del> ) <u>\$9.75</u> )	(( <del>\$6.70</del> ) <u>\$7.00</u> )
((6 p.m. to 7 p.m.)) 7 p.m. to 8 p.m.	(( <del>\$5.10</del> ) <u>\$5.70</u> )	(( <del>\$8.10</del> ) <u>\$8.70</u> )	(( <del>\$5.35</del> ) <u>\$5.95</u> )
((7 p.m. to 9 p.m.)) 8 p.m. to 9 p.m.	(( <del>\$4.05</del> ) <u>\$4.90</u> )	(( <del>\$7.05</del> ) <u>\$7.90</u> )	(( <del>\$4.30</del> ) <u>\$5.15</u> )
9 p.m. to 11 p.m.	(( <del>\$3.00</del> ) <u>\$3.75</u> )	(( <del>\$6.00</del> ) <u>\$6.75</u> )	(( <del>\$3.25</del> ) <u>\$4.00</u> )
11 p.m. to 11:59 p.m.	\$1.90	\$4.90	\$2.15

Saturdays and Sundays <sup>3</sup>	Good To Go! <sup>TM</sup> Pass <sup>1</sup>	Pay By Mail <sup>1</sup>	Good To Go! <sup>TM</sup> Pay By Plate <sup>2</sup>
Midnight to 5 a.m.	\$1.90	\$4.90	\$2.15
5 a.m. to 8 a.m.	<del>(\$2.10)</del> <u>\$2.40</u>	<del>(\$5.10)</del> <u>\$5.40</u>	<del>(\$2.35)</del> <u>\$2.65</u>
8 a.m. to 11 a.m.	<del>(\$3.10)</del> <u>\$3.55</u>	<del>(\$6.10)</del> <u>\$6.55</u>	<del>(\$3.35)</del> <u>\$3.80</u>
11 a.m. to 6 p.m.	<del>(\$4.00)</del> <u>\$4.60</u>	<del>(\$7.00)</del> <u>\$7.60</u>	<del>(\$4.25)</del> <u>\$4.85</u>
6 p.m. to 9 p.m.	<del>(\$3.10)</del> <u>\$3.55</u>	<del>(\$6.10)</del> <u>\$6.55</u>	<del>(\$3.35)</del> <u>\$3.80</u>
9 p.m. to 11 p.m.	<del>(\$2.10)</del> <u>\$2.40</u>	<del>(\$5.10)</del> <u>\$5.40</u>	<del>(\$2.35)</del> <u>\$2.65</u>
11 p.m. to 11:59 p.m.	\$1.90	\$4.90	\$2.15

Notes: <sup>1</sup>The rate for electronic tolls has been rounded to the nearest five cents, as needed.  
<sup>2</sup>For this type of payment method, the customer is charged the Good to Go!<sup>TM</sup> Pass toll rate plus a \$0.25 fee as provided in WAC 468-270-300.  
<sup>3</sup>The weekend rates will be assessed on the days on which holidays are observed: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

TABLE 4, Effective July 1, (~~2017~~) 2023  
 SR 520 BRIDGE  
 FOUR-AXLE VEHICLE TOLL RATES

Mondays through Fridays	Good To Go! <sup>TM</sup> Pass <sup>1</sup>	Pay By Mail <sup>1</sup>	Good To Go! <sup>TM</sup> Pay By Plate <sup>2</sup>
Midnight to 5 a.m.	\$2.50	\$6.50	\$2.75
5 a.m. to 6 a.m.	<del>(\$4.00)</del> <u>\$5.00</u>	<del>(\$8.00)</del> <u>\$9.00</u>	<del>(\$4.25)</del> <u>\$5.25</u>
6 a.m. to 7 a.m.	<del>(\$6.80)</del> <u>\$7.60</u>	<del>(\$10.80)</del> <u>\$11.60</u>	<del>(\$7.05)</del> <u>\$7.85</u>
<del>(7 a.m. to 9 a.m.)</del> 7 a.m. to 10 a.m.	<del>(\$8.60)</del> <u>\$9.00</u>	<del>(\$12.60)</del> <u>\$13.00</u>	<del>(\$8.85)</del> <u>\$9.25</u>
<del>(9 a.m. to 10 a.m.)</del> 10 a.m. to 11 a.m.	<del>(\$6.80)</del> <u>\$7.60</u>	<del>(\$10.80)</del> <u>\$11.60</u>	<del>(\$7.05)</del> <u>\$7.85</u>
<del>(10 a.m. to 2 p.m.)</del> 11 a.m. to 2 p.m.	<del>(\$5.40)</del> <u>\$6.50</u>	<del>(\$9.40)</del> <u>\$10.50</u>	<del>(\$5.65)</del> <u>\$6.75</u>
2 p.m. to 3 p.m.	<del>(\$6.80)</del> <u>\$7.60</u>	<del>(\$10.80)</del> <u>\$11.60</u>	<del>(\$7.05)</del> <u>\$7.85</u>
<del>(3 p.m. to 6 p.m.)</del> 3 p.m. to 7 p.m.	<del>(\$8.60)</del> <u>\$9.00</u>	<del>(\$12.60)</del> <u>\$13.00</u>	<del>(\$8.85)</del> <u>\$9.25</u>
<del>(6 p.m. to 7 p.m.)</del> 7 p.m. to 8 p.m.	<del>(\$6.80)</del> <u>\$7.60</u>	<del>(\$10.80)</del> <u>\$11.60</u>	<del>(\$7.05)</del> <u>\$7.85</u>
<del>(7 p.m. to 9 p.m.)</del> 8 p.m. to 9 p.m.	<del>(\$5.40)</del> <u>\$6.50</u>	<del>(\$9.40)</del> <u>\$10.50</u>	<del>(\$5.65)</del> <u>\$6.75</u>
9 p.m. to 11 p.m.	<del>(\$4.00)</del> <u>\$5.00</u>	<del>(\$8.00)</del> <u>\$9.00</u>	<del>(\$4.25)</del> <u>\$5.25</u>
11 p.m. to 11:59 p.m.	\$2.50	\$6.50	\$2.75

Saturdays and Sundays <sup>3</sup>	Good To Go! <sup>TM</sup> Pass <sup>1</sup>	Pay By Mail <sup>1</sup>	Good To Go! <sup>TM</sup> Pay By Plate <sup>2</sup>
Midnight to 5 a.m.	\$2.50	\$6.50	\$2.75
5 a.m. to 8 a.m.	<del>(\$2.80)</del> <u>\$3.20</u>	<del>(\$6.80)</del> <u>\$7.20</u>	<del>(\$3.05)</del> <u>\$3.45</u>
8 a.m. to 11 a.m.	<del>(\$4.10)</del> <u>\$4.70</u>	<del>(\$8.10)</del> <u>\$8.70</u>	<del>(\$4.35)</del> <u>\$4.95</u>
11 a.m. to 6 p.m.	<del>(\$5.30)</del> <u>\$6.10</u>	<del>(\$9.30)</del> <u>\$10.10</u>	<del>(\$5.55)</del> <u>\$6.35</u>
6 p.m. to 9 p.m.	<del>(\$4.10)</del> <u>\$4.70</u>	<del>(\$8.10)</del> <u>\$8.70</u>	<del>(\$4.35)</del> <u>\$4.95</u>
9 p.m. to 11 p.m.	<del>(\$2.80)</del> <u>\$3.20</u>	<del>(\$6.80)</del> <u>\$7.20</u>	<del>(\$3.05)</del> <u>\$3.45</u>
11 p.m. to 11:59 p.m.	\$2.50	\$6.50	\$2.75

- Notes: <sup>1</sup>The rate for electronic tolls has been rounded to the nearest five cents, as needed.  
<sup>2</sup>For this type of payment method, the customer is charged the Good to Go!™ Pass toll rate plus a \$0.25 fee as provided in WAC 468-270-300.  
<sup>3</sup>The weekend rates will be assessed on the days on which holidays are observed: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

**TABLE 5, Effective July 1, (~~2017~~) 2023**  
**SR 520 BRIDGE**  
**FIVE-AXLE VEHICLE TOLL RATES**

<b>Mondays through Fridays</b>	<b>Good To Go!™ Pass<sup>1</sup></b>	<b>Pay By Mail<sup>1</sup></b>	<b>Good To Go!™ Pay By Plate<sup>2</sup></b>
Midnight to 5 a.m.	\$3.15	\$8.15	\$3.40
5 a.m. to 6 a.m.	<del>(\$5.00)</del> <u>\$6.25</u>	<del>(\$10.00)</del> <u>\$11.25</u>	<del>(\$5.25)</del> <u>\$6.50</u>
6 a.m. to 7 a.m.	<del>(\$8.50)</del> <u>\$9.50</u>	<del>(\$13.50)</del> <u>\$14.50</u>	<del>(\$8.75)</del> <u>\$9.75</u>
<del>(7 a.m. to 9 a.m.)</del> 7 a.m. to 10 a.m.	<del>(\$10.75)</del> <u>\$11.25</u>	<del>(\$15.75)</del> <u>\$16.25</u>	<del>(\$11.00)</del> <u>\$11.50</u>
<del>(9 a.m. to 10 a.m.)</del> 10 a.m. to 11 a.m.	<del>(\$8.50)</del> <u>\$9.50</u>	<del>(\$13.50)</del> <u>\$14.50</u>	<del>(\$8.75)</del> <u>\$9.75</u>
<del>(10 a.m. to 2 p.m.)</del> 11 a.m. to 2 p.m.	<del>(\$6.75)</del> <u>\$8.15</u>	<del>(\$11.75)</del> <u>\$13.15</u>	<del>(\$7.00)</del> <u>\$8.40</u>
2 p.m. to 3 p.m.	<del>(\$8.50)</del> <u>\$9.50</u>	<del>(\$13.50)</del> <u>\$14.50</u>	<del>(\$8.75)</del> <u>\$9.75</u>
<del>(3 p.m. to 6 p.m.)</del> 3 p.m. to 7 p.m.	<del>(\$10.75)</del> <u>\$11.25</u>	<del>(\$15.75)</del> <u>\$16.25</u>	<del>(\$11.00)</del> <u>\$11.50</u>
<del>(6 p.m. to 7 p.m.)</del> 7 p.m. to 8 p.m.	<del>(\$8.50)</del> <u>\$9.50</u>	<del>(\$13.50)</del> <u>\$14.50</u>	<del>(\$8.75)</del> <u>\$9.75</u>
<del>(7 p.m. to 9 p.m.)</del> 8 p.m. to 9 p.m.	<del>(\$6.75)</del> <u>\$8.15</u>	<del>(\$11.75)</del> <u>\$13.15</u>	<del>(\$7.00)</del> <u>\$8.40</u>
9 p.m. to 11 p.m.	<del>(\$5.00)</del> <u>\$6.25</u>	<del>(\$10.00)</del> <u>\$11.25</u>	<del>(\$5.25)</del> <u>\$6.50</u>
11 p.m. to 11:59 p.m.	\$3.15	\$8.15	\$3.40

<b>Saturdays and Sundays<sup>3</sup></b>	<b>Good To Go!™ Pass<sup>1</sup></b>	<b>Pay By Mail<sup>1</sup></b>	<b>Good To Go!™ Pay By Plate<sup>2</sup></b>
Midnight to 5 a.m.	\$3.15	\$8.15	\$3.40
5 a.m. to 8 a.m.	<del>(\$3.50)</del> <u>\$4.00</u>	<del>(\$8.50)</del> <u>\$9.00</u>	<del>(\$3.75)</del> <u>\$4.25</u>
8 a.m. to 11 a.m.	<del>(\$5.15)</del> <u>\$5.90</u>	<del>(\$10.15)</del> <u>\$10.90</u>	<del>(\$5.40)</del> <u>\$6.15</u>
11 a.m. to 6 p.m.	<del>(\$6.65)</del> <u>\$7.65</u>	<del>(\$11.65)</del> <u>\$12.65</u>	<del>(\$6.90)</del> <u>\$7.90</u>
6 p.m. to 9 p.m.	<del>(\$5.15)</del> <u>\$5.90</u>	<del>(\$10.15)</del> <u>\$10.90</u>	<del>(\$5.40)</del> <u>\$6.15</u>
9 p.m. to 11 p.m.	<del>(\$3.50)</del> <u>\$4.00</u>	<del>(\$8.50)</del> <u>\$9.00</u>	<del>(\$3.75)</del> <u>\$4.25</u>
11 p.m. to 11:59 p.m.	\$3.15	\$8.15	\$3.40

- Notes: <sup>1</sup>The rate for electronic tolls has been rounded to the nearest five cents, as needed.  
<sup>2</sup>For this type of payment method, the customer is charged the Good to Go!™ Pass toll rate plus a \$0.25 fee as provided in WAC 468-270-300.  
<sup>3</sup>The weekend rates will be assessed on the days on which holidays are observed: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

**TABLE 6, Effective July 1, (~~2017~~) 2023**  
**SR 520 BRIDGE**  
**SIX-AXLE OR MORE VEHICLE TOLL RATES**

<b>Mondays through Fridays</b>	<b>Good To Go!™ Pass<sup>1</sup></b>	<b>Pay By Mail<sup>1</sup></b>	<b>Good To Go!™ Pay By Plate<sup>2</sup></b>
Midnight to 5 a.m.	\$3.75	\$9.75	\$4.00
5 a.m. to 6 a.m.	<del>(\$6.00)</del> <u>\$7.50</u>	<del>(\$12.00)</del> <u>\$13.50</u>	<del>(\$6.25)</del> <u>\$7.75</u>

<b>Mondays through Fridays</b>	<b>Good To Go!™ Pass<sup>1</sup></b>	<b>Pay By Mail<sup>1</sup></b>	<b>Good To Go!™ Pay By Plate<sup>2</sup></b>
6 a.m. to 7 a.m.	<del>(\$10.20)</del> <u>\$11.40</u>	<del>(\$16.20)</del> <u>\$17.40</u>	<del>(\$10.45)</del> <u>\$11.65</u>
<del>(7 a.m. to 9 a.m.)</del> 7 a.m. to 10 a.m.	<del>(\$12.90)</del> <u>\$13.50</u>	<del>(\$18.90)</del> <u>\$19.50</u>	<del>(\$13.15)</del> <u>\$13.75</u>
<del>(9 a.m. to 10 a.m.)</del> 10 a.m. to 11 a.m.	<del>(\$10.20)</del> <u>\$11.40</u>	<del>(\$16.20)</del> <u>\$17.40</u>	<del>(\$10.45)</del> <u>\$11.65</u>
<del>(10 a.m. to 2 p.m.)</del> 11 a.m. to 2 p.m.	<del>(\$8.10)</del> <u>\$9.75</u>	<del>(\$14.10)</del> <u>\$15.75</u>	<del>(\$8.35)</del> <u>\$10.00</u>
2 p.m. to 3 p.m.	<del>(\$10.20)</del> <u>\$11.40</u>	<del>(\$16.20)</del> <u>\$17.40</u>	<del>(\$10.45)</del> <u>\$11.65</u>
<del>(3 p.m. to 6 p.m.)</del> 3 p.m. to 7 p.m.	<del>(\$12.90)</del> <u>\$13.50</u>	<del>(\$18.90)</del> <u>\$19.50</u>	<del>(\$13.15)</del> <u>\$13.75</u>
<del>(6 p.m. to 7 p.m.)</del> 7 p.m. to 8 p.m.	<del>(\$10.20)</del> <u>\$11.40</u>	<del>(\$16.20)</del> <u>\$17.40</u>	<del>(\$10.45)</del> <u>\$11.65</u>
<del>(7 p.m. to 9 p.m.)</del> 8 p.m. to 9 p.m.	<del>(\$8.10)</del> <u>\$9.75</u>	<del>(\$14.10)</del> <u>\$15.75</u>	<del>(\$8.35)</del> <u>\$10.00</u>
9 p.m. to 11 p.m.	<del>(\$6.00)</del> <u>\$7.50</u>	<del>(\$12.00)</del> <u>\$13.50</u>	<del>(\$6.25)</del> <u>\$7.75</u>
11 p.m. to 11:59 p.m.	\$3.75	\$9.75	\$4.00

  

<b>Saturdays and Sundays<sup>3</sup></b>	<b>Good To Go!™ Pass<sup>1</sup></b>	<b>Pay By Mail<sup>1</sup></b>	<b>Good To Go!™ Pay By Plate<sup>2</sup></b>
Midnight to 5 a.m.	\$3.75	\$9.75	\$4.00
5 a.m. to 8 a.m.	<del>(\$4.20)</del> <u>\$4.80</u>	<del>(\$10.20)</del> <u>\$10.80</u>	<del>(\$4.45)</del> <u>\$5.05</u>
8 a.m. to 11 a.m.	<del>(\$6.15)</del> <u>\$7.05</u>	<del>(\$12.15)</del> <u>\$13.05</u>	<del>(\$6.40)</del> <u>\$7.30</u>
11 a.m. to 6 p.m.	<del>(\$7.95)</del> <u>\$9.15</u>	<del>(\$13.95)</del> <u>\$15.15</u>	<del>(\$8.20)</del> <u>\$9.40</u>
6 p.m. to 9 p.m.	<del>(\$6.15)</del> <u>\$7.05</u>	<del>(\$12.15)</del> <u>\$13.05</u>	<del>(\$6.40)</del> <u>\$7.30</u>
9 p.m. to 11 p.m.	<del>(\$4.20)</del> <u>\$4.80</u>	<del>(\$10.20)</del> <u>\$10.80</u>	<del>(\$4.45)</del> <u>\$5.05</u>
11 p.m. to 11:59 p.m.	\$3.75	\$9.75	\$4.00

Notes: <sup>1</sup>The rate for electronic tolls has been rounded to the nearest five cents, as needed.  
<sup>2</sup>For this type of payment method, the customer is charged the Good to Go!™ Pass toll rate plus a \$0.25 fee as provided in WAC 468-270-300.  
<sup>3</sup>The weekend rates will be assessed on the days on which holidays are observed: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

**WSR 21-18-069**  
**PERMANENT RULES**  
**TRANSPORTATION COMMISSION**

[Filed August 26, 2021, 3:32 p.m., effective September 26, 2021]

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

Purpose: The purpose of this rule is to: (i) Increase ferry fares, (ii) change the occupancy requirement for vanpools from five to three to align with the updated definition of ride sharing, and (iii) make a technical correction regarding eligibility requirements for a discounted fare for school groups. The Washington state transportation commission acted in 2017 to remove the requirement that a school group must be traveling for "an institutionally sponsored activity" in order to be eligible for the flat group rate. While this language was stricken in one location of the WAC, a second location where

the language occurred, was not. This amendment corrects this drafting error.

Citation of Rules Affected by this Order: Amending WAC 468-300-010, 468-300-020, and 468-300-040.

Statutory Authority for Adoption: RCW 47.56.030 and 47.60.315.

Adopted under notice filed as WSR 21-14-057 on July 1, 2021.

Changes Other than Editing from Proposed to Adopted Version: Clarification language was added on which fare categories are rounded down to the nearest nickel.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 3, Repealed 0.

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

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

Date Adopted: August 10, 2021.

Reema Griffith  
Executive Director

**AMENDATORY SECTION** (Amending WSR 19-18-004, filed 8/22/19, effective 9/22/19)

**WAC 468-300-010 Ferry passenger tolls.**

**EFFECTIVE 03:00 A.M. October 1, ((2019)) 2021**

ROUTES	Full Fare <sup>9</sup>	Senior/ Disabled, Youth <sup>9</sup>	Multiride Media 20 Rides <sup>1, 9</sup>	Monthly Pass <sup>5, 9</sup>	Bicycle Surcharge <sup>2</sup>
Via Auto Ferry					
*Fauntleroy-Southworth	((8.75)) <u>7.20</u>	((3.35)) <u>3.60</u>	((54.50)) <u>58.60</u>	((87.20)) <u>93.80</u>	1.00
*Seattle-Bremerton					
*Seattle-Bainbridge Island					
*Edmonds-Kingston	((8.65)) <u>9.25</u>	((4.30)) <u>4.60</u>	((69.70)) <u>75.00</u>	((111.55)) <u>120.00</u>	1.00
Port Townsend-Coupeville	((3.50)) <u>3.85</u>	((1.75)) <u>1.90</u>	((57.00)) <u>63.60</u>	((91.20)) <u>101.80</u>	0.50
*Fauntleroy-Vashon					
*Southworth-Vashon					
*Pt. Defiance-Tahlequah	((5.65)) <u>6.10</u>	((2.80)) <u>3.05</u>	((45.70)) <u>49.80</u>	((73.15)) <u>79.70</u>	1.00
*Mukilteo-Clinton	((5.20)) <u>5.65</u>	((2.60)) <u>2.80</u>	((42.10)) <u>46.20</u>	((67.40)) <u>73.95</u>	1.00
*Anacortes to Lopez, Shaw, Orcas or Friday Harbor	((14.00)) <u>14.85</u>	((7.00)) <u>7.40</u>	((91.90)) <u>98.30</u>	N/A	2.00 <sup>6</sup>
Between Lopez, Shaw, Orcas and Friday Harbor <sup>4</sup>	N/C	N/C	N/C	N/A	N/C
Anacortes to Sidney and Sidney to all destinations	((20.65)) <u>21.80</u>	((10.30)) <u>10.90</u>	N/A	N/A	4.00 <sup>7</sup>
From Lopez, Shaw, Orcas and Friday Harbor to Sidney	((12.90)) <u>13.70</u>	((6.40)) <u>6.85</u>	N/A	N/A	2.00 <sup>8</sup>
Lopez, Shaw, Orcas and Friday Harbor to Sidney (round trip) <sup>3</sup>	((25.55)) <u>26.90</u>	((12.55)) <u>13.20</u>	N/A	N/A	4.00 <sup>7</sup>

All fares rounded to the ((next)) nearest multiple of \$0.05.

\*These routes operate as a one-point toll collection system with round trip tolls.

<sup>1</sup>MULTIRIDE MEDIA - Shall be valid only for 90 days from date of purchase after which time the tickets shall not be accepted for passage. Remaining value will not be eligible for refund or exchange. There shall be no commercial resale of this fare media. For mail order deliveries, WSF may add additional days to allow for delivery times.

<sup>2</sup>BICYCLE SURCHARGE - Is an addition to the appropriate passenger fare. Customers using multiride media and monthly passes are exempt from the bicycle surcharge. On all routes except Anacortes/San Juan Islands/Sidney, B.C., customers paying with the ePurse or the ORCA card are exempt from the bicycle surcharge. For the purposes of WSF fares determination, the bicycle fare category shall include both bicycles as defined by RCW 46.04.071 and electric-assisted bicycles as defined ((in)) by RCW 46.04.169. Bicycles towing a kayak or canoe are to be charged the motorcycle/driver (stowage) rate in WAC 468-300-020. This rate includes the fare for the walk on passenger with the bicycle, and the kayak or canoe being towed by the bicycle. This requirement shall not apply to interisland travel in the San Juan Islands. All other bicycles towing trailers are charged the applicable bicycle surcharge.

<sup>3</sup>ROUND TRIP - Round trip passage for international travel available for trips beginning or ending on one of the Islands served.

<sup>4</sup>INTER-ISLAND FARES - Passenger fares included in Anacortes tolls.

<sup>5</sup>PASSES - Passenger passes are available for all routes except Anacortes/San Juan Islands/Sidney, B.C. Passes are valid for the period printed on the pass and will be presented to Washington state ferries staff or scanned through an automated turnstile whenever a passenger fare is collected. This pass is based on 16 days of passenger travel with a 20% discount. A \$1.00 retail/shipping and handling fee will be added to the price of the pass.

A combination ferry-transit pass may be available for a particular route when determined by Washington state ferries and a local public transit agency to be a viable fare instrument. The WSF portion of the fare is based on 16 days of passenger travel per month at a 20% discount.

The monthly pass is valid for a maximum of 31 round trips per month, is nontransferable, is nonreproducible, and is intended for a single user. Monthly passes purchased through the regional SmartCard program are also nontransferable and intended for a single user, but allow for unlimited usage.

<sup>6</sup>BICYCLE SURCHARGE - This becomes \$4.00 during peak season (May 1 through September 30).

<sup>7</sup>BICYCLE SURCHARGE - This becomes \$6.00 during peak season (May 1 through September 30).

<sup>8</sup>BICYCLE SURCHARGE - This becomes \$3.00 during peak season (May 1 through September 30).

<sup>9</sup>CAPITAL SURCHARGE - Included is a (~~(\$0.25)~~) \$0.50 capital surcharge on each single passenger fare collected. On all multiride cards except for Port Townsend/Coupeville, (~~(there is)~~) the included (~~(a)~~) capital surcharge (~~(of \$2.50)~~) is \$5.00. For Port Townsend/Coupeville, the included capital surcharge is (~~(\$5.00)~~) \$10.00 on multiride cards. On all monthly passes except Port Townsend/Coupeville, there is included a (~~(\$4.00)~~) \$8.00 capital surcharge. For Port Townsend/Coupeville, the included capital surcharge is (~~(\$8.00)~~) \$16.00 on monthly passes. For passenger half fare on Port Townsend/Coupeville the capital surcharge is \$0.40.

CHILDREN/YOUTH - Children under six years of age will be carried free when accompanied by parent or guardian. Children/youths six through eighteen years of age will be charged the youth fare, which will be 50% of full fare rounded down to the (~~(next)~~) nearest multiple of \$0.05.

SENIOR CITIZENS - Passengers age 65 and over, with proper identification establishing proof of age, may travel at half-fare passenger tolls on any route where passenger fares are collected, which will be rounded down to the nearest multiple of \$0.05.

PEOPLE WITH DISABILITIES - Any person who has a physical or mental impairment that substantially limits one or more major life activity, upon presentation of a WSF Disability Travel Permit, Regional Reduced Fare Permit, or other identification which establishes a disability may travel at half-fare passenger tolls on any route where passenger fares are collected, which will be rounded down to the nearest multiple of \$0.05. In addition, people with disabilities who require attendant care while traveling on the ferries, and are so certified by their physician, may obtain an endorsement on their WSF Disability Travel Permit and such endorsement shall allow the attendant to travel free as a passenger.

BUS PASSENGERS - Passengers traveling on public transit buses pay the applicable fare. Passengers traveling in private or commercial buses will be charged the half-fare rate, which will be rounded down to the nearest multiple of \$0.05.

MEDICARE CARD HOLDERS - Any person holding a medicare card duly issued to that person pursuant to Title II or Title XVIII of the Social Security Act may travel at half-fare passenger tolls, which will be rounded down to the nearest multiple of \$0.05 on any route upon presentation of a WSF Disability Travel Permit or a Regional Reduced Fare Permit at time of travel.

IN-NEED ORGANIZATIONS - For qualified organizations serving in-need clients by providing tickets for transportation on WSF at no cost to clients, program would offer a monthly discount to approximate appropriate multiride media discount rates. Appointing bodies (those that appoint Ferry Advisory Committees) will nominate to the Washington State Transportation Commission those organizations that meet the criteria of the program. The Commission will review such nominations and certify those organizations that qualify. The following criteria will be used for nominating and certifying in-need organizations: Nongovernmental and not-for-profit organizations whose primary purpose is one or more of the following: Help clients with medical issues; provide clients with low-income social services; help clients suffering from domestic violence; provide clients with employment-seeking services; and/or help clients with Social Security. Travel will be initially charged based on full fare and billed monthly. The credits will be approximately based on the discount rates offered to multiride media users applicable on the date of travel.

PROMOTIONAL TOLLS - A promotional rate may be established at the discretion of the WSF Assistant Secretary, Executive Director for a specific discount in order to enhance total revenue and effective only at designated times on designated routes. A promotional fare product may also be established to support tourism or other special events. The promotional fare or product may be bundled and sold as part of a multiparty promotional program.

Special passenger fare rate(s) may be established for a pilot program in conjunction with the Central Puget Sound Regional Fare Integration project on ferry route(s) serving King, Pierce, Snohomish and Kitsap counties. The rate(s) may be established at the discretion of the WSF Assistant Secretary, Executive Director for a specific discount not to exceed fifty percent of full fare.

SCHOOL GROUPS - Passengers traveling in authorized school groups, including home-school groups, will be charged a flat rate of (~~(\$1)~~) \$5.00 per walk-on group or per vehicle of students and/or advisors and staff. All school groups require a letter of authorization and prior notification. In the case of home-school groups, in addition to prior notification, a copy of the filed Declaration of Intent (as outlined in RCW 28A.200.010) shall be submitted to the tollbooth at the time of travel. Notification shall be made no less than 72 hours before the scheduled departure and will include the expected number of school-age children and adults that will be traveling to ensure WSF can satisfy U.S. Coast Guard lifesaving equipment requirements. Failure to provide adequate notification may result in delayed travel. Vehicles and drivers will be charged the fare applicable to vehicle size. The special school rate is (~~(\$2)~~) \$10.00 on routes where one-point toll systems are in effect.

BUNDLED SINGLE FARE BOOKS - WSF may bundle single fare types into multiride media as a customer convenience. Remaining value will not be eligible for refund or exchange. For mail order deliveries, WSF may add additional days for delivery times.

FIRE DEPARTMENT AND FIRE DISTRICT FARE CONSIDERATION - At the discretion of the WSF Assistant Secretary, WSF may authorize no-fare or discounted fare passage on scheduled and/or special ferry sailings for fire departments and fire districts that provide contracted fire protection services for WSF ferry terminals and/or other WSF facilities within their jurisdiction. Such passage shall be considered full and complete consideration for such fire protection services, in lieu of annual payments for such services, to be so noted in such fire protection agreements. The scope of such authorization includes designated fire department and fire district vehicles (see below), drivers and passengers en route to and from an emergency call, on ferry routes with a WSF terminal and/or other WSF facility served by a fire department or fire district pursuant to a WSF fire protection service agreement. Authorized vehicles may include public fire department and fire district medical aid units, fire trucks, incident command and/or other vehicles dispatched to and returning from an emergency call.

GROUP OR VOLUME SALES - In order to increase total revenues, WSF may develop full fare or discounted customer packages or bundle single fare types into multiride media or offer passes for high volume or group users. In pricing these packages, WSF will have discretion to set appropriate volume discounts based on a case-by-case basis.

SPECIAL EVENTS - In order to increase total revenues, WSF may develop, create or participate in special events that may include, but not be limited to, contributing or packaging discounted fares in exchange for the opportunity to participate in the income generated by the event.

LOW-INCOME FARE PILOT - Starting no earlier than January 1, 2020, special passenger fare rate(s) may be established for a pilot program offering a low-income fare on any ferry route for riders made eligible through an existing transit agency's low-income fare program. Enactment of this program is dependent upon legislative funding for the pilot project. If funded, Washington State Ferries' Assistant Secretary shall submit a proposal to carry out this pilot program and the Washington State Transportation Commission must approve both the program and the fare schedule before it is implemented. Once implemented, WSF shall provide, at a minimum, updates to the Commission every six months on the pilot. The pilot will conclude no longer than three years from its implementation.

GOOD TO GO! PILOT - Special ferry toll rate(s) may be established for a pilot program of Good to Go! or similar fare collection infrastructure, technology, or ORCA replacement system on any ferry route. Washington State Ferries Assistant Secretary shall design the program and submit a proposed program and fare schedule to the Washington State Transportation Commission. The Commission shall review, modify and approve the proposed fare schedule and fare policies before it is implemented. Once implemented, WSF shall provide, at a minimum, updates to the Commission every six months on the pilot. The pilot will conclude no longer than three years from its implementation.

**EFFECTIVE 03:00 A.M. (~~May 1, 2020~~) October 1, 2022**

ROUTES	Full Fare <sup>8</sup>	Senior/ Disabled, Youth <sup>8</sup>	Multiride Media	Monthly Pass <sup>5, 8</sup>	Bicycle Surcharge <sup>2</sup>
			20 Rides <sup>1, 8</sup>		
Via Auto Ferry					
*Fautleroy-Southworth	<del>((7.10))</del> <u>7.40</u>	<del>((3.55))</del> <u>3.70</u>	<del>((57.80))</del> <u>60.20</u>	<del>((92.50))</del> <u>96.35</u>	1.00
*Seattle-Bremerton					
*Seattle-Bainbridge Island					
*Edmonds-Kingston	<del>((9.05))</del> <u>9.45</u>	<del>((4.50))</del> <u>4.70</u>	<del>((73.40))</del> <u>76.60</u>	<del>((117.45))</del> <u>122.60</u>	1.00
Port Townsend-Coupeville	<del>((3.80))</del> <u>3.95</u>	<del>((1.80))</del> <u>1.95</u>	<del>((62.80))</del> <u>65.20</u>	<del>((100.50))</del> <u>104.35</u>	0.50
*Fautleroy-Vashon					
*Southworth-Vashon					
*Pt. Defiance-Tahlequah	<del>((5.95))</del> <u>6.25</u>	<del>((2.95))</del> <u>3.10</u>	<del>((48.60))</del> <u>51.00</u>	<del>((77.80))</del> <u>81.60</u>	1.00
*Mukilteo-Clinton	<del>((5.55))</del> <u>5.80</u>	<del>((2.75))</del> <u>2.90</u>	<del>((45.40))</del> <u>47.40</u>	<del>((72.65))</del> <u>75.85</u>	1.00
*Anacortes to Lopez, Shaw, Orcas or Friday Harbor	<del>((14.50))</del> <u>15.20</u>	<del>((7.25))</del> <u>7.60</u>	<del>((96.00))</del> <u>100.55</u>	N/A	2.00 <sup>6</sup>
Between Lopez, Shaw, Orcas and Friday Harbor <sup>4</sup>	N/C	N/C	N/C	N/A	N/C
Anacortes to Sidney and Sidney to all destinations	<del>((21.30))</del> <u>22.35</u>	<del>((10.65))</del> <u>11.15</u>	N/A	N/A	4.00 <sup>7</sup>
From Lopez, Shaw, Orcas and Friday Harbor to Sidney	<del>((13.40))</del> <u>14.05</u>	<del>((6.65))</del> <u>7.00</u>	N/A	N/A	2.00 <sup>8</sup>
Lopez, Shaw, Orcas and Friday Harbor to Sidney (round trip) <sup>3</sup>	<del>((26.30))</del> <u>27.60</u>	<del>((12.80))</del> <u>13.50</u>	N/A	N/A	4.00 <sup>7</sup>

All fares rounded to the (~~next~~) nearest multiple of \$0.05.

\*These routes operate as a one-point toll collection system with round trip tolls.

<sup>1</sup>MULTIRIDE MEDIA - Shall be valid only for 90 days from date of purchase after which time the tickets shall not be accepted for passage. Remaining value will not be eligible for refund or exchange. There shall be no commercial resale of this fare media. For mail order deliveries, WSF may add additional days to allow for delivery times.

<sup>2</sup>BICYCLE SURCHARGE - Is an addition to the appropriate passenger fare. Customers using multiride media and monthly passes are exempt from the bicycle surcharge. On all routes except Anacortes/San Juan Islands/Sidney, B.C., customers paying with the ePurse (~~on~~) or the ORCA card are exempt from the bicycle surcharge. For the purposes of WSF fares determination, the bicycle fare category shall include both bicycles as defined by RCW 46.04.071 and electric-assisted bicycles as defined by RCW 46.04.169. Bicycles towing a kayak or canoe are to be charged the motorcycle/driver (stowage) rate in WAC 468-300-020. This rate includes the fare for the walk on passenger with the bicycle, and the kayak or canoe being towed by the bicycle. This requirement shall not apply to interisland travel in the San Juan Islands. All other bicycles towing trailers are charged the applicable bicycle surcharge.

<sup>3</sup>ROUND TRIP - Round trip passage for international travel available for trips beginning or ending on one of the Islands served.

<sup>4</sup>INTER-ISLAND FARES - Passenger fares included in Anacortes tolls.

<sup>5</sup>PASSES - Passenger passes are available for all routes except Anacortes/San Juan Islands/Sidney, B.C. Passes are valid for the period printed on the pass and will be presented to Washington state ferries staff or scanned through an automated turnstile whenever a passenger fare is collected. This pass is based on 16 days of passenger travel with a 20% discount. A \$1.00 retail/shipping and handling fee will be added to the price of the pass.

A combination ferry-transit pass may be available for a particular route when determined by Washington state ferries and a local public transit agency to be a viable fare instrument. The WSF portion of the fare is based on 16 days of passenger travel per month at a 20% discount.

The monthly pass is valid for a maximum of 31 round trips per month, is nontransferable, is nonreproducible, and is intended for a single user. Monthly passes purchased through the regional SmartCard program are also nontransferable and intended for a single user, but allow for unlimited usage.

<sup>6</sup>BICYCLE SURCHARGE - This becomes \$4.00 during peak season (May 1 through September 30).

<sup>7</sup>BICYCLE SURCHARGE - This becomes \$6.00 during peak season (May 1 through September 30).

<sup>8</sup>BICYCLE SURCHARGE - This becomes \$3.00 during peak season (May 1 through September 30).

<sup>9</sup>CAPITAL SURCHARGE((S)) - Included is a (~~(\$0.25))~~ \$0.50 capital surcharge on each single passenger fare collected. On all multiride cards except for Port Townsend/Coupeville, (~~there is an~~) the included capital surcharge (~~(of \$2.50))~~ is \$5.00. For Port Townsend/Coupeville, the included capital surcharge is (~~(\$5.00))~~ \$10.00 on multiride cards. On all monthly passes except Port Townsend/Coupeville, there is an included (~~(\$4.00))~~ \$8.00 capital surcharge. For Port Townsend/Coupeville, the included capital surcharge is (~~(\$8.00))~~ \$16.00 on monthly passes. For passenger half fare on Port Townsend/Coupeville the capital surcharge is \$0.40.

((Beginning May 1, 2020, an additional \$0.25 capital surcharge for new vessel construction is included on each single passenger fare collected. On all multiride cards except for Port Townsend/Coupeville, there is an included new vessel capital surcharge of \$2.50. For Port Townsend/Coupeville, the included new vessel capital surcharge is \$5.00 on multiride cards. On all monthly passes except Port Townsend/Coupeville, there is included a \$4.00 new vessel capital surcharge. For Port Townsend/Coupeville, the included new vessel capital surcharge is \$8.00 on monthly passes. For passenger half fare on Port Townsend/Coupeville the new vessel capital surcharge is \$0.15.))

**CHILDREN/YOUTH** - Children under six years of age will be carried free when accompanied by parent or guardian. Children/youths six through eighteen years of age will be charged the youth fare, which will be 50% of full fare rounded down to the ~~((next))~~ nearest multiple of \$0.05.

**SENIOR CITIZENS** - Passengers age 65 and over, with proper identification establishing proof of age, may travel at half-fare passenger tolls on any route where passenger fares are collected, which will be rounded down to the nearest multiple of \$0.05.

**PEOPLE WITH DISABILITIES** - Any person who has a physical or mental impairment that substantially limits one or more major life activity, upon presentation of a WSF Disability Travel Permit, Regional Reduced Fare Permit, or other identification which establishes a disability may travel at half-fare passenger tolls on any route where passenger fares are collected, which will be rounded down to the nearest multiple of \$0.05. In addition, people with disabilities who require attendant care while traveling on the ferries, and are so certified by their physician, may obtain an endorsement on their WSF Disability Travel Permit and such endorsement shall allow the attendant to travel free as a passenger.

**BUS PASSENGERS** - Passengers traveling on public transit buses pay the applicable fare. Passengers traveling in private or commercial buses will be charged the half-fare rate, which will be rounded down to the nearest multiple of \$0.05.

**MEDICARE CARD HOLDERS** - Any person holding a medicare card duly issued to that person pursuant to Title II or Title XVIII of the Social Security Act may travel at half-fare passenger tolls, which will be rounded down to the nearest multiple of \$0.05 on any route upon presentation of a WSF Disability Travel Permit or a Regional Reduced Fare Permit at time of travel.

**IN-NEED ORGANIZATIONS** - For qualified organizations serving in-need clients by providing tickets for transportation on WSF at no cost to clients, program would offer a monthly discount to approximate appropriate multiride media discount rates. Appointing bodies (those that appoint Ferry Advisory Committees) will nominate to the Washington State Transportation Commission those organizations that meet the criteria of the program. The Commission will review such nominations and certify those organizations that qualify. The following criteria will be used for nominating and certifying in-need organizations: Nongovernmental and not-for-profit organizations whose primary purpose is one or more of the following: Help clients with medical issues; provide clients with low-income social services; help clients suffering from domestic violence; provide clients with employment-seeking services; and/or help clients with Social Security. Travel will be initially charged based on full fare and billed monthly. The credits will be approximately based on the discount rates offered to multiride media users applicable on the date of travel.

**PROMOTIONAL TOLLS** - A promotional rate may be established at the discretion of the WSF Assistant Secretary, Executive Director for a specific discount in order to enhance total revenue and effective only at designated times on designated routes. A promotional fare product may also be established to support tourism or other special events. The promotional fare or product may be bundled and sold as part of a multiparty promotional program.

Special passenger fare rate(s) may be established for a pilot program in conjunction with the Central Puget Sound Regional Fare Integration project on ferry route(s) serving King, Pierce, Snohomish and Kitsap counties. The rate(s) may be established at the discretion of the WSF Assistant Secretary, Executive Director for a specific discount not to exceed fifty percent of full fare.

**SCHOOL GROUPS** - Passengers traveling in authorized school groups, including home-school groups, ~~((for institution-sponsored activities))~~ will be charged a flat rate of \$5 per walk-on group or per vehicle of students and/or advisors and staff. All school groups require a letter of authorization and prior notification. In the case of home-school groups, in addition to prior notification, a copy of the filed Declaration of Intent (as outlined in RCW 28A.200.010) shall be submitted to the tollbooth at the time of travel. Notification shall be made no less than 72 hours before the scheduled departure and will include the expected number of school-age children and adults that will be traveling to ensure WSF can satisfy U.S. Coast Guard lifesaving equipment requirements. Failure to provide adequate notification may result in delayed travel. Vehicles and drivers will be charged the fare applicable to vehicle size. The special school rate is \$10 on routes where one-point toll systems are in effect.

**BUNDLED SINGLE FARE BOOKS** - WSF may bundle single fare types into multiride media as a customer convenience. Remaining value will not be eligible for refund or exchange. For mail order deliveries, WSF may add additional days for delivery times.

**FIRE DEPARTMENT AND FIRE DISTRICT FARE CONSIDERATION** - At the discretion of the WSF Assistant Secretary, WSF may authorize no-fare or discounted fare passage on scheduled and/or special ferry sailings for fire departments and fire districts that provide contracted fire protection services for WSF ferry terminals and/or other WSF facilities within their jurisdiction. Such passage shall be considered full and complete consideration for such fire protection services, in lieu of annual payments for such services, to be so noted in such fire protection agreements. The scope of such authorization includes designated fire department and fire district vehicles (see below), drivers and passengers en route to and from an emergency call, on ferry routes with a WSF terminal and/or other WSF facility served by a fire department or fire district pursuant to a WSF fire protection service agreement. Authorized vehicles may include public fire department and fire district medical aid units, fire trucks, incident command and/or other vehicles dispatched to and returning from an emergency call.

**GROUP OR VOLUME SALES** - In order to increase total revenues, WSF may develop full fare or discounted customer packages or bundle single fare types into multiride media or offer passes for high volume or group users. In pricing these packages, WSF will have discretion to set appropriate volume discounts based on a case-by-case basis.

**SPECIAL EVENTS** - In order to increase total revenues, WSF may develop, create or participate in special events that may include, but not be limited to, contributing or packaging discounted fares in exchange for the opportunity to participate in the income generated by the event.

**LOW-INCOME FARE PILOT** - Starting no earlier than January 1, 2020, special passenger fare rate(s) may be established for a pilot program offering a low-income fare on any ferry route for riders made eligible through an existing transit agency's low-income fare program. Enactment of this program is dependent upon legislative funding for the pilot project. If funded, Washington State Ferries' Assistant Secretary shall submit a proposal to carry out this pilot program and the Washington State Transportation Commission must approve both the program and the fare schedule before it is implemented. Once implemented, WSF shall provide, at a minimum, updates to the Commission every six months on the pilot. The pilot will conclude no longer than three years from its implementation.

**GOOD TO GO! PILOT** - Special ferry toll rate(s) may be established for a pilot program of Good to Go! or similar fare collection infrastructure, technology, or ORCA replacement system on any ferry route. Washington State Ferries Assistant Secretary shall design the program and submit a proposed program and fare schedule to the Washington State Transportation Commission. The Commission shall review, modify and approve the proposed

fare schedule and fare policies before it is implemented. Once implemented, WSF shall provide, at a minimum, updates to the Commission every six months on the pilot. The pilot will conclude no longer than three years from its implementation.

**AMENDATORY SECTION** (Amending WSR 19-18-004, filed 8/22/19, effective 9/22/19)

**WAC 468-300-020 Vehicle under 22', motorcycle, and stowage ferry tolls.**

**EFFECTIVE 03:00 A.M. October 1, (~~2019~~) 2021**

ROUTES	Vehicle Under 14' Incl. Driver One Way <sup>7</sup>	Vehicle Under 14' w/Sr Citizen or Disabled Driver <sup>4,7</sup>	Vehicle under 14' Multiride Media 20 Rides <sup>2,7</sup>
Fauntleroy-Southworth Port Townsend/Coupeville	((9.60)) <u>10.30</u>	((7.90)) <u>8.50</u>	((154.60)) <u>166.80</u>
Seattle-Bainbridge Island Seattle-Bremerton Edmonds-Kingston	((12.35)) <u>13.20</u>	((10.15)) <u>10.85</u>	((198.60)) <u>213.20</u>
*Fauntleroy-Vashon			
*Southworth-Vashon			
*Pt. Defiance-Tahlequah	((15.75)) <u>16.75</u>	((12.90)) <u>13.70</u>	((126.50)) <u>135.00</u>
Mukilteo-Clinton	((7.40)) <u>8.00</u>	((6.10)) <u>6.55</u>	((119.40)) <u>130.00</u>
	10 Rides - 5 Round Trips		
*Anacortes to Lopez	((28.60)) <u>30.25</u>	((21.60)) <u>22.80</u>	((107.55)) <u>114.05</u>
*Shaw, Orcas	((34.35)) <u>36.30</u>	((27.35)) <u>28.85</u>	((129.15)) <u>136.75</u>
*Friday Harbor	((40.70)) <u>43.00</u>	((33.70)) <u>35.55</u>	((152.95)) <u>161.90</u>
Between Lopez, Shaw, Orcas and Friday Harbor <sup>3</sup>	((16.95)) <u>18.05</u>	((16.95)) <u>18.05</u>	((68.05)) <u>72.70</u>
<i>International Travel</i>			
Anacortes to Sidney and Sidney to all destinations	((46.75)) <u>49.35</u>	((36.40)) <u>38.45</u>	N/A
Lopez, Shaw, Orcas and Friday Harbor to Sidney	((29.05)) <u>30.75</u>	((22.55)) <u>23.90</u>	N/A
Lopez, Shaw, Orcas and Friday Harbor to Sidney (round trip) <sup>5</sup>	((57.85)) <u>61.00</u>	((44.85)) <u>47.30</u>	N/A

ROUTES	Vehicle 14' to Under 22' Incl. Driver One Way <sup>7</sup>	Vehicle 14' to Under 22' w/Sr Citizen or Disabled Driver <sup>4,7</sup>	Vehicle 14' to Under 22' Multiride Media 20 Rides <sup>2,7</sup>
Fauntleroy-Southworth Port Townsend/Coupeville	((12.20)) <u>13.05</u>	((10.50)) <u>11.25</u>	((196.20)) <u>210.80</u>
Seattle-Bainbridge Island Seattle-Bremerton Edmonds-Kingston	((15.75)) <u>16.80</u>	((13.55)) <u>14.45</u>	((253.00)) <u>270.80</u>
*Fauntleroy-Vashon			
*Southworth-Vashon			
*Pt. Defiance-Tahlequah	((20.10)) <u>21.35</u>	((17.25)) <u>18.30</u>	((161.30)) <u>171.80</u>
Mukilteo-Clinton	((9.40)) <u>10.10</u>	((8.10)) <u>8.65</u>	((151.40)) <u>163.60</u>
	10 Rides - 5 Round Trips		
*Anacortes to Lopez	((35.90)) <u>38.00</u>	((28.90)) <u>30.55</u>	((134.95)) <u>143.15</u>
*Shaw, Orcas	((43.05)) <u>45.50</u>	((36.05)) <u>38.05</u>	((161.75)) <u>171.25</u>
*Friday Harbor	((51.10)) <u>53.95</u>	((44.10)) <u>46.50</u>	((191.95)) <u>202.95</u>
Between Lopez, Shaw, Orcas and Friday Harbor <sup>3</sup>	((24.10)) <u>25.60</u>	((24.10)) <u>25.60</u>	((96.65)) <u>102.90</u>
<i>International Travel</i>			
Anacortes to Sidney and Sidney to all destinations	((57.95)) <u>61.15</u>	((47.60)) <u>50.25</u>	N/A
Lopez, Shaw, Orcas and Friday Harbor to Sidney	((36.00)) <u>38.05</u>	((29.50)) <u>31.20</u>	N/A
Lopez, Shaw, Orcas and Friday Harbor to Sidney (round trip) <sup>5</sup>	((71.75)) <u>75.60</u>	((58.75)) <u>61.90</u>	N/A

**EFFECTIVE 03:00 A.M. October 1, (~~2019~~) 2021**

ROUTES	Motorcycle <sup>5</sup> Incl. Driver Stowage <sup>1,7</sup> One Way	Motorcycle w/Sr Citizen or Disabled Driver Stowage <sup>1,7</sup> One Way	Motorcycle Frequent User Commuter 20 Rides <sup>2,7</sup>
Fauntleroy-Southworth Port Townsend/Coupeville	((5.25)) <u>5.70</u>	((3.55)) <u>3.90</u>	((85.00)) <u>93.20</u>
Seattle-Bainbridge Island Seattle-Bremerton Edmonds-Kingston	((6.75)) <u>7.30</u>	((4.55)) <u>4.95</u>	((109.00)) <u>118.80</u>

ROUTES	Motorcycle <sup>5</sup> Incl. Driver Stowage <sup>1, 7</sup> One Way	Motorcycle w/Sr Citizen or Disabled Driver Stowage <sup>1, 7</sup> One Way	Motorcycle Frequent User Commuter 20 Rides <sup>2, 7</sup>
*Fautleroy-Vashon			
*Southworth-Vashon			
*Pt. Defiance-Tahlequah	<del>((8.55))</del> <u>9.15</u>	<del>((5.70))</del> <u>6.10</u>	<del>((68.90))</del> <u>74.20</u>
Mukilteo-Clinton	<del>((4.10))</del> <u>4.55</u>	<del>((2.80))</del> <u>3.10</u>	<del>((66.60))</del> <u>74.80</u>
*Anacortes to Lopez	<del>((18.40))</del> <u>19.50</u>	<del>((11.40))</del> <u>12.05</u>	<del>((138.65))</del> <u>147.50</u>
*Shaw, Orcas	<del>((19.85))</del> <u>21.00</u>	<del>((12.85))</del> <u>13.55</u>	<del>((149.50))</del> <u>158.75</u>
*Friday Harbor	<del>((21.45))</del> <u>22.70</u>	<del>((14.45))</del> <u>15.25</u>	<del>((161.50))</del> <u>171.50</u>
Between Lopez, Shaw, Orcas and Friday Harbor <sup>3</sup>	<del>((6.80))</del> <u>7.35</u>	<del>((6.80))</del> <u>7.35</u>	N/A
Anacortes to Sidney and Sidney to all destinations	<del>((28.15))</del> <u>29.70</u>	<del>((17.80))</del> <u>18.80</u>	N/A
Lopez, Shaw, Orcas and Friday Harbor to Sidney	<del>((17.50))</del> <u>18.55</u>	<del>((11.00))</del> <u>11.70</u>	N/A
Lopez, Shaw, Orcas and Friday Harbor to Sidney (round trip) <sup>5</sup>	<del>((34.75))</del> <u>36.60</u>	<del>((21.75))</del> <u>22.90</u>	N/A

All fares rounded to the ~~((next))~~ nearest multiple of \$0.05.

\*These routes operate as a one-point toll collection system with round trip tolls.

<sup>1</sup>SIZE - Vehicles under 14' in length shall pay the vehicle under 14' toll. Customers may be required to provide documentation, digitally or on paper, at the tollbooth to prove vehicle length. Documentation may include an owner's manual, materials from an auto research web site, or similar reference material that clearly lists the relevant vehicle specifications. ~~((AH))~~ Vehicles from 14' to under 22' in length shall pay the 14' to under 22' toll. Motorcycles towing a trailer and vehicles licensed as motorcycles with three or more wheels that are 8'0" or longer shall pay the appropriate length-based vehicle fare. Motorcycles include both mopeds and motorcycles as defined by RCW 46.04.304 and 46.04.330. Both are considered vehicles for the purposes of vehicle registration, license plate display, and WSF fare determination.

<sup>2</sup>MULTIRIDE MEDIA - Shall be valid only for 90 days from date of purchase after which time the media shall not be accepted for passage. Remaining value will not be eligible for refund or exchange. There shall be no commercial resale of this fare media. For mail order deliveries, WSF may add additional days to allow for delivery time. The vehicle/driver multiride card may be used for passage for an attendant driver plus one disabled ~~((driver))~~ passenger.

<sup>3</sup>INTER-ISLAND FARES - Tolls collected westbound only. Vehicles traveling between islands may request a single transfer ticket good for one transfer at an intermediate island. The transfer may only be obtained when purchasing the appropriate vehicle fare for inter-island travel (westbound at Lopez, Shaw, or Orcas) and is free of charge. Transfers shall be valid until the end of the service day on the day of purchase.

<sup>4</sup>SENIOR CITIZENS - Passengers age 65 and over, with proper identification establishing proof of age, may travel at half-fare passenger tolls on any route where passenger fares are collected, which will be rounded down to the nearest multiple of \$0.05. The half-fare discount applies to the driver portion of the vehicle-driver fare. The vehicle portion of the vehicle-driver fare is never further discounted.

PEOPLE WITH DISABILITIES - Any person who has a physical or mental impairment that substantially limits one or more major life activity, upon presentation of a WSF Disability Travel Permit, Reduced Fare Permit, or other identification which establishes a disability, may travel at half-fare passenger tolls on any route where passenger fares are collected, which will be rounded down to the nearest multiple of \$0.05. The half-fare discount applies to driver portion of the vehicle-driver fare. The vehicle portion of the vehicle-driver fare is never discounted. In addition, people with disabilities who require attendant care while traveling on the ferries, and are so certified by their physician, may obtain an endorsement on their WSF Disability Travel Permit and such endorsement shall allow the attendant to travel free.

<sup>5</sup>ROUND TRIP - Round trip passage for international travel available for trips beginning or ending on one of the islands served.

<sup>6</sup>VEHICLE RESERVATION DEPOSIT - Nonrefundable deposits for advance vehicle reservations may be established at a level of from 25 to 100 percent of the applicable 14' to under 22' standard vehicle one way fare. This is a deposit toward the fare and not an additional fee and applies only to those routes where the legislature has approved the use of a reservation system. Where it is operationally necessary (routes where vehicle fares are collected in only one direction or to increase operational efficiency at the terminal) a reservation no-show fee may be used in lieu of a deposit. The no-show fee will be limited to 25 to 100 percent of the applicable one way 14' to under 22' standard vehicle fare and will be charged if the customer does not travel within the same service day as their reserved sailing, provided there are no service disruptions.

<sup>7</sup>CAPITAL SURCHARGE - Included is a ~~((0.25))~~ \$0.50 capital surcharge on each single vehicle/driver fare collected. On all multiride cards except for routes serving Vashon Island and the San Juan Islands, there is an included capital surcharge of ~~((5.00))~~ \$10.00. For Vashon Island routes, the included capital surcharge is ~~((2.50))~~ \$5.00 on multiride cards. For motorcycles in the San Juan Islands, the included capital surcharge on multiride cards is ~~((2.50))~~ \$5.00. For vehicles under 22' in the San Juan Islands, the included capital surcharge on multiride cards is ~~((1.25))~~ \$2.50.

RIDE SHARE VEHICLES - A commuter ride share vehicle which carries ~~((five))~~ three or more persons on a regular and expense-sharing basis for the purpose of travel to and from work or school and which is certified as such by a local organization approved by the Washington state ferry system, may purchase for a \$20 fee, a permit valid for one year valid only during the hours shown on the permit. The \$20.00 fee shall include the driver. Remaining passengers shall pay the applicable passenger fare. Except that the minimum total paid for all passengers in the van shall not be less than ~~((four))~~ two times the applicable passenger fare. Carpools of three or more registered in WSF's preferential loading program must also pay a \$20.00 yearly permit fee.

STOWAGE - Stowage carry-on items including kayaks, canoes and other items of comparable size which are typically stowed on the vehicle deck of the vessel shall be charged at the motorcycle rate. This rate includes the walk-on passenger carrying on the item to be stowed.

PEAK SEASON SURCHARGE - A 25% surcharge shall be applied to vehicles from May 1 through September 30 except those using multiride media. A 35% surcharge shall be applied on vehicle fares from Anacortes to Lopez, Shaw, Orcas and Friday Harbor, except those using multiride media. The resulting fare is rounded to the nearest \$0.05 if required.

**FIRE DEPARTMENT AND FIRE DISTRICT FARE CONSIDERATION** - At the discretion of the WSF Assistant Secretary, WSF may authorize no-fare or discounted fare passage on scheduled and/or special ferry sailings for fire departments and fire districts that provide contracted fire protection services for WSF ferry terminals and/or other WSF facilities within their jurisdiction. Such passage shall be considered full and complete consideration for such fire protection services, in lieu of annual payments for such services, to be so noted in such fire protection agreements. The scope of such authorization includes designated fire department and fire district vehicles (see below), drivers and passengers en route to and from an emergency call, on ferry routes with a WSF terminal and/or other WSF facility served by a fire department or fire district pursuant to a WSF fire protection service agreement. Authorized vehicles may include public fire department and fire district medical aid units, fire trucks, incident command and/or other vehicles dispatched to and returning from an emergency call.

**IN-NEED ORGANIZATIONS** - For qualified organizations serving in-need clients by providing tickets for transportation on WSF at no cost to clients, program would offer a monthly discount to approximate appropriate multiride media discount rates (20% off base season rates, except for Anacortes to San Juan Islands where it is 35% off base season end of week rates). Appointing bodies (those that appoint Ferry Advisory Committees) will nominate to the Washington State Transportation Commission those organizations that meet the criteria of the program. The Commission will review such nominations and certify those organizations that qualify. The following criteria will be used for nominating and certifying in-need organizations: Nongovernmental and not-for-profit organizations whose primary purpose is one or more of the following: Help clients with medical issues; provide clients with low-income social services; help clients suffering from domestic violence; provide clients with employment-seeking services; and/or help clients with Social Security. Travel will be initially charged based on full fare and billed monthly. The credits will be approximate based on the discount rates offered to multiride media users applicable on the date of travel.

**PENALTY CHARGES** - Owner of vehicle without driver will be assessed a \$100.00 penalty charge.

**PROMOTIONAL TOLLS** - A promotional rate may be established at the discretion of the WSF Assistant Secretary, Executive Director for a specified discount in order to enhance total revenue and effective only at designated times on designated routes. A promotional fare product may also be established to support tourism or other special events. The promotional fare or product may be bundled and sold as part of a multiparty promotional program.

**GROUP OR VOLUME SALES** - In order to increase total revenues, WSF may develop full fare or discounted customer packages or bundle single fare types into multiride media or offer passes for high volume or group users. In pricing these packages, WSF will have discretion to set appropriate volume discounts based on a case-by-case basis.

**SPECIAL EVENTS** - In order to increase total revenues, WSF may develop, create or participate in special events that may include, but not be limited to, contributing or packaging discounted fares in exchange for the opportunity to participate in the income generated by the event.

**BUNDLED SINGLE FARE MEDIA** - WSF may bundle single fare types into multiple trip books as a customer convenience. Remaining value will not be eligible for refund or exchange. For mail order deliveries, WSF may add additional days to allow for delivery time.

**GOOD TO GO! PILOT** - Special ferry toll rate(s) may be established for a pilot program of Good to Go! or similar fare collection infrastructure, technology, or ORCA replacement system on any ferry route. Washington State Ferries Assistant Secretary shall design the program and submit a proposed program and fare schedule to the Washington State Transportation Commission. The Commission shall review, modify and approve the proposed fare schedule and fare policies before it is implemented. Once implemented, WSF shall provide, at a minimum, updates to the Commission every six months on the pilot. The pilot will conclude no longer than three years from its implementation.

**EFFECTIVE 03:00 A.M. (~~May 1, 2020~~) October 1, 2022**

ROUTES	Vehicle Under 14' Incl. Driver One Way <sup>7</sup>	Vehicle Under 14' w/Sr Citizen or Disabled Driver <sup>4, 7</sup>	Vehicle Under 14' Multiride Media 20 Rides <sup>2, 7</sup>
Fauntleroy-Southworth Port Townsend/Coupeville	<del>((10.05))</del> <u>10.55</u>	<del>((8.25))</del> <u>8.70</u>	<del>((162.80))</del> <u>170.80</u>
Seattle-Bainbridge Island Seattle-Bremerton Edmonds-Kingston	<del>((12.90))</del> <u>13.55</u>	<del>((10.60))</del> <u>11.15</u>	<del>((208.40))</del> <u>218.80</u>
*Fauntleroy-Vashon			
*Southworth-Vashon			
*Pt. Defiance-Tahlequah	<del>((16.40))</del> <u>17.20</u>	<del>((13.40))</del> <u>14.05</u>	<del>((132.20))</del> <u>138.60</u>
Mukilteo-Clinton	<del>((7.85))</del> <u>8.20</u>	<del>((6.45))</del> <u>6.75</u>	<del>((127.60))</del> <u>133.20</u>
	10 Rides - 5 Round Trips		
*Anacortes to Lopez	<del>((29.55))</del> <u>31.00</u>	<del>((22.30))</del> <u>23.40</u>	<del>((111.45))</del> <u>116.90</u>
*Shaw, Orcas	<del>((35.45))</del> <u>37.20</u>	<del>((28.20))</del> <u>29.60</u>	<del>((133.55))</del> <u>140.15</u>
*Friday Harbor	<del>((41.95))</del> <u>44.05</u>	<del>((34.70))</del> <u>36.45</u>	<del>((157.95))</del> <u>165.80</u>
Between Lopez, Shaw, Orcas and Friday Harbor <sup>3</sup>	<del>((17.65))</del> <u>18.50</u>	<del>((17.65))</del> <u>18.50</u>	<del>((71.10))</del> <u>74.50</u>
<i>International Travel</i>			
Anacortes to Sidney and Sidney to all destinations	<del>((48.15))</del> <u>50.55</u>	<del>((37.50))</del> <u>39.35</u>	N/A
Lopez, Shaw, Orcas and Friday Harbor to Sidney	<del>((30.00))</del> <u>31.50</u>	<del>((23.25))</del> <u>24.45</u>	N/A
Lopez, Shaw, Orcas and Friday Harbor to Sidney (round trip) <sup>5</sup>	<del>((59.50))</del> <u>62.50</u>	<del>((46.00))</del> <u>48.40</u>	N/A

**EFFECTIVE 03:00 A.M. (~~May 1, 2020~~) October 1, 2022**

ROUTES	Vehicle 14' to Under 22' Incl. Driver One Way <sup>7</sup>	Vehicle 14' to Under 22' w/Sr Citizen or Disabled Driver <sup>4, 7</sup>	Vehicle 14' to Under 22' Multiride Media 20 Rides <sup>2, 7</sup>
Fauntleroy-Southworth Port Townsend/Coupeville <sup>6</sup>	((12.75)) <u>13.35</u>	((10.95)) <u>11.50</u>	((206.00)) <u>215.60</u>
Seattle-Bainbridge Island Seattle-Bremerton Edmonds-Kingston	((16.40)) <u>17.20</u>	((14.10)) <u>14.80</u>	((264.40)) <u>277.20</u>
*Fauntleroy-Vashon			
*Southworth-Vashon			
*Pt. Defiance-Tahlequah	((20.85)) <u>21.90</u>	((17.85)) <u>18.75</u>	((167.80)) <u>176.20</u>
Mukilteo-Clinton	((9.90)) <u>10.35</u>	((8.50)) <u>8.90</u>	((160.40)) <u>167.60</u>
	10 Rides - 5 Round Trips		
*Anacortes to Lopez <sup>6</sup>	((37.05)) <u>38.90</u>	((29.80)) <u>31.30</u>	((139.55)) <u>146.50</u>
*Shaw, Orcas <sup>6</sup>	((44.40)) <u>46.60</u>	((37.15)) <u>39.00</u>	((167.15)) <u>175.40</u>
*Friday Harbor <sup>6</sup>	((52.65)) <u>55.30</u>	((45.40)) <u>47.70</u>	((198.05)) <u>208.00</u>
Between Lopez, Shaw, Orcas and Friday Harbor <sup>3</sup>	((25.00)) <u>26.20</u>	((25.00)) <u>26.20</u>	((100.50)) <u>105.30</u>
<i>International Travel</i>			
Anacortes to Sidney and Sidney to all destinations <sup>6</sup>	((59.65)) <u>62.65</u>	((49.00)) <u>51.45</u>	N/A
Lopez, Shaw, Orcas and Friday Harbor to Sidney	((37.15)) <u>39.00</u>	((30.40)) <u>31.95</u>	N/A
Lopez, Shaw, Orcas and Friday Harbor to Sidney (round trip) <sup>6</sup>	((73.80)) <u>77.50</u>	((60.30)) <u>63.40</u>	N/A

**EFFECTIVE 03:00 A.M. (~~May 1, 2020~~) October 1, 2022**

ROUTES	Motorcycle <sup>5</sup> Incl. Driver Stowage <sup>1, 7</sup> One Way	Motorcycle w/Sr Citizen or Disabled Driver Stowage <sup>1, 7</sup> One Way	Motorcycle Frequent User Commuter 20 Rides <sup>2, 7</sup>
Fauntleroy-Southworth Port Townsend/Coupeville <sup>6</sup>	((5.60)) <u>5.85</u>	((3.80)) <u>4.00</u>	((91.60)) <u>95.60</u>
Seattle-Bainbridge Island Seattle-Bremerton Edmonds-Kingston	((7.15)) <u>7.45</u>	((4.85)) <u>5.05</u>	((116.40)) <u>121.20</u>
*Fauntleroy-Vashon			
*Southworth-Vashon			
*Pt. Defiance-Tahlequah	((8.95)) <u>9.40</u>	((5.95)) <u>6.25</u>	((72.60)) <u>76.20</u>
Mukilteo-Clinton	((4.45)) <u>4.60</u>	((3.05)) <u>3.15</u>	((73.20)) <u>75.60</u>
*Anacortes to Lopez <sup>6</sup>	((19.05)) <u>19.95</u>	((11.80)) <u>12.35</u>	((144.15)) <u>150.90</u>
*Shaw, Orcas <sup>6</sup>	((20.50)) <u>21.50</u>	((13.25)) <u>13.90</u>	((155.00)) <u>162.50</u>
*Friday Harbor <sup>6</sup>	((22.15)) <u>23.25</u>	((14.90)) <u>15.65</u>	((167.40)) <u>175.65</u>
Between Lopez, Shaw, Orcas and Friday Harbor <sup>3</sup>	((7.20)) <u>7.50</u>	((7.20)) <u>7.50</u>	N/A
Anacortes to Sidney and Sidney to all destinations <sup>6</sup>	((29.00)) <u>30.45</u>	((18.35)) <u>19.25</u>	N/A
Lopez, Shaw, Orcas and Friday Harbor to Sidney	((18.15)) <u>19.05</u>	((11.40)) <u>12.00</u>	N/A
Lopez, Shaw, Orcas and Friday Harbor to Sidney (round trip) <sup>6</sup>	((35.80)) <u>37.60</u>	((22.30)) <u>23.50</u>	N/A

All fares rounded to the (~~next~~) nearest multiple of \$0.05.

\*These routes operate as a one-point toll collection system with round trip tolls.

<sup>1</sup>SIZE - Vehicles under 14' in length shall pay the vehicle under 14' toll. Customers may be required to provide documentation, digitally or on paper, at the tollbooth to prove vehicle length. Documentation may include an owner's manual, materials from an auto research web site, or similar reference material that clearly lists the relevant vehicle specifications. Vehicles from 14' to under 22' in length shall pay the 14' to under 22' toll. Motorcycles towing a trailer and vehicles licensed as motorcycles with three or more wheels that are 8'0" or longer shall pay the appropriate length-based vehicle fare. Motorcycles include both mopeds and motorcycles as defined by RCW 46.04.304 and 46.04.330. Both are considered vehicles for the purposes of vehicle registration, license plate display, and WSF fare determination.

<sup>2</sup>MULTIRIDE MEDIA - Shall be valid only for 90 days from date of purchase after which time the media shall not be accepted for passage. Remaining value will not be eligible for refund or exchange. There shall be no commercial resale of this fare media. For mail order deliveries, WSF may add additional days to allow for delivery time. The vehicle/driver multiride card may be used for passage for an attendant driver plus one disabled passenger.

<sup>3</sup>INTER-ISLAND FARES - Tolls collected westbound only. Vehicles traveling between islands may request a single transfer ticket good for one transfer at an intermediate island. The transfer may only be obtained when purchasing the appropriate vehicle fare for inter-island travel (westbound at Lopez, Shaw, or Orcas) and is free of charge. Transfers shall be valid until the end of the service day on the day of purchase.

- <sup>4</sup>SENIOR CITIZENS - Passengers age 65 and over, with proper identification establishing proof of age, may travel at half-fare passenger tolls on any route where passenger fares are collected, which will be rounded down to the nearest multiple of \$0.05. The half-fare discount applies to the driver portion of the vehicle-driver fare. The vehicle portion of the vehicle-driver fare is never further discounted.
- PEOPLE WITH DISABILITIES - Any person who has a physical or mental impairment that substantially limits one or more major life activity, upon presentation of a WSF Disability Travel Permit, Reduced Fare Permit, or other identification which establishes a disability, may travel at half-fare passenger tolls on any route where passenger fares are collected, which will be rounded down to the nearest multiple of \$0.05. The half-fare discount applies to driver portion of the vehicle-driver fare. The vehicle portion of the vehicle-driver fare is never discounted. In addition, people with disabilities who require attendant care while traveling on the ferries, and are so certified by their physician, may obtain an endorsement on their WSF Disability Travel Permit and such endorsement shall allow the attendant to travel free.
- <sup>5</sup>ROUND TRIP - Round trip passage for international travel available for trips beginning or ending on one of the islands served.
- <sup>6</sup>VEHICLE RESERVATION DEPOSIT - Nonrefundable deposits for advance vehicle reservations may be established at a level of from 25 to 100 percent of the applicable 14' to under 22' standard vehicle one way fare. This is a deposit toward the fare and not an additional fee and applies only to those routes where the legislature has approved the use of a reservation system. Where it is operationally necessary (routes where vehicle fares are collected in only one direction or to increase operational efficiency at the terminal) a reservation no-show fee may be used in lieu of a deposit. The no-show fee will be limited to 25 to 100 percent of the applicable one way 14' to under 22' standard vehicle fare and will be charged if the customer does not travel within the same service day as their reserved sailing, provided there are no service disruptions.
- <sup>7</sup>CAPITAL SURCHARGE((S)) - Included is a (~~(\$0.25)~~) \$0.50 capital surcharge on each single vehicle/driver fare collected. On all multiride cards except for routes serving Vashon Island and the San Juan Islands, there is an included capital surcharge of (~~(\$5.00)~~) \$10.00. For Vashon Island routes, the included capital surcharge is (~~(\$2.50)~~) \$5.00 on multiride cards. For motorcycles in the San Juan Islands, the included capital surcharge (~~(included)~~) on multiride cards is (~~(\$2.50)~~) \$5.00. For vehicles under 22' in the San Juan Islands, the included capital surcharge (~~(included)~~) on multiride cards is (~~(\$1.25)~~) \$2.50.  
(Beginning May 1, 2020, an additional \$0.25 capital surcharge for new vessel construction is included on each single vehicle/driver fare collected. Included is a \$0.25 new vessel capital surcharge on each single vehicle/driver fare collected. On all multiride cards except for routes serving Vashon Island and the San Juan Islands, there is an included new vessel capital surcharge of \$5.00. For Vashon Island routes, the included new vessel capital surcharge is \$2.50 on multiride cards. For motorcycles in the San Juan Islands, the included new vessel capital surcharge on multiride cards is \$2.50. For vehicles under 22' in the San Juan Islands, the included new vessel capital surcharge on multiride cards is \$1.25.)
- RIDE SHARE VEHICLES - A commuter ride share vehicle which carries (~~(five)~~) three or more persons on a regular and expense-sharing basis for the purpose of travel to and from work or school and which is certified as such by a local organization approved by the Washington state ferry system, may purchase for a \$20 fee, a permit valid for one year valid only during the hours shown on the permit. The \$20.00 fee shall include the driver. Remaining passengers shall pay the applicable passenger fare. Except that the minimum total paid for all passengers in the van shall not be less than (~~(four)~~) two times the applicable passenger fare. Carpools of three or more registered in WSF's preferential loading program must also pay a \$20.00 yearly permit fee.
- STOWAGE - Stowage carry-on items including kayaks, canoes and other items of comparable size which are typically stowed on the vehicle deck of the vessel shall be charged at the motorcycle rate. This rate includes the walk-on passenger carrying on the item to be stowed.
- PEAK SEASON SURCHARGE - A 25% surcharge shall be applied to vehicles from May 1 through September 30 except those using multiride media. A 35% surcharge shall be applied on vehicle fares from Anacortes to Lopez, Shaw, Orcas and Friday Harbor, except those using multiride media. The resulting fare is rounded (~~(up)~~) to the (~~(next)~~) nearest \$0.05 if required.
- FIRE DEPARTMENT AND FIRE DISTRICT FARE CONSIDERATION - At the discretion of the WSF Assistant Secretary, WSF may authorize no-fare or discounted fare passage on scheduled and/or special ferry sailings for fire departments and fire districts that provide contracted fire protection services for WSF ferry terminals and/or other WSF facilities within their jurisdiction. Such passage shall be considered full and complete consideration for such fire protection services, in lieu of annual payments for such services, to be so noted in such fire protection agreements. The scope of such authorization includes designated fire department and fire district vehicles (see below), drivers and passengers en route to and from an emergency call, on ferry routes with a WSF terminal and/or other WSF facility served by a fire department or fire district pursuant to a WSF fire protection service agreement. Authorized vehicles may include public fire department and fire district medical aid units, fire trucks, incident command and/or other vehicles dispatched to and returning from an emergency call.
- IN-NEED ORGANIZATIONS - For qualified organizations serving in-need clients by providing tickets for transportation on WSF at no cost to clients, program would offer a monthly discount to approximate appropriate multiride media discount rates (20% off base season rates, except for Anacortes to San Juan Islands where it is 35% off base season end of week rates). Appointing bodies (those that appoint Ferry Advisory Committees) will nominate to the Washington State Transportation Commission those organizations that meet the criteria of the program. The Commission will review such nominations and certify those organizations that qualify. The following criteria will be used for nominating and certifying in-need organizations: Nongovernmental and not-for-profit organizations whose primary purpose is one or more of the following: Help clients with medical issues; provide clients with low-income social services; help clients suffering from domestic violence; provide clients with employment-seeking services; and/or help clients with Social Security. Travel will be initially charged based on full fare and billed monthly. The credits will be approximate based on the discount rates offered to multiride media users applicable on the date of travel.
- PENALTY CHARGES - Owner of vehicle without driver will be assessed a \$100.00 penalty charge.
- PROMOTIONAL TOLLS - A promotional rate may be established at the discretion of the WSF Assistant Secretary, Executive Director for a specified discount in order to enhance total revenue and effective only at designated times on designated routes. A promotional fare product may also be established to support tourism or other special events. The promotional fare or product may be bundled and sold as part of a multiparty promotional program.
- GROUP OR VOLUME SALES - In order to increase total revenues, WSF may develop full fare or discounted customer packages or bundle single fare types into multiride media or offer passes for high volume or group users. In pricing these packages, WSF will have discretion to set appropriate volume discounts based on a case-by-case basis.
- SPECIAL EVENTS - In order to increase total revenues, WSF may develop, create or participate in special events that may include, but not be limited to, contributing or packaging discounted fares in exchange for the opportunity to participate in the income generated by the event.

BUNDLED SINGLE FARE MEDIA - WSF may bundle single fare types into multiple trip books as a customer convenience. Remaining value will not be eligible for refund or exchange. For mail order deliveries, WSF may add additional days to allow for delivery time.

GOOD TO GO! PILOT - Special ferry toll rate(s) may be established for a pilot program of Good to Go! or similar fare collection infrastructure, technology, or ORCA replacement system on any ferry route. Washington State Ferries Assistant Secretary shall design the program and submit a proposed program and fare schedule to the Washington State Transportation Commission. The Commission shall review, modify and approve the proposed fare schedule and fare policies before it is implemented. Once implemented, WSF shall provide, at a minimum, updates to the Commission every six months on the pilot. The pilot will conclude no longer than three years from its implementation.

**AMENDATORY SECTION** (Amending WSR 19-18-004, filed 8/22/19, effective 9/22/19)

**WAC 468-300-040 Oversize vehicle ferry tolls.**

**EFFECTIVE 03:00 A.M. October 1, ((2019)) 2021**

((Oversize Vehicle Ferry Tolls<sup>1</sup>  
Overall Unit Length - Including Driver

ROUTES	22' To Under 30' Under 7'2" High <sup>5</sup>	22' To Under 30' 7'2" High or Over <sup>5</sup>	30' To Under 40' <sup>5</sup>	40' To Under 50' <sup>5</sup>	50' To Under 60' <sup>5</sup>	60' To under 70' <sup>5</sup>	70' To and include 80' <sup>5</sup>	Cost Per Ft. Over 80'
Fauntleroy-Southworth Port Townsend/Coupeville	18.15	36.05	48.00	59.95	71.85	83.80	95.75	1.20
Seattle-Bainbridge Island Seattle/Bremerton Edmonds-Kingston	23.50	46.75	62.25	77.75	93.25	108.75	124.25	1.55
*Fauntleroy-Vashon *Southworth-Vashon *Pt. Defiance-Tahlequah	30.00	59.75	79.60	99.45	119.30	139.15	158.95	2.00
Mukilteo-Clinton	14.00	27.70	36.85	45.95	55.10	64.25	73.40	0.90
*Anacortes to Lopez <sup>2</sup>	53.75	107.20	142.85	178.50	214.15	249.80	285.45	3.55
*Anacortes to Shaw, Orcas <sup>2</sup>	64.40	128.60	171.35	214.15	256.95	299.70	342.50	4.30
*Anacortes to Friday Harbor	76.50	152.75	203.60	254.45	305.30	356.15	406.95	5.10
Between Lopez, Shaw, Orcas and Fri- day Harbor <sup>3</sup>	36.05	71.85	95.75	119.60	143.45	167.35	191.20	N/A
<i>International Travel</i> Anacortes to Sidney to all destinations	91.95	91.95	122.55	153.10	183.65	214.25	244.80	3.05
Lopez, Shaw, Orcas and Friday Harbor to Sidney	57.05	57.05	76.00	94.90	113.85	132.75	151.70	1.90
Lopez, Shaw, Orcas and Friday Harbor to Sidney (round trip) <sup>4</sup>	113.85	113.85	151.75	189.55	227.45	265.25	303.15	3.80))

Oversize Vehicle Ferry Tolls<sup>1</sup>  
Overall Unit Length - Including Driver

ROUTES	22' To Under 30' Under 7'2" High <sup>5</sup>	22' To Under 30' 7'2" High or Over <sup>5</sup>	30' To Under 40' <sup>5</sup>	40' To Under 50' <sup>5</sup>	50' To Under 60' <sup>5</sup>	60' To under 70' <sup>5</sup>	70' To and include 80' <sup>5</sup>	Cost Per Ft. Over 80'
Fauntleroy-Southworth Port Townsend/Coupeville	19.30	38.15	50.70	63.25	75.80	88.35	100.90	1.25
Seattle-Bainbridge Island Seattle/Bremerton Edmonds-Kingston	24.95	49.40	65.70	82.00	98.30	114.60	130.90	1.65
*Fauntleroy-Vashon *Southworth-Vashon *Pt. Defiance-Tahlequah	31.80	63.10	83.95	104.80	125.70	146.55	167.40	2.10
Mukilteo-Clinton	14.95	29.35	38.95	48.60	58.20	67.80	77.45	0.95
*Anacortes to Lopez <sup>2</sup>	56.75	112.95	150.45	187.95	225.45	262.95	300.40	3.75
*Anacortes to Shaw, Orcas <sup>2</sup>	68.00	135.45	180.45	225.45	270.45	315.40	360.40	4.50
*Anacortes to Friday Harbor	80.70	160.90	214.35	267.80	321.30	374.75	428.20	5.35
Between Lopez, Shaw, Orcas and Fri- day Harbor <sup>3</sup>	38.15	75.80	100.90	126.00	151.10	176.20	201.30	N/A

Oversize Vehicle Ferry Tolls<sup>1</sup>

Overall Unit Length - Including Driver

ROUTES	22' To	22' To	30' To	40' To Under	50' To	60' To under	70' To and	Cost Per
	Under 30'	Under 30'						
	Under 72"	7'2" High	Under 40' <sup>5</sup>	50' <sup>5</sup>	Under 60' <sup>5</sup>	70' <sup>5</sup>	include 80' <sup>5</sup>	Ft. Over
	High <sup>5</sup>	or Over <sup>5</sup>						80'
<i>International Travel</i>								
Anacortes to Sidney to all destinations	101.50	101.50	135.15	168.80	202.45	236.15	269.80	3.35
Lopez, Shaw, Orcas and Friday Harbor to Sidney	63.05	63.05	83.90	104.75	125.60	146.40	167.25	2.10
Lopez, Shaw, Orcas and Friday Harbor to Sidney (round trip) <sup>4</sup>	125.60	125.60	167.30	209.00	250.70	292.30	334.00	4.20

All fares rounded to the nearest multiple of \$0.05.

\*These routes operate as a one-point toll collection system with round trip tolls.

<sup>1</sup>OVERSIZE VEHICLES - Includes all vehicles 22 feet in length and longer regardless of type: Commercial trucks, recreational vehicles, vehicles under 22' pulling trailers, etc. Length shall include vehicle and load to its furthest extension. Overheight charge is included in oversize vehicle toll. Vehicles wider than 8'6" pay double the fare applicable to their length. Private and commercial passenger buses or other passenger vehicles pay the applicable oversize vehicle tolls. Public transit buses and drivers shall travel free upon display of an annual permit which may be purchased for \$10. Upon presentation by either the driver or passenger of a WSF Disability Travel Permit, Regional Reduced Fare Permit, or other identification which establishes disability, vehicles 22-30 feet in length and 7'2" or over in height shall be charged the 22-30 foot length and under 7'2" in height fare for vehicles equipped with wheelchair lift or other feature designed to accommodate the person with the disability.

<sup>2</sup>TRANSFERS - Tolls collected westbound only. Oversize vehicles traveling westbound from Anacortes may (~~purchase~~) receive a single intermediate transfer when first purchasing the (~~appropriate~~) fare for the furthest intended point of travel for the trip. The transfer is valid until the end of the service day on the day purchased (~~and is priced as follows: \$66.00 base season, \$88.95 peak season~~).

<sup>3</sup>INTER-ISLAND - Tolls collected westbound only. Vehicles traveling between islands may request a single transfer ticket good for one transfer at an intermediate island. The transfer may only be obtained when purchasing the appropriate vehicle fare for inter-island travel (westbound at Lopez, Shaw, or Orcas) and is free of charge. Transfers shall be valid until the end of the service day on the day of purchase.

<sup>4</sup>ROUND TRIP - Round trip passage for international travel available for trips beginning or ending on one of the islands served.

<sup>5</sup>CAPITAL SURCHARGE - There is (~~an~~) included (~~(\$0.25)~~) an additional \$0.50 capital surcharge on each single vehicle/driver fare collected.

BULK NEWSPAPERS - Per 100 lbs. \$2.85 (Shipments exceeding 60,000 lbs. in any month shall be assessed \$1.42 per 100 lbs.). Daily newspapers, in bundles, to be received and delivered without receipt and subject to owner's risk, will be transported between ferry terminals on regular scheduled sailings.

VEHICLE RESERVATION DEPOSIT - Nonrefundable deposits for advanced reservations may be established at a level of from 25 to 100 percent of the applicable oversize vehicle one way fare. This is a deposit toward the fare and not an additional fee and applies only to those routes where the legislature has approved the use of a reservation system. Where it is operationally necessary (routes where vehicle fares are collected in only one direction or to increase operational efficiency at the terminal) a reservation no-show fee may be used in lieu of a deposit. The no-show fee will be limited to 25 to 100 percent of the applicable one way oversize vehicle fare and will be charged if the customer does not travel within the same service day as their reserved sailing, provided there are no service disruptions.

PEAK SEASON SURCHARGE - A peak season surcharge shall apply to all oversize vehicles from May 1 through September 30. The oversize fare shall be determined based on the peak-season car-and-driver fare and the analogous oversize vehicle fare, calculated with the same factor as the oversize base seasons fares are to the base season under 20 foot fare. The senior citizen discount shall apply to the driver of an oversize vehicle. The resulting fare is rounded (~~up~~) to the (~~next~~) nearest \$0.05 if required.

SENIOR CITIZEN DISCOUNTS - Discounts of 50% for the driver of the above vehicles shall apply. Senior citizen discount is determined by subtracting full-fare passenger rate and adding half-fare passenger rate, which will be rounded down to the nearest multiple of \$0.05. The senior citizen discount shall apply to the driver of an oversize vehicle.

PENALTY CHARGES - Owner of vehicle without driver will be assessed a \$100.00 penalty charge.

COMMERCIAL ACCOUNTS - Commercial customers making 12 or more, one-way crossings per week (Sunday through Saturday) will qualify for a 10% discount from the regular ferry tolls. WSF will provide a commercial account program that will be prepaid and offer access to volume discounts based on travel, revenue or other criteria in accordance with WSF business rules. On an annual basis, commercial accounts will pay a \$50 nonrefundable account maintenance fee.

GROUP OR VOLUME SALES - In order to increase total revenues, WSF may develop full fare or discounted customer packages or bundle single fare types into multiple trip books or offer passes for high volume or group users. In pricing these packages, WSF will have discretion to set appropriate volume discounts based on a case-by-case basis.

SPECIAL EVENTS - In order to increase total revenues, WSF may develop, create or participate in special events that may include, but not be limited to, contributing or packaging discounted fares in exchange for the opportunity to participate in the income generated by the event.

FIRE DEPARTMENT AND FIRE DISTRICT FARE CONSIDERATION - At the discretion of the WSF Assistant Secretary, WSF may authorize no-fare or discounted fare passage on scheduled and/or special ferry sailings for fire departments and fire districts that provide contracted fire protection services for WSF ferry terminals and/or other WSF facilities within their jurisdiction. Such passage shall be considered full and complete consideration for such fire protection services, in lieu of annual payments for such services, to be so noted in such fire protection agreements. The scope of such authorization includes designated fire department and fire district vehicles (see below), drivers and passengers en route to and from an emergency

call, on ferry routes with a WSF terminal and/or other WSF facility served by a fire department or fire district pursuant to a WSF fire protection service agreement. Authorized vehicles may include public fire department and fire district medical aid units, fire trucks, incident command and/or other vehicles dispatched to and returning from an emergency call.

EMERGENCY TRIPS DURING NONSERVICE HOURS - While at locations where crew is on duty charge shall be equal to the cost of fuel consumed to make emergency trip. Such trips shall only be offered as a result of official requests from an emergency services agency and only in the case of no reasonable alternative.

DISCLAIMER - Under no circumstances does Washington state ferries warrant the availability of ferry service at a given date or time; nor does it warrant the availability of space on board a vessel on a given sailing.

GOOD TO GO! PILOT - Special ferry toll rate(s) may be established for a pilot program of Good to Go! or similar fare collection infrastructure, technology, or ORCA replacement system on any ferry route. Washington State Ferries Assistant Secretary shall design the program and submit a proposed program and fare schedule to the Washington State Transportation Commission. The Commission shall review, modify and approve the proposed fare schedule and fare policies before it is implemented. Once implemented, WSF shall provide, at a minimum, updates to the Commission every six months on the pilot. The pilot will conclude no longer than three years from its implementation.

**EFFECTIVE 03:00 A.M. (~~May 1, 2020~~) October 1, 2022**

~~((Oversize Vehicle Ferry Tolls<sup>†</sup>~~  
Overall Unit Length - Including Driver

ROUTES	<del>22' To Under 30' Under 7'2" High<sup>5</sup></del>	<del>22' To Under 30' 7'2" High or Over<sup>5</sup></del>	<del>30' To Under 40'<sup>5</sup></del>	<del>40' To Under 50'<sup>5</sup></del>	<del>50' To Under 60'<sup>5</sup></del>	<del>60' To under 70'<sup>5</sup></del>	<del>70' To and include 80'<sup>5</sup></del>	<del>Cost Per Ft. Over 80'</del>
Fauntleroy-Southworth Port Townsend/Coupeville	18.90	37.25	49.45	61.70	73.95	86.20	98.45	1.25
Seattle-Bainbridge Island Seattle/Bremerton Edmonds-Kingston	24.35	48.20	64.10	80.00	95.90	111.80	127.70	1.60
<del>*Fauntleroy-Vashon *Southworth-Vashon *Pt. Defiance-Tahlequah</del>	<del>31.05</del>	<del>61.55</del>	<del>81.90</del>	<del>102.25</del>	<del>122.60</del>	<del>142.95</del>	<del>163.30</del>	<del>2.05</del>
Mukilteo-Clinton	14.60	28.65	38.00	47.40	56.80	66.15	75.55	0.95
*Anacortes to Lopez <sup>2</sup>	55.35	110.20	146.80	183.35	219.90	256.50	293.05	3.65
*Anacortes to Shaw, Orcas <sup>2</sup>	66.35	132.15	176.05	219.90	263.80	307.70	351.55	4.40
*Anacortes to Friday Harbor	78.75	156.95	209.10	261.25	313.40	365.55	417.70	5.20
Between Lopez, Shaw, Orcas and Friday Harbor <sup>3</sup>	37.25	73.95	98.45	122.95	147.40	171.90	196.40	N/A
<i>International Travel</i>								
Anacortes to Sidney to all destinations	99.00	99.00	131.80	164.65	197.50	230.30	263.15	3.30
Lopez, Shaw, Orcas and Friday Harbor to Sidney	61.50	61.50	81.85	102.15	122.50	142.80	163.15	2.05
Lopez, Shaw, Orcas and Friday Harbor to Sidney (round trip) <sup>4</sup>	122.50	122.50	163.20	203.80	244.50	285.10	325.80	4.10))

Oversize Vehicle Ferry Tolls<sup>1</sup>  
Overall Unit Length - Including Driver

ROUTES	<u>22' To Under 30' Under 7'2" High<sup>5</sup></u>	<u>22' To Under 30' 7'2" High or Over<sup>5</sup></u>	<u>30' To Under 40'<sup>5</sup></u>	<u>40' To Under 50'<sup>5</sup></u>	<u>50' To Under 60'<sup>5</sup></u>	<u>60' To under 70'<sup>5</sup></u>	<u>70' To and include 80'<sup>5</sup></u>	<u>Cost Per Ft. Over 80'</u>
Fauntleroy-Southworth Port Townsend/Coupeville	19.80	39.10	51.95	64.80	77.65	90.50	103.35	1.30
Seattle-Bainbridge Island Seattle/Bremerton Edmonds-Kingston	25.55	50.60	67.30	84.00	100.70	117.40	134.10	1.65
<del>*Fauntleroy-Vashon *Southworth-Vashon *Pt. Defiance-Tahlequah</del>	<del>32.60</del>	<del>64.65</del>	<del>86.00</del>	<del>107.40</del>	<del>128.75</del>	<del>150.15</del>	<del>171.50</del>	<del>2.15</del>
Mukilteo-Clinton	15.30	30.05	39.90	49.75	59.60	69.45	79.30	1.00
*Anacortes to Lopez <sup>2</sup>	58.15	115.75	154.15	192.55	230.95	269.35	307.80	3.85
*Anacortes to Shaw, Orcas <sup>2</sup>	69.65	138.80	184.85	230.95	277.05	323.15	369.25	4.60
*Anacortes to Friday Harbor	82.70	164.85	219.60	274.40	329.15	383.95	438.70	5.45

Oversize Vehicle Ferry Tolls<sup>1</sup>

Overall Unit Length - Including Driver

ROUTES	22' To	22' To	30' To	40' To Under	50' To	60' To under	70' To and	Cost Per
	Under 30'	Under 30'						
	Under 72"	7'2" High	Under 40' <sup>5</sup>	50' <sup>5</sup>	Under 60' <sup>5</sup>	70' <sup>5</sup>	include 80' <sup>5</sup>	Ft. Over
	High <sup>5</sup>	or Over <sup>5</sup>						80'
Between Lopez, Shaw, Orcas and Friday Harbor <sup>2</sup>	39.10	77.65	103.35	129.10	154.80	180.55	206.25	N/A
<i>International Travel</i>								
Anacortes to Sidney to all destinations	104.00	104.00	138.50	172.95	207.45	241.95	276.45	3.45
Lopez, Shaw, Orcas and Friday Harbor to Sidney	64.60	64.60	85.95	107.30	128.65	150.05	171.40	2.15
Lopez, Shaw, Orcas and Friday Harbor to Sidney (round trip) <sup>4</sup>	128.70	128.70	171.40	214.10	256.80	299.60	342.30	4.30

All fares rounded to the nearest multiple of \$0.05.

\*These routes operate as a one-point toll collection system with round trip tolls.

<sup>1</sup>OVERSIZE VEHICLES - Includes all vehicles 22 feet in length and longer regardless of type: Commercial trucks, recreational vehicles, vehicles under 22' pulling trailers, etc. Length shall include vehicle and load to its furthest extension. Overheight charge is included in oversize vehicle toll. Vehicles wider than 8'6" pay double the fare applicable to their length. Private and commercial passenger buses or other passenger vehicles pay the applicable oversize vehicle tolls. Public transit buses and drivers shall travel free upon display of an annual permit which may be purchased for \$10. Upon presentation by either the driver or passenger of a WSF Disability Travel Permit, Regional Reduced Fare Permit, or other identification which establishes disability, vehicles 22-30 feet in length and 7'2" or over in height shall be charged the 22-30 foot length and under 7'2" in height fare for vehicles equipped with wheelchair lift or other feature designed to accommodate the person with the disability.

<sup>2</sup>TRANSFERS - Tolls collected westbound only. Oversize vehicles traveling westbound from Anacortes may receive a single intermediate transfer when first purchasing the fare for the furthest intended point of travel for the trip. The transfer is valid until the end of the service day on the day purchased.

<sup>3</sup>INTER-ISLAND - Tolls collected westbound only. Vehicles traveling between islands may request a single transfer ticket good for one transfer at an intermediate island. The transfer may only be obtained when purchasing the appropriate vehicle fare for inter-island travel (westbound at Lopez, Shaw, or Orcas) and is free of charge. Transfers shall be valid until the end of the service day on the day of purchase.

<sup>4</sup>ROUND TRIP - Round trip passage for international travel available for trips beginning or ending on one of the islands served.

<sup>5</sup>CAPITAL SURCHARGE((S)) - There is included an additional ((~~\$0.25~~)) \$0.50 capital surcharge on each single vehicle/driver fare collected. ((Beginning May 1, 2020, an additional \$0.25 capital surcharge for new vessel construction is included on each single vehicle/driver fare collected.))

BULK NEWSPAPERS - Per 100 lbs. \$2.85 (Shipments exceeding 60,000 lbs. in any month shall be assessed \$1.42 per 100 lbs.). Daily newspapers, in bundles, to be received and delivered without receipt and subject to owner's risk, will be transported between ferry terminals on regular scheduled sailings.

VEHICLE RESERVATION DEPOSIT - Nonrefundable deposits for advanced reservations may be established at a level of from 25 to 100 percent of the applicable oversize vehicle one way fare. This is a deposit toward the fare and not an additional fee and applies only to those routes where the legislature has approved the use of a reservation system. Where it is operationally necessary (routes where vehicle fares are collected in only one direction or to increase operational efficiency at the terminal) a reservation no-show fee may be used in lieu of a deposit. The no-show fee will be limited to 25 to 100 percent of the applicable one way oversize vehicle fare and will be charged if the customer does not travel within the same service day as their reserved sailing, provided there are no service disruptions.

PEAK SEASON SURCHARGE - A peak season surcharge shall apply to all oversize vehicles from May 1 through September 30. The oversize fare shall be determined based on the peak-season car-and-driver fare and the analogous oversize vehicle fare, calculated with the same factor as the oversize base seasons fares are to the base season under 20 foot fare. The senior citizen discount shall apply to the driver of an oversize vehicle. The resulting fare is rounded ((up)) to the ((next)) nearest \$0.05 if required.

SENIOR CITIZEN DISCOUNTS - Discounts of 50% for the driver of the above vehicles shall apply. Senior citizen discount is determined by subtracting full-fare passenger rate and adding half-fare passenger rate, which will be rounded down to the nearest multiple of \$0.05. The senior citizen discount shall apply to the driver of an oversize vehicle.

PENALTY CHARGES - Owner of vehicle without driver will be assessed a \$100.00 penalty charge.

COMMERCIAL ACCOUNTS - Commercial customers((s)) making 12 or more, one-way crossings per week (Sunday through Saturday) will qualify for a 10% discount from the regular ferry tolls. WSF will provide a commercial account program that will be prepaid and offer access to volume discounts based on travel, revenue or other criteria in accordance with WSF business rules. On an annual basis, commercial accounts will pay a \$50 nonrefundable account maintenance fee.

GROUP OR VOLUME SALES - In order to increase total revenues, WSF may develop full fare or discounted customer packages or bundle single fare types into multiple trip books or offer passes for high volume or group users. In pricing these packages, WSF will have discretion to set appropriate volume discounts based on a case-by-case basis.

SPECIAL EVENTS - In order to increase total revenues, WSF may develop, create or participate in special events that may include, but not be limited to, contributing or packaging discounted fares in exchange for the opportunity to participate in the income generated by the event.

FIRE DEPARTMENT AND FIRE DISTRICT FARE CONSIDERATION - At the discretion of the WSF Assistant Secretary, WSF may authorize no-fare or discounted fare passage on scheduled and/or special ferry sailings for fire departments and fire districts that provide contracted fire protection ser-

vices for WSF ferry terminals and/or other WSF facilities within their jurisdiction. Such passage shall be considered full and complete consideration for such fire protection services, in lieu of annual payments for such services, to be so noted in such fire protection agreements. The scope of such authorization includes designated fire department and fire district vehicles (see below), drivers and passengers en route to and from an emergency call, on ferry routes with a WSF terminal and/or other WSF facility served by a fire department or fire district pursuant to a WSF fire protection service agreement. Authorized vehicles may include public fire department and fire district medical aid units, fire trucks, incident command and/or other vehicles dispatched to and returning from an emergency call.

EMERGENCY TRIPS DURING NONSERVICE HOURS - While at locations where crew is on duty charge shall be equal to the cost of fuel consumed to make emergency trip. Such trips shall only be offered as a result of official requests from an emergency services agency and only in the case of no reasonable alternative.

DISCLAIMER - Under no circumstances does Washington state ferries warrant the availability of ferry service at a given date or time; nor does it warrant the availability of space on board a vessel on a given sailing.

GOOD TO GO! PILOT - Special ferry toll rate(s) may be established for a pilot program of Good to Go! or similar fare collection infrastructure, technology, or ORCA replacement system on any ferry route. Washington State Ferries Assistant Secretary shall design the program and submit a proposed program and fare schedule to the Washington State Transportation Commission. The Commission shall review, modify and approve the proposed fare schedule and fare policies before it is implemented. Once implemented, WSF shall provide, at a minimum, updates to the Commission every six months on the pilot. The pilot will conclude no longer than three years from its implementation.

**WSR 21-18-070  
PERMANENT RULES  
TRANSPORTATION COMMISSION**

[Filed August 26, 2021, 3:34 p.m., effective September 26, 2021]

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

Purpose: The purpose of this rule is to adjust toll rates for the State Route (SR) 16 Tacoma Narrows Bridge to meet financial requirements. Pursuant to RCW 47.46.100, the Washington state transportation commission is required to establish toll rates and fees for the Tacoma Narrows Bridge that are adequate to cover debt, operations, insurance, and maintenance costs. This increase is pursuant to RCW 47.46-190(4).

Citation of Rules Affected by this Order: Amending WAC 468-270-070.

Statutory Authority for Adoption: RCW 47.46.100, 47.56.030.

Adopted under notice filed as WSR 21-15-122 on July 21, 2021.

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

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

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

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

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

Date Adopted: August 24, 2021.

Reema Griffith  
Executive Director

AMENDATORY SECTION (Amending WSR 18-17-163, 19-01-066 and 19-10-006, filed 8/21/18, 12/14/18 and 4/18/19, effective 8/1/19)

**WAC 468-270-070 What are the toll rates on the Tacoma Narrows Bridge?** The toll rates for the Tacoma Narrows Bridge are shown in Table 1.

**Table 1, Effective (~~July 1, 2015~~) October 1, 2021  
Tacoma Narrows Bridge Toll Rates**

Vehicle Axles	Good to Go! <sup>TM</sup> Pass <sup>1</sup>	Cash <sup>1</sup>	Pay By Mail <sup>1</sup>	Good To Go! <sup>TM</sup> Pay by Plate <sup>2</sup>
2	<del>(\$5.00)</del> <u>\$5.25</u>	<del>(\$6.00)</del> <u>\$6.25</u>	<del>(\$7.00)</del> <u>\$7.25</u>	<del>(\$5.25)</del> <u>\$5.50</u>
3	<del>(\$7.50)</del> <u>\$7.90</u>	<del>(\$9.00)</del> <u>\$9.40</u>	<del>(\$10.50)</del> <u>\$10.90</u>	<del>(\$7.75)</del> <u>\$8.15</u>
4	<del>(\$10.00)</del> <u>\$10.50</u>	<del>(\$12.00)</del> <u>\$12.50</u>	<del>(\$14.00)</del> <u>\$14.50</u>	<del>(\$10.25)</del> <u>\$10.75</u>
5	<del>(\$12.50)</del> <u>\$13.15</u>	<del>(\$15.00)</del> <u>\$15.65</u>	<del>(\$17.50)</del> <u>\$18.15</u>	<del>(\$12.75)</del> <u>\$13.40</u>
6	<del>(\$15.00)</del> <u>\$15.75</u>	<del>(\$18.00)</del> <u>\$18.75</u>	<del>(\$21.00)</del> <u>\$21.75</u>	<del>(\$15.25)</del> <u>\$16.00</u>

Notes: <sup>1</sup>The rate has been rounded to the nearest five cents, as needed.

<sup>2</sup>For this type of payment method, the customer is charged the Good to Go!™ Pass toll rate plus a \$0.25 fee as provided in WAC 468-270-300.

**WSR 21-18-071**  
**PERMANENT RULES**  
**TRANSPORTATION COMMISSION**

[Filed August 26, 2021, 3:35 p.m., effective September 26, 2021]

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

Purpose: The purpose of this rule is to adjust toll rates for the SR 99 tunnel to mitigate a reduction in revenue resulting from the COVID-19 pandemic and to ensure toll revenues cover repair and replacement costs for the tunnel as required under state law. Pursuant to RCW 47.56.862, Washington state transportation commission, as the state tolling authority, must consider toll rates for the SR 99 tunnel that will help ensure legal and funding requirements are met, to support reliable travel times and speed on the facility, and to minimize traffic impacts, such as on the downtown Seattle street network.

Citation of Rules Affected by this Order: Amending WAC 468-270-073.

Statutory Authority for Adoption: RCW 47.56.030, 47.56.795, 47.56.850, and 47.56.862.

Adopted under notice filed as WSR 21-15-123 on July 21, 2021.

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

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

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

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

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

Date Adopted: August 24, 2021.

Reema Griffith  
 Executive Director

AMENDATORY SECTION (Amending WSR 19-06-037, filed 3/1/19, effective 4/1/19)

**WAC 468-270-073 What are the toll rates on the SR 99 Tunnel?** (1) Tables 7 through 11 show the applicable toll rates by vehicle axles, day and time of travel, and method of payment.

(2) Effective July 1, 2022, and every three years thereafter, subject to review and potential adjustment by the commission, toll rates shall be increased as described in WAC 468-270-040 (3)(b).

**TABLE 7**  
**SR 99 TUNNEL**  
**TWO-AXLE VEHICLE TOLL RATES**

<b>Mondays through Fridays</b>	<b>Good To Go!™ Pass<sup>1</sup></b>	<b>Pay By Mail<sup>1</sup></b>	<b>Good To Go!™ Pay By Plate<sup>2</sup></b>
Midnight to 6 a.m.	<del>(\$1.00)</del> <u>\$1.15</u>	<del>(\$3.00)</del> <u>\$3.15</u>	<del>(\$1.25)</del> <u>\$1.40</u>
6 a.m. to 7 a.m.	<del>(\$1.25)</del> <u>\$1.45</u>	<del>(\$3.25)</del> <u>\$3.45</u>	<del>(\$1.50)</del> <u>\$1.70</u>
7 a.m. to 9 a.m.	<del>(\$1.50)</del> <u>\$1.75</u>	<del>(\$3.50)</del> <u>\$3.75</u>	<del>(\$1.75)</del> <u>\$2.00</u>
9 a.m. to 3 p.m.	<del>(\$1.25)</del> <u>\$1.45</u>	<del>(\$3.25)</del> <u>\$3.45</u>	<del>(\$1.50)</del> <u>\$1.70</u>
3 p.m. to 6 p.m.	<del>(\$2.25)</del> <u>\$2.60</u>	<del>(\$4.25)</del> <u>\$4.60</u>	<del>(\$2.50)</del> <u>\$2.85</u>
6 p.m. to 11 p.m.	<del>(\$1.25)</del> <u>\$1.45</u>	<del>(\$3.25)</del> <u>\$3.45</u>	<del>(\$1.50)</del> <u>\$1.70</u>
11 p.m. to midnight	<del>(\$1.00)</del> <u>\$1.15</u>	<del>(\$3.00)</del> <u>\$3.15</u>	<del>(\$1.25)</del> <u>\$1.40</u>
<b>Saturdays and Sundays<sup>3</sup></b>	<b>Good To Go!™ Pass<sup>1</sup></b>	<b>Pay By Mail<sup>1</sup></b>	<b>Good To Go!™ Pay By Plate<sup>2</sup></b>
Midnight to Midnight	<del>(\$1.00)</del> <u>\$1.15</u>	<del>(\$3.00)</del> <u>\$3.15</u>	<del>(\$1.25)</del> <u>1.40</u>

Notes: <sup>1</sup>The rate for electronic tolls has been rounded to the nearest five cents, as needed.

<sup>2</sup>For this type of payment method, the customer is charged the Good to Go!™ Pass toll rate plus a \$0.25 fee as provided in WAC 468-270-300.

<sup>3</sup>The weekend rates will be assessed on the days on which holidays are observed: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

**TABLE 8  
SR 99 TUNNEL  
THREE-AXLE VEHICLE TOLL RATES**

<b>Mondays through Fridays</b>	<b>Good To Go!™ Pass<sup>1</sup></b>	<b>Pay By Mail<sup>1</sup></b>	<b>Good To Go!™ Pay By Plate<sup>2</sup></b>
Midnight to 6 a.m.	<del>(\$1.50)</del> <u>\$1.75</u>	<del>(\$4.50)</del> <u>\$4.75</u>	<del>(\$1.75)</del> <u>\$2.00</u>
6 a.m. to 7 a.m.	<del>(\$1.90)</del> <u>\$2.20</u>	<del>(\$4.90)</del> <u>\$5.20</u>	<del>(\$2.15)</del> <u>\$2.45</u>
7 a.m. to 9 a.m.	<del>(\$2.25)</del> <u>\$2.65</u>	<del>(\$5.25)</del> <u>\$5.65</u>	<del>(\$2.50)</del> <u>\$2.90</u>
9 a.m. to 3 p.m.	<del>(\$1.90)</del> <u>\$2.20</u>	<del>(\$4.90)</del> <u>\$5.20</u>	<del>(\$2.15)</del> <u>\$2.45</u>
3 p.m. to 6 p.m.	<del>(\$3.40)</del> <u>\$3.90</u>	<del>(\$6.40)</del> <u>\$6.90</u>	<del>(\$3.65)</del> <u>\$4.15</u>
6 p.m. to 11 p.m.	<del>(\$1.90)</del> <u>\$2.20</u>	<del>(\$4.90)</del> <u>\$5.20</u>	<del>(\$2.15)</del> <u>\$2.45</u>
11 p.m. to midnight	<del>(\$1.50)</del> <u>\$1.75</u>	<del>(\$4.50)</del> <u>\$4.75</u>	<del>(\$1.75)</del> <u>\$2.00</u>
<b>Saturdays and Sundays<sup>3</sup></b>	<b>Good To Go!™ Pass<sup>1</sup></b>	<b>Pay By Mail<sup>1</sup></b>	<b>Good To Go!™ Pay By Plate<sup>2</sup></b>
Midnight to Midnight	<del>(\$1.50)</del> <u>\$1.75</u>	<del>(\$4.50)</del> <u>\$4.75</u>	<del>(\$1.75)</del> <u>\$2.00</u>

Notes: <sup>1</sup>The rate for electronic tolls has been rounded to the nearest five cents, as needed.  
<sup>2</sup>For this type of payment method, the customer is charged the Good to Go!™ Pass toll rate plus a \$0.25 fee as provided in WAC 468-270-300.  
<sup>3</sup>The weekend rates will be assessed on the days on which holidays are observed: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

**TABLE 9  
SR 99 TUNNEL  
FOUR-AXLE VEHICLE TOLL RATES**

<b>Mondays through Fridays</b>	<b>Good To Go!™ Pass<sup>1</sup></b>	<b>Pay By Mail<sup>1</sup></b>	<b>Good To Go!™ Pay By Plate<sup>2</sup></b>
Midnight to 6 a.m.	<del>(\$2.00)</del> <u>\$2.30</u>	<del>(\$6.00)</del> <u>\$6.30</u>	<del>(\$2.25)</del> <u>\$2.55</u>
6 a.m. to 7 a.m.	<del>(\$2.50)</del> <u>\$2.90</u>	<del>(\$6.50)</del> <u>\$6.90</u>	<del>(\$2.75)</del> <u>\$3.15</u>
7 a.m. to 9 a.m.	<del>(\$3.00)</del> <u>\$3.50</u>	<del>(\$7.00)</del> <u>\$7.50</u>	<del>(\$3.25)</del> <u>\$3.75</u>
9 a.m. to 3 p.m.	<del>(\$2.50)</del> <u>\$2.90</u>	<del>(\$6.50)</del> <u>\$6.90</u>	<del>(\$2.75)</del> <u>\$3.15</u>
3 p.m. to 6 p.m.	<del>(\$4.50)</del> <u>\$5.20</u>	<del>(\$8.50)</del> <u>\$9.20</u>	<del>(\$4.75)</del> <u>\$5.45</u>
6 p.m. to 11 p.m.	<del>(\$2.50)</del> <u>\$2.90</u>	<del>(\$6.50)</del> <u>\$6.90</u>	<del>(\$2.75)</del> <u>\$3.15</u>
11 p.m. to midnight	<del>(\$2.00)</del> <u>\$2.30</u>	<del>(\$6.00)</del> <u>\$6.30</u>	<del>(\$2.25)</del> <u>\$2.55</u>
<b>Saturdays and Sundays<sup>3</sup></b>	<b>Good To Go!™ Pass<sup>1</sup></b>	<b>Pay By Mail<sup>1</sup></b>	<b>Good To Go!™ Pay By Plate<sup>2</sup></b>
Midnight to Midnight	<del>(\$2.00)</del> <u>\$2.30</u>	<del>(\$6.00)</del> <u>\$6.30</u>	<del>(\$2.25)</del> <u>\$2.55</u>

Notes: <sup>1</sup>The rate for electronic tolls has been rounded to the nearest five cents, as needed.  
<sup>2</sup>For this type of payment method, the customer is charged the Good to Go!™ Pass toll rate plus a \$0.25 fee as provided in WAC 468-270-300.  
<sup>3</sup>The weekend rates will be assessed on the days on which holidays are observed: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

**TABLE 10  
SR 99 TUNNEL  
FIVE-AXLE VEHICLE TOLL RATES**

<b>Mondays through Fridays</b>	<b>Good To Go!™ Pass<sup>1</sup></b>	<b>Pay By Mail<sup>1</sup></b>	<b>Good To Go!™ Pay By Plate<sup>2</sup></b>
Midnight to 6 a.m.	<del>(\$2.50)</del> <u>\$2.90</u>	<del>(\$7.50)</del> <u>\$7.90</u>	<del>(\$2.75)</del> <u>\$3.15</u>
6 a.m. to 7 a.m.	<del>(\$3.15)</del> <u>\$3.65</u>	<del>(\$8.15)</del> <u>\$8.65</u>	<del>(\$3.40)</del> <u>\$3.90</u>
7 a.m. to 9 a.m.	<del>(\$3.75)</del> <u>\$4.40</u>	<del>(\$8.75)</del> <u>\$9.40</u>	<del>(\$4.00)</del> <u>\$4.65</u>
9 a.m. to 3 p.m.	<del>(\$3.15)</del> <u>\$3.65</u>	<del>(\$8.15)</del> <u>\$8.65</u>	<del>(\$3.40)</del> <u>\$3.90</u>

<b>Mondays through Fridays</b>	<b>Good To Go!™ Pass<sup>1</sup></b>	<b>Pay By Mail<sup>1</sup></b>	<b>Good To Go!™ Pay By Plate<sup>2</sup></b>
3 p.m. to 6 p.m.	(( <del>\$5.65</del> ) <u>\$6.50</u> )	(( <del>\$10.65</del> ) <u>\$11.50</u> )	(( <del>\$5.90</del> ) <u>\$6.75</u> )
6 p.m. to 11 p.m.	(( <del>\$3.15</del> ) <u>\$3.65</u> )	(( <del>\$8.15</del> ) <u>\$8.65</u> )	(( <del>\$3.40</del> ) <u>\$3.90</u> )
11 p.m. to midnight	(( <del>\$2.50</del> ) <u>\$2.90</u> )	(( <del>\$7.50</del> ) <u>\$7.90</u> )	(( <del>\$2.75</del> ) <u>\$3.15</u> )
<b>Saturdays and Sundays<sup>3</sup></b>	<b>Good To Go!™ Pass<sup>1</sup></b>	<b>Pay By Mail<sup>1</sup></b>	<b>Good To Go!™ Pay By Plate<sup>2</sup></b>
Midnight to Midnight	(( <del>\$2.50</del> ) <u>\$2.90</u> )	(( <del>\$7.50</del> ) <u>\$7.90</u> )	(( <del>\$2.75</del> ) <u>\$3.15</u> )

Notes: <sup>1</sup>The rate for electronic tolls has been rounded to the nearest five cents, as needed.  
<sup>2</sup>For this type of payment method, the customer is charged the Good to Go!™ Pass toll rate plus a \$0.25 fee as provided in WAC 468-270-300.  
<sup>3</sup>The weekend rates will be assessed on the days on which holidays are observed: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

**TABLE 11**  
**SR 99 TUNNEL**  
**SIX-AXLE OR MORE VEHICLE TOLL RATES**

<b>Mondays through Fridays</b>	<b>Good To Go!™ Pass<sup>1</sup></b>	<b>Pay By Mail<sup>1</sup></b>	<b>Good To Go!™ Pay By Plate<sup>2</sup></b>
Midnight to 6 a.m.	(( <del>\$3.00</del> ) <u>\$3.45</u> )	(( <del>\$9.00</del> ) <u>\$9.45</u> )	(( <del>\$3.25</del> ) <u>\$3.70</u> )
6 a.m. to 7 a.m.	(( <del>\$3.75</del> ) <u>\$4.35</u> )	(( <del>\$9.75</del> ) <u>\$10.35</u> )	(( <del>\$4.00</del> ) <u>\$4.60</u> )
7 a.m. to 9 a.m.	(( <del>\$4.50</del> ) <u>\$5.25</u> )	(( <del>\$10.50</del> ) <u>\$11.25</u> )	(( <del>\$4.75</del> ) <u>\$5.50</u> )
9 a.m. to 3 p.m.	(( <del>\$3.75</del> ) <u>\$4.35</u> )	(( <del>\$9.75</del> ) <u>\$10.35</u> )	(( <del>\$4.00</del> ) <u>\$4.60</u> )
3 p.m. to 6 p.m.	(( <del>\$6.75</del> ) <u>\$7.80</u> )	(( <del>\$12.75</del> ) <u>\$13.80</u> )	(( <del>\$7.00</del> ) <u>\$8.05</u> )
6 p.m. to 11 p.m.	(( <del>\$3.75</del> ) <u>\$4.35</u> )	(( <del>\$9.75</del> ) <u>\$10.35</u> )	(( <del>\$4.00</del> ) <u>\$4.60</u> )
11 p.m. to midnight	(( <del>\$3.00</del> ) <u>\$3.45</u> )	(( <del>\$9.00</del> ) <u>\$9.45</u> )	(( <del>\$3.25</del> ) <u>\$3.70</u> )
<b>Saturdays and Sundays<sup>3</sup></b>	<b>Good To Go!™ Pass<sup>1</sup></b>	<b>Pay By Mail<sup>1</sup></b>	<b>Good To Go!™ Pay By Plate<sup>2</sup></b>
Midnight to Midnight	(( <del>\$3.00</del> ) <u>\$3.45</u> )	(( <del>\$9.00</del> ) <u>\$9.45</u> )	(( <del>\$3.25</del> ) <u>\$3.70</u> )

Notes: <sup>1</sup>The rate for electronic tolls has been rounded to the nearest five cents, as needed.  
<sup>2</sup>For this type of payment method, the customer is charged the Good to Go!™ Pass toll rate plus a \$0.25 fee as provided in WAC 468-270-300.  
<sup>3</sup>The weekend rates will be assessed on the days on which holidays are observed: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

**WSR 21-18-077**  
**PERMANENT RULES**  
**HEALTH CARE AUTHORITY**

[Filed August 27, 2021, 1:08 p.m., effective September 27, 2021]

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

Purpose: The agency is amending WAC 182-526-0195 to change subsection (4) to specify that the administrative law judge has discretion to grant or deny an agency or managed care organization request for a prehearing conference.

Citation of Rules Affected by this Order: Amending WAC 182-526-0195.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 21-15-057 on July 15, 2021.

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

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

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

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

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

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

Date Adopted: August 27, 2021.

Wendy Barcus  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 21-11-039, filed 5/12/21, effective 6/12/21)

**WAC 182-526-0195 Prehearing conferences.** (1)

Unlike a prehearing meeting, a prehearing conference is a formal proceeding conducted on the record by an administrative law judge (ALJ) to address issues and prepare for a hearing.

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

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

(2) All parties must attend the prehearing conference. If the party who requested the hearing does not attend the prehearing conference, the ALJ may enter an order of default and an order dismissing the hearing.

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

(4) The ALJ must grant the appellant's, and may grant the managed care organization's or the agency representative's, first request for a prehearing conference if it is filed with the office of administrative hearings (OAH) at least seven business days before the scheduled hearing date.

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

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

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

(a) Provider and vendor overpayment hearings.

(b) Estate recovery and predeath liens.

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

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

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

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

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

(c) Identify any accommodation or safety issues;

(d) Agree to postpone the hearing;

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

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

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

(h) Schedule additional prehearing conferences;

(i) Resolve the dispute;

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

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

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

(a) The actions taken at the prehearing conference;

(b) Any changes to the documents;

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

(d) Any agreements reached; and

(e) Any ruling of the ALJ.

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

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

(12) If no objection is made to the prehearing order, the order determines how the hearing is conducted, including whether the hearing will be in person or held by telephone conference or other means, unless the ALJ changes the order for good cause.

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

**WSR 21-18-081**

**PERMANENT RULES**

**DEPARTMENT OF**

**SOCIAL AND HEALTH SERVICES**

(Aging and Long-Term Support Administration)

[Filed August 30, 2021, 8:43 a.m., effective October 1, 2021]

Effective Date of Rule: October 1, 2021.

Purpose: The department is amending, repealing, and creating new sections in chapters 388-71, 388-106, and 388-113 WAC, and creating a new chapter 388-115 WAC, Consumer directed employer (CDE), as a reference for the individual providers employed by the CDE.

The purpose for making changes is to clarify and consolidate rules related to background checks, disqualifying convictions, and negative actions, and character, competence and suitability determinations for home and community services, residential care services, and the developmental disabilities administration.

These changes will provide better clarity and understanding for the public and contracted entities, reduce the

amount of WAC language across programs, and help preserve the health and safety of our clients. Other provisions related to long-term care worker qualifications, and a client's choice of provider will also be clarified and consolidated.

Citation of Rules Affected by this Order: New WAC 388-71-0503, 388-71-0511, 388-71-05410, 388-71-05415, 388-71-0837, 388-71-0893, 388-71-0971, 388-71-0977, 388-71-0981, 388-71-1064, 388-113-0050, 388-113-0060, 388-113-0070, 388-113-0100, 388-113-0101, 388-113-0103, 388-113-0105, 388-113-0107, 388-113-0108, 388-113-0109, 388-115-0500, 388-115-0503, 388-115-0505, 388-115-0510, 388-115-0511, 388-115-0513, 388-115-0516, 388-115-0520, 388-115-0523, 388-115-0540, 388-115-05410, 388-115-05415, 388-115-0562 and 388-115-05640; repealing WAC 388-71-0512, 388-71-0514, 388-71-0544, 388-71-0546, 388-71-0551, 388-71-0553, 388-71-0556 and 388-71-0560; and amending WAC 388-71-0500, 388-71-0505, 388-71-0510, 388-71-0513, 388-71-0515, 388-71-0517, 388-71-0523, 388-71-0540, 388-71-0543, 388-71-0561, 388-71-0836, 388-71-0839, 388-71-0860, 388-71-0870, 388-71-0875, 388-71-0880, 388-71-0888, 388-71-0890, 388-71-0911, 388-71-0932, 388-71-0936, 388-71-0953, 388-71-0975, 388-71-0980, 388-71-0985, 388-71-0990, 388-71-0991, 388-71-1001, 388-71-1026, 388-71-1055, 388-71-1066, 388-106-0035, 388-106-0040, 388-106-1445, 388-106-1458, 388-113-0005, 388-113-0010, and 388-113-0030.

The following section of the Washington Administrative Code is decodified and recodified as follows: Old WAC 388-113-0040; new WAC 388-113-0025.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520, 43.43.832, 74.39A.270, 74.39A.056, 74.39A.074, 43.20A.710, 74.39A.525, 43.43.842, 74.39A.326, 74.39A.-515, 74.39A.505, 18.88B.021, and 43.43.837.

Other Authority: ESSB 6199 in 2018.

Adopted under notice filed as WSR 21-10-094 on May 4, 2021.

A final cost-benefit analysis is available by contacting Angel Sullivan, P.O. Box 45600, Olympia, WA 98504-5600, phone 360-725-2495, fax 360-407-7582, TTY 360-493-2637, email angel.sullivan@dshs.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 34, Amended 38, Repealed 8; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 34, Amended 38, Repealed 8.

Date Adopted: August 30, 2021.

Donald Clintsman  
Acting Secretary

**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 21-20 issue of the Register.

## WSR 21-18-082

### PERMANENT RULES

## EMPLOYMENT SECURITY DEPARTMENT

[Filed August 30, 2021, 8:45 a.m., effective September 30, 2021]

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

Purpose: The adopted rules amend two sections under Title 192 WAC related to weekly benefit amount proration and backdating an application or a weekly claim for paid family and medical leave benefits. Specifically, the amendments provide clearer guidance for employees, employers, and employment security department (department) staff by increasing the readability of the amended sections, providing clearer examples related to the proration of weekly benefit claims, and allowing department staff to consider all information provided when processing claims.

Citation of Rules Affected by this Order: Amending WAC 192-610-040 Can an employee backdate an application or a weekly claim for benefits?, and 192-620-035 When will a weekly benefit amount be prorated?

Statutory Authority for Adoption: RCW 50A.05.060, 50A.15.020.

Adopted under notice filed as WSR 21-14-093 on July 7, 2021.

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

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

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

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

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

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

Date Adopted: August 30, 2021.

April Amundson  
Policy and Rules Manager  
Leave and Care Division

AMENDATORY SECTION (Amending WSR 19-08-016, filed 3/22/19, effective 4/22/19)

**WAC 192-610-040 Can an employee backdate an application or a weekly claim for benefits?** (1) Generally, paid family or medical leave benefits are payable on or after the date the employee applies for benefits. An application or weekly claim may be backdated for good cause or for the convenience of the department.

(2) For the purpose of this section:

(a)(i) "Good cause" means factors beyond the employee's control that reasonably prevented an employee from applying for benefits (~~(prior to or)~~) at the time of need for paid leave (~~(such as)~~). These factors include, but are not limited to, a serious health condition, a period of incapacity, or a natural disaster.

(ii) ~~The burden (of proof is on the employee to provide all pertinent facts and evidence to the department to determine good cause. The evidence must show that the factors prevented the employee from applying for or claiming benefits when the qualifying event occurred and any subsequent duration in which the employee did not apply for or claim benefits. This evidence may include, but is not limited to, medical)) is on the employee to establish that good cause exists. The employee must provide all pertinent information and documentation which demonstrates that the factors prevented the employee from applying for benefits when the qualifying event occurred. This may include, but is not limited to, certification from a health care provider, evidence of a natural disaster, or other information required by the department.~~

(b) "For the convenience of the department" means for the purpose of program administration or situations when accepting timely applications or weekly claims was difficult or impossible. These include, but are not limited to, equipment breakdown or lack of available staff.

(3) An employee who wants to backdate an application or weekly claim must file for benefits during the first ~~((week in which))~~ seven days after the date that the factors that constitute good cause no longer exist.

AMENDATORY SECTION (Amending WSR 21-11-009, filed 5/7/21, effective 6/7/21)

**WAC 192-620-035 When will a weekly benefit amount be prorated?** (1) For an employee on paid family or medical leave, a weekly benefit amount is prorated when:

(a) The employee reports hours worked for wages;

(b) The employee reports hours for paid sick leave, paid vacation leave, or other paid time off that is not considered a supplemental benefit payment as defined in WAC 192-500-180; or

(c) The employee files a weekly application for benefits that contains a day or days for which the employee ~~((did not claim))~~ was not approved for paid family or medical leave.

(2) If an employee reports hours under subsection (1)(a) or (b) of this section, proration will be calculated as specified by RCW 50A.15.020(2).

(3) If an employee ~~((claims part))~~ is approved for leave for part of a week under subsection (1)(c) of this section, proration for that week will ~~((be calculated by dividing the~~

~~employee's typical workweek hours and weekly benefit amount for that week by sevenths, then multiplying by the number of days for which the employee claimed paid family or medical leave for that week. The remainder of the week will be calculated as specified by RCW 50A.15.020(2) and subsection (1)(a) and (b) of this section))~~ occur as follows:

(a) The employee's typical workweek hours are multiplied by the number of days approved for leave, then divided by seven. The result is rounded down to the nearest whole hour. This amount is the employee's adjusted typical workweek hours.

(b) Any hours worked or taken as paid time off as reported by the employee are then subtracted from the employee's adjusted typical workweek hours. This amount will be the number of hours of paid family or medical leave claimed for that week.

(c) The number of hours claimed for that week are then divided by the employee's typical workweek hours to produce a percentage.

(d) The resulting percentage is then multiplied by the employee's normal weekly benefit amount. The resulting amount, rounded down to the nearest whole dollar, is the employee's benefit payment for that week.

**Example 1:** An employee has already served a waiting period in the claim year and files a claim for a week of paid medical leave. The employee typically works forty hours a week at eight hours per day. In the week for which the employee is claiming, the employee claimed one day of paid medical leave and worked the other four days. This employee's weekly benefit is usually eight hundred dollars. The weekly benefit would then be prorated by the hours on paid medical leave (eight hours) relative to the typical workweek hours (forty hours). Eight hours is twenty percent of forty hours. The employee's weekly benefit would be prorated to twenty percent for a total of one hundred sixty dollars.

**Example 2:** An employee ~~((files a claim for eight hours of paid family or medical leave and takes sick leave from the employer for the same day. The employer does not offer the sick leave as a supplemental benefit payment. The sick leave is considered hours worked by the employee. The employee is being paid for the same hours claimed on paid family or medical leave. This employee is not eligible for benefits for this week.~~

**Example 3:** The employee's typical workweek hours are forty hours per week, and the weekly benefit amount is one thousand dollars. The employee files a claim for leave that starts on a Tuesday. Because the employee's claim did not include Sunday or Monday of that week, the employee's typical workweek hours and weekly benefit amount for that week will be prorated by two-sevenths, or two days of the seven days in the week. For that week only, the employee's typical workweek hours will be twenty-eight (five-sevenths of forty, rounded down to the nearest hour) and the weekly benefit amount will be seven hundred fourteen dollars (five-sevenths of one thousand dollars, rounded down to the nearest dollar)) with typical workweek hours of forty and a weekly benefit amount of one thousand dollars is approved for leave through Thursday. The employee is not approved

for leave Friday or Saturday. For this week only, the following proration will occur:

(a) The employee's typical workweek hours (forty) are multiplied by the number of approved days of leave for that week (five) and then divided by seven and rounded down. The result is an adjusted typical workweek hours of twenty-eight.

(b) The employee reports no hours of work or paid time off for that week. The resulting number of hours claimed for that week are twenty-eight.

(c) The number of hours claimed for that week (twenty-eight) are then divided by the employee's normal typical workweek hours (forty). This results in a percentage of seventy percent.

(d) The percentage (seventy) is then multiplied by the employee's weekly benefit amount (one thousand). For that week, the employee will receive seven hundred dollars.

**Example 3:** An employee with typical workweek hours of forty and a weekly benefit amount of one thousand dollars is approved for leave through Thursday. The employee is not approved for leave Friday or Saturday. For this week only, the following proration will occur:

(a) The employee's typical workweek hours (forty) are multiplied by the number of approved days of leave for that week (five) and then divided by seven and rounded down. The result is an adjusted typical workweek hours of twenty-eight.

(b) The employee reports eight hours of work and eight hours of paid time for that week. The adjusted workweek hours are reduced to reflect sixteen hours of work and paid time. The resulting number of hours claimed for that week are twelve.

(c) The number of hours claimed for that week (twelve) are then divided by the employee's normal typical workweek hours (forty). This results in a percentage of thirty percent.

(d) The percentage (thirty) is then multiplied by the employee's weekly benefit amount (one thousand dollars). For that week, the employee will receive three hundred dollars.

## WSR 21-18-096

### PERMANENT RULES

### DEPARTMENT OF

### LABOR AND INDUSTRIES

[Filed August 31, 2021, 8:58 a.m., effective October 1, 2021]

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

Purpose: The purpose of this rule making is to adopt amendments to the elevator rules and fees under chapter 296-96 WAC.

The department of labor and industries (L&I) has reviewed the elevator rules to address requests from stakeholders held over from a past 2018 rule-making process and to further update and clarify existing rules. Washington's elevator stakeholders were invited to participate in the review, submit proposals for changes to the rules, and provide recommendations to L&I regarding possible rule changes. A technical advisory committee (TAC) of industry experts and the

elevator safety advisory committee (ESAC) reviewed the proposals and provided recommendations to L&I on adoption of the rules. This rule making adopts amendments based on the review and stakeholder recommendations to improve public safety.

L&I has also evaluated the elevator program's budget and projected revenue and a fee increase is needed to support operating expenses for inspections of conveyances and other elevator program public safety activities.

This rule making will:

- Increase fees by the fiscal growth factor of 5.08 percent for fiscal year 2020.
- Adopt rules for uniformity with national safety codes and standards that are recognized and used to regulate the conveyance industry. For example:
  - American Society of Mechanical Engineers (ASME) A90.1-2015 Safety Code for Belt Manlifts;
  - ASME A18.1-2017 Safety Standards for Platform Lifts and Stairway Chair Lifts - OSG Exemption; and
  - ASME A17.1-2016/CSA B44-13 Safety Code for Elevators, Escalators, Dumbwaiters, Residential Elevators, and Special Purpose Personnel Elevators.
- Adopt rules that make exceptions to the national safety codes and standards. For example:
  - Excluding all references to QEI certification in ASME A17.1- 2016/CSA B44-13, ASME A18.1-2017 and American Society of Safety Engineers/ American National Standards Institute (ASSE/ ANSI) A10.4-2016;
  - Requiring the installation of a stop switch that is accessible from the landing on existing elevators; and
  - Disallowing alternative Category 5 testing methodologies for conveyances in the state of Washington.
- Adopt rules to bring the rules up-to-date and improve public safety. For example:
  - Allow L&I to charge for portions of an hour for elevator services, such as technical services and consultations, and accident investigations to account for the actual time and cost of services;
  - Allow for reduced guard railing heights on car tops on existing elevators based upon existing instruction conditions to provide an alternative method of compliance;
  - Allow an access door to the motor brake for equipment installed in the hoistway for private residential elevators; and
  - Require posting of an overhead sign in the hoistway when guardrail clearances are less than allowed by code.
- Adopt amendments to the elevator licensing and continuing education requirements. For example:
  - Clarifies the minimum passing scores on the Washington state written examination for elevator contractors and elevator mechanics to obtain a license; and

- Clarifies that certificates of completion for continuing education courses for elevator mechanics must be signed or marked to receive educational credit from L&I.
- Adopt rules to reflect L&I's existing processes and practices. For example:
  - Clarifies a permit application needs to be sent to L&I, along with plans for new installations and major alterations prior to the start of construction and permit issuance; and
  - Allows L&I to request additional information and safety testing results for plan review exceptions for new residential incline chairlifts to ensure code compliance and testing standards are met.
- Adopt rules requested by stakeholders. For example:
  - Clarifying the allowance of driving machines in the hoistway for machine room-less elevators;
  - Clarifying the requirements for machine rooms and main line disconnects;
  - Requiring car safeties for belt manlifts to be tested at 100 percent of its rated load;
  - Replacing five-year safety testing with annual safety testing for belt manlifts;
  - Creating a new section to clarify the additional documentation that must be onsite and the items needed for maintenance and test logs;
  - Updating requirements for electric manlifts; and
  - Clarifying the governor overspeed safety testing requirements for residential stairway chairlifts and inclined commercial stairway chair lifts.
- Adopt rules for clarity, to streamline the rules, and for ease of use. For example:
  - Corrects the safety code installation dates for the adopted standards;
  - Clarifies the requirements for keys and key boxes for operation and maintenance of elevators;
  - Clarifies the fee for processing of permit applications; and
  - Adds standard application material lifts to Part D of the chapter to clarify provisions for older lifts.
- Repeal rules that are obsolete, to eliminate redundancy, and simplify the rules.
- Adopt rules for general housekeeping, such as punctuation, typographical and reference corrections, uniformity with code dimensions, formatting of section headers and numbers, removal of obsolete language, etc.

Citation of Rules Affected by this Order: New WAC 296-96-02650 and 296-96-02700; repealing WAC 296-96-02470, 296-96-02471, 296-96-11080, 296-96-20005, 296-96-23118, 296-96-23303, 296-96-24416, 296-96-24419, 296-96-24422, 296-96-24425, 296-96-24428, 296-96-24431, 296-96-24434, 296-96-24437, 296-96-24440, 296-96-24445, 296-96-24448, 296-96-24451, 296-96-24454, 296-96-24460, 296-96-24466, 296-96-24470 and 296-96-24478; and amending WAC 296-96-00650, 296-96-00675, 296-96-00904, 296-96-00906, 296-96-00910, 296-96-00912, 296-96-00916, 296-96-00922, 296-96-01005, 296-96-01010,

296-96-01025, 296-96-01027, 296-96-01030, 296-96-01035, 296-96-01040, 296-96-01045, 296-96-01055, 296-96-01057, 296-96-01060, 296-96-01065, 296-96-02410, 296-96-02452, 296-96-02460, 296-96-02465, 296-96-02530, 296-96-02552, 296-96-02580, 296-96-02605, 296-96-02640, 296-96-05000, 296-96-05020, 296-96-05030, 296-96-05070, 296-96-05090, 296-96-05140, 296-96-05190, 296-96-05210, 296-96-07150, 296-96-18020, 296-96-23117, 296-96-23119, 296-96-23126, 296-96-23130, 296-96-23132, 296-96-23200, 296-96-23605, 296-96-23701, 296-96-24401, 296-96-24457, 296-96-24480, 296-96-24500, 296-96-24516, 296-96-24528, 296-96-24537, 296-96-24543, 296-96-24553, 296-96-24560, 296-96-24600, 296-96-24611, 296-96-24630, and 296-96-24670.

Statutory Authority for Adoption: Chapter 70.87 RCW.

Adopted under notice filed as WSR 21-12-089 on June 1, 2021.

Changes Other than Editing from Proposed to Adopted Version: The following are changes from the proposed to adopted version:

- WAC 296-96-00910 Elevator mechanic license categories.
  - Subsection (4)(c) of this section was changed back to the original rule language regarding special purpose elevators. Based on a recent audit, we discovered that essential stakeholders affected by this change were not a part of the rule development process and the proposed rule is problematic. It could cause work interruptions for some businesses.

A final cost-benefit analysis is available by contacting Alicia Curry, L&I, P.O. Box 44400, Olympia, WA 98504-4400, phone 360-902-6244, fax 360-902-5292, email Alicia.Curry@Lni.wa.gov, website <https://lni.wa.gov/licensing-permits/elevators/laws-rules-policies#rule-development>.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 2, Amended 61, Repealed 23.

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 2, Amended 61, Repealed 23.

Date Adopted: August 31, 2021.

Joel Sacks  
Director

**AMENDATORY SECTION** (Amending WSR 18-18-070, filed 8/31/18, effective 10/1/18)

**WAC 296-96-00650 Adopted standards.**

ELEVATOR CODES AND SUPPLEMENTS ADOPTED				
TYPE OF CONVEYANCE	CODE AND SUPPLEMENTS	DATE INSTALLED		COMMENTS
		FROM	TO	
Elevators, Dumbwaiters, Escalators	American Standard Safety Code (ASA) A17.1, 1960	11/1/1963	12/29/1967	Adopted Standard

NATIONAL ELEVATOR CODES AND SUPPLEMENTS ADOPTED				
TYPE OF CONVEYANCE	CODE AND SUPPLEMENTS	DATE INSTALLED		COMMENTS
		FROM	TO	
Moving Walks	American Standard Safety Code (ASA) A17.1.13, 1962	11/1/1963	12/29/1967	Adopted Standard
Elevators, Dumbwaiters, Escalators, and Moving Walks	U.S.A. Standards USAS A17.1-1965 Supplements A17.1a-1967 A17.1b-1968 A17.1c-1969	12/30/1967	2/24/1972	Adopted Standard USAS 1965 includes revision and consolidation of A17.1-1960, A17.1a-1963, & A17.1.13-1962. Adopted code and supplements, excluding Appendix E & ANSI A17.1-1970.
Elevators, Dumbwaiters, Escalators, and Moving Walks	American National Standards Institute A17.1-1971	2/25/1972	6/30/1982	Adopted Standard as amended and revised through 1971.
Elevators, Dumbwaiters, Escalators, and Moving Walks	ANSI A17.1-1971; A17.1a-1972	2/25/1972	6/30/1982	Adopted Supplement
Elevators, Dumbwaiters, Escalators, and Moving Walks	ANSI A17.1-1981	7/1/1982	1/9/1986	Adopted Standard
Elevators, Dumbwaiters, Escalators, and Moving Walks	ANSI A17.1a-1982	3/1/1984	1/9/1986	Adopted Supplement
Elevators, Dumbwaiters, Escalators, and Moving Walks	ANSI A17.1b-1983	12/1/1984	1/9/1986	Adopted Supplement, except portable escalators covered by Part VIII A17.1b-1983.
Elevators, Dumbwaiters, Escalators, and Moving Walks	ANSI A17.1-1984	1/10/1986	12/31/1988	Adopted Standard Except Part XIX. After 11/1/1988 Part II, Rule 211.3b was replaced by WAC 296-81-275.
Elevators, Dumbwaiters, Escalators, and Moving Walks	ANSI A17.1a-1985	1/10/1986	12/31/1988	Adopted Supplement
Elevators, Dumbwaiters, Escalators, and Moving Walks	ANSI A17.1b-1985 A17.1c-1986 A17.1d-1986 A17.1e-1987	12/6/1987	12/31/1988	Adopted Supplement
Elevators, Dumbwaiters, Escalators, and Moving Walks	ANSI A17.1-1987	1/1/1989	12/31/1992	Adopted Standard Except Part XIX and Part II, Rule 211.3b. WAC 296-81-275 replaced Part II, Rule 211.3b.
Elevators, Dumbwaiters, Escalators, and Moving Walks	ASME A17.1-1990	1/1/1993	2/28/1995	Adopted Standard Except Part XIX and Part V, Section 513. Chapter 296-94 WAC replaced Part V, Section 513.
Elevators, Dumbwaiters, Escalators, and Moving Walks	ASME A17.1-1993	3/1/1995	6/30/1998	Adopted Standard Except Part XIX and Part V, Section 513. Chapter 296-94 WAC replaced Part V, Section 513.
Elevators, Dumbwaiters, Escalators, and Moving Walks	ASME A17.1-1996	6/30/1998	6/30/2004	Adopted Standard Except Part V, Section 513.
Elevators, Dumbwaiters, Escalators, and Moving Walks	ASME A17.1-2000 A17.1a-2002 A17.1b-2003	7/1/2004	1/1/2008	Adopted Standards and Addenda Except Rules 2.4.12.2, 8.6.5.8 and Sections 5.4, 7.4, 7.5, 7.6, 7.9, 7.10, 8.10.1.1.3 and 8.11.1.1.
Safety Standards for Platform Lifts and Stairway Chairlifts	ASME A18.1-1999 A18.1a-2001 A18.1b-2001	7/1/2004	1/1/2008	Adopted Standards and Addenda.

NATIONAL ELEVATOR CODES AND SUPPLEMENTS ADOPTED				
TYPE OF CONVEYANCE	CODE AND SUPPLEMENTS	DATE INSTALLED		COMMENTS
		FROM	TO	
Safety Code for Elevators, Escalators, Dumbwaiters, Residential Elevators, Special Purpose	ASME A17.1-2004 A17.1a-2005	1/1/2008	1/1/2014	Adopted Standards and Addenda Except Rules 2.4.7.2, marked car top clearance space, 8.6.5.8, Maintenance of safety bulkhead, 5.4, Private residence incline elevators, 7.4 & 7.5 & 7.9 & 7.10 Material lifts, 8.10.1.1.3 and 8.11.1.1, QEI-1 inspector.
Safety Code for Platform Lifts and Stairway Chairlifts	ASME A18.1-2005	1/1/2008	<del>(1/1/2014)</del> 9/30/2018	
Safety Code for Belt Manlifts	ASME A90.1-2003	1/1/2008	<del>(1/1/2014)</del> 9/30/2018	
Safety Code for Personnel Hoists, Retroactive	ANSI A10.4-2004	1/1/2008	<del>(1/1/2014)</del> 9/30/2018	
Safety Code for Elevators, Escalators, Dumbwaiters, Residential Elevators, Special Purpose	ASME A17.1-2010	1/1/2014	<del>(8/31/2018)</del> 9/30/2018	
Standard for Elevator Suspension, Compensation, and Governor Systems	ASME A17.6-2010	1/1/2014	Current	
Safety Code for Platform Lifts and Stairway Chairlifts	ASME A18.1-2011	1/1/2014	<del>(8/31/2018)</del> 9/30/2018	
Safety Code for Belt Manlifts	ASME A90.1-2009	1/1/2014	<del>(8/31/2018)</del> 9/30/2018	
Safety Code for Personnel Hoists	ANSI A10.4-2007	1/1/2014	<del>(8/31/2018)</del> 9/30/2018	
Safety Code for Elevators, Escalators, Dumbwaiters, Residential Elevators, and Special Purpose	ASME A17.1-2016/CSA B44-16	<del>(9/1/2018)</del> 10/1/2018	Current	
Guide for Inspection of Elevators, Escalators, and Moving Walks	ASME A17.2-2017	<del>(9/1/2018)</del> 10/1/2018	Current	
Safety Code for Existing Elevators and Escalators	ASME A17.3-2015	<del>(9/1/2018)</del> 10/1/2018	Current	
Safety Standards for Platform Lifts and Stairway Chair Lifts	ASME A18.1-2017	<del>(9/1/2018)</del> 10/1/2018	Current	
Safety Code for Belt Manlifts	ASME A90.1-2015	<del>(9/1/2018)</del> 10/1/2018	Current	
Safety Code for Personnel Hoists	ASSE/ANSI A10.4-2016	<del>(9/1/2018)</del> 10/1/2018	Current	
Safety Code for Material Hoists	ASSE/ANSI A10.5-2013	<del>(9/1/2018)</del> 10/1/2018	Current	

**Note:** Copies of codes and supplements can be obtained from the following: The American Society of Mechanical Engineers (ASME), Order Department 150 Clove Road, 6th Floor, Little Falls, New Jersey 07424-2138 or by visiting [www.asme.org](http://www.asme.org). The American Society of Safety Engineers (ASSE) 1800 East Oakton Street, Des Plaines, IL 60018-2187 or by visiting [www.asse.org](http://www.asse.org).

Comments: Codes adopted by this chapter will be identified with the applicable ASME/ANSI code reference number contained within the rules or as excluded or amended in WAC 296-96-00675.

**AMENDATORY SECTION** (Amending WSR 19-15-118, filed 7/23/19, effective 9/1/19)

**WAC 296-96-00675 Amendments to adopted standards.** (1) Exclude all references to QEI certification in ASME A17.1/CSA B44, ASME A18.1, and ANSI/ASSE A10.4 from code adoption.

(2) ASME A17.1/CSA B44, Section 1.2 Purpose and Exceptions amended as follows: The purpose of this code is to provide for the safety of life and limb, and to promote the

public welfare. Compliance with these rules shall be achieved by:

(a) Conformance with the requirements in ASME A17.1/CSA B44 as amended by this chapter; or

(b) Conformance with a combination of requirements in ASME A17.1/CSA B44, this chapter, and ASME A17.7/CSA B44.7 with the following ASME A17.7/CSA B44.7 inclusions:

(i) All system or component certifications performed by an Accredited Elevator/Escalator Certification Organization

(AECO) under ASME A17.7/CSA B44.7 shall be approved by the department before any such system or component is allowed to be permitted or installed in the state of Washington.

(ii) The applicant shall provide the certificate of certification for the device or system evaluated by an AECO.

(iii) The department has the final authority regarding acceptance of any item in ASME A17.7/CSA B44.7. The department may remove approval if a design has changed or unforeseen or undisclosed information is obtained.

(iv) The department will post the specific ASME A17.7/CSA B44.7 AECO certificate including exceptions agreed upon. At that time the certificate and exceptions become part of the adopted rule in the state of Washington and not subject to a variance process. The installer shall include the certificate and exceptions and all required information on each conveyance installed utilizing the ASME A17.7/CSA B44.7 method in the Maintenance Control Program documentation.

(v) The department may charge an additional fee for each item in review based upon the variance fee table.

(c) Additions or modifications to adopted standards and/or this chapter shall require approval from the department.

(3) ASME A17.1/CSA B44, Section 5.8, Marine Elevators. This section only applies to elevators installed on board a marine vessel flying the Washington state flag and under one hundred gross metric tons.

(4) ASME A17.1/CSA B44, Section 5.11, Wind Turbine Elevator is not adopted.

(5) Periodic tests and inspections. Pursuant to requirements 8.6.1.7 and 8.11.1.3, the department adopts ASME A17.1/CSA B44, Appendix N for the frequency of periodic tests. Pursuant to RCW 70.87.120 (2)(a) periodic inspections shall be performed annually.

(6) ASME A17.1/CSA B44 requirement 8.11.1.1.2 is not adopted. The department shall be permitted to witness periodic tests when the department deems necessary.

(7)((a)) ASME A17.1-2016/CSA B44-16, 8.6.11.1 Firefighters' Emergency Operation is amended as follows: All elevators provided with firefighters' emergency operation shall be subjected quarterly, by authorized personnel, to Phase I recall by use of the keyed switch, and a minimum of one-floor operation on Phase II. Deficiencies shall be corrected. A record of findings shall be available to elevator personnel and the authority having jurisdiction.

((b)) (8) Append ASME A17.1-2016/CSA B44-16, 8.6.4.19.6 as follows: At least once each year, the fire alarm initiating devices associated with elevator recall and shunt trip initiating devices shall be tested to ensure they are still properly interfaced with the elevator control.

This test applies to electric and hydraulic elevators.

(9) ASME A17.3 requirement 3.10.3 is modified as follows: Where the car top stop switch located in the inspection control station is not accessible from the landing, a separate car top stop switch shall be provided as required by ASME A17.1/CSA B44, 2.26.1.4.2(a).

(10) The department will not allow the 8.6.11.10 "Category 5 Tests Without Load Via Alternative Test Methodologies" portion of ASME A17.1 to be followed in Washington.

Standard testing as outlined in ASME A17.1 shall be followed.

AMENDATORY SECTION (Amending WSR 18-18-068, filed 8/31/18, effective 10/1/18)

**WAC 296-96-00904 License requirements for elevator contractors.** (1) Any sole proprietor, firm or corporation wishing to engage in the business of installation, alteration, service, replacement of maintenance of equipment covered by this chapter within the state of Washington shall apply for a license with the department of labor and industries.

The entities above shall obtain and maintain a valid specialty or general contractor registration under chapter 18.27 RCW to engage in the business of conveyance work.

(2) The potential licensee shall complete and submit a department-approved application. As part of the application the following shall be provided:

(a) The employee who is the licensed elevator contractor's primary point of contact.

(b) The number of years the applicant has been engaged in the business of installing, constructing, altering, replacing, maintaining, removing, dismantling and/or servicing conveyances.

(c) Documentation that at least one licensed elevator mechanic is employed by the applicant.

(3) The person representing the company, firm or corporation who is applying for the elevator contractor's license shall be considered the company's primary point of contact and shall:

(a) Provide acceptable proof to the department that shows that the person representing the company, firm, or corporation has five years of work experience in performing conveyance work as verified by current and previous state of Washington elevator licenses; or

(b) Pass a written examination administered by the department on chapter 70.87 RCW and this chapter with a minimum score of seventy percent.

(c) Failure to pass the examination will require the submittal of a new application.

(4) Pay the fees specified in WAC 296-96-00922.

(5) The department may deny application or renewal of a license under this section if the applicant owes outstanding final judgments to the department.

(6) If the primary point of contact identified in subsection (2)(a) of this section separates employment, his/her relationship or designation is terminated, or death of the designated individual occurs, the elevator contractor shall, within ninety days, designate a new individual who has met the requirement noted above to serve as the elevator contractor's primary point of contact. The elevator contractor shall inform the department of the change in writing or the contractor's license will be automatically suspended.

(7) Where unique or product-specific procedures or methods are required to inspect or test equipment, such procedures, or methods shall be:

(a) Provided in the maintenance control program.

(b) Provided by the manufacturer or installer or their license may be suspended.

(c) Available to owners for their use or used by their qualified service provider.

(d) Accessible on-site to elevator personnel (see also ASME A17.1-8.6.1.2.1(f)).

(e) Where special tools or devices are necessary for maintenance and testing of conveyances, they shall remain on-site for the life of the conveyance.

(8) Contractor licenses may be revoked for failure to comply with this subsection.

Legal maintenance contracts notwithstanding, all elevator companies and other approved maintenance providers (see RCW 70.87.270) who continuously demonstrate non-compliance with the maintenance, examination, testing, documentation, and performance of work outlined in ASME A17.1/CSA B44 and this chapter shall:

(a) Be notified in writing by the department outlining the reason or reasons for noncompliance;

(b) Respond to the department inquiry within fifteen days;

(c) Outline a solution(s) agreeable to the department within thirty days;

(i) Otherwise the elevator company's license may be suspended until such a time as they can demonstrate compliance; and

(ii) Other approved maintenance providers shall cease maintenance, examination, and testing until such a time as they can demonstrate compliance. Continuous demonstrations of maintenance, examination, and testing noncompliance shall result in approval being revoked.

**AMENDATORY SECTION** (Amending WSR 19-24-086, filed 12/3/19, effective 12/3/19)

**WAC 296-96-00906 License requirements for elevator mechanics.** (1) Any person wishing to engage in the installation, alteration, service, replacement or maintenance of equipment covered by this chapter within the state of Washington shall apply for a license with the department of labor and industries.

(2) Applicants for a category (01) license as identified under WAC 296-96-00910 shall demonstrate at least one of the following qualifications in order to obtain a license without an exam:

(a) Successfully completed an apprenticeship training program for elevator mechanics and have passed the final examination required by such program; or

(b) Performed at least five thousand four hundred hours of acceptable work experience in construction, installation, maintenance, service or repair of elevators or other conveyances subject to this chapter, as verified by current and prior employers, and have passed a nationally recognized elevator mechanic's examination, such as that administered by the National Elevator Industry Education Program or as approved by the department; or

(c) Possess an elevator mechanic's license from another state that has standards substantially equal to those established in this chapter.

(3) Any person wishing to obtain a category (01) license coming from another state without licensing may obtain a license with examination by paying the required fee and sub-

mitting an application with documentation demonstrating the applicant has worked as an elevator mechanic without supervision for at least five thousand four hundred hours.

(4) Conditions for temporary elevator mechanics: In the event an elevator contractor encounters a verifiable shortage of licensed mechanics, an elevator contractor may request that the department issue temporary elevator mechanic licenses to persons certified by the licensed elevator contractor to have an acceptable combination of documented experience and education to perform elevator work without direct and immediate supervision. Each license shall recite that it is valid for one year to the holder as long as he or she is employed by the licensed elevator contractor that certified the individual as qualified.

As part of the initial licensing process the applicant shall(±) have seventy-five percent of both education and training hours to obtain a license (see WAC 296-96-00908).

(5) Conditions for emergency elevator mechanics: If the governor should declare a state of emergency due to a disaster, or an act of God, or other extenuating circumstances and the number of persons in the state holding valid licenses is insufficient to cope with the emergency, an elevator contractor may request emergency elevator mechanic licenses for persons who are not licensed to perform work subject to this chapter but are certified by the elevator contractor to have an acceptable combination of documented experience and education to perform elevator work without direct and immediate supervision. Each such license shall be valid for a period of thirty days and renewable as long as the emergency exists.

(6) The department may deny renewal or application, or suspend an individual's license if they have an outstanding final judgment.

(7) Qualify for licensing:

(a) For conveyance work covered by all categories identified in WAC 296-96-00910 except personnel hoists (04), material lifts (05), residential conveyances (06), residential inclined elevators (07) and temporary licenses (09), the applicant shall comply with the applicable mechanic licensing requirements as follows:

(i) Test.

(A) The applicant shall provide acceptable proof to the department that shows the necessary combination of documented experience and education credits in the applicable license category (see WAC 296-96-00910) of not less than three years' work experience in the elevator industry under the general direction of a licensed elevator mechanic performing conveyance work in the same category as verified by current and previous employers licensed to do business in this state or as an employee of a public agency;

Acceptable proof may include department-approved forms documenting years of experience, affidavits, letters from previous employers, declarations of experience, education credits, copies of contractor registration information, etc. Additional documentation may be requested by the department to verify the information provided on the application; and

(B) Pass an examination administered by the department on chapter 70.87 RCW and this chapter with a minimum passing score of eighty percent; or

(ii) National exam/education.

(A) Have obtained a certificate of completion and successfully passed the mechanic examination of a nationally recognized training program for the elevator industry such as the National Elevator Industry Educational Program or its equivalent; or

(B) Have obtained a certificate of completion of an apprenticeship program for an elevator mechanic, having standards substantially equal to those of chapter 70.87 RCW and this chapter, and registered with the Washington state apprenticeship and training council under chapter 49.04 RCW; or

(iii) Reciprocity. The applicant shall provide acceptable proof to the department that shows that the applicant is holding a valid license from a state having entered into a reciprocal agreement with the department and having standards substantially equal to those of chapter 70.87 RCW and this chapter.

(b) For conveyance work performed on personnel hoists as identified in WAC 296-96-00910(4):

(i) Test. The applicant shall provide acceptable proof to the department that shows the necessary combination of documented experience and education credits in the applicable license category (see WAC 296-96-00910) of not less than one year's work experience in the elevator industry or not less than three years (for the purpose of this category one year will be equivalent to seven hundred hours) documented experience and education credits in conveyance work under the general direction of a licensed elevator mechanic as described in category (04) performing conveyance work in the same category as verified by current and previous employers licensed to do business in this state; and

(ii) Pass an examination administered by the department on chapter 70.87 RCW, A10.4 and this chapter with a minimum passing score of eighty percent.

(iii) Reciprocity. The applicant shall provide acceptable proof to the department that shows the applicant is holding a valid license from a state having entered into a reciprocal agreement with the department and having standards substantially equal to those of chapter 70.87 RCW and this chapter.

(c) For conveyance work performed on material lifts as identified in WAC 296-96-00910(5):

(i) Test. The applicant and the licensed elevator contractor/employer shall comply with the provisions of RCW 70.87.245; and

(ii) The applicant shall pass an examination administered by the department on chapter 70.87 RCW and this chapter with a minimum passing score of eighty percent;

(d) For residential conveyance work covered by category (06) as identified in WAC 296-96-00910:

(i) Test. The applicant shall provide acceptable proof to the department that shows the necessary combination of documented experience and education credits in the applicable license category (see WAC 296-96-00910) of not less than two years' work experience in the elevator industry performing conveyance work as verified by current and previous employers licensed to do business in this state; and

(ii) Pass an examination administered by the department on chapter 70.87 RCW and this chapter with a minimum passing score of eighty percent.

(e) For residential inclined conveyance work covered by category (07) as identified in WAC 296-96-00910;

(i) Test. The applicant shall provide acceptable proof to the department that shows the necessary combination of documented experience and education credits in the applicable license category (see WAC 296-96-00910) of not less than one year's work experience in the elevator industry or not less than three years' documented experience and education credits in conveyance work as described in category (01) performing conveyance work as verified by current and previous employers licensed to do business in this state; and

(ii) Pass an examination administered by the department on chapter 70.87 RCW and this chapter with a minimum passing score of eighty percent.

(f) For temporary mechanic licenses as identified in WAC 296-96-00910 category (09) the applicant shall provide acceptable proof from a licensed elevator contractor that attests that the individual is competent to perform work under chapter 70.87 RCW and this chapter.

(8) Complete and submit a department-approved application.

An applicant who is required to take an examination under the provisions of this section may not perform the duties of a licensed elevator mechanic until the applicant has been notified by the department that he/she has passed the examination.

(9) Pay the fees specified in WAC 296-96-00922.

(10) The department may deny application of a license under this section if the applicant owes outstanding final judgments to the department or does not meet the minimum criteria established in the elevator laws and rules.

**AMENDATORY SECTION** (Amending WSR 18-18-068, filed 8/31/18, effective 10/1/18)

**WAC 296-96-00910 Elevator mechanic license categories.** The following are the licensing categories for qualified elevator mechanics or temporary elevator mechanics:

(1) **Category (01):** A general elevator mechanic license encompasses the installation, alteration, maintenance, inspection, relocation, decommission, removal, and repair of all types of elevators and other conveyances in any location covered under chapter 70.87 RCW and this chapter.

(2) **Category (02):** This license is limited to the installation, alteration, maintenance, inspection, relocation, decommission, removal, and repair of the following commercial and residential conveyances:

(a) Residential conveyances:

(i) Wheelchair lifts\*;

(ii) Dumbwaiters;

(iii) Incline chairlifts\*; and

(iv) Residential elevators.

\*License is not required to remove these.

(b) Commercial conveyances:

(i) Wheelchair lifts;

(ii) Dumbwaiters;

(iii) Incline chairlifts; and

(iv) LULA elevators.

(3) **Category (03):** This license is limited to the installation, alteration, maintenance, inspection, relocation, decom-

mission, removal, and repair of the following conveyances in industrial sites and grain terminals:

- (a) Electric and hand-powered manlifts;
- (b) Special purpose elevators; and
- (c) Belt manlifts.

(4) **Category (04):** This license is limited to the installation, alteration, maintenance, inspection, relocation, decommission, removal, and repair of the following conveyances:

- (a) Temporary personnel hoists;
- (b) Temporary material hoists; and
- (c) Special purpose elevators.

(5) **Category (05):** This license is limited to the installation, alteration, maintenance, inspection, relocation, decommission, removal, and repair of material lifts.

(6) **Category (06):**

(a) This license is limited to the installation, alteration, maintenance, inspection, relocation, decommission, and repair of the following conveyances:

- (i) Residential wheelchair lifts;
- (ii) Residential dumbwaiters; and
- (iii) Residential incline chairlifts.

(b) Work experience on conveyances in (a)(i), (ii), and (iii) of this subsection may not be all inclusively applied toward the category (02) license requirements.

**Note:** Maintenance work performed by the owner or at the direction of the owner is exempted from licensing requirements if the owner resides in the residence at which the conveyance is located and the conveyance is not accessible to the public. Such exempt work does not count toward work experience for licensure.

(7) **Category (07):** This license is limited to the installation, alteration, maintenance, inspection, relocation, decommission, and repair of residential inclined elevators.

**Note:** Maintenance work performed by the owner or at the direction of the owner is exempted from licensing requirements if the owner resides in the residence at which the conveyance is located and the conveyance is not accessible to the public. Such exempt work does not count toward work experience for licensure.

(8) **Category (08):** This license is limited to maintenance and nonalteration repair and replacement of all conveyances and is further limited to employees of public agencies to obtain and maintain the license. This work should not count towards other licenses.

(9) **Category (09):** A temporary license is limited to the installation, alteration, maintenance, inspection, relocation, decommission, removal, and repair of conveyances in the category for which the license is sought. The license shall be issued pursuant to the conditions of RCW 70.87.250.

(10) **Category (10):** An emergency license is limited to the installation, alteration, maintenance, inspection, relocation, decommission, removal, and repair of conveyances by elevator mechanics that are certified by an elevator contractor to have an acceptable combination of documented experience and education to perform elevator work without direct and immediate supervision and is further limited for use during a state of emergency.

AMENDATORY SECTION (Amending WSR 19-24-086, filed 12/3/19, effective 12/3/19)

**WAC 296-96-00912 License renewal requirements.**

(1) An elevator contractor or elevator mechanic license issued pursuant to this chapter shall be valid for a period of two years and may be renewed by submission of a renewal application to the department, payment of a renewal fee as specified in WAC 296-96-00922 and proof of compliance with the requirements of this chapter.

(a) Elevator contractor licenses expire on the calendar date two years from issuance.

Upon applying for renewal the elevator contractor shall verify the primary point of contact information is correct.

(b) Elevator mechanic licenses expire on the licensee's birth date in the calendar year two years from the year of application. It is noted that the initial license term may be valid for a longer or shorter period of time depending on when the licensee's birthday falls compared to the date on which the initial license was issued.

(i) If a license is issued in an even-numbered year, the license will expire on the license holder's birth date in the next even-numbered year.

(ii) If a license is issued in an odd-numbered year, the license will expire on the license holder's birth date in the next odd-numbered year.

(c) Renewal of an elevator mechanic license shall be conditioned upon completion of not less than eight hours of instruction within one year immediately preceding a license renewal application and submission of a certificate of completion for the course. Continuing education courses and instructors shall be approved by the department.

(2) Temporary elevator mechanics (category (09)). A temporary elevator mechanic license may be renewed at the discretion of the department. Examples include, but are not limited to, abnormally high rate of construction or natural disaster.

(a) The renewal period is one year from the date of issuance.

(b) As part of the renewal process the applicant shall:

(i) Complete and submit a department-approved application.

(ii) Pay the fees specified in WAC 296-96-00922.

(iii) Have seventy-five percent of both education and training hours to obtain a license (see WAC 296-96-00908).

**Note:** The department may require the applicant demonstrate more than seventy-five percent of education hours if multiple temporary licenses are requested.

(3) The department may deny renewals of licenses under this section if the applicant owes outstanding final judgments to the department. Final judgment also includes any penalties assessed against an individual or firm owed the department because of an unappealed civil penalty or any outstanding fees due under chapter 70.87 RCW and this chapter.

(4) Renewals will be considered timely when the renewal application is received on or prior to the expiration date of the license.

(5) Renewals are considered late if the renewal applications are received after the expiration date of the license but no later than ninety days after the expiration of the licenses.

If the application is not received within ninety days from license expiration, the licensee must reapply and pass the competency examination.

(6) A mechanic licensed in the state of Washington may take a withdrawal if they are no longer working for a company licensed in the state or no longer performing work that requires a license. A mechanic holding a valid license that wishes to withdraw their license shall submit their request, in writing, to the department of labor and industries elevator section prior to the license expiration date. To cancel a withdrawal request and be reinstated, the mechanic shall submit their request in writing, reapply, complete the required continuing education, and pay the renewal licensing fee.

AMENDATORY SECTION (Amending WSR 18-18-068, filed 8/31/18, effective 10/1/18)

**WAC 296-96-00916 Continuing education course provider requirements.** (1) The department approves continuing education course providers.

(2) The department will review and approve courses.

(a) All providers seeking course approval shall submit the required information to the department on a form provided by the department.

(b) The courses shall be taught by instructors through continuing education providers; courses may include, but are not limited to, association seminars and labor training programs.

(c) All instructors shall be approved by the department and are exempt from the requirements of WAC 296-96-00912 (2)(b)(ii) regarding his or her application for license renewal, provided that such applicant was qualified as an instructor at any time during the one year immediately preceding the scheduled date for such renewal and the instructor shall have taught two or more courses in the year preceding the renewal.

(d) All training courses shall conform to and be based upon current standards and requirements governing the operation, construction, installation, alteration, inspection and repair of elevators and other conveyances.

(e) All course approval requests shall include:

(i) A general description of the course, including its scope, the instructional materials to be used and the instructional methods to be followed;

(ii) A detailed course outline;

(iii) A sample copy of the certificate that will be provided to the attendee. The certificate shall note the name of the course, the number of hours as approved by the department, a course number if one has been assigned by the provider, the date the education was completed and the instructor's signature and the student's signature. The certificate must state that it is not valid without the signatures of the instructor and the student.

(iv) The name and qualifications of the course instructor(s);

(v) The locations where the course will be taught;

(vi) The days and hours the course will be offered; and

(vii) The specific fees associated with the course, as well as, the total cost of the course.

(f) Training courses will be approved for a two-year period.

(g) It is the responsibility of the provider to annually review and update its courses and to notify the department of any changes.

(h) The department may withdraw its approval of any training course if it determines the provider is no longer in compliance with the requirements of this chapter. If the department withdraws its approval of a training course, it will give the provider written notification of the withdrawal, specifying the reasons for its decision.

(i) Approved training providers shall keep uniform records, for a period of ten years, of attendance of licensees and these records shall be available for inspection by the department at its request. The provider shall submit a list of names of the attendees to the department on or before thirty days after the date of the course being held. Approved training providers are responsible for the security of all attendance records and certificates of completion. Falsifying or knowingly allowing another to falsify attendance records or certificates of completion constitutes grounds for suspension or revocation of the approval required under this section.

AMENDATORY SECTION (Amending WSR 19-24-086, filed 12/3/19, effective 12/3/19)

**WAC 296-96-00922 Licensing fees.** The following are the department's elevator license fees:

Type of Fee	Period Covered by Fee	Dollar Amount of Fee
Elevator contractor/mechanic application fee (not required for renewal of valid license)	Per application	<del>\$(66.80)</del> <u>70.10</u>
Elevator contractor/mechanic examination fee	Per application	<del>\$(201.30)</del> <u>211.50***</u>
Reciprocity application fee	Per application*	<del>\$(66.80)</del> <u>70.10</u>
Elevator mechanic license	2 years	<del>\$(134.10)</del> <u>140.90</u>
Elevator contractor license	2 years	<del>\$(134.10)</del> <u>140.90</u>
Temporary elevator mechanic license application fee (not required for renewal)	Per application	<del>\$(66.80)</del> <u>70.10</u>
Temporary elevator mechanic license	1 year	<del>\$(134.10)</del> <u>140.90</u>
Emergency elevator mechanic license	30 days	<del>\$(33.20)</del> <u>34.80</u>

Type of Fee	Period Covered by Fee	Dollar Amount of Fee
Elevator mechanic/contractor timely renewal fee	2 years	\$((134.10)) <u>140.90</u>
Elevator mechanic/contractor late renewal fee	2 years	\$((268.60)) <u>282.20</u>
Temporary elevator mechanic timely renewal fee	1 year	\$((134.10)) <u>140.90</u>
Temporary elevator mechanic late renewal fee	1 year	\$((268.60)) <u>282.20</u>
Training provider application/renewal fee	2 years	\$((134.10)) <u>140.90</u>
Continuing education course fee by approved training provider	1 year**	Not applicable
Replacement of any licenses		\$((19.90)) <u>20.90</u>
Refund processing fee		\$((40.00)) <u>42.00</u>

\* Reciprocity application is only allowed for applicants who are applying for licensing based upon possession of a valid license that was obtained in state(s) with which the department has a reciprocity.

\*\* This fee is paid directly to the continuing education training course provider approved by the department.

\*\*\*This fee may be collected by an outside vendor for some exams and may differ from the fee shown above.

**AMENDATORY SECTION** (Amending WSR 18-24-102, filed 12/4/18, effective 1/4/19)

**WAC 296-96-01005 Obtaining permits.** (1) See WAC 296-96-01000 for the permit process.

(2) Construction and alteration permits are valid for one year from the date of issue. However, permits may be renewed if:

(a) Application for a renewal permit is submitted before the current permit expires;

(b) The department approves the request for a renewal permit; and

(c) A renewal fee of \$((60.60)) 63.60 is paid to the department for each permit renewed;

(3) If the permit has expired the applicant shall reapply for a new permit.

(4) See WAC 296-96-01006 for work requiring a permit.

**AMENDATORY SECTION** (Amending WSR 18-24-102, filed 12/4/18, effective 1/4/19)

**WAC 296-96-01010 Installation and alteration permit fees.** Permit fees are based on the total cost of the conveyance or alteration and the labor to install or alter the conveyance. The following permit fees apply to the construction, alteration, or relocation of all conveyances except personnel and material hoists (see WAC 296-96-01025):

TOTAL COST OF INSTALLATION OR ALTERATION	FEE
\$0 to and including \$1,000	\$((66.80)) <u>70.10</u>
\$1,001 to and including \$5,000	\$((100.30)) <u>105.40</u>
\$5,001 to and including \$7,000	\$((167.60)) <u>176.10</u>
\$7,001 to and including \$10,000	\$((201.30)) <u>211.50</u>
\$10,001 to and including \$15,000	\$((268.60)) <u>282.20</u>
OVER \$15,000 for installation only*	\$((376.00)) <u>395.10</u> plus
OVER \$15,000 for alteration only*	\$((268.60)) <u>282.20</u>
*Each additional \$1,000 or fraction thereof	\$((9.20)) <u>9.60</u>

**AMENDATORY SECTION** (Amending WSR 18-24-102, filed 12/4/18, effective 1/4/19)

**WAC 296-96-01025 Permit fees for personnel and material hoists.** The fee for each personnel hoist or material hoist installation is \$((268.60)) 282.20.

See WAC 296-96-01035(2) for requirements for jumps.

**Note:** An operating certificate is also required for these types of conveyances.

**AMENDATORY SECTION** (Amending WSR 18-24-102, filed 12/4/18, effective 1/4/19)

**WAC 296-96-01027 Permit fee refunds.** The initial installation permit fees are refundable minus a processing fee if the installation work has not been performed. No refunds will be issued for expired permits. All requests for refunds shall be submitted in writing to the elevator section and shall identify the specific permits and the reasons for which the refunds are requested.

The processing fee for each refund is \$((40.00)) 42.00.

**AMENDATORY SECTION** (Amending WSR 18-24-102, filed 12/4/18, effective 1/4/19)

**WAC 296-96-01030 Plan approval.** Prior to the start of construction and the issuance of a permit, the applicant shall submit to the department for approval a permit application and plans for new installations or major alterations. To be approved, the plan shall comply with the latest adopted applicable standard and applicable Washington Administrative Code (WAC). In addition, the plans shall include all informa-

tion necessary to determine whether each installation/alteration complies with all applicable codes. The permit holder shall keep a copy of the approved plan on the job site until the department has witnessed all acceptance tests. Any alterations to the approved plan shall be submitted to the department for approval before a final inspection will be conducted. The nonrefundable fees for ~~((reviewing the plans))~~ processing the applications are ~~\$(~~(33-20)~~)~~ 34.80 for each installation/major alteration.

**Exception:** Residential incline chair lifts will not require plan review. Equipment shall be listed and labeled by a product testing laboratory which is accredited by the department and plans supplied by the manufacturer shall be on-site. If the equipment is not listed and labeled as per RCW 19.28.010 it shall be field evaluated or replaced with equipment that is listed and labeled by a product testing laboratory which is accredited by the department. The department may request additional information as deemed necessary to determine if lifts comply with current codes and testing standards. Governor overspeed safety testing shall be verified by manufacturer's documentation (see A18.1 Requirement 9.9.3). The test results certified by, a nationally recognized testing laboratory (NRTL). Certification shall be provided at time of application.

**AMENDATORY SECTION** (Amending WSR 18-24-102, filed 12/4/18, effective 1/4/19)

**WAC 296-96-01035 Inspection fees.** The initial inspection of construction, alteration or relocation of a conveyance is included with the permit fee. Once the department has approved the initial installation of the conveyance, a temporary 30-day operating certificate will be issued. Prior to the expiration of the 30-day temporary operating certificate, the application for an annual operating certificate and the appropriate fees shall be paid to the department. Once the department has received the appropriate fees and application the owner will be issued the first annual operating certificate. The owner or owner's representative will receive an invoice from the department for renewal. The owner is required to renew the annual operating certificate yearly.

The following inspections require an additional inspection fee:

(1) **Reinspection.** If a conveyance does not pass an initial inspection and an additional inspection is required, the fee for each reinspection of a conveyance is ~~\$(~~(134-10)~~)~~ 140.90 per conveyance plus ~~\$(~~(65-10)~~)~~ 68.40 per hour for each hour in addition to the first hour.

The department may waive reinspection fees.

(2) **Inspecting increases in the height (jumping) of personnel and material hoists.**

The fee for inspecting an increase in the height (jumping) of each personnel hoist or material hoist is ~~\$(~~(134-10)~~)~~ 140.90 plus ~~\$(~~(66-80)~~)~~ 70.10 per hour for each hour in addition to 2 hours. This fee is for inspections occurring during regular working hours.

The permit holder may be allowed to operate a hoist prior to the jump inspection if:

(a) The electrical limits will not allow the lift to operate above the previously inspected landing; and

(b) The state elevator inspector is contacted, agrees and can schedule an inspection within 3 days.

(3) **Variance inspections.**

(a) The fee for an on-site variance inspection is ~~\$(~~(201-30)~~)~~ 211.50 per conveyance plus ~~\$(~~(66-80)~~)~~ 70.10 per hour for each hour in addition to 2 hours. This fee is for inspections occurring during regular working hours.

(b) The fee for a variance that does not require an on-site inspection is ~~\$(~~(66-80)~~)~~ 70.10 per conveyance. The individual requesting the variance shall provide the department with pictures, documentation, or other information necessary for the department to review the variance. The department may conduct an on-site variance inspection to verify the information provided or if it determines that an inspection is necessary. If an on-site variance inspection is performed, the fees in (a) of this subsection will apply.

(4) **"Red tag" status fee.** The annual fee for a conveyance in "Red tag" status is ~~\$(~~(33-20)~~)~~ 34.80.

**Note:** The department shall be provided with written approval from the building official, indicating that the conveyance is not required for building occupancy, when applying to have the conveyance placed in voluntary red tag status.

(5) **Decommission inspection.** The fee for performing a decommission inspection is ~~\$(~~(66-80)~~)~~ 70.10. Once the decommission inspection has been performed and approved, the conveyance will no longer require annual inspections until such time that the conveyance is brought back into service. Prior to operating the conveyance, a new inspection and annual operating permit shall be obtained.

(6) **Voluntary inspections by request.** The owner or potential purchaser of a building within the department's jurisdiction may request a voluntary inspection of a conveyance. The fee for this inspection will be ~~\$(~~(134-10)~~)~~ 140.90 per conveyance and ~~\$(~~(66-80)~~)~~ 70.10 per hour for each hour in addition to 2 hours plus the standard per diem and mileage allowance granted to department inspectors. The owner/potential purchaser requesting the voluntary inspection will not be subject to any penalties based on the inspector's findings.

**AMENDATORY SECTION** (Amending WSR 18-24-102, filed 12/4/18, effective 1/4/19)

**WAC 296-96-01040 Construction-use inspection fee.**

(1) The fee for the inspecting and testing of elevators used for construction is ~~\$(~~(107-20)~~)~~ 112.60, in addition to any other fees required in this chapter. This fee purchases a 30-day temporary use permit that may be renewed at the department's discretion.

(2) When this temporary use permit is purchased, a notice declaring that the equipment has not received final approval from the department shall be conspicuously posted in the elevator.

**AMENDATORY SECTION** (Amending WSR 18-24-102, filed 12/4/18, effective 1/4/19)

**WAC 296-96-01045 Residential elevator inspection and fees.** (1) Chapter 70.87 RCW requires the department to inspect all new, altered or relocated conveyances operated

exclusively for single-family use in private residences. Prior to installation, a licensed elevator contractor shall complete a permit application as described in WAC 296-96-01005 and pay the appropriate fee listed in WAC 296-96-01010.

(2) Chapter 70.87 RCW allows the department to inspect conveyances operated exclusively for single-family use in private residences when the department is investigating an accident or an alleged or apparent violation of the statute or these rules.

(3) No annual inspection and operating certificate is required for a private residence conveyance operated exclusively for single-family use unless the owner requests it. When an owner requests an inspection and an annual operating certificate, the following fee shall be paid prior to an inspection:

TYPE OF CONVEYANCE	FEE
Each inclined stairway chair lift in private residence . . . . .	\$(( <del>31.20</del> )) <u>32.70</u>
Each inclined wheel chair lift in a private residence . . . . .	\$(( <del>31.20</del> )) <u>32.70</u>
Each vertical wheel chair lift in a private residence . . . . .	\$(( <del>39.30</del> )) <u>41.30</u>
Each dumbwaiter in a private residence . . . . .	\$(( <del>31.20</del> )) <u>32.70</u>
Each inclined elevator at a private residence . . . . .	\$(( <del>111.50</del> )) <u>117.10</u>
Each private residence elevator . . . . .	\$(( <del>71.80</del> )) <u>75.40</u>
Duplication of a lost, damaged or stolen operating permit . . . . .	\$(( <del>13.10</del> )) <u>13.70</u>

AMENDATORY SECTION (Amending WSR 18-24-102, filed 12/4/18, effective 1/4/19)

**WAC 296-96-01055 Technical services and consultations.** A person, firm, corporation, or governmental agency may request elevator field technical services from the department by paying a fee of \$((~~80.30~~)) 84.30 per hour or any portion thereof (including travel time) plus the standard per diem and mileage allowance granted to department inspectors. These field technical services may include code evaluation, code consultation, plan examination, code interpretation, and clarification of technical data relating to the application of the department's conveyance rules. Field technical services do not include inspections.

AMENDATORY SECTION (Amending WSR 18-24-102, filed 12/4/18, effective 1/4/19)

**WAC 296-96-01057 Accident investigations.** The department shall investigate an injury-related accident reported by the owner or owner's duly authorized agent. The department may charge at a rate of \$((~~80.30~~)) 84.30 per hour or portion thereof (including travel time) plus the standard per diem and mileage allowance granted to department inspectors.

AMENDATORY SECTION (Amending WSR 18-24-102, filed 12/4/18, effective 1/4/19)

**WAC 296-96-01060 Inspections after normal business hours.** An inspection outside of normal business hours and business days (i.e., Monday through Friday excluding holidays; 7:00 a.m. to 5:00 p.m.) may be requested under the following conditions:

- (1) An inspector is available; and
- (2) The inspection is authorized by the department.
- (3) The minimum fee for an after-hours inspection is \$((~~100.30~~)) 105.40 and \$((~~100.30~~)) 105.40 per hour for each hour in addition to the first hour plus the standard per diem and mileage allowance granted to department inspectors.

(4) This fee is in addition to any other fees required for the project.

AMENDATORY SECTION (Amending WSR 18-24-102, filed 12/4/18, effective 1/4/19)

**WAC 296-96-01065 Annual operating permit fees.** An annual operating certificate will be issued to the building owner upon payment of the appropriate fee. The owner of record shall be invoiced by the department. If a change of ownership has occurred, it is the new owner's responsibility to ensure the department has the corrected information. Below is the fee structure table:

TYPE OF CONVEYANCE	FEE
Each hydraulic elevator . . . . .	\$(( <del>134.10</del> )) <u>140.90</u>
Each roped-hydraulic elevator . . . . .	\$(( <del>167.60</del> )) <u>176.10</u>
plus for each hoistway opening in excess of two . . . . .	\$(( <del>13.10</del> )) <u>13.70</u>
Each cable elevator . . . . .	\$(( <del>167.60</del> )) <u>176.10</u>
plus for each hoistway opening in excess of two . . . . .	\$(( <del>13.10</del> )) <u>13.70</u>
Each cable elevator traveling more than 25 feet without an opening—for each 25 foot traveled . . . . .	\$(( <del>13.10</del> )) <u>13.70</u>
Each limited-use/limited-application (—LULA) elevator . . . . .	\$(( <del>134.10</del> )) <u>140.90</u>
Each escalator . . . . .	\$(( <del>111.40</del> )) <u>117.00</u>
Each dumbwaiter in other than a private residence . . . . .	\$(( <del>71.80</del> )) <u>75.40</u>
Each material lift . . . . .	\$(( <del>134.10</del> )) <u>140.90</u>
Each incline elevator in other than a private residence . . . . .	\$(( <del>144.20</del> )) <u>151.50</u>
Each belt manlift . . . . .	\$(( <del>134.10</del> )) <u>140.90</u>
Each stair lift in other than a private residence . . . . .	\$(( <del>71.80</del> )) <u>75.40</u>

TYPE OF CONVEYANCE	FEE
Each wheel chair lift in other than a private residence . . . . .	\$(( <del>71.80</del> )) <u>75.40</u>
Each personnel hoist . . . . .	\$(( <del>134.10</del> )) <u>140.90</u>
Each grain elevator personnel lift . . . . .	\$(( <del>111.40</del> )) <u>117.00</u>
Each material hoist . . . . .	\$(( <del>134.10</del> )) <u>140.90</u>
Each special purpose elevator . . . . .	\$(( <del>134.10</del> )) <u>140.90</u>
Each private residence elevator installed in other than a private residence . . . . .	\$(( <del>134.10</del> )) <u>140.90</u>
Each casket lift . . . . .	\$(( <del>111.40</del> )) <u>117.00</u>
Each sidewalk freight elevator . . . . .	\$(( <del>111.40</del> )) <u>117.00</u>
Each hand-powered manlift or freight elevator . . . . .	\$(( <del>75.50</del> )) <u>79.30</u>
Each boat launching elevator . . . . .	\$(( <del>111.40</del> )) <u>117.00</u>
Each auto parking elevator . . . . .	\$(( <del>111.40</del> )) <u>117.00</u>
Each moving walk . . . . .	\$(( <del>111.40</del> )) <u>117.00</u>
Duplication of a damaged, lost or stolen operating permit . . . . .	\$(( <del>13.10</del> )) <u>13.70</u>

**AMENDATORY SECTION** (Amending WSR 18-18-070, filed 8/31/18, effective 10/1/18)

**WAC 296-96-02410 Alterations.** (1) Where there is an associated seismic or ADA requirement to the equipment or system being altered, the equipment shall also be brought into compliance with the applicable seismic and/or ADA requirements during the alteration.

(2) Machine room, control room, machinery space, and control space illumination shall be required to meet the minimum illumination levels as required by the latest adopted code.

(3) Where a new jack assembly or hydraulic pump unit is installed, a seismic (overspeed) valve shall be installed according to ASME A17.1/CSA B44, Section 8.4.11.

(4) When new elevator equipment is installed in a machine or control room, receptacles shall comply with current adopted edition of NFPA 70 (see Art. 620.23).

(5) When new equipment is installed in the elevator pit, illumination levels shall be required to meet the minimum illumination levels required by the current adopted edition of ASME A17.1/CSA B44. Receptacles in the pit area shall be of the GFCI type (see NFPA 70, Art. 620.24).

(6) Where the main line disconnect is being replaced or relocated, and the machine room or hoistway is sprinklered,

or in the process of being sprinklered, a shunt-trip device shall be installed.

**Section 4**

**Machine Space in Hoistways**

**AMENDATORY SECTION** (Amending WSR 18-18-070, filed 8/31/18, effective 10/1/18)

**WAC 296-96-02452 Access to machines, overhead sheaves, shackles, and hitch supports.** When the machine space is provided inside the hoistway, maintainable items on the machine, overhead sheaves, shackles, and hitch supports shall not be located more than ~~((six feet six inches))~~ 78 in. from the horizontal plane of the car top.

**Section ((4)) 5**

**Main Line Disconnects and Shunt-Trip Breakers**

**AMENDATORY SECTION** (Amending WSR 18-18-070, filed 8/31/18, effective 10/1/18)

**WAC 296-96-02460 Location.** (1) The main line disconnect(s) shall be located per NFPA 70, Article 620.51(c) and:

- (a) Inside the machine room door on the strike side of the machine or control room door;
- (b) Not more than ~~((twenty four inches))~~ 24 in. from the door to the operating handle; and
- (c) Be at a height not less than ~~((thirty six inches))~~ 36 in. nor more than ~~((sixty six inches))~~ 66 in. above the finish floor as measured centerline to the disconnect handle.

(2) For multicar machine rooms the switches shall be grouped together as close as possible to that location.

(3) For machine rooms with double swing doors, the doors shall swing out and the switch(es) shall be located on the wall adjacent to the hinge side of the active door panel.

(4) Shunt-trip breakers, where provided, shall be located in the elevator machine room or control room.

(5) Where shunt-trip breakers are also being used as a main line disconnect, they shall comply with subsections (1) through (3) of this section.

**EXCEPTION:** Special purpose, residential elevators, and residential inclined elevators are exempt from this section. For LULAs, the main disconnect and car light disconnect shall be located adjacent to the controller when not located in a dedicated machine room. When a machine room is provided it shall comply with this section.

**Section ((5)) 6**

**Additional Machine/Control Room Requirements**

**AMENDATORY SECTION** (Amending WSR 18-18-070, filed 8/31/18, effective 10/1/18)

**WAC 296-96-02465 Machine rooms, control rooms, and control spaces.** (1) The lighting control switch shall be located inside the machine room or control room within

~~((twenty-four inches))~~ 24 in. of the lock jamb side of the access door.

For machine rooms and control rooms with double swing doors, the doors shall swing out and the switch(es) shall be located on the wall adjacent to the hinge side of the active door panel.

(2) Elevator machine room, control room, and control space access doors shall be provided with a sign that reads "Elevator Equipment Room/Authorized Personnel Only! Storage of equipment not pertaining to the elevator is prohibited." The sign shall be located approximately 60 in. above floor level. Lettering shall not be less than 0.375 in. in height and shall contrast with the background. Where double doors are provided, the sign is only required to be provided on the active door panel.

**EXCEPTION:** Residential conveyances, LULAs and special purpose elevators are exempted from these requirements.

(3) The temperature and humidity shall comply with ASME A17.1/CSA B44. Where no manufacturer's temperature range is available, the room or space shall be kept between 13°C (55°F) and 38°C (100°F).

**Section 7**

**Fire Service, Sprinklers, Sprinkler Pipes, Shunt Trip**

~~((Car(s)))~~

**Section ~~((6))~~ 8**

**Correction Facility Elevators**

**Section 9**

**Additional Requirements**

AMENDATORY SECTION (Amending WSR 18-18-070, filed 8/31/18, effective 10/1/18)

**WAC 296-96-02530 Handrails.** Handrails are not required. Where handrails are provided in elevator cars, ~~((their configuration))~~ they shall comply with ~~((ADAAG or ICC A117.1))~~ the following:

- (1) Be securely attached to the wall;
- (2) Be located at a height between 32 in. and 38 in. from the top of the handrail to the floor; and
- (3) Be constructed with smooth surfaces and no sharp corners; and
- (4) Be configured with a gripping surface as required by ANSI/ICC A117.1 for handrails.

~~((Note))~~  
**Exception:** Residential conveyances are excluded from this requirement.

**Section 10**

**Hoistway and Pit**

AMENDATORY SECTION (Amending WSR 18-18-070, filed 8/31/18, effective 10/1/18)

**WAC 296-96-02552 Location of equipment in hoistway.** Elevator equipment shall be permitted to be located within the hoistway subject to the requirements in ASME A17.1/CSA B44 and the following:

(1) Where an elevator cannot be prevented from movement electrically and mechanically prior to entering the ~~((hoistway or))~~ pit area~~(, the following restrictions shall apply:~~

~~((a)))~~ motor controllers, motion controllers, drives, hydraulic control valves, hydraulic reservoir (tank), ~~((and))~~ hydraulic pump motors, and driving machines shall not be located in the ~~((hoistway or))~~ pit.

~~((b))~~ Driving machines shall not be located in the pit.

(2) ~~((The ability to activate the))~~ Where a means is used to secure the elevator electrically and mechanically prior to entering the pit, the means shall be designed such that the activation can be performed without full bodily entry into the ~~((hoistway or))~~ pit.

~~((3))~~ Elevator controls and machinery other than driving machines, hydraulic cylinder, piston, governor, and their components shall be located in a room dedicated exclusively to elevator equipment.

(4) Drive sheaves, deflector sheaves, machine parts and supports are permitted to project into the hoistway.

**Section 11**

**Outside Hoistway**

AMENDATORY SECTION (Amending WSR 18-18-070, filed 8/31/18, effective 10/1/18)

**WAC 296-96-02580 Inspection keys ~~((required on-site))~~.** ~~((The keys for Group 2 Authorized Personnel (see ASME A17.1/CSA B44 8.1.3) shall be located in a locked key retainer box in the elevator lobby at the designated level above the hall buttons, or located by machine room doors at no more than six feet above the floor, provided access to the key box doesn't require passage through locked doors. If in order to meet this requirement the box would be located in an unsecured location (such as the outside portion of a condo); other arrangements shall be accommodated with the written permission of the department.~~

The key retainer box shall be:

- Readily accessible to authorized personnel;
- Clearly labeled "ELEVATOR";
- Securely mounted;
- Equipped with a 1-inch mortise cylinder cam lock with keyway set to a #39504 Fort type key;

Further:

- Keys for access to elevator machine rooms and for operating elevator equipment shall be tagged and kept in the key box.

~~• The box shall contain all keys associated with the Group 2 Security and applicable to the elevator(s) (see ASME A17.1/CSA B44, Req. 8.1.3).~~

~~• Mechanical hoistway access devices shall be located in the key box or machine room.)~~ (1) All keys necessary for the operation and maintenance of the elevator(s) shall be provided and kept on-site in a key retainer box.

(2) The key retainer box shall be:

(a) Located in the elevator lobby at the designated level above the hall buttons or located by the machine room door at a height not more than 72 in. above the floor. Access to the key box shall not require passage through locked doors;

(b) Readily accessible to inspection personnel;

(c) Clearly labeled "ELEVATOR;"

(d) Securely mounted;

(e) Equipped with a 1-inch mortise cylinder cam lock with keyway set to a #39504 barrel type key;

(f) Keys for access to the elevator machine rooms and for operating elevator equipment shall be labeled as to their function and kept in the key box;

(g) Mechanical hoistway access devices shall be located in the key box. Where the key cannot fit into the key box, it may be located in the machine/control room;

(h) Where the box cannot be located as indicated in (a) of this subsection, it shall be permitted to be in an unsecured location (such as the outside portion of a condominium). Other arrangements shall be accommodated with the written permission of the department;

(i) No persons except the building owner and inspectors shall have access to the key box; and

(j) All other keys kept elsewhere on-site shall be segregated into groups and secured as required by ASME A17.1/CSA B44, Section 8.1.

~~(Note)~~ The cities of Seattle and Spokane may designate their own options for keys and lockbox arrangement via their rule processes.

**Exceptions:** Residential elevators are exempt from this section.

~~((EXCEPTION: Residential elevators are exempt from this section.))~~

## Section 12

### Accessibility Equipment

~~((Accessibility Equipment))~~

AMENDATORY SECTION (Amending WSR 18-18-070, filed 8/31/18, effective 10/1/18)

**WAC 296-96-02605 Private residence inclined stairway chairlifts.** (1) Battery operated private residence inclined stairway chairlifts are not required to be permanently wired or installed on an individual branch circuit as required by ~~((NEC))~~ NFPA 70 620.51 (A) Exception 2. These conveyances shall be permitted to use a cord and plug that will act as the equipment disconnecting means. The circuit, which is used for the equipment, shall have overcurrent protection that will protect the circuit and the equipment. The circuit shall have sufficient capacity to support the additional load of the stairway chairlift. Units that are operated by line voltage shall comply with NEC 620.51 (A) Exception 2.

(2) ~~((A free passage width of not less than seventeen inches shall be provided. If the chair can be folded when not in use the distance can be measured from the folded chair. When in use there must be a minimum of two inches between any body part and the nearest obstruction.))~~ Governor overspeed safety testing shall be verified by manufacturer's documentation (see A18.1 Requirement 9.9.3). Safeties shall be manually tripped at rated speed with no load on the chair (see A18.1 Section 10.4).

AMENDATORY SECTION (Amending WSR 18-18-070, filed 8/31/18, effective 10/1/18)

**WAC 296-96-02640 ((Incline)) Inclined commercial stairway chair lifts.** Governor overspeed safety testing shall be verified by ~~((manufacturer))~~ manufacturer's submitted documentation ~~((and manually tripped at rated speed with no load))~~ at time of permit (see A18.1 Requirement 9.9.3). Safeties shall be manually tripped at rated speed with no load on the chair (see A18.1 Section 10.4).

### NEW SECTION

**WAC 296-96-02650 Additional required on-site documentation.** (1) Wiring diagrams.

(2) A log identifying applicable tests.

(3) Manufacturer's operational instructions that include the operation of the manual lowering device.

(4) Maintenance logs shall include the following tasks:

(a) Stair chair lifts:

(i) Platform lifts:

- (A) Operating control devices;
- (B) Seat, arm rests, and foot rest;
- (C) Rated load and data plate; and
- (D) Ride.

(ii) Machine:

- (A) Enclosure;
- (B) Drive machine brake;
- (C) Suspension means;
- (D) Disconnecting means;
- (E) Numbering of equipment;
- (F) Gears and bearings;
- (G) Winding drum;
- (H) Suspension fastenings;
- (I) Slack-rope devices; and
- (J) Overspeed governor.

(iii) Runway:

- (A) Normal terminal stopping devices;
- (B) Final terminal stopping devices;
- (C) Head room;
- (D) Guiding members;
- (E) Construction;
- (F) Clearances;
- (G) Traveling cables and junction boxes;
- (H) Guide rail fastenings and equipment; and
- (I) Equipment exposure to weather.

(b) Inclined platform lifts:

(i) Platform:

- (A) Stop switch;
- (B) Operating control devices;
- (C) Floor;

- (D) Lighting;
- (E) Emergency signal;
- (F) Signs and operating device symbols;
- (G) Rated load and data plates;
- (H) Ride; and
- (I) Arms and retractable ramps.
- (ii) Machine:
  - (A) Enclosure;
  - (B) Guarding of exposed auxiliary equipment;
  - (C) Drive machine brake;
  - (D) Gears and bearings;
  - (E) Winding drum;
  - (F) Belt or chain drive;
  - (G) Secondary and deflector sheaves;
  - (H) Suspension fastenings;
  - (I) Slack-rope devices;
  - (J) Safety device;
  - (K) Overspeed governor;
  - (L) Disconnecting means;
  - (M) Numbering of equipment; and
  - (N) Controller.
- (iii) Runway:
  - (A) Normal terminal stopping devices;
  - (B) Final terminal stopping devices;
  - (C) Head room;
  - (D) Slack rope devices;
  - (E) Safeties and guiding members;
  - (F) Construction;
  - (G) Clearances;
  - (H) Guide rail fastenings and equipment;
  - (I) Suspension means; and
  - (J) Equipment exposure to weather.
- (c) Vertical platform lifts:
  - (i) Platform:
    - (A) Stop switch;
    - (B) Operating control devices;
    - (C) Lighting and auxiliary lighting;
    - (D) Emergency signaling device;
    - (E) Gates and retractable ramps;
    - (F) Enclosure;
    - (G) Signs and operating device symbols;
    - (H) Rated load and data plate; and
    - (I) Ride.
  - (ii) Machine:
    - (A) Enclosure;
    - (B) Drive machine brake;
    - (C) Gears and bearings;
    - (D) Winding drum;
    - (E) Belt or chain drive machine;
    - (F) Secondary or deflector sheaves;
    - (G) Suspension fastenings;
    - (H) Slack rope device;
    - (I) Overspeed governors;
    - (J) Hydraulic power unit;
    - (K) Control valves; and
    - (L) Hydraulic cylinders and supply piping.
  - (iii) Runways:
    - (A) Normal terminal stopping device;
    - (B) Final terminal stopping device;
    - (C) Head room;

- (D) Slack rope device;
- (E) Safeties and guiding members;
- (F) Construction;
- (G) Clearances;
- (H) Traveling cables;
- (I) Door and gate equipment;
- (J) Suspension fastenings;
- (K) Suspension means; and
- (L) Equipment exposure to weather.
- (iv) Outside runway:
  - (A) Doors and gates;
  - (B) Door locking devices; and
  - (C) Enclosure.

### Section 13

#### Private Residence Elevators

##### NEW SECTION

##### **WAC 296-96-02700 Machine room requirements.** (1)

Main line disconnects and car light disconnects shall be located adjacent to the controller when not located in a dedicated machine room. When located in a dedicated room, commercial machine room requirements shall be followed. Main line disconnects shall comply with WAC 296-96-02460.

(2) Access to the motor brake shall have:

- (a) A lockable door that is a minimum of 6" x 6" or 36 sq. in.
- (b) A "STOP" switch shall be located within reach of the access door.
- (c) A light switch and GFCI receptacle shall be located within reach of the access door.

AMENDATORY SECTION (Amending WSR 18-18-070, filed 8/31/18, effective 10/1/18)

**WAC 296-96-05000 Scope.** The requirements in this part are intended to cover those stand-alone standard application (~~((vertical))~~ material lifts. Where Type-A or Type-B material lifts are installed, they shall comply with ASME A17.1/CSA B44, Part 7.

AMENDATORY SECTION (Amending WSR 18-18-070, filed 8/31/18, effective 10/1/18)

**WAC 296-96-05020 Hoistway enclosure.** Generally, local codes and ordinances govern hoistway enclosure construction. When not in conflict with a local code requirement, the enclosure shall:

- (1) Be built to a height of (~~((7-feet))~~ 84 in. above each floor, landing and adjacent stairway tread;
- (2) Extend (adjacent to the counterweights) the full height of the floor and 8 (~~((inches))~~ in. beyond the counterweight raceway;
- (3) Be constructed of either solid material or material with openings that will reject a (~~((2-inch))~~ 2 in. diameter ball;
- (4) Be supported and braced so that it does not deflect more than 1 inch when subjected to a force of 100 lbs. applied perpendicular at any point;

(5) A full height hoistway enclosure is required only on the side(s) of the material lift for which the car is not equipped with a gate or enclosure.

AMENDATORY SECTION (Amending WSR 18-18-070, filed 8/31/18, effective 10/1/18)

**WAC 296-96-05030 Hoistway gates and doors.**

Enclosure gates (doors) shall be constructed according to the following standards:

- (1) The gate shall guard the full width of each opening on every landing.
- (2) It shall be built in one of the following styles:
  - (a) Vertically sliding;
  - (b) Biparting;
  - (c) Counter-balanced;
  - (d) Horizontally swinging; or
  - (e) Horizontally sliding.
- (3) Be constructed of either solid material or material with openings that will reject a ~~((2-inch))~~ 2 in. diameter ball.
- (4) Be constructed with a distance of not more than ~~((2 1/2 inches))~~ 2.5 in. between a hoistway gate or hoistway door face and a landing sill edge.
- (5) Be designed and guided to withstand (without being broken, permanently deformed, or displaced from its guides or tracks) a 100 pound lateral pressure applied near its center.
- (6) Be equipped with labeled and listed electrical interlock(s) that prevents the operation of the lift when the doors or gates are open.
- (7) Be constructed with balanced type vertically sliding gates that extend no more than 2 ~~((inches))~~ in. vertically from the landing threshold and no less than 66 ~~((inches))~~ in. above it.

AMENDATORY SECTION (Amending WSR 18-18-070, filed 8/31/18, effective 10/1/18)

**WAC 296-96-05070 Car enclosures.**

(1) Lift cars shall have their sides enclosed with solid panels or openwork that will reject a two-inch diameter ball. On the car sides where there is no gate (door), the enclosure shall extend to a height of at least ~~((forty-eight inches))~~ 48 in. from the floor or to a height necessary to enclose the materials that are being moved, whichever is greater. On the car side next to the counterweight runway, the enclosure shall extend vertically to the car top or underside of the car crosshead and horizontally to at least ~~((six inches))~~ 6 in. on each side of the runway.

(2) Standard application material lifts in unenclosed hoistways shall have a car gate that is constructed of the same material as the car enclosure.

(3) The gate, if required or supplied, shall be the same height as the sidewalls of the car enclosure and shall be provided with a latching device and electrical contact to prevent the operation of the motor and brake if open more than two inches.

AMENDATORY SECTION (Amending WSR 18-18-070, filed 8/31/18, effective 10/1/18)

**WAC 296-96-05090 Car and counterweight guides.**

Car and counterweight guide rails shall be fastened so they

will not deflect more than ~~((1/8))~~ 0.125 in. They shall also be strong enough to withstand, without deformation, the application of a car safety when the car is carrying its rated load and traveling at its rated speed.

AMENDATORY SECTION (Amending WSR 18-18-070, filed 8/31/18, effective 10/1/18)

**WAC 296-96-05140 Car safeties.** Car safeties shall be used on all material lifts that are suspended by wire ropes or chains. They shall be able to stop and sustain a car carrying ~~((425))~~ 100 percent of its rated load. This shall be demonstrated during the acceptance inspection and test procedure with an overspeed or gravity drop test, minimum two safeties at a time. On lifts driven by rack and pinion machines:

(1) Car safeties shall be able to stop and sustain a car carrying ~~((425))~~ 100 percent of its rated load.

(2) Car safeties will consist of a freely rotating safety pinion, an overspeed governor, and a safety device which may be mounted on the car.

(3) The rotating pinion driving an overspeed governor will travel on a stationary rack, which is vertically mounted in the hoistway.

(4) The governor will actuate the safety device when the downward speed of the car reaches the tripping speed and will bring the car to a gradual stop.

AMENDATORY SECTION (Amending WSR 18-18-070, filed 8/31/18, effective 10/1/18)

**WAC 296-96-05190 Pits.** The following requirements shall apply to lift pits ~~((shall))~~:

- (1) Have noncombustible floors;
- (2) Be designed to prevent the entry of groundwater into the pit;
- (3) Have floors that are substantially level;
- (4) ~~((Have))~~ Where provided, drains ~~((that are))~~ shall not be directly connected to sewers;
- (5) Provide safe and convenient access to the pit;
- (6) ~~((Provide))~~ Have an approved access ladder for pits deeper than ~~((3 feet))~~ 36 in.; and
- (7) Have nonperforated metal guards installed on the open sides of the counterweights where spring, solid or oil type buffers are attached. These guards shall:
  - (a) Extend from a point not more than 12 ~~((inches))~~ in. above the pit floor to a point at least ~~((7 feet))~~ 84 in. but not more than ~~((8 feet))~~ 96 in. above the floor;
  - (b) Be fastened to a properly reinforced and braced metal frame which will be at least equal in strength and stiffness to No. 14 U.S. gauge sheet steel; and
  - (c) Be omitted on the pit side where compensating chains or ropes are attached to the counterweight.

AMENDATORY SECTION (Amending WSR 18-18-070, filed 8/31/18, effective 10/1/18)

**WAC 296-96-05210 Signage.** Each lift shall have the following two signs:

(1) A "CAPACITY" sign permanently fastened in the lift car and on each landing. This sign shall indicate the rated

load of the lift in pounds and be made of metal with ~~((2-inch))~~ 2 in. high black letters on a yellow background.

(2) A "NO RIDERS" sign conspicuously and permanently fastened on the landing side of all hoistway gates (doors) and in the enclosure of each car. This sign shall be made of metal with ~~((2-inch))~~ 2 in. high black letters on a red background.

AMENDATORY SECTION (Amending WSR 18-18-070, filed 8/31/18, effective 10/1/18)

**WAC 296-96-07150 Guide rails, track supports and fastenings.** (1) Guides, guide rails, guide rail brackets, and their fastenings and supports shall, at the point of support, deflect ~~((1/8-inch))~~ 0.125 in. or less while resisting horizontal forces encountered during loading. When horizontal force is measured at a mid-point between brackets, guide rails shall deflect ~~((1/4-inch))~~ 0.25 in. or less in any direction.

(2) Fixed, suspended cable guides may be used as a guide member(s). When used, the deflection is to be specified by the manufacturer and approved by a structural engineer licensed in the state of Washington.

~~((Special Purpose Personnel Elevators))~~

#### Electric Manlifts

NOTE: New installations shall comply with ASME A17.1/CSA B44, Section 5.7.

#### Hand Powered Elevators

NOTE: New installations shall comply with ASME A17.1/CSA B44, Section 4.3.

#### Casket Lifts

NOTE: These conveyances are intended to be used only in mortuaries where moving caskets is necessary. The installation of new lifts for this purpose shall comply with ASME A17.1/CSA B44, Part 7 or chapter 296-96 WAC Part C, Section 1.

AMENDATORY SECTION (Amending WSR 18-18-070, filed 8/31/18, effective 10/1/18)

**WAC 296-96-18020 Car and platform enclosures.** All boat launching elevator cars or platforms shall be enclosed to a height of at least ~~((6-feet))~~ 72 in. from the floor on all sides where there are no hoistway doors or gates. Enclosures may be built as solid panels or open work which will reject a 2 in. diameter ball.

### **PART D - REGULATIONS FOR EXISTING ELEVATORS, STANDARD APPLICATION MATERIAL LIFTS, DUMBWAITERS, AND ESCALATORS**

NOTE: This part provides the minimum requirements for existing conveyances. Application of Part D rules apply where a conveyance was not provided, or required to be provided, with a device or system when originally installed or altered. Where Part D does not cover a particular device or system, refer to ASME A17.3.

AMENDATORY SECTION (Amending WSR 18-18-070, filed 8/31/18, effective 10/1/18)

**WAC 296-96-23117 Car top guard railings** ~~((for traction elevators))~~. A standard railing shall be installed on the top of all ~~((traction elevators where the perpendicular distance between the edges of the car top and the adjacent hoistway enclosure exceeds 12 in. horizontal clearance. The railing shall be substantially constructed of metal and shall consist of a top rail, intermediate rail and post. The top rail shall have a smooth surface and the upper surface shall be located at a vertical height of 42 in. The intermediate rail shall be located approximately halfway between the top rail and the car top. There shall be a minimum of 6 in. of clearance above the top rail when the car is at its furthest point of travel. If the vertical clearance from the car top to the hoistway enclosure, including gravity stopping distance, is less than 48 in. away, the top handrail height may be reduced to 42 in. plus or minus 3 in. If the clearances will not allow a 39 in. handrail, do not install the top of car railing, instead provide signage required by WAC 296-96-23119))~~ elevators in compliance with ASME A17.1/CSA B44, 2.14.1.7. Where existing conditions do not permit the railing to be installed according to clearances of 2.14.1.7.2, the following shall apply:

(1) The top railing shall be installed at a height of not less than 1070 mm (42 in.) nor more than 1100 mm (43 in.) from the car top.

(2) Where overhead conditions prevent the top railing from being located between 1070 mm (42 in.) and 1100 mm (43 in.), the railing shall be permitted to be lowered to a height that will still provide the minimum 100 mm (4 in.) vertical clearance to the nearest overhead object. In such cases the top railing shall be provided with red and white stripes 50 mm (2 in.) in width.

(3) The stripes are only required on the side(s) where the top rail is below 900 mm (35 in.).

(4) Where required, the stripes shall extend the entire length of the top rail.

(5) Where overhead conditions prevent the railing from complying with the vertical height and/or the clearances in 2.14.1.7.2(a) or (b), provide signage as required by WAC 296-96-23119(2).

(6) Toeboards are not required.

~~((EXEMPTION:))~~ This requirement does not apply to electric manlifts or Exception: residential elevators.

AMENDATORY SECTION (Amending WSR 18-18-070, filed 8/31/18, effective 10/1/18)

**WAC 296-96-23119 Low overhead signs.** (1) Elevators that do not have a minimum of 24 in. clearance from the crosshead, or any equipment mounted on the crosshead, to the lowest member of the overhead structure in the hoistway when the car has reached its maximum upward movement shall be provided with caution signage. A sign shall be located near the top of car inspection station. An additional sign shall be posted on the hoistway wall. This sign shall be visible when accessing the car top. The sign shall consist of alternating 4 in. diagonal red and white stripes and shall clearly state "danger low clearance" in lettering not less than 4 in. in height.

(2) Where required by WAC 296-96-23117(5), a sign shall be provided that reads "Caution: Low Clearances Above Guardrail."

AMENDATORY SECTION (Amending WSR 18-18-070, filed 8/31/18, effective 10/1/18)

**WAC 296-96-23126 Guarding of equipment.** (1)

Where feasible, gears, sprockets, sheaves, cables, tapes, belts and chains shall be fitted with suitable guards to prevent accidental contact.

(2) Openings in machine room floors above the hoistway must be guarded to prevent tools and materials from falling into the hoistway below.

(3) Open grating in machine room floors shall reject a ball ((+2)) 0.5 in. in diameter.

(4) Ventilation grids where exposed to the hoistway below shall be firmly fastened to prevent accidental removal and shall be fitted with ((+2)) 0.5 in. wire mesh ((under)) securely attached to the grid.

AMENDATORY SECTION (Amending WSR 18-18-070, filed 8/31/18, effective 10/1/18)

**WAC 296-96-23130 Pit access.** Access ladders shall be installed in elevator pits ((3 ft.)) 36 in. or deeper. Where constraints prohibit the installation of a pit ladder conforming to ASME A17.1/CSA B44, 2.2.4.2, a retractable ladder shall be permitted to be installed in accordance with 2.2.4.2.7 and 2.2.4.2.8 of ASME A17.1/CSA B44.

AMENDATORY SECTION (Amending WSR 18-18-070, filed 8/31/18, effective 10/1/18)

**WAC 296-96-23132 Pit illumination and receptacles.**

(1) Light fixtures shall be installed in all pits.

(a) Installations prior to 7/1/2004 require a permanent lighting fixture producing at least 5 foot-candles as measured in the working areas at the pit floor.

(b) A light switch shall be installed and shall be accessible from the pit access door.

(2) A permanent GFCI 15-20 amp duplex receptacle shall be provided in all pits.

(3) Where more than one elevator shares a common pit, a GFCI 15-20 amp duplex receptacle shall be located in the area below each elevator and above when traction machines are located in top of the hoistway.

**Subpart II**

~~((Machinery and Equipment for Electric))  
(Existing Elevators))~~

**Machinery and Equipment for Existing Electric Elevators**

AMENDATORY SECTION (Amending WSR 18-18-070, filed 8/31/18, effective 10/1/18)

**WAC 296-96-23200 Scope.** This subpart ((H, Machinery and Equipment for Electric Elevators,)) is a minimum standard for all existing electric elevators. It applies to other equipment only as referenced in the applicable subpart.

~~((Section 3)~~

~~(Absence of Safety Bulkheads))~~

**Subpart III**

**Absence of Safety Bulkheads**

**Subpart ((HH)) IV**

**Alterations, Repairs, Maintenance, and Testing**

AMENDATORY SECTION (Amending WSR 18-18-070, filed 8/31/18, effective 10/1/18)

**WAC 296-96-23605 Examination of standard application material lifts, special purpose ((lifts)) elevators, electric manlifts, and ((hand elevators)) hand-powered manlifts.** (1) Examination standard application material lifts, special purpose lifts, electric manlifts and hand elevators shall conform to the following:

(a) Annual examination requirements for electrical elevators. Service providers(†) shall furnish documentation to include the following components or systems that shall be examined if installed.

(b) Inside car:

(i) ~~((Door reopening device;~~

~~((ii)))~~ Stop switches;

~~((iii)))~~ (ii) Operating control devices(‡);

~~((iv)))~~ (iii) Car lighting and auxiliary lighting(‡)\*;

~~((v)))~~ (iv) Car emergency signal;

~~((vi)))~~ (v) Car door or gate;

~~((vii))~~ Door closing force;

~~((viii)))~~ (vi) Ventilation(‡);

~~((ix)))~~ (vii) Restricted opening of car or hoistway doors;

~~((x)))~~ (viii) Car ride(‡; and

~~((xi)))~~;

(ix) Stopping accuracy(‡);

(x) Car enclosure;

(xi) Emergency exits;

(xii) Signs and operating device symbols; and

(xiii) Equipment exposure to weather\*.

(c) Machine room/control room:

- (i) Guarding of equipment;
- (ii) Stop switch;
- (iii) Disconnecting means and control;
- (iv) Controller wiring, fuses, grounding, etc.;
- (v) Machinery supports and fastenings;
- (vi) Drive machine brakes;
- (vii) Traction drive machines;
- (viii) Gears, bearings, and flexible connections;
- (ix) Winding drum machine;
- (x) Absorption of regenerated power;
- (xi) Traction sheaves;
- (xii) Secondary and deflector sheaves;
- (xiii) Rope fastenings;
- (xiv) Operating devices;
- (xv) Code data plate(~~(\*)~~)\*;
- (xvi) ~~((AC drives from a DC source;~~
- ~~(xvii))~~ Slack rope devices;
- ~~((xviii))~~ (xvii) Wiring diagrams; ~~((and~~
- ~~(xix))~~ (xviii) Rope retainers or restraints;
- (xix) Equipment exposure to weather\*; and
- (xx) Fire extinguisher\*.
- (d) Top-of-car:
  - (i) Top-of-car stop switch;
  - (ii) Car top light and outlet;
  - (iii) Top-of-car operating device and/or working platforms;
    - (iv) Car, overhead, and deflector sheaves;
    - (v) Crosshead data plate(~~(\*\*)~~);
    - (vi) Traveling cables and junction boxes;
    - (vii) Door and gate equipment;
    - (viii) Car frame and stiles;
    - (ix) Guide rails fastening and equipment;
    - (x) Governor rope;
    - (xi) Governor releasing carrier;
    - (xii) Fastening and hitch plate;
    - (xiii) Suspension means;
    - (xiv) Compensation means;
    - (xv) Working areas on the car top(~~(?)~~);
    - (A) Means to prevent unexpected movement.
    - (B) Unexpected car movement device.
    - (C) Operating instructions for unexpected car movement device.
    - (D) Operating instructions for egress and reentry procedure(~~(?)~~).
    - (xvi) Machinery supports and fastenings;
    - (xvii) Guarding of exposed auxiliary equipment;
    - (xviii) Rope retainers and snag guards;
    - (xix) Position restraints;
    - (xx) Top emergency exit;
    - (xxi) Hoistway construction\*; and
    - (xxii) Equipment exposure to weather\*.
  - (e) Outside hoistway:
    - (i) Car platform guard;
    - (ii) Hoistway doors;
    - (iii) ~~((Vision panels\*~~
    - ~~(iv))~~ Hoistway door locking devices;
    - ~~((v))~~ (iv) Access to hoistway;
    - ~~((vi))~~ (v) Emergency and access hoistway openings;
    - ~~((vii))~~ (vi) Separate counterweight hoistway;
    - (vii) Elevator parking devices; and

- (viii) Equipment exposure to weather\*.
- (f) Pit:
  - (i) Pit access, lighting, stop switch and condition;
  - (ii) Bottom clearance and runby;
  - (iii) Traveling cables;
  - (iv) Compensating chains, ropes, and sheaves;
  - (v) Car frame and platform;
  - (vi) ~~((Working areas in the pit;~~
  - ~~(A) Means to prevent unexpected movement.~~
  - ~~(B) Unexpected car movement device.~~
  - ~~(C) Operating instructions for unexpected car movement device.~~
  - ~~(D) Operating instructions for egress and reentry procedure;~~
  - ~~(vii))~~ Machinery supports and fastenings;
  - ~~((viii))~~ (vii) Guarding of exposed auxiliary equipment;
  - ~~((and~~
  - ~~(ix) Pit inspection operation))~~
  - (viii) Equipment exposure to weather\*; and
  - (ix) Buffers.

**Note:** (\*) ~~((May be combined with other items on the log-~~

~~(\*\*))~~ A visual component that must be reported to the owner.

(2) Annual examination requirements for hydraulic elevators. Service providers shall furnish documentation to include the following components or systems that shall be examined if installed.

- (a) Inside the car:
  - (i) ~~((Door reopening device;~~
  - ~~(ii))~~ Stop switches;
  - ~~((iii))~~ (ii) Operating control devices(~~(\*)~~);
  - ~~((iv))~~ (iii) Car lighting and auxiliary lighting;
  - ~~((v))~~ (iv) Car emergency signal;
  - ~~((vi))~~ (v) Car door or gate;
  - ~~((vii) Door closing force;~~
  - ~~(viii))~~ (vi) Emergency exit;
  - ~~((ix))~~ (vii) Ventilation(~~(\*)~~);
  - ~~((x))~~ (viii) Signs and operating device symbols;
  - ~~((xi))~~ (ix) Restricted opening of car or hoistway doors;
  - ~~((xii))~~ (x) Car ride(~~(\*)~~; and
  - ~~(xiii))~~;
  - (xi) Stopping accuracy(~~(\*)~~);
  - (xii) Car enclosure; and
  - (xiii) Equipment exposure to weather.
- (b) Machine room/control room:
  - (i) Stop switch;
  - (ii) Disconnecting means and control;
  - (iii) Controller wiring, fuses, grounding, etc.;
  - (iv) Hydraulic power unit;
  - (v) Tanks\*(~~(\*)~~; and);
  - (vi) Wiring diagrams;
  - (vii) Code data plate\*;
  - (viii) Equipment exposure to weather\*; and
  - (ix) Fire extinguisher\*.
- (c) Top-of-car:
  - (i) Top-of-car stop switch;
  - (ii) Car top light and outlet;
  - (iii) Top-of-car operating device and working platforms;
  - (iv) Top emergency exit;
  - (v) Traveling cables and junction boxes;

- (vi) Door and gate equipment;
  - (vii) Car frame and stiles;
  - (viii) Guide rails fastening and equipment;
  - (ix) Governor rope;
  - (x) Wire rope fastening and hitch plate;
  - (xi) Suspension rope;
  - (xii) Slack rope device;
  - (xiii) Traveling sheave;
  - (xiv) Crosshead data plate\*~~((\*, and))~~;
  - (xv) Guarding of equipment; and
  - (xvi) Equipment exposure to weather\*.
  - (d) Outside hoistway:
    - (i) Car platform guard;
    - (ii) Hoistway doors;
    - (iii) ~~((Vision panels\*;~~
    - ~~((iv)))~~ Hoistway door locking devices;
    - ~~((v)))~~ (iv) Access to hoistway; and
    - ~~((vi) Emergency doors in blind hoistways;))~~ (v) Equipment exposure to weather\*.
  - (e) Pit:
    - (i) Pit access, lighting, stop switch, and condition;
    - (ii) Bottom clearance and runby;
    - (iii) Plunger and cylinder;
    - (iv) Traveling cables;
    - (v) Car frame and platform;
    - (vi) Supply piping;
    - (vii) Governor rope tension device;
    - (viii) Machinery supports and fastenings;
    - (ix) Guarding of exposed auxiliary equipment; and
    - (x) Equipment exposure to weather\*.
- Note: (\*) ~~((May be combined with other items on the log-~~
- ~~((\*\*)))~~ A visual component that must be report to the owner.

**Subpart ~~((IV))~~ V**

**Lifts for ~~((Physically Handicapped))~~  
Persons with Disabilities**

AMENDATORY SECTION (Amending WSR 18-18-070, filed 8/31/18, effective 10/1/18)

**WAC 296-96-23701 ~~((Periodic examinations))~~ Main-  
tenance and tests on commercial accessibility lifts. (1) ~~((A))~~ One- and five-year inspection test tags in accordance with ASME A18.1, Section 10.3, shall be attached and visible. A full-load safety test shall be performed with weights on all commercial accessibility equipment.**

(2) The owner shall ensure that the accessibility lifts are routinely examined and maintained in accordance with ASME A18.1, Section ~~((10.2))~~ 11 and with this subpart.

(3) Documentation of tests, examinations and maintenance shall be readily accessible on-site.

**Subpart ~~((V))~~ VI**

**Standard Application Material Lifts**

~~((Subpart VI~~

~~Alterations, Repairs, Maintenance, and Testing))~~

**Subpart ~~((VII))~~ VII**

**Inclined Private Residence Elevators**

**Subpart ~~((IX))~~ VIII**

**Private Residence Inclined Conveyances for Transporting Only Property**

**Subpart ~~((X))~~ IX**

**Material Hoists**

**Subpart ~~((XI))~~ X**

**Belt Manlifts**

AMENDATORY SECTION (Amending WSR 18-18-070, filed 8/31/18, effective 10/1/18)

**WAC 296-96-24401 Applicable requirements.** (1) ~~((Belt))~~ Existing belted manlifts shall comply with the ~~((code under which the unit was installed.~~

~~(2) Where a unit was installed when no code was available (pre 1949), the unit shall, as a minimum, comply with the oldest adopted standard (i.e., ASME A90.1 2003).~~

~~(3))~~ current adopted edition of ASME A90.1 standard and this section.

(2) Appendix I and II records shall be kept in a secure location within the building and be readily accessible to maintenance personnel and inspectors.

AMENDATORY SECTION (Amending WSR 18-18-070, filed 8/31/18, effective 10/1/18)

**WAC 296-96-24457 Up-limit stop devices.** (1) Two separate automatic stop devices shall be provided to cut off the power and apply the brake when a loaded step passes the upper terminal landing. One of these devices shall consist of a switch mechanically operated by the belt or ~~((stop))~~ step roller. The second device shall consist of any of the following:

(a) A roller switch located above but not in line with the first switch;

(b) A photocell and light source (an "electric eye"); or

(c) A switch activated by a lever, bar, rod, or plate.

(i) If a plate is used, it shall be positioned above the head pulley so it barely clears a passing step.

(ii) If a bar is used, the bar shall be of the "breakaway" type.

(2) The stop device shall stop the lift before a loaded step reaches a point 24 in. above the top terminal landing.

(3) Once the lift has stopped, the automatic stop device shall be manually reset. Therefore, this device shall be located on the top landing where the person resetting the device has a clear view of both the "up" and "down" runs of the lift; and it shall be impossible to reset from a step.

(4) ~~((Electric))~~ Stop devices shall ~~((meet the following requirements:~~

(a) ~~All electric switches that directly open the main motor circuit shall be multiple type switches;~~

(b) ~~Photoelectric devices shall be designed and installed so that failure of the light source, the light sensitive element or any vacuum tube used in the circuit will result in shutting off the power to the driving motor;~~

(c) ~~In areas where flammable vapors or dust may be present, all electrical installations shall be in accordance with the NEC requirements for those installations; and~~

(d) ~~All controller contacts carrying main motor current shall be copper to carbon types unless the circuit is simultaneously broken at two or more points or the contacts are immersed in oil))~~ comply with the requirements found in the current adopted edition of ASME A90.1.

AMENDATORY SECTION (Amending WSR 18-18-070, filed 8/31/18, effective 10/1/18)

**WAC 296-96-24480 ~~((Five year test))~~ Additional annual testing requirements.** ~~((A five year test of the belt manlifts shall be conducted, and the test shall be administered under the following conditions:))~~ (1) Qualified people will conduct the test. A qualified person is either:

(a) An elevator mechanic licensed in the appropriate category of the conveyance being tested;

(b) The representative of a firm that manufactured the particular belt manlift who holds a current temporary mechanic's license in this state; or

(c) The representative of a firm that manufactured the particular belt manlift who is working under the direct supervision of an elevator mechanic licensed in the appropriate category of the conveyance being tested.

(2) ~~((The up capacity of the belt manlift shall be tested with 200 lbs. on each horizontal step. During the up run portion of the test the belt manlift shall not show appreciable slip of the belt when standing or running at rated speed.~~

(3) ~~The down capacity of the belt manlift shall be tested with 200 lbs. on each horizontal step. During the down run portion of the test the belt manlift shall not show appreciable slip of the belt when standing or running at the rated speed. The brake shall stop and hold the belt with test load within a maximum of 24 in. of travel.~~

(4) ~~After the five year test has been performed))~~ A tag indicating the date of the test and name of the company performing the test shall be attached in a visible area of the drive motor machine. The tag shall have all applicable ASME A90.1~~(2))~~ Section 8.1 test descriptions and code references.

## Subpart ~~((XH~~

### ~~Special Purpose Elevators~~

### ~~(Formerly Known as)) XI~~

### Electric Manlifts~~(9))~~

AMENDATORY SECTION (Amending WSR 18-18-070, filed 8/31/18, effective 10/1/18)

**WAC 296-96-24500 Scope.** (1) These requirements apply to ~~((special purpose personnel elevators))~~ electric manlifts installed prior to January 1, 1999, in facilities in which agricultural products are stored, food products are processed, goods are manufactured, energy is generated, or similar industrial or agricultural processes are performed.

(2) Where a special purpose personnel elevator was installed after January 1, 1999, the conveyance shall comply with the requirements for a special purpose elevator found in the edition of ASME A17.1 or A17.1/B44 Section 5.7 that was in effect at the time.

AMENDATORY SECTION (Amending WSR 18-18-070, filed 8/31/18, effective 10/1/18)

**WAC 296-96-24516 Maintenance requirements.** (1) Examinations, in compliance with WAC 296-96-23605, are to be performed and documented in the maintenance and testing records.

Test tag(s) shall be attached to a wall inside the cab (car enclosure).

(2) Owners of electric manlifts are responsible for ensuring that:

(a) ~~((Elevators))~~ Manlifts and their parts are maintained in a safe condition;

(b) All devices and safeguards required by these regulations are maintained in good working order; and

(c) Maintenance~~((, examinations,))~~ and safety tests ~~((be))~~ are performed and documented to the ~~((applicable))~~ requirements found in ASME A17.1 Section 8.6 as applicable to the sections of WAC 296-96-24519 through 296-96-24560.

AMENDATORY SECTION (Amending WSR 18-18-070, filed 8/31/18, effective 10/1/18)

**WAC 296-96-24528 Car doors and gates.** (1) All ~~((elevators))~~ electric manlifts shall have car doors, except on fully enclosed hoistways equipped with hoistway gates and enclosed from the top of the hoistway opening to the ceiling on the landing side.

~~((1))~~ (2) Car doors shall be:

(a) Constructed of solid or perforated material capable of resisting a 75 lb. thrust without deflecting 1/4 in. If perforated material is used, it shall reject a 1 in. diameter ball.

(b) Biparting or otherwise horizontally swung provided the door swings within the elevator car.

~~((2))~~ Interlocks or a combination consisting of mechanical locks and electric contacts shall be provided on car gates on elevators in unenclosed hoistways unless a safe means of self-evacuation is provided. Such means shall be approved by

~~the department.))~~ (c) All car doors or gates equipped with an electric contact.

(d) An electrical and mechanical interlock provided when a safe means of self-evacuation (a ladder) is not provided.

AMENDATORY SECTION (Amending WSR 18-18-070, filed 8/31/18, effective 10/1/18)

**WAC 296-96-24537 Suspension means.** (1) There shall be at least 2 hoisting ropes. Each rope shall be:

~~((1))~~ (a) Made of a good grade of elevator traction wire rope;

~~((2))~~ (b) At least 3/8 in. in diameter and possessing a safety factor of 5;

~~((3))~~ (c) Fastened by babbitted tapered elevator sockets or other acceptable methods. If cable clamps are used, a minimum of 3 fist grip or equivalent clamps shall be provided. U-shaped clamps shall not be acceptable.

(2) The car platform shall not be more than 6 in. above the top landing when the counterweight buffer is fully compressed. The counterweight shall be a minimum of 150 mm (6 in.) from the deflector sheave when the car buffer is fully compressed.

AMENDATORY SECTION (Amending WSR 18-18-070, filed 8/31/18, effective 10/1/18)

**WAC 296-96-24543 Car safeties.** All cars suspended or operated from overhead machinery shall be equipped with an approved car safety capable of stopping and holding the car while carrying its rated load.

(1) Car safeties shall be mechanically operated and not be affected by any interruptions in the electrical circuit.

(2) Car safeties and governor controlled safeties shall operate automatically and the control circuit shall be interrupted in the event the safeties set.

(3) All ~~((special purpose elevators))~~ electric manlifts shall be equipped with an overspeed governor that shall not exceed 175 ft./min. and shall deenergize the brake control and motor drive circuits simultaneously when the car safety mechanism is activated.

(4) Winding drum type machines shall have a manual-reset slack rope device that interrupts the drive motor and brake circuits.

~~((5) Separate safety tags shall be used to distinguish the no-load annual safety test and the five-year full load test.))~~

AMENDATORY SECTION (Amending WSR 18-18-070, filed 8/31/18, effective 10/1/18)

**WAC 296-96-24553 Drive machines.** (1) ~~((Elevator machines))~~ Electric manlifts shall be driven by approved-type units.

(a) On direct drive or approved worm gear driven type, a mechanically actuated, electrically released brake shall be installed on the driving unit.

(b) On V belt driven types, a minimum of 4 belts, 1/2 in. minimum size, shall be used to transmit power from the motor to the drive shaft and a mechanically activated, electrically released brake shall be installed on the final drive shaft.

(c) All winding drum machine type elevators shall be equipped with top and bottom final limit switches.

(2) Wherever practical, ~~((elevator))~~ drive machines shall be installed on the top side of the supporting structure.

(3) All components of the driving mechanism and parts subject to stress involved in suspending the load or related equipment shall be designed to withstand 8 times the total weight to be suspended, including load, counterweight, car and cables.

(4) Gears shall be made of steel or equivalent material. Cast iron gears are prohibited.

(5) A working platform, with railings complying with the applicable requirements adopted according to chapter 49.17 RCW, shall be provided to allow for safely working on equipment.

(6) A light with a switch shall be located near the elevator driving machine or the machinery space.

(7) A means to lockout/tagout the ~~((elevator))~~ manlift equipment shall be provided and located near the driving machine or machine space.

(8) The ~~((elevator))~~ manlift machinery shall be protected from the weather.

(9) All sheaves shall be appropriately guarded per the requirements adopted according to chapter 49.17 RCW.

AMENDATORY SECTION (Amending WSR 18-18-070, filed 8/31/18, effective 10/1/18)

**WAC 296-96-24560 Additional applicable requirements.** (1) Car speeds shall not exceed 125 ft./min.

(2) Alterations shall conform with the applicable requirements in WAC 296-96-24519 through 296-96-24557.

(3) Electric manlift controls and disconnects shall be accessible and labeled.

### Subpart ~~((XIII))~~

#### **Hand Elevators**

#### ~~((Previously Called))~~ **XII**

#### **Hand-Powered Manlifts((9))**

AMENDATORY SECTION (Amending WSR 18-18-070, filed 8/31/18, effective 10/1/18)

**WAC 296-96-24600 Scope.** This section covers ~~((elevators))~~ hand-powered manlifts that have the capacity of 1 person and are installed in a facility prior to January 1, 1999, in which agricultural products are stored, food products are processed, goods are manufactured, energy is generated, or similar industrial or agricultural processes are performed.

AMENDATORY SECTION (Amending WSR 18-18-070, filed 8/31/18, effective 10/1/18)

**WAC 296-96-24611 Maintenance and test requirements.** (1) Maintenance and tests shall comply with the applicable requirements found in ASME A17.1/CSA B44, Section 8.6.

(a) Test tag(s) shall be attached to the inside of the car.

(b) ~~((Hand elevators))~~ Manlifts with wooden rails shall be safety tested with no load annually. There is not a full load testing requirement.

(2) Qualified people shall conduct the test. A qualified person is either:

(a) An elevator mechanic licensed in the appropriate category for the conveyance being tested;

(b) The representative of a firm that manufactured the particular conveyance and who holds a current temporary mechanic's license in this state; or

(c) The representative of a firm that manufactured the particular conveyance who is working under the direct supervision of an elevator mechanic licensed in the appropriate category for the conveyance being tested.

(3) Examinations, in compliance with WAC 296-96-23605, are to be performed and documented in the maintenance and testing records.

AMENDATORY SECTION (Amending WSR 18-18-070, filed 8/31/18, effective 10/1/18)

**WAC 296-96-24630 Habitable space beneath the car and counterweight.** There shall not be habitable space below an elevator hoistway or counterweight shaft unless the floor above the space can withstand ~~((the impact of a freely))~~ an impact 125 percent greater than the impact generated by a free falling car with rated load or counterweight falling from the full height of the hoistway.

AMENDATORY SECTION (Amending WSR 18-18-070, filed 8/31/18, effective 10/1/18)

**WAC 296-96-24670 Hoistway requirements.** (1) Escape ladders shall be installed and shall extend the full length of the hoistway.

(a) Ladders shall be installed in a manner to provide access to an emergency exit and shall be located in a position so that in an emergency a person can safely transfer from the car platform to the ladder.

**Note:** Transfer is considered safe when a person can maintain 3 points of contact while making the transfer.

(b) An "IMPAIRED CLEARANCE" sign shall be posted at the bottom of a ladder when the face of the ladder is less than 30 in. from any structure.

(2) The minimum clearance between a car side and the hoistway enclosure is 1 in.

(3) The clearance between a car platform and a landing sill shall be at least 1/2 in. but not more than 1 1/2 in.

(4) Adequate lighting shall be installed and operating in the path of travel.

**Note:** For the purpose of this section, adequate lighting shall be 5 fc.

### Subpart ~~((XIV))~~ XIII

#### Casket Lifts

**Note:** As a minimum, all such lifts currently installed shall comply with this section. These conveyances are intended to be used only in mortuaries where moving of caskets is necessary. New casket lifts shall comply with either ASME A17.1/CSA B44 Part 7 or with this chapter, Part C1.

### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 296-96-02470	Fireman's service for groups of four or more.
WAC 296-96-02471	Emergency personnel lock box.
WAC 296-96-11080	Five-year test.
WAC 296-96-20005	Applicable codes and standards.
WAC 296-96-23118	Car top railings for hydraulic elevators.
WAC 296-96-23303	Hydraulic elevators without safety bulkheads.
WAC 296-96-24416	Landings.
WAC 296-96-24419	Landing guards and cones.
WAC 296-96-24422	Guarding of entrances and exits.
WAC 296-96-24425	Guarding of floor openings.
WAC 296-96-24428	Guarding of floor landings.
WAC 296-96-24431	Bottom landings.
WAC 296-96-24434	Top clearances.
WAC 296-96-24437	Emergency exit ladders.
WAC 296-96-24440	Lighting.
WAC 296-96-24445	Drive machines.
WAC 296-96-24448	Operating speed.
WAC 296-96-24451	Step requirements.
WAC 296-96-24454	Handholds.
WAC 296-96-24460	Emergency stop devices.
WAC 296-96-24466	Warning signs.
WAC 296-96-24470	Restricted use of manlifts.
WAC 296-96-24478	Inspection requirements.

### WSR 21-18-097

#### PERMANENT RULES DEPARTMENT OF

#### LABOR AND INDUSTRIES

[Filed August 31, 2021, 9:00 a.m., effective October 1, 2021]

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

Purpose: The language revision clarifies the department of labor and industry's (L&I) outpatient hospital payment process and removes any potential conflict between the hospital outpatient payment rules, WAC 296-23A-0700 and 296-23A-0740. The effect will be to help providers gain a clear understanding of L&I's payment policies.

Citation of Rules Affected by this Order: Amending WAC 296-23A-0700 and 296-23A-0740.

Statutory Authority for Adoption: RCW 51.04.020(1) and 51.04.030.

Adopted under notice filed as WSR 21-13-137 on June 22, 2021.

A final cost-benefit analysis is available by contacting Dee Hahn, P.O. Box 44322, Olympia, WA 98504-4322, phone 360-902-6828, fax 360-902-4249, email Dee.Hahn@lni.wa.gov, website <https://www.lni.wa.gov/rulemaking-activity/?query=296-23A>.

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

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

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

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

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

Date Adopted: August 31, 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 21-18-098

### PERMANENT RULES

#### WHATCOM COMMUNITY COLLEGE

[Filed August 31, 2021, 10:51 a.m., effective October 1, 2021]

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

Purpose: The existing chapter 132U-305 WAC, Supplemental Title IX Procedures do not meet current Title IX regulations including investigative procedures and definitions of key terms.

Citation of Rules Affected by this Order: Amending chapter 132U-126 WAC [New chapter 132U-305 WAC].

Statutory Authority for Adoption: Chapter 28B.50 RCW.

Adopted under notice filed as WSR 21-07-118 on March 23, 2021.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 13, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: April 27 [May 25], 2021.

Benjamin Reed  
Title IX and  
ADA Coordinator

## Chapter 132U-305 WAC

### SUPPLEMENTAL TITLE IX PROCEDURES

#### NEW SECTION

**WAC 132U-305-005 Introduction.** Whatcom Community College recognizes its responsibility for investigation, resolution, implementation of corrective measures, and monitoring the educational environment and workplace to stop, remediate, and prevent sexual misconduct and harassment as outlined in the Title IX of the Educational Amendments Act of 1972. This policy reflects the Department of Education's final rule, which went into effect August 14, 2020. Whatcom Community College is committed to addressing all allegations of misconduct and harassment, and as such the Title IX coordinator will evaluate each allegation to determine if it fits under the jurisdiction of this policy, this chapter, or chapter 132U-126 WAC.

#### NEW SECTION

**WAC 132U-305-010 Definitions.** (1) **Actual knowledge:** Notice of sexual harassment or allegations of sexual harassment to a recipient's Title IX coordinator or any official of the recipient who has authority to institute corrective measures on behalf of the recipient.

(2) **Complainant:** Employee(s), applicant(s), student(s), or visitors(s) of Whatcom Community College who alleges that she or he has been subjected to discrimination or harassment due to his or her membership in a protected class.

(3) **Complaint:** A description of facts filed by a complainant or signed by the Title IX coordinator alleging sexual harassment against a respondent and requesting that the recipient investigate the allegation of sexual harassment. In complaints where the Title IX coordinator signs a formal complaint, the Title IX coordinator is not a complainant or

otherwise a party and must otherwise comply with their regulatory duties.

(4) **Consent:** Knowing, voluntary and clear permission by word or action, to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact. A person cannot consent if he or she is unable to understand what is happening or is disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct. Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

(5) **Decision maker:** The individual that leads and coordinates the disciplinary phase of these procedures, following a full investigation as outlined below. In cases involving only students as complainants and respondents the decision maker will be the director for student conduct or designee. In cases involving employees as either complainants, respondents, or both the decision maker will be the executive director for human resources or designee. The decision maker cannot be the Title IX coordinator involved in the case, or the investigator.

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

(7) **Respondent:** Person or persons who are members of the campus community who allegedly discriminated against or harassed another person or persons. Any person alleged to have violated this policy is presumed not responsible until the resolution of the formal or informal process.

(8) **Retaliation:** Harming, threatening, intimidating, coercing, or taking adverse action of any kind against a person because the person reported an alleged violation of this policy or other college policy, provided information about an alleged violation, or participated as a witness or in any other capacity in an investigation or disciplinary proceeding.

(9) **Supportive measures:** Nondisciplinary, nonpunitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. The Title IX coordinator is responsible for coordinating these measures. Supportive measures may include: Counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus safety escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures (See VAWA Section 304 for additional measures that may be required). These measures are available to complainants without the filing of a formal complaint.

NEW SECTION

**WAC 132U-305-015 Prohibited conduct under Title IX.** Pursuant to RCW 28B.50.140(13) and Title IX of the Education Amendments Act of 1972, 20 U.S.C. Sec. 1681, the college may impose disciplinary sanctions against a student or employee who commits, attempts to commit, or aids, abets, incites, encourages, or assists another person to commit, an act(s) of "sexual harassment."

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

(1) Quid pro quo harassment. A college employee conditioning the provision of an aid, benefit, or service of the college on an individual's participation in unwelcome sexual conduct.

(2) Hostile environment. Unwelcome conduct that a reasonable person would find to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the college's educational programs or activities, or employment.

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

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

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

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

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

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

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

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

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

(i) The length of the relationship;

(ii) The type of relationship; and

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

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

NEW SECTION

**WAC 132U-305-020 Title IX jurisdiction.** (1) This supplemental procedure applies only if the alleged misconduct:

(a) Occurred in the United States;

(b) Occurred during a college educational program or activity; and

(c) Meets the definition of sexual harassment as that term is defined in this policy.

(2) For purposes of this policy, an "educational program or activity" is defined as locations, events, or circumstances over which the college exercised substantial control over both the respondent and the context in which the alleged sexual harassment occurred. This definition includes any building owned or controlled by a student organization that is officially recognized by the college.

(3) Proceedings under this policy must be dismissed if the Title IX coordinator or designee determines that one or all of the requirements of subsection (1)(a) through (c) of this section have not been met. Dismissal under this policy does not prohibit the college from pursuing other disciplinary action based on allegations that the respondent violated other provisions of the college's student conduct code, chapter 132U-126 WAC, or the college's discrimination and harassment policy, chapter 132U-300 WAC.

(4) If the Title IX coordinator or designee determines the facts in the investigation report are not sufficient to support Title IX jurisdiction and/or pursuit of a Title IX violation, the student conduct officer will issue a notice of dismissal in whole or part to both parties explaining why some or all of the Title IX claims have been dismissed.

NEW SECTION

**WAC 132U-305-025 Confidentiality and right to privacy.** (1) Whatcom Community College will seek to protect the privacy of the complainant and respondent to the fullest extent possible, consistent with the legal obligation to investigate, take appropriate remedial and/or disciplinary action, and comply with the federal and state law, as well as Whatcom Community College policies and procedures. Although Whatcom Community College will attempt to honor requests for confidentiality, it cannot guarantee complete confidentiality. Determinations regarding how to handle requests for confidentiality will be made by the Title IX coordinator/designee.

(2) **Confidentiality requests and sexual violence complaints:** The Title IX coordinator/designee will inform and obtain consent from the complainant before commencing an

investigation into a sexual violence complaint. If a sexual violence complainant asks that his or her name not be revealed to the respondent or that the college not investigate the allegation, the Title IX coordinator/designee will inform the complainant that maintaining confidentiality may limit the college's ability to respond fully to the allegations and that retaliation by the respondent and/or others is prohibited. If the complainant still insists that his or her name not be disclosed or that the college not investigate, the Title IX coordinator/designee will determine whether the college can honor the request and at the same time maintain a safe and nondiscriminatory environment for all members of the college community, including the complainant. Factors to be weighed during this determination may include, but are not limited to:

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

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

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

#### NEW SECTION

**WAC 132U-305-030 Initiation of investigation.** Any employee, student, applicant, or visitor who believes that he or she has been the subject of discrimination or harassment should report the incident or incidents to the college's Title IX coordinator identified below. If the complaint is against that coordinator, the complainant should report the matter to the president's office for referral to an alternative designee.

The college encourages the timely reporting of any incidents of discrimination or harassment. Complaints may be submitted in writing or verbally. For complainants who wish to submit a written complaint, a formal complaint form is available online at <http://www.whatcom.edu/home/showdocument?id=360>. Hardcopies of the complaint form are available in the Human Resource Office, Laidlaw Center (LDC) 235.

The following college officials are designated to handle inquiries regarding this policy:

Name: Benjamin Reed

Title: Title IX & ADA Coordinator  
Office: Laidlaw Center (LDC) 208  
Contact: [breed@whatcom.edu](mailto:breed@whatcom.edu)  
Address: 237 W. Kellogg Rd., Bellingham, WA 98226

Name: Becky Rawlings  
Title: Executive Director for Human Resources, Title IX/EEO Coordinator  
Office: Laidlaw Center (LDC) 235  
Contact: [brawlings@whatcom.edu](mailto:brawlings@whatcom.edu)  
Address: 237 W. Kellogg Rd., Bellingham, WA 98226

The Title IX coordinator(s) or designee:

- Will accept all complaints and referrals from college employees, applicants, students, and visitors;
- Will make determinations regarding how to handle requests by complainants for confidentiality;
- Will keep accurate records of all complaints and referrals for the required time period;
- May conduct investigations or delegate and oversee investigations conducted by a designee;
- May impose interim remedial measures to protect parties during investigations of discrimination or harassment;
- May recommend specific corrective measure to stop, mediate, and prevent the recurrence of inappropriate conduct.

Any employee, applicant, student, or visitor of Whatcom Community College may file a complaint. Complaints may be submitted in writing or verbally. The college encourages the timely reporting of any incidents of discrimination or harassment. Complaints may be submitted in writing or verbally. For complainants who wish to submit a written complaint, a formal complaint form is available online at <http://www.whatcom.edu/home/showdocument?id=360>. Hardcopies of the complaint form are available in the Human Resource Office, Laidlaw Center (LDC) 235. Any person submitting a discrimination complaint shall be provided with a written copy of the college's antidiscrimination policies and procedures, as well as a copy of this policy.

Upon receiving a discrimination complaint, and determining that the requirements of WAC 132U-305-020 (1)(a) through (c) have been met, the college shall commence an impartial investigation. The Title IX coordinator/designee shall be responsible for overseeing all investigations. Investigations may not be conducted by the Title IX coordinator, and the college may contract with a third-party as investigator. Once the investigation is assigned to someone other than the Title IX coordinator, the Title IX coordinator shall inform the complainant and respondent(s) of the appointment of an investigator.

(1) **Supportive measures:** The Title IX coordinator/designee will promptly contact all necessary parties to coordinate supportive measures.

(2) **Interim measures:** The Title IX coordinator/designee may impose measures to protect the complainant and/or respondent pending the conclusion of the investigation. Interim measures may include, but are not limited to, imposition of no contact orders, rescheduling classes, temporary work reassignments, referrals for counseling or medical assistance, and imposition of summary discipline on the

respondent consistent with the college's student conduct code or the college's employment policies and collective bargaining agreements.

(3) **Investigation:** Complaints shall be thoroughly and impartially investigated. The investigation shall include, but is not limited to, interviewing the complainant and the respondent, relevant witnesses, and reviewing relevant documents. The investigation shall be concluded within a reasonable time, normally ninety days barring exigent circumstances. At the conclusion of the investigation, the investigator shall set forth his or her findings and recommendations in writing. The investigator shall send a copy of the findings and recommendations to the Title IX coordinator/designee. The Title IX coordinator/designee shall send that final investigation report to the decision maker.

(4) **Written notice of conclusion:** The Title IX coordinator/designee will provide each party and the appropriate student services administrator or appointing authority with written notice of investigative findings, along with access to the report. All parties will have up to ten days to submit, in writing, a meaningful response to the findings of fact in the report.

(5) **Final investigation report:** Ten days after the written notice of conclusion, the investigator will submit the final investigation report, with findings of fact using a preponderance of evidence standard, to the Title IX coordinator.

#### NEW SECTION

**WAC 132U-305-035 Initiation of discipline.** (1) Upon receiving the final investigation report from the investigator, the Title IX coordinator/designee will forward the report to the decision maker, who 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 decision maker determines that there are sufficient grounds to proceed under these supplemental procedures, the decision maker will initiate a Title IX disciplinary proceeding by serving the notice on the respondent and the complainant, and their respective advisors. The notice must:

- (a) Set forth the basis for Title IX jurisdiction;
- (b) Identify the alleged Title IX violation(s);
- (c) Set forth the facts underlying the allegation(s);
- (d) Identify the range of possible sanctions that may be imposed if the respondent is found responsible for the alleged violation(s); and
- (e) Explain that the parties are entitled to be accompanied by their chosen advisors during the hearing and that:
  - (i) The advisors will be responsible for questioning all witnesses on the party's behalf;
  - (ii) An advisor may be an attorney; and
  - (iii) The college will appoint the party an advisor of the college's choosing at no cost to the party, if the party fails to do so.

(3) Explain that if a party fails to appear at the hearing, a decision of responsibility may be made in their absence.

#### NEW SECTION

**WAC 132U-305-040 Prehearing procedure.** (1) Upon sending the disciplinary notice, the decision maker will send a hearing notice to all parties, in compliance with WAC 132U-300-090. In no event will the hearing date be set less than ten days after the Title IX coordinator or designee provided the final investigation report to the parties.

(2) A party may choose to have an attorney serve as their advisor at the party's own expense. This right will be waived unless, at least five days before the hearing, the attorney files a notice of appearance with the decision maker. The decision maker will then forward copies to all parties.

(3) In preparation for the hearing, the parties will have equal access to all evidence gathered by the investigator during the investigation, regardless of whether the college intends to offer the evidence at the hearing.

#### NEW SECTION

**WAC 132U-305-045 Rights of parties.** (1) The college's student conduct procedures, chapter 132U-126 WAC, as well as college policies, practices, faculty negotiated agreements, and collective bargaining agreements and this policy shall apply equally to all parties.

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

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

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

#### NEW SECTION

**WAC 132U-305-050 Evidence.** The introduction and consideration of evidence during the hearing is subject to the following procedures and restrictions:

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

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

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

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

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

(4) **Cross-examination required:** If a party or witness does not submit to cross-examination during the live hearing,

the decision maker must not rely on any statement by that party or witness in reaching a determination of responsibility.

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

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

- (a) Spousal/domestic partner privilege;
- (b) Attorney-client and attorney work product privileges;
- (c) Privileges applicable to members of the clergy and priests;
- (d) Privileges applicable to medical providers, mental health therapists, and counselors;
- (e) Privileges applicable to sexual assault and domestic violence advocates; and
- (f) Other legal privileges identified in RCW 5.60.060.

#### NEW SECTION

**WAC 132U-305-055 Initial order.** (1) In addition to complying with chapter 132U-126 WAC, the decision maker 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 decision maker's determination of responsibility for each allegation;
- (f) Describes any disciplinary sanction or conditions imposed against the respondent, if any;
- (g) Describes to what extent, if any, complainant is entitled to remedies designed to restore or preserve complainant's equal access to the college's education programs or activities; and
- (h) Describes the process for appealing the initial order to the college president.

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

#### NEW SECTION

**WAC 132U-305-060 Appeals.** (1) The parties shall have the right to appeal from the initial order's determination of responsibility and/or dismissal of an allegation(s) of sexual harassment in a formal complaint. The right to appeal will be subject to the same procedures and time frames set forth in WAC 132U-126-090.

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

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

#### NEW SECTION

**WAC 132U-305-065 Nonretaliation, intimidation, and coercion.** Retaliation by, for, or against any participant (including complainant, respondent, witness, Title IX coordinator/designee, or investigator) is expressly prohibited. Retaliatory action of any kind taken against individual(s) as a result of seeking redress under the applicable procedures or serving as a witness in a subsequent investigation or any resulting disciplinary proceedings is prohibited and is conduct subject to discipline. Any person who thinks he/she has been the victim of retaliation should contact the Title IX coordinator/designee immediately.

### WSR 21-18-099

#### PERMANENT RULES

#### WHATCOM COMMUNITY COLLEGE

[Filed August 31, 2021, 10:52 a.m., effective October 1, 2021]

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

Purpose: The existing chapter 132U-300 WAC, Discrimination and harassment, do not meet current Title IX regulations including investigative procedures and definitions of key terms.

Citation of Rules Affected by this Order: Amending chapter 132U-126 WAC [WAC 132U-300-040, 132U-300-060, and 132U-300-130].

Statutory Authority for Adoption: Chapter 28B.50 RCW.

Adopted under notice filed as WSR 27-01-119 [21-07-119] on March 23, 2021.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 3, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: April 27 [May 25], 2021.

Benjamin Reed

Title IX and  
ADA Coordinator

**AMENDATORY SECTION** (Amending WSR 18-17-025, filed 8/6/18, effective 9/6/18)

**WAC 132U-300-040 Introduction.** Whatcom Community College recognizes its responsibility for investigation, resolution, implementation of corrective measures, and monitoring the educational environment and workplace to stop, remediate, and prevent discrimination on the basis of race, color, national origin, age, perceived or actual physical or mental disability, pregnancy, genetic information, sex, sexual orientation, gender identity, marital status, creed, religion, or honorably discharged veteran or military status, or the use of trained guide dog or service animal, as required by Title VI of the Civil Rights Act of 1964, Title VII of the Civil Rights Act of 1964, Title IX of the Educational Amendments of 1972, Sections 504 and 508 of the Rehabilitation Act of 1973, the Americans with Disabilities Act and ADA Amendment Act, the Age Discrimination Act of 1975, the Violence Against Women Reauthorization Act and Washington state's law against discrimination, chapter 49.60 RCW and their implementing regulations. Employees are also protected from discrimination for filing a whistleblower complaint with the Washington state auditor.

For complaints involving sexual misconduct and sex-based discrimination, the Title IX coordinator or designee will evaluate the complaint according to Policy 616, chapter 132U-305 WAC. Complaints that fit the jurisdictional requirements of chapter 132U-305 WAC will follow the investigative and discipline procedures outlined in that policy, which follows the requirements of the 2020 final rules under Title IX, which went into effect August 14, 2020. All complaints that do not fit the jurisdictional requirements of chapter 132U-305 WAC will use the procedures outlined in this policy.

**AMENDATORY SECTION** (Amending WSR 18-17-025, filed 8/6/18, effective 9/6/18)

**WAC 132U-300-060 Complaint procedure.** Whatcom Community College has enacted policies prohibiting discrimination against, and harassment of members of protected classes. Any individual found to be in violation of this policy will be subject to disciplinary action up to and including dismissal from the college or from employment.

Any employee, student, applicant, or visitor who believes that he or she has been the subject of discrimination or harassment should report the incident or incidents to the college's Title IX/EEO coordinator identified below. If the complaint is against that coordinator, the complainant should report the matter to the president's office for referral to an alternate designee.

The college encourages the timely reporting of any incidents of discrimination or harassment. Complaints may be submitted in writing or verbally. For complainants who wish to submit a written complaint, a formal complaint form is available online at <http://www.whatcom.edu/home/showdocument?id=360>. Hard copies of the complaint form are

available in the Human Resource Office, Laidlaw Center (LDC) 235.

The following college officials ~~((s))~~ are designated to handle inquiries regarding this policy:

Name: Benjamin Reed

Title: Title IX & ADA Coordinator

Office: Laidlaw Center (LDC) 208

Contact: [breed@whatcom.edu](mailto:breed@whatcom.edu)

Address: 237 W. Kellogg Rd., Bellingham, WA 98226

Name: Becky Rawlings

Title: Executive Director for Human Resources, Title IX/EEO Coordinator

Office: Laidlaw Center (LDC) 235

Contact: [brawlings@whatcom.edu](mailto:brawlings@whatcom.edu)

Address: 237 W. Kellogg Rd., Bellingham, WA 98226

The Title IX/EEO coordinators or designee:

- Will accept all complaints and referrals from college employees, applicants, students, and visitors;
- Will make determinations regarding how to handle requests by complainants for confidentiality;
- Will keep accurate records of all complaints and referrals for the required time period;
- May conduct investigations or delegate and oversee investigations conducted by a designee;
- May impose interim remedial measures to protect parties during investigations of discrimination or harassment;
- Will issue written findings and recommendations upon completion of an investigation; and
- May recommend specific corrective measures to stop, remediate, and prevent the recurrence of inappropriate conduct.

**AMENDATORY SECTION** (Amending WSR 18-17-025, filed 8/6/18, effective 9/6/18)

**WAC 132U-300-130 Criminal complaints.** Discriminatory or harassing conduct may also be, or occur in conjunction with, criminal conduct. Criminal complaints may be filed with the following law enforcement authorities:

**Bellingham Police Department**

505 Grand Avenue

Bellingham, WA 98225

360-778-8800

<https://www.cob.org/gov/dept/police>

**Blaine Public Safety Department**

322 H Street

Blaine, WA 98230

360-332-6769

<http://www.ci.blaine.wa.us/171/Public-Safety>

**Everson Police Department**

111 W Main Street

Everson, WA 98247

360-966-4212

<http://www.ci.everson.wa.us/police-department.html>

**Ferndale Police Department**

2220 Main Street

Ferndale, WA 98248

360-384-3390  
<http://www.ferndalepd.org/>

**Lummi Nation Police Department**

2665 Kwina Road  
Bellingham, WA 98226  
360-312-2000  
<http://www.lummi-nsn.gov/Website.php?PageID=397>

**Lynden Police Department**

203 19th Street  
 Lynden, WA 98264  
 360-354-2828  
<http://www.lyndenwa.org/departments/police/>

**Nooksack Tribal Police Department**

5061 Deming Road  
Deming, WA 98244  
360-592-5176  
<https://nooksacktribe.org/departments/law-enforcement>

**Sumas Police Department**

433 Cherry Street  
 Sumas, WA 98295  
 360-988-5711  
<http://www.sumaspolice.com/>

**Western Washington University**

Department of Public Safety  
 516 High Street  
 Bellingham, WA 98225  
 360-650-3911  
<http://www.wvu.edu/ps/police/index.shtml>

**Whatcom County Sheriff's Office**

Public Safety Building  
 311 Grand Avenue  
 Bellingham, WA 98225  
 360-676-6650  
<http://www.whatcomcounty.us/200/Sheriff>

The college will proceed with an investigation of harassment and discrimination complaints regardless of whether the underlying conduct is subject to civil criminal prosecution.

**WSR 21-18-100**

**PERMANENT RULES**

**WHATCOM COMMUNITY COLLEGE**

[Filed August 31, 2021, 10:52 a.m., effective October 1, 2021]

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

Purpose: The existing chapter 132U-126 WAC, Student rights and responsibility policy, does not meet current Title IX regulations. Items including investigative procedures and definitions of key terms need to be removed or edited.

Citation of Rules Affected by this Order: Amending chapter 132U-126 WAC.

Statutory Authority for Adoption: Chapter 28B.50 RCW.

Adopted under notice filed as WSR 21-09-004 on April 7, 2021.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 11, Repealed 1; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: April 27 [May 25], 2021.

Benjamin Reed  
 Title IX and  
 ADA Coordinator

AMENDATORY SECTION (Amending WSR 18-17-025, filed 8/6/18, effective 9/6/18)

**WAC 132U-126-010 Definitions.** The following definitions shall apply for the purpose of this student conduct code:

(1) "Business day" any day, Monday through Friday (excluding holidays), during which college offices are open.

(2) "College community" shall include any person or entity with a connection or relationship with pursuit of the college mission.

(3) "College premises" shall include the college campus and includes all land, buildings, facilities, vehicles, equipment, and other property owned, used, leased, or controlled by the college.

(4) "Complainant" is an ((alleged victim of sexual misconduct)) employee(s), applicant(s), student(s), or visitor(s) of Whatcom Community College who alleges that they have been subjected to behavior that is a violation of this policy.

(5) "Consent" means knowing, voluntary, and clear permission by word or action, to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact. A person cannot consent if they are unable to understand what is happening or is disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct. Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

(6) "Conduct review officer" is the vice president for student services or other college administrator designated by the president to be responsible for receiving and for reviewing or

referring appeals of student disciplinary cases in accordance with the procedures of this code.

~~((6))~~ (7) "Disciplinary action" is the process by which the student conduct officer imposes discipline against a student for a violation of the student conduct code.

~~((7))~~ (8) "Disciplinary appeal" is the process by which an aggrieved student can appeal the discipline imposed by the student conduct officer. Disciplinary appeals from a suspension in excess of ten business days or an expulsion are heard by the student conduct appeals board. Appeals of all other appealable disciplinary action shall be reviewed through brief adjudicative proceedings.

~~((8))~~ (9) "Filing" is the process by which a document is received by a college official responsible for facilitating a disciplinary process. Documents required to be filed shall be deemed filed upon actual receipt during office hours at the office of the specified college official. Unless otherwise provided, filing shall be accomplished by:

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

(b) Sending the document by first class mail to the specified college official's office; or

(c) Emailing the document to specified college official's colleges email address.

~~((9))~~ (10) "Guest" is any person who is not a member of the college community, who is on institutional property or attending an institutional function that the invitation of and/or hosted by a member of the college community.

~~((10))~~ (11) "Preponderance of evidence" is defined as "more likely than not" and is the standard of responsibility that is used when determining whether a violation of the student rights and responsibilities has occurred.

~~((11))~~ (12) "President" is the president of the college. The president is authorized to delegate or reassign any and all of their responsibilities as may be reasonably necessary.

~~((12))~~ (13) "Reporting party" is a student or another member of the college community who reports an alleged violation of this code that has been committed.

~~((13))~~ (14) "Respondent" is the student against whom disciplinary action is initiated.

~~((14))~~ (15) "Service" is the process by which a document is officially delivered to a party. Service is deemed complete upon the hand delivery of the document, or upon the date the document is emailed or post marked by the mail service. Unless otherwise provided, service upon a person shall be accomplished by:

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

(b) Sending the document by certified or first class mail to the person's last known address; or

(c) Emailing the document to the party's official college email address.

~~((15))~~ (16) "Student" includes all persons taking courses at or through the college, whether on a full-time or a part-time basis, and whether such courses are credit courses, noncredit courses, online courses, or otherwise. Persons who withdraw after allegedly violating the code, who are not officially enrolled for a particular term but who have a continuing relationship with the college, or who have been notified of their acceptance for admissions are considered "students."

~~((16))~~ (17) "Student conduct code" or "code" is the student rights and responsibilities policy in this chapter.

~~((17))~~ (18) "Student conduct officer" is a college administrator designated by the president or vice president for student services to be responsible for implementing and enforcing the student conduct code.

AMENDATORY SECTION (Amending WSR 18-17-025, filed 8/6/18, effective 9/6/18)

**WAC 132U-126-015 Statement of student rights.** As members of the academic community, students are encouraged to develop the capacity for critical judgment and to engage in an independent search for truth. Freedom to teach and freedom to learn are inseparable facets of academic freedom. The freedom to learn depends upon appropriate opportunities and conditions in the classroom, on the campus, and in the larger community. Students should exercise their freedom with responsibility. The responsibility to secure and to respect general conditions conducive to the freedom to learn is shared by all members of the college community.

The following enumerated rights are guaranteed to each student within the limitations of statutory law and college policy, which are deemed necessary to achieve the education goals of the college:

(1) **Academic freedom.**

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

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

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

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

(2) **Due process.**

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

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

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

(3) **Sexual misconduct complainant.** In any case involving an allegation of sexual misconduct as defined in this code, a complainant ~~((19))~~ and respondents are afforded certain rights under this code including, but not limited to:

(a) The right to be informed of all orders issued in the disciplinary case in which they are a complainant;

(b) The right to appeal to the student conduct committee an initial order issued by a conduct officer;

(c) The right to request presidential review of an initial order issued by the student conduct committee; and

(d) The right to be accompanied to all hearings by an advisor and/or an attorney at the student's expense.

AMENDATORY SECTION (Amending WSR 18-17-025, filed 8/6/18, effective 9/6/18)

**WAC 132U-126-030 Prohibited student conduct.** The college may impose sanctions against a student found responsible for committing, attempting to commit, aiding, abetting, inciting, encouraging, or assisting another person to commit, an act(s) of misconduct which include, but are not limited to, the following:

(1) **Academic dishonesty.** Any act of academic dishonesty including, but not limited to, cheating, plagiarism, and fabrication:

(a) Cheating includes any attempt to give or obtain unauthorized collaboration relating to the completion of an academic assignment.

(b) Plagiarism includes taking and using as one's own, without proper attribution, the ideas, writings, or work of another person in completing an academic assignment. Prohibited conduct may also include the unauthorized submission for credit of academic work that has been submitted for credit in another course.

(c) Fabrication includes falsifying data, information, or citations in completing an academic assignment and also includes providing false or deceptive information to an instructor concerning the completion of an assignment.

(d) The decision to bring a student conduct proceeding under this code for academic dishonesty is at the sole discretion of the student conduct officer. Nothing in this code prohibits instructors and/or academic divisions or departments from imposing academic sanctions, up to and including a failing grade in an academic course or dismissal from an academic program, in response to academic dishonesty. Policies and procedures governing the imposition of academic sanctions for academic dishonesty can be found in the course syllabus, and any applicable program handbook.

(2) **Other dishonesty.** Any other act of dishonesty including, but not limited to:

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

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

(c) Furnishing false information, or failing to furnish correct information, in response to the request or requirement of a college officer or employee.

(3) ~~((Disruptive behavior. Behavior))~~ **Disruption or obstruction.** Conduct not otherwise protected by law, that interferes with, impedes, or otherwise unreasonably hinders the following:

(a) Instruction, services, research, administration, disciplinary proceedings, or other college activities, including the obstruction of the free flow of pedestrian or vehicular movement on college property or at a college activity; or

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

(4) **Assault or intimidation.** Unwanted touching, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, or other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property. ~~((Bullying is physical or verbal abuse, repeated over time, and involves a power imbalance between the aggressor and victim.))~~ For purpose of this code, "bullying" is defined as repeated or aggressive unwanted behavior, not otherwise protected by law that intentionally humiliates, harms, or intimidates the victim.

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

(6) **Property violation.** Damage to, misappropriation of, unauthorized use or possession of, vandalism, or other nonaccidental damaging or destruction of college property or property of another person. Property for the purposes of this subsection includes, but is not limited to, computer passwords, access codes, identification cards, personal financial account numbers, other confidential personal information, intellectual property, and college copyrights and trademarks.

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

(8) **Weapons.** Possession, holding, wearing, transporting, storage or presence of any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, explosive device, or any other weapon apparently capable of producing bodily harm is prohibited on the college campus, subject to the following exceptions:

(a) Commissioned law enforcement personnel or legally authorized military personnel while in performance of their duties;

(b) A student with a valid concealed weapons permit may store a pistol in their vehicle parked on campus in accordance with RCW 9.41.050 (2) or (3), provided the vehicle is locked and the weapon is concealed from view; or

(c) The president may grant permission to bring a weapon on campus upon a determination that the weapon is reasonably related to a legitimate pedagogical purpose. Such permission shall be in writing and shall be subject to such terms or conditions incorporated in the written permission.

(d) This policy does not apply to the possession and/or use of legal disabling chemical sprays when possessed and/or used for self defense.

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

(10) **Alcohol, drug, and tobacco violations.**

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

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

(c) **Drugs.** The use, possession, delivery, sale, or the appearance of being under the influence of any legend drug, including anabolic steroids, androgens, or human growth hormones as defined in chapter 69.41 RCW, or any other controlled substance under chapter 69.50 RCW, except as prescribed for a student's use by a licensed practitioner.

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

(11) **Lewd conduct.** Conduct which is obscene, indecent, pornographic and/or lascivious that is not otherwise protected under the law.

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

(13) **Sexual misconduct.** The term "sexual misconduct" includes sexual harassment, sexual intimidation, and sexual violence.

(a) **Sexual harassment.** The term "sexual harassment" means unwelcome (~~conduct of a sexual nature, including unwelcome sexual advances, requests for sexual favors, and/or other verbal, nonverbal, or physical conduct of a sexual nature that is sufficiently serious as to deny or limit, and does deny or limit, based on sex, the ability of a student to participate in or benefit from the college's educational program or that creates an intimidating, hostile, or offensive environment for other campus community members~~) sexual or gender-based conduct, including unwelcome sexual advances, requests for sexual favors, quid pro quo harass-

ment, and other verbal, nonverbal, or physical conduct of a sexual or a gendered nature that is sufficiently severe, persistent, or pervasive as to:

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

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

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

(b) **Sexual intimidation.** The term "sexual intimidation" incorporates the definition of "sexual harassment" and means threatening or emotionally distressing conduct based on ~~(sex)~~ gender identity or perceived gender including, but not limited to, nonconsensual recording of sexual activity or the distribution of such recording.

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

(i) Nonconsensual sexual intercourse is any sexual intercourse (anal, oral, or vaginal), however slight, with any object or body part, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.

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

(iii) Domestic violence includes (~~asserted violent misdemeanor and felony offenses committed by the victim's current or former spouse, current or former cohabitant, person similarly situated under domestic or family violence laws, or anyone else protected under domestic family violence law~~) physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Washington, RCW 26.50.010.

(iv) Dating violence means physical violence, bodily injury, assault, the infliction of fear or imminent physical harm, sexual assault, or stalking committed by a person who has been in a romantic or intimate relationship with the victim. Whether there was such relationship will be gauged by its length, type, and frequency of interaction.

(v) Stalking means intentional and repeated harassment or following of another person, which places that person in reasonable fear that the perpetrator intends to injure, intimidate, or harass that person. Stalking also includes instances where the perpetrator knows or reasonably should know that

the person is frightened, intimidated, or harassed, even if the perpetrator lacks such intent.

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

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

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

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

(15) **Hostile environment.** Unwelcome conduct that a reasonable person would find to be so severe, pervasive, or objectively offensive that it effectively denies a person equal access to the college's educational programs or activities.

(16) **Retaliation.** Harming, threatening, intimidating, coercing, or taking adverse action of any kind against a person because such person reported an alleged violation of this code or college policy, provided information about an alleged violation, or participated as a witness or in any other capacity in a college investigation or disciplinary proceeding.

~~((16))~~ (17) **Misuse of electronic resources.** Theft or other misuse of computer time or other electronic information resources of the college. Such misuse includes, but is not limited to:

- (a) Unauthorized use of such resources or opening of file, message, or other item;
- (b) Unauthorized duplication, transfer, or distribution of a computer program, file, message, or other item;
- (c) Unauthorized use or distribution of someone else's password or other identification;
- (d) Use of such time or resources to interfere with someone else's work;
- (e) Use of such time or resources to send, display, or print an obscene or abusive message, text, or image;

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

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

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

(i) Failure to comply with the college's electronic use policy.

~~((17))~~ (18) **Unauthorized access.** Unauthorized possession, duplication, or other use of a key, keycard, or other restricted means of access to college property, or unauthorized entry onto or into college property.

~~((18))~~ (19) **Safety violation.** ~~((Safety violation includes))~~ Any nonaccidental or negligent conduct that interferes with or otherwise compromises any college policy, equipment, or procedure relating to the safety and security of self or the campus community, including tampering with fire safety equipment and triggering false alarms or other emergency response systems. A safety violation may include the operation of any motor vehicle on college property in an unsafe manner or in a manner which is reasonably perceived as threatening the health or safety of another person.

~~((19))~~ (20) **Violation of other laws and policies.** Violation of any federal, state, or local law, rule, or regulation or other college rules or policies.

~~((20))~~ (21) **Ethical violation.** The breach of any generally recognized and published code of ethics or standards of professional practice that governs the conduct of a particular profession for which the student is taking a course or is pursuing as an educational goal or major.

In addition to initiating discipline proceedings for violation of the student conduct code, the college may refer any violations of federal, state, or local laws to civil and criminal authorities for disposition. The college shall proceed with student disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution.

**AMENDATORY SECTION** (Amending WSR 18-17-025, filed 8/6/18, effective 9/6/18)

**WAC 132U-126-040 Sanctions.** In keeping with the educational mission of Whatcom Community College, sanctions serve the purpose of educating students about their rights and responsibilities, reinforcing the high standards of scholarship expected of Whatcom students, promoting student development, and maintaining safety and well-being of members of the college community. When appropriate, the college may attempt to resolve issues without formal disciplinary action and may give verbal warnings. When a student takes responsibility for a violation or is determined to have violated the code, the student conduct officer may impose one or more of the following sanctions. This list is not meant to be exhaustive and other sanctions may be applied at the discretion of the student conduct officer.

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

(2) **Written reprimand.** Notice in writing that the student has violated one or more terms of this code of conduct and that continuation of the same or similar behavior may result in more severe disciplinary action.

(3) **Disciplinary probation.** Formal action placing specific conditions and restrictions upon the student's continued attendance depending upon the seriousness of the violation. Probation may be for a specific period of time or for the duration of the student's enrollment at the college.

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

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

(6) **Educational activity.** A student may be required to engage in educational activities related to violation(s). Such activities may include, but are not limited to, attendance at educational programs, community services, project or written assignments, and/or meeting with campus officials.

(7) **Loss of privileges.** A student may be denied specific privileges on a temporary or permanent basis such as participating in specific activities or restriction from specific areas of campus.

(8) **Restitution.** Reimbursement for damage to or misappropriation of property, or for injury to persons, or for reasonable costs incurred by the college in pursuing an investigation or disciplinary proceedings.

(9) **Professional evaluation.** Referral for drug, alcohol, psychological or medical evaluation by an appropriately certified or licensed professional may be required. The student may choose the professional within the scope of practice and with the professional credentials as defined by the college. The student will sign all necessary releases to allow the college access to any such evaluation. The student's return to college may be conditional upon compliance with the recommendations set forth in such a professional evaluation. If the evaluation indicates that the student is not capable of functioning within the college community, the student will remain suspended until further evaluation recommends that the student is capable of reentering the college and complying with the rules of conduct.

(10) **Administrative no-contact order.** An order directing a student to have no contact with a specified student, college employee, a member of the college community, or a particular college facility.

(11) **Student housing relocation.** Students who are living in college-controlled or administered housing may be transferred to alternate college-controlled or administered housing.

(12) **Termination of student housing contract.** A student may be removed from their college-controlled housing and their housing contract terminated.

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

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

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

AMENDATORY SECTION (Amending WSR 18-17-025, filed 8/6/18, effective 9/6/18)

**WAC 132U-126-045 Initiation of disciplinary action.**

(1) All disciplinary actions will be initiated by the student conduct officer in response to a report filed by any college community member. A complaint should be made in writing to the office of (~~student conduct~~) community standards. Additionally, information received from any source (police report, third party, electronic, etc.) may be considered as a complaint. If that officer is the subject of a complaint initiated by the respondent, the president shall, upon request and when feasible, designate another person to fulfill any such disciplinary responsibilities relative to the complaint. All complaints of sexual misconduct will be reviewed by the Title IX coordinator or designee to determine whether the complaint is a violation of chapter 132U-305 WAC or the student code of conduct.

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

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

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

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

(a) Exonerate the respondent and terminate the proceedings.

(b) Impose a disciplinary sanction(s), as described in WAC 132U-125-035.

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

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

AMENDATORY SECTION (Amending WSR 18-17-025, filed 8/6/18, effective 9/6/18)

**WAC 132U-126-050 Appeal from disciplinary action.** (1) The respondent may appeal a disciplinary action by submitting a written appeal with the conduct review officer within ten business days of service. Failure to appeal on or before the deadline constitutes a waiver of the right to appeal and the initial decision shall be deemed final.

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

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

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

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

(6) Disciplinary action imposed for violation will not begin while an appeal is pending, except summary suspension and any conditions included in a summary suspension.

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

(a) Disciplinary suspensions in excess of ten (~~(business)~~) instructional days;

(b) Dismissals; and

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

(8) Appeals to the following sanctions shall be reviewed through brief adjudicative proceedings:

(a) Suspension of ten (~~(business)~~) instructional days or less;

(b) Disciplinary probation;

(c) Written reprimands; and

(d) Any conditions or terms imposed in conjunction with one of the three sanctions listed in this subsection.

(9) In cases involving allegations of sexual misconduct, the complainant has the right to appeal the following actions by the student conduct (~~(office))~~ officer or designee following the same procedures as set forth in subsection (8)(a) through (d) of this section for the respondent:

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

(b) Any sanctions and/or conditions imposed against a respondent for a sexual misconduct violation, including a disciplinary warning.

(10) If the respondent files an appeal to a decision imposing sanctions for a sexual misconduct violation, the college shall notify the complainant of the appeal and provide the complainant an opportunity to participate as a party to the appeal.

(11) Except as otherwise specified in this chapter, a complainant who files an appeal to sanctions or who participates as a party to a respondent's appeal of a disciplinary decision shall be afforded the same procedural rights as are afforded the respondent.

AMENDATORY SECTION (Amending WSR 18-17-025, filed 8/6/18, effective 9/6/18)

**WAC 132U-126-055 Brief adjudicative proceedings—Initial hearing.** (1) Brief adjudicative proceedings shall be conducted by a conduct review officer or designee. The conduct review officer shall not participate in any case in which the conduct officer is complainant or witness; or in which they have direct or personal interest, prejudice, or bias; or in which they have acted previously in an advisory capacity.

(2) The parties to a brief adjudicative proceeding are the respondent, the student conduct officer, and the complainant in cases involving sexual misconduct. The conduct review officer shall conduct an informal hearing and provide each party an opportunity to be informed of the facts as viewed by the college and the initial disciplinary findings. Each party will also have an opportunity to explain their view of the matter.

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

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

(5) Upon review, if the conduct review officer determines that the respondent's conduct may warrant imposition of a disciplinary suspension of more than ten (~~(business)~~)

days or dismissal, the matter shall be referred to the student conduct committee for a disciplinary hearing.

**AMENDATORY SECTION** (Amending WSR 18-17-025, filed 8/6/18, effective 9/6/18)

**WAC 132U-126-060 Brief adjudicative proceedings—Review of an initial decision.** (1) An initial decision is subject to review by the president or designee, provided a party files a written request for review with the conduct review officer within ten ((business)) days of service of the initial decision.

(2) The president or designee shall not participate in any case in which they are a complainant or witness; has direct or personal interest, prejudice, or bias; or has acted previously in an advisory capacity.

(3) During the review, the president or designee shall give each party an opportunity to file written responses explaining their view of the matter and shall make any inquiries necessary to ascertain whether the sanctions should be modified or whether the proceedings should be referred to the student conduct committee for a formal adjudicative hearing.

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

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

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

**AMENDATORY SECTION** (Amending WSR 18-17-025, filed 8/6/18, effective 9/6/18)

**WAC 132U-126-075 Appeal—Student conduct committee.** (1) Proceedings of the student conduct committee shall be governed by the Administrative Procedure Act, chapter 34.05 RCW.

(2) The student conduct committee chair shall serve all parties with written notice of the hearing not less than seven business days in advance of the hearing date. The chair may shorten this notice period if both parties agree, and may continue the hearing to a later time for good cause shown.

(3) The committee chair is authorized to conduct prehearing conferences and/or to make prehearing decisions

concerning the extent and form of any discovery, issuance of protective decisions, and similar procedural matters.

(4) Any involved party, including the committee chair, may submit a request to submit and exchange lists of potential witnesses and copies of potential exhibits that reasonably expect to be presented to the committee. This request must be submitted to the committee chair at least five business days prior to the hearing. The parties shall exchange the items no later than the third business day prior to the hearing. Failure to participate in good faith in such a requested exchange may be cause for exclusion from the hearing of any witness or exhibit not disclosed, absent a showing of good cause for such failure.

(5) The committee chair may provide to the committee members in advance of the hearings copies of:

(a) The conduct officer's notification of imposition of discipline or referral to the committee; and

(b) The notice of appeal or any response to referral by the respondent. If doing so, however, the chair should remind the members that these "pleadings" are not evidence of any facts they may allege.

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

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

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

(9) Each party may be accompanied at the hearing by a nonattorney assistant of their choice. A respondent, or complainant in a case involving allegations of sexual misconduct, may elect to be represented by an attorney at their own cost, but will be deemed to have waived that right unless, at least four business days before the hearing, written notice of the attorney's identity and participation is filed with the committee chair with a copy to the student conduct officer. The committee will ordinarily be advised by an assistant attorney general. If the respondent or complainant is represented by an attorney, the student conduct officer may also be represented by a second, appropriately screened assistant attorney general.

(10) At the option of the college president, the college may appoint an administrative law judge to serve as a hearing officer responsible for handling procedural matters otherwise assigned to the chair and to conduct the hearing on behalf of the student conduct committee.

AMENDATORY SECTION (Amending WSR 18-17-025, filed 8/6/18, effective 9/6/18)

**WAC 132U-126-090 Appeal from student conduct committee initial decision.** (1) A respondent, or complainant in a case involving allegations of sexual misconduct, who is aggrieved by the findings or conclusions issued by the student conduct committee may appeal the student conduct committee's initial decision to the president or designee by filing a written notice of appeal with the president's office within ten ((business)) days of service of the committee's initial decision. Failure to file a timely appeal constitutes a waiver of the right and the initial decision shall be deemed final.

(2) The president or designee shall not participate in any case in which the president or designee is a complainant or witness; has direct or personal interest, prejudice, or bias has or has acted previously in an advisory capacity.

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

(4) The president or designee shall provide a written decision to all parties within twenty ((business)) days after receipt of the notice of appeal. The president or designee's decision shall be final and shall include a notice of any rights to request reconsideration and/or judicial review.

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

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

AMENDATORY SECTION (Amending WSR 18-17-025, filed 8/6/18, effective 9/6/18)

**WAC 132U-126-095 Summary suspension.** (1) Summary suspension is a temporary exclusion from specified college premises or denial of access to all activities or privileges for which a respondent might otherwise be eligible, while an investigation and/or formal disciplinary procedures are pending.

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

(a) Has violated any provision of the code of conduct; and

(b) Presents an immediate danger to the health, safety or welfare of members of the college community; or

(c) Poses an ongoing threat of substantial disruption of, or interference with, the operations of the college.

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

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

(a) The reason for imposing the summary suspension, including a description of the conduct giving rise to the summary suspension and reference to the provisions of the student conduct code or the law allegedly violated;

(b) The date, time, and location when the respondent must appear before the conduct review officer for a hearing on the summary suspension; and

(c) The conditions, if any, under which the respondent may physically access the campus or communicate with members of the campus community. If the respondent has been trespassed from the campus, a notice against trespass shall be included that warns the student that their privilege to enter into or remain on college premises has been withdrawn, that the respondent shall be considered trespassing and subject to arrest for criminal trespass if the respondent enters the college campus other than to meet as scheduled with the student conduct officer or conduct review officer or to attend a scheduled disciplinary hearing.

(5) The conduct review officer shall conduct a hearing on the summary suspension as soon as practicable after imposition of the summary suspension.

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

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

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

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

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

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 132U-126-100 Sexual misconduct proceedings.

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

**WSR 21-18-102**  
**PERMANENT RULES**  
**DEPARTMENT OF HEALTH**

[Filed August 31, 2021, 11:32 a.m., effective December 1, 2021]

Effective Date of Rule: December 1, 2021.

Purpose: WAC 246-945-990 Pharmaceutical licensing fees and renewal cycle, 246-945-991 Hospital pharmacy associated clinics fees and renewal cycle, and 246-945-992 Fee payment. The department of health (department), in consultation with the pharmacy quality assurance commission (commission), has adopted changes and recodified three sections of rule to move fees for all license types collected by the commission into the recently created chapter 246-945 WAC. The adopted rules also change professional licenses to a two-year renewal cycle and adds a new fee for the registration of a remote dispensing site created by the passage of SSB 6086.

Citation of Rules Affected by this Order: New WAC 246-945-990, 246-945-991 and 246-945-992; and repealing WAC 246-907-030, 246-907-0302, and 246-907-040.

Statutory Authority for Adoption: RCW 43.70.110, 43.70.250; and SSB 6086 (chapter 244, Laws of 2020).

Adopted under notice filed as WSR 21-12-074 on May 28, 2021.

Changes Other than Editing from Proposed to Adopted Version: The following technical, nonsubstantive changes were made to the proposed rules upon adoption:

WAC 246-945-990 (5)(b) removed fees listed under "with differential hours." The pharmacy license with differential hours no longer exists, so that was removed for accuracy.

WAC 246-945-992(1) had a typo. "A licensed pharmacist" should have read "A licensed pharmacy." That typo has been corrected in the adopted version of the rules.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 2, Amended 0, Repealed 3.

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

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

Date Adopted: August 31, 2021.

Kristin Peterson, JD

AMENDATORY SECTION (Amending WSR 18-21-123, filed 10/18/18, effective 1/1/19)

**WAC 246-907-030 Pharmaceutical licensing fees and renewal cycle.** (1) Pharmacist, pharmacy technician, pharmacy intern, and pharmacy assistant credentials must be renewed every two years on the practitioner's birthday as provided in chapter 246-12 WAC(~~(, Part 2)~~).

(2) Pharmacy location credentials, controlled substance researcher registration, drug dog handler K9 registration, and other Controlled Substances Act registrations will expire on June 1st of each year.

(3) All other credentials, including health care entity, will expire on October 1st of each year, except the shop-keeper endorsement which expires annually associated with a business license issued by the department of revenue.

(4) The following nonrefundable fees will be charged for pharmacy professionals:

(a) All pharmacy professionals:

<b>Title of fee</b>	<b>Fee</b>
Verification of credential	\$25.00
Duplicate credential	10.00
 (b) Pharmacist:	
<del>((Original))</del> <u>Initial</u> credential	<del>((200.00))</del> <u>\$400.00</u>
Renewal	<del>((265.00))</del> <u>530.00</u>
Late renewal penalty	<del>((135.00))</del> <u>265.00</u>
Expired credential reissuance	265.00
Inactive credential renewal	265.00
Retired <u>active</u> credential <u>status</u> application	<del>((25.00))</del> <u>50.00</u>
Retired <u>active</u> credential <u>status</u> renewal	<del>((25.00))</del> <u>50.00</u>
Temporary <u>practice</u> permit	100.00
Reciprocity ( <u>license by license transfer</u> )	465.00

(c) Pharmacy technician:

<del>((Original))</del> <u>Initial</u> credential	<del>((70.00))</del> <u>\$140.00</u>
Renewal	<del>((70.00))</del> <u>140.00</u>
Late renewal penalty	<del>((50.00))</del> <u>70.00</u>
Expired credential reissuance	70.00

(d) Pharmacy intern:

<del>((Original))</del> <u>Initial</u> credential	<del>((45.00))</del> <u>\$90.00</u>
Renewal	<del>((45.00))</del> <u>90.00</u>
Late renewal penalty	<del>((45.00))</del> <u>50.00</u>
Verification of internship hours	25.00
Expired credential reissuance	45.00

(e) Pharmacy assistant:

<del>((Original))</del> <u>Initial</u> credential	<del>((35.00))</del> <u>\$70.00</u>
Renewal	<del>((35.00))</del> <u>70.00</u>
Late renewal penalty	<del>((35.00))</del> <u>50.00</u>
Expired credential reissuance	35.00

(5) The following nonrefundable fees will be charged for pharmaceutical firms:

(a) All pharmaceutical firms:

Verification of credential	\$25.00
Duplicate credential	10.00
Facility inspection	400.00

(b) Pharmacy (includes hospital pharmacies):

**Pharmacy credential** (for hospital pharmacy associated clinics, see WAC ~~((246-907-0302))~~ 246-945-991)

<del>((Original))</del> <u>Initial</u> credential	\$540.00
Renewal	540.00
Late renewal penalty	270.00

**Pharmacy technician utilization**

<del>((Original))</del> <u>Initial</u> utilization	100.00
Renewal	100.00

**Controlled substances authority**

<del>((Original))</del> <u>Initial</u> credential	150.00
Renewal	150.00

~~((With differential hours~~

<del>Original</del> credential	<del>55.00</del>
<del>Renewal</del>	<del>55.00))</del>

(c) Nonresident pharmacy:

**Pharmacy credential**

<del>((Original))</del> <u>Initial</u> credential	\$540.00
Renewal	540.00
Late renewal penalty	270.00

**Controlled substances authority**

<del>((Original))</del> <u>Initial</u> credential	150.00
Renewal	150.00

(d) Controlled substance researcher:

<del>((Original))</del> <u>Initial</u> credential	\$400.00
Renewal	400.00

(e) Other controlled substances act registrations (i.e., analytical laboratories, school laboratories):

<del>((Original))</del> <u>Initial</u> credential	\$360.00
Renewal	360.00

(f) Drug dog handler K9 registration:

<del>((Original))</del> <u>Initial</u> credential	\$55.00
Renewal	55.00

(g) Health care entity:

**Health care entity credential**

<del>((Original))</del> <u>Initial</u> credential	\$540.00
Renewal	540.00
Late renewal penalty	270.00

**Controlled substances authority**

<del>((Original))</del> <u>Initial</u> credential	150.00
Renewal	150.00

(h) Drug manufacturer:

**Manufacturer credential**

<del>((Original))</del> <u>Initial</u> credential	\$825.00
Renewal	825.00
Late renewal penalty	300.00

**Controlled substances authority**

<del>((Original))</del> <u>Initial</u> credential	150.00
Renewal	150.00

(i) Drug wholesaler - Full line:

**Wholesaler credential**

<del>((Original))</del> <u>Initial</u> credential	\$825.00
Renewal	825.00
Late renewal penalty	300.00

**Controlled substances authority**

<del>((Original))</del> <u>Initial</u> credential	150.00
Renewal	150.00

(j) Drug wholesaler - Export:

**Wholesaler credential**

<del>((Original))</del> <u>Initial</u> credential	\$825.00
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Renewal 825.00  
 Late renewal penalty 300.00  
 (k) Drug wholesaler - OTC only:

~~((Original))~~ Initial credential 465.00  
 Renewal 465.00  
 Late renewal penalty 235.00

(l) Drug wholesaler - Export nonprofit humanitarian organization:

**Wholesaler credential**

~~((Original))~~ Initial credential 25.00  
 Renewal 25.00  
 Late renewal penalty 25.00

(m) Legend drug sample distributor:

**Distributor credential**

~~((Original))~~ Initial credential 540.00  
 Renewal 540.00  
 Late renewal penalty 270.00

**Controlled substances authority**

~~((Original))~~ Initial credential 150.00  
 Renewal 150.00

(n) Poison manufacturer/seller:

~~((Original))~~ Initial credential 55.00  
 Renewal 55.00  
 Late renewal penalty 50.00

(o) Precursor chemicals:

~~((Original))~~ Initial credential 55.00  
 Renewal 55.00  
 Late renewal penalty 50.00

(p) Itinerant vendor:

~~((Original))~~ Initial credential 55.00  
 Renewal 55.00  
 Late renewal penalty 50.00

(q) Sodium pentobarbital for animal euthanization:

~~((Original))~~ Initial credential 55.00  
 Renewal 55.00  
 Late renewal penalty 50.00

(r) Shopkeeper:

~~((Original))~~ Initial credential 55.00  
 Renewal 55.00

(s) Remote dispensing site for opioid use disorder medications registration:

Initial credential 55.00  
Renewal 55.00  
Late renewal penalty 50.00

AMENDATORY SECTION (Amending WSR 18-21-123, filed 10/18/18, effective 1/1/19)

**WAC 246-907-0302 Hospital pharmacy associated clinics fees and renewal cycle.** (1) Parent hospital pharmacy licenses with one or more hospital pharmacy associated clinics (HPAC) expire on June 1st of each year.

(2) A parent hospital pharmacy must submit fees for HPACs in addition to fees set in WAC ~~((246-907-030(4)))~~ 246-945-990(5). HPAC fees are due annually, except as provided under subsection (3)(d) of this section.

(3) A parent hospital pharmacy must submit the following nonrefundable fees based on category and number of HPACs as defined in WAC ~~((246-873A-020))~~ 246-945-233(3) added to the parent hospital pharmacy license.

(a) **Category 1 HPAC.** A parent hospital pharmacy must submit the Category 1 HPAC fee according to the number of Category 1 HPACs under the parent hospital pharmacy license.

HPAC tier	Number of Category 1 HPACs under parent hospital pharmacy license	Total annual fee
A	1-10	\$895.00
B	11-50	\$2,240.00
C	51-100	\$3,125.00
D	Over 100	\$4,025.00

(b) **Category 2 HPAC.** A parent hospital pharmacy must submit the Category 2 HPAC fee for each Category 2 HPAC under the parent hospital pharmacy license.

Category 2 HPAC fee	\$755.00
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(c) The department charges a processing fee of fifty-five dollars for an amended license to change the number of HPACs.

(d) If at any time a parent hospital pharmacy submits an addendum increasing the number of HPACs on the parent hospital pharmacy license, which changes the applicable HPAC tier to a higher fee amount, the parent hospital pharmacy shall submit the difference in fees with the addendum.

(e) The department will not refund fees when a tier reduction occurs between renewal periods.

AMENDATORY SECTION (Amending WSR 91-19-028, filed 9/10/91, effective 10/11/91)

**WAC 246-907-040 Fee payment.** (1) A licensed ~~((pharmacist))~~ pharmacy, wholesaler, or manufacturer shall pay a facility inspection fee in lieu of the original license fee

when there is only a change of facility location within the premises identified by the license address. Any change of location to a different address shall require a new application and payment of the original license fee.

(2) An original license fee shall be paid whenever there is any change in ownership, including change in business structure or organizational structure such as a change from sole proprietorship to a corporation, or a change of more than fifty percent ownership in a corporation.

(3) All fees for pharmacy professionals are charged on ~~((an annual))~~ a biennial basis and will not be prorated.

(4) All fees for pharmaceutical firms are charged on an annual basis and will not be prorated.

#### NEW SECTION

The following sections of the Washington Administrative Code are decodified and recodified as follows:

Old WAC Number	New WAC Number
246-907-030	246-945-990
246-907-0302	246-945-991
246-907-040	246-945-992

### WSR 21-18-110 PERMANENT RULES DEPARTMENT OF

#### CHILDREN, YOUTH, AND FAMILIES

[Filed August 31, 2021, 3:15 p.m., effective October 1, 2021]

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

Purpose: Update chapter 110-15 WAC to explain when and for whom the department provides child care, the child care rates that may be paid, and the tax liability for payments to family, friend, and neighbor child care providers.

Citation of Rules Affected by this Order: Repealing WAC 110-15-4515, 110-15-4535 and 110-15-4545; and amending WAC 110-15-4500, 110-15-4505, 110-15-4510, 110-15-4520, 110-15-4525, 110-15-4530, 110-15-4540, 110-15-4550, 110-15-4555, 110-15-4560, 110-15-4565, 110-15-4575, and 110-15-4580.

Statutory Authority for Adoption: RCW 74.12.340.

Adopted under notice filed as WSR 21-11-115 on May 19, 2021.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 13, Repealed 3.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 13, Repealed 3.

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

New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: August 31, 2021.

Brenda Villarreal  
Rules Coordinator

### PART IV. CHILD PROTECTIVE AND CHILD WELFARE SERVICES CHILD CARE SUBSIDIES

AMENDATORY SECTION (Amending WSR 19-14-078, filed 7/1/19, effective 7/1/19)

**WAC 110-15-4500** ~~What ((are the)) types of child care subsidies are available to child welfare program participants?~~ ~~((This chapter relates to the following subsidies in children's administration (CA)))~~ DCYF may purchase:

- (1) Child protective services child care;
- (2) Child welfare services child care; and
- (3) Employed foster parent child care.

AMENDATORY SECTION (Amending WSR 19-14-078, filed 7/1/19, effective 7/1/19)

**WAC 110-15-4505** ~~Child and parent—Definitions.~~ The following definitions apply ~~((throughout this chapter))~~ to WAC 110-15-4500 through 110-15-4580.

"**Child**" means a person twelve years of age or younger or a person under nineteen years of age who is physically, mentally, or emotionally incapable of self-care as verified by a licensed medical practitioner or masters level or above mental health professional.

~~("**In-home/relative child care provider**" means a provider who meets the requirement in WAC 170-290-0130 through 170-290-0167.)~~

"**Parent**" means a biological or adoptive parent of a child or an individual who ~~((have))~~ has an established parent-child relationship under RCW 26.26.101, unless the legal rights of that person have been terminated or paternity has been disestablished.

AMENDATORY SECTION (Amending WSR 19-14-078, filed 7/1/19, effective 7/1/19)

**WAC 110-15-4510** Child care for child protective services (CPS) and child welfare services (CWS). ~~((The department))~~ DCYF may purchase ((CPS/CWS)) child care within available funds for children of families in need of support as part of a ((CPS/CWS)) CPS or CWS case plan. This service is short-term and time-limited. Social workers must determine if other resources are available to meet this need before authorizing payment by the department.

AMENDATORY SECTION (Amending WSR 19-14-078, filed 7/1/19, effective 7/1/19)

**WAC 110-15-4520** What are the maximum child care subsidy rates ((CA)) DCYF pays for child care in a licensed or certified child care center? ((CA)) Maximum child care subsidy rates for licensed child care centers can be found in WAC ((170-290-0200)) 110-15-0200.

AMENDATORY SECTION (Amending WSR 19-14-078, filed 7/1/19, effective 7/1/19)

**WAC 110-15-4525** What are the maximum child care subsidy rates ~~((CA))~~ **DCYF** pays for child care in a licensed or certified family home child care? ~~((CA))~~ Maximum child care subsidy rates for licensed or certified family home child care can be found in WAC ~~((170-290-0205))~~ 110-15-0205.

AMENDATORY SECTION (Amending WSR 19-14-078, filed 7/1/19, effective 7/1/19)

**WAC 110-15-4530** When can ~~((CA))~~ **DCYF** pay more than the maximum ~~((CA))~~ child care subsidy rate? ~~((CA))~~ **DCYF** pays additional subsidies to a licensed or certified family child care home or center when:

(1) Care is for nonstandard hours ~~((under WAC 388-165-195 and 388-165-200))~~ as defined in WAC 110-15-0249;

(2) A child has a documented special need(s) under WAC ~~((388-165-210, 388-165-215, or 388-165-220))~~ 110-15-0220;

(3) Care is not available at the ~~((CA))~~ **DCYF** rate and the provider's usual rate is authorized;

(4) The provider is participating in the state's early achievers program and receives tiered reimbursement and state funds are available; or

(5) A child registration fee is applicable under WAC ~~((170-290-0245))~~ 110-15-0245.

To the extent that funds are available, ~~((CA))~~ **DCYF** may pay additional subsidies to licensed or certified family home child care for field trip and quality enhancement fees under WAC ~~((170-290-0245))~~ 110-15-0247.

AMENDATORY SECTION (Amending WSR 19-14-078, filed 7/1/19, effective 7/1/19)

**WAC 110-15-4540** How does ~~((CA))~~ **DCYF** pay for nonstandard hour child care? ~~((CA))~~ **DCYF** authorizes the nonstandard hour bonus to licensed or certified child care providers as specified in WAC ~~((170-290-0249))~~ 110-15-0249.

AMENDATORY SECTION (Amending WSR 19-14-078, filed 7/1/19, effective 7/1/19)

**WAC 110-15-4550** What is the ~~((CA))~~ **DCYF** child care subsidy rate for children with special needs in a licensed or certified child care center? For children with documented special needs, ~~((CA pays child care subsidies to licensed or certified child care centers as described in WAC 388-165-180. In addition, CA))~~ **DCYF** pays the base rate authorized in WAC 110-15-0200 and the lesser of:

(1) The actual cost of providing the special needs care; or

(2) The applicable rate listed in WAC ~~((170-290-0225))~~ 110-15-0225 (1)(a) or (b).

AMENDATORY SECTION (Amending WSR 19-14-078, filed 7/1/19, effective 7/1/19)

**WAC 110-15-4555** What is the ~~((CA))~~ **DCYF** child care subsidy rate for children with special needs in a licensed or certified family home child care? For children with documented special needs, ~~((CA))~~ **DCYF** pays ~~((child care subsidies to licensed or certified family child care homes as described in WAC 388-165-185. In addition, CA pays))~~ the base rate authorized in WAC 110-15-0205 and the lesser of:

(1) The actual cost of providing special needs care; or

(2) The applicable rate listed in WAC ~~((170-290-0230))~~ 110-15-0230 (1)(a) or (b).

AMENDATORY SECTION (Amending WSR 19-14-078, filed 7/1/19, effective 7/1/19)

**WAC 110-15-4560** What is the ~~((CA))~~ **DCYF** in-home/relative child care rate for children with special needs? For children with documented special needs, ~~((CA may authorize payment to in-home/relative child care providers in accordance with))~~ **DCYF** pays the base rate authorized in WAC 110-15-0240 and the applicable special needs rate listed in WAC ~~((170-290-0235))~~ 110-15-0235.

AMENDATORY SECTION (Amending WSR 19-14-078, filed 7/1/19, effective 7/1/19)

**WAC 110-15-4565** What is the maximum child care subsidy rate ~~((CA))~~ **DCYF** pays for in-home/relative child care? ~~((CA))~~ **DCYF** pays the cost of child care directly to the provider as the rate specified in WAC ~~((170-290-0240))~~ 110-15-0240.

AMENDATORY SECTION (Amending WSR 19-14-078, filed 7/1/19, effective 7/1/19)

**WAC 110-15-4575** What is the responsibility of ~~((DSHS))~~ **DCYF** regarding child care subsidies for in-home/relative child care? (1) On all payments ~~((DSHS))~~ **DCYF** makes toward the cost of in-home/relative child care, ~~((DSHS))~~ **DCYF** pays the employer's share of:

(a) Social Security taxes;

(b) Medicare taxes;

(c) Federal Unemployment Taxes (FUTA); and

(d) State unemployment taxes (SUTA) when applicable.

(2) On all payments ~~((DSHS))~~ **DCYF** makes toward the cost of in-home/relative child care ~~((DSHS))~~ **DCYF** withholds the following taxes:

(a) Social security taxes up to the wage base limit; and

(b) Medicare taxes.

(3) If an in-home/relative child care provider receives less than ~~((one thousand one hundred dollars))~~ the per family threshold allowed by *Internal Revenue Service Publication 926, Household Employer's Tax Guide*, in a calendar year, ~~((DSHS))~~ **DCYF** refunds all withheld taxes to the provider.

AMENDATORY SECTION (Amending WSR 19-14-078, filed 7/1/19, effective 7/1/19)

**WAC 110-15-4580 When can ((DSHS)) DCYF pay toward the cost of in-home/relative child care provided outside the child's home? ((DSHS)) DCYF will pay toward the cost of child care provided in the relative's home by the following adult relative of the child:**

- (1) Siblings and stepsiblings living outside the child's home;
- (2) Grandparents;
- (3) Aunts;
- (4) Uncles;
- (5) First cousins;
- (6) Great grandparents;
- (7) Great aunts;
- (8) Great uncles; and
- (9) Extended family members as determined by law or custom of the Indian child's tribe.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 110-15-4515 When are DSHS child care subsidy rates in this chapter effective?  
 WAC 110-15-4535 What is nonstandard hour child care?  
 WAC 110-15-4545 How does DSHS determine that a child qualifies for a special needs rate?

**WSR 21-18-112**

**PERMANENT RULES**

**DEPARTMENT OF HEALTH**

(Board of Optometry)

[Filed August 31, 2021, 4:45 p.m., effective October 1, 2021]

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

Purpose: Chapter 246-851 WAC, Optometrists; adopting a new section, WAC 246-851-245, for suicide prevention education; and repealing WAC 246-851-430 AIDS prevention education requirements. The adopted rule implements ESHB 2411 (chapter 229, Laws of 2020) codified in RCW 43.70.442. The law amended RCW 43.70.442 adding optometrists to the list of professionals required to complete a one-time continuing education training in suicide prevention. The adopted rule requires optometrists to take a one-time, three-hour training in suicide assessment. The adopted rule removes references to AIDS education and training in accordance with ESHB 1551, chapter 76, Laws of 2020, which removed the requirement for healthcare practitioners to take AIDS training.

Citation of Rules Affected by this Order: New WAC 246-851-245; and repealing WAC 246-851-430.

Statutory Authority for Adoption: RCW 18.54.070; ESHB 2411 (chapter 229, Laws of 2020).

Other Authority: ESHB 2411 (chapter 229, Laws of 2020) codified in RCW 43.70.442; ESHB 1551 (chapter 76, Laws of 2020).

Adopted under notice filed as WSR 21-07-090 on March 19, 2021.

A final cost-benefit analysis is available by contacting Lorelei Walker, P.O. Box 47852, Olympia, WA 98504, phone 360-236-4947, fax 360-236-2901, TTY 711, email lorelei.walker@doh.wa.gov, website doh.wa.gov.

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

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

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

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

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

Date Adopted: May 3, 2021.

Glen Owen, OD, Chair  
Board of Optometry

NEW SECTION

**WAC 246-851-245 Optometrist suicide prevention education.** A licensed optometrist or a retired active licensed optometrist shall complete a board-approved, one-time training in suicide prevention that is at least three hours in length. Training must include screening and referral.

(1) This training must be completed by the end of the first full continuing education reporting period after August 1, 2021, or during the first full continuing education reporting period after initial licensure, whichever is later.

(2) Training accepted by the board must be on the department's model list as authorized in WAC 246-12-601 through 246-12-650.

(3) Training completed between June 11, 2020, and August 1, 2021, that meets the requirements of subsection (2) of this section, is accepted as meeting the one-time training requirement of this section.

(4) The hours spent completing the training in suicide assessment under this section count toward meeting applicable continuing education requirements for optometrist license renewal.

REPEALER

The following section of the Washington Administrative Code is repealed:

- WAC 246-851-430 AIDS prevention and information education requirements.

**WSR 21-18-125  
PERMANENT RULES  
LIQUOR AND CANNABIS  
BOARD**

[Filed September 1, 2021, 10:52 a.m., effective October 2, 2021]

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

Purpose: WAC 314-55-040 What criminal history might prevent a marijuana (cannabis) license applicant from receiving or keeping a marijuana (cannabis) license? The Washington state liquor and cannabis board (board) has adopted rule amendments that frame the standards and thresholds for criminal history checks for marijuana (cannabis) licensees.

Citation of Rules Affected by this Order: Amending WAC 314-55-040.

Statutory Authority for Adoption: RCW 69.50.331, 69.50.342.

Adopted under notice filed as WSR 21-14-111 on July 7, 2021.

A final cost-benefit analysis is available by contacting Jeff Kildahl, 1025 Union Avenue S.E., Olympia, WA 98501, phone 360-664-1781, fax 360-664-3208, email rules@lcb.wa.gov, website www.lcb.wa.gov.

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

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

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

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

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

Date Adopted: September 1, 2021.

David Postman  
Chair

AMENDATORY SECTION (Amending WSR 16-11-110, filed 5/18/16, effective 6/18/16)

**WAC 314-55-040 ((What criminal history might prevent a marijuana license applicant from receiving or keeping a marijuana license?)) Cannabis applicant or licensee background checks. (((1) When the WSLCB processes a criminal history check on an applicant, it uses a point system to determine if the person qualifies for a license. The WSLCB will not normally issue a marijuana license or renew a license to an applicant who has accumulated eight or more points as indicated below:**

<b>Description</b>	<b>Time period during which points will be assigned</b>	<b>Points assigned</b>
Felony conviction	Ten years	12 points

<b>Description</b>	<b>Time period during which points will be assigned</b>	<b>Points assigned</b>
Gross misdemeanor conviction	Three years	5 points
Misdemeanor conviction	Three years	4 points
Currently under federal or state supervision for a felony conviction	n/a	8 points
Non-disclosure of any of the above	n/a	4 points each

(2) If a case is pending for an alleged offense that would earn eight or more points, the WSLCB will hold the application for the disposition of the case. If the disposition is not settled within ninety days, the WSLCB will administratively close the application.

(3) The WSLCB may not issue a marijuana license to anyone who has accumulated eight or more points as referenced above. This is a discretionary threshold and it is further recommended that the following exceptions to this standard be applied:

**Exception to criminal history point assignment.**

(a) Prior to initial license application, two federal or state misdemeanor convictions for the possession only of marijuana within the previous three years may not be applicable to the criminal history points accumulated. All criminal history must be reported on the personal/criminal history form.

(i) Regardless of applicability, failure to disclose full criminal history will result in point accumulation;

(ii) State misdemeanor possession convictions accrued after December 6, 2013, exceeding the allowable amounts of marijuana, usable marijuana, and marijuana-infused products described in chapter 69.50 RCW shall count toward criminal history point accumulation.

(b) Prior to initial license application, any single state or federal conviction for the growing, possession, or sale of marijuana will be considered for mitigation on an individual basis. Mitigation will be considered based on the quantity of product involved and other circumstances surrounding the conviction.

(4) Once licensed, marijuana licensees must report any criminal convictions to the WSLCB within fourteen days.)

(1) The board conducts a background check of a new applicant or for license renewals to evaluate whether the applicant or licensee qualifies or requalifies for a license. The background check includes a criminal record check through the Washington state patrol and the Federal Bureau of Investigations database.

(2) Review and evaluation of information produced by background checks. The board will review the information produced by background checks to determine whether the applicant or licensee qualifies for a new or renewed license. Information from the background check may not preclude approval, but will be considered in determining the applicant's eligibility for licensure.

(3) The board will conduct a threshold review for the following types of convictions:

<u>Conviction Type</u>	<u>Conviction Class</u>	<u>Time Consideration</u>	<u>Determination</u>
<u>Felonies</u>	<u>Class A and B convictions</u>	<u>10 years</u>	<u>Threshold review if 1 or more</u>
	<u>Class C convictions</u>	<u>7 years</u>	<u>Threshold review if 2 or more</u>
<u>Misdemeanors</u>	<u>Gross misdemeanors and misdemeanors</u>	<u>3 years</u>	<u>Threshold review if 3 or more</u>

(a) Active state supervision and active federal supervision resulting in determination of threshold review.

(b) The board will conduct a threshold review of any license applicant or license renewal if the background check indicates that the applicant or renewing licensee is under active state supervision, active federal supervision, or both.

(4) **Pending criminal charge review and evaluation.** The board will review and evaluate the applicant or renewing licensee's pending criminal charges. Review and evaluation criteria include, but are not limited to:

(a) A determination of whether the convictions of pending charge(s) alone or compiled would put an individual over the conviction allowance above.

(b) The application may be placed on hold for ninety days and if no disposition within ninety days, the application will be withdrawn.

(5) **Threshold review evaluation criteria.** When a background check results in a determination for a threshold review, the board will consider the following criteria:

(a) Time since the conviction, or pending offenses;

(b) Nature and specific circumstances of the offense;

(c) Relationship of the offense or incident to the nature of the work performed;

(d) Number of offenses or incidents;

(e) If criminal, any relevant evidence of rehabilitation, such as information about compliance with conditions of parole or probation, including orders of no contact with victims and witnesses, and the individuals conduct and experience since the time of the offense; and

(f) Any other relevant information, including information submitted by the applicant or licensee, or requested by the board.

(6) **Continued reporting.** Cannabis licensees must report any criminal convictions to the board within thirty days. New convictions will be considered upon receipt or at the time of renewal.