

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

AMENDATORY SECTION (Amending WSR 14-14-025, filed 6/24/14, effective 7/25/14)

WAC 388-71-0500 What is the purpose of this section of the chapter? The purpose of ~~((this chapter))~~ WAC 388-71-0500 through WAC 388-71-05640 is to describe ~~((the))~~:

(1) ~~((Qualifications of an individual provider, as defined in WAC 388-106-0010))~~ The role of the client as the employer;

(2) Individual provider and agency provider qualifications ~~((of a long term care worker employed by a home care agency, as defined in WAC 388-106-0010 and chapter 246-335-WAC))~~ and responsibilities;

(3) ~~((Conditions under which))~~ When the department ~~((or the area agency on aging (AAA) will pay for the services of an individual))~~ must or may reject a client's choice of provider ~~((or a home care agency long term care worker));~~ and

(4) ~~((Training requirements for an))~~ When a client, individual provider, and medicaid contracted home care agency ~~((long term care worker;~~

~~((5) Client's options for obtaining a long term care worker. A client, as described in WAC 388-71-0836, eligible to receive long term care services, or his/her legal representative acting on the client's behalf, may choose to receive personal care services in the client's home from an individual provider or a long term care worker from a home care agency. If the client chooses to receive services from a home care agency, the agency will assign a long term care worker employed by the agency to provide services to the client. Individual providers and home care agency long term care workers are "long term care workers" as defined in RCW 74.39A.009 and are subject to background checks under RCW 74.39A.056 and 43.20A.710; and~~

~~((6) Contracting requirements))~~ has the right to appeal a department decision.

NEW SECTION

WAC 388-71-0503 What definitions apply to WAC 388-71-0500 through WAC 388-71-05640? "Agency provider" means a long-term care worker who works for a home care agency.

"Area agencies on aging (AAA)" means a contracted entity that aging and long-term support administration (ALISA) grants funds to in order to carry out the functions of the Older Americans Act, general-fund state programs and to provide case management services and supports to individuals eighteen and older who receive medicaid-funded LTC in their own homes.

"Applicant" means a person who is in the process of becoming an in-home long-term care worker.

"Negative actions" are listed in WAC 388-113-0030.

"Background check" means a name and date of birth check or a fingerprint-based background check, or both.

"Background check result" is defined in WAC 388-113-0010.

"Background check central unit (BCCU)" means the DSHS entity responsible for conducting background checks for the department.

"Character, competence, and suitability determination (CC&S)" is defined in WAC 388-113-0050.

"Client" means an individual receiving medicaid-funded in-home long term services from the department.

"Department" means the department of social and health services or its designees.

"Family member" includes, but is not limited to a parent, child, sibling, aunt, uncle, niece, nephew, cousin, grandparent, grandchild, grandniece, grandnephew, or such relatives when related by marriage.

"Fingerprint-based background check" means a search of in-state criminal history records through the Washington state patrol and national criminal history records through the Federal Bureau of Investigation.

"Home care agency (HCA)" means an entity that is licensed by the department of health to provide home care services through a contract arrangement with the department to clients in places of permanent or temporary residence.

"Home care agency long-term care worker" means a long-term care worker who works for a home care agency.

"Individual provider (IP)" as defined in RCW 74.39A.240 limited to individual providers contracted with the department.

"Long-term care worker" as defined in RCW 74.39A.-009 (17) but limited to individual providers contracted with the department or hired by the home care agency.

"Name and date of birth check" is a search conducted by the background check central unit (BCCU) of Washington state criminal history and negative action records using the applicant's name and date of birth.

AMENDATORY SECTION (Amending WSR 13-02-023, filed 12/20/12, effective 1/20/13)

WAC 388-71-0505 ((How does a client hire)) Who hires and supervises an individual provider? The client or ((legal)) representative:

(1) Has the primary responsibility for locating, screening, hiring, supervising, and terminating an individual provider, except that this responsibility must not limit the department's authority to reject, terminate the contract of, or deny or terminate payment to an individual provider under this chapter;

(2) Establishes an employer/employee relationship with the individual provider; and

(3) May receive assistance from the ((social worker/case manager)) case manager or other resources in ((this process)) identifying potential providers.

AMENDATORY SECTION (Amending WSR 14-14-025, filed 6/24/14, effective 7/25/14)

WAC 388-71-0510 ((How does a person become an individual provider)) What are the qualifications of a LTC worker providing in-home services? In order to ((become an individual provider, a person)) be qualified as a long-term care worker, an applicant must:

(1) ((Be eighteen years of age or older)) Not have a disqualifying crime or negative action under chapter 388-113 WAC based on a completed background check;

(2) ((Provide the social worker/case manager/designee with:

(a) ~~A valid Washington state driver's license or other valid picture identification; and either~~

(b) ~~A Social Security card; or~~

(c) ~~Proof of authorization to work in the United States.~~

(3) ~~Complete the required DSHS form authorizing a background check))~~ Not be disqualified based on a character, competence, and suitability determination;

((4) ~~Disclose any criminal convictions and pending charges, and also disclose civil adjudication proceedings and negative actions as those terms are defined in WAC 388-71-0512;~~

(5) ~~Effective January 8, 2012, be screened through Washington state's name and date of birth background check. Preliminary results may require a thumb print for identification purposes.~~

(6) ~~Effective January 8, 2012, be screened through the Washington state and national fingerprint-based background check, as required by RCW 74.39A.056.~~

(7) ~~Results of background checks are provided to the department and the employer or potential employer unless otherwise prohibited by law or regulation for the purpose of determining whether the person:~~

(a) ~~Is disqualified based on a disqualifying criminal conviction or a pending charge for a disqualifying crime as listed in WAC 388-113-0020, civil adjudication proceeding, or negative action as defined in WAC 388-71-0512 and 388-71-0540; or~~

(b) ~~Should or should not be employed as an individual provider based on his or her character, competence, and/or suitability.~~

(8) ~~For those providers listed in RCW 43.43.837(1), a second Washington state and national fingerprint-based background check is required if they have lived out of the state of Washington since the first national fingerprint-based background check was completed.~~

(9) ~~The department may require an individual provider to have a Washington state name and date of birth background check or a Washington state and national fingerprint-based background check, or both, at any time.~~

~~(10) Sign a home and community-based service provider contract/agreement to provide personal care services to a person under a medicaid state plan or federal waiver such as COPES or other waiver programs))~~ (3) Complete training and certification requirements listed in WAC 388-71-0520 and WAC 388-71-0523;

(4) If required, have an active home care aide certification or other qualifying credential by the department of health;

(5) In addition to the qualifications listed in subsections (1) through (4) of this section, an individual provider must:

(a) Have a current and valid individual provider services contract with DSHS to provide personal care services;

(b) Pass the federal exclusion list screening;

(c) Not have credible allegations of fraud which are pending investigation, unless they fit within the exceptions listed in 42 C.F.R. 455.23;

(d) Be eighteen years of age or older;

(e) Provide the department with a valid: Social Security card and picture ID, as determined by DSHS.

NEW SECTION

WAC 388-71-0511 When is a background check required of an individual provider or agency provider?

(1) Individual providers are required to complete and pass a name and date of birth background check before initial contracting with the department.

(2) Agency providers are required to complete and pass a name and date of birth background check prior to working with a client.

(3) Individual providers and agency provider workers are required to complete and pass a name and date of birth background check:

(a) Every two years; and

(b) Any time the department or the home care agency employer requests a new check.

(4) In addition to the name and date of birth background check, individual providers and agency providers are required to complete and pass a fingerprint-based background check:

(a) If hired after January 7, 2012, and in accordance with provisional hire rules in WAC 388-113-0109;

(b) If they have lived out of state since the last fingerprint-based background check was completed; or

(c) Any time the department or home care agency requests a new check.

AMENDATORY SECTION (Amending WSR 14-14-025, filed 6/24/14, effective 7/25/14)

WAC 388-71-0513 ((~~ts~~)) How does an individual provider or agency provider complete a background check ((required of a long-term care worker employed by a home care agency licensed by the department of health))? ((In order to be a long-term care worker employed by a home care agency, a person must:))

(1) The individual provider or agency provider must:

(a) Complete the ((required DSHS form authorizing a) background check authorization form;

(b) Answer all questions on the background check authorization form truthfully;

(c) Obtain a fingerprint-based background check result;

(d) Not have any automatically disqualifying conviction(s), pending charge(s), or negative action(s) as described in chapter 388-113 WAC;

(e) Review the background check results and if necessary provide documents or other information to BCCU to correct the background check results; and

(f) When requested by BCCU, provide additional information in order to complete a background check as mandated by statute.

(2) ~~((Disclose any disqualifying criminal convictions and pending charges as listed in WAC 388-113-0020, and also disclose civil adjudication proceedings and negative actions as those terms are defined in WAC 388-71-0512.~~

~~(3) Effective January 8, 2012, be screened through Washington state's name and date of birth background check. Preliminary results may require a thumb print for identification purposes.~~

~~(4) Effective January 8, 2012, be screened through the Washington state and national fingerprint-based background check, as required by RCW 74.39A.056.~~

~~(5) Results of background checks are provided to the department and the employer or potential employer for the purpose of determining whether the person:~~

~~(a) Is disqualified based on a disqualifying criminal conviction or a pending charge for a disqualifying crime as listed in WAC 388-113-0020, civil adjudication proceeding, or negative action as defined in WAC 388-71-0512 and listed in WAC 388-71-0540; or~~

~~(b) Should or should not be employed based on his or her character, competence, and/or suitability.~~

~~(6) For those providers listed in RCW 43.43.837(1), a second national fingerprint-based background check is required if they have lived out of the state of Washington since the first national fingerprint-based background check was completed.~~

~~(7) The department may require a long-term care worker to have a Washington state name and date of birth background check or a Washington state and national fingerprint-based background check, or both, at any time)) It is the responsibility of the home care agency to ensure compliance with subsection (1) of this section for its agency providers.~~

AMENDATORY SECTION (Amending WSR 21-04-037, filed 1/26/21, effective 3/1/21)

WAC 388-71-0515 What are the responsibilities of an individual provider when providing services to a client? An individual provider (IP) must:

(1) Take direction from the client, who is the IP's employer, or when appropriate, from the client's ((legal)) representative;

(2) Understand the client's plan of care that has been signed by the client or ((legal)) representative, which may be

translated or interpreted, as necessary, and as requested by the client;

(3) Provide the services as outlined on the client's plan of care, as described in WAC 388-106-0010, according to the client's direction, supervision, and prioritization of tasks within the number of hours authorized;

(4) Accommodate the client's individual preferences and unique needs in providing care;

(5) Contact the client, client's representative and case manager when there are changes that affect the personal care and other tasks listed on the plan of care;

(6) Observe and consult with the client or client's representative, regarding change(s) in health, take appropriate action, and respond to emergencies;

(7) Notify the case manager immediately when the client enters a hospital, or moves to another setting, or when the client has an emergent health and safety need that requires the IP to provide services in excess of the client's authorization or the IP's work week limit;

(8) Notify the case manager immediately in the event of the client's death;

(9) Notify the department or AAA immediately when unable to staff/serve the client;

(10) Notify the department/AAA when the individual provider will no longer provide services. The individual provider must:

(a) Give at least two weeks' notice(;;); and

(b) Notify the client or the client's representative in writing(;;); and

(c) Notify the client's case manager((-));

(11) Complete and ~~((keep))~~ submit accurate time ~~((sheets of authorized/paid hours that are accessible to the social worker/case manager; under WAC 388-106-0130, the department does not pay for informal support provided to the client by anyone, including the IP))~~ records, in IPOne, of authorized hours for each day worked; ~~((and))~~

(12) Comply with all applicable laws, regulations, and the individual provider contract;

(13) Have a current background check as described in WAC 388-71-0511 and a current DSHS contract;

(14) Provide services only when the department has approved and authorized payment for services to be provided, except in circumstances where there is an emergent health and safety need; and

(15) Comply with electronic visit verification requirements, when required.

AMENDATORY SECTION (Amending WSR 13-02-023, filed 12/20/12, effective 1/20/13)

WAC 388-71-0517 What are the responsibilities of a home care agency when the home care agency long-term care worker is a family member of the client and the client is receiving in-home medicaid-funded personal care or ~~((DDD))~~ respite services? A home care agency must not bill the department for in-home medicaid-funded personal care or ~~((DDD))~~ respite services when the agency employee providing care is a family member of the client served, unless approved to do so ~~((through an exception to rule under WAC 388-440-0001. For purposes of this section, family member~~

~~means related by blood, marriage, adoption, or registered domestic partnership))~~ by the department or exempt as provided in RCW 74.39A.326.

AMENDATORY SECTION (Amending WSR 13-02-023, filed 12/20/12, effective 1/20/13)

WAC 388-71-0523 What are the training~~((#))~~ and certification requirements for individual providers and home care agency long-term care workers? The following chart provides a summary of the training and certification requirements for individual providers and home care agency long-term care workers, including criteria for those providers working limited hours for one person, caring for only one's child or parent, and providing respite services only.

Who	Status	Orientation training	Safety training	Basic training	Continuing education	Credential such as certification ((HCA-C)) as a home care aide (HCA)
<p>(1) An individual provider or home care agency long-term care worker who is a licensed, certified health care professional <u>in good standing through the Washington state department of health, or an individual provider or home care agency long-term care worker with special education training who meets the criteria in RCW 18.88B.041 (1)(a)(i)(A).</u></p>	<p><u>ARNP, RN, LPN, HCA, CN-A, ((and allied health)) or other professionals listed in WAC 388-71-0839</u></p>	<p>Not required.</p>	<p>Not required.</p>	<p>Not required.</p>	<p><u>Not required of ARNPs, RNs, or LPNs in chapter 388-71 WAC. ((Ten hours through June 30, 2012)) Required twelve hours ((from July 1, 2012 forward per)) under WAC 388-71-0990 and 388-71-0991 of NA-Cs, HCAs, and other professionals listed in WAC 388-71-0839, such as an individual with special education training with an endorsement granted by the superintendent of public instruction under RCW 28A.300.010.</u></p>	<p><u>((Not required)) Must maintain in good standing the certification or credential or other professional role listed in WAC 388-71-0839.</u></p>
<p>(2) An individual provider or home care agency long-term care worker with specific employment history.</p>	<p><u>((Employed as)) A long-term care worker employed at some point between January 1, 2011 and January 6, 2012 and ((who)) has completed the basic training requirements in effect on date of his or her hire. WAC ((388-71-0840)) 388-71-0839.</u></p>	<p>Not required.</p>	<p>Not required.</p>	<p>Not required.</p>	<p>Required. <u>((Ten hours through June 30, 2012.)) Twelve hours from July 1, 2012 ((forward per)) under WAC 388-71-0990 and 388-71-0991.</u></p>	<p>Not required.</p>

Who	Status	Orientation training	Safety training	Basic training	Continuing education	Credential such as certification ((HCA-C)) as a home care aide (HCA)
(3) <u>An individual provider((/)) or home care agency long-term care worker.</u>	Contracted with the department or hired by a licensed home care agency to provide personal care service as defined in WAC 388-71-0836 and is not exempt under subsection (1) or (2) of this ((table)) section.	Required. Two hours ((per)) under WAC 388-71-0860.	Required. Three hours per WAC 388-71-0860.	Required. Seventy hours ((per)) under WAC 388-71-0870 and 388-71-0875.	Required. Twelve hours ((per)) under WAC 388-71-0990 and 388-71-0991.	<u>Home care aide certification required ((per)) under WAC 388-71-0975. Home care aide certification required under WAC 388-71-0975 within two hundred days of the date of hire as provided in WAC 246-980-050 (unless the department of health issues a provisional certification under WAC 246-980-065).</u>
(4) <u>An individual provider ((with)) who works limited hours for one person.</u>	Contracted individual providing twenty hours or less of care for one person per calendar month and does not meet the criteria in (1) or (2) of this ((table)) section.	Required. Two hours ((per)) under WAC 388-71-0860.	Required. Three hours ((per)) under WAC 388-71-0860.	Required. Thirty hours ((per)) under WAC 388-71-0880.	Not required ((prior to June 30, 2014)).	Not required.
(6) <u>An individual who provides only respite services and works three hundred hours or less in any calendar year.</u>	<u>Contracted individual providing only respite care and works no more than three hundred hours in the calendar year, is not exempt in subsection (1) or (2) of this section, and does not meet criteria in subsection (7) of this section.</u>	<u>Required. Two hours under WAC 388-71-0860.</u>	<u>An individual who provides only respite services and works three hundred or less in any calendar year.</u>	<u>Contracted individual providing only respite care and works no more than three hundred hours in the calendar year, is not exempt in subsection (1) or (2) of this section, and does not meet the criteria in subsection (7) of this section.</u>	<u>Required. Two hours under WAC 388-71-0860.</u>	<u>An individual who provides only respite services and works three hundred hours or less in any calendar year.</u>

Who	Status	Orientation training	Safety training	Basic training	Continuing education	Credential such as certification ((HCA-C)) as a home care aide (HCA)
((5) Parent, step parent, or adoptive parent as individual provider)) (6) An individual provider caring only for his or her biological, step, or adoptive adult child.	((Department paid)) Contracted individual providing care only for his or her adult child ((ONLY and receiving)) that receives services through the ((division of)) developmental disabilities administration and not exempt under (1) or (2) of this (table) section.	Required. Two hours per WAC 388-71-0895.	Required. Three hours ((per)) under WAC 388-71-0895.	Required. Seven hours ((per)) under WAC 388-71-0890.	Not required.	Not required.
((6) Biological, step, or adoptive parent/adult child as individual provider)) (7) An individual provider caring only for his or her biological, step, or adoptive child, or parent.	((Who is a department paid)) Contracted individual providing care only to his or her child or parent, who is not exempt in subsection (1) or (2) of this section, and does not meet criteria in ((5) and is not exempt under (1) or (2) of this table)) (6) of this section.	Required. Two hours ((per)) under WAC 388-71-0860.	Required. Three hours ((per)) under WAC 388-71-0860.	Required. Thirty hours ((per)) under WAC 388-71-0880.	Required ((for adult)). An individual provider caring only for his or her biological, step, or adoptive child ((per)) or parent under WAC 388-71-0990 and 388-71-0991. Not required for ((parent provider per)) an individual provider caring only for his or her biological, step, or adoptive child under WAC 388-71-1001.	Not required.

AMENDATORY SECTION (Amending WSR 14-14-025, filed 6/24/14, effective 7/25/14)

WAC 388-71-0540 ~~When will the department((, AAA, or department designee deny payment for services of an)) reject your choice of individual provider ((or home care agency long term care worker))?~~ (1) The department((, AAA, or department designee)) will ((deny payment for the services of)) reject an individual provider ((or home care agency provider)) who:

((1) When the services are provided by an employee of the home care agency who is related by blood, marriage, adoption, or registered domestic partnership to the client)) (a) Is the client's spouse, except in the case of an individual provider for a chore services client;

(b) Is the natural, step, or adoptive parent of a minor client aged seventeen or younger;

(c) Is the foster parent providing personal care or skills acquisition training to a child residing in their licensed foster home;

(d) Does not meet the qualifications under WAC 388-71-0510; or

(e) Has had a contract terminated within the last ninety days for not complying with the work week limits of chapter 388-114 WAC.

(2) ((When he or she is the client's spouse, except in the case of an individual provider for a chore services client. Note: For chore spousal providers, the department pays a rate not to exceed the amount of a one person standard for a continuing general assistance grant, per WAC 388-478-0020;

(3) When he or she is the natural/step/adoptive parent of a minor client aged seventeen or younger receiving services under medicaid personal care;

(4) When he or she is a foster parent providing personal care to a child residing in their licensed foster home;

(5) When he or she has had any of the following:

(a) A history of noncompliance with federal or state laws or regulations in the provision of care or services to children or vulnerable adults;

(b) When he or she has a conviction or pending charge for a disqualifying crime listed in WAC 388-113-0020 (1), (2) or equivalent conviction or pending charge as described in WAC 388-113-0020(3).

(c) ~~Been found to have abused, neglected, financially exploited, or abandoned a minor or vulnerable adult by court of law or a disciplining authority, including the department of health. Examples of legal proceedings in which such findings could be made include juvenile court proceedings under chapter 13.34 RCW, domestic relations proceeding under Title 26 RCW, or proceedings involving a court ordered permanent restraining order or order of protection, either active or expired, against the individual that was based upon abuse, neglect, financial exploitation or mistreatment of a minor or vulnerable adult;~~

(d) A finding of abuse or neglect of a child under RCW 24.44.020 and chapter 388-15 WAC that is:

(i) ~~Listed on the department's background check central unit (BCCU) report; or~~

(ii) ~~Disclosed by the individual, except for findings made before December, 1998. Findings made before December 1998 require a character, competence, and suitability determination.~~

(e) A finding of abuse, neglect, financial exploitation, or abandonment of a vulnerable adult that is:

(i) ~~Listed on any registry, including the department's registry;~~

(ii) ~~Listed on the department's background check central unit (BCCU) report; or~~

(iii) ~~Disclosed by the individual, except for adult protective services findings made before October 2003. Findings made before October 2003 require a character, competence, and suitability determination.~~

(6) ~~Who has registered sex offender status;~~

(7) ~~Who has had a license, certification, medicaid or medicare provider agreement, or a contract for the care of children or vulnerable adults denied, suspended, revoked, not renewed, or terminated, for noncompliance with state and/or federal regulations;~~

(8) ~~Who obtained or attempted to obtain a license, certification or contract by fraudulent means or misrepresentation;~~

(9) ~~Who knowingly, or with reason to know, made a false statement of material fact on his or her application for a license, certification, contract or any data attached to the application, or in any matter involving the department;~~

(10) ~~Who willfully prevented or interfered with or failed to cooperate with any inspection, investigation, or monitoring visit made by the department, including refusal to permit authorized department representatives to interview clients or have access to their records;~~

(11) ~~When the client's assessment or reassessment does not identify an unmet need;~~

(12) ~~Who is terminated by the client (in the case of an individual provider) or by the home care agency (in the case of an agency provider);~~

(13) ~~Who does not successfully complete applicable training requirements, within the timeframes described in WAC 388-71-0875, 388-71-0880, 388-71-0890 and 388-71-0991. If an individual provider or long-term care worker~~

~~employed by a home care agency does not complete required training within the required timeframe, and:~~

(a) ~~If the worker is not required to be a certified home care aide, then the long-term care worker may not provide care until the training is completed; or~~

(b) ~~If the worker is required to be a certified home care aide, then the long-term care worker may not provide care until the certification has been granted.~~

(14) ~~Who does not successfully complete the certification or recertification requirements as described under WAC 388-71-0975; or~~

(15) ~~Who has had a home care aide certification denied, suspended, or revoked. If the individual is otherwise qualified, payment for services may resume when his or her certification has been reissued.~~

~~In addition,)) The department((, AAA, or department designee may deny payment to or terminate the contract of)) will also reject an individual provider ((as provided under WAC 388-71-0543, 388-71-0546, and 388-71-0551)) when the department believes the individual will be unable to appropriately meet the care needs of the client, including health and safety.~~

NEW SECTION

WAC 388-71-05410 What are the client's rights if the department rejects their choice of individual provider?

(1) If the department rejects the client's choice of individual provider, the client has a right to:

(a) An administrative hearing to appeal the decision, as described in chapter 388-02 WAC and Title 182 WAC; and

(b) Receive services from another currently contracted qualified individual provider or home care agency provider, or to receive services through other settings the client is eligible for.

(2) The hearing rights provided under this section are rights of the client and not the individual provider.

(3) Denying a request for increased work week limits for an individual provider is not a denial of choice of provider.

(4) For the purpose of an administrative hearing, a "DISQUALIFY" background check result on a Notification of Background Check Result letter from the department's background check central unit indicates a department background check showed a disqualifying crime or negative action under chapter 388-113 WAC. A "DISQUALIFY" result, if admitted into evidence, meets the department's burden to show the applicant has a disqualifying crime or negative action under chapter 388-113 WAC. A party appealing the department's decision to deny their choice of provider can rebut a "DISQUALIFY" result by introducing clear and convincing evidence that the Notification of Background Check Result letter is erroneous. This section does not grant a long-term care worker a right to an administrative hearing to contest the results of a background check or the denial or termination of a contract.

NEW SECTION

WAC 388-71-05415 When will the department deny payment to the home care agency? The department will deny payment to the home care agency for services provided

to a department client by an agency provider that it employs who:

- (1) Does not meet the qualifications in WAC 388-71-0510; or
- (2) Is a family member of the client served, except as provided by 74.39A.326.

AMENDATORY SECTION (Amending WSR 13-02-023, filed 12/20/12, effective 1/20/13)

WAC 388-71-0543 ~~When may the department((, AAA, or department designee deny payment for the services)) reject your choice of an individual provider?~~ In addition to ~~((mandatory denials of payment under WAC 388-71-0540, the department, AAA, or department designee may deny payment for the services of an individual provider who:~~

- ~~(1) Has been convicted of:~~
 - ~~(a) Any crime that the department determines is reasonably related to the competency of the person to provide care to a client; or~~
 - ~~(b) A crime involving a firearm used in commission of a felony or in any act of violence against a person.~~
- ~~(2) Is engaged in the misuse of alcohol, controlled substances, or legend drugs;~~
- ~~(3) Has committed an act of domestic violence toward a family or household member;~~
- ~~(4) Has been found in any final decision of a federal or state agency to have abandoned, neglected, abused or financially exploited a vulnerable adult, unless the department is required to deny payment under WAC 388-71-0540;~~
- ~~(5) Has had a license for the care of children or vulnerable adults denied, suspended, revoked, terminated, or not renewed unless the department is required to deny payment under WAC 388-71-0540;~~
- ~~(6) Has had any health care provider license, certification or contract denied, suspended, revoked, terminated, even though the license was later reinstated after satisfactory completion of conditions or other requirements. This provision also applies to a long-term care worker who voluntarily relinquished a license, certification or contract in lieu of revocation or termination;~~
- ~~(7) Has had any residential care facility or health care facility license, certification, contract denied, suspended, revoked, terminated, even though the license, certification or contract was later reinstated after satisfactory completion of conditions or other requirements. This provision also applies to a long-term care worker who voluntarily relinquished a license, certification or contract in lieu of revocation or termination;~~
- ~~(8) Has been enjoined from operating a facility for the care and services of children or adults; or~~
- ~~(9) Has been the subject of a sanction or corrective or remedial action taken by federal, state, county, or municipal officials or safety officials related to the care or treatment of children or vulnerable adults, unless the department is required to deny payment under WAC 388-71-0540)) the reasons the department must reject your choice of provider under WAC 388-71-0540, the department may also reject your choice of an individual provider under the conditions listed in WAC 388-113-0050, 388-113-0060, and 388-113-~~

0070 and when the individual provider fails to meet the requirements under WAC 388-71-0515 or the terms of the contract or the employment reference guide.

AMENDATORY SECTION (Amending WSR 13-02-023, filed 12/20/12, effective 1/20/13)

WAC 388-71-0561 **When does an individual provider have the right to an administrative hearing and how can a hearing be requested?** (1) An individual provider has the right to an administrative hearing when the department denies payment to the individual provider because:

- (a) He or she has not been certified by the department of health as a home care aide within the required timeframe; or
 - (b) If exempted from certification, he or she has not completed required training within the required timeframe.
- (2) An individual provider has the right to an administrative hearing when the department terminates the individual provider's contract, or takes other enforcement measures against the individual provider because:
- (a) He or she has not completed required training within the required timeframe; or
 - (b) His or her certification as a home care aide has been revoked by the department of health.
- (3) In an administrative hearing challenging an action under subsection (1) or (2) above, the individual provider may not challenge an action by the department of health that affects the individual provider's certification. Actions by the department of health must be challenged through an appeal to the department of health, as provided in department of health rules.
- (4) To request an administrative hearing, an individual provider must send, deliver, or fax a written request to the office of administrative hearings (OAH). OAH must receive the written request within thirty calendar days of the effective date on the department's notice letter that is served ((upon)) to the individual provider.

(5) The individual provider should keep a copy of the request.

(6) The appeal process will be governed by the Administrative Procedure Act (chapter 34.05 RCW), RCW 74.39A.-085, chapter 388-02 WAC, Title 182 WAC and this chapter. If there is a conflict between chapter 388-02 WAC, Title 182 WAC and this chapter, this chapter will govern.

TRAINING

AMENDATORY SECTION (Amending WSR 13-02-023, filed 12/20/12, effective 1/20/13)

WAC 388-71-0836 **What definitions apply to the long-term care worker training requirements?** The following definitions apply to the long-term care worker training requirements:

- (1) **"Activities of daily living,"** ~~((in the context of this chapter.))~~ means self-care abilities related to personal care such as bathing, eating, using the toilet, medication assistance, dressing, and transfer. Instrumental activities of daily living may also be used to assess a person's functional abilities in the home and the community such as cooking, shop-

ping, house cleaning, doing laundry, working, and managing personal finances.

(2) **"Care team"** ~~((includes))~~ means the client and everyone involved in his or her care. The care team ~~((can))~~ may include family, friends, doctors, nurses, long-term care workers, social workers, and case managers. The role of the care team is to support the client's well-being ~~((of the client,))~~. However, the client directs the care plan.

~~((**"Certified home care aide"** means a long-term care worker who has obtained and maintains a home care aide certification through the department of health.))~~

(3) **"Challenge test"** means a ~~((challenge))~~ competency test taken for specialty training~~((s))~~ without first taking the class for which the test is designed and ~~((can))~~ may only be used when basic training is not required.

(4) **"Client"** means an individual receiving in-home services.

(5) **"Competency"** ~~((defines))~~ means the integrated knowledge, skills, or behavior expected of a long-term care worker after completing training in a required topic area. Learning objectives are associated with each competency.

(6) **"Competency testing"** ~~((is))~~ means evaluating a student to determine if he or she can demonstrate the required level of skill, knowledge, ~~((and/or))~~ and behavior with respect to the identified learning objectives of a particular course. The department only requires competency testing for nurse delegation core and specialized diabetes training, and the specialty and expanded specialty trainings. Training programs may integrate competency testing within their approved curricula.

(7) **"Core basic training"** means the portion of the seventy-hour long-term care worker basic training that covers the core competencies and skills that long-term care workers need in order to provide personal care services efficiently and safely. The core basic training hours also includes hours devoted to student practice and demonstration of skills.

(8) **"Date of hire"** for determining timeframes related to training and certification, means the date of hire as described in WAC 246-980-010.

~~((**"DDD"**))~~ (9) **"DDA"** refers to the ~~((division of))~~ developmental disabilities administration.

(10) **"Direct care worker"** means a paid individual who provides direct, personal care services to persons with disabilities or the elderly requiring long-term care (see also the definition of long-term care worker, which includes client care workers).

(11) **"Department"** or **"DSHS"** ~~((refers to))~~ means the department of social and health services.

(12) **"Enhancement"** ~~((is))~~ means additional time provided for skills practice and additional training materials or classroom activities that help a long-term care worker to thoroughly learn the course content and skills. Enhancements can include new student materials, videos or DVDs, online materials, ~~((and/or))~~ and additional student activities.

(13) **"Expanded specialty training"** means optional curricula that provide caregivers with advanced knowledge and skills to provide person-centered care to clients or residents living with conditions other than developmental disabilities, dementia, and mental health. The optional expanded specialty training may include such topics as traumatic brain

injury, diabetes care, and bariatric care. The optional expanded specialty training curricula must be DSHS developed and based on competencies and learning objectives established by the department.

(14) **"Guardian"** means an individual as defined in chapter 11.88 RCW.

(15) **"Home care aide"** or **"certified home care aide"** means a long-term care worker who has obtained and maintains a home care aide certification through the department of health.

(16) **"Individual provider"** or **"IP"** means a person who has contracted with the department to provide personal care or respite care services to persons with functional disabilities under a medicaid state plan program, such as the medicaid personal care or community first choice programs or under a federal medicaid waiver ((such as community options)) program ~~((entry system (COPES), or other waiver programs)).~~

(17) **"Learning objectives"** ~~((are))~~ means measurable, written statements that clearly describe what a long-term care worker must minimally learn to meet each competency. Learning objectives are identified for each competency. Learning objectives provide consistent, common language and a framework for curriculum designers, the curriculum approval process, and testing. Curriculum developers have the flexibility to determine how learning objectives are met and may include additional content deemed necessary to best meet the competency in a particular setting.

(18) **"Long-term care worker"** ~~((includes))~~ means:

~~((a))~~ All persons ((providing)) who provide paid, personal care services for the elderly or persons with disabilities, including but not limited to individual providers of home care services, direct care ((employees of)) workers employed by home care agencies, providers of home care services to persons with developmental disabilities under Title 71A RCW, all direct care workers in state-licensed ((boarding homes)) assisted living facilities, adult family homes, respite care providers, community residential service providers, and any other direct care staff ((providing)) who provide home or community-based services to the elderly or persons with functional disabilities or developmental disabilities((, and supported living providers)).

~~((The following persons are not))~~ (b) Long-term care workers do not include:

~~((1))~~ Persons who are:

~~((a))~~ Providing personal care services to individuals who are not receiving state-funded services; and

~~((b))~~ The person is not employed by an agency or facility that is licensed by the state.

~~((2))~~ Persons employed by:

~~((a))~~ Nursing homes licensed under chapter 18.51 RCW;

~~((b))~~ Facilities certified under 42 C.F.R. Part 483;

~~((c))~~ Residential habilitation centers under chapter 71A.20 RCW;

~~((d))~~ Hospitals or other acute care settings;

~~((e))~~ Hospice agencies licensed under chapter 70.127 RCW;

~~((f))~~ Adult day care centers or adult day health centers.

~~((3))~~ Persons whose services are exclusively limited to assistance with "instrumental activities of daily living," as

that term is defined in WAC 388-106-0010)) (i) Persons employed by the following facilities or agencies: Nursing homes subject to chapter 18.51 RCW, hospitals or other acute care settings, residential habilitation centers under chapter 71A.20 RCW, facilities certified under 42 C.F.R., Part 483, hospice agencies subject to chapter 70.127 RCW, adult day care centers; or

(ii) Persons who are not paid by the state, by a private agency, or facility licensed by the state to provide personal care services.

(19) **"Personal care services"** means physical or verbal assistance with activities of daily living, or activities of daily living and instrumental activities of daily living ~~((which))~~ that are provided to the client.

(20) **"Seventy-hour long-term care worker training"** ~~means the seventy-hours of required training that a new long-term care worker much complete within one hundred and twenty days of hire. It has three components: Core competencies, practice of skills, and population specific topics, which may include specialty and nurse delegation training.~~

(21) **"Specialty training"** means curricula that meets the requirements of RCW 18.20.270 and 70.128.230 to provide basic core knowledge and skills that caregivers need to learn and understand to effectively and safely provide care to residents living with mental illness, dementia, or developmental disabilities. The specialty training curricula may be DSHS developed or DSHS approved and must be based on the competencies and learning objectives in WAC 388-112A-0430, 388-112A-0440, or 388-112A-0450.

(22) **"Training entity"** means an organization, including an independent contractor, who ~~((is providing))~~ provides or may provide training under this ~~((section))~~ chapter using approved curriculum. Training entities may only deliver approved curriculum.

(23) **"Training partnership"** means a joint partnership or trust that includes the office of the governor, and the exclusive bargaining representative of individual providers under RCW 74.39A.270 with the capacity to provide training, peer mentoring, and workforce development, or other services to individual providers.

NEW SECTION

WAC 388-71-0837 How does DSHS determine a long-term care worker's date of hire? (1) The department determines a long-term care worker's date of hire according to WAC 246-980-010.

(2) The date of hire is specific to each long-term care worker. It does not change when a long-term care worker changes clients or employers unless the long-term care worker meets the criteria in WAC 388-71-0980.

(3) This section does not apply to background check requirements under this chapter.

AMENDATORY SECTION (Amending WSR 13-02-023, filed 12/20/12, effective 1/20/13)

WAC 388-71-0839 ~~((What))~~ Which long-term care workers are exempt from the seventy hour, thirty hour or twelve hour basic training ~~((requirement))~~ requirements? The following long-term care workers are exempt from the

seventy-hour long-term care worker basic training requirement:

(1) ~~((A person already))~~ An individual employed as a long-term care worker on January 6, 2012, who ~~((completed))~~ complied with the basic training requirements in effect on the date of his or her hire;

(2) ~~((A person employed as a long term care worker on January 6, 2012, who completes within one hundred twenty days of hire the basic training requirements in effect on the date of his or her hire;~~

(3) ~~A person))~~ An individual previously employed as a long-term care worker who completed the basic training requirements in effect on the date of his or her hire, and was employed as a long-term care worker at some point between January 1, 2011 and January 6, 2012~~((, this exemption will be verified at time of hire or service begin date));~~

~~((4) An individual provider who worked as a respite provider or who provided care to a minor between January 1, 2011 and January 6, 2012, and who completed the training requirements in effect on the date of his or her hire;~~

~~((5))~~ (3) Registered nurses, licensed practical nurses, ~~((nurse technicians, or))~~ and advanced registered nurse practitioner licensed under chapter 18.79 RCW;

~~((6))~~ (4) Nursing assistants certified under chapter 18.88A RCW and persons in an approved training program for certified nursing assistants under chapter 18.88A RCW provided that they complete the training program within one hundred twenty days of the date of hire and the department of health has issued them their nursing assistant certified credential within two hundred days of the date of hire;

~~((7) Certified counselors under chapter 18.19 RCW;~~

(8) Speech language pathologists or audiologists under chapter 18.35 RCW;

(9) Occupational therapists under chapter 18.59 RCW;

(10) Physical therapists under chapter 18.74 RCW;

~~((11))~~ (5) A home health aide who ~~((is))~~ was employed by a medicare certified home health agency within the year before being hired as a long-term care worker and has met the requirements of 42 C.F.R., ~~((Part 483.35))~~ Sec. 484.36;

~~((12))~~ (6) An individual with special education training ~~((and))~~ who has an endorsement granted by the Washington state superintendent of public instruction as described in RCW 28A.300.010; and

~~((13) Individuals who are in a training program to become credentialed in a category listed from subsection (5) through (10) must complete this training program within one hundred twenty days of hire or service begin date to meet this exemption))~~ (7) Home care aides (HCAs) certified under chapter 18.88B RCW.

AMENDATORY SECTION (Amending WSR 13-02-023, filed 12/20/12, effective 1/20/13)

WAC 388-71-0860 Who must complete orientation and safety training and by when? Unless exempted in WAC 388-71-0839 (1) through ~~((12))~~ (7), all long-term care workers must complete orientation and safety training prior to providing care to a client.

AMENDATORY SECTION (Amending WSR 13-02-023, filed 12/20/12, effective 1/20/13)

WAC 388-71-0870 What is the seventy hour basic training? (1) The seventy-hour long-term care worker basic training (~~(of seventy hours is training that)~~) includes:

(a) The core competencies and skills that long-term care workers need in order to provide personal care services effectively and safely; (~~(and)~~)

(b) Practice and demonstration of skills; and

(c) Population specific competencies.

(2) (~~All seventy hour basic training curriculum must be~~) DSHS approved (~~(by the department and provided by qualified instructors)~~) seventy-hour basic training curricula.

(3) On-the-job training, as described in WAC 388-71-0932, may be applied to seventy-hour long-term care worker basic training for an amount that must be approved by the department.

(4) The DSHS developed (~~(revised)~~) fundamentals of caregiving (~~((RFOC))~~) (FOC) or another department approved training may be used to teach core basic training but it must include enhancements. Additional student materials are required to ensure the enhancements are well planned and documented for students. Materials must be submitted for approval and approved per WAC 388-71-1026. Examples of enhancements (~~(are)~~) include, but are not limited to:

(a) (~~(Adding)~~) More time for workers to practice skills including:

(i) The mechanics of completing the skill correctly(-);

(ii) Client centered communication and problem solving associated with performing the skill(-);

(iii) The different levels of care required for each skill (~~((~~) including independent, supervision, limited, extensive, and total(+))(-);

(iv) Working with assistive devices associated with a skill.

(v) Helpful tips or best practices in working through common client challenges associated with a skill(-); and

(vi) Disease specific concerns or challenges associated with a skill.

(~~In most of these examples, additional student materials would be required to ensure the skill enhancements are well planned and documented for students. Materials must be submitted for approval and approved per WAC 388-71-1026.~~)

(b) Augmenting or adding additional materials, student activities, videos or guest speakers that:

(i) More deeply reinforce and fortify the learning outcomes required for basic training(-);

(ii) Ensure each student integrates and retains the knowledge and skills needed to provide quality basic personal care(-); and

(iii) Prepares workers for the certification testing environment and process.

(c) Enhancements are NOT materials (~~(and/or)~~) or activities that are one or more of the following:

(i) Are out of the scope of practice for a (~~(LTC)~~) long-term care worker such as content clearly written for registered nurses(-);

(ii) Are identical to, or a direct replacement of, those already included in (~~(RFOC))~~) FOC;

(iii) Do not reinforce Washington state laws associated with client rights and client directed care(-);

(iv) Long-term care workers are not paid to provide(-); and

(v) Are written above a high school reading level.

(~~((4))~~) (5) The delivery mode of the seventy-hour long-term care worker basic training may be either in-person instruction or a hybrid of online and in-person modules. One hour of completed classroom instruction or other form of training (such as a video or online course) equals one hour of training.

(a) Online modules must be an instructor led class, such as a webinar, or an online interactive self-paced class that provides clear instructions on how students get questions answered during the course and adheres to the DSHS online class standards posted on DSHS's website.

(b) The in-person portion of hybrid modules must be no less than twelve hours of the total basic training hours and include in-person instruction on the personal care assistance tasks supporting activities of daily living, commonly referred to as skills training.

(~~((5))~~) (6) The training entity must establish a way for the long-term care worker to ask the instructor questions. An instructor or representative must be available within twenty-four hours during the business week.

(~~((6))~~) (7) There is no challenge test for basic training.

AMENDATORY SECTION (Amending WSR 13-02-023, filed 12/20/12, effective 1/20/13)

WAC 388-71-0875 Who must complete the seventy hour basic training and by when? Unless exempt from training in WAC 388-71-0839 (1) through (~~((+2))~~) (7), all long-term care workers must complete core and population specific competencies within one hundred twenty days of(~~(-~~

~~(+))~~) the date of hire (~~(for home care agency long-term care workers; or~~

~~(2) From the begin date of the authorization to provide department paid in-home services for a client for individual providers))~~) as described in WAC 246-980-010.

AMENDATORY SECTION (Amending WSR 13-02-023, filed 12/20/12, effective 1/20/13)

WAC 388-71-0880 Who must take the thirty hour basic training (~~(instead of the seventy hour basic training)~~) and by when must it be completed? Unless exempt from the basic training requirements under WAC 388-71-0839 (1) through (~~((+2))~~) (7), the following individuals must take the thirty hour basic training under WAC 388-71-0885(-; ~~must be completed within one hundred twenty days from the begin date of the authorization for provision to provide department paid, in-home services by an individual provider, who is caring only for)~~):

(~~((+))~~) (1) An individual provider who only:

(i) Cares for his or her biological, step, or adoptive child, or parent(-); or

(~~((2))~~) An individual provider who:

(a) Provides care to only one person; and

~~(b))~~ (ii) Provides no more than twenty hours of care ((in any calendar month)) for one person who is not the individual provider's biological, step, or adoptive child, or parent.

(2) An individual who provides only respite services to clients not covered under title 71A RCW, works three hundred hours or less in any calendar year and is not exempt from basic training under WAC 388-71-0839.

AMENDATORY SECTION (Amending WSR 13-02-023, filed 12/20/12, effective 1/20/13)

WAC 388-71-0888 ~~(What are the)~~ When do the seventy-hour basic training and certification requirements ((for)) apply to an individual ((provider who is initially hired to provide care for one person, if the authorized monthly hours fluctuate or individual provider begins working for more than one department client)) whose required basic training was previously less than seventy hours? (1) ((If an)) Individual ((provider is initially hired to provide care for one client and the authorized hours are for more than twenty hours he or she will have to)) providers eligible for limited training under WAC 388-71-0880 and 388-71-0893, who begin to work for a second client who is not their biological, step, or adoptive child or parent, or continue to work for one client whose authorized monthly hours fluctuate above twenty hours per month must:

(a) Complete the seventy hours of basic training(, become certified and complete continuing education even if the authorized monthly hours are later reduced to twenty hours or fewer.

(2) If the individual provider initially starts working for one client and the authorized monthly hours are twenty or fewer, he or she will have to complete the seventy hours of basic training, become certified, and complete continuing education whenever:

(a) The authorized hours increase to more than twenty hours); ~~((or))~~ and

(b) ((He or she begins to work for a second department client)) Become a certified home care aide under WAC 388-71-095.

((3) Under these circumstances from the point of this change, the individual provider will:

(a) Have an additional one hundred twenty days to complete the seventy hours of training and additional one hundred fifty days to become certified;

(b) Be required to complete continuing education under WAC 388-71-0990; and

(c) Be required to continue to comply with the higher level of training requirements, even if the monthly authorized hours are later reduced to twenty or fewer hours)) (2) Individual providers who provide only respite services and worked more than three hundred hours in any calendar year must complete the seventy hours of basic training and become a certified home care aide.

(3) Individual providers who previously only provided personal care to their biological, step, or adoptive child or parent through DDA or HCS who begin working for an unrelated client must complete the seventy hour basic training and become a certified home care aide.

(4) When an IP described in subsections (1), (2), or (3) of this section is required to complete the seventy hour basic training and become a certified home care aide, the IP will:

(a) Have one hundred twenty days from the date of the change to complete the seventy hour basic training and two hundred days from the date of the change to become certified; and

(b) Be required to complete continuing education under WAC 388-71-0990.

(5) For the purpose of this section, the date of the change means the date on which the IP:

(a) Began working for a client that is not his or her biological, step or adoptive child or parent;

(b) Exceeded twenty hours of work in one month; or

(c) Exceeded more than three hundred respite hours in one calendar year.

(6) If an IP is required to or chooses to become a certified home care aide and completes the seventy hour training requirements under this section, the individual will be required to continue to comply with these requirements to maintain his or her credential and complete continuing education requirements even if:

(a) The monthly authorized hours are later reduced to twenty or fewer hours;

(b) He or she no longer works for a second unrelated client; or

(c) The individual works less than three hundred respite hours in a calendar year.

(7) The training and certification requirements for an individual that met the above criteria in subsection (6) does not apply if the individual returns to work only for his or her biological, step, or adoptive parent or adult child.

AMENDATORY SECTION (Amending WSR 13-02-023, filed 12/20/12, effective 1/20/13)

WAC 388-71-0890 What are the training requirements for parent providers who are individual providers for their adult children through ~~((DDD))~~ DDA? Unless exempt from the basic training requirements as defined in WAC 388-71-0839 (1) through ~~((+2))~~ (7), a ~~((natural))~~ biological, step, or adoptive parent who is the individual provider for his or her adult child receiving services through the DSHS ~~((division of))~~ developmental disabilities administration must complete the twelve hour parent provider training, as described in WAC 388-71-0895, within one hundred twenty days from the begin date of the authorization to provide department paid, in-home services.

NEW SECTION

WAC 388-71-0893 Who must take the nine hour basic training and by when must it be completed? (1) Unless exempt from the basic training requirements under WAC 388-71-0839 (1) through (7), an individual provider must take orientation and safety training and nine hours of training if he or she meets the following criteria:

(a) Provides only respite services for individuals with developmental disabilities receiving services under title 71A RCW; and

(b) Works three hundred hours or less in any calendar year.

(2) The individual provider must complete the orientation and safety training before providing care.

(3) The training partnership identified in RCW 74.39A.-360 must offer at least twelve of the fourteen total hours online and five of these online hours must be individually selected from elective courses.

(4) An individual must complete the nine hours basic training required under this section within one hundred twenty days of the long-term care worker's date of hire.

AMENDATORY SECTION (Amending WSR 13-02-023, filed 12/20/12, effective 1/20/13)

WAC 388-71-0911 What are the competencies and learning objectives for the core competencies of basic training? ~~((The))~~ Long-term care worker basic training includes core competencies that describe the behavior and skills that a long-term care worker ~~((should))~~ must exhibit when working with clients~~((:))~~ and the learning objectives ~~((are))~~ associated with each competency~~((:))~~ as follows:

(1) Regarding communication~~((:))~~

(a) Communicate effectively and in a respectful and appropriate manner with clients, family members, and care team members~~((:))~~;

~~((a))~~ (b) Recognize how verbal and nonverbal cues impact communication with the client and care team;

~~((b))~~ (c) Engage and respect the client through verbal and nonverbal communication;

~~((c))~~ (d) Listen attentively and determine that the client, when able, understands what has been communicated;

~~((d))~~ (e) Recognize and acknowledge clients' communication including indicators of pain, confusion, or misunderstanding;

~~((e))~~ (f) Utilize communication strategies to deal with difficult situations; and

~~((f))~~ (g) Recognize common barriers to effective communication and identify how to eliminate them~~((:))~~;

(2) Regarding long-term care worker self-care~~((: take appropriate action to reduce stress and avoid burnout))~~:

(a) Identify behaviors, practices, and resources to reduce stress and avoid burnout;

(b) Recognize common barriers to self-care and ways to overcome them; and

(c) Recognize aspects of a long-term care worker's job that can lead to stress and burnout, common signs and symptoms of stress and burnout; and the importance of taking action to practice self-care to avoid burnout~~((:))~~;

(3) Regarding the competency of effective problem solving, use effective problem solving skills to:

(a) Explain why it is necessary to understand and utilize a problem solving method;

(b) Implement a problem solving process/method; and

(c) Identify obstacles to effective problem solving and ways to overcome them~~((:))~~;

(4) Regarding the competency of client rights and dignity, take appropriate action to promote and protect a client's legal and human rights as protected by federal and Washington state laws including:

(a) Protect a client's confidentiality, including what is considered confidential information, to whom a long-term care worker is allowed or not allowed to give confidential information, and how to respond if a non-care team member asks for confidential information;

(b) Promote client's dignity~~((:))~~ and privacy, and encourage, and support a client's maximum independence when providing care; ~~((and))~~

(c) Maintain a restraint-free environment, including physical, chemical, and environmental restraints. Use common, safe alternatives to restraint use; and

(d) Protect and promote the client's right to live free of abuse, neglect, abandonment, and financial exploitation~~((:))~~;

(5) Regarding the competency of recognizing indicators of abuse and understanding the mandatory reporting requirements, recognize the signs of abuse and report suspected abuse, abandonment, neglect, and financial exploitation:

(a) Describe long-term care ~~((workers'))~~ worker's responsibilities as a mandatory reporter as defined in RCW 74.34.020 through 74.34.053; and

(b) Identify common indications of abuse, abandonment, neglect, and financial exploitation~~((:))~~;

(6) Regarding the competency of client directed care, take appropriate action when following a client's direction regarding his or her care:

(a) Describe a long-term care worker's role in client directed care including determining, understanding, and supporting a client's choices;

(b) Describe the importance and impact of client directed care on a client's independence, self-determination, and quality of life;

(c) Identify effective problem solving strategies that help balance a client's choice with personal safety; and

(d) Report concerns when a client refuses care or makes choices that present a possible safety concern~~((:))~~;

(7) Regarding the competency of cultural sensitivity, provide culturally appropriate care:

(a) Describe how cultural background, lifestyle practices, and traditions can impact care; and

(b) Use methods to determine and ensure that these are respected and considered when providing care~~((:))~~;

(8) Regarding the competency of body mechanics, utilize current best practices and evidence-based methods of proper body mechanics while performing tasks as outlined in the care plan~~((:))~~;

(9) Regarding the competency on fall prevention~~((: prevent or reduce the risk of falls))~~:

(a) Identify fall risk factors and take action to reduce fall risks for a client; and

(b) Take proper steps to assist when a client is falling or has fallen~~((:))~~;

(10) Regarding the competency of skin and body care, use personal care practices that promote and maintain skin integrity:

(a) Explain the importance of observing a client's skin, when to observe it, and what to look for including common signs and symptoms of skin breakdown;

(b) Identify risk factors of skin breakdown;

(c) Observe skin at pressure point locations and report any concerns;

(d) Describe what a pressure ulcer is, what it looks like, and what actions to take if a client appears to be developing or develops a pressure ulcer;

(e) Describe current best practices that protect and maintain a client's skin integrity including position changes when sitting or lying for extended periods, and proper positioning and transfer techniques;

(f) Implement current best practices that promote healthy skin including hygiene, nutrition, hydration, and mobility; and

(g) Identify when to report skin changes and ~~((to whom-))~~ who to report them to:

(11) Regarding the competency on long-term care worker roles and boundaries, adhere to basic job standards, expectations, and requirements and maintain professional boundaries:

(a) Identify when, how, and why to obtain information from appropriate sources about a client's condition or disease for which they are receiving services~~((:))~~, and describe how to use this information to provide appropriate, individualized care;

(b) Describe a client's baseline based on information provided in the care plan and explain why it is important to know a client's baseline;

(c) Identify changes in a client's physical, mental, and emotional state through observation;

(d) Report changes from baseline ~~((and/or))~~ and concerns to the appropriate care team member(s);

(e) Identify basic job standards and requirements ~~((e.g.))~~ such as coming to work on time) and describe how maintaining these standards are critical to a client's safety and well-being;

(f) Explain the purpose of a care plan and describe how it is created, used and modified;

(g) Use a client's care plan to direct a long-term care worker's job tasks and any client directed care tasks;

(h) Identify what is required of a long-term care worker, as described in WAC 388-71-0946, prior to performing a nurse-delegated task;

(i) Describe the role of a care team and a long-term care worker's role in ~~((#))~~ the care team;

(j) Describe professional boundaries and the importance of maintaining them; and

(k) Identify signs of unhealthy professional boundaries, barriers to keeping clear professional boundaries, and ways to avoid or eliminate them~~((:))~~;

(12) Regarding the competency on supporting activities of daily living, perform required personal care tasks to the level of assistance needed and according to current best practices and evidence-based guidelines:

(a) Demonstrate, in the presence of a qualified instructor, all critical steps required for personal care tasks including but not limited to:

- (i) Helping an individual walk;
- (ii) Transferring an individual from bed to wheelchair;
- (iii) Turning and repositioning an individual in bed;
- (iv) Providing ~~((mouth))~~ oral care;
- (v) Cleaning and storing dentures;
- (vi) Shaving a face;
- (vii) Providing fingernail care;

(viii) Providing foot care;

(ix) Providing a bed bath;

(x) Assisting an individual with a weak arm to dress;

(xi) Putting knee-high elastic stockings on an individual;

(xii) Providing passive range of motion for one shoulder;

(xiii) Providing passive range of motion for one knee and ankle;

(xiv) Assisting an individual to eat;

(xv) Assisting with peri-care;

(xvi) Assisting with the use of a bedpan;

(xvii) Assisting with catheter care;

(xviii) Assisting with condom catheter care; and

(xix) Providing medication assistance~~((:))~~;

(b) In the process of performing the personal care tasks, use proper body mechanics, listen attentively, speak clearly and respectfully while explaining what the long-term care worker is doing, incorporate client preferences, maintain privacy and dignity, support the client's level of ability, and assure ~~((their))~~ his or her comfort and safety;

(c) Appropriately utilize assistive device(s) specified in the care plan;

(d) Describe any safety concerns related to each task and how to address the concerns;

(e) Demonstrate an understanding of bowel and bladder functioning, including factors that promote healthy bowel and bladder functioning, and the signs, symptoms, and common causes of abnormal bowel and bladder function; and

(f) Identify the importance of knowing a client's bowel and bladder functioning baseline and when to report changes~~((:))~~;

(13) Regarding the competency on food preparation and handling, plan and prepare meals using a basic knowledge of nutrition and hydration, incorporating any diet restrictions or modifications, and prevent food borne illness by preparing and handling food in a safe manner:

(a) Describe how nutrition and hydration can impact a client's health;

(b) Plan, shop, and prepare meals for a client according to the guidelines of good nutrition and hydration, incorporating any dietary requirements and restrictions ~~((per))~~ from the care plan and client preferences;

(c) Describe common signs of poor nutrition and hydration, and when to report concerns and ~~((to whom))~~ who to report concerns to;

(d) Understand that diet modification is required for certain health conditions, including dysphagia, and describe how to identify diet modifications required for a client;

(e) Recognize when a client's food choices vary from specifications on the care plan, describe when ~~((and))~~ to ~~((whom))~~ report concerns and who to report ~~((concerns))~~ them to;

(f) Describe what causes food borne illness, the risks associated with food borne illness and examples of potentially hazardous foods;

(g) Describe appropriate food handling practices, including:

(i) Avoiding cross contamination from one food to another~~((:))~~;

(ii) Safe storage requirements for cooling of leftover foods, including:

- (A) Depth(:);
- (B) Types of containers(:) and temperatures(:);
- (C) The need to maintain food at proper temperatures to limit bacterial growth; and ~~((what are the))~~
- (D) Safe food storage and holding temperatures for both cold and hot foods(:);
- (ii) Best practices for thawing and re-heating food(:); and
- (iv) Using clean gloves (if possible), and clean utensils when preparing food;
- (h) Describe the importance and correct procedure for cleaning and disinfecting food contact surfaces; and
- (i) Describe why a long-term care worker with certain types of illnesses ~~((and/or))~~, symptoms, or both must not prepare food(:);
- ~~((Long-term care workers who complete DSHS approved basic training meet the training requirements for adult family homes in RCW 70.128.250.))~~
- (14) Regarding the competency of medication assistance, appropriately assist with medications:
- (a) Identify what a long-term care worker is allowed and not allowed to do when assisting with medications as described in chapter 246-888 WAC;
- (b) Define terms related to medication assistance including prescription drugs, over the counter medications, and as needed (PRN) medications, medication side effects, and drug interactions;
- (c) Identify common symptoms of medication side effects and when and to whom to report concerns;
- (d) Store medications according to safe practices and the label instructions;
- (e) Describe, in the proper sequence, each of the five rights of medication assistance; and
- (f) Identify what to do for medication-related concerns, including describing ways to work with a client who refuses to take medications, identifying when and to whom to report when a client refuses medication or there are other medication-related concerns, and identifying what is considered a medication error ~~((and when and to whom it must be reported.))~~, when to report a medication error, and who to report it to;
- (15) Regarding the competency of infection control and blood-borne pathogens including HIV/AIDS, implement best practices to prevent and control the spread of infections:
- (a) Identify commonly occurring infections, ways that infections are spread, and symptoms of infections;
- (b) Describe the purpose, benefit, and proper implementation of standard precautions in infection control;
- (c) Implement current best practices for controlling the spread of infection, including the use of hand washing and gloves;
- (d) Demonstrate proper hand washing and putting on and taking off gloves;
- (e) Identify immunizations that are recommended for adults to reduce the spread of virus and bacteria;
- (f) Describe laundry and housekeeping measures that help in controlling the spread of infection;
- (g) Describe proper use of cleaning agents that destroy micro-organisms on surfaces;

- (h) Describe what blood-borne (BB) pathogens are and how they are transmitted;
- (i) Identify the major BB pathogens, diseases, and high-risk behaviors for BB diseases;
- (j) Identify measures to take to prevent BB diseases;
- (k) Describe what to do if exposed to BB pathogens and how to report an exposure;
- (l) Describe how HIV works in the body;
- (m) Explain that testing and counseling for HIV/AIDS is available;
- (n) Describe the common symptoms of HIV/AIDS;
- (o) Explain the legal and ethical issues related to HIV including required reporting, confidentiality and nondiscrimination; and
- (p) Explain the importance of emotional issues and support for clients and long-term care workers(:);
- ~~((Long-term care workers who complete DSHS approved basic training meet the four hours of AIDS education as required by the department of health in WAC 246-980-040.))~~
- (16) Regarding the competency on grief and loss, support yourself and the client in the grieving process:
- (a) Define grief and loss;
- (b) Describe common losses a client and long-term care worker may experience;
- (c) Identify common symptoms associated with grief and loss;
- (d) Describe why self-care is important during the grieving process; and
- (e) Identify beneficial ways and resources to work through feelings of grief and loss;
- (17) Long-term care workers who complete DSHS approved basic training meet the training requirements for adult family homes in RCW 70.128.250;
- (18) Long-term care workers who complete DSHS-approved basic training meet the four hours of AIDS education as required by the department of health for the home care aide requirement in WAC 246-980-040; and
- (19) Regarding the competency on identifying indicators of hearing loss, which may be part of the basic training or population specific hours:
- (a) Identify common symptoms associated with hearing loss; and
- (b) Identify what to do for hearing loss related concerns, including describing ways to communicate with a client who is experiencing hearing loss and identifying when and to whom to report when a client's hearing ability changes.

AMENDATORY SECTION (Amending WSR 13-02-023, filed 12/20/12, effective 1/20/13)

WAC 388-71-0932 What is on-the-job training? (1) Effective July 1, 2012, on-the-job training is a method of training ~~((when))~~ where the long-term care worker successfully demonstrates in the seventy-hour long-term care worker basic training, any or all of the core competencies for personal care or infection control skills ~~((included in the core basic training))~~ while working with a client ~~((versus))~~ on the job, instead of in a practice training setting.

(2) On-the-job training ~~((is))~~ must be provided by a qualified instructor as described in WAC 388-71-1055, who directly observes, coaches, and reinforces skills training for up to two long-term care workers at a time. The instructor providing the on-the-job training:

(a) Does not have to be the instructor who has taught the core competency training;

(b) ~~((Cannot))~~ Must not be someone whose primary job duty is providing direct care to clients; ~~((or))~~ and

(c) ~~((Cannot))~~ May be the immediate supervisor in a home care agency of the long-term care worker receiving ~~((the on-the-job))~~ this training.

(3) The ~~((person))~~ instructor overseeing ~~((on-the-job))~~ this training must:

(a) Submit DSHS required forms and become an approved instructor for the core competency of basic training; and

(b) Verify on a DSHS approved skills checklist or other department approved form, the long-term care worker's successful completion of the demonstrated skills.

(4) For the person receiving on-the-job training, the hours spent in on the job training may count ~~((for up to twelve hours))~~ toward the completion of basic training requirements.

(5) The training program ~~((shall offer))~~ must get department ~~((approved))~~ approval for the on-the-job training hours as part of the seventy hour training.

AMENDATORY SECTION (Amending WSR 13-02-023, filed 12/20/12, effective 1/20/13)

WAC 388-71-0936 What is nurse delegation core training? (1) Nurse delegation core training is the required course a nursing assistant, certified or registered, or certified home care aide must successfully complete before being delegated a nursing task.

(2) Only the curriculum developed by DSHS, "Nurse Delegation for Nursing Assistants and Home Care Aides" meets the training requirement for nurse delegation core training.

(3) DSHS must approve the instructors for nurse delegation core training prior to an instructor offering a course.

AMENDATORY SECTION (Amending WSR 13-02-023, filed 12/20/12, effective 1/20/13)

WAC 388-71-0953 ~~((Can))~~ May nurse delegation core and specialized diabetes training occur in the same year as the seventy-hour long-term care worker basic training? Nurse delegation core and specialized diabetes training ~~((can occur))~~ may be required in the same year as basic training if ~~((required to be able to perform))~~ delegated tasks need to be performed. If ~~((this occurs, the maximum of twelve hours for this training can be applied towards the continuing education requirement for the following year. Nurse delegation core and specialized diabetes trainings do not apply towards))~~ completed within one hundred and twenty days of hire, the nurse delegation core and specialized diabetes training hours may be applied towards the population specific component of the seventy-hour long-term care worker basic training.

NEW SECTION

WAC 388-71-0971 Prior to hiring a long-term care worker, what training and certification requirements must be reviewed by the home care agency or department? Before hiring a long-term care worker, the home care agency or the department acting on behalf of the client, as defined under RCW 74.39A.009; or the consumer directed employer under chapter 74.39A RCW; must review and verify the highest level of training or certification achieved by the individual.

(1) When the individual is a home care aide certified under chapter 18.88B RCW, the home care agency, CDE, or department must:

(a) Verify that the individual's home care aide certification is current and in good standing; and

(b) Confirm that the individual has completed continuing education as required under WACs 388-71-0990 and 388-71-0991.

(2) When the individual is exempt from the seventy-hour long-term care worker training and certification requirements under WAC 388-71-0839, the home care agency, CDE, or department must review and verify the following:

(a) Documents demonstrating the individual's exemption status from training and certification which may include:

(i) Washington state provider active credential number, showing that the individual's license or certification is current and in good standing;

(ii) Letter from a former or current employer documenting work history during the exemption period described in WAC 388-71-0839;

(iii) Employment history records from the Washington state employment security department documenting work history information during the exemption period;

(iv) Federal tax statements documenting work history information during the exemption period; or

(v) Documentation showing completion of the basic training as required under WAC 388-71-0839;

(b) For the year in which they are hired, documentation of completion of twelve hours of continuing education, or information on when the continuing education must be completed, that complies with WAC 388-71-0990 and WAC 388-71-0991.

(3) Individuals who have worked as long-term care workers in the past, but who did not complete the basic training or certification required at the time, may be eligible to have their date of hire reset in accordance with this section and WAC 388-71-0980.

(a) Individuals who are eligible to reset their date of hire as provided in WAC 388-71-0980 must submit a new application and fee to the department of health and adhere to the training or certification requirement under this chapter.

(b) Individuals who are not eligible to reset their date of hire as provided in WAC 388-71-0980 must not be paid to provide personal care assistance until they complete required training and become certified as a long term care worker.

(4) The home care agency, or the department acting on behalf of the client, as defined under RCW 74.39A.009; or the consumer directed employer under chapter 74.39A RCW must comply with continuing education documentation requirements under WAC 388-71-0970.

(a) Individuals who worked in the previous year in a long term care setting during the previous calendar year, are held accountable for their continuing education completion by their new employer on the date of hire and shall provide at new hire documentation of their continuing education compliance during the calendar year in which they are hired; or

(b) Individuals who work for multiple employers or move between employers shall on the date of hire, provide documentation of continuing education compliance for year in which they are hired, if hired after their birthdate.

AMENDATORY SECTION (Amending WSR 13-02-023, filed 12/20/12, effective 1/20/13)

WAC 388-71-0975 Who is required to obtain certification as a home care aide, and by when? In order to be authorized to provide department paid in-home services, all long-term care workers ((, who do not fall within the exemptions under the department of health WAC 246-980-070,)) must obtain home care aide certification ((within one hundred and fifty days of hire or begin date of the authorization to provide department paid in-home services effective January 7, 2012)) as provided in chapter 246-980 WAC.

NEW SECTION

WAC 388-71-0977 Once an individual is required to obtain certification as a home care aide, may that individual revert to exempt status? (1) If an individual is required to or chooses to become a certified home care aide and completes the seventy hour training requirements under this section, the individual will be required to continue to comply with these requirements to maintain his or her credential and complete continuing education requirements even if:

(a) The monthly authorized hours are later reduced to twenty or fewer hours;

(b) He or she no longer works for a second unrelated client; or

(c) The individual works less than three hundred respite hours in a calendar year.

(2) The training and certification requirements for an individual that met the above criteria in subsection (1) of this section does not apply when the individual returns to work only for his or her biological, step, or adoptive parent, or adult child.

AMENDATORY SECTION (Amending WSR 13-02-023, filed 12/20/12, effective 1/20/13)

WAC 388-71-0980 ((Can)) May a home care agency or client employ a long-term care worker who has not completed the seventy hour basic training ((and/or)) or certification requirements? (1) If an individual has previously worked as a long-term care worker, but did not complete the training or certification requirements under RCW 18.88B.041, RCW 74.39A.074, and RCW 74.39A.096, or this chapter, a home care agency or client ((cannot)) must not employ ((an)) the individual to work as a long-term care worker ((if)) until the individual has ((previously worked as a long-term care worker and has not completed applicable training and/or certification requirements within the required

timeframe. Such individual may be employed by a home care agency or client to work as a long-term care worker only after applicable training and/or certification requirements are met. The department is authorized by RCW 74.39A.086 to take enforcement action for noncompliance related to training and/or certification requirements)) completed the required training certification unless the date of hire has been reset as described under subsection (2) of this section.

(2) The date of hire may be reset once for each home care applicant after a minimum of one year has passed since the initial date of hire.

(3) Individuals who meet the criteria in subsection (2) of this section are allowed a new one hundred twenty days to complete the seventy-hour long-term care worker basic training and a new two hundred days to become certified as a home care aide, if required by WAC 246-980-020.

(4) Individuals who meet the criteria in subsection (3) of this section must submit a new application and fee to the department of health.

NEW SECTION

WAC 388-71-0981 Is the department authorized by RCW 74.39A.086 to take enforcement action for noncompliance related to training and certification requirements? The department is authorized under RCW 74.39A.086 to take enforcement action for noncompliance related to training and certification requirements.

AMENDATORY SECTION (Amending WSR 13-02-023, filed 12/20/12, effective 1/20/13)

WAC 388-71-0985 What is continuing education? (1) Continuing education is ((additional relevant)) annual training designed to ((keep current)) promote professional development and increase a person's knowledge, expertise, and skills. DSHS must approve continuing education curricula and instructors. The same continuing education course may not be repeated for credit unless it is a new or more advanced training on the same topic, or there is a demonstrated or documented need for retraining. Exceptions to this ((are first aid, CPR, and blood borne pathogens. Nurse delegation core and nurse delegation specialized diabetes training may be used to count towards continuing education)) include the following topics:

(a) Blood-borne pathogens and infection control;

(b) CPR training;

(c) First aid training;

(d) Food handling training;

(e) Health Insurance Portability and Accountability Act (HIPAA);

(f) Medication assistance;

(h) Aging sensitivity;

(i) Client rights;

(j) Clients safety; and

(k) Abuse and neglect identification and mandatory reporting.

(2) Nurse delegation core and nurse delegation specialized diabetes training hours when not applied to basic training may count towards continuing education.

(3) Successful completion of a department of health approved home care aide certified alternative bridge program may be applied for up to twelve hours of continuing education in the year it was completed.

AMENDATORY SECTION (Amending WSR 13-02-023, filed 12/20/12, effective 1/20/13)

WAC 388-71-0990 Who is required to complete continuing education training, how many hours (of continuing education) are required each year, and under what circumstances may the long-term care worker not be paid? (1) ~~((From January 1, 2012 through June 30, 2012, individual providers and home care agency long-term care workers whose birth date occurs January 1 through June 30, and the required basic training was previously completed must complete ten hours of continuing education. If ten hours of continuing education were completed between January 1, 2012 through June 30, 2012 for an individual provider or home care agency long-term care worker, regardless of their birth date, then the continuing education requirements have been met for 2012.~~

~~(2) Effective July 1, 2012,)) The following long-term care workers must complete twelve hours of continuing education by their birthday each year:~~

~~(a) Certified home care aides ((must complete twelve hours of continuing education each year after obtaining certification as described in department of health WAC 246-980-110 and 246-12-020(3-));~~

~~((3)) (b) If exempt from home care aide certification as described in RCW 18.88B.041, ((#H)) long-term care workers must complete twelve hours of continuing education each year worked unless exempt from continuing education as described in WAC 388-71-1001.~~

~~((4)) (2) A long-term care worker or certified home care aide who did not complete the continuing education requirements by the timeframe described in ((1) above) this section or in WAC 388-71-0991 ((cannot)) must not be paid to provide care after that date and ((cannot)) must not be reinstated as a long-term care worker until ((they complete)) the worker has completed the continuing education requirements.~~

~~((5)) (3) One hour of completed classroom instruction or other form of training (such as a video or online course) equals one hour of continuing education. The training entity must establish a way for the long-term care worker to ask the instructor questions.~~

AMENDATORY SECTION (Amending WSR 13-02-023, filed 12/20/12, effective 1/20/13)

WAC 388-71-0991 When must a long-term care worker or certified home care aide complete continuing education? (1) ~~((Effective July 1, 2012,)) All long-term care workers ((and)) who are certified home care aides must ((complete)) comply with the continuing education requirements ((described in WAC 388-71-0990 by their birthday)) under chapter 246-980 WAC.~~

~~(2) ((For)) Long-term care workers, who are ((required to be certified, if the first renewal period is less than a full year from the date of certification, no continuing education~~

~~will be due for the first renewal period)) exempt from home care aide certification as described in RCW 18.88B.041, unless exempt from continuing education as described under WAC 388-71-1001 must complete the annual continuing education requirements for each calendar year in which they performed any work as a long-term care worker.~~

~~(3) ((For)) Long-term care workers, who are ((biological, step, or adoptive adult child, continuing education is to be completed by their birthday in the year following completion of basic training)) exempt from home care aide certification as described in RCW 18.88B.041, unless exempt from continuing education as described under WAC 388-71-1001 and who have not worked in long-term care for a calendar year or longer, are eligible to return to work as a long-term care worker when the continuing education hours required under this section are completed within the following time-frames:~~

~~(a) On or before their birthday, if their birthday will occur after the date they return to work; or~~

~~(b) Within forty-five calendar days of the date they returned to work, if their birthday occurred took place on or before the day they returned to work.~~

~~(i) If this forty-five calendar day time period allows workers to complete their continuing education in January or February of the following year, the hours of credit earned will be applied to the year in which they were hired.~~

~~(ii) Continuing education requirements for the calendar year after the year they were hired must be completed as required under WAC 388-71-0990, even if the long-term care worker must complete twenty-four hours of classes within a very short time.~~

~~(4) If the renewal period following initial certification as a home care aide or nursing assistant (NA-C), is less than a full year from the date of certification, no continuing education will be due for the first renewal period. The long-term care worker must complete continuing education requirement for the second renewal period on or before their birthdays.~~

~~(5) For long-term care workers who are caring for a biological, step, or adoptive parent, continuing education must be completed on or before by their birthday in the year after basic training was completed. If these long-term care workers have not worked in long-term care for a calendar year or longer they can complete their continuing education requirement as provided in subsection (3) of this section.~~

AMENDATORY SECTION (Amending WSR 13-02-023, filed 12/20/12, effective 1/20/13)

WAC 388-71-1001 ((What)) Which long-term care workers are exempt from the continuing education requirement? Unless voluntarily certified as a home care aide, continuing education is not required for any of the following:

~~(1) Individual providers caring only for ((his or her)) their biological, step, or adoptive ((son or daughter)) child; ((and))~~

~~(2) ((Before June 30, 2014, an)) Individual ((provider who)) providers that:~~

~~(a) ((Provides)) Provide care to only one person((s)) and~~

~~((b) Provides))~~ provide no more than twenty hours of care in any calendar month; or

(b) Individual providers who only provide respite services and work three hundred hours or less in any calendar year;

(3) Before January 1, 2016, a long-term care worker employed by a community residential service business; and

(4) Registered nurses and licensed practical nurse licensed under chapter 18.79 RCW.

AMENDATORY SECTION (Amending WSR 13-02-023, filed 12/20/12, effective 1/20/13)

WAC 388-71-1026 What must be submitted to DSHS for curriculum approval? DSHS developed curricula are not required to be submitted to the department for approval unless the curriculum is being modified in any manner by the training entity.

(1) If a training entity modifies a department developed curricula in any manner, the training entity must submit the curriculum to the department for approval.

(2) Training must not be offered before receiving department curriculum and instructor approval.

(3) Online classes when applicable, must adhere to the DSHS online class standards in effect at the time of approval. These online standards are posted on the DSHS's website.

~~((4))~~ **(4) For orientation and/or safety training:**

~~(a) ((Effective January 7, 2012,))~~ Submit an outline of what will be covered in each training offered ~~((for example,))~~ including a table of contents ~~((or a class syllabus showing))~~ that shows where the required introductory topics as listed in WAC 388-71-0846 for orientation and WAC 388-71-0855 for safety training are covered in the training.

(b) Department required orientation and safety training application forms must be submitted to the department at least forty-five days in advance of when the training is expected to be offered. ~~((Training cannot be offered before receiving department curriculum and instructor approval.))~~

~~((2))~~ **(5) For continuing education:**

~~(a) ((Effective July 1, 2012, for))~~ Continuing education curriculum delivery models must only include instructor led ~~((and)),~~ online ~~((learning, submit a summary that includes the topic, a brief description of what it will cover, and a course outline. Also include the number of training hours. For online training courses, submit a description of how the instructor or training entity will assess that the students have completed the materials and integrated the information being taught. Department required continuing education training application forms must be submitted at least forty-five days in advance of when the training is expected to be offered. The trainings cannot be offered before receiving department curriculum and instructor approval as well as the unique code assigned by the department for each curriculum))~~ instructor led (such as a webinar), or an online interactive self-paced class that provides clear instructions on how students get questions answered during the course.

(b) For continuing education classes, submit on a department developed form, a summary that includes the topic, a brief description of what it will cover, a course outline, and the number of training hours.

(c) For online training courses, submit the information requested in (b) of this subsection and submit a description of how the instructor or training entity will assess that the students have completed the materials and integrated the information being taught.

(d) Department required continuing education training application forms must be submitted at least forty-five days in advance of when the training is expected to be offered.

~~((3))~~ **(6) For seventy-hour long-term care worker basic training, the thirty hour basic training, and the twelve hour parent provider training:**

(a) If the instructor or training entity ~~((wants to use))~~ uses the DSHS developed ~~((revised))~~ fundamentals of caregiving learner's guide or its substitute with enhancements, they must submit the DSHS required form with all required information. ~~((Curricula must be submitted to DSHS for approval of one or both sections (core competencies and population specific competencies) of the seventy hours required for basic training, for the thirty hour basic training, and for the twelve hour parent provider training. When submitting one or both sections of the basic training curriculum for DSHS approval, it must at a minimum include:))~~

(b) If the instructor or training entity does not use a DSHS developed revised fundamentals of caregiving learner's guide or its substitute with enhancements to teach the seventy-hour long-term care worker basic training, thirty hour basic training, and for the twelve hour parent provider training, they must submit to DSHS the following for approval:

(i) A completed DSHS curriculum checklist indicating where all of the competencies and learning objectives, described in this chapter, are located in the long-term care worker materials from the proposed curriculum for that course;

(ii) Any materials long-term care workers will receive, such as a textbook or long-term care worker manual, learning activities, audio-visual materials, handouts and books;

(iii) The table of contents or outline of the curriculum including the allotted time for each section;

(iv) Demonstration skills checklists for the personal care tasks described in WAC 388-71-0911 (12)(a) and (b), and infection control skills (hand washing and putting on and taking off gloves);

(v) The teacher's guide or manual that includes for each section of the curriculum:

(A) The goals and objectives;

(B) ((How that section will be taught including)) Methods of teaching ~~((methods and)),~~ including learning activities that incorporate adult learning principles;

(C) Methods instructors will use to determine whether each long-term care worker understands the material covered and can demonstrate all skills;

(D) A list of sources or references ~~((;))~~ that were used to develop the curriculum ~~((;))~~ and if the primary source or reference is not a published citation, the instructor must provide detail on how the content was established as evidence based ~~((;))~~;

(E) Description of how the curriculum was designed to accommodate long-term care workers with either limited

English proficiency (~~(and/or)~~), learning disabilities or both; and

(F) Description and proof of how input was obtained from consumers and long-term care worker representatives in the development of the curriculum.

~~((vi) In addition, for)~~ (c) Curricula ~~((being))~~ submitted for the core competency section of the basic training as described in WAC 388-71-0911 ~~(, the curriculum)~~ must include how much time long-term care workers will be given to practice skills and how instructors will evaluate and ensure each long-term care worker can proficiently complete each skill.

~~((vii))~~ (d) Entities submitting curriculum for population specific basic training must submit their own list of competencies and learning objectives used to develop the population specific basic training curriculum.

AMENDATORY SECTION (Amending WSR 13-02-023, filed 12/20/12, effective 1/20/13)

WAC 388-71-1055 What are the minimum qualifications for an instructor ~~((of the seventy hour))~~ for basic ~~((training core and))~~ (including thirty hour and twelve hour DDA parent providers, population specific ~~((training))~~, ~~((thirty hour training, twelve hour DDD parent provider training))~~ on-the-job ~~((training))~~, nurse delegation core ~~((training))~~, and nurse delegation specialized diabetes training? An instructor for basic ~~((training core and))~~ (including thirty hour and twelve hour DDA parent providers, population specific ~~((training))~~, on-the-job ~~((training))~~, nurse delegation core ~~((training))~~, and nurse delegation specialized diabetes training must meet the following minimum qualifications:

(1) ~~((General qualifications:~~

~~(a))~~ Twenty-one years of age; ~~((and~~

~~(b))~~ (2) Has not had a professional health care, adult family home, ~~((boarding home))~~ enhanced services facility, assisted living facility, or social services license or certification revoked in Washington state ~~((:))~~; and

~~((2))~~ (3) Meets one or more of the following education ~~((and))~~ or work experience ~~((:~~

~~(a))~~ requirements upon initial approval or hire ~~((, an instructor must))~~:

~~((i) Be))~~ (a) Is a registered nurse with work experience within the last five years with the elderly or persons with disabilities requiring long-term care in a community setting; ~~((or~~

~~((ii) Have))~~ (b) Has an associate degree or higher degree in the field of health or human services and six months of professional or caregiving experience within the last five years in an adult family home, ~~((boarding home))~~ enhanced services facility, assisted living facility, supported living through ~~((DDD))~~ DDA, or home care setting; or

~~((iii) Have))~~ (c) Has a high school diploma, or equivalent, and one year of professional or caregiving experience within the last five years in an adult family home, ~~((boarding home))~~ enhanced services facility, assisted living facility, supported living through ~~((DDD))~~ DDA, or home care setting ~~((:))~~;

~~((3))~~ (4) Meets the following teaching experience requirements:

(a) ~~((Must have))~~ One hundred hours of teaching adults in an appropriate setting on topics directly related to the basic training ~~for basic training topics that may be offered as continuing education~~; or

(b) ~~((Must have))~~ Forty hours of teaching ~~basic training~~ while being mentored by an instructor who ~~((meets these qualifications, and must attend))~~ is approved to teach basic training;

(5) Except for instructors for nurse delegation core and diabetes training, completion of a class on adult education that meets the requirements in WAC 388-71-1066 ~~((:))~~;

~~((4) The instructor must be))~~ (6) Experienced in caregiving practices and ~~((capable of demonstrating))~~ demonstrates competency with respect to teaching the course content or units being taught;

~~((5))~~ (7) Instructors who will administer tests must have experience or training in assessment and competency testing; and

~~((6) An instructor))~~ (8) Community instructors for nurse delegation core and specialized diabetes trainings must have a current Washington state ~~((RN))~~ registered nurse (RN) license in good standing without practice restrictions.

NEW SECTION

WAC 388-71-1064 What are the minimum qualifications for community instructors for adult education training using DSHS curriculum? (1) The minimum qualifications for community instructors of adult education training using DSHS curriculum, in addition to the general qualifications in WAC 388-71-1055 (1) and (2), include:

(a) The instructor must be experienced in adult education practices and capable of demonstrating competency in the entire course content;

(b) Education:

(i) Has a bachelor's degree or is a registered nurse with at least one year of education in seminars, conferences, continuing education, or in college classes in subjects directly related to adult education, such as, but not limited to English as a second language (ESL), adult basic education, and adult secondary education (one year of education equals twenty-four semester credits in a semester system, thirty-six quarter credits in a quarter system, or at least eighty hours of seminars, conferences, and continuing education); and

(ii) Successful completion of the DSHS adult education training curriculum prior to beginning to train others;

(c) Meets one or more of the following teaching experience requirements:

(i) Two years of experience teaching long-term care workers; or

(ii) Two hundred hours of experience teaching adult education or closely related subjects;

(d) Successful completion of the DSHS instructor qualification/demonstration process; and

(e) Instructor approved and contracted by the department as a community instructor.

(2) Instructors that administer tests must have experience or training in assessment and competency testing.

AMENDATORY SECTION (Amending WSR 13-02-023, filed 12/20/12, effective 1/20/13)

WAC 388-71-1066 What must be included in a class on adult education and which instructors must complete it? (1) A class on adult education must include content, student practice, and evaluation of student skills by the instructor in:

- ~~((1))~~ (a) Adult education theory and practice principles;
- ~~((2))~~ (b) Instructor facilitation techniques;
- ~~((3))~~ (c) Facilitating learning activities for adults;
- ~~((4))~~ (d) Administering competency testing; and
- ~~((5))~~ (e) Working with adults with special training needs ~~((for example,))~~ like limited English as a second language ~~((or))~~ proficiency, learning ~~((or literacy issues))~~ disabilities, or both.

(2) Instructors who request approval to teach either core basic training, specialty training as described in chapter 388-112A, or both, must complete the DSHS adult education class or an adult education class that meets the criteria in subsection (1) of this section and provide a copy of the certificate of completion.

AMENDATORY SECTION (Amending WSR 06-05-022, filed 2/6/06, effective 3/9/06)

WAC 388-106-0035 May I receive personal care services through any of the long-term care programs when I am out of the state of Washington? (1) You may receive personal care assistance through any long-term care programs in WAC 388-106-0015 subsections (1) through (5) when temporarily traveling out of state for less than thirty days, as long as your:

- (a) Individual provider is contracted with the state of Washington or an employee of the consumer directed employer;
- (b) Travel plans are coordinated with your case manager prior to departure;
- (c) Services are authorized on your plan of care prior to departure; and
- (d) Services are strictly for your personal care and do not include your provider's travel time, expenses.

(2) You may not receive personal care services outside of the United States.

AMENDATORY SECTION (Amending WSR 15-01-085, filed 12/16/14, effective 1/16/15)

WAC 388-106-0040 Who can provide long-term care services? The following types of providers can provide long-term care services:

(1) Individual providers (IPs), who provide services to clients in their own home. ~~((IPs must meet the requirements outlined in WAC 388-71-0500 through 388-71-05640.))~~

(2) Home care agencies that provide services to clients in their own home. Home care agencies must be licensed under chapter 70.127 RCW and chapter 246-335 WAC and contracted with ~~((area agency on aging))~~ the department.

(3) Residential providers, which include licensed adult family homes, enhanced services facilities, and assisted liv-

ing facilities, that contract with the department to provide assisted living, adult residential care, and enhanced adult residential care services (which may also include specialized dementia care).

(4) Providers who have contracted with the department to perform other services.

(5) In the case of new freedom consumer directed services (NFCDS), additional providers meeting NFCDS HCBS waiver requirements contracting with a department approved provider of fiscal management services.

AMENDATORY SECTION (Amending WSR 13-18-039 and 13-17-125, filed 8/29/13 and 8/21/13, effective 10/1/13)

WAC 388-106-1445 How is the amount of the individual budget determined? The department will calculate your individual budget amount after you are assigned a number of monthly hours resulting from completion of the comprehensive assessment reporting and evaluation tool, CARE. The calculation will be based on the average wage, including a mileage allowance, as determined by the collective bargaining agreement for individual provider personal care ~~((paid by the department))~~ multiplied by the number of units generated by the assessment, multiplied by a factor of .93, plus an amount equal to the average per participant expenditures for nonpersonal care supports purchased in the COPES waiver.

AMENDATORY SECTION (Amending WSR 17-08-065, filed 3/31/17, effective 5/1/17)

WAC 388-106-1458 How do I create and use my spending plan? (1) You create your spending plan with the assistance of the care consultant using the new freedom self-assessment and the CARE assessment.

(2) The spending plan must be approved by both you and the care consultant.

(3) You and your care consultant must identify how many personal care service units you intend to purchase prior to the month you plan to use them (service month).

(4) The value of those units is deducted from your new freedom budget.

(5) The rest of the funds can be used for other covered goods and services or saved.

(6) Once a service month begins, the number of personal care units may not be altered during that month.

(7) The maximum number of personal care units that can be purchased from the monthly budget is calculated from the individual budget as described in WAC 388-106-1445, divided by the individual provider average wage including mileage.

(8) Prior to the service month, you may elect to use savings funds to buy additional personal care.

(9) You may choose to have your personal care provided by an individual provider (IP) or a home care agency.

(10) Each unit will be deducted from your new freedom budget at the average IP wage rate including mileage.

(11) The balance of your individual new freedom budget will be available in your NFSP to save or purchase other goods and services up to the limit described in WAC 388-106-1455(2).

(12) If you have a change of condition or situation and your new freedom budget increases due to a new assessment or exception to rule, you may purchase additional personal care from an IP or home care agency mid-month at the average IP rate, including mileage during the month your budget changed.

(13) You may assign your predetermined personal care units to a different provider during the month of service.

(14) Under chapter 388-114 WAC, individual providers for one or more department clients who work more than forty hours in a work week, are entitled to overtime and the responsibility for paying the extra cost as follows:

(a) If the ~~((department approves the))~~ individual provider is contracted with the department and approved to work more than forty hours per week as described in WAC 388-114-0080, the department will pay the extra cost for overtime up to the number of service hours the individual provider is approved to work and the payment for these extra costs will not be charged to your budget; and

(b) If you assign more overtime hours to your individual provider than the department approved, you must pay the extra costs for the unapproved overtime hours and the additional cost will impact your monthly budget and may reduce the number of service hours you are able to purchase from it.

AMENDATORY SECTION (Amending WSR 14-14-025, filed 6/24/14, effective 7/25/14)

WAC 388-113-0005 What is the purpose of this chapter and to whom does it apply? (1) The purpose of this chapter is to describe the following:

~~((+))~~ (a) Criminal convictions, pending charges, and negative actions that automatically disqualify an ~~((individual))~~ applicant from having unsupervised access to vulnerable adults or minors who are receiving services from a program or facility under subsection (2) of this section;

(b) Exceptions to automatic disqualifications that may apply to certain criminal convictions and pending charges;

(c) Character, competence, and suitability review;

(d) Circumstances in which providers may share background check results and criminal history record information;

(e) One hundred and twenty day provisional hire while fingerprints are pending; and

(f) Confidentiality and retention for background checks.

(2) This chapter applies to the following programs or facilities:

(a) ~~((Chapter 388-71 WAC, Home and community services and programs, including individual providers and employees of home care agencies))~~ Long-term care workers providing in-home care under chapter 388-106 WAC, Long-term care services;

(b) ~~((Chapter 388-101 WAC, Certified community residential services and supports~~;

~~((+))~~ Chapter 388-76 WAC, Licensed adult family homes;

~~((+))~~ (c) Chapter 388-78A WAC, Licensed assisted living facilities;

~~((+))~~ (d) Chapter 388-97 WAC, Licensed nursing homes and medicare and medicaid certified nursing facilities;

~~((f) Chapter 388-825 WAC, Developmental disabilities administration programs))~~ (e) Certified community residential services and supports under chapter 388-101 and 388-101D WAC; ~~((and))~~

~~((g))~~ (f) Chapter 388-107 WAC, Licensed enhanced services facilities under chapter 388-107 WAC; and

(g) Developmental disabilities administration programs under chapter 388-825 WAC.

~~((2) Exceptions to automatic disqualifications that may apply to certain criminal convictions and pending charges.))~~

AMENDATORY SECTION (Amending WSR 14-14-025, filed 6/24/14, effective 7/25/14)

WAC 388-113-0010 What definitions apply to this chapter? "Applicant" means an employee, volunteer, student, intern, licensee, service provider, contractor, or other individual who is the subject of the background check and who will work in a position that may have unsupervised access, as defined in RCW 43.43.830 to minors or vulnerable adults.

"Authorized entity" means a service provider, licensee, contractor, or other public or private agency that:

(1) Is required to conduct background checks under the rules listed in WAC 388-113-0005; and

(2) Is authorized to conduct the background checks through the background check central unit.

"Background check" means a name and date of birth check or a fingerprint-based background check, or both.

"Background check central unit (BCCU)" means a division within the department that processes background checks for department authorized service providers and department programs who serve vulnerable individuals across Washington state.

"Background check result" means a notification letter produced by the BCCU that describes the outcome of the background check, as described in WAC 388-113-0101, but does not, by itself, include criminal history record information (CHRI).

"Criminal history record information" means the information found in the Records of Arrests and Prosecutions (RAP) sheet about a person's arrests and convictions.

"Department" means the Washington state department of social and health services and its designees.

"Drug" means a:

~~((a))~~ (1) Controlled substance as defined in RCW 69.50.101;

~~((b))~~ (2) Legend drug, as defined in RCW 69.41.010;

~~((c))~~ (3) Precursor drug under Chapter 69.43 RCW; or

~~((d))~~ (4) Imitation controlled substance, as defined in RCW 69.52.020.

"Final finding" is described in WAC 388-71-0105.

"Founded" is defined in WAC 110-30-0020.

"Fingerprint-based background check" means a search of in-state criminal history records through the Washington state patrol and national criminal history records through the Federal Bureau of Investigation (FBI).

"Individual provider (IP)" as defined in RCW 74.39A.240.

"Minor" means any person under the age of eighteen who is receiving services from a program or facility under chapter 388-71 WAC, Home and community services and programs, chapter 388-76 WAC, Adult family home minimum licensing requirements, chapter 388-78A WAC, Assisted living facility licensing rules, chapter 388-97 WAC, Nursing homes, chapter 388-101 WAC, Certified community residential services and supports, chapter 388-107 WAC, Licensing requirements for enhanced service facilities, or chapter 388-825 WAC, Developmental disabilities administration service rules.

"Name and date of birth check" is a search conducted by the background check central unit (BCCU) of Washington state criminal history and negative action records using the applicant's name and date of birth.

"Negative Action" means actions as described in WAC 388-113-0030.

"Pending charge" means a criminal charge for a (~~dis-~~qualifying) crime has been filed in a court of law for which the department has not received documentation showing the disposition of the charge.

"Record of Arrest and Prosecution (RAP sheet)" means a record kept by law-enforcement authorities of a person's arrests and convictions.

"Requesting entity" means the person or entity that requested the background check from the background check central unit (BCCU).

"Unsupervised access" ((means not in the presence of:

(a) Another employee or volunteer from the same business or organization as the applicant; or

(b) Any relative or guardian of any of the minors or vulnerable adults to which the applicant has access during the course of his or her employment or involvement with the business or organization)) is described in RCW 43.43.830(13).

"Vulnerable adult" is defined in RCW 74.34.020(17).

AMENDATORY SECTION (Amending WSR 14-14-025, filed 6/24/14, effective 7/25/14)

WAC 388-113-0030 ((Where do I find what)) Which negative actions ((are disqualifying)) automatically disqualify an applicant from having unsupervised access to minors and vulnerable adults who are receiving services? ((In addition to disqualifying convictions and pending charges for disqualifying crimes, individuals are disqualified from working in positions involving unsupervised access to minors or vulnerable adults under chapters 388-71, 388-101, 388-76, 388-78A, 388-97, 388-825 and 388-107 WAC if certain findings have been made or certain actions have been taken against them. These disqualifying findings and actions are referred to as "negative actions" and they are listed in the following program rules:

(a) Chapter 388-71 WAC, Home and community services and programs, including individual providers and employees of home care agencies;

(b) Chapter 388-101 WAC, Certified community residential services and supports;

(c) Chapter 388-76 WAC, Licensed adult family homes;

(d) Chapter 388-78A WAC, Licensed assisted living facilities;

(e) Chapter 388-97 WAC, Licensed nursing homes;

(f) Chapter 388-825 WAC, Developmental disabilities administration programs; and

(g) Chapter 388-107 WAC, Licensed enhanced services facilities))

Applicants who must satisfy background checks requirements under a program or facility listed in WAC 388-113-0005 may not work in a position that may involve unsupervised access to minors or vulnerable adults if he or she has one or more of the following automatically disqualifying negative actions:

(1) A court of law has issued a final order finding or concluding the applicant abused, neglected, financially exploited, or abandoned a minor or vulnerable adult;

(2) The department has made a final finding of abuse, neglect, financial exploitation, or abandonment of a vulnerable adult against the applicant or the applicant is listed on any state's registry as having a final finding of abuse, neglect, financial exploitation, or abandonment of a vulnerable adult, and if the finding was made by adult protective services, it was after October 2003;

(3) A founded finding of abuse, neglect, sexual exploitation, or abandonment of a minor against the applicant, or the applicant was found by a court in a dependency proceeding, a title 26 RCW domestic relations proceeding, or other court proceeding to have sexually abused or exploited any minor, or to have physically abused any minor and the finding was made by child protective services after October 1, 1998. Such a finding is not disqualifying if it is accompanied by a Certificate of Parental Improvement (CPI);

(4) The applicant is a registered sex offender, or is required by law to register as a sex offender; or

(5) The department of health or another disciplining authority has issued a final order finding or concluding the applicant abused, neglected, financially exploited, or abandoned a minor or vulnerable adult.

NEW SECTION

WAC 388-113-0050 What is a character, competence, and suitability determination? (1) A character, competence, and suitability determination is a review process that the department, or an authorized entity uses to decide whether an applicant has the character, competence, and suitability to have unsupervised access to minors or vulnerable adults.

(2) The department or authorized entity may also conduct a character, competence, and suitability determination for the purpose of deciding whether or not an applicant has the character, competence, and suitability to work with a particular department client when the applicant is or intends to be an individual provider.

(3) The department or an authorized entity may consider any information that may be relevant to an applicant's character, competence, and suitability, to maintain and promote the health and safety of the client including but not limited to:

(a) The ability of the applicant to appropriately meet the care needs of persons who would be under his or her care;

(b) A history of behaviors that may put persons who would be under the applicant's care at risk; or

(c) The vulnerability of persons who would be under the applicant's care.

(4) Additional factors that may be considered in a character, competence, and suitability determination include, but are not limited to, whether the applicant has had any of the following:

(a) Findings made or actions taken, including settlements or stipulations, by the department, the department of health, or other federal or state agencies;

(b) Sanctions imposed or corrective or remedial actions taken by federal, state, county, or municipal officials;

(c) A license, certification, or contract that is denied, suspended, revoked, or terminated, including a license or certification relinquished in lieu of discipline;

(d) Injunctions against operating a facility for the care of minors or vulnerable adults;

(e) Issuance of a final restraining order or order of protection, either active or expired;

(f) Convictions, or pending charges, for crimes not automatically disqualifying under WAC 388-113-0020, including:

(i) The amount of time that has passed since any of the applicant's convictions, pending charges;

(ii) The seriousness of any convictions or pending charges; and

(iii) The number and types of convictions or pending charges in the applicant's background;

(g) History of failure to comply with the department's billing requirements;

(h) Evidence the applicant has obtained or attempted to obtain a license, certification, department contract, or payment by fraudulent means or misrepresentation; or

(i) Evidence the applicant refused to permit authorized department representatives to interview clients, to have access to client records, or to have access to any care setting.

A character, competence, and suitability determination is only appropriate where the applicant has not been automatically disqualified.

NEW SECTION

WAC 388-113-0060 How and when must a character, competence, and suitability determination be conducted by the department or an authorized entity? (1) The department or an authorized entity must conduct a character, competence, and suitability determination of an employee, prospective employee, or other individual who is required to undergo a background check when the applicant has received a "review required" result as defined in WAC 388-113-0101(b).

(2) If the department or an authorized entity is required to conduct a character, competence, and suitability determination under this section, the person or entity responsible must document in writing the following information:

(a) Reason for the decision;

(b) Whether or not the applicant may have unsupervised access to minors and vulnerable adults;

(c) The date the character, competence, and suitability determination was completed; and

(d) The name and signature of the person or persons who performed the determination.

(3) If an applicant is required to have a character, competence, and suitability determination under this section, the applicant may not have unsupervised access to minors or vulnerable adults unless the character, competence, and suitability determination has:

(a) Been completed and documented in writing.

(b) Concluded the applicant may have unsupervised access to minors or vulnerable adults.

(4) A character, competence, and suitability determination may not be conducted if an applicant has an automatically disqualifying conviction or pending charge under WAC 388-113-0020 or has an automatically disqualifying negative action under WAC 388-113-0030.

NEW SECTION

WAC 388-113-0070 When may a character, competence, and suitability determination be conducted? The department or an authorized entity may choose to conduct a character, competence, and suitability determination at any time.

NEW SECTION

WAC 388-113-0100 What information sources are searched when the background check central unit (BCCU) conducts a background check? (1) The BCCU searches multiple information sources when completing state and federal background checks, including state and federal law enforcement records, state court records, and agency databases.

These sources include:

(a) Washington state:

(i) Court criminal history and judicial information system records;

(ii) DSHS adult protective services findings;

(iii) DSHS residential client protection program findings;

(iv) DSHS child protective services findings;

(v) Department of health findings; and

(vi) Department of corrections;

(b) Washington state patrol (WSP) fingerprint rap sheets for fingerprint-based search;

(c) WSP criminal history records;

(d) Applicant self-disclosures;

(e) Federal Bureau of Investigation fingerprint rap sheets for fingerprint based search;

(f) Western identification network (WIN) state search (Alaska, Oregon, Idaho, Montana, Nevada, Utah, and Wyoming); and

(g) Stored WSP & FBI fingerprint rap sheets and WIN state rap sheets (unless prohibited by federal law).

(2) For more information, BCCU can be contacted at BCCUinquiry@dshs.wa.gov.

NEW SECTION

WAC 388-113-0101 What are the possible results of a background check? (1) The requesting entity will receive a background check result. The background check result by itself does not include criminal history record information but identifies the source of any criminal or negative action records. The possible types of results are:

(a) A "no record" letter, which means none of the background check data sources reported criminal or negative action records and there are no background check records to be reviewed;

(b) A "review required" letter, which means the applicant or one or more data sources reported a background issue that requires a character, competence, and suitability review by the department or authorized entity to determine whether or not the applicant can work in a position that may have unsupervised access to minors or vulnerable adults; or

(c) A "disqualify" letter, which means the applicant or one or more data sources reported a background issue that automatically disqualifies the applicant from a position that has unsupervised access to minors or vulnerable adults.

(2) The requesting entity may receive an "additional information" letter, which means the applicant or one or more data sources reported information in a manner that is unclear and BCCU requires clarifying information from the applicant before the background check can be completed. An additional information letter is not a result. If the individual receives an "additional information" letter:

(a) The individual may not be contracted or begin working in a position that has unsupervised access until the requesting entity has a non-disqualifying result from the name and date of birth check; or

(b) If the additional information letter is the result of a pending fingerprint check, the individual is not automatically disqualified, and may work as described in WAC 388-113-0109.

NEW SECTION

WAC 388-113-0103 What does the requesting entity receive from the background check central unit? (1) The background check central unit (BCCU) provides the entity who requested the name and date of birth background check with:

(a) Background check result; and

(b) Any criminal history record information and negative actions reported from the background check data sources including the Washington state record of arrests and prosecutions (RAP) sheets; and may include prior fingerprint RAP sheets from the federal bureau of investigation (FBI) if one was used to complete the background check. The FBI RAP sheets will only be distributed as described in subsection (2)(c) below.

(2) BCCU provides the entity who requested the fingerprint background check with:

(a) Background check result;

(b) Any criminal history record information and negative actions reported from the background check data sources, including Washington state RAP sheets; and

(c) Authorized governmental entities will also receive the FBI RAP sheets.

(3) In cases where the requesting entity is not authorized to receive the FBI RAP sheet, the applicant may request those records directly from BCCU.

NEW SECTION

WAC 388-113-0105 When must background check results and criminal history information be shared with the applicant? The requesting entity must:

(1) Notify the applicant of the background check result;

(2) Inform the applicant they may have a copy of their results and criminal history record information when the entity has it; and

(3) Provide a copy of results and criminal history record information when the entity has it, if requested. The applicant may also contact BCCU at BCCUInquiry@dshs.wa.gov.

NEW SECTION

WAC 388-113-0107 When can background check results and criminal history record information be shared? (1) The requesting entity may only disclose the background check result and criminal history record information in the Washington state record of arrests and prosecutions (RAP) sheets from the background check central unit to the following:

(a) The applicant;

(b) The client, or client's representative, when the client has elected to receive services from an IP; and

(c) Other persons or entities as allowed by federal and state law, including the department of health (DOH).

(2) A requesting entity that receives criminal history record information from the federal bureau of investigations (FBI) may only disclose the FBI RAP sheets to the following:

(a) The applicant; and

(b) A governmental entity as allowed by federal and state law, including DOH.

(3) The applicant may choose to provide a copy of the background check result and FBI RAP sheets to the requesting entity or employer.

(4) For additional information sharing related to health care facilities as defined in RCW 43.43.830, refer to individual program WACs under title chapter 388-76 WAC, Adult family home minimum licensing requirements, chapter 388-97 WAC, Nursing Homes, chapter 388-78A WAC, Assisted living facility licensing rules.

(5) The applicant may contact BCCU at BCCUInquiry@dshs.wa.gov for a copy of their results.

NEW SECTION

WAC 388-113-0108 When will the client of an individual provider receive the result and criminal history record information from the state background check? A client who has elected to receive services from an individual provider will be notified of the result of a background check. When the result of a background check is "review required" the client, who is the managing employer of the individual provider, will be provided with a copy of the background

check result and the Washington State record of arrests and prosecutions (RAP) sheets if requested by the client. The individual provider may choose to provide a copy of the FBI RAP sheet to the client.

NEW SECTION

WAC 388-113-0109 May an individual have unsupervised access to minors or vulnerable adults pending the outcome of the fingerprint check? (1) Individuals who are required to complete a fingerprint-based background check may have unsupervised access for a one hundred twenty-day provisional period when both:

(a) The individual is not disqualified by the name and date of birth background check which is also known as the interim result letter; and

(b) A fingerprint-based background check is pending, which means fingerprint appointment has been scheduled.

(2) If this section conflicts with any other provision of the WAC, this section takes precedence.

Chapter 388-115 WAC

Consumer directed employer

NEW SECTION

WAC 388-115-0500 What is the purpose of this section of the chapter? The purpose of WAC 388-115-0500 through WAC 388-115-05640 is to describe:

(1) The role of the client as the managing employer of individual providers;

(2) Individual provider qualifications and responsibilities;

(3) When the consumer directed employer must or may reject a client's selected individual provider; and

(4) When the consumer directed employer has a right to an administrative hearing.

NEW SECTION

WAC 388-115-0503 What definitions apply to WAC 388-115-0500 through 388-115-05640? "Area agencies on aging (AAA)" means a contracted entity that aging and long-term support administration (ALTSA) grants funds to in order to carry out the functions of the Older Americans Act, general-fund state programs and to provide case management services and supports to individuals 18 and older who receive medicaid-funded LTC in their own homes.

"Applicant" means a person who is in the process of becoming an in-home long-term care worker.

"Negative actions" are listed in WAC 388-113-0030.

"Background check" means a name and date of birth check or a fingerprint-based background check, or both.

"Background check result" is defined in WAC 388-113-0101.

"Background check central unit" (BCCU) means the DSHS entity responsible for conducting background checks for the department.

"Character, competence and suitability determination (CC&S)" is defined in WAC 388-113-0050.

"Client" means an individual receiving medicaid-funded in-home long term services from the department.

"Consumer directed employer (CDE)" is a private entity that contracts with the department to be the legal employer of individual providers for purposes of performing administrative functions. The consumer directed employer is patterned after the agency with choice model, recognized by the federal centers for medicare and medicaid services for financial management in consumer directed programs. The entity's responsibilities are described in RCW 74.39A.515 and throughout this chapter 74.39A RCW and include:

(1) Coordination with the consumer, who is the individual provider's managing employer;

(2) Withholding, filing, and paying income and employment taxes, including workers' compensation premiums and unemployment taxes, for individual providers;

(3) Verifying an individual provider's qualifications; and

(4) Providing other administrative and employment-related supports. The consumer directed employer is a social service agency and its employees are mandated reporters as defined in RCW 74.34.020.

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

"Fingerprint-based background check" means an in-state criminal history records through the Washington state patrol and national criminal history records through the Federal Bureau of Investigation.

"Individual provider (IP)" as defined in RCW 74.39A.240 limited to Individual Providers employed by the consumer directed employer.

"Managing employer" means a consumer who employs one or more individual providers and whose responsibilities include:

(1) Choosing potential individual providers and referring them to the consumer directed employer;

(2) Selecting an individual provider(s);

(3) Overseeing the day-to-day management and scheduling of the individual provider's tasks consistent with the plan of care; and

(4) Dismissing the individual provider when desired.

"Name and date of birth check" is a search, conducted by the background check central unit (BCCU), of Washington state check criminal history and negative action records using the applicant's name and date of birth.

NEW SECTION

WAC 388-115-0505 What is the client's role as managing employer of an individual provider? The client, or their representative, is the managing employer and:

(1) Has the primary responsibility to select, dismiss, assign hours, and supervise the work of one or more individual providers; and

(2) May receive assistance from the consumer directed employer or other resources in identifying potential providers.

NEW SECTION

WAC 388-115-0510 What are the qualifications of an individual provider? In order to be qualified as an individual provider, an applicant must:

- (1) Be eighteen years of age or older;
- (2) Not have a disqualifying crime or negative action under chapter 388-113 WAC based on a completed background check;
- (3) Not be disqualified based on a character, competence, and suitability determination;
- (4) Complete training and certification requirements as required by WAC 388-71-0520 and WAC 388-71-0523;
- (5) If required, have a home care aide certification or other qualifying credential by the DOH that is both active and in good standing;
- (6) Be an employee of the consumer directed employer to provide personal care services;
- (7) Pass the federal exclusion list screening; and
- (8) Not have credible allegations of fraud which are pending investigation, unless they fit within the exceptions listed in 42 C.F.R. 455.23.

NEW SECTION

WAC 388-115-0511 When is a background check required of an individual provider? (1) Individual providers are required to complete and pass a name and date of birth background check prior to working with a client.

(2) Individual providers are required to complete and pass a name and date of birth background check:

- (a) Every two years; and
- (b) Any time the consumer directed employer requests a new background check from an individual provider.
- (3) In addition to the name and date of birth background check, individual providers must complete and pass a fingerprint-based background check as required in RCW 43.43.837 and RCW 74.39A.056.

NEW SECTION

WAC 388-115-0513 How does an individual provider complete a background check? (1) The individual provider must:

- (a) Complete the background check authorization form;
- (b) Answer all questions on the background check authorization form truthfully;
- (c) Obtain a fingerprint-based background check result;
- (d) Not have any automatically disqualifying conviction(s), pending charge(s), or negative action(s) as described in chapter 388-113 WAC;
- (e) Review the background check results and if necessary provide documents or other information to BCCU to correct the background check results; and
- (f) When requested by BCCU, provide additional information in order to complete a background check as mandated by statute.

(2) It is the responsibility of the consumer directed employer to ensure compliance with subsection (1) of this section for individual providers it employs.

NEW SECTION

WAC 388-115-0516 What are the responsibilities of the consumer directed employer when providing care to a client? In providing care to a client, the consumer directed employer must:

- (1) Be responsible that the client assigned individual provider(s) understands the approved plan of care;
- (2) Assign client approved tasks from services outlined in a client's plan of care, as described in WAC 388-106-0010;
- (3) Accommodate the client's individual preferences and unique needs in providing care;
- (4) Contact the client, client's representative and case manager when there are changes observed by the individual provider that affect the personal care and other tasks listed on the plan of care;
- (5) Be responsible that the individual provider(s) observes the client for and consults with the client or representative, regarding change(s) in health, takes appropriate action, and responds to emergencies;
- (6) Notify the case manager immediately when the client enters a hospital or moves to another setting;
- (7) Notify the case manager immediately in the event of the client's death;
- (8) Notify the department or AAA immediately when unable to staff/serve the client;
- (9) Comply with time keeping requirements, and keep accurate records of time of authorized/paid hours that are accessible to the appropriate department or designee staff; and
- (10) Comply with all applicable laws and regulations.

NEW SECTION

WAC 388-115-0520 What are the training requirements for an individual provider? An individual hired on or after January 7, 2012, must meet the training requirements described in WAC 388-71-0836 through 388-71-1006. These training requirements also apply to individual providers who were hired before January 7, 2012, if they did not complete prior training requirements within one hundred twenty days of hire and they want to be reinstated to work. These training requirements and certification if required must be met prior to reinstating these individuals to work.

NEW SECTION

WAC 388-115-0523 What are the training and certification requirements for individual providers? The following chart provides a summary of the training and certification requirements for individual providers, including criteria for those providers working limited hours for one person, caring only for one's child or parent, and providing respite services only:

Who	Status	Orientation training	Safety training	Basic training	Continuing education (CE)	Required credential
(1) An individual provider who is a licensed, certified health care professional in good standing through the Washington state department of health, or an individual provider or home care agency long-term care worker with special education training who meets the criteria in RCW 18.88B.041 (1)(a)(i)(A).	ARNP, RN, LPN, HCA, NA-C, or other professionals listed in WAC 388-71-0839	Not required.	Not required.	Not required.	Not required of ARNPs, RNs, or LPNs in chapter 388-71 WAC. Required twelve hours under WAC 388-71-0990 and 388-71-0991 of NA-Cs, HCAs, and other professionals listed in WAC 388-71-0839, such as an individual with special education training with an endorsement granted by the superintendent of public instruction under RCW 28A.300.010.	Not required. Must maintain in good standing the certification or credential or other professional role listed in WAC 388-71-0839.
(2) An individual provider with specific employment history.	A long-term care worker employed at some point between January 1, 2011 and January 6, 2012, and has completed the basic training requirements in effect on his or her date of hire. WAC 388-71-0839.	Not required.	Not required.	Not required.	Required. Twelve hours under WAC 388-71-0990 and 388-71-0991.	Not required.
(3) An individual provider.	Hired by the consumer directed employer to provide personal care service as defined in WAC 388-71-0836, and is not exempt under subsection (1) or (2) of this section.	Required. Two hours under WAC 388-71-0860.	Required. Three hours under WAC 388-71-0860.	Required. Seventy hours under WAC 388-71-0870 and 388-71-0875.	Required. Twelve hours under WAC 388-71-0990 and 388-71-0991.	Home care aide certification required under WAC 388-71-0975 within two hundred days of the date of hire as provided in WAC 246-980-050 (unless the department of health issues a provisional certification under WAC 246-980-065).
(4) An individual provider who works limited hours for one person.	Individual providing twenty hours or less of care for one person per calendar month, and does not meet the criteria in (1) or (2) of this section.	Required. Two hours under WAC 388-71-0860.	Required. Three hours under WAC 388-71-0860.	Required. Thirty hours under WAC 388-71-0880.	Not required.	Not required.

Who	Status	Orientation training	Safety training	Basic training	Continuing education (CE)	Required credential
<p>(5) An individual who provides only respite services and works three hundred hours or less in any calendar year.</p>	<p>(a) Individual providing only respite care and works no more than three hundred hours in the calendar year, is not exempt in subsection (1) or (2) of this section, and does not meet criteria in subsection (7) of this section.</p> <p>(b) Individual providing only respite services for individuals with developmental disabilities that receive services under Title 71A RCW and for individuals that receive services under chapter 74.39A, that is working three hundred hours or less in any calendar year, and that is not exempt in subsection (1) or (2) of this section.</p>	<p>Required. Two hours under WAC 388-71-0860.</p>	<p>Required. Three hours under WAC 388-71-0860.</p>	<p>Required. Thirty hours under WAC 388-71-0880.</p>	<p>Not required.</p>	<p>Not required.</p>
<p>(6) An individual provider caring only for his or her biological, step, or adoptive adult child.</p>	<p>Individual providing care only for his or her adult child that receives services through the developmental disabilities administration and not exempt under (1) or (2) of this section.</p>	<p>Required. Two hours per WAC 388-71-0895.</p>	<p>Required. Three hours under WAC 388-71-0895.</p>	<p>Required. Seven hours under WAC 388-71-0890.</p>	<p>Not required.</p>	<p>Not required.</p>

Who	Status	Orientation training	Safety training	Basic training	Continuing education (CE)	Required credential
(7) An individual provider caring only for his or her biological, step, or adoptive child, or parent.	Individual providing care only to his or her child or parent, who is not exempt in subsection (1) or (2) of this section, and does not meet criteria in subsection (6) of this section.	Required. Two hours under WAC 388-71-0860.	Required. Three hours under WAC 388-71-0860.	Required. Thirty hours under WAC 388-71-0880.	Required for an individual provider caring only for his or her biological, step, or adoptive parent under WAC 388-71-0990 and 388-71-0991. Not required for an individual provider caring only for his or her biological, step, or adoptive child under WAC 388-71-1001.	Not required.

NEW SECTION

WAC 388-115-0540 When will the consumer directed employer reject your selected individual provider? (1) The CDE will reject an individual provider who:

- (a) Is the client's spouse, except in the case of an individual provider for a chore services client;
- (b) Is the natural, step, or adoptive parent of a minor client aged seventeen or younger;
- (c) Is the foster parent providing personal care or skills acquisition training to a child residing in their licensed foster home; or
- (d) Does not meet the qualifications under WAC 388-115-0510.

(2) The CDE will also reject an individual provider when the CDE believes that the individual will be unable to appropriately meet the care needs of the consumer, including health and safety.

NEW SECTION

WAC 388-115-05410 What are the client's rights if the consumer directed employer rejects their selection of a person to serve as their individual provider or discontinues their current individual provider's assignment? (1) The client may choose to receive services from a different individual provider or another qualified provider.

- (2) The client has the right to dispute the decision under the consumer directed employer's dispute resolution process.
- (3) The client does not have a right to a hearing under chapter 34.05 RCW.

NEW SECTION

WAC 388-115-05415 When will the department deny payment to the CDE? The department will deny payment to the CDE for services provided to a department client:

- (1) By an individual provider who does not meet the qualifications in WAC 388-115-0510;
- (2) In excess of the client's authorized number of hours, except when necessary to respond to an emergent situation that poses a serious risk to the client's health and safety; or

(3) As provided in the contract with the consumer directed employer.

NEW SECTION

WAC 388-115-0562 When does the consumer directed employer have the right to an administrative hearing and how can a hearing be requested? (1) The consumer directed employer has the right to an administrative hearing when the department or a department designee terminates its contract or takes other enforcement action related to its contract because the consumer directed employer:

- (a) Employs an individual provider who has not completed training within the required timeframe; or
- (b) Employs an individual provider who does not meet the certification or recertification requirements or whose certification has been revoked by the department of health (DOH).

(2) In an administrative hearing under subsection (1) of this section, the consumer directed employer may not challenge an action taken by the DOH that affects an individual provider's certification.

(3) To request an administrative hearing, the consumer directed employer must send, deliver, or fax a written request to the office of administrative hearings (OAH). OAH must receive the written request within thirty calendar days of the date the department's notice letter is served upon the consumer directed employer.

(4) The consumer directed employer should keep a copy of the request.

(5) The appeal process will be governed by the Administrative Procedure Act (chapter 34.05 RCW), RCW 74.39A.-085, chapter 388-02 WAC, title 182 WAC, and this chapter. If there is a conflict between chapter 388-02 WAC, title 182 WAC, and this chapter, this chapter will govern.

NEW SECTION

WAC 388-115-05640 Self-directed care—Who must direct self-directed care? Self-directed care under chapter 74.39 RCW must be directed by an adult client for whom the health-related tasks are provided. The adult client is responsible

ble to train the individual provider in the health-related tasks which the client self-directs.

NEW SECTION

The following section of the Washington Administrative Code is decodified and recodified as follows:

Old WAC Number	New WAC Number
388-113-0040	388-113-0025

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 388-71-0512 What is included in Washington state's name and date of birth background check and the Washington state and national fingerprint-based background check?
- WAC 388-71-0514 Can an individual provider or licensed home care agency long-term care worker work pending the outcome of the national fingerprint-based background check?
- WAC 388-71-0544 When may the department, AAA, or department designee deny payment to a home care agency for the services of a long-term care worker that it employs?
- WAC 388-71-0546 When may the department, AAA, or department designee reject your choice of an individual provider?
- WAC 388-71-0551 When may the department, AAA, or department designee terminate an individual provider's contract?
- WAC 388-71-0553 When may the department summarily suspend an individual provider's contract?
- WAC 388-71-0556 When can the department, AAA, or managed care entity otherwise terminate an individual provider's contract?
- WAC 388-71-0560 What are the client's rights if the department denies, terminates, or summarily suspends an individual provider's contract?

WSR 21-20-006
PERMANENT RULES
PARKS AND RECREATION
COMMISSION

[Filed September 22, 2021, 3:11 a.m., effective October 23, 2021]

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

Purpose: This permanent rule will amend chapter 352-66 WAC, WAC 352-60-080, and 352-60-030 state statute [rules] to align with federal statute 33 C.F.R. part 60 and 46 C.F.R. part 160.

Citation of Rules Affected by this Order: Amending chapter 352-66 WAC; WAC 352-60-080 and 352-60-030.

Statutory Authority for Adoption: RCW 79A.05.070, 79A.05.030.

Adopted under notice filed as WSR 21-15-016 on July 9, 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 [20], Amended 3 [5], Repealed 0 [9].

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0 [20], Amended 3 [5], Repealed 0 [9].

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: September 16, 2021 [2021].

Valeria Veasley
Management Analyst

AMENDATORY SECTION (Amending WSR 94-16-027, filed 7/25/94, effective 8/25/94)

WAC 352-60-030 Personal flotation devices required. No person shall operate or permit the operation of a vessel on the waters of the state unless the vessel has on board United States Coast Guard approved personal flotation devices as follows:

(1) Vessels less than sixteen feet (4.9 meters) in length, and canoes and kayaks of any length, must have one Type I, II, or III PFD, or one wearable with a buoyancy of 50, 70, 100, 150, or 275 newtons and is of the proper size for each person on board.

(2) Vessels sixteen feet (4.9 meters) or more in length, except a canoe or kayak, must have one Type I, II, or III wearable PFD, or a wearable PFD with a buoyancy of 50, 70, 100, 150, or 275 newtons of the proper size for each person on board and, in addition, one Type IV, or a throwable PFD.

(3) Alternate PFD requirement. A United States Coast Guard approved Type V PFD may be carried in lieu of any required PFD under this section if it is approved for the activity in which the vessel is engaged in and used in compliance with requirements on the approval label.

(4) Stowage and condition.

(a) All personal flotation devices required by this section shall be readily accessible to all persons on board and be in good and serviceable condition. All Type IV or throwable personal flotation devices must be immediately available.

(b) All devices shall be approved by the United States Coast Guard and marked in compliance with Coast Guard standards.

(c) No PFD may exhibit deterioration that could diminish the performance of the PFD, including:

(i) Metal or plastic hardware used to secure the PFD on the wearer that is broken, deformed, or weakened by corrosion;

(ii) Webbing and straps used to secure the PFD on the wearer that are ripped, torn, or which have become separated from the attachment point on the PFD; or

(iii) Any rotted or deteriorated structural component that fails when tugged.

(d) In addition to meeting the requirements of this section, no inherently buoyant PFD, including the inherently buoyant components of a hybrid inflatable PFD, may exhibit:

(i) Rips, tears, or open seams in the fabric or coating that are large enough to allow the loss of buoyant material;

(ii) Buoyant material that has become hardened, nonresilient, permanently compressed, waterlogged, oil-soaked, or which shows evidence of fungus or mildew; or

(iii) Loss of buoyant material or buoyant material that is not held in place.

(e) Except as provided in this section, a properly armed inflation mechanism, complete with a full inflation medium cartridge and all status indicators showing that the inflation mechanism is properly armed, must also have:

(i) Inflatable chambers that are all capable of holding air;

(ii) Oral inflation tubes that are not blocked, detached, or broken;

(iii) A manual inflation lanyard or lever that is not inaccessible, broken, or missing; and

(iv) Inflator status indicators that are not broken or otherwise nonfunctional.

(f) All devices shall be approved by the United States Coast Guard or Underwriters Laboratory and marked in compliance with United States Coast Guard Standards.

(5) Exemptions. Racing shells, rowing sculls and racing kayaks are exempt from the requirements of this section provided they are manually propelled, recognized by a national or international racing association and designed solely for competitive racing.

AMENDATORY SECTION (Amending WSR 94-16-027, filed 7/25/94, effective 8/25/94)

WAC 352-60-080 Fire extinguisher required. (1)

Every vessel with a motor, except vessels with an outboard motor, less than twenty-six feet (7.9 meters) in length and of open construction, shall carry on board, fully charged and in serviceable condition the following hand portable United States Coast Guard, for vessels manufactured prior to August 22, 2016, or Underwriters Laboratory for vessels manufactured after August 22, 2016, approved fire extinguishers:

(a) Motorboats with no fixed fire extinguishing system in the machinery space and which are:

(i) Less than twenty-six feet (7.9 meters) in length - One extinguisher;

(ii) Twenty-six feet (7.9 meters) but less than forty feet (12 meters) in length - Two extinguishers;

(iii) Forty feet (12 meters) or longer in length - Three extinguishers.

(b) Motorboats with a fixed extinguishing system in the machinery space and which are:

(i) Less than twenty-six feet (7.9 meters) - No hand portable extinguisher required;

(ii) Twenty-six feet (7.9 meters) or longer in length, but less than forty feet (12 meters) in length - One extinguisher;

(iii) Forty feet (12 meters) or longer in length - Two extinguishers.

(2) The fire extinguishers required by this section are Class B-I for vessels manufactured prior to August 22, 2016, or are 5-B for vessels manufactured after August 22, 2016, as described in Title 46, Code of Federal Regulations, ~~((25-30))~~ Part 34 and Title 46, Code of Federal Regulations, Part 25, 30-20, however, one Class B-II described in that regulation may be substituted for two Class B-I extinguishers. One UL 20-B may be substituted for two 5-B extinguishers.

Chapter 352-66 WAC

((UNIFORM WATERWAY MARKING)) UNITED STATES AIDS TO NAVIGATION SYSTEM

AMENDATORY SECTION (Amending WSR 90-07-051, filed 3/19/90, effective 4/19/90)

WAC 352-66-010 Purpose. ~~((H))~~ The purpose of this chapter is to establish a uniform waterway marking system of aids to navigation, including regulatory markers compatible with ~~((the United States lateral system of buoyage))~~ Title 33, Code of Federal Regulations, Part 62, United States Aids to Navigation System, to which all waterway markers owned by state, local government, or private parties shall conform. The ~~((uniform waterway marking))~~ United States Aids to Navigation System is designed to assist the recreational boater in safe navigation and to allow the state and its political subdivisions to provide uniform regulatory information regarding vessel operation on the waters of Washington state not serviced by a marking system administered by the federal government.

AMENDATORY SECTION (Amending WSR 90-07-051, filed 3/19/90, effective 4/19/90)

WAC 352-66-020 Definitions. As used in this chapter, the following terms have the meanings indicated unless the context clearly requires otherwise.

(1) "Aid to navigation" means any device external to the vessel intended to assist the navigator to determine position or safe course or to warn of dangers or obstructions.

(2) "Beacons" are aids to navigation structures permanently attached to the earth's surface. Lighted beacons are called lights; unlighted beacons are called day beacons.

(3) "Buoyage" means a system of buoys.

(4) "Buoys" ~~((is))~~ are any waterway markers designed to float on the water while anchored in a fixed position so as to be clearly visible to operators of an approaching vessel and used to convey an official message.

~~((2))~~ (5) "Lateral system" is a system of waterway markers prescribed in Title 33, Code of Federal Regulations,

Part 62, employing an arrangement of shapes, colors, numbers, and light characteristics to indicate to a vessel operator the preferred direction of travel for safe passage. They may be either beacons or buoys.

~~((3)) "Sign" is any device designed to carry an official message which is attached to another object, such as a piling, buoy, pier, or the land itself.~~

~~(4) "Uniform state waterway marking system (USWMS)";~~ (6) "Navigable waters of the United States." The term navigable waters of the United States is defined in Title 33, Code of Federal Regulations, Part 62 means:

(a) Territorial seas of the United States;

(b) Internal waters of the United States that are subject to tidal influences that: Are or have been used, or are or have been susceptible for use, by themselves or in connection with other waters, as highways for substantial interstate or foreign commerce, notwithstanding natural or man-made obstructions that require portage.

(7) "United States Aids to Navigation System (USATONS)" means the system of aids to navigation including regulatory markers, buoys, and signs prescribed in Title 33, Code of Federal Regulations, ~~((subpart 66.10))~~ Part 62, which are used to provide vessel operators guidance for safe navigation and to identify water areas where vessel operation is restricted or controlled.

~~((5))~~ (8) "Vessel" means every watercraft used or capable of being used as a means of transportation on the water, other than a seaplane or swim toy.

~~((6))~~ (9) "Waters of Washington state" means any waters within the territorial limits of Washington state.

AMENDATORY SECTION (Amending WSR 90-07-051, filed 3/19/90, effective 4/19/90)

WAC 352-66-030 General regulations. (1) On the navigable waters of Washington state, marking to assist navigation is accomplished by a lateral system of buoyage for use with nautical charts. The lateral system is used by the United States Coast Guard in the marking of navigable waters of the United States as determined by the United States Coast Guard Commandant. The lateral system may be also used by the state and subdivisions thereof for private aids to navigation only when all applicable permits for private aids to navigation have been approved by the United States Coast Guard and other federal, state, or local authorities.

(2) The ~~((USWMS))~~ USATONS has been developed to provide a system of visual, audible, and electronic signals which are designed to assist the prudent mariner in the process of navigation. They have been established to provide a means to convey to the ~~((small))~~ recreational vessel operator ~~((, in particular,))~~ adequate guidance to indicate safe boating channels by indicating the presence of either natural or artificial obstructions or hazards, marking restricted or controlled areas, and providing directions. The ~~((USWMS))~~ USATONS is suited to use on all waters of Washington state and is designed to satisfy the needs of all types of ~~((small))~~ recreational vessels. ~~((It supplements and is generally compatible with the Coast Guard lateral system of aids to navigation.~~

(3) The USWMS consists of two categories:

~~(a) A system of regulatory markers; and~~

~~(b) A system of aids to navigation.)~~

(3) The U.S. Aids to Navigation System is primarily a lateral system which employs a simple arrangement of colors, shapes, numbers, and light characteristics to mark the limits of navigable routes. This lateral system is supplemented by nonlateral aids to navigation where appropriate.

(4) Generally, lateral aids to navigation indicate on which side of a vessel an aid to navigation should be passed when the vessel is proceeding in the conventional direction of buoyage. Normally, the conventional direction of buoyage is the direction in which a vessel enters navigable channels from seaward and proceeds towards the head of navigation. In the absence of a route leading from seaward, the conventional direction of buoyage generally follows a clockwise direction around land masses.

(5) Although aids to navigation are maintained to a reasonable degree of reliability, the rigors of the marine environment and various equipment failures do cause discrepancies on occasion.

NEW SECTION

WAC 352-66-045 Beacons and buoys. Beacons and buoys indicate to a vessel operator the existence of dangerous areas, as well as those areas which are restricted or controlled, such as speed zones and areas dedicated to a particular use, or to provide general information and directions:

(1) Aids to navigation are placed on shore or on marine sites to assist a navigator to determine his position or safe course. They may mark limits of navigable channels, or warn of dangers or obstructions to navigation. The primary components of the U.S. Aids to Navigation System are beacons and buoys.

(2) Beacons are aids to navigation structures which are permanently fixed to the earth's surface. They range from large lighthouses to small, single-pile structures and may be located on land or in the water. Lighted beacons are called lights; unlighted beacons are called day beacons.

(3) Beacons exhibit a daymark. For small structures these are colored geometric shapes which make an aid to navigation readily visible and easily identifiable against background conditions. Generally, the daymark conveys to the mariner, during daylight hours, the same significance as does the aid's light or reflector at night. The daymark of large lighthouses and towers, however, consists of the structure itself. As a result, these daymarks do not infer lateral significance.

(4) Vessels should not pass beacons close aboard due to the danger of collision with riprap or structure foundations, or the obstruction or danger that the aid marks.

(5) Buoys are floating aids to navigation used extensively throughout U.S. waters. They are moored to the seabed by sinkers with chain or other moorings of various lengths.

(6) The daymark of a buoy is the color and shape of the buoy and, if so equipped, of the top mark.

(7) Can buoys have a cylindrical shape. Nun buoys have a tapered, conical shape.

(8) Pillar buoys have a wide cylindrical base supporting a narrower superstructure. They may be surmounted by colored shapes called top marks.

(9) Spherical buoys have a round shape.

(10) Mariners attempting to pass a buoy close aboard risk collision with a yawing buoy, the buoy's mooring, or with the obstruction which the buoy marks.

(11) Mariners should not rely on buoys alone for determining their positions due to factors limiting their reliability. Prudent mariners will use bearings or angles from beacons or other landmarks, soundings, and various methods of electronic navigation. Buoys vary in reliability because:

(a) Buoy positions represented on nautical charts are approximate positions only, due to practical limitations in positioning and maintaining buoys and their sinkers in precise geographical locations.

(b) Buoy moorings vary in length. The mooring lengths define a "watch circle," and buoys can be expected to move within this circle. Actual watch circles do not coincide with the dots or circles representing them on charts.

(c) Buoy positions are normally verified during periodic maintenance visits. Between visits, environmental conditions, including atmospheric and sea conditions, and seabed slope and composition, may shift buoys off their charted positions. Also buoys may be dragged off station, sunk, or capsized by a collision with a vessel.

NEW SECTION

WAC 352-66-055 Lateral marks. (1) Lateral marks define the port and starboard sides of a route to be followed. They may be either beacons or buoys.

(2) Side marks are lateral marks which advise the mariner to stay to one side of the mark. Their most frequent use is to mark the sides of channels; however, they may be used individually to mark obstructions outside of clearly defined channels. Side marks are not always placed directly on a channel edge and may be positioned outside the channel as indicated on charts and nautical publications.

(3) Port hand marks indicate the left side of channels when proceeding in the conventional direction of buoyage. Beacons have green square daymarks, while buoys are green can or pillar buoys.

(4) Starboard hand marks indicate the right side of channels when proceeding in the conventional direction of buoyage. Beacons have red triangular daymarks, while buoys are red nun or pillar buoys.

(5) Preferred channel marks indicate channel junctions or bifurcations and may also mark wrecks or obstructions which the mariner, after consulting a chart to ascertain the location of the obstruction relative to the aid, may pass on either side. Preferred channel marks have red and green horizontal bands with the color of the topmost band indicating the preferred channel. If the topmost band is green, the mark serves as a port hand mark for vessels following the preferred channel proceeding in the conventional direction of buoyage, and as a starboard hand mark for the other channel. Beacons would have square daymarks, while buoys would be can or pillar buoys. If the topmost band is red, the mark serves as a starboard hand mark for vessels following the preferred channel proceeding in the conventional direction of buoyage, and a port hand mark for the other channel. Beacons would have

triangular daymarks, while buoys would be nun or pillar buoys.

(6) The color schemes in this section apply to IALA Region B (Washington state).

NEW SECTION

WAC 352-66-065 Safe water marks. Safe water marks indicate that there is navigable water all around the mark. They are often used to indicate fairways or mid channels, or the seaward end of channels. Safe water marks are colored with red and white vertical stripes. Beacons have an octagonal daymark; red and white buoys are spherical or display a red spherical top mark.

NEW SECTION

WAC 352-66-075 Isolated danger marks. Isolated danger marks indicate an isolated danger which may be passed on all sides. As these marks are erected or moored on or near dangers, they should not be approached closely without special caution. These marks are colored black with one or more broad horizontal red bands and are equipped with a top mark of two black spheres, one above the other.

NEW SECTION

WAC 352-66-085 Special marks. Special marks are not primarily intended to assist safe navigation, but to indicate special areas or features referred to in charts or other nautical publications. They may be used, for example, to mark anchorages, cable or pipeline areas, traffic separation schemes, military exercise zones, ocean data acquisition systems, etc. Special marks are colored solid yellow.

NEW SECTION

WAC 352-66-095 Inland waters obstruction mark. (1) On inland waters designated by the commandant as state waters in accordance with 33 C.F.R., Part 66 and on nonnavigable internal waters of a state which have no defined head of navigation, a buoy showing alternate vertical black and white stripes may be used to indicate to a vessel operator that an obstruction to navigation extends from the nearest shore to the buoy.

(2) The black and white buoy's meaning is "do not pass between the buoy and the shore." The number of white and black stripes is discretionary, provided that the white stripes are twice the width of the black stripes. Prior to December 31, 2003, this aid shall not be used on a waterway which has a red and white striped obstruction marker defined in 33 C.F.R., Part 66 of that chapter, unless all obstruction markers are replaced.

NEW SECTION

WAC 352-66-105 Information and regulatory marks. (1) Information and regulatory marks are used to alert the mariner to various warnings or regulatory matters. These marks have orange geometric shapes against a white back-

ground. The meanings associated with the orange shapes are as follows:

- (a) A vertical open-faced diamond signifies danger;
- (b) A vertical diamond shape having a cross centered within indicates that vessels are excluded from the marked area;
- (c) A circular shape indicates that certain operating restrictions are in effect within the marked area;
- (d) A square or rectangular shape will contain directions or instructions lettered within the shape.

(2) When a buoy is used as an information or regulatory mark it shall be white with two horizontal orange bands placed completely around the buoy circumference. One band shall be near the top of the buoy body, with a second band placed just above the waterline of the buoy so that both bands are clearly visible.

NEW SECTION

WAC 352-66-115 Mooring buoys. (1) Mooring buoys are white with a blue horizontal band. This distinctive color scheme is recommended to facilitate identification and to avoid confusion with aids to navigation.

(2) A lighted mooring buoy shall normally display a slow flashing white light. When its location in a waterway is such that it constitutes an obstruction to a vessel operated during hours of darkness, it shall display a quick flashing white light.

(3) A mooring buoy shall bear ownership identification provided that the manner and placement of the identification does not detract from the meaning intended to be conveyed by the color scheme or identification letter when assigned.

NEW SECTION

WAC 352-66-125 Lighthouses. Lighthouses are prominent beacons of varying size, color, and appearance employed to mark headlands, landfalls, harbor entrances, channel edges, hazards, and other features. While normally identified by their distinctive appearance, some lighthouses display diamond shaped, checkered daymarks to facilitate recognition.

NEW SECTION

WAC 352-66-130 Large navigational buoys. Large navigational buoys (LNBS) may be considered floating light-houses. They generally provide light, sound, and radio beacon signals, and some are equipped with radar beacons (racons). LNBS are red in color, have a forty-foot diameter hull, and a tower approximately forty feet in height.

NEW SECTION

WAC 352-66-140 Ranges. Ranges are aids to navigation systems employing dual beacons which, when the structures appear to be in line, assist the mariner in maintaining a safe course. The appropriate nautical chart must be consulted when using ranges to determine whether the range marks the centerline of the navigable channel and also to ascertain what section of the range may be safely traversed. Ranges are gen-

erally, but not always, lighted, and display rectangular daymarks of various colors.

NEW SECTION

WAC 352-66-150 Numbers and letters. (1) All solid red and solid green aids are numbered, with red aids bearing even numbers and green aids bearing odd numbers. The numbers for each increase in the conventional direction of buoyage. Numbers are kept in approximate sequence on both sides of the channel by omitting numbers where necessary.

(2) Only side marks are numbered. However, aids other than those mentioned in (1) of this section may be lettered to assist in their identification, or to indicate their purpose. Side marks may carry letters in addition to numbers to identify the first aid to navigation in a waterway, or when new aids to navigation are added to channels with previously completed numerical sequences. Letters on side marks will follow alphabetical order from seaward and proceeding toward the conventional direction of buoyage and will be added to numbers as suffixes.

(3) Aids to navigation may be fitted with light-reflecting material to increase their visibility in darkness. The colors of this material may convey the same significance as the aid except that letters and numbers may be white.

NEW SECTION

WAC 352-66-160 Light characteristics. (1) Lights on aids to navigation are differentiated by color and rhythm. Lighthouses and range lights may display distinctive light characteristics to facilitate recognition. No special significance should be attached to the color or rhythm of such lights. Other lighted aids to navigation employ light characteristics to convey additional information.

(2) When proceeding in the conventional direction of buoyage, aids to navigation, if lighted, display light characteristics as follows:

(a) Green lights mark port (left) sides of channels and locations of wrecks or obstructions which are to be passed by keeping these lights on the port (left) hand of a vessel. Green lights are also used on preferred channel marks where the topmost band is green.

(b) Red lights mark starboard (right) sides of channels and locations of wrecks or obstructions which are to be passed by keeping these lights on the starboard (right) hand of a vessel. Red lights are also used on preferred channel marks where the topmost band is red.

(3) The purpose of aids exhibiting white or yellow lights may be determined by their shape, color, letters or numbers, and the light rhythm employed.

(4) Light rhythms, are employed as follows:

(a) Aids with lateral significance display regularly flashing or regularly occulting light rhythms. Ordinarily, flashing lights (frequency not exceeding thirty flashes per minute) will be used.

(b) Preferred channel marks display a composite group flashing light rhythm (groups of two flashes followed by one flash).

(c) Safe water marks display a white morse code "A" rhythm (short-long flash).

(d) Isolated danger marks display a white group flashing two.

(e) Special marks display yellow lights with fixed or slow flashing rhythm preferred.

(f) Mooring buoys and information and regulatory marks display white lights of various rhythms.

(g) For situations where lights require a distinct cautionary significance, as at sharp turns, sudden channel constrictions, wrecks, or obstructions, a quick flashing light rhythm (sixty flashes per minute) may be used.

(h) Occasionally lights use sectors to mark shoals or warn mariners of other dangers. Lights so equipped show one color from most directions and a different color or colors over definite arcs of the horizon as indicated on the appropriate nautical chart. These sectors provide approximate bearing information since the observer should note a change of color as the boundary between the sectors is crossed. As sector bearings are not precise, they should be considered a warning only and not used to determine exact bearing to the light.

NEW SECTION

WAC 352-66-170 Sound signals. (1) Often sound signals are located on or adjacent to aids to navigation. When visual signals are obscured, sound signals warn mariners of the proximity of danger.

(a) Sound signals are distinguished by their tone and phase characteristics.

(b) Tones are determined by the devices producing the sound (i.e., diaphones, diaphragm horns, reed horns, sirens, whistles, bells, and gongs).

(c) Phase characteristics are defined by the signal's sound pattern, i.e., the number of blasts and silent periods per minute and their durations.

(2) Where no live watch is maintained, sound signals are normally operated continuously. Mariners should not rely solely on sound signals to determine their positions for the following reasons:

(a) Distance cannot be accurately determined by sound intensity.

(b) Occasionally sound signals may not be heard in areas close to their location.

(c) As previously noted, buoy positions are not always reliable. Therefore, their sound signals cannot be assumed to be emanating from a fixed position.

NEW SECTION

WAC 352-66-180 Racons. (1) Aids to navigation may be enhanced by the use of radar beacons (racons). Racons, when triggered by a radar signal, will transmit a coded reply to the interrogating radar. This reply serves to identify the aid station by exhibiting a series of dots and dashes which appear on the radar display in a line emanating radially from just beyond the echo of the aid station. Although racons may be used on both laterally significant and nonlaterally significant aids alike, the racon signal itself is for identification purposes only, and therefore carries no lateral significance.

(2) Racons are also used as bridge marks to mark the best point of passage.

NEW SECTION

WAC 352-66-190 Ownership identification. Ownership identification on private or state aids to navigation is permitted so long as it does not change or hinder an understanding of the meaning of the aid to navigation.

NEW SECTION

WAC 352-66-200 Maritime radio beacons. (1) Maritime radio beacons operate during specific intervals as published in *Coast Guard Light Lists*. For station identification, simple characteristics consisting of combinations of dots and dashes are used. The transmitted power of maritime radio beacons is adjusted to provide a usable signal at the service range which meets the operational requirement.

(2) Carrier type operation. Radio beacons superimpose the characteristic code on a carrier frequency which is on continuously during the period of transmission. This extends the usefulness of maritime radio beacons to aircraft and ships employing automatic direction finders

(3) Special calibration radio beacons, as listed in the current editions of the *Coast Guard Light Lists*, will broadcast continuously for the purpose of enabling vessels to calibrate their direction finders upon request either to the cognizant district commander, or, if time does not permit, directly to the calibration station.

(4) Caution: A vessel steering a course for a radio beacon should observe the same precautions that apply when steering for a light or any other mark.

(5) Distance cannot be accurately determined by radio beacon signal. Mariners must exercise extreme caution when the aid to navigation which supports the radio beacon is not visible, and no other means of determining its distance is available.

(6) If the radio beacon is aboard a large navigational buoy (LNB) or on any marine site, particular care should be exercised to avoid the possibility of collision. In addition, caution should be exercised in using radio beacons aboard floating aids, because of the possibility that the aid could be off station.

NEW SECTION

WAC 352-66-220 Procedure for reporting defects and discrepancies. (1) Mariners should notify the nearest Coast Guard facility immediately of any observed aids to navigation defects or discrepancies.

(2) The Coast Guard cannot monitor the many thousands of aids in the U.S. Aids to Navigation System simultaneously and continuously. As a result, it is not possible to maintain every aid operating properly and on its charted position at all times. Marine safety will be enhanced if persons finding aids missing, sunk, capsized, damaged, off station, or showing characteristics other than those advertised in the *Light List*, or other publication, promptly inform the Coast Guard.

NEW SECTION

WAC 352-66-230 Placement to conform. No person, political subdivision, or agent of the state shall establish,

erect, or place any new or replacement regulatory marker or aid to navigation after January 1, 1991, unless such device conforms to the provisions of this chapter.

NEW SECTION

WAC 352-66-240 Abuse prohibited. (1) No person shall damage, remove, interfere with, moor to, or otherwise obstruct the purpose of any regulatory marker or aid to navigation.

(2) When a vessel is involved with a violation of this chapter, violators shall be subject to the penalties set forth in RCW 88.02.380.

(3) Other violations of this chapter shall subject the violator to the penalties set forth in RCW 79A.05.165.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 352-66-040 Regulatory markers.
- WAC 352-66-050 Aids to navigation.
- WAC 352-66-060 Size, shape, material, and construction of waterway markers.
- WAC 352-66-070 Numbers, letters, or words on markers.
- WAC 352-66-080 Reflectors or reflective materials.
- WAC 352-66-090 Navigation lights.
- WAC 352-66-100 Mooring (anchor) buoys.
- WAC 352-66-110 Placement to conform.
- WAC 352-66-120 Abuse prohibited.

**WSR 21-20-009
PERMANENT RULES
DEPARTMENT OF HEALTH**

(Board of Physical Therapy)

[Filed September 23, 2021, 10:19 a.m., effective October 24, 2021]

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

Purpose: WAC 246-915-085 Continuing competency, physical therapists and physical therapist assistants. General updates, revisions, and housekeeping amendments.

The board of physical therapy (board) made general updates, revisions, and housekeeping amendments to the continuing competency rules. The board updated the rules to provide more clarity to selected continuing education activities. The activities listed in these rules that are no longer available to licensees were removed from the rules. The rule amendments are necessary to provide clear, current, and enforceable requirements for regulating physical therapists and physical therapy assistants. These rules are needed in order to comply with state laws.

Citation of Rules Affected by this Order: Amending WAC 246-915-085.

Statutory Authority for Adoption: RCW 18.74.023.

Adopted under notice filed as WSR 21-13-119 on June 21, 2021.

A final cost-benefit analysis is available by contacting Kris Waidely, Program Manager, P.O. Box 47852, Olympia, WA 98504, phone 360-236-4847, fax 360-236-2901, TTY 711, email kris.waidely@doh.wa.gov, website www.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; and 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 2, 2021.

Kathryn L. Dale, PT
Board Chair

AMENDATORY SECTION (Amending WSR 20-06-029, filed 2/26/20, effective 3/28/20)

WAC 246-915-085 Continuing competency. (1) Every two years, a physical therapist shall complete thirty-two hours of continuing education (CE) through any of the following means:

	CE Type	Maximum Hours Allowed	Documentation Requirements
a.	Participation in a course, live or online, including recorded.	No limit	Keep certificates of completion for each course, and, if not contained in the certificate of completion, information describing the course sponsors, the goals and objectives of the course, the credentials of the presenter as a recognized authority on the subject presented, dates of attendance, and total hours for all continuing education courses being reported.

	CE Type	Maximum Hours Allowed	Documentation Requirements
b.	Live or recorded instructional electronic media <u>relating to the practice of physical therapy</u> that does not include specific goals and objectives ((relating to the practice of physical therapy)) .	Four hours	Instead of course goals, objectives and certificate of completion, the PT shall write and submit to the department a ((one-page synopsis in twelve-point font)) <u>minimum of two takeaways</u> for each hour of running time.
c.	Books or articles reviewed.	Eight hours (reading time only)	The PT shall write and submit to the department a one-page synopsis in twelve-point font for each hour of reading time. The time spent writing a synopsis is not reportable.
d.	Preparation and presentation of professional physical therapy courses or lectures.	((Ten)) <u>Sixteen</u> hours	The PT shall submit to the department ((an outline of)) <u>a description and objectives of the presentation</u> ((materials)) , date, and location of presentation.
e.	Written <u>preparation and publication</u> of original scholarly research or work published in a peer-review journal.	Ten hours	The PT shall submit to the department proof of publication which may include poster presentations.
f.	Clinical instruction of physical therapy students enrolled in a physical therapy educational program accredited by the American Physical Therapy Association's Commission on Accreditation in Physical Therapy Education (CAPTE) or clinical instruction in a postgraduate residency or fellowship through the American Board of Physical Therapy Residency and Fellowship Education (ABPTRFE).	Ten hours	The PT shall obtain and submit to the department a letter or certificate from the student's academic institution verifying that the student has completed the course of clinical instruction. Each thirty-two hours of student mentorship equals one hour for purposes of CE credit.

	CE Type	Maximum Hours Allowed	Documentation Requirements
g.	((Completion of Option, which is a self-assessment tool created by the Federation of State Boards of Physical Therapy.)) <u>Courses required for professional certification such as to work in public schools.</u>	((Five)) <u>Fifteen</u> hours	The PT shall submit a copy of the completion certificate to the department.
h.	Courses provided by an accredited institution of higher education which may include, but are not limited to, courses leading to an advanced degree in physical therapy or other courses that advance the PT's competence.	No limit	The PT shall submit a transcript to the department verifying courses taken. One quarter credit is equal to ten hours; one trimester is equal to twelve hours; and one semester credit is equal to fifteen hours.
i.	((Participation in the use of the Federation of State Boards of Physical Therapy's aptitude continuing competence resource.)) <u>Attendance at science-based conferences.</u>	((Two hours)) <u>No limit</u>	((The PT shall submit verification of completion by FSBPT.)) <u>Certificate of attendance.</u>
j.	<u>Preparing for and successfully taking and passing board certification exams through the American Board of Physical Therapy Specialties.</u>	No limit	<u>Certificate of certification.</u>

(2) Every two years a physical therapist who holds a spinal manipulation endorsement shall complete at least ten hours of continuing education directly related to spinal manipulation with at least five hours related to procedural techniques and application of spinal manipulation. For documentation, refer to the documentation required for the particular type of continuing education chosen. The hours spent completing spinal manipulation continuing education count toward meeting any applicable continuing competency requirements.

(3) Every two years, a physical therapist assistant shall complete twenty-four hours of continuing education through any of the following means:

	CE Type	Hours Allowed	Documentation Requirements
a.	Participation in a course, live or online, <u>including recorded.</u>	No limit	Keep certificates of completion for each course, and, if not contained in the certificate of completion, information describing the course sponsors, the goals and objectives of the course, the credentials of the presenter as a recognized authority on the subject presented, dates of attendance, and total hours for all continuing education courses being reported.
b.	Live or recorded instructional electronic media <u>relating to the practice of physical therapy</u> that does not include specific goals and objectives ((relating to the practice of physical therapy)) .	Four hours	Instead of course goals, objectives and certificate of completion, the PTA shall ((write and submit a one-page synopsis in twelve-point font)) <u>submit to the department a minimum of two takeaways</u> for each hour of running time.
c.	Books or articles reviewed.	Eight hours (reading time only)	The PTA shall write and submit a one-page synopsis in twelve-point font for each hour of reading time. The time spent writing a synopsis is not reportable.
d.	Preparation and presentation of professional physical therapy courses or lectures.	((Ten)) <u>Sixteen</u> hours	The PTA shall submit ((an outline)) <u>to the department a description and objectives of the presentation</u> ((materials)) , date, and location of presentation.
e.	Written <u>preparation and publication</u> of original scholarly research or work published in a peer-review journal.	Ten hours	The PTA shall submit proof of publication which may include poster presentations.

	CE Type	Hours Allowed	Documentation Requirements
f.	Clinical instruction of physical therapist assistant students enrolled in a physical therapy assistant program accredited by the American Physical Therapy Association's Commission on Accreditation in Physical Therapy Education (CAPTE) or clinical instruction in a postgraduate residency or fellowship through the American Board of Physical Therapy Residency and Fellowship Education (ABPTRFE).	Ten hours	The PTA shall obtain and submit to the department a letter or certificate from the student's academic institution verifying that the student has completed the course of clinical instruction. Each thirty-two hours of student mentorship equals one hour for purposes of CE credit.
g.	((Completion of Option, which is a self-assessment tool created by the Federation of State Boards of Physical Therapy)) <u>Courses required for professional certification such as to work in public schools.</u>	((Five)) <u>Fifteen</u> hours	The PTA shall submit a copy of the completion certificate.
h.	Courses provided by an accredited institution of higher education which may include, but are not limited to, courses leading to an advanced degree in physical therapy or other courses that advance the PTA's competence.	No limit	The PTA shall submit a transcript verifying courses taken. One quarter credit is equal to ten hours; one trimester credit is equal to twelve hours; and one semester credit is equal to fifteen hours.
i.	((Participation in the use of the Federation of State Boards of Physical Therapy's aptitude continuing-competence resource.)) <u>Attendance at science-based conferences.</u>	((Two hours)) <u>No limit</u>	((The PTA shall submit verification of completion by FSBPT.)) <u>Certificate of attendance.</u>
j.	<u>Preparing for and successfully taking and passing board certification exams through the American Board of Physical Therapy Specialties.</u>	<u>No limit</u>	<u>Certificate of certification.</u>

(4) Each physical therapist and physical therapist assistant shall complete a one-time, three hour suicide assessment training described in WAC 246-915-086.

(5) Every two years, each physical therapist and physical therapist assistant shall complete two hundred hours involving the application of physical therapy knowledge and skills which may be obtained in the clinical practice of physical therapy or in the nonclinical activities which include, but are not limited to, the following:

	Clinical Activities	Hours Allowed	Documentation
a.	Physical therapy clinical practice.	No limit	Documentation of physical therapy employment, the PT or PTA shall provide copies of employment records or other proof acceptable to the board of employment for the hours being reported.

	Nonclinical Activities	Hours Allowed (within the two hundred hours required)	Documentation
b.	Physical therapy teaching of: <ul style="list-style-type: none"> • Patient/client management, prevention and wellness. • Physical therapy ethics and standards of practice. • Professional advocacy/involvement. 	No limit	The PT or PTA shall provide documentation of such activities as acceptable to the board.
c.	Active service on boards or participation in professional or government organizations, <u>or attendance at professional or government organizations meetings</u> specifically related to the practice of physical therapy.	No limit	The PT or PTA shall provide documentation of such activities as acceptable to the board.
d.	Developing course work in physical therapy schools or education programs or physical therapy continuing education courses.	No limit	The PT or PTA shall provide documentation of such activities as acceptable to the board.
e.	Physical therapy research as a principal or associate researcher.	No limit	The PT or PTA shall provide documentation of such activities as acceptable to the board.
f.	Physical therapy consulting.	No limit	The PT or PTA shall provide documentation of such activities as acceptable to the board.

	Nonclinical Activities	Hours Allowed (within the two hundred hours required)	Documentation
g.	Management of physical therapy services.	No limit	The PT or PTA shall provide documentation of such activities as acceptable to the board.
h.	Physical therapy <u>volunteer hours or observation in physical therapy practice.</u>	<u>No limit</u>	The PT or PTA shall <u>provide documentation verifying volunteer or observation hours.</u>

**WSR 21-20-010
PERMANENT RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 21-196—Filed September 23, 2021, 10:32 a.m., effective October 24, 2021]

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

Purpose: A large area of the ferruginous hawk's habitat is grasslands and shrubsteppe. Washington's drastic landscape development has altered the ferruginous hawk's breeding range. Native grasslands and arid shrublands have transformed into agriculture and urbanization. Also, there has been a decline in condition on rangelands. All these factors contribute to the loss of nesting and foraging habitat.

The reduction of prey on the breeding range and landscape during migration speak to the decline of Washington's breeding population. The breeding population of ferruginous hawks in Washington is in a sustained decline. Between 1974 and 2016, there have been significant declines in nesting territory occupancy, nest success, and productivity. Additionally, the percentage of surveyed nesting territories supporting breeding pairs has declined in the core breeding range of the species in Benton and Franklin counties. The distribution of breeding pairs statewide also appears to have shrunk since the 1990s.

With the lack of improvement in habitat conditions or movement to address the primary threats, the ferruginous hawk is now classified as endangered in Washington.

Washington department of fish and wildlife classified the ferruginous hawk as endangered in the state of Washington under WAC 220-610-010. The reason we adopted the rule is to draw attention to the growing conservation concern around this species and further prioritize it internally and externally with our conservation partners. The species meets the definition of endangered as defined in WAC 220-610-110 and will now fall under regulations and enforcement in RCW 77.15.120.

Citation of Rules Affected by this Order: Amending WAC 220-200-100 and 220-610-010.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, and 77.12.020.

Adopted under notice filed as WSR 21-13-139 on June 22, 2021.

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

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

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

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

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

Date Adopted: August 27, 2021.

Larry M. Carpenter
for Larry Smith, Chair
Fish and Wildlife Commission

AMENDATORY SECTION (Amending WSR 21-13-032, filed 6/10/21, effective 7/11/21)

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

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

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

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

Common Name	Scientific Name
Gray whale	<i>Eschrichtius robustus</i>
Common Loon	<i>Gavia immer</i>
Larch Mountain salamander	<i>Plethodon larselli</i>
Pygmy whitefish	<i>Prosopium coulteri</i>

Common Name	Scientific Name
Margined sculpin	<i>Cottus marginatus</i>
Olympic mudminnow	<i>Novumbra hubbsi</i>

(3) Other protected wildlife include:

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

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

AMENDATORY SECTION (Amending WSR 21-13-032, filed 6/10/21, effective 7/11/21)

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

Common Name	Scientific Name
Oregon vesper sparrow	<i>Pooecetes gramineus affinis</i>
pygmy rabbit	<i>Brachylagus idahoensis</i>
fisher	<i>Pekania pennanti</i>

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

**WSR 21-20-015
PERMANENT RULES
CLARK COLLEGE**

[Filed September 23, 2021, 3:19 p.m., effective October 24, 2021]

Effective Date of Rule: Thirty-one days after filing.
Purpose: WAC 132N-122-010 removes the word "transcripts" from the existing language in WAC 132N-122-010 to

comply with HB [2SHB] 2513 (2020) codified at RCW 28B.10.293.

Citation of Rules Affected by this Order: Amending WAC 132N-122-010.

Statutory Authority for Adoption: RCW 28B.50.140.

Adopted under notice filed as WSR 21-17-073 on March 19 [August 12], 2021.

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

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

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

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

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

Date Adopted: September 23, 2021.

Galina Burley
Executive Vice President
of Operations

AMENDATORY SECTION (Amending WSR 97-23-019, filed 11/10/97, effective 12/11/97)

WAC 132N-122-010 Policy. If any person, including faculty, staff, student or former student, is indebted to the college for an outstanding debt, the college need not provide any further services of any kind to such individual(s) including, but not limited to, transmitting files, records, admission to or registration with the college, conferring of degrees, (~~transcripts~~) or other services which have been requested by such person. Further, if the person is an employee of the college, the college shall have the right to offset such outstanding debts against the wages owed to the employee.

**WSR 21-20-017
PERMANENT RULES
CLARK COLLEGE**

[Filed September 23, 2021, 3:38 p.m., effective October 24, 2021]

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

Purpose: Code of student conduct, chapter 132N-125 WAC, repeal and replace with chapter 132N-126 WAC, to comply with new federal regulations for Title IX of the Education Amendments of 1972 (Title IX) by adding new sections on Supplemental Title IX Student Conduct Procedures; reorganizes the student conduct code; uses consistent terminology throughout the code and revises some definitions; revises the jurisdiction section of the code; removes the section of the code applying to students studying abroad; adds a clause that academic consequences for academic dishonesty

may be addressed outside of the code through failing grades and other academic consequences; revises subsections on prohibited student conduct; removes a section addressing trespass; revises the section on sanctions, initiation of disciplinary action, brief adjudicative proceedings, appeals to the student conduct committee, conduct committee hearings, initial orders, appeals from initial orders, record keeping, and summary suspension; removes the section on supplemental sexual misconduct procedures and imbeds those procedures within the rest of the code; and repeal chapter 132N-300 WAC Grievance Procedure—Discrimination and replace with college policy and procedures that are in compliance with new federal regulations for Title IX of the Education Amendments of 1972 (Title IX).

Citation of Rules Affected by this Order: New WAC 132N-126-005, 132N-126-010, 132N-126-015, 132N-126-020, 132N-126-025, 132N-126-030, 132N-126-035, 132N-126-040, 132N-126-045, 132N-126-050, 132N-126-100, 132N-126-105, 132N-126-110, 132N-126-115, 132N-126-120, 132N-126-125, 132N-126-130, 132N-126-135, 132N-126-140, 132N-126-145, 132N-126-150, 132N-126-155, 132N-126-160, 132N-126-200, 132N-126-205, 132N-126-210, 132N-126-215, 132N-126-220, 132N-126-225, 132N-126-230, 132N-126-235 and 132N-126-240; and repealing WAC 132N-125-005, 132N-125-010, 132N-125-015, 132N-125-020, 132N-125-025, 132N-125-030, 132N-125-035, 132N-125-040, 132N-125-045, 132N-125-100, 132N-125-105, 132N-125-110, 132N-125-115, 132N-125-120, 132N-125-125, 132N-125-130, 132N-125-135, 132N-125-140, 132N-125-145, 132N-125-150, 132N-125-200, 132N-125-205, 132N-125-210, 132N-125-215, 132N-125-220, 132N-125-225, 132N-300-001, and 132N-300-010.

Statutory Authority for Adoption: RCW 28B.50.140.

Adopted under notice filed as WSR 21-17-090 on September 2, 2020 [August 13, 2021].

Changes Other than Editing from Proposed to Adopted Version: Removed the requirement for cross-examination in WAC 132N-126-230 to comply with recent Department of Education guidance in response to a federal court ruling striking down that part of the Title IX regulations. Clarified appeals process in WAC 132N-126-240.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 32, Amended 0, Repealed 26; 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 2.

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

Date Adopted: September 23, 2021.

Galina Burley
Executive Vice President

REPEALER

The following chapter of the Washington Administrative Code is repealed:

- WAC 132N-125-005 Student responsibilities.
- WAC 132N-125-010 Authority.
- WAC 132N-125-015 Definitions.
- WAC 132N-125-020 Statement of jurisdiction.
- WAC 132N-125-025 Students studying abroad.
- WAC 132N-125-030 Statement of student rights.
- WAC 132N-125-035 Prohibited student conduct.
- WAC 132N-125-040 Trespass.
- WAC 132N-125-045 Disciplinary sanctions—Terms—Conditions.
- WAC 132N-125-100 Initiation of disciplinary action.
- WAC 132N-125-105 Appeal from disciplinary action.
- WAC 132N-125-110 Brief adjudicative proceedings—Initial hearing.
- WAC 132N-125-115 Brief adjudicative proceedings—Review of an initial decision.
- WAC 132N-125-120 Student conduct committee.
- WAC 132N-125-125 Appeal—Student conduct committee.
- WAC 132N-125-130 Student conduct committee hearings—Presentation of evidence.
- WAC 132N-125-135 Student conduct committee—Initial decision.
- WAC 132N-125-140 Appeal from student conduct committee initial decision.
- WAC 132N-125-145 Summary suspension.
- WAC 132N-125-150 Classroom misconduct and authority to suspend for no more than one day.
- WAC 132N-125-200 Supplemental sexual misconduct procedures.
- WAC 132N-125-205 Supplemental definitions.
- WAC 132N-125-210 Supplemental complaint process.
- WAC 132N-125-215 Supplemental appeal rights.
- WAC 132N-125-220 Brief adjudicative proceedings—College record.
- WAC 132N-125-225 Recordkeeping.

Chapter 132N-126 WAC
STUDENT CODE OF CONDUCT

NEW SECTION

WAC 132N-126-005 Authority. The board of trustees of Washington State Community College District No. 14, acting pursuant to RCW 28B.50.140(13), delegates to the president of the college the authority to administer disciplinary action. Administration of the disciplinary procedures is the responsibility of the vice president of student affairs or their designee. Unless otherwise specified, the student conduct officer or designee shall serve as the principal investigator and administrator for alleged violations of this code.

NEW SECTION

WAC 132N-126-010 Definitions. The following definitions shall apply for the purposes of this student conduct code:

- (1) "ASCC" means the associated students of Clark College as defined in the constitution of that body.
- (2) "Assembly" means any overt activity engaged in by one or more persons, the object of which is to gain publicity, advocate a view, petition for a cause, or disseminate information to any person, persons, or group of persons.
- (3) "Business day" means a weekday, excluding weekends and college holidays.
- (4) "College" means Clark College and any other community college centers or premises established within Community College District No. 14, state of Washington.
- (5) "College community" means trustees, students, staff, faculty, and visitors on college premises.
- (6) "College official" includes any person employed by the college performing assigned duties.
- (7) "College premises" includes all campuses and electronic presences of the college, wherever located, and includes all land, buildings, facilities, vehicles, equipment, computer systems, websites, and other property owned, used, or controlled by the college.
- (8) A "complainant" is an alleged victim of sexual misconduct.
- (9) "Conduct review officer" is the vice president of student affairs or other college administrator designated by the president to be responsible for receiving and for reviewing or referring appeals of student disciplinary actions in accordance with the procedures of this code.
- (10) "Controlled substance" means and includes any drug or substance as defined in chapter 69.50 RCW as now law or hereafter amended.
- (11) "Day" means a weekday, excluding weekends and college holidays.
- (12) "Disciplinary action" is the process by which the student conduct officer imposes discipline against a student for a violation of the student conduct code.
- (13) "Disciplinary appeal" is the process by which an aggrieved student can appeal the discipline imposed by the student conduct officer. Disciplinary appeals from a suspension in excess of ten instructional days or an expulsion are heard by the student conduct committee. Appeals of all other

appealable disciplinary action shall be reviewed through brief adjudicative proceedings.

(14) "Faculty member" and "instructor" means any employee of Community College District No. 14, state of Washington, who is employed on a full-time or part-time basis as a teacher, instructor, counselor, or librarian.

(15) "Filing" is the process by which a document is officially delivered to a college official responsible for facilitating a disciplinary review. Unless otherwise provided, filing shall be accomplished by:

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

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

Papers required to be filed shall be deemed filed upon actual receipt during office hours at the office of the specified college official.

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

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

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

(17) "RCW" means Revised Code of Washington which can be accessed at <http://apps.leg.wa.gov/rcw/>.

(18) "Respondent" is the student against whom disciplinary action is initiated.

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

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

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

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

(20) "Sexual misconduct" has the meaning ascribed to this term in WAC 132N-126-025(13).

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

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

NEW SECTION

WAC 132N-126-015 Statement of 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;

or

(c) Off-campus conduct that in the judgment of the college adversely affects the college community or the pursuit of its objectives.

(2) Jurisdiction extends to, but is not limited to, locations in which students are engaged in official college activities including, but not limited to, foreign or domestic travel, activities funded by the associated students, athletic events, training internships, cooperative and distance education, online education, practicums, supervised work experiences or any other college-sanctioned social or club activities.

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

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

NEW SECTION

WAC 132N-126-020 Statement of student rights. As members of the academic community, students are encouraged to develop the capacity for critical judgment and to engage in an independent search for truth.

Freedom to teach and freedom to learn are inseparable facets of academic freedom. The freedom to learn depends upon appropriate opportunities and conditions in the classroom, on the campus, and in the larger community. Students should exercise their freedom with responsibility. The responsibility to secure and to respect general conditions conducive to the freedom to learn is shared by all members of the college community.

The following enumerated rights are guaranteed to each student within the limitations of statutory law and college policy, which are deemed necessary to achieve the educational goals of the college:

(1) **Academic freedom.**

(a) Students are guaranteed the rights of free inquiry, expression, and assembly upon and within college premises that are generally open and available to the public.

(b) Students are free to pursue appropriate educational objectives from among the college's curricula, programs, and services, subject to the limitations of RCW 28B.50.090 (3)(b).

(c) Students shall be protected from academic evaluation which is arbitrary, prejudiced, or capricious, but are responsible for meeting the standards of academic performance established by each of their instructors.

Students have the right to a learning environment which is free from unlawful discrimination, inappropriate and disrespectful conduct, and any and all harassment, including sexual harassment.

(2) **Due process.**

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

(b) No disciplinary sanction may be imposed on any student without notice to the accused of the nature of the charges.

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

NEW SECTION

WAC 132N-126-025 Prohibited student conduct. The college may impose disciplinary sanctions against a student who commits, attempts to commit, aids, abets, incites, encourages, or assists another person to commit, an act(s) of misconduct which include, but are not limited to, the following:

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

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

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

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

(d) Academic consequences for academic dishonesty or abetting in academic dishonesty may be imposed at the discretion of a faculty member up to and including a failing grade for the course. Students should refer to each of their faculty's course syllabus and program handbook. Further academic consequences may follow consistent with the provisions in any program handbook including, but not limited to, dismissal from an academic program. Incidents of academic dishonesty may also be referred to the student conduct officer for disciplinary action consistent with this chapter in addition to the academic consequences identified above.

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

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

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

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

(3) **Obstructive or disruptive conduct.** Conduct, not otherwise protected by law, that interferes with, impedes, or otherwise unreasonably hinders:

(a) Instruction, research, administration, disciplinary proceeding, or other college activities, including the obstruction of the free flow of pedestrian or vehicular movement on college property or at a college activity; or

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

(4) **Assault, intimidation, harassment.** Unwanted touching, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, or other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property. For purposes of this code, "bullying" is defined as repeated or aggressive unwanted behavior, not otherwise protected by law that intentionally humiliates, harms, or intimidates the victim.

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

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

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

(8) **Weapons.** 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 his or her vehicle parked on campus in accordance with RCW 9.41.050 (2) or (3), provided the vehicle is locked and the weapon is concealed from view; or

(c) The president may grant permission to bring a weapon on campus upon a determination that the weapon is reasonably related to a legitimate pedagogical purpose. Such permission shall be in writing and shall be subject to such terms or conditions incorporated in the written permission.

This policy does not apply to the possession and/or use of disabling 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, to any student.

(10) **Alcohol, drug, and tobacco violations.**

(a) **Alcohol.** The use, possession, delivery, sale, or being observably under the influence of any alcoholic beverage, except as permitted by law and applicable college policies.

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

(c) **Drugs.** The use, possession, delivery, sale, or being observably under the influence of any legend drug, including anabolic steroids, androgens, or human growth hormones as defined in chapter 69.41 RCW, or any other controlled substance under chapter 69.50 RCW, except as prescribed for a student's use by a licensed practitioner.

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

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

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

(13) **Sexual misconduct.** The term "sexual misconduct" includes sexual harassment, sexual intimidation, and sexual violence. Sexual harassment prohibited by Title IX is defined in the supplemental procedures to this code. See WAC 132N-126-205 (discipline procedures for cases involving allegations of Title IX violations).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(I) The length of the relationship;

(II) The type of relationship; and

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

(vii) Stalking. Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

(A) Fear for their safety or the safety of others; or

(B) Suffer substantial emotional distress.

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

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

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

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

(a) Unauthorized use of such resources or opening of a file, message, or other item;

(b) Unauthorized duplication, transfer, or distribution of a computer program, file, message, or other item;

(c) Unauthorized use or distribution of someone else's password or other identification;

(d) Use of such time or resources to interfere with someone else's work;

(e) Use of such time or resources to send, display, or print an obscene or abusive message, text, or image;

(f) Use of such time or resources to interfere with normal operation of the college's computing system or other electronic information resources;

(g) Use of such time or resources in violation of applicable copyright or other law;

(h) Adding to or otherwise altering the infrastructure of the college's electronic information resources without authorization; or

(i) Failure to comply with the college's electronic use policy.

(17) **Unauthorized access.** Unauthorized possession, duplication, or other use of a key, keycard, or other restricted means of access to college property, or unauthorized entry onto or into college property.

(18) **Safety violations.** Nonaccidental conduct that interferes with or otherwise compromises any college policy, equipment, or procedure relating to the safety and security of the campus community, including tampering with fire safety equipment and triggering false alarms or other emergency response systems.

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

(20) **Ethical violation.** The breach of any generally recognized and published code of ethics or standards of professional practice that governs the conduct of a particular profession for which the student is taking a course or is pursuing 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 reserves the right to pursue student disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution.

NEW SECTION

WAC 132N-126-030 Disciplinary sanctions and terms and conditions. (1) The following disciplinary sanctions may be imposed upon students found to have violated the student conduct code.

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

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

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

(d) **Disciplinary suspension.** Dismissal from the college and from the student status for a stated period of time. There

will be no refund of tuition or fees for the quarter in which the action is taken.

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

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

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

(b) **Educational sanction.** The college may require the student to complete an educational activity or experience directly related to the violation committed, at the student's expense.

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

(d) **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.

(e) **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 premises.

(f) **No trespass order.** A student may be restricted from college property based on their misconduct.

NEW SECTION

WAC 132N-126-035 Conduct hold on student records. (1) A student conduct officer or other designated college official may place a conduct hold on the student's record if the student is the responding party in a pending complaint of prohibited conduct, a pending conduct proceed-

ing under this code, or in conjunction with a disciplinary sanction or condition under this code.

(2) A conduct hold may restrict the student from registering for classes, requesting an official transcript, or receiving a degree from the college until the hold has been removed.

(3) If the conduct hold is placed pending or during a conduct proceeding, the student will be notified of the hold and be advised how to raise an objection about the hold or request that it be made less restrictive. The hold will remain in place until lifted by the student conduct officer or other designated college official with authority to do so.

(4) Implementation of any conduct hold prior to disciplinary action does not assume any determination of, or create any expectation of, responsibility for prohibited conduct under this conduct code.

NEW SECTION

WAC 132N-126-040 Amnesty policy. (1) Clark College values the health, safety, and wellness of those in our college community. Students are encouraged to report crimes, share concerns, and seek medical attention for themselves or others in need.

(2) A student conduct officer may elect not to initiate disciplinary action against a student who, while in the course of helping another person seek medical or other emergency assistance, admits to a possible policy violation under this student conduct code, provided that any such violations did not and do not place the health or safety of any other person at risk.

(3) A student conduct officer may elect not to initiate disciplinary action against a student who, while in the course of reporting violence, sexual misconduct, or a crime in progress, admits to personal consumption of alcohol or drugs at or near the time of the incident, provided that any such use did not place the health or safety of any other person at risk.

(4) While policy violations cannot be overlooked, the college may elect to offer educational options or referrals, rather than initiating disciplinary action against students who report crimes, serve as witnesses, or seek medical attention as described in this section.

(5) This amnesty policy may not apply to students who repeatedly violate college policies in regards to alcohol, drugs, or other prohibited conduct.

NEW SECTION

WAC 132N-126-045 Interim measures. (1) After receiving a report of alleged sexual misconduct or other serious student misconduct, a student conduct officer or designee may implement interim measures which may include, but are not limited to:

(a) A no-contact order prohibiting direct or indirect contact, by any means, with an impacted party, a responding party, a reporting party, other specified persons, and/or a specific student organization;

(b) Changes to class schedules, assignments, or test schedules;

(c) Modified on-campus employment schedule or location;

(d) Restrictions on access to portions of campus; or

(e) Alternative safety arrangements such as campus safety escorts.

(2) If an interim measure is put in place pending or during a conduct proceeding, the student will be notified of the interim measure and be advised how to raise an objection about the interim measure or request that it be made less restrictive. The student conduct officer may adjust or modify interim measures as students' situations and schedules change and evolve over time. Interim measures will remain in place until the student receives notice they have been lifted or modified from the student conduct officer.

(3) Implementation of any interim measure does not assume any determination of, or create any presumption regarding responsibility for, a violation under this student conduct code.

NEW SECTION

WAC 132N-126-050 Records. (1) Student conduct code records are maintained in accordance with the college's records retention schedule.

(2) The disciplinary record is confidential, and is released only as authorized under the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99).

HEARING PROCEDURES

NEW SECTION

WAC 132N-126-100 Initiation of disciplinary action.

(1) All disciplinary actions will be initiated by the student conduct officer. If that officer is the subject of a complaint initiated by the respondent, the president shall, upon request and when feasible, designate another person to fulfill any such disciplinary responsibilities relative to the complainant.

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

(4) Within ten days of the initial disciplinary meeting, and after considering the evidence in the case, including any facts or argument presented by the respondent, the student conduct officer shall serve the respondent with a written decision setting forth the facts and conclusions supporting their

decision, the specific student conduct code provisions found to have been violated, the discipline imposed, if any, and a notice of any appeal rights with an explanation of the consequences of failing to file a timely appeal.

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

(a) Exonerate the respondent and terminate the proceedings.

(b) Impose a disciplinary sanction(s), as described in WAC 132N-126-030.

(c) Refer the matter directly to the student conduct committee for such disciplinary action as the committee deems appropriate. Such referral shall be in writing, to the attention of the chair of the student conduct committee, with a copy served on the respondent.

(6) In cases involving allegations of sexual misconduct, the student conduct officer, on the same date that a disciplinary decision is served on the respondent, will serve a written notice informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including disciplinary suspension or dismissal of the respondent. The notice will also inform the complainant of their appeal rights. If protective sanctions and/or conditions are imposed, the student conduct officer shall make a reasonable effort to contact the complainant to ensure that prompt notice of the protective disciplinary sanctions and/or conditions.

NEW SECTION

WAC 132N-126-105 Appeal from disciplinary action. (1) The respondent may appeal a disciplinary action by filing a written notice of appeal with the conduct review officer within ten days of service of the student conduct officer's decision. Failure to timely file a notice of appeal constitutes a waiver of the right to appeal and the student conduct officer's decision shall be deemed final.

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

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

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

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

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

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

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

(b) Dismissals; and

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

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

(a) Suspensions of ten instructional days or less;

(b) Disciplinary probation;

(c) Written reprimands; and

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

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

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

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

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

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

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

NEW SECTION

WAC 132N-126-110 Brief adjudicative proceedings authorization. Brief adjudicative proceedings shall be used for student conduct appeals involving the following disciplinary actions:

(1) Suspension of ten instructional days or less;

(2) Disciplinary probation;

(3) Written reprimands;

(4) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions; and

(5) Appeals by a complainant in student disciplinary proceeding involving allegations of sexual misconduct in which the student conduct officer:

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

(b) Issues a verbal warning to respondent.

NEW SECTION

WAC 132N-126-115 Brief adjudicative proceedings—Initial hearing. (1) Brief adjudicative proceedings shall be conducted by a conduct review officer. The conduct review officer shall not participate in any case in which they are a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

(2) The parties to a brief adjudicative proceeding are the respondent, the student conduct officer, and in cases involving sexual misconduct, the complainant. Before taking action, the conduct review officer shall conduct an informal hearing and provide each party (a) an opportunity to be informed of the agency's view of the matter and (b) an opportunity to explain the party's view of the matter.

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

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

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

NEW SECTION

WAC 132N-126-120 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 days of service of the initial decision.

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

(3) During the review, the president or designee shall give 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 or designee does not make a disposition of the matter within twenty days after the request is submitted.

(5) If the president or designee upon review determines that the respondent's conduct may warrant imposition of a

disciplinary suspension of more than ten instructional days or expulsion, the matter shall be referred to the student conduct committee for a disciplinary hearing.

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

NEW SECTION

WAC 132N-126-125 Student conduct committee. (1) The student conduct committee shall consist of five members:

(a) Two full-time students appointed by the student government (ASCC);

(b) Two faculty members appointed by the president; and

(c) One faculty member or administrator, other than an administrator serving as a student conduct or conduct review officer, appointed by the president to serve as the chair.

(2) The faculty member or administrator or other impartial hearing officer who serves as the chair of the committee may take action on preliminary hearing matters prior to convening the committee. The chair shall receive annual training on protecting victims and promoting accountability in cases involving allegations of sexual misconduct.

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

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

NEW SECTION

WAC 132N-126-130 Appeal—Student conduct committees. (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. The chair may shorten this notice period if both parties agree, and also may continue the hearing to a later time for good cause shown.

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

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

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

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

(7) The student conduct officer, upon request, shall provide reasonable assistance to the respondent 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) In cases heard by the committee, each party may be accompanied at the hearing by a nonattorney assistant of their choice.

(10) The respondent in all appeals before the committee, or a complainant in an appeal involving allegations of sexual misconduct before the committee, may elect to be represented by an attorney at their own cost, but will be deemed to have waived that right unless, at least four business days before the hearing, written notice of the attorney's identity and participation is filed with the committee chair with a copy to the student conduct officer.

(11) The committee will ordinarily be advised by an assistant attorney general. If the respondent and/or the complainant is represented by an attorney, the student conduct officer may also be represented by a second, appropriately screened assistant attorney general.

NEW SECTION

WAC 132N-126-135 Student conduct 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 they select, 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.

NEW SECTION

WAC 132N-126-140 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 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. The complainant may appeal the student conduct committee's initial decision to the president subject to the same procedures and deadlines applicable to other parties. The notice will also inform the complainant of their appeal rights.

NEW SECTION

WAC 132N-126-145 Appeal from student conduct committee initial decision. (1) A party who is aggrieved by the findings or conclusions issued by the student conduct committee may appeal the committee's initial decision to the president by filing a notice of appeal with the president's office within ten days of service of the committee's initial decision. Failure to file a timely appeal constitutes a waiver of the right and the initial decision shall be deemed final.

(2) The notice of appeal must identify the specific findings of fact and/or conclusions of law in the initial decision that are challenged and must contain argument why the appeal should be granted. If necessary to aid review, the president or designee may ask for additional briefing from the parties on issues raised on appeal. The president's or designee'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 or designee shall provide a written decision to the party and the student conduct officer within twenty days after receipt of the notice of appeal. The president's or designee's decision shall be final and shall include a notice of any rights to request reconsideration and/or judicial review.

(4) In cases involving allegations of sexual misconduct, the president or designee, 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 or designee shall not engage in an ex parte communication with any of the parties regarding an appeal.

NEW SECTION

WAC 132N-126-150 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 warning the respondent that their privilege to enter into or remain on college premises has been withdrawn, and that the respondent shall be considered trespassing and subject to arrest for criminal trespass if they enter the college campus other than to meet with the student conduct officer or conduct review officer, or to attend a disciplinary hearing.

(5)(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 continued pending the conclusion of disciplinary proceedings and/or whether the summary suspension should be less restrictive in scope.

(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.

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

(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.

(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.

NEW SECTION

WAC 132N-126-155 Classroom misconduct and authority to suspend for no more than one day. (1) Faculty members have the authority to take appropriate action to maintain order and proper conduct in the classroom and to maintain the effective cooperation of students in fulfilling the objectives of the course.

(2) Bringing any person, thing, or object to a teaching and learning environment that may disrupt the environment or cause a safety or health hazard, without the express approval of the faculty member is expressly prohibited.

(3) Faculty members or college administrators have the right to suspend any student from any single class or related activity for no more than one instructional day, if the student's misconduct creates disruption to the point that it is difficult or impossible to maintain the decorum of the class, related activity, or the learning and teaching environment. The faculty member or college administrator shall report this suspension to the student conduct officer or designee on the same day of the suspension. In consultation with the faculty member, the student conduct officer may set conditions for the student upon return to the class or activity.

NEW SECTION

WAC 132N-126-160 Sexual misconduct proceedings. 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.

SUPPLEMENTAL STUDENT CONDUCT PROCEDURES FOR CASES INVOLVING ALLEGATIONS OF VIOLATION OF TITLE IX

NEW SECTION

WAC 132N-126-200 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 Clark College's standard disciplinary procedures, WAC 132N-126-005 through 132N-126-155, these supplemental procedures shall take precedence.

The college may, at its own 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 132N-126-205 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, Clark College may impose disciplinary sanctions against a student who commits, attempts to commit, or aids, abets, incites, encourages, or assists another person to commit, an act(s) of "sexual harassment."

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

(1) Quid pro quo harassment. A Clark 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 132N-126-210 Title IX jurisdiction. (1) This supplemental procedure applies only if the alleged misconduct:

(a) Occurred in the United States;

(b) Occurred during a Clark College educational program or activity; and

(c) Meets the definition of sexual harassment as that term is defined in this supplemental procedure.

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

(3) Proceedings under this supplemental procedure must be dismissed if the decision maker determines that one or all of the requirements of subsection (1)(a) through (c) of this section have not been met. Dismissal under this supplemental procedure does not prohibit Clark College from pursuing other disciplinary action based on allegations that the respondent violated other provisions of the college's student conduct code, WAC 132N-126-025.

(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 132N-126-215 Initiation of discipline. (1) Upon receiving the Title IX investigation report from the Title IX coordinator, the student conduct officer will independently review the report to determine whether there are sufficient grounds to pursue a disciplinary action against the respondent for engaging in prohibited conduct under Title IX.

(2) If the student conduct officer determines that there are sufficient grounds to proceed under these supplemental procedures, the student conduct officer will initiate a Title IX

disciplinary proceeding by filing a written disciplinary notice with the chair of the student conduct committee and serving the notice on the respondent and the complainant, and their respective advisors. The notice must:

(a) Set forth the basis for Title IX jurisdiction;

(b) Identify the alleged Title IX violation(s);

(c) Set forth the facts underlying the allegation(s);

(d) Identify the range of possible sanctions that may be imposed if the respondent is found responsible for the alleged violation(s); and

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

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

(ii) An advisor may be an attorney; and

(iii) The college will appoint the party an advisor of the college's choosing at no cost to the party, if the party fails to do so.

(3) Explain that if a party fails to appear at the hearing, a decision of responsibility may be made in their absence.

NEW SECTION

WAC 132N-126-220 Prehearing procedure. (1) Upon receiving the disciplinary notice, the chair of the student conduct committee will send a hearing notice to all parties, in compliance with WAC 132N-126-100. 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 Clark College intends to offer the evidence at the hearing.

NEW SECTION

WAC 132N-126-225 Rights of parties. (1) Clark College's student conduct procedures, WAC 132N-126-100 through 132N-126-155, and this supplemental procedure shall apply equally to all parties.

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

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

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

NEW SECTION

WAC 132N-126-230 Evidence. The introduction and consideration of evidence during the hearing is subject to the following procedures and restrictions:

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

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

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

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

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

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

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

(a) Spousal/domestic partner privilege;

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

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

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

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

(f) Other legal privileges identified in RCW 5.60.060.

NEW SECTION

WAC 132N-126-235 Initial order. (1) In addition to complying with WAC 132N-126-130, the student conduct committee will be responsible for conferring and drafting an initial order that:

(a) Identifies the allegations of sexual harassment;

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

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

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

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

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

(g) Describes to what extent, if any, complainant is entitled to remedies designed to restore or preserve complainant's

equal access to Clark College's educational programs or activities; and

(h) Describes the process for appealing the initial order to the Clark College president.

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

NEW SECTION

WAC 132N-126-240 Appeals. (1) All parties, including the student conduct officer, in their capacity as a representative of the college, have the right to appeal from the determination of responsibility and/or from a dismissal, in whole or part, of a formal complaint during the investigative or hearing process. Appeals must be in writing and filed with the president's office within 21 days of service of the initial order or notice of dismissal. Appeals must identify the specific findings of fact and/or conclusions of law in the initial order or dismissal that the appealing party is challenging and must contain argument as to why the appeal should be granted. Failure to file a timely appeal constitutes a waiver of the right to appeal and the initial order or dismissal shall be deemed final.

(2) Upon receiving a timely appeal, the president's office will serve a copy of the appeal on all parties, who will have 10 days from the date of service to submit written responses to the president's office addressing issues raised in the appeal. Failure to file a timely response constitutes a waiver of the right to participate in the appeal. Upon receipt of written responses, the president's office shall serve copies of the responses to the other parties.

(3) Parties receiving a copy of the responses shall have five days in which to submit a written reply addressing issues raised in the responses to the president's office.

(4) The president or their designee, based on their review of parties' submissions and the hearing or investigative record, will determine whether the grounds for appeal have merit, provide the rationale for this conclusion, and state whether a dismissal is affirmed or denied, or if the disciplinary sanction(s) and condition(s) imposed in the initial order are affirmed, vacated, or amended, and, if amended, set forth any new disciplinary sanction(s) and/or condition(s).

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

(6) All administrative decisions reached through this process are and may be judicially appealed pursuant to applicable provisions of chapter 34.05 RCW including, but not limited to, the timelines set forth in RCW 34.05.542. No decisions or recommendations arising from this disciplinary procedure will be subject to grievance pursuant to any collective bargaining agreement.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 132N-300-001 Statement of policy.

WAC 132N-300-010 Grievance procedure.

WSR 21-20-019
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed September 23, 2021, 4:30 p.m., effective October 24, 2021]

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

Purpose: The department is amending WAC 388-450-0100 Allocating income—Definitions. These amendments correct dates for temporary absence which align with prior permanent filing under WSR 08-14-105 (see changes to WAC 388-418-0007(6)) and replace outdated language without changing the effect of the rule.

Citation of Rules Affected by this Order: Amending WAC 388-450-0100.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.250.

Adopted under notice filed as WSR 21-15-060 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: September 23, 2021.

Katherine I. Vasquez
Rules Consultant

AMENDATORY SECTION (Amending WSR 13-24-043, filed 11/26/13, effective 1/1/14)

WAC 388-450-0100 Allocating income—Definitions.

The following definitions apply to the allocation rules for TANF/SFA, RCA, PWA, and ABD cash programs:

(1) **"Dependent"** means a person who:

(a) Is or could be claimed for federal income tax purposes by the financially responsible person; or

(b) The financially responsible person is legally obligated to support.

(2) **"Financially responsible person"** means a parent, stepparent, adoptive parent, spouse, or caretaker relative.

(3) A **"disqualified assistance unit member"** means a person who is:

(a) An unmarried pregnant or parenting minor who is under age eighteen, who has not completed a high school education or high school equivalency certification, and who is not participating in those educational activities which

would lead to the attainment of a high school diploma or high school equivalency;

(b) An unmarried pregnant or parenting minor under age eighteen who is not living in a department-approved living situation;

(c) The financially responsible person who does not report to the department within five days of the date it becomes reasonably clear that the absence of a child will exceed (~~ninety~~) one hundred eighty days;

(d) A person who has been convicted in federal or state court of having made a fraudulent statement or representation about their place of residence in order to receive assistance from two or more states at the same time as defined in WAC 388-446-0010; and

(e) A person who has been convicted of unlawfully receiving public assistance as defined under WAC 388-446-0005.

(4) **"Ineligible assistance unit member"** means an individual who is:

(a) Ineligible for cash assistance due to the (~~citizenship/ alien~~) citizenship/immigration status requirements in WAC 388-424-0010;

(b) Ineligible to receive assistance under WAC 388-442-0010 for having been convicted after August 21, 1996, under federal or state law, of possession, use or distribution of a controlled substance;

(c) Ineligible to receive assistance under WAC 388-442-0010 for fleeing to avoid prosecution or custody or confinement after conviction for a crime or attempt to commit a crime;

(d) Ineligible to receive assistance under WAC 388-442-0010 for violating a condition of probation or parole which was imposed under a federal or state law as determined by an administrative body or court of competent jurisdiction;

(e) The spouse of a (~~woman~~) person who receives cash benefits from the PWA program; or

(f) The adult parent of a minor parent's child.

WSR 21-20-028
PERMANENT RULES
DEPARTMENT OF HEALTH

[Filed September 24, 2021, 3:16 p.m., effective October 25, 2021]

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

Purpose: WAC 246-809-330 Supervised postgraduate experience requirements. The purpose of this amendment to WAC 246-809-330 is to remove the limit on distance supervision hours that may be obtained by social worker associates applying for licensure, consistent with statutory amendments made by SHB 1007 (chapter 21, Laws of 2021). In addition to bringing department rule into alignment with statute, these amendments will support social worker associates providing telemental health services during the coronavirus disease 2019 (COVID-19) pandemic and their ability to complete the supervised experience hours necessary for full licensure.

Citation of Rules Affected by this Order: Amending WAC 246-809-330.

Statutory Authority for Adoption: RCW 18.225.040.

Other Authority: SHB 1007 (chapter 21, Laws of 2021); RCW 18.225.090.

Adopted under notice filed as WSR 21-13-148 on June 22, 2021.

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

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

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

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

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

Date Adopted: September 23, 2021.

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

AMENDATORY SECTION (Amending WSR 20-12-074, filed 6/1/20, effective 7/2/20)

WAC 246-809-330 Supervised postgraduate experience requirements. (1) Licensed advanced social worker.

(a) Applicants who have held an active advanced social worker license for the past five consecutive years or more in another state or territory, without a disciplinary record or disqualifying criminal history, are deemed to have met the supervised experience requirements for Washington state licensure in subsection (1)(c) of this section.

(b) In accordance with RCW 18.225.090 and 18.225.095, for applicants who can demonstrate they have practiced as a substance use disorder professional for at least three years within ten years from the date their application for an advanced social worker license is submitted to the department, the department shall reduce the total required supervised hours from three thousand two hundred hours to two thousand eight hundred eighty hours. The requirements in subsection (3)(c)(i) through (iii) of this section shall apply regardless of the reduction of total required hours.

(c) The supervised experience requirement consists of a minimum of three thousand two hundred hours with ninety hours of supervision by a licensed independent clinical social worker or a licensed advanced social worker who has been licensed or certified for at least two years. Of those hours:

(i) Eight hundred hours must be in direct client contact; and

(ii) Ninety hours must be in direct supervision as follows:

(A) Fifty hours must include direct supervision by a licensed advanced social worker or licensed independent

clinical social worker; these hours may be in one-to-one supervision or group supervision; and

(B) Forty hours may be with an equally qualified licensed mental health practitioner as defined in WAC 246-809-310(3). These hours must be in one-to-one supervision(~~;~~ and

~~(iii) Distance supervision is limited to forty supervision hours~~)).

(2) Licensed independent clinical social worker.

(a) Applicants who have held an active independent clinical social worker license for the past five consecutive years or more in another state or territory, without a disciplinary record or disqualifying criminal history, are deemed to have met the supervised experience requirements for Washington state licensure in (c) of this subsection.

(b) In accordance with RCW 18.225.090 and 18.225.095, for applicants who can demonstrate they have practiced as a substance use disorder professional for at least three years within ten years from the date their application for an independent clinical social worker license is submitted to the department, the department shall reduce the total required supervised hours from four thousand hours to three thousand six hundred hours. The requirements in subsection (2)(c)(i) and (ii) of this section shall apply regardless of the reduction of total required hours.

(c) The experience requirement consists of a minimum of four thousand hours of experience, over a period of not less than three years. Of those four thousand hours:

(i) One thousand hours must be direct client contact supervised by a licensed independent clinical social worker;

(ii) One hundred thirty hours of direct supervision as follows:

(A) Seventy hours must be with an independent clinical social worker;

(B) Sixty hours may be with an equally qualified licensed mental health practitioner as defined in WAC 246-809-310(3); and

(C) Sixty hours of the one hundred thirty hours of direct supervision must be in one-to-one supervision. The remaining seventy hours may be in one-to-one supervision or group supervision(~~;~~ and

~~(D) Distance supervision is limited to sixty supervision hours~~)).

(3) Licensed social worker associate-advanced and licensed social worker associate-independent clinical applicants are not required to have supervised postgraduate experience prior to becoming an associate.

(4) Licensed social worker associate-advanced and licensed social worker associate-independent clinical applicants must declare they are working toward full licensure.

**WSR 21-20-030
PERMANENT RULES
DEPARTMENT OF HEALTH**

[Filed September 24, 2021, 3:37 p.m., effective October 25, 2021]

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

Purpose: WAC 246-809-990 Licensed counselor, and associate—Fees and renewal cycle, and 246-811-035 Certifi-

cation of a substance use disorder professional trainee. The purpose of these amendments is to align with statutory changes. HB 1063 (chapter 57, Laws of 2021) created an exception to the statutory limits on associate and trainee license renewals for licensed counselors and substance use disorder professionals (SUDP). These rule amendments incorporate statutory amendments by reference.

Previously, both the statute and rules limited licensed counselor associates to six license renewals and SUDP trainees to four license renewals. Under amendments made by HB 1063, the secretary of health may allow additional renewals when a governor-declared emergency results in barriers to testing or training. Amendments to WAC 246-809-990 and 246-811-035 clarify that the statutory limits to associate and trainee license renewals apply, except as provided by statute.

An additional amendment to WAC 246-809-990 also removes an outdated citation.

Citation of Rules Affected by this Order: Amending WAC 246-809-990 and 246-811-035.

Statutory Authority for Adoption: RCW 18.225.040 and 18.205.060.

Other Authority: HB 1063 (chapter 57, Laws of 2021); RCW 18.225.145, 18.205.095.

Adopted under notice filed as WSR 21-13-152 on June 22, 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 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 2, Repealed 0.

Date Adopted: September 23, 2021.

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

AMENDATORY SECTION (Amending WSR 20-12-074, filed 6/1/20, effective 7/2/20)

WAC 246-809-990 Licensed counselor, and associate—Fees and renewal cycle. (1) Except for a probationary license as described in WAC 246-809-095, a license must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC(~~Part 2~~).

(2) Associate licenses are valid for one year and must be renewed every year on the date of issuance. The associate license may be renewed no more than six times, except as provided in RCW 18.225.145.

(3) The following nonrefundable fees will be charged:

Title	Fee
Licensed marriage and family therapist	
Original application	
Application and initial license	\$290.00
UW online access fee (HEAL-WA)	16.00
Active license renewal	
Renewal	180.00
Late renewal penalty	90.00
Expired license reissuance	85.00
UW online access fee (HEAL-WA)	16.00
Retired active license renewal	
Renewal	70.00
Late renewal penalty	35.00
UW online access fee (HEAL-WA)	16.00
Duplicate license	10.00
Verification of license	25.00
Licensed marriage and family therapy associate	
Original application	
Application	65.00
UW online access fee (HEAL-WA)	16.00
Renewal	
Renewal	50.00
UW online access fee (HEAL-WA)	16.00
Late renewal penalty	50.00
Expired license reissuance	40.00
Duplicate license	10.00
Verification of license	25.00
Licensed mental health counselor	
Original application	
Application	95.00
Initial license	80.00
UW online access fee (HEAL-WA)	16.00
Active license renewal	
Renewal	90.00
Late renewal penalty	50.00
Expired license reissuance	65.00
UW online access fee (HEAL-WA)	16.00
Retired active license renewal	
Renewal retired active	70.00
Late renewal penalty	35.00
UW online access fee (HEAL-WA)	16.00
Duplicate license	10.00

Title	Fee
Verification of license	25.00
Licensed mental health counselor associate	
Original application	
Application	35.00
Renewal	
Renewal	25.00
Late renewal penalty	25.00
Expired license reissuance	40.00
Duplicate license	10.00
Verification of license	25.00
Licensed advanced social worker and licensed independent clinical social worker	
Original application	
Application	100.00
Initial license	100.00
UW online access fee (HEAL-WA)	16.00
Active license renewal	
Renewal	100.00
Late renewal penalty	50.00
Expired license reissuance	72.50
UW online access fee (HEAL-WA)	16.00
Retired active license renewal	
Renewal retired active	65.00
Late renewal penalty	30.00
UW online access fee (HEAL-WA)	16.00
Duplicate license	10.00
Verification of license	25.00
Licensed advanced social worker associate and licensed independent clinical social worker associate	
Original application	
Application	35.00
UW online access fee (HEAL-WA)*	16.00
Renewal	
Renewal	25.00
Late renewal penalty	25.00
UW online access fee (HEAL-WA)*	16.00
Expired license reissuance	40.00
Duplicate license	10.00
Verification of license	25.00

* Surcharge applies to independent clinical social worker associate only.

(4) For a probationary license as described under WAC 246-809-095, the following nonrefundable fees will be charged:

Title	Fee
Licensed marriage and family therapist	
Original application	
Application and initial license	\$290.00
Active license renewal	
Renewal	180.00
Late renewal penalty	90.00
Expired license reissuance	85.00
Duplicate license	10.00
Verification of license	25.00
Licensed mental health counselor	
Original application	
Application and initial license	175.00
Active license renewal	
Renewal	90.00
Late renewal penalty	50.00
Expired license reissuance	65.00
Duplicate license	10.00
Verification of license	25.00
Licensed advanced social worker and licensed independent clinical social worker	
Original application	
Application and initial license	200.00
Active license renewal	
Renewal	100.00
Late renewal penalty	50.00
Expired license reissuance	72.50
Duplicate license	10.00
Verification of license	25.00

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

WAC 246-811-035 Certification of a substance use disorder professional trainee. (1) The department of health will issue a substance use disorder professional trainee certificate to an individual who:

- (a) Submits an application on forms the department provides;
- (b) Includes written documentation to meet the eligibility criteria;
- (c) Declares that he or she is enrolled in an approved school and gaining the experience required to receive a substance use disorder professional credential.

(2) A substance use disorder professional trainee must submit a signed declaration with their annual renewal that states they are enrolled in an approved education program, or

have completed the educational requirements, and are obtaining the experience requirements for a substance use disorder professional credential.

(3) A substance use disorder professional trainee certificate can only be renewed four times, except as provided in RCW 18.205.095.

WSR 21-20-032
PERMANENT RULES
PUGET SOUND
CLEAN AIR AGENCY

[Filed September 24, 2021, 5:11 p.m., effective November 1, 2021]

Effective Date of Rule: November 1, 2021.

Purpose: **Section 3.11** The agency's practice for many years has been to annually adjust the maximum civil penalty amount as allowed by law. The proposed adjustment to the maximum civil penalty amount accounts for inflation, as authorized by RCW 70A.15.3160 (formerly RCW 70.94.-431) and as determined by the state office of the economic and revenue forecast council. Without this adjustment, the maximum penalty amount would effectively decrease each year. The consumer price index (CPI) for the Seattle/Tacoma/Bellevue area increased by 1.58 percent for the 2020 calendar year, which amounts to an increase of \$325.00 in the maximum civil penalty amount. The agency has used CPI for wage earners in the Puget Sound region for many years to make this inflation-based adjustment because it reflects the data of what happened (i.e. not a forecast) and it represents local economic information.

The proposed amendment does not affect the way the agency determines actual civil penalty amounts in individual cases. This continues to be done following civil penalty worksheets previously approved by the board.

Section 3.25 This section currently provides that whenever federal rules are referenced in agency regulations, the effective date of the federal regulations referred to is July 1, 2020. This provides certainty so that persons affected by the regulations and agency staff know which version of a federal regulation to reference. For many years, the agency's practice has been to update this date annually to stay current with federal regulations. Following this practice, the proposed amendments would change the reference date to July 1, 2021.

Citation of Rules Affected by this Order: Amending Regulation I, Sections 3.11 (Civil Penalties) and 3.25 (Federal Regulation Reference Date).

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

Adopted under notice filed as WSR 21-17-103 on August 13, 2021.

Date Adopted: September 24, 2021.

Craig Kenworthy
Executive Director

AMENDATORY SECTION
SECTION 3.11 CIVIL PENALTIES

(a) Any person who violates any of the provisions of chapter 70.94 RCW or any of the rules or regulations in force pursuant thereto, may incur a civil penalty in an amount not

to exceed \$((~~20,541.00~~)) 20,866.00, per day for each violation.

(b) Any person who fails to take action as specified by an order issued pursuant to chapter 70.94 RCW or Regulations I, II, and III of the Puget Sound Clean Air Agency shall be liable for a civil penalty of not more than \$((~~20,541.00~~)) 20,866.00, for each day of continued noncompliance.

(c) Within 30 days of the date of receipt of a Notice and Order of Civil Penalty, the person incurring the penalty may apply in writing to the Control Officer for the remission or mitigation of the penalty. To be considered timely, a mitigation request must be actually received by the Agency, during regular office hours, within 30 days of the date of receipt of a Notice and Order of Civil Penalty. This time period shall be calculated by excluding the first day and including the last, unless the last day is a Saturday, Sunday, or legal holiday, and then it is excluded and the next succeeding day that is not a Saturday, Sunday, or legal holiday is included. The date stamped by the Agency on the mitigation request is prima facie evidence of the date the Agency received the request.

(d) A mitigation request must contain the following:

(1) The name, mailing address, telephone number, and telefacsimile number (if available) of the party requesting mitigation;

(2) A copy of the Notice and Order of Civil Penalty involved;

(3) A short and plain statement showing the grounds upon which the party requesting mitigation considers such order to be unjust or unlawful;

(4) A clear and concise statement of facts upon which the party requesting mitigation relies to sustain his or her grounds for mitigation;

(5) The relief sought, including the specific nature and extent; and

(6) A statement that the party requesting mitigation has read the mitigation request and believes the contents to be true, followed by the party's signature.

The Control Officer shall remit or mitigate the penalty only upon a demonstration by the requestor of extraordinary circumstances such as the presence of information or factors not considered in setting the original penalty.

(e) Any civil penalty may also be appealed to the Pollution Control Hearings Board pursuant to chapter 43.21B RCW and chapter 371-08 WAC. An appeal must be filed with the Hearings Board and served on the Agency within 30 days of the date of receipt of the Notice and Order of Civil Penalty or the notice of disposition on the application for relief from penalty.

(f) A civil penalty shall become due and payable on the later of:

(1) 30 days after receipt of the notice imposing the penalty;

(2) 30 days after receipt of the notice of disposition on application for relief from penalty, if such application is made; or

(3) 30 days after receipt of the notice of decision of the Hearings Board if the penalty is appealed.

(g) If the amount of the civil penalty is not paid to the Agency within 30 days after it becomes due and payable, the Agency may bring action to recover the penalty in King

County Superior Court or in the superior court of any county in which the violator does business. In these actions, the procedures and rules of evidence shall be the same as in an ordinary civil action.

(h) Civil penalties incurred but not paid shall accrue interest beginning on the 91st day following the date that the penalty becomes due and payable, at the highest rate allowed by RCW 19.52.020 on the date that the penalty becomes due and payable. If violations or penalties are appealed, interest shall not begin to accrue until the 31st day following final resolution of the appeal.

(i) To secure the penalty incurred under this section, the Agency shall have a lien on any vessel used or operated in violation of Regulations I, II, and III which shall be enforced as provided in RCW 60.36.050.

AMENDATORY SECTION

SECTION 3.25 FEDERAL REGULATION REFERENCE DATE

Whenever federal regulations are referenced in Regulation I, II, or III, the effective date shall be July 1, ~~((2020))~~ 2021.

WSR 21-20-035

PERMANENT RULES

BENTON CLEAN AIR AGENCY

[Filed September 27, 2021, 11:49 a.m., effective October 28, 2021]

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

Purpose: The changes to Benton Clean Air Agency (BCAA) Regulation 1 are to address outdated RCW codes throughout the regulation and update them with the correct new codes. References to fee tables no longer contained within BCAA Regulation 1 were removed. Addition of language regarding variances to the rule was added.

Citation of Rules Affected by this Order: Amending BCAA Regulation 1.

Statutory Authority for Adoption: RCW 70A.15.2040, 70A.15.3050(2).

Adopted under notice filed as WSR 21-13-125 on June 21, 2021.

Changes Other than Editing from Proposed to Adopted Version: None, other than to include the effective date of November 1, 2021.

Date Adopted: September 23, 2021.

Tyler Thompson
Air Quality Specialist

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 21-22 issue of the Register.

WSR 21-20-036

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed September 27, 2021, 12:50 p.m., effective October 28, 2021]

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

Purpose: The department is amending WAC 388-106-0275 to enable budgetary flexibilities related to funding availability that may not exceed \$2,500 per discharge for items and services, and to clarify items that may not be purchased under this rule.

Citation of Rules Affected by this Order: Amending WAC 388-106-0275.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520, 74.39A.400; and 42 C.F.R. § 441.500-590.

Adopted under notice filed as WSR 21-17-047 on August 10, 2021.

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

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

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 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: September 27, 2021.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 16-04-020, filed 1/22/16, effective 2/22/16)

WAC 388-106-0275 Are there limits to the community transition services I may receive? Community transition services:

(1) Do not include recreational or diverting items, such as a television, cable or VCR;

(2) Do not include room and board; ~~((and))~~

(3) ~~((May not exceed eight hundred fifty dollars per discharge))~~ Do not include residential unit furnishings, as outlined in WAC 388-78A-3011 for assisted living facilities and WAC 388-76-10685 for adult family homes;

(4) Do not include items that would otherwise be covered under other payment sources, including but not limited to, medicare, medicaid, and private insurance; and

(5) May not exceed twenty-five hundred dollars per discharge for items and services.

WSR 21-20-037
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Behavioral Health Administration)

[Filed September 27, 2021, 12:59 p.m., effective October 28, 2021]

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

Purpose: The proposed rule is necessary for administering inpatient and outpatient competency restoration programs which are run by the department of social and health services and the health care authority, respectively. As directed by RCW 10.77.086, this rule making is to develop rules for the conditions of participation in the outpatient competency restoration program, within the framework of the forensic mental health care system.

This rule adds definitional language; describes factors that, if present, may make a client clinically inappropriate for outpatient competency restoration services; outlines initial intake requirements and conditions of participation; requires certain reporting for outpatient competency restoration providers; allows for providers to request early competency evaluation; and provides a framework for removal from the program and when the program ends.

Citation of Rules Affected by this Order: New WAC 388-878-0010, 388-878-0020, 388-878-0030, 388-878-0040, 388-878-0050, 388-878-0060, 388-878-0070, 388-878-0080, and 388-878-0090.

Statutory Authority for Adoption: RCW 10.77.086, 10.77.088.

Adopted under notice filed as WSR 21-12-090 on June 1, 2021.

Changes Other than Editing from Proposed to Adopted Version: Added to WAC 388-878-0020 Outpatient competency restoration program (OCRCP)—Definitions, ""**Behavior concern report**"" means a report regarding behavioral concerns that may compromise conditional release, program progress, or both. This must include any noncompliance with the conditions of participation, even if such noncompliance does not rise to the level of removal from the program."

Amended WAC 388-878-0060 OCRCP provider reporting, to say "behavior concern report" instead of "behavioral concern report."

Amended WAC 388-878-0050 Conditions of participation, to say that participants must "remain" clinically appropriate for outpatient competency restoration services, and must "remain" substantially compliant [compliant] with conditions instead of "be" in each instance.

Amended WAC 388-878-0090 to delete "following the last date on which the program may legally provide services to the client" and inserted "upon expiration of the order for outpatient competency restoration services."

A final cost-benefit analysis is available by contacting Nora Selander, P.O. Box 45525, Olympia, WA 98504, phone 360-902-7637, email nora.selander@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 9, 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 9, Amended 0, Repealed 0.

Date Adopted: September 27, 2021.

Donald L. Clintsman
Acting Secretary

Chapter 388-878 WAC

Outpatient competency restoration program.

NEW SECTION

WAC 388-878-0010 Introduction and overview. (1) Outpatient competency restoration program (OCRCP) is one of the elements of the Trueblood Settlement managed by the health care authority in collaboration with the department of social and health services office of forensic mental health services.

(2) The OCRCP provides an option for courts to order competency restoration services in the community for persons who the court determines are not competent to stand trial and are appropriate for community-based treatment.

NEW SECTION

WAC 388-878-0020 Outpatient competency restoration program (OCRCP)—Definitions. "**Behavior concern report**" means a report regarding behavioral concerns that may compromise program progress. This must include any noncompliance with the conditions of participation, even if such noncompliance does not rise to the level of removal from the program.

"**Competency evaluation**" means an evaluation performed to determine whether an individual is competent to stand trial.

"**Department**" means the Washington state department of social and health services.

"**Forensic navigator**" means department staff who are officers of the court who assist the individual to access services related to diversion and the outpatient competency restoration program.

"**Health care authority**" or "**HCA**" means the Washington state health care authority, any division, section, office, unit or other entity of HCA, or any of the officers or other officials lawfully representing HCA.

"**Inpatient competency restoration**" means competency restoration services performed in an inpatient setting, including a state psychiatric hospital or residential treatment facility.

"**Outpatient competency restoration program**" or "**OCRCP**" means competency restoration services that are

provided on an outpatient basis to clients who are on conditional release from custody.

"Provider" means the HCA-contracted provider of outpatient competency restoration services, its employees and agents.

NEW SECTION

WAC 388-878-0030 Clinically appropriate for outpatient competency restoration services. (1) The court may order a client into OCRP when it determines the client is clinically appropriate to receive outpatient competency restoration services. Clinical appropriateness for OCRP means a likelihood of being restored to competency in an outpatient setting.

(2) A client may not be clinically appropriate for outpatient competency restoration services if the client exhibits any of the following:

- (a) Is not medically stable;
- (b) Has current suicidal ideation with intent;
- (c) Is at heightened risk of harming others;
- (d) Psychiatric symptoms at a severity that suggests that the client will not be able to care for their basic needs or health and safety in the community even with clinically appropriate housing and case management services; or
- (e) Other concerning behavior or factors which indicates the client is not appropriate for outpatient competency restoration services.

NEW SECTION

WAC 388-878-0040 Assignment of clients and initial intake. (1) The forensic navigator will inquire into a provider's capacity before informing the court that the provider is able to accept a case assignment. Subject to capacity limitations, the designated provider will accept all clients ordered by the court.

(2) Immediately following the case assignment, the provider will make arrangements for the client to attend an initial intake appointment to be conducted by the provider.

- (a) The date of this appointment is the program start date.
- (b) The provider will develop an initial treatment plan based on the clinical barriers to competency assessed upon intake, and plan for commencing support or clinical services.
- (c) The provider will commence OCRP services for the client as soon as practicable after the initial intake appointment, even if the assessment and initial treatment plan are still being completed.

NEW SECTION

WAC 388-878-0050 Conditions of participation. Every client in receipt of modified conditions of release from the criminal court and ordered for outpatient competency restoration must remain clinically appropriate for outpatient competency restoration services, and must remain substantially compliant with the following conditions of participation:

- (1) Taking medications or receiving prescribed intramuscular medication, if applicable;
- (2) Abstaining from alcohol and unprescribed drugs;

(3) Participating in regular urinalysis or other drug testing for clients who have a current substance use disorder diagnosis; and

(4) Engaging in their care and treatment.

NEW SECTION

WAC 388-878-0060 OCRP provider reporting. (1) The provider will submit a weekly status update to the assigned forensic navigator via secure email.

(2) The provider will submit a behavior concern report when there is concern about a client's behavior. The report must be submitted to the forensic navigator via direct notification in person or by phone same day, and additionally by secure email within twenty-four hours of concern.

NEW SECTION

WAC 388-878-0070 Early competency evaluation. The provider will promptly request an early competency evaluation when the provider determines the client may meet one of the following criteria:

- (1) Client exhibits barriers to competency to stand trial that are minimal or not present; or
- (2) Client determined to be not restorable to competency to stand trial.

NEW SECTION

WAC 388-878-0080 Program removal. (1) If a client fails to comply with the conditions of the outpatient competency restoration program such that restoration is no longer appropriate in that setting or the client is no longer clinically appropriate as determined by the department, the department will remove the client from the program and place the client in an appropriate facility for inpatient competency restoration.

(2) If the provider determines that the client may no longer meet the conditions of participation, the provider will promptly contact the forensic navigator to consider removal from the program.

NEW SECTION

WAC 388-878-0090 Program end. (1) The provider will no longer serve the client in the program upon expiration of the order for outpatient competency restoration services.

(2) The provider must contact the forensic navigator to make a plan for coordinated transition or continuing outpatient behavioral health services.

WSR 21-20-042
PERMANENT RULES
OFFICE OF THE
INSURANCE COMMISSIONER

[Insurance Commissioner Matter R 2021-05—Filed September 27, 2021,
6:07 p.m., effective January 1, 2022]

Effective Date of Rule: January 1, 2022.

Purpose: The purpose of the rules is to advance collateral reform relating to reinsurance and assist Washington state [to] maintain a competitive and secure insurance market.

Citation of Rules Affected by this Order: New WAC 284-13-53902, 284-13-53903 and 284-13-59509; and amending WAC 284-13-536, 284-13-538, 284-13-539, 284-13-53901, and 284-13-540.

Statutory Authority for Adoption: RCW 48.02.060, 48.12.480; section 2, chapter 139, Laws of 2021, and section 4, chapter 138, Laws of 2021.

Adopted under notice filed as WSR 21-17-124 on August 17, 2021.

A final cost-benefit analysis is available by contacting David Forte, P.O. Box 40260, Olympia, WA 98504-0260, phone 360-725-7042, fax 360-586-3109, email davidf@oic.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 3, Amended 5, 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 3, Amended 5, Repealed 0.

Date Adopted: September 27, 2021.

Mike Kreidler
Insurance Commissioner

AMENDATORY SECTION (Amending WSR 15-24-126, filed 12/2/15, effective 1/2/16)

WAC 284-13-536 Credit for reinsurance—Certain reinsurers maintaining trust funds—Liabilities defined. For purposes of WAC 284-13-520 through 284-13-538, liabilities means the assuming insurer's gross liabilities attributable to reinsurance ceded by United States domiciled insurers excluding liabilities that are ~~((not))~~ otherwise secured by acceptable means, and, must include:

(1) For business ceded by domestic insurers authorized to write accident and disability, and property and casualty insurance:

- (a) Losses and allocated loss expenses paid by the ceding insurer, recoverable from the assuming insurer;
- (b) Reserves for losses reported and outstanding;
- (c) Reserves for losses incurred but not reported;
- (d) Reserves for allocated loss expenses; and
- (e) Unearned premiums.

(2) For business ceded by domestic insurers authorized to write life, disability and annuity insurance:

- (a) Aggregate reserves for life policies and contracts net of policy loans and net due and deferred premiums;

- (b) Aggregate reserves for accident and disability policies;

- (c) Deposit funds and other liabilities without life or disability contingencies; and

- (d) Liabilities for policy and contract claims.

AMENDATORY SECTION (Amending WSR 15-24-126, filed 12/2/15, effective 1/2/16)

WAC 284-13-538 Specific securities provided to a ceding insurer. A specific security provided to a ceding insurer by an assuming insurer under WAC ~~((284-13-53901))~~ 284-13-540 must be applied, until exhausted, to the payment of liabilities of the assuming insurer to the ceding insurer holding the specific security prior to, and as a condition precedent for, presentation of a claim by the ceding insurer for payment by a trustee of a trust established by the assuming insurer under WAC 284-13-520 through 284-13-538.

AMENDATORY SECTION (Amending WSR 15-24-126, filed 12/2/15, effective 1/2/16)

WAC 284-13-539 Credit for reinsurance—Certified reinsurers. (1) Under RCW 48.12.430, the commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that has been certified as a reinsurer in this state at all times for which statutory financial statement credit for reinsurance is claimed under this section. The credit allowed must be based upon the security held by or on behalf of the ceding insurer in accordance with a rating assigned to the certified reinsurer by the commissioner. The security must be in a form consistent with RCW 48.12.430 and 48.12.460, and WAC 284-13-550, 284-13-560 or 284-13-570. The amount of security required in order for full credit to be allowed must correspond with the following requirements:

- (a)

Ratings	Security Required
Secure - 1	0%
Secure - 2	10%
Secure - 3	20%
Secure - 4	50%
Secure - 5	75%
Vulnerable - 6	100%

(b) Affiliated reinsurance transactions shall receive the same opportunity for reduced security requirements as all other reinsurance transactions.

(c) The commissioner must require the certified reinsurer to post one hundred percent, for the benefit of the ceding insurer or its estate, security upon the entry of an order of rehabilitation, liquidation or conservation against the ceding insurer.

(d) In order to facilitate the prompt payment of claims, a certified reinsurer is not required to post security for a catastrophe recoverables for a period of one year from the date of the first instance of a liability reserve entry by the ceding company as a result of a loss from a catastrophe occur-

rence as recognized by the commissioner. The one year deferral period is contingent upon the certified reinsurer continuing to pay claims in a timely manner. Reinsurance recoverables for only the following lines of business as reported on the NAIC annual financial statement related specifically to the catastrophe occurrence will be included in the deferral:

- (i) Line 1: Fire.
- (ii) Line 2: Allied lines.
- (iii) Line 3: Farmowners multiple peril.
- (iv) Line 4: Homeowners multiple peril.
- (v) Line 5: Commercial multiple peril.
- (vi) Line 9: Inland marine.
- (vii) Line 12: Earthquake.
- (viii) Line 21: Auto physical damage.

(e) Credit for reinsurance under this section applies only to reinsurance contracts entered into or renewed on or after the effective date of the certification of the assuming insurer. Any reinsurance contract entered into prior to the effective date of the certification of the assuming insurer that is subsequently amended after the effective date of the certification of the assuming insurer, or a new reinsurance contract, covering any risk for which collateral was provided previously, is only subject to this section with respect to losses incurred and reserves reported from and after the effective date of the amendment or new contract.

(f) Nothing in this section prohibits the parties to a reinsurance agreement from agreeing to provisions establishing security requirements that exceed the minimum security requirements established for certified reinsurers under this section.

(2)(a) The commissioner shall post notice on the commissioner's web site promptly upon receipt of any application for certification, including instructions on how members of the public may respond to the application. The commissioner may not take final action on the application until at least thirty days after posting the notice required by (a) of this subsection.

(b) The commissioner shall issue notice to an assuming insurer that has made application and been approved as a certified reinsurer. Included in the notice shall be the rating assigned the certified reinsurer under subsection (1) of this section. The commissioner shall publish a list of all certified reinsurers and their ratings.

(c) In order to be eligible for certification, the assuming insurer must meet the following requirements:

(i) The assuming insurer must be domiciled and licensed to transact insurance or reinsurance in a qualified jurisdiction, as determined by the commissioner under subsection (3) of this section.

(ii) The assuming insurer must maintain capital and surplus, or its equivalent, of no less than two hundred fifty million dollars calculated under (d)(viii) of this subsection. This requirement may also be satisfied by an association including incorporated and individual unincorporated underwriters having a minimum capital and surplus equivalent (net of liabilities) of at least two hundred fifty million dollars and a central fund containing a balance of at least two hundred fifty million dollars.

(iii) The assuming insurer must maintain financial strength ratings from two or more rating agencies deemed

acceptable by the commissioner. These ratings must be based on interactive communication between the rating agency and the assuming insurer and must not be based solely on publicly available information. These financial strength ratings will be one factor used by the commissioner in determining the rating that is assigned to the assuming insurer. Acceptable rating agencies include the following:

- (A) Standard & Poor's;
- (B) Moody's Investors Service;
- (C) Fitch Ratings;
- (D) A.M. Best Company; or
- (E) Any other nationally recognized statistical rating organization.

(iv) The certified reinsurer must comply with any other requirements reasonably imposed by the commissioner.

(d) Each certified reinsurer must be rated on a legal entity basis, with due consideration being given to the group rating where appropriate, except that an association including incorporated and individual unincorporated underwriters that has been approved to do business as a single certified reinsurer may be evaluated on the basis of its group rating. Factors that may be considered as part of the evaluation process include, but are not limited to, the following:

(i) The certified reinsurer's financial strength rating from an acceptable rating agency. The maximum rating that a certified reinsurer may be assigned will correspond to its financial strength rating as outlined in the table below. The commissioner must use the lowest financial strength rating received from an approved rating agency in establishing the maximum rating of a certified reinsurer. A failure to obtain or maintain at least two financial strength ratings from acceptable rating agencies will result in loss of eligibility for certification:

Ratings	Best	S&P	Moody's	Fitch
Secure - 1	A++	AAA	Aaa	AAA
Secure - 2	A+	AA+, AA, AA-	Aa1, Aa2, Aa3	AA+, AA, AA-
Secure - 3	A	A+, A	A1, A2	A+, A
Secure - 4	A-	A-	A3	A-
Secure - 5	B++, B+	BBB+, BBB, BBB-	Baa1, Baa2, Baa3	BBB+, BBB, BBB-
Vulnerable - 6	B, B-, C++, C+, C-, D, E, F	BB+, BB, BB-, B+, B, B-, CCC, CC, C, D, R	Ba1, Ba2, Ba3, B1, B2, B3, Caa, Ca, C	BB+, BB, BB-, B+, B, B-, CCC+, CC, CCC-, DD

(ii) The business practices of the certified reinsurer in dealing with its ceding insurers, including its record of compliance with reinsurance contractual terms and obligations;

(iii) For certified reinsurers domiciled in the United States, a review of the most recent applicable NAIC annual statement blank, either schedule F (for property/casualty reinsurers) or schedule S (for life and disability reinsurers);

(iv) For certified reinsurers not domiciled in the United States, a review annually of Form CR-F (for property/casualty reinsurers) or Form CR-S (for life and disability reinsurers) set forth in WAC 284-13-59502 through 284-13-59508;

(v) The reputation of the certified reinsurer for prompt payment of claims under reinsurance agreements, based on an analysis of ceding insurers' schedule F reporting of overdue reinsurance recoverables, including the proportion of obligations that are more than ninety days past due or are in dispute, with specific attention given to obligations payable to companies that are in administrative supervision or receivership;

(vi) Regulatory actions against the certified reinsurer;

(vii) The report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in (d)(viii) of this subsection;

(viii) For certified reinsurers not domiciled in the United States, audited financial statements (~~((audited United States GAAP basis if available, audited IFRS basis statements are allowed but most include an audited footnote reconciling equity and net income to a United States GAAP basis, or, with the permission of the insurance commissioner, audited IFRS statements with reconciliation to United States GAAP certified by an officer of the company)))~~), regulatory filings, and actuarial opinions (as filed with non-United States jurisdiction supervisor, with a translation into English). Upon the initial application for certification, the commissioner will consider audited financial statements for the last ~~((three))~~ two years filed with its non-United States jurisdiction supervisor;

(ix) The liquidation priority of obligations to a ceding insurer in the certified reinsurer's domiciliary jurisdiction in the context of an insolvency proceeding;

(x) A certified reinsurer's participation in any solvent scheme of arrangement, or similar procedure, which involves United States ceding insurers. The commissioner must receive prior notice from a certified reinsurer that proposes participation by the certified reinsurer in a solvent scheme arrangement; and

(xi) Any other information deemed relevant by the commissioner.

(e) Based on the analysis conducted under (d)(v) of this subsection of a certified reinsurer's reputation for prompt payment of claims, the commissioner may make appropriate adjustments in the security the certified reinsurer is required to post to protect its liabilities to United States ceding insurers, provided that the commissioner must, at a minimum, increase the security the certified reinsurer is required to post by one rating level under (d)(i) of this subsection if the commissioner finds that:

(i) More than fifteen percent of the certified reinsurer's ceding insurance clients have overdue reinsurance recoverables on paid losses of ninety days or more which are not in dispute and which exceed one hundred thousand dollars for each cedent; or

(ii) The aggregate amount of reinsurance recoverables on paid losses which are not in dispute that are overdue by ninety days or more exceeds fifty million dollars.

(f) The assuming insurer must submit a properly executed Form CR-1 set forth under WAC 284-13-59501 as evidence of its submission to the jurisdiction of this state, appointment of the commissioner as an agent for service of process in this state, and agreement to provide security for one hundred percent of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding

insurers if it resists enforcement of a final United States judgment. The commissioner will not certify any assuming insurer that is domiciled in a jurisdiction that the commissioner has determined does not adequately and promptly enforce final United States judgments or arbitration awards.

(g) The certified reinsurer must agree to meet applicable information filing requirements as determined by the commissioner, both with respect to an initial application for certification and on an ongoing basis. The applicable information filing requirements are as follows:

(i) Notification within ten days of any regulatory actions taken against the certified reinsurer, any change in the provisions of its domiciliary license or any change in rating by an approved rating agency, including a statement describing the changes and the reasons therefore;

(ii) Annually, Form CR-F or CR-S, as applicable per the instructions posted on the National Association of Insurance Commissioner's web site;

(iii) Annually, the report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in (g)(iv) of this subsection;

(iv) Annually, audited financial statements (~~((audited United States GAAP basis if available, audited IFRS basis statements are allowed but must include an audited footnote reconciling equity and net income to a United States GAAP basis, or, with the permission of the commissioner, audited IFRS statements with reconciliation to United States GAAP certified by an officer of the company)))~~), regulatory filings, and actuarial opinion (as filed with the certified reinsurer's supervisor, with a translation into English). Upon the initial certification, audited financial statements for the last ~~((three))~~ two years filed with the certified reinsurer's supervisor;

(v) At least annually, an audited list of all disputed and overdue reinsurance claims regarding reinsurance assumed from United States domestic ceding insurers;

(vi) A certification from the certified reinsurer's domestic regulator that the certified reinsurer is in good standing and maintains capital in excess of the jurisdiction's highest regulatory action level; and

(vii) Any other information that the commissioner may reasonably require.

(h) Change in rating or revocation of certification.

(i) In the case of a downgrade by a rating agency or other disqualifying circumstance, the commissioner must upon notice assign a new rating to the certified reinsurer in accordance with the requirements of subsection (2)(d)(i) of this section.

(ii) The commissioner has the authority to suspend, revoke, or otherwise modify a certified reinsurer's certification at any time if the certified reinsurer fails to meet its obligations or security requirements under this section, or if other financial or operating results of the certified reinsurer, or documented significant delays in payment by the certified reinsurer, lead the commissioner to reconsider the certified reinsurer's ability or willingness to meet its contractual obligations.

(iii) If the rating of a certified reinsurer is upgraded by the commissioner, the certified reinsurer may meet the security requirements applicable to its new rating on a prospective basis, but the commissioner must require the certified rein-

surer to post security under the previously applicable security requirements as to all contracts in force on or before the effective date of the upgraded rating. If the rating of a certified reinsurer is downgraded by the commissioner, the commissioner must require the certified reinsurer to meet the security requirements applicable to its new rating for all business it has assumed as a certified reinsurer.

(iv) Upon revocation of the certification of a certified reinsurer by the commissioner, the assuming insurer is required to post security in accordance with WAC 284-13-540 in order for the ceding insurer to continue to take credit for reinsurance ceded to the assuming insurer. If funds continue to be held in trust under WAC 284-13-520 through 284-13-538, the commissioner may allow additional credit equal to the ceding insurer's pro rata share of the funds, discounted to reflect the risk of uncollectability and anticipated expenses of trust administration. Notwithstanding the change of a certified reinsurer's rating or revocation of its certification, a domestic insurer that has ceded reinsurance to that certified reinsurer may not be denied credit for reinsurance for a period of three months for all reinsurance ceded to that certified reinsurer, unless the reinsurance is found by the commissioner to be at high risk of uncollectability.

(3)(a) If, upon conducting an evaluation under this section with respect to the reinsurance supervisory system of any non-United States assuming insurer, the commissioner determines that the jurisdiction qualifies to be recognized as a qualified jurisdiction, the commissioner must publish notice and evidence of the recognition in an appropriate manner. The commissioner may establish a procedure to withdraw recognition of those jurisdictions that are no longer qualified.

(b) In order to determine whether the domiciliary jurisdiction of a non-United States assuming insurer is eligible to be recognized as a qualified jurisdiction, the commissioner must evaluate the reinsurance supervisory system of the non-United States jurisdiction, both initially and on an ongoing basis, and consider the rights, benefits and the extent of reciprocal recognition afforded by the non-United States jurisdiction to reinsurers licensed and domiciled in the United States. The commissioner must determine the appropriate approach for evaluating the qualifications of the jurisdictions, and create and publish a list of jurisdictions whose reinsurers may be approved by the commissioner as eligible for certification. A qualified jurisdiction must agree to share information and cooperate with the commissioner with respect to all certified reinsurers domiciled within that jurisdiction. Additional factors to be considered in determining whether to recognize a qualified jurisdiction, in the discretion of the commissioner include, but are not limited to, the following:

(i) The framework under which the assuming insurer is regulated.

(ii) The structure and authority of the domiciliary regulator with respect to solvency regulation requirements and financial surveillance.

(iii) The substance of financial and operating standards for assuming insurers in the domiciliary jurisdiction.

(iv) The form and substance of financial reports required to be filed or made publicly available by reinsurers in the domiciliary jurisdiction and the accounting principles used.

(v) The domiciliary regulator's willingness to cooperate with United States regulators in general and the commissioner in particular.

(vi) The history of performance by assuming insurers in the domiciliary jurisdiction.

(vii) Any documented evidence of substantial problems with the enforcement of final United States judgments in the domiciliary jurisdiction. A jurisdiction will not be considered to be a qualified jurisdiction if the commissioner has determined that it does not adequately and promptly enforce final United States judgments or arbitration awards.

(viii) Any relevant international standards or guidance with respect to mutual recognition of reinsurance supervision adopted by the International Association of Insurance Supervisors or successor organization.

(ix) Any other matters deemed relevant by the commissioner.

(c) A list of qualified jurisdictions shall be published through the NAIC committee process. The commissioner shall consider the list in determining qualified jurisdictions. If the commissioner approves a jurisdiction as qualified that does not appear on the list of qualified jurisdictions, the commissioner shall provide thoroughly documented justification with respect to the criteria provided under (b)(i) through (ix) of this subsection.

(d) United States jurisdictions that meet the requirements for accreditation under the NAIC financial standards and accreditation program are recognized as qualified jurisdictions.

(4)(a) If an applicant for certification has been certified as a reinsurer in an NAIC accredited jurisdiction, the commissioner has the discretion to defer to that jurisdiction's certification, and to defer to the rating assigned by that jurisdiction, if the assuming insurer submits a properly executed CR-1 and additional information as the commissioner requires. The assuming insurer is considered to be a certified reinsurer in this state.

(b) Any change in the certified reinsurer's status or rating in the other jurisdiction applies automatically in this state as of the date it takes effect in the other jurisdiction. The certified reinsurer must notify the commissioner of any change in its status or rating within ten days after receiving notice of the change.

(c) The commissioner may withdraw recognition of the other jurisdiction's rating at any time and assign a new rating in accordance with subsection (2)(h) of this section.

(d) The commissioner may withdraw recognition of the other jurisdiction's certification at any time, with notice to the certified reinsurer. Unless the commissioner suspends or revokes the certified reinsurer's certification under subsection (2)(h) of this section, the certified reinsurer's certification remains in good standing in this state for a period of three months, which is extended if additional time is necessary to consider the assuming insurer's application for certification in this state.

(5) In addition to the clauses required under WAC 284-13-580, reinsurance contracts entered into or renewed under this section must include a proper funding clause, which requires the certified reinsurer to provide and maintain security in an amount sufficient to avoid the imposition of any

financial statement penalty on the ceding insurer under this section for reinsurance ceded to the certified reinsurer.

(6) The commissioner will comply with all reporting and notification requirements that may be established by the NAIC with respect to certified reinsurers and qualified jurisdictions.

AMENDATORY SECTION (Amending WSR 15-24-126, filed 12/2/15, effective 1/2/16)

WAC 284-13-53901 Credit for reinsurance required by law. Under RCW 48.12.435, the commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of section 2, chapter 138, Laws of 2021 and RCW 48.12.410 through 48.12.430, but only as to the insurance of risks located in jurisdictions where the reinsurance is required by the applicable law or regulation of that jurisdiction. As used in this section, "jurisdiction" means state, district or territory of the United States and lawful national government.

NEW SECTION

WAC 284-13-53902 Credit for reinsurance—Reciprocal jurisdiction. (1) Pursuant to section 2, chapter 138, Laws of 2021, the commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that is licensed to write reinsurance by, and has its head office or is domiciled in, a reciprocal jurisdiction, and which meets the other requirements of this regulation.

(2) A "reciprocal jurisdiction" is a jurisdiction, as designated by the commissioner that meets one of the following:

(a) A non-U.S. jurisdiction that is subject to an in-force covered agreement with the United States, each within its legal authority, or, in the case of a covered agreement between the United States and the European Union, is a member state of the European Union. For purposes of this subsection, a "covered agreement" is an agreement entered into pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act, 31 U.S.C. Secs. 313 and 314, that is currently in effect or in a period of provisional application and addresses the elimination, under specified conditions, of collateral requirements as a condition for entering into any reinsurance agreement with a ceding insurer domiciled in this state or for allowing the ceding insurer to recognize credit for reinsurance;

(b) A U.S. jurisdiction that meets the requirements for accreditation under the NAIC financial standards and accreditation program; or

(c) A qualified jurisdiction, as determined by the commissioner pursuant to RCW 48.12.430(3) and WAC 284-13-539(3), which is not otherwise described in (a) or (b) of this subsection and which the commissioner determines meets all of the following additional requirements:

(i) Provides that an insurer which has its head office or is domiciled in such qualified jurisdiction shall receive credit for reinsurance ceded to a U.S. domiciled assuming insurer in the same manner as credit for reinsurance is received for reinsurance assumed by insurers domiciled in such qualified jurisdiction;

(ii) Does not require a U.S. domiciled assuming insurer to establish or maintain a local presence as a condition for entering into a reinsurance agreement with any ceding insurer subject to regulation by the non-U.S. jurisdiction or as a condition to allow the ceding insurer to recognize credit for such reinsurance;

(iii) Recognizes the U.S. state regulatory approach to group supervision and group capital, by providing written confirmation by a competent regulatory authority, in such qualified jurisdiction, that insurers and insurance groups that are domiciled or maintain their headquarters in this state or another jurisdiction accredited by the NAIC shall be subject only to worldwide prudential insurance group supervision including worldwide group governance, solvency and capital, and reporting, as applicable, by the commissioner or the commissioner of the domiciliary state and will not be subject to group supervision at the level of the worldwide parent undertaking of the insurance or reinsurance group by the qualified jurisdiction; and

(iv) Provides written confirmation by a competent regulatory authority in such qualified jurisdiction that information regarding insurers and their parent, subsidiary, or affiliated entities, if applicable, shall be provided to the commissioner in accordance with a memorandum of understanding or similar document between the commissioner and such qualified jurisdiction including, but not limited to, the International Association of Insurance Supervisors Multilateral Memorandum of Understanding or other multilateral memoranda of understanding coordinated by the NAIC.

(3) Credit shall be allowed when the reinsurance is ceded from an insurer domiciled in this state to an assuming insurer meeting each of the conditions set forth below.

(a) The assuming insurer must be licensed to transact reinsurance by, and have its head office or be domiciled in, a reciprocal jurisdiction.

(b) The assuming insurer must have and maintain on an ongoing basis minimum capital and surplus, or its equivalent, calculated on at least an annual basis as of the preceding December 31st or at the annual date otherwise statutorily reported to the reciprocal jurisdiction, and confirmed as set forth in (g) of this subsection according to the methodology of its domiciliary jurisdiction, in the following amounts:

(i) No less than two hundred fifty million dollars; or

(ii) If the assuming insurer is an association, including incorporated and individual unincorporated underwriters:

(A) Minimum capital and surplus equivalents (net of liabilities) or own funds of the equivalent of at least two hundred fifty million dollars; and

(B) A central fund containing a balance of the equivalent of at least two hundred fifty million dollars.

(c) The assuming insurer must have and maintain on an ongoing basis a minimum solvency or capital ratio, as applicable, as follows:

(i) If the assuming insurer has its head office or is domiciled in a reciprocal jurisdiction as defined in subsection (1)(a) of this section, the ratio specified in the applicable covered agreement;

(ii) If the assuming insurer is domiciled in a reciprocal jurisdiction as defined in subsection (1)(b) of this section, a risk-based capital (RBC) ratio of three hundred percent of the

authorized control level, calculated in accordance with the formula developed by the NAIC; or

(iii) If the assuming insurer is domiciled in a reciprocal jurisdiction as defined in subsection (1)(c) of this section, after consultation with the reciprocal jurisdiction and considering any recommendations published through the NAIC committee process, such solvency or capital ratio as the commissioner determines to be an effective measure of solvency.

(d) The assuming insurer must agree to and provide adequate assurance, in the form of a properly executed Form RJ-1 (WAC 284-13-59509), of its agreement to the following:

(i) The assuming insurer must agree to provide prompt written notice and explanation to the commissioner if it falls below the minimum requirements set forth in (b) or (c) of this subsection, or if any regulatory action is taken against it for serious noncompliance with applicable law.

(ii) The assuming insurer must consent in writing to the jurisdiction of the courts of this state and to the appointment of the commissioner as agent for service of process.

(A) The commissioner may also require that such consent be provided and included in each reinsurance agreement under the commissioner's jurisdiction.

(B) Nothing in this provision shall limit or in any way alter the capacity of parties to a reinsurance agreement to agree to alternative dispute resolution mechanisms, except to the extent such agreements are unenforceable under applicable insolvency or delinquency laws.

(iii) The assuming insurer must consent in writing to pay all final judgments, wherever enforcement is sought, obtained by a ceding insurer, that have been declared enforceable in the territory where the judgment was obtained.

(iv) Each reinsurance agreement must include a provision requiring the assuming insurer to provide security in an amount equal to one hundred percent of the assuming insurer's liabilities attributable to reinsurance ceded pursuant to that agreement if the assuming insurer resists enforcement of a final judgment that is enforceable under the law of the jurisdiction in which it was obtained or a properly enforceable arbitration award, whether obtained by the ceding insurer or by its legal successor on behalf of its estate, if applicable.

(v) The assuming insurer must confirm that it is not presently participating in any solvent scheme of arrangement, which involves this state's ceding insurers, and agrees to notify the ceding insurer and the commissioner and to provide one hundred percent security to the ceding insurer consistent with the terms of the scheme, should the assuming insurer enter into such a solvent scheme of arrangement. Such security shall be in a form consistent with the provisions of RCW 48.12.430 and 48.12.460 and WAC 284-13-550, 284-13-560, or 284-13-570. For purposes of this regulation, the term "solvent scheme of arrangement" means a foreign or alien statutory or regulatory compromise procedure subject to requisite majority creditor approval and judicial sanction in the assuming insurer's home jurisdiction either to finally commute liabilities of duly noticed classed members or creditors of a solvent debtor, or to reorganize or restructure the debts and obligations of a solvent debtor on a final basis, and which may be subject to judicial recognition and enforcement

of the arrangement by a governing authority outside the ceding insurer's home jurisdiction.

(vi) The assuming insurer must agree in writing to meet the applicable information filing requirements as set forth in (e) of this subsection.

(e) The assuming insurer or its legal successor must provide, if requested by the commissioner, on behalf of itself and any legal predecessors, the following documentation to the commissioner:

(i) For the two years preceding entry into the reinsurance agreement and on an annual basis thereafter, the assuming insurer's annual audited financial statements, in accordance with the applicable law of the jurisdiction of its head office or domiciliary jurisdiction, as applicable, including the external audit report;

(ii) For the two years preceding entry into the reinsurance agreement, the solvency and financial condition report or actuarial opinion, if filed with the assuming insurer's supervisor;

(iii) Prior to entry into the reinsurance agreement and not more than semi-annually thereafter, an updated list of all disputed and overdue reinsurance claims outstanding for ninety days or more, regarding reinsurance assumed from ceding insurers domiciled in the United States; and

(iv) Prior to entry into the reinsurance agreement and not more than semi-annually thereafter, information regarding the assuming insurer's assumed reinsurance by ceding insurer, ceded reinsurance by the assuming insurer, and reinsurance recoverable on paid and unpaid losses by the assuming insurer to allow for the evaluation of the criteria set forth in (f) of this subsection.

(f) The assuming insurer must maintain a practice of prompt payment of claims under reinsurance agreements. The lack of prompt payment will be evidenced if any of the following criteria is met:

(i) More than fifteen percent of the reinsurance recoverables from the assuming insurer are overdue and in dispute as reported to the commissioner;

(ii) More than fifteen percent of the assuming insurer's ceding insurers or reinsurers have overdue reinsurance recoverable on paid losses of ninety days or more which are not in dispute and which exceed for each ceding insurer one hundred thousand dollars, or as otherwise specified in a covered agreement; or

(iii) The aggregate amount of reinsurance recoverable on paid losses which are not in dispute, but are overdue by ninety days or more, exceeds fifty million dollars, or as otherwise specified in a covered agreement.

(g) The assuming insurer's supervisory authority must confirm to the commissioner on an annual basis that the assuming insurer complies with the requirements set forth in (b) and (c) of this subsection.

(h) Nothing in this provision precludes an assuming insurer from providing the commissioner with information on a voluntary basis.

(4) The commissioner shall timely create and publish a list of reciprocal jurisdictions.

(a) A list of reciprocal jurisdictions is published through the NAIC committee process. The commissioner's list shall include any reciprocal jurisdiction as defined under subsec-

tion (2)(a) and (b) of this section, and shall consider any other reciprocal jurisdiction included on the NAIC list. The commissioner may approve a jurisdiction that does not appear on the NAIC list of reciprocal jurisdictions as provided by applicable law, regulation, or in accordance with criteria published through the NAIC committee process.

(b) The commissioner may remove a jurisdiction from the list of reciprocal jurisdictions upon a determination that the jurisdiction no longer meets one or more of the requirements of a reciprocal jurisdiction, as provided by applicable law, regulation, or in accordance with a process published through the NAIC committee process, except that the commissioner shall not remove from the list a reciprocal jurisdiction as defined under subsection (2)(a) and (b) of this section. Upon removal of a reciprocal jurisdiction from this list credit for reinsurance ceded to an assuming insurer domiciled in that jurisdiction shall be allowed, if otherwise allowed pursuant to RCW 48.12.400 through 48.12.499 or WAC 284-13-500 through 284-13-59509.

(5) The commissioner shall timely create and publish a list of assuming insurers that have satisfied the conditions set forth in this section and to which cessions shall be granted credit in accordance with this section.

(a) If an NAIC accredited jurisdiction has determined that the conditions set forth in subsection (3) of this section have been met, the commissioner has the discretion to defer to that jurisdiction's determination, and add such assuming insurer to the list of assuming insurers to which cessions shall be granted credit in accordance with this subsection. The commissioner may accept financial documentation filed with another NAIC accredited jurisdiction or with the NAIC in satisfaction of the requirements of subsection (3) of this section.

(b) When requesting that the commissioner defer to another NAIC accredited jurisdiction's determination, an assuming insurer must submit a properly executed Form RJ-1 and additional information as the commissioner may require. A state that has received such a request will notify other states through the NAIC committee process and provide relevant information with respect to the determination of eligibility.

(6) If the commissioner determines that an assuming insurer no longer meets one or more of the requirements under this section, the commissioner may revoke or suspend the eligibility of the assuming insurer for recognition under this section.

(a) While an assuming insurer's eligibility is suspended, no reinsurance agreement issued, amended or renewed after the effective date of the suspension qualifies for credit except to the extent that the assuming insurer's obligations under the contract are secured in accordance with WAC 284-13-540.

(b) If an assuming insurer's eligibility is revoked, no credit for reinsurance may be granted after the effective date of the revocation with respect to any reinsurance agreements entered into by the assuming insurer, including reinsurance agreements entered into prior to the date of revocation, except to the extent that the assuming insurer's obligations under the contract are secured in a form acceptable to the commissioner and consistent with the provisions of WAC 284-13-540.

(7) Before denying statement credit or imposing a requirement to post security with respect to subsection (6) of this section or adopting any similar requirement that will have substantially the same regulatory impact as security, the commissioner shall:

(a) Communicate with the ceding insurer, the assuming insurer, and the assuming insurer's supervisory authority that the assuming insurer no longer satisfies one of the conditions listed in subsection (3) of this section;

(b) Provide the assuming insurer with thirty days from the initial communication to submit a plan to remedy the defect, and ninety days from the initial communication to remedy the defect, except in exceptional circumstances in which a shorter period is necessary for policyholder and other consumer protection;

(c) After the expiration of ninety days or less, as set out in (b) of this subsection, if the commissioner determines that no or insufficient action was taken by the assuming insurer, the commissioner may impose any of the requirements as set out in this subsection; and

(d) Provide a written explanation to the assuming insurer of any of the requirements set out in this subsection.

(8) If subject to a legal process of rehabilitation, liquidation or conservation, as applicable, the ceding insurer, or its representative, may seek and, if determined appropriate by the court in which the proceedings are pending, may obtain an order requiring that the assuming insurer post security for all outstanding liabilities.

NEW SECTION

WAC 284-13-53903 Credit for reinsurance—Term and universal life insurance reserve financing. (1) Pursuant to section 5, chapter 138, Laws of 2021, the purpose and intent of this section is to establish uniform, national standards governing reserve financing arrangements pertaining to life insurance policies containing guaranteed nonlevel gross premiums, guaranteed nonlevel benefits and universal life insurance policies with secondary guarantees; and to ensure that, with respect to each such financing arrangement, funds consisting of primary security and other security, as defined in subsection (4) of this section, are held by or on behalf of ceding insurers in the forms and amounts required herein. In general, reinsurance ceded for reserve financing purposes has one or more of the following characteristics:

(a) Some or all of the assets used to secure the reinsurance treaty or to capitalize the reinsurer are issued by the ceding insurer or its affiliates;

(b) Some or all of the assets used to secure the reinsurance treaty or to capitalize the reinsurer are not unconditionally available to satisfy the general account obligations of the ceding insurer; or

(c) Some or all of the assets used to secure the reinsurance treaty or to capitalize the reinsurer create a reimbursement, indemnification or other similar obligation on the part of the ceding insurer or any of its affiliates (other than a payment obligation under a derivative contract acquired in the normal course and used to support and hedge liabilities pertaining to the actual risks in the policies ceded pursuant to the reinsurance treaty).

(2) This section will apply to reinsurance treaties that cede liabilities pertaining to covered policies, as that term is defined in subsection (4)(b) of this section, issued by any life insurance company domiciled in this state. This section and WAC 284-13-500 through 284-13-59509 will both apply to such reinsurance treaties; provided, that in the event of a direct conflict between the provisions of this regulation and WAC 284-13-500 through 284-13-59509, the provisions of this regulation will apply, but only to the extent of the conflict.

(3) This section does not apply to:

(a) Reinsurance of:

(i) Policies that satisfy the criteria for exemption set forth in WAC 284-74-350(7); and which are issued before the later of:

(A) The effective date of this regulation; and

(B) The date on which the ceding insurer begins to apply the provisions of VM-20 to establish the ceded policies' statutory reserves, but in no event later than January 1, 2020;

(ii) Portions of policies that satisfy the criteria for exemption set forth in WAC 284-74-350(6) and which are issued before the later of:

(A) The effective date of this regulation; and

(B) The date on which the ceding insurer begins to apply the provisions of VM-20 to establish the ceded policies' statutory reserves, but in no event later than January 1, 2020;

(iii) Any universal life policy that meets all of the following requirements:

(A) Secondary guarantee period, if any, is five years or less;

(B) Specified premium for the secondary guarantee period is not less than the net level reserve premium for the secondary guarantee period based on the commissioner's standard ordinary (CSO) valuation tables and valuation interest rate applicable to the issue year of the policy; and

(C) The initial surrender charge is not less than one hundred percent of the first year annualized specified premium for the secondary guarantee period;

(iv) Credit life insurance;

(v) Any variable life insurance policy that provides for life insurance, the amount or duration of which varies according to the investment experience of any separate account or accounts; or

(vi) Any group life insurance certificate unless the certificate provides for a stated or implied schedule of maximum gross premiums required in order to continue coverage in force for a period in excess of one year.

(b) Reinsurance ceded to an assuming insurer that meets the applicable requirements of RCW 48.12.425; or

(c) Reinsurance ceded to an assuming insurer that meets the applicable requirements of RCW 48.12.410, 48.12.415, or 48.12.420, and that, in addition:

(i) Prepares statutory financial statements in compliance with the *NAIC Accounting Practices and Procedures Manual*, without any departures from NAIC statutory accounting practices and procedures pertaining to the admissibility or valuation of assets or liabilities that increase the assuming insurer's reported surplus and are material enough that they need to be disclosed in the financial statement of the assum-

ing insurer pursuant to statement of statutory accounting principles No. 1 (SSAP 1); and

(ii) Is not in a company action level event, regulatory action level event, authorized control level event, or mandatory control level event as those terms are defined in RCW 48.05.440 through 48.05.455 when its RBC is calculated in accordance with the life risk-based capital report including overview and instructions for companies, as the same may be amended by the NAIC from time to time, without deviation; or

(d) Reinsurance ceded to an assuming insurer that meets the applicable requirements of RCW 48.12.410, 48.12.415, or 48.12.420, and that, in addition:

(i) Is not an affiliate, as that term is defined in RCW 48.31B.005, of:

(A) The insurer ceding the business to the assuming insurer; or

(B) Any insurer that directly or indirectly ceded the business to that ceding insurer;

(ii) Prepares statutory financial statements in compliance with the *NAIC Accounting Practices and Procedures Manual*;

(iii) Is both:

(A) Licensed or accredited in at least ten states (including its state of domicile); and

(B) Not licensed in any state as a captive, special purpose vehicle, special purpose financial captive, special purpose life reinsurance company, limited purpose subsidiary, or any other similar licensing regime; and

(iv) Is not, or would not be, below five hundred percent of the authorized control level RBC as that term is defined in RCW 48.05.440 when its risk-based capital (RBC) is calculated in accordance with the life risk-based capital report including overview and instructions for companies, as the same may be amended by the NAIC from time to time, without deviation, and without recognition of any departures from NAIC statutory accounting practices and procedures pertaining to the admission or valuation of assets or liabilities that increase the assuming insurer's reported surplus; or

(e) Reinsurance ceded to an assuming insurer that meets the requirements of section 5(5), chapter 138, Laws of 2021; or

(f) Reinsurance not otherwise exempt under this section if the commissioner, after consulting with the NAIC Financial Analysis Working Group (FAWG) or other group of regulators designated by the NAIC, as applicable, determines under all the facts and circumstances that all of the following apply:

(i) The risks are clearly outside of the intent and purpose of this regulation, as described in subsection (1) of this section;

(ii) The risks are included within the scope of this regulation only as a technicality; and

(iii) The application of this regulation to those risks is not necessary to provide appropriate protection to policyholders.

(4) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Actuarial method" means the methodology used to determine the required level of primary security, as described in subsection (5) of this section.

(b) "Covered policies" means the following: Subject to the exemptions described in subsection (3) of this section, covered policies are those policies, other than grandfathered policies, of the following policy types:

(i) Life insurance policies with guaranteed nonlevel gross premiums and/or guaranteed nonlevel benefits, except for flexible premium universal life insurance policies; or

(ii) Flexible premium universal life insurance policies with provisions resulting in the ability of a policyholder to keep a policy in force over a secondary guarantee period.

(c) "Grandfathered policies" means policies of the types described in (a) and (b) of this subsection that were:

(i) Issued prior to January 1, 2015; and

(ii) Ceded, as of December 31, 2014, as part of a reinsurance treaty that would not have met one of the exemptions set forth in Section 4 had that section then been in effect.

(d) "Noncovered policies" means any policy that does not meet the definition of covered policies including grandfathered policies as defined in this section.

(e) "Required level of primary security" means the dollar amount determined by applying the actuarial method to the risks ceded with respect to covered policies, but not more than the total reserve ceded.

(f) "Primary security" means the following forms of security:

(i) Cash meeting the requirements of RCW 48.12.460 (1);

(ii) Securities listed by the Securities Valuation Office meeting the requirements of RCW 48.12.460(2), but excluding any synthetic letter of credit, contingent note, credit-linked note or other similar security that operates in a manner similar to a letter of credit, and excluding any securities issued by the ceding insurer or any of its affiliates; and

(iii) For security held in connection with funds withheld and modified coinsurance reinsurance treaties:

(A) Commercial loans in good standing of CM3 quality and higher;

(B) Policy loans; and

(C) Derivatives acquired in the normal course and used to support and hedge liabilities pertaining to the actual risks in the policies ceded pursuant to the reinsurance treaty.

(g) "Other security" means any security acceptable to the commissioner other than security meeting the definition of primary security.

(h) "Valuation manual" means the *Valuation Manual* adopted by the NAIC as described in RCW 48.74.100 (2)(a) and WAC 284-74-610, with all amendments adopted by the NAIC that are effective for the financial statement date on which credit for reinsurance is claimed.

(i) "VM-20" means requirements for principle-based reserves for life products, including all relevant definitions, from the *Valuation Manual*.

(5)(a) The actuarial method to establish the required level of primary security for each reinsurance treaty subject to this regulation must be VM-20, applied on a treaty-by-treaty basis, including all relevant definitions, from the *Valuation Manual* as then in effect, applied as follows:

(i) For covered policies described in subsection (4)(b)(i) of this section, the actuarial method is the greater of the deterministic reserve or the net premium reserve (NPR) regardless of whether the criteria for exemption testing can be met. However, if the covered policies do not meet the requirements of the stochastic reserve exclusion test in the *Valuation Manual*, then the actuarial method is the greatest of the deterministic reserve, the stochastic reserve, or the NPR. In addition, if such covered policies are reinsured in a reinsurance treaty that also contains covered policies described in subsection (4)(b)(ii) of this section, the ceding insurer may elect to instead use (a)(ii) of this subsection as the actuarial method for the entire reinsurance agreement. Whether this subsection (5)(a)(i) or (ii) of this section are used, the actuarial method must comply with any requirements or restrictions that the *Valuation Manual* imposes when aggregating these policy types for purposes of principle-based reserve calculations.

(ii) For covered policies described in subsection (4)(b)(ii) of this section, the actuarial method is the greatest of the deterministic reserve, the stochastic reserve, or the NPR regardless of whether the criteria for exemption testing can be met.

(iii) Except as provided in (a)(iv) of this subsection, the actuarial method is to be applied on a gross basis to all risks with respect to the covered policies as originally issued or assumed by the ceding insurer.

(iv) If the reinsurance treaty cedes less than one hundred percent of the risk with respect to the covered policies, then the required level of primary security may be reduced as follows:

(A) If a reinsurance treaty cedes only a quota share of some or all of the risks pertaining to the covered policies, the required level of primary security, as well as any adjustment under (a)(iv)(C) of this subsection, may be reduced to a pro rata portion in accordance with the percentage of the risk ceded;

(B) If the reinsurance treaty in a nonexempt arrangement cedes only the risks pertaining to a secondary guarantee, the required level of primary security may be reduced by an amount determined by applying the actuarial method on a gross basis to all risks, other than risks related to the secondary guarantee, pertaining to the covered policies, except that for covered policies for which the ceding insurer did not elect to apply the provisions of VM-20 to establish statutory reserves, the required level of primary security may be reduced by the statutory reserve retained by the ceding insurer on those covered policies, where the retained reserve of those covered policies should be reflective of any reduction pursuant to the cession of mortality risk on a yearly renewable term basis in an exempt arrangement;

(C) If a portion of the covered policy risk is ceded to another reinsurer on a yearly renewable term basis in an exempt arrangement, the required level of primary security may be reduced by the amount resulting by applying the actuarial method including the reinsurance section of VM-20 to the portion of the covered policy risks ceded in the exempt arrangement, except that for covered policies issued prior to January 1, 2017, this adjustment is not to exceed $[cx/(2 * \text{number of reinsurance premiums per year})]$ where cx is cal-

culated using the same mortality table used in calculating the net premium reserve; and

(D) For any other treaty ceding a portion of risk to a different reinsurer including, but not limited to, stop loss, excess of loss and other nonproportional reinsurance treaties, there will be no reduction in the required level of primary security.

It is possible for any combination of (a)(iv) of this subsection to apply. Such adjustments to the required level of primary security will be done in the sequence that accurately reflects the portion of the risk ceded via the treaty. The ceding insurer should document the rationale and steps taken to accomplish the adjustments to the required level of primary security due to the cession of less than one hundred percent of the risk.

The adjustments for other reinsurance will be made only with respect to reinsurance treaties entered into directly by the ceding insurer. The ceding insurer will make no adjustment as a result of a retrocession treaty entered into by the assuming insurers.

(v) In no event will the required level of primary security resulting from application of the actuarial method exceed the amount of statutory reserves ceded.

(vi) If the ceding insurer cedes risks with respect to covered policies, including any riders, in more than one reinsurance treaty subject to this regulation, in no event will the aggregate required level of primary security for those reinsurance treaties be less than the required level of primary security calculated using the actuarial method as if all risks ceded in those treaties were ceded in a single treaty subject to this regulation;

(vii) If a reinsurance treaty subject to this regulation cedes risk on both covered and noncovered policies, credit for the ceded reserves will be determined as follows:

(A) The actuarial method must be used to determine the required level of primary security for the covered policies and subsection (6) of this section must be used to determine the reinsurance credit for the covered policy reserves; and

(B) Credit for the noncovered policy reserves will be granted only to the extent that security, in addition to the security held to satisfy the requirements of (a)(vii)(A) of this subsection, is held by or on behalf of the ceding insurer in accordance with section 2, chapter 138, Laws of 2021 and RCW 48.12.410 through 48.12.460. Any primary security used to meet the requirements of this subsection may not be used to satisfy the required level of primary security for the covered policies.

(b) For the purposes of both calculating the required level of primary security pursuant to the actuarial method and determining the amount of primary security and other security, as applicable, held by or on behalf of the ceding insurer, the following will apply:

(i) For assets, including any such assets held in trust, that would be admitted under the *NAIC Accounting Practices and Procedures Manual* if they were held by the ceding insurer, the valuations are to be determined according to statutory accounting procedures as if such assets were held in the ceding insurer's general account and without taking into consideration the effect of any prescribed or permitted practices; and

(ii) For all other assets, the valuations are to be those that were assigned to the assets for the purpose of determining the amount of reserve credit taken. In addition, the asset spread tables and asset default cost tables required by VM-20 must be included in the actuarial method if adopted by the NAIC's Life Actuarial (A) Task Force no later than the December 31st on or immediately preceding the valuation date for which the required level of primary security is being calculated. The tables of asset spreads and asset default costs must be incorporated into the actuarial method in the manner specified in VM-20.

(6) Requirements applicable to covered policies to obtain credit for reinsurance - Opportunity for remediation:

(a) Requirements are subject to the exemptions described in subsection (3) of this section and the provisions of (b) of this subsection, credit for reinsurance will be allowed with respect to ceded liabilities pertaining to covered policies pursuant to section 2, chapter 138, Laws of 2021 and RCW 48.12.410 through 48.12.460 if, and only if, in addition to all other requirements imposed by law or regulation, the following requirements are met on a treaty-by-treaty basis:

(i) The ceding insurer's statutory policy reserves with respect to the covered policies are established in full and in accordance with the applicable requirements of chapter 48.74 RCW and related regulations and actuarial guidelines, and credit claimed for any reinsurance treaty subject to this regulation does not exceed the proportionate share of those reserves ceded under the contract;

(ii) The ceding insurer determines the required level of primary security with respect to each reinsurance treaty subject to this regulation and provides support for its calculation as determined to be acceptable to the commissioner;

(iii) Funds consisting of primary security, in an amount at least equal to the required level of primary security, are held by or on behalf of the ceding insurer, as security under the reinsurance treaty within the meaning of RCW 48.12.460, on a funds withheld, trust, or modified coinsurance basis;

(iv) Funds consisting of other security, in an amount at least equal to any portion of the statutory reserves as to which primary security is not held pursuant to (a)(iii) of this subsection, are held by or on behalf of the ceding insurer as security under the reinsurance treaty within the meaning of RCW 48.12.460;

(v) Any trust used to satisfy the requirements of this section must comply with all of the conditions and qualifications of WAC 284-13-550, except that:

(A) Funds consisting of primary security or other security held in trust, will for the purposes identified in subsection (5)(b) of this section, be valued according to the valuation rules set forth in subsection (5)(b) of this section, as applicable;

(B) There are no affiliate investment limitations with respect to any security held in such trust if such security is not needed to satisfy the requirements of (a)(iii) of this subsection;

(C) The reinsurance treaty must prohibit withdrawals or substitutions of trust assets that would leave the fair market value of the primary security within the trust (when aggregated with primary security outside the trust that is held by or on behalf of the ceding insurer in the manner required by

(a)(iii) of this subsection below one hundred two percent of the level required by (a)(iii) of this subsection at the time of the withdrawal or substitution; and

(D) The determination of reserve credit under WAC 284-13-550(5) must be determined according to the valuation rules set forth in subsection (5)(b) of this section, as applicable; and

(vi) The reinsurance treaty has been approved by the commissioner.

(b) Requirements at inception date and on an ongoing basis - Remediation:

(i) The requirements of (a) of this subsection must be satisfied as of the date that risks under covered policies are ceded on or after the effective date of this subsection and on an ongoing basis thereafter. Under no circumstances shall a ceding insurer take or consent to any action or series of actions that would result in a deficiency under (a)(iii) or (iv) of this subsection with respect to any reinsurance treaty under which covered policies have been ceded, and in the event that a ceding insurer becomes aware at any time that such a deficiency exists, it will use its best efforts to arrange for the deficiency to be eliminated as expeditiously as possible.

(ii) Prior to the due date of each quarterly or annual statement, each life insurance company that has ceded reinsurance within the scope of subsection (2) of this section must perform an analysis, on a treaty-by-treaty basis, to determine, as to each reinsurance treaty under which covered policies have been ceded, whether as of the end of the immediately preceding calendar quarter (the valuation date) the requirements of (a)(iii) and (iv) of this subsection were satisfied. The ceding insurer will establish a liability equal to the excess of the credit for reinsurance taken over the amount of primary security actually held pursuant to (a)(iii) of this subsection, unless either:

(A) The requirements of (a)(iii) and (iv) of this subsection were fully satisfied as of the valuation date as to such reinsurance treaty; or

(B) Any deficiency has been eliminated before the due date of the quarterly or annual statement to which the valuation date relates through the addition of primary security and/or other security, as the case may be, in such amount and in such form as would have caused the requirements of (a)(iii) and (iv) of this subsection to be fully satisfied as of the valuation date.

(iii) Nothing in (b)(ii) of this subsection will be construed to allow a ceding company to maintain any deficiency under (a)(iii) or (iv) of this subsection for any period of time longer than is reasonably necessary to eliminate it.

(7) If any provision of this section is held invalid, the remainder shall not be affected.

(8) No insurer that has covered policies as to which this regulation applies as set forth in section (2) of this section shall take any action or series of actions, or enter into any transaction or arrangement or series of transactions or arrangements if the purpose of such action, transaction or arrangement or series thereof is to avoid the requirements of this regulation, or to circumvent its purpose and intent, as set forth in section (1) of this section.

AMENDATORY SECTION (Amending WSR 15-24-126, filed 12/2/15, effective 1/2/16)

WAC 284-13-540 Asset or reduction from liability for reinsurance ceded to an unauthorized assuming insurer not meeting the requirements of WAC 284-13-510 through ((284-13-53901)) 284-13-53903. Under RCW 48.12.460, the commissioner shall allow a reduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of section 2, chapter 138, Laws of 2021 and RCW 48.12.405 through 48.12.455, in an amount not exceeding the liabilities carried by the ceding insurer. The reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the exclusive benefit of the ceding insurer, under a reinsurance contract with the assuming insurer as security for the payment of obligations under the reinsurance contract. The security must be held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer, or in the case of a trust, held in a qualified United States financial institution as defined in RCW 48.12.465(2). This security may be in the form of any of the following:

(1)(a) Cash;

(b) Securities listed by the Securities Valuation Office of the NAIC, including those exempt from filing as defined by the purposes and procedures manual of the Securities Valuation Office, and qualifying as admitted assets;

(c) Clean, irrevocable, unconditional, and "evergreen" letters of credit issued or confirmed by a qualified United States institution, as defined in RCW 48.12.465(1), effective no later than December 31 of the year for which filing is being made, and in the possession of, or in trust, the ceding insurer on or before the filing date of its annual statement. Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance (or confirmation) shall, notwithstanding the issuing (or confirming) institution's subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification, or amendment, whichever first occurs; or

(d) Any other form of security acceptable to the commissioner.

(2) An admitted asset or a reduction from liability for reinsurance ceded to an unauthorized assuming insurer under this section is allowed only when the requirements of WAC 284-13-580 and the applicable portions of WAC 284-13-550, 284-13-560, or 284-13-570 have been satisfied.

NEW SECTION

WAC 284-13-59509 Form RJ-1.

FORM RJ-1

CERTIFICATE OF REINSURER DOMICILED IN RECIPROCAL JURISDICTION

I, _____,
(name of officer) (title of officer)

of _____, the
assuming insurer (name of assuming insurer)

under a reinsurance agreement with one or more insurers domiciled in Washington state, in order to be considered for approval in this state, hereby certify that _____ ("Assuming Insurer"):

- 1. Submits to the jurisdiction of any court of competent jurisdiction in [Name of State] for the adjudication of any issues arising out of the reinsurance agreement, agrees to comply with all requirements necessary to give such court jurisdiction, and will abide by the final decision of such court or any appellate court in the event of an appeal.
2. Designates the Insurance Commissioner of Washington state as its lawful attorney in and for the Washington state upon whom may be served any lawful process in any action, suit or proceeding in this state arising out of the reinsurance agreement instituted by or on behalf of the ceding insurer.
3. Agrees to pay all final judgments, wherever enforcement is sought, obtained by a ceding insurer, that have been declared enforceable in the territory where the judgment was obtained.
4. Agrees to provide prompt written notice and explanation if it falls below the minimum capital and surplus or capital or surplus ratio, or if any regulatory action is taken against it for serious noncompliance with applicable law.
5. Confirms that it is not presently participating in any solvent scheme of arrangement, which involves insurers domiciled in Washington state.
6. Agrees that in each reinsurance agreement it will provide security in an amount equal to one hundred percent of the assuming insurer's liabilities attributable to reinsurance ceded pursuant to that agreement if the assuming insurer resists enforcement of a final U.S. judgment, that is enforceable under the law of the territory in which it was obtained, or a properly enforceable arbitration award whether obtained by the ceding insurer or by its resolution estate, if applicable.
7. Agrees to provide the documentation in accordance with Washington Administrative Code 284-13-53902(3)(e) for reciprocal jurisdiction reinsurers, if requested by the commissioner.

Dated: _____
(name of assuming insurer)

BY: _____
(name of officer)
(title of office)

WSR 21-20-044
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed September 28, 2021, 8:10 a.m., effective October 29, 2021]

Effective Date of Rule: Thirty-one days after filing.
Purpose: This adoption amends chapter 296-127 WAC, Prevailing wage, to set the intent and affidavit filing fees charged after the end of the 2019-2021 biennium so that the

department of labor and industries can continue to process and approve or certify the intent and affidavit forms. SB 5566 was passed in the 2019 legislative session and signed into law to address fees charged for the approval of statements of intent to pay prevailing wages and the certification of affidavits of those wages. SB 5566 amended RCW 39.12.070 to allow for a filing fee for submitting intent and affidavit forms to be \$40 or less, and specifically for the 2019-2021 biennium the fees to not be more than \$20.

There are approximately one thousand public agencies that contract for public work in Washington state. Under the provisions of RCW 39.12.040, these agencies cannot make payment, release contract retainage, or accept the contract work as complete without the required approved and certified intent and affidavit forms. This means a rule setting the filing fee that allows processing of these forms must be in place or many payments on public works will not be possible under the law. Without the legal ability to make payments, public works will come to a statewide standstill.

Citation of Rules Affected by this Order: Amending WAC 296-127-040 and 296-127-045.

Statutory Authority for Adoption: Section 1, chapter 193, Laws of 2019; RCW 39.12.070.

Adopted under notice filed as WSR 21-17-115 on August 17, 2021.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 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 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: September 28, 2021.

Joel Sacks
Director

AMENDATORY SECTION (Amending WSR 08-17-072, filed 8/19/08, effective 9/19/08)

WAC 296-127-040 Statement of intent to pay prevailing wages. (1) All statements of intent to pay prevailing wages submitted to the industrial statistician of the department shall be accompanied by ~~((the fee set in RCW 39.12.070))~~ a forty-dollar filing fee for each statement. Fees shall be made payable to the department of labor and industries.

(2) Any agency, division, or department of the state of Washington which through agreement with the department certifies statements of intent for its own contracts shall provide to the industrial statistician each month the number of statements of intent certified and quarterly shall send the fee set in RCW 39.12.070 for each statement of intent to pay prevailing wages it has certified. This fee shall be sent to the industrial statistician and be made payable to the department of labor and industries.

AMENDATORY SECTION (Amending WSR 08-17-072, filed 8/19/08, effective 9/19/08)

WAC 296-127-045 Affidavit of wages paid. (1) All affidavits of wages paid submitted to the industrial statistician of the department shall be accompanied by ~~((the fee set in RCW 39.12.070))~~ a forty-dollar filing fee for each affidavit of wages paid. All fees shall be made payable to the department of labor and industries.

(2) Any agency, division, or department of the state of Washington which through agreement with the department certifies affidavits of wages paid for its own contracts shall provide to the industrial statistician each month the number of affidavit of wages paid it has certified and quarterly shall send the fee set in RCW 39.12.070 for each affidavit of wages paid it has certified. This fee shall be sent to the industrial statistician and be made payable to the department of labor and industries.

WSR 21-20-045
PERMANENT RULES
OFFICE OF THE
INSURANCE COMMISSIONER

[Insurance Commissioner Matter R 2021-03—Filed September 28, 2021,
8:12 a.m., effective July 15, 2022]

Effective Date of Rule: July 15, 2022.

Purpose: Section 2, chapter 22, Laws of 2021 (SHB 1037) necessitates resident adjusters have continuing education requirements; therefore, the commissioner is considering rule making to further clarify resident independent adjusters and public adjusters continuing education protocols.

Citation of Rules Affected by this Order: Amending WAC 284-17-200, 284-17-220, 284-17-222, 284-17-224, 284-17-273, 284-17-278, and 284-17-292.

Statutory Authority for Adoption: RCW 48.02.060, 48.17.005, and 48.17.150.

Adopted under notice filed as WSR 21-17-122 on August 17, 2021.

A final cost-benefit analysis is available by contacting David Forte, P.O. Box 40260, Olympia, WA 98504-0260, phone 360-725-7042, fax 360-586-3109, email davidf@oic.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 7, Repealed 0.

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

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

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

Date Adopted: September 28, 2021.

Mike Kreidler
Insurance Commissioner

AMENDATORY SECTION (Amending WSR 15-13-061, filed 6/10/15, effective 7/11/15)

WAC 284-17-200 Insurance continuing education—Purpose. WAC 284-17-200 through 284-17-312 establish the minimum continuing education requirements that must be met prior to the renewal of an insurance producer or adjuster license, and specify the minimum criteria that continuing education courses must meet to be approved by the commissioner.

AMENDATORY SECTION (Amending WSR 15-13-061, filed 6/10/15, effective 7/11/15)

WAC 284-17-220 Insurance continuing education required—Resident licensees. (1) Except as provided in WAC 284-17-222 or waived in accordance with WAC 284-17-254, all individual residents licensed to transact life, disability, personal lines, property, casualty or variable life and variable annuity products lines of authority must meet the continuing education requirements of this chapter.

(2) All individual residents licensed as independent adjuster, public adjuster, or crop adjuster must meet the continuing education requirements of this chapter.

AMENDATORY SECTION (Amending WSR 09-02-073, filed 1/6/09, effective 7/1/09)

WAC 284-17-222 Continuing insurance education exemptions. (~~Resident adjusters and~~) Individuals holding only limited credit insurance, travel insurance, or surety licenses are exempt from the continuing insurance education requirements of this chapter.

AMENDATORY SECTION (Amending WSR 15-13-061, filed 6/10/15, effective 7/11/15)

WAC 284-17-224 Insurance continuing education—Required credit hours—Producers and adjusters. Timely completion of this state's continuing insurance education requirement is a prerequisite for renewal or reinstatement of a license. Before applying for renewal or reinstatement of a license, except as provided in WAC 284-17-222 or waived in accordance with WAC 284-17-254, all resident producers licensed for personal lines, life, disability, property, casualty or variable life and variable annuity product lines of authority and all resident licensed adjusters must complete twenty-four credit hours of approved insurance continuing education. The twenty-four hours of education must include three credit hours of ethics education during every license continuation period.

(1) Courses must be completed within the twenty-four month period prior to the:

- (a) Expiration date of the license;
- (b) Date of late renewal; or
- (c) Date of the request for reinstatement.

(2) (~~Producers~~) Licensees must maintain each continuing education certificate of completion for three years.

(3) For producers required to complete the annuity suitability training, flood training or long-term care training, producers should maintain certificates for as long as the producer transacts business for these products, but not less than three years.

(4) Adjusters must take either property and casualty insurance related continuing education courses, or insurance claim adjusting related continuing education courses, or both.

AMENDATORY SECTION (Amending WSR 15-13-061, filed 6/10/15, effective 7/11/15)

WAC 284-17-273 Continuing insurance education attendance register. A continuing education provider must use an attendance register in the format required by the commissioner to document attendance for a classroom or webinar course. The attendance register must include the following:

- (1) Continuing education provider's name and provider number;
- (2) Course title and course number;
- (3) Location of the classroom or instructor's location for a webinar;
- (4) Signature of the instructor or monitor for a classroom course;
- (5) For a classroom course, the attendee's:
 - (a) Name and phone number;
 - (b) Washington (~~producer~~) license number;
 - (c) Arrival time;
 - (d) Signature; and
 - (e) Departure time with the attendee's initials.

An attendance register form for a classroom course is available on the insurance commissioner's web site.

- (6) For a webinar course, the attendee's:
 - (a) Name and phone number;
 - (b) Washington (~~producer~~) license number;
 - (c) Log-in time to join the class;
 - (d) Chat history and polling responses; and
 - (e) Log-out time that the attendee exited the class.

AMENDATORY SECTION (Amending WSR 16-12-034, filed 5/24/16, effective 6/24/16)

WAC 284-17-278 Approval of an insurance continuing education course. (1) An application for approval of a continuing insurance education course or a new instruction method of a previously approved course must be submitted electronically or via email to the commissioner's education mailbox no fewer than twenty days prior to the first date the course is offered for credit.

(a) If the continuing education provider does not know the first date the course will be offered at the time the provider submits the application, then if the commissioner approves the course, the provider cannot offer the course until twenty days after the commissioner receives the course application;

(b) The provider can advertise a course after the approval date, but cannot offer the course until the effective date;

(c) The commissioner will not process a new course application submitted by a provider until after the commis-

sioner has sent the provider's continuing education course renewal notice. The provider must immediately submit the continuing education course renewal request for processing. After the commissioner processes the provider's course renewal request, the commissioner will continue reviewing the provider's new course application.

(2) The request must include all of the following, as applicable:

(a) **Classroom courses:**

(i) Completed request for course and credit approval form or the National Association of Insurance Commissioners Uniform Continuing Education Reciprocity Course filing form;

(ii) Detailed course outline, including a list of topics that the continuing education provider will cover and an estimate of the amount of time the provider will spend on each topic. The commissioner will not accept video presentation slides in lieu of the detailed course outline;

(iii) Biography or resume of instructor(s); and

(iv) Sample of the attendance register form that the provider will use.

(b) **Webinar courses:**

(i) Completed request for course and credit approval form or the National Association of Insurance Commissioners Uniform Continuing Education Reciprocity Course filing form;

(ii) Detailed course outline, including a list of topics that the provider will cover and an estimate of the amount of time the provider will spend on each topic. The commissioner will not accept video presentation slides in lieu of the detailed course outline;

(iii) Biography or resume of instructor(s);

(iv) Polling questions or verification codes, including two for each credit hour of the course;

(v) Description of the process for monitoring and verifying attendance; and

(vi) Sample of the document the provider will use to record each attendee's attendance and participation.

(c) **Self-study courses:**

(i) Completed request for course and credit approval form or the National Association of Insurance Commissioners Uniform Continuing Education Reciprocity Course filing form;

(ii) Detailed course outline with word count for each chapter, section or module;

(iii) If ethics content is included, a separate word count for the ethics content;

(iv) Samples of the course reading material to assist the commissioner in determining course difficulty level;

(v) Sample of video content, if included in the course. If the course includes video exceeding fifty minutes and the information is mandatory for completing the course, one additional credit hour will be added to the course credit total;

(vi) Description of the verification process the provider will use to confirm that the licensee has completed the course study material before accessing the exam;

(vii) Resume of the course content developer showing education and work experience related to the course subject matter; and

(viii) Copy of the examination. All examination questions must be multiple choice.

(A) The provider must include a minimum of ten exam questions for a one credit hour course, with an additional five exam questions for each subsequent credit hour;

(B) To pass the exam, licensees must achieve a score of seventy percent or higher;

(C) If the licensee does not pass the first exam, the licensee must take a second exam that contains no more than fifty percent of the same questions from the first exam. If the licensee does not pass on the second attempt, the provider must alternate the exams until the licensee passes the exam.

(3) To be eligible for approval, a course must have a direct and specific application to insurance. A course about ethics or about laws and regulations specific to insurance is eligible. The subject matter should increase the ((producer's)) licensee's technical knowledge of insurance principles, insurance coverage, and insurance laws and regulations. The continuing education provider is responsible for the accuracy of facts and figures used in the course.

(4) The commissioner will not award credit for topics such as personal improvement, general education, sales, marketing, motivation, business management, time management, leadership, supportive office skills, internet use, social media use, automation, and other courses that are not directly and specifically related to insurance.

(5) Insurance prelicensing education courses are not eligible for approval for continuing insurance education credit.

AMENDATORY SECTION (Amending WSR 15-13-061, filed 6/10/15, effective 7/11/15)

WAC 284-17-292 Certificates of completion of insurance continuing education courses—Form. The form of certificate of course completion required by the commissioner is available to continuing education providers by contacting the commissioner's office. The certificate and signature may be in electronic format.

(1) The certificate must indicate that it is a Washington approved insurance continuing education course; and

(2) The certificate must include the following:

(a) Licensee's name and Washington ((producer)) license number;

(b) Course title and number;

(c) Date of course completion;

(d) Total number of credit hours and ethics credit hours if included;

(e) Continuing education provider's name and number; and

(f) Signature of the authorized designee of the provider and date.

**WSR 21-20-047
PERMANENT RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD**

[Filed September 28, 2021, 10:37 a.m., effective October 29, 2021]

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

Purpose: This proposed rule revises policy around specialty endorsements. Under this rule, teachers, administrators, and educational staff associates would be able to add a specialty endorsement to their certificate. In addition, this rule clarifies a process for adding a specialty endorsement to the state system. Currently, teacher preparation programs can offer a specialty endorsement. This rule provides a process for other organizations to apply to offer a specialty endorsement. This rule revises and updates current policy. This rule reflects the recommendations of a stakeholder workgroup convened by the professional educator standards board. This rule allows for the assets that community organizations can bring to professional learning for educators.

Citation of Rules Affected by this Order: New WAC 181-82A-210 and 181-82A-212; repealing WAC 181-82A-207; and amending WAC 181-82A-208.

Statutory Authority for Adoption: Chapter 28A.410 RCW.

Adopted under notice filed as WSR 21-15-091 on September 16 [July 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 2, Amended 1, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 2, Amended 1, 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: September 16, 2021.

Sophia Keskey
Rules Coordinator

AMENDATORY SECTION (Amending WSR 21-08-024, filed 3/29/21, effective 4/29/21)

WAC 181-82A-208 Specialty endorsements and educator certificates. (1) The following specialty endorsements may only be added to an existing endorsed (~~teaching~~) teacher certificate:

~~((1))~~ (a) Environmental and sustainability education.

~~((2))~~ (b) Teacher of the visually impaired. Upon adoption of a content knowledge assessment by the professional educator standards board, teacher of the visually impaired will be available as an endorsement. Until adoption, teacher of the visually impaired will be available as a specialty endorsement.

~~((3))~~ (c) Gifted education.

~~((4))~~ (d) Elementary mathematics specialist.

~~((5))~~ (e) Other specialty endorsements as approved by the professional educator standards board.

(2) The following specialty endorsements may be added to an existing administrator certificate, educational staff associate certificate, or endorsed teacher certificate:

(a) Elementary computer science.

(b) Secondary computer science.

(c) Other specialty endorsements as approved by the professional educator standards board.

(3) Providers approved by the professional educator standards board may recommend a candidate for a specialty endorsement to the superintendent of public instruction.

NEW SECTION

WAC 181-82A-210 Proposal process for a new specialty endorsement in Washington state. Organizations seeking the creation of a new specialty endorsement in Washington state follow a two-phase process including a preproposal and a proposal.

(1) **Preproposal.** The applicants must submit a preproposal declaring an intent to submit a proposal for the creation of a new specialty endorsement in Washington state. The preproposal will address all requirements published by the board including, but not limited to, the following. The preproposal will:

(a) Provide the name of the specialty endorsement;

(b) Identify at least two organizations submitting the proposal for the new specialty endorsement. These organizations must be eligible to serve as in-service education agencies under WAC 181-85-045;

(c) Identify the proposed essential learnings for the specialty endorsement, or describe the plan to develop the essential learnings;

(d) Describe how the specialty endorsement is aligned and responsive to the cultural competency, diversity, equity, and inclusion (CCDEI) standards under RCW 28A.410.260. Until the CCDEI standards are adopted by the board, the proposers will describe how the specialty endorsement is aligned and responsive to the cultural competency standards published by the board; and

(e) Describe the need for the specialty endorsement, demonstrating response to educator, student, and community needs.

(2) **Proposal.** If the preproposal receives approval from the professional educator standards board, the proposers shall submit a proposal. The proposal will address all requirements published by the board including, but not limited to, the following:

(a) Identify any changes to the preproposal information since the preproposal was submitted;

(b) Letter of commitment from at least two organizations interested in seeking approval to offer the specialty endorsement. If the organizations submitting letters of commitment are the same organizations who are submitting the proposal, the proposal must include at least one letter of support from an additional organization;

(c) Pilot. The proposal will include a description of the pilot of essential learnings for the specialty endorsement including, but not limited to:

(i) Report on the diversity of pilot participants;

(ii) Description of how the pilot was aligned and responsive to the cultural competency, diversity, equity, and inclusion (CCDEI) standards under RCW 28A.410.260. Until the CCDEI standards are adopted by the board, the proposers will describe how the pilot was aligned and responsive to the cultural competency standards published by the board;

(iii) Approved specialty endorsement providers may consider work completed by an individual in a specialty endorsement pilot towards meeting the requirements for recommendation for a specialty endorsement.

NEW SECTION

WAC 181-82A-212 Proposal process for an organization to be approved to offer a specialty endorsement. Organizations seeking approval to offer a specialty endorsement follow a one-phase proposal process.

(1) Organizational eligibility:

(a) Organizations eligible to apply for approval as a specialty endorsement program provider include those eligible to serve as an in-service education agency under WAC 181-85-045.

(b) In order to offer a specialty endorsement, providers must maintain status as an approved in-service education agency or professional educator standards board approved educator preparation program provider.

(2) **Proposal process.** The prospective provider will submit a proposal that addresses all requirements published by the board including, but not limited to, the following:

(a) Description of how the organization will determine that a participant has met the requirements for the specialty endorsement, including the essential learnings;

(b) Statement of need for the provider offering the specialty endorsement, demonstrating response to educator, student, and community needs;

(c) Description of strategies and practices the organization will use to recruit and retain participants from historically excluded groups, including participants of color;

(d) Description of how the provider will implement the specialty endorsement offering in a manner aligned and responsive to the cultural competency, diversity, equity, and inclusion (CCDEI) standards under RCW 28A.410.260. Until the CCDEI standards are adopted by the board, the proposer will describe how the provider will implement the specialty endorsement offering in a manner aligned and responsive to the cultural competency standards published by the board;

(e) At least two letters of support from education or community-related organizations; and

(f) Organizational capacity to support participants in completing a specialty endorsement.

(3) Reapproval, rescindment, and disapproval.

(a) Specialty endorsement program providers approved under this section must complete a reapproval process every five years per a schedule posted by the professional educator standards board.

(b) The board, upon receipt of a serious complaint from any source, or upon its own initiative prompted by indications of the need for response, may require a provider to complete the reapproval process.

(c) Approved providers that voluntarily rescind their approval shall be permitted to continue to prepare and recommend for a specialty endorsement. Candidates who have been previously admitted to the program, provided that no recommendations for credentials will be accepted later than twelve months following receipt of the formal letter to rescind provider approval. The provider will notify all currently enrolled candidates of the provider's change in status and notify candidates of the twelve-month timeline to complete requirements for recommendation.

(d) Disapproved specialty endorsement programs may reapply for approval by following the specialty endorsement approval process.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 181-82A-207 Specialty endorsement criteria.

**WSR 21-20-050
PERMANENT RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD**

[Filed September 28, 2021, 10:55 a.m., effective October 29, 2021]

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

Purpose: This proposed rule clarifies the performance standards for educational interpreters for the deaf, with standards as adopted by the professional educator standards board (PESB). This rule clarifies current policy. PESB sets standards for educational interpreters for the deaf. The standards adopted by PESB are those recommended by a stakeholder workgroup.

Citation of Rules Affected by this Order: New WAC 181-82-127.

Statutory Authority for Adoption: Chapter 28A.410 RCW.

Adopted under notice filed as WSR 21-15-090 on September 16 [July 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 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 0, Amended 0, Repealed 0.

Date Adopted: September 16, 2021.

Sophia Keskey
Rules Coordinator

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: September 16, 2021.

Sophia Keskey
Rules Coordinator

NEW SECTION

WAC 181-82-127 Educational interpreters. (1) Educational interpreters for the deaf are required to meet the performance standards adopted and published by the professional educator standards board.

(2) Educational interpreters for the deaf who have not met the performance standards under subsection (1) of this section may provide or continue providing educational interpreter services to students according to the timelines and provisions under RCW 28A.410.271.

WSR 21-20-052 PERMANENT RULES PROFESSIONAL EDUCATOR STANDARDS BOARD

[Filed September 28, 2021, 11:08 a.m., effective October 29, 2021]

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

Purpose: This proposed rule clarifies which professional educator standards board (PESB) program standards apply to school counselor and school psychologist preparation programs. School counselor and psychologist programs must continue to adhere to standards of their national accreditation bodies. In spring 2021, PESB staff convened two focus groups of school counselor and school psychologist preparation program leaders to clarify which PESB program standards apply to school counselor and school psychologist preparation programs. Through an alignment process, focus group members identified applicable gaps between the related national standards and PESB program standards. This rule reflects the workgroup's recommendations. The board has also reviewed this rule.

Citation of Rules Affected by this Order: Amending WAC 181-78A-105, 181-78A-110, 181-78A-125, 181-78A-220, 181-78A-225, 181-78A-232, and 181-78A-236.

Statutory Authority for Adoption: Chapter 28A.410 RCW.

Adopted under notice filed as WSR 21-15-092 on September 16 [July 19], 2021.

Changes Other than Editing from Proposed to Adopted Version: Amendments were made clarifying existing policy on approval for school counselor, school psychologist programs, career and technical education (CTE) business and industry route, and CTE administrator programs to ensure coherence across our WAC.

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 7, Repealed 0.

AMENDATORY SECTION (Amending WSR 21-08-023, filed 3/29/21, effective 4/29/21)

WAC 181-78A-105 Procedures for initial approval of an educator preparation program. A prospective provider desiring to establish a preparation program shall comply with the following:

(1) Notification of intent. Prospective providers must submit the appropriate form, published by the professional educator standards board, declaring an intent to apply for approval to offer an educator preparation program or a new educator certification program.

(a) The notification of intent will be posted on the board website as public notice.

(b) The board will contact the prospective provider to begin the preproposal process.

(2) Preproposal. The prospective provider will develop and submit a preproposal that addresses all requirements approved and published by the board including evidence of necessary capacity, resources, and projected sustainability of the program. After board staff verify the preproposal is complete, the preproposal will be brought to the board.

(3) Final proposal. The prospective provider may be approved to develop a final proposal or the preproposal may be denied.

(a) If denied, the provider may resubmit its preproposal informed by suggestions of the board.

(b) If the preproposal is approved by the board, the prospective provider must develop and submit a written plan which addresses all final proposal elements including domains, components, and other program approval requirements contained in chapter 181-78A WAC and published by the board, including letters of support from partner districts and/or community agencies as evidence of how the program will meet Washington educator workforce needs.

(c) Final proposals submitted by prospective providers of school counselor preparation programs shall include (~~verification of program approval~~) evidence of seeking accreditation by the council for the accreditation for counseling and related education programs.

(d) Final proposals submitted by prospective providers of school psychologist programs shall include (~~verification of program approval~~) evidence of seeking accreditation by the National Association for School (~~Psychology~~) Psychologists.

(4) After reviewing a prospective provider's final program proposal, the board may approve or deny the program approval:

(a) The program may be approved in a specific location(s) for an initial approval period of up to twenty-seven months following the beginning of instruction. The prospective provider must notify the board when instruction has begun. If initial approval is denied, the prospective provider may resubmit a revised plan informed by suggestions given by the board and its staff.

(b) School counselor and school psychologist programs: Approve the program for a time period to align with their respective national association approvals.

(5) Prior to the expiration of initial approval, staff of the board shall conduct a site visit to determine if the program is in full compliance and performance aligned with the state approval requirements. This includes a review of all applicable indicators and domain components for the type of program.

(a) The twenty-seven-month review is a formal review to evaluate recently approved educator preparation programs and consider them for continued approval.

(i) The formal review will incorporate the following elements:

(A) The board shall determine the schedule for formal reviews and the forms of documentation and validation that will be used for evaluation.

(B) Preparation program providers will submit requested evidence to the staff of the board.

(C) A review team will review the evidence and request additional information including information provided through documents and interviews with program provider staff or affiliates as needed. One board staff member will serve as chair on the review team during the review process but will not serve in an evaluative role. Additional members of the review team shall include one member of the programs professional educator advisory board, one P-12 practitioner with expertise related to the program scheduled for review, and two representatives of peer programs. Any two of these review team members, or two additional members must be identified individuals with expertise related to the domains of practice and standard components identified in annual written program feedback analyses.

(ii) The twenty-seven-month review team will use multiple data sources to address the specific goals listed in this section.

(A) The twenty-seven-month review team and the preparation program provider will use annual performance indicator data available at the time of review. Performance of programs on board approved indicators will be used by the review team to write the review report and by the board in consideration of the program's continued approval status.

(B) The twenty-seven-month review team and the preparation program provider will use evidence compiled by the provider that demonstrates performance aligned with all program standards and requirements. Programs' demonstration of upholding board approved standards and requirements will be used by the review team to write the review report and will be used by the board in consideration of continued approval status. Staff of the board will offer program providers guidance regarding the evidence required, how it may be gathered and used, and how it must be submitted.

(C) The twenty-seven-month review team and the preparation program provider will evaluate whether and to what degree the provider of the program under review has implemented the program in alignment with the goals and design for which it was approved. Fidelity to approved program designs and outcomes will be used by the review team to write the review report and by the board in consideration of continued approval status.

(D) The twenty-seven-month review team and the preparation program provider will evaluate whether and to what degree the provider of the program under review has demonstrated continuous improvement in its implementation and outcomes. Providers' ability to demonstrate continuous improvement in processes and outcomes will be used by the review team to write the review report and by the board in consideration of continued approval status.

(iii) Following the review, the review team will provide a report identifying any areas of practice in which program performance is out of alignment with standards and requirements.

(A) The report may also verify or contradict that the approved indicators or thresholds are functioning as intended.

(B) The review team's report and other appropriate documentation will be submitted to the provider and the board within six months of the formal twenty-seven-month review.

(C) Providers may submit a reply to the review team report within three weeks following receipt of the report. The board shall publish the process for submitting and reviewing the reply.

(D) In considering the review team's report, the board may request additional information for review, or take action to extend or change the educator preparation program's approval status.

(iv) Based upon the review team's report, the program provider's response, and any subsequent requests for information, as applicable, the board shall take one of the following actions:

(A) The board shall give full approval as described in WAC 181-78A-110 (1)(a).

(B) Limited approval as described in WAC 181-78A-110 (1)(b).

(C) Disapproval as described in WAC 181-78A-110 (1)(c).

(v) The board's staff may provide technical assistance to providers to help them improve their performance as described in WAC 181-78A-110 (1)(b)(iv).

(b) A provider may request a hearing in instances where it disagrees with the professional educator standards board's decision. This request must be made within twenty days from the decision date. The hearing will be conducted through the office of administrative hearings by an administrative law judge (~~per~~) under chapter 34.05 RCW. The provider seeking a hearing will provide a written request to the board in accordance with WAC 10-08-035.

AMENDATORY SECTION (Amending WSR 18-17-089, filed 8/14/18, effective 9/14/18)

WAC 181-78A-110 Approval status for existing programs. Providers will be notified of their current program approval status after each annual review period. Approval status for all programs will be published on the board website.

(1) Based upon performance thresholds, formal program review reports, and national accreditation status, as applicable, the board shall take one of the following actions:

(a) **Full approval.**

(i) Teacher and principal preparation programs: The board shall approve programs that:

(A) Maintain overall performance at or above thresholds on program performance indicators; and

(B) Meet or exceed the program approval standards and requirements established in this chapter and published by the board.

(ii) School counseling and school psychology: The board shall approve programs that:

(A) Maintain accreditation from their national accrediting organizations; and

(B) Meet or exceed the program approval standards and requirements established in this chapter and published by the board.

(iii) Superintendent programs: The board shall approve programs that meet or exceed the program approval standards and requirements established in this chapter and published by the board.

(iv) Program administrator programs: The board shall approve programs that meet or exceed the program approval standards and requirements established in this chapter and published by the board.

(v) Career and technical education administrator and business and industry route educator preparation programs: The board shall approve programs that meet or exceed the program approval standards and requirements established in this chapter and published by the board.

(b) **Limited approval.**

(i) Teacher and principal: The board may grant limited approval to educator preparation programs with performance below thresholds established by the professional educator standards board for more than three consecutive review periods. Based on the report of the site-based review team, the board may elect to consider these programs "at-risk" for purposes of federal reporting. Programs deemed "at-risk" after subsequent review periods of low performance on established thresholds, and with board consideration of the outcome of the formal review and report submitted per WAC 181-78A-100, may be granted continued limited approval with the designation of "low-performing" for purposes of federal reporting.

(ii) School counseling and school psychology: The board shall give limited approval to programs with one or more of the following:

(A) Limited approval from their national accrediting organizations.

(B) That do not meet the program approval standards and requirements established in this chapter and published by the board.

(ii) Superintendent (~~and program administrator~~): The board shall give limited approval to programs that do not meet ~~(approval criteria or national standards after being reviewed and reported on by a review team per WAC 181-78A-100(2)).~~

~~(iv)) the program approval standards and requirements established in this chapter and published by the board.~~

(iv) Program administrator: The board shall give limited approval to programs that do not meet the program approval standards and requirements established in this chapter and published by the board.

(v) Career and technical education administrator and business and industry route educator preparation programs: The board shall give limited approval to programs that do not meet the program approval standards and requirements established in this chapter and published by the board.

(vi) The board's staff may provide technical assistance to providers of low-performing preparation programs to help them improve their performance. Technical assistance may include, but is not limited to:

(A) Detailed information on the programs performance relative indicators.

(B) Assistance to address the performance and rigor of programs.

(C) Assistance to identify resources to assist program improvement.

(D) Sharing practices found effective in exemplary programs.

(c) **Disapproval.**

(i) A teacher (~~principal, superintendent~~) or (~~program~~) administrator program must be in limited approval status for at least one full review period before being considered by the board for disapproval. A provider whose program has been disapproved may request a hearing to be conducted through the office of administrative hearings under WAC 10-08-035.

(ii) Providers of school counseling programs must notify the board if the program loses approval from the council for the accreditation for counseling and related education programs or, if that program has been specifically approved to operate under alternative national standards per WAC 181-78A-225, from the relevant national organization. The board may rescind approval of the program upon receipt of this notification.

(iii) Providers of school psychology programs must notify the board if the program loses approval from the National Association of School Psychologists or, if that program has been specifically approved to operate under alternative national standards per WAC 181-78A-225, from the relevant national organization. The board may rescind approval of the program upon receipt of this notification.

(2) The board, upon receipt of a serious complaint from any source or upon its own initiative prompted by indications of the need for response, may at any time review all or any part of a preparation program for compliance with the provisions of this chapter. If deviations from standards or requirements are found, the board is authorized to change the program's current approval status, including full disapproval.

AMENDATORY SECTION (Amending WSR 21-08-023, filed 3/29/21, effective 4/29/21)

WAC 181-78A-220 Program approval standards for approved preparation programs. The board shall adopt and revise program standards that describe domains of practice, program components, and other expectations for ~~((teacher and principal))~~ educator preparation programs to align and maintain currency with recognized national association standards for the specific certificate role. The board will use national standards as guidance for determining domains, components, and indicators used for program review.

(1) General domain outcome expectations for teacher, principal, career and technical education administrator, superintendent, ~~((and))~~ program administrator, school counselor, and school psychologist preparation programs are as follows:

(a) Candidates and cohorts. Providers of educator preparation programs recruit, select, and prepare diverse cohorts of candidates with potential to be outstanding educators.

(i) Providers conduct strategic and ongoing outreach to identify, recruit, admit, support, and transition promising educator candidates.

(ii) Providers of preparation programs use strategies to recruit and prepare a greater number of candidates from underrepresented groups including, but not limited to, candidates of color in effort to prepare an educator workforce that mirrors the characteristics of the student population in Washington state public schools.

(iii) Providers set, publish and uphold admission standards to ensure that candidates and cohorts are academically capable and prepared to succeed in educator preparation programs.

(b) Knowledge, skills and cultural responsiveness. Providers prepare candidates who demonstrate the knowledge, skills and cultural responsiveness required for the particular certificate and areas of endorsement, which reflect the state's approved standards.

(i) Providers demonstrate effective, culturally responsive pedagogy using multiple instructional methods, formats, and assessments.

(ii) Providers ensure that completers demonstrate the necessary subject matter knowledge for success as educators in schools.

(iii) Providers ensure that candidates demonstrate pedagogical knowledge and skill relative to the professional standards adopted by the board for the role for which candidates are being prepared.

(iv) Providers ensure that candidates are well prepared to exhibit the knowledge and skills of culturally responsive educators.

(v) Providers ensure that teacher candidates engage with the since time immemorial curriculum focused on history, culture, and government of American Indian peoples as prescribed in RCW 28B.10.710 and WAC 181-78A-232.

(c) Novice practitioners. Providers prepare candidates who are role ready.

(i) Providers prepare candidates who are ready to engage effectively in their role and context upon completion of educator preparation programs.

(ii) Providers prepare candidates to develop reflective, collaborative, and professional growth-centered practices through regular evaluation of the effects of their teaching through feedback and reflection.

(iii) Providers prepare candidates for their role in directing, supervising, and evaluating paraeducators.

(iv) Providers require candidates to demonstrate knowledge of teacher evaluation research and Washington's evaluation requirements.

(d) State and local workforce needs. Providers contribute positively to state and local educator workforce needs.

(i) Providers partner with local schools to assess and respond to educator workforce, student learning, and educator professional learning needs.

(ii) Providers use preparation program and workforce data in cooperation with professional educator advisory boards to assess and respond to local and state workforce needs.

(iii) Providers of teacher educator preparation programs prepare and recommend increasing numbers of candidates in endorsement areas identified by the professional educator standards board workforce priorities.

(e) Data systems. Providers maintain data systems that are sufficient to direct program decision making, inform state-level priorities, and report to the professional educator standards board.

(i) Providers develop and maintain effective data systems that are sufficient for program growth, evaluation, and mandated reporting.

(ii) Providers utilize secure data practices for storing, monitoring, reporting, and using data for program improvement.

(iii) Providers produce and utilize data reports in accordance with data and reporting guidance published by the professional educator standards board.

(f) Field experience and clinical practice. Providers offer field-based learning experiences and formalized clinical practice experiences for candidates to develop and demonstrate the knowledge and skills needed for their role.

(i) Providers establish and maintain field placement practices, relationships, and agreements with all school districts in which candidates are placed for field experiences leading to certification or endorsement per WAC 181-78A-125.

(ii) Providers ensure that candidates integrate knowledge and skills developed through field experiences with the content of programs' course work.

(iii) Providers offer field experiences that are in accordance with chapter 181-78A WAC and the board approved candidate assessment requirements.

(iv) Providers ensure that candidates participate in field experiences in school settings with students and teachers who differ from themselves in race, ethnicity, home language, socio-economic status, or local population density.

(g) Program resources and governance. Providers ensure that programs have adequate resources, facilities, and governance structures to enable effective administration and fiscal sustainability.

(i) Providers ensure that programs utilize a separate ((~~administrate~~)) administrative unit responsible for the composition and organization of the preparation program.

(ii) Providers ensure the program has adequate personnel to promote teaching and learning.

(iii) Providers ensure the program has adequate facilities and resources to promote teaching and learning.

(2) General knowledge and skills standards are as follows:

(a) Teacher: The board adopts the national knowledge and skills competencies most recently published by the Council of Chief State School Officers known as the *Interstate Teacher Assessment and Support Consortium Model Core Teaching Standards and Learning Progressions for Teachers* with any additions deemed necessary by the professional educator standards board.

Endorsement competencies will be aligned with the national standards of each content area/specialized professional organization, when such a national standard is available. Currently approved endorsement standards and competencies will be published on the board website.

(b) Principal: The board adopts the national knowledge and skills competencies most recently published by the National Policy Board for Educational Administration known as the *National Educational Leadership Preparation (NELP) Standards - Building Level* with any additions deemed necessary by the professional educator standards board.

(c) Superintendent: The board adopts the national knowledge and skills competencies published by the University Council of Educational Administration known as the *National Educational Leadership Preparation (NELP) Standards - District Level* published in 2018, or as subsequently revised. ((~~Until the publication of the *National Educational Leadership Preparation (NELP) Standards - District Level* with any additions deemed necessary by the professional educator standards board.~~))

(d) Program administrator: Provider may select national knowledge and skills competencies published by the University Council of Educational Administration known as the *National Educational Leadership Preparation (NELP) Standards - Building Level* or those known as the *National Educational Leadership Preparation (NELP) Standards - District Level* with any additions deemed necessary by the professional educator standards board.

(e) School counselor: The board adopts the national knowledge and skills competencies most recently published by the Council for Accreditation of Counseling and Related Educational Programs known as the CACREP standards with any additions deemed necessary by the professional educator standards board.

(f) School psychologist: The board adopts the national knowledge and skills competencies most recently published by the National Association for School Psychologists known as the National Association for School Psychologists standards for graduate preparation of school psychologists with any additions deemed necessary by the professional educator standards board.

(g) Standards for career and technical education teacher preparation programs resulting in an initial certificate area, as

published by the professional educator standards board and as described in WAC 181-77A-165.

(h) Standards for career and technical education administrator preparation programs are as published by the professional educator standards board.

AMENDATORY SECTION (Amending WSR 19-15-144, filed 7/24/19, effective 8/24/19)

WAC 181-78A-225 Acceptance of alternative standards and additions to national standards for school counselor and school psychologist preparation programs.

(1) For a given program, the professional educator standards board may allow the substitution of alternative national standards for program approval standards for school counselor and school psychologist program approval, if they are deemed by the board to be equivalent to the board-adopted national standards for the role (WAC 181-78A-220 (2) through (5)).

(2) The professional educator standards board has deemed necessary the following additions to the standards adopted by the Council for Accreditation of Counseling and Related Educational Programs (CACREP):

WAC 181-78A-232 (1)(a) and (2)(d); 181-78A-233 (2)(c); 181-78A-234 (2)(c) and (d); 181-78A-235 (1)(b), (2)(b) and (d), (3)(b) and (c); and 181-78A-236 (1)(a), (2)(c), and (4)(a).

(3) The professional educator standards board has deemed necessary the following additions to the standards adopted by the National Association of School Psychologists (NASP):

WAC 181-78A-232 (2)(d); 181-78A-233 (2)(c); 181-78A-234 (1)(a) and (b), (2)(a), (c), and (d); 181-78A-235 (1)(b), (2)(a), (b), and (d), (3)(b) and (c); 181-78A-236 (2)(c) and (f); and 181-78A-237 (1)(b).

(4) The professional educator standards board may allow the substitution of national standards (e.g., the National Council for Accreditation of Teacher Education (NCATE) teacher education standards) for program approval with any additions deemed necessary by the professional educator standards board. National standards may also be approved for programs in specific endorsement areas if they are deemed to be equivalent to state standards.

AMENDATORY SECTION (Amending WSR 21-08-023 [21-15-084], filed 3/29/21 [7/16/21], effective 4/29/21 [8/16/21])

WAC 181-78A-232 Teacher, principal, career and technical education administrator, superintendent, and program administrator—Specific program approval domain standard—Candidate knowledge, skills, and cultural responsiveness. Knowledge, skills, and cultural responsiveness. Providers prepare candidates who demonstrate the knowledge, skills and cultural responsiveness required for the particular certificate and areas of endorsement, which reflect the state's approved standards.

(1) Providers demonstrate effective, culturally responsive pedagogy using multiple instructional methods, formats, and assessments.

(a) Qualified faculty use multiple instructional strategies, pedagogies, and assessments to address candidates' academic language ability levels and cultural and linguistic backgrounds.

(b) Providers create opportunities for faculty members and program personnel to pursue, apply, and practice ongoing professional learning to improve their knowledge, skill, effectiveness, and cultural responsiveness.

(c) Faculty within the program and the unit collaborate among one another, with content specialists, P-12 schools, members of the broader professional community, and diverse members of local communities for continuous program improvement.

(d) Faculty members and program leaders systematically and comprehensively evaluate faculty's effectiveness in teaching and learning.

(2) Providers ensure that completers demonstrate the necessary subject matter knowledge for success as educators in schools.

(a) Candidates demonstrate knowledge and competence relative to the standards related to the role adopted by the board. Providers ensure that candidates in teacher preparation programs demonstrate the most recently published InTASC Standards, candidates in principal programs demonstrate the most recently published NELP - Building Level Standards, ~~(and)~~ candidates in superintendent programs demonstrate the most recently published NELP - District Level Standards, candidates in school counselor programs demonstrate the most recently published CACREP standards, candidates in school psychologist programs demonstrate the most recently published NASP standards for graduate preparation of school psychologists, and candidates in career and technical education educator preparation programs demonstrate and document the career and technical education standards approved by the professional educator standards board.

(b) Teacher candidates must take a board approved basic skills assessment prior to program. A provider of a teacher preparation program must assure that all candidates entering the program have successfully met the basic skills requirement under chapter 181-01 WAC at the time of admission. The provider must collect and hold evidence of candidates meeting this requirement.

(c) Teacher candidates must take a content knowledge assessment prior to beginning student teaching. The provider must collect and hold evidence of candidates meeting this requirement. Teacher candidates apply content knowledge as reflected in board approved endorsement competencies. Endorsement assessments are not required for teacher candidates in career and technical education business and industry route programs.

(d) Providers ensure that educator candidates complete a course on issues of abuse and emotional or behavioral distress in students as required by RCW 28A.410.035 and WAC ~~((181-79A-030))~~ 181-79A-200.

(e) Under RCW 28A.410.040, a teacher candidate whose only baccalaureate degree is in early childhood education, elementary education, or special education must have completed thirty quarter credits, or the equivalent in semester credits or continuing education credit hours, in one academic field in an endorsement area under WAC 181-82A-202.

(f) Candidates for an initial certificate in a career and technical education residency teacher preparation program must complete a minimum of forty-five quarter credits, or the equivalent in semester credits or continuing education credit hours, in the specific career and technical education area for which certification is sought.

(3) Providers ensure that candidates demonstrate pedagogical knowledge and skill relative to the professional standards adopted by the board for the role for which candidates are being prepared.

(a) Candidates demonstrate knowledge and competence relative to the standards related to the role, which were adopted by the board. Providers ensure that candidates in teacher preparation programs demonstrate most recently published InTASC Standards, candidates in principal programs demonstrate most recently published NELP - Building Level Standards, candidates in superintendent programs demonstrate most recently published NELP - District Level Standards, candidates in school counselor programs demonstrate the most recently published CACREP standards, candidates in school psychologist programs demonstrate the most recently published NASP standards for graduate preparation of school psychologists, and candidates in career and technical education educator preparation programs demonstrate and document the career and technical education standards approved by the professional educator standards board.

(b) Faculty and mentors provide regular and ongoing feedback to candidates regarding field based performance that is actionable and leads to improvement in candidates' practice.

(c) Providers demonstrate through structured observation, discussion, surveys, and/or artifacts that program completers effectively apply the professional knowledge, skills, and dispositions that the preparation program was designed to achieve.

(d) Providers ensure that teacher candidates achieve passing scores on the teacher performance assessment, also known as the pedagogy assessment, approved by the board. Teacher preparation program providers shall require that each candidate engage in a performance assessment process approved by the board. The teacher performance assessment is not required for teacher candidates in career and technical education business and industry route programs. Candidates who participated in the teacher performance assessment field trials or took the pedagogy assessment prior to January 1, 2014, may be recommended for certification by the preparation program without a passing score.

(e) Providers of career and technical educator preparation programs provide candidates all necessary guidance to document, demonstrate, and submit for approval the required hours of occupational experience.

(f) In order to ensure that teacher and principal candidates can recognize signs of emotional or behavioral distress in students and appropriately refer students for assistance and support, teacher and principal preparation program providers must incorporate the social emotional standards and benchmarks, and must provide guidance to candidates on related competencies described in RCW 28A.410.270.

(4) Providers ensure that candidates are well prepared to exhibit the knowledge and skills of culturally responsive educators.

(a) Providers offer all candidates meaningful, reflective opportunities to interact with racially and culturally diverse colleagues, faculty, P-12 practitioners, and P-12 students and families.

(b) Providers prepare candidates to adapt their practices based on students' prior experiences, cultural knowledge, and frames of reference to make learning encounters more relevant and effective.

(c) Providers ensure course work explicitly focuses on cultural responsiveness and integrates components of culturally responsive education within and throughout all courses.

(d) Faculty explicitly model equity pedagogy in course work and ~~((practica))~~ field experiences in ways that enable candidates to integrate their own cultural and linguistic backgrounds into classroom activities.

(5) Teacher candidates engage with the since time immemorial curriculum focused on history, culture, and government of American Indian peoples as prescribed in RCW 28B.10.710.

(a) There shall be a one quarter or semester course, or the equivalent in continuing education credit hours, in either Washington state history and government, or Pacific Northwest history and government in the curriculum of all teacher preparation programs.

(b) No person shall be completed from any of said programs without completing said course of study, unless otherwise determined by the Washington professional educator standards board.

(c) Any course in Washington state or Pacific Northwest history and government used to fulfill the requirement of this section shall include information on the culture, history, and government of the American Indian peoples who were the first human inhabitants of the state and the region.

(d) Teacher preparation program providers shall ensure that programs meet the requirements of this section by integrating the curriculum developed and made available free of charge by the office of the superintendent of public instruction into existing programs or courses and may modify that curriculum in order to incorporate elements that have a regionally specific focus.

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

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

AMENDATORY SECTION (Amending WSR 21-08-023, filed 3/29/21, effective 4/29/21)

WAC 181-78A-236 Teacher, principal, career and technical education administrator, superintendent, and program administrator—Specific program approval domain standard—Field experience and clinical practice. Field experience and clinical practice. Providers offer field-based learning experiences and formalized clinical practice

experiences for candidates to develop and demonstrate the knowledge and skills needed for their role.

(1) Providers establish and maintain field placement practices, relationships, and agreements with all school districts in which candidates are placed for field experiences leading to certification or endorsement under WAC 181-78A-125.

(a) The program provider and school partners cooperatively design, implement, and evaluate field experiences and clinical practices conforming to board standards and requirements for the role.

(b) Clinical practice for teacher candidates in programs approved to offer traditional routes to teacher certification must consist of no less than four hundred fifty hours in a classroom setting, with a qualifying mentor teacher. Clinical practice for teacher candidates in programs approved to offer alternative routes to certification must consist of no less than five hundred forty hours in a classroom setting with a qualifying mentor.

(c) Principal candidates complete an internship for a full school year, consisting of at least five hundred forty hours, half of which must be during school hours when students and/or staff are present. Interning candidates must demonstrate that they have the appropriate, specific skills pursuant to the standards identified in WAC 181-78A-220 and 181-78A-232.

(d) Superintendent candidates must complete an internship of at least three hundred sixty hours. Interning candidates must demonstrate that they have the appropriate, specific skills pursuant to the standards identified in WAC 181-78A-220 and 181-78A-232.

(e) Candidates in career and technical education teacher preparation programs as described in WAC 181-77-031 must complete a student teaching experience of at least four hundred fifty hours. Candidates must demonstrate that they have the appropriate, specific skills pursuant to the standards identified in the career and technical education standards approved by the professional educator standards board.

(f) Candidates in career and technical education administrator and business and industry route programs must complete a practicum of at least sixty hours. Candidates must demonstrate that they have the appropriate, specific skills pursuant to the standards identified in the career and technical education standards approved by the professional educator standards board.

(g) Providers articulate in writing clear entry and exit criteria as well as a process for mitigating concerns during clinical practice for candidates, school leader(s), and the mentor.

(2) Providers ensure that candidates integrate knowledge and skills developed through field and industry experiences with the content of programs' course work.

(a) Providers offer field experiences in which teacher and principal candidates plan, practice, discuss, and reflect upon methods of instruction and differentiation, and all educator candidates demonstrate that they have the appropriate, specific relevant skills pursuant to WAC 181-78A-220 and 181-78A-232 to be effective in the role.

(b) Integrate assignments, assessments, and actionable feedback throughout candidates' field experiences.

(c) Provide faculty supervision, including ~~((on-site))~~ supervisory visits, on an ongoing basis.

(d) Identify and recruit mentors for candidates who are educational leaders collaboratively with the partner school(s) or district(s).

(e) Ensure that candidates' mentors are fully certificated school personnel and have a minimum of three years of professional experience in the role they are supervising.

(f) Mentors and school leaders are provided with a set of internship expectations and receive, or provide evidence of having received, training and experience mentoring adult learners and culturally responsive teaching and learning.

(g) Effectiveness of mentor preparation and communication are reviewed annually by program faculty.

(3) Providers offer field experiences in accordance with chapter 181-78A WAC and the board approved candidate assessment requirements.

(a) Ensure that educator candidates are placed in settings where they can be evaluated and given actionable feedback.

(b) Ensure that educator candidates are fingerprinted and have completed required character clearance prior to placement in field experience settings.

(4) Providers ensure that candidates participate in field experiences in school settings with students and teachers who differ from themselves in race, ethnicity, home language, socio-economic status or local population density.

(a) Field experiences provide opportunities to work in communities or with student populations with backgrounds dissimilar to the background of the candidate.

(b) Course assignments and discussions offer candidates opportunities to reflect upon interactions with diverse populations and communities in order to integrate professional growth in cultural responsiveness as a habit of practice.

(c) Candidates have opportunities to design, implement and receive feedback on cultural responsiveness in lessons, assignments, and activities.

WSR 21-20-079

PERMANENT RULES

PROFESSIONAL EDUCATOR STANDARDS BOARD

[Filed September 30, 2021, 11:23 a.m., effective October 31, 2021]

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

Purpose: This proposed rule clarifies that within both the informal and formal appeals process, the level of discipline may be changed. For example, a suspension could be changed to a reprimand or a revocation, or there could be a modification within the level of discipline. For example, there could be a modification to the length of a suspension, or to the type or amount of professional learning an educator is required to complete. This rule clarifies current policy. This policy has long acted in this way at the informal appeals level, and this clarifies that it acts in the same way at the formal appeals level.

Citation of Rules Affected by this Order: Amending WAC 181-86-145 and 181-86-150.

Statutory Authority for Adoption: Chapter 28A.410 RCW.

Adopted under notice filed as WSR 21-15-089 on September 16 [July 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 2, Repealed 0.

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

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

Date Adopted: September 16, 2021.

Sophia Keskey
Rules Coordinator

AMENDATORY SECTION (Amending WSR 21-08-022, filed 3/29/21, effective 4/29/21)

WAC 181-86-145 Appeal procedure—Informal SPI review. Any person who appeals the decision or order to deny their application, the issuance of a reprimand, or the order to suspend or revoke their certificate must file a written notice with the superintendent of public instruction within thirty calendar days following the date of postmarked mailing or other notification, whichever is earlier, from the section of the superintendent of public instruction's office responsible for certification of the decision or order. A written notice of appeal is deemed filed upon actual receipt during office hours by the section of the superintendent of public instruction's office responsible for certification of the decision or order.

The written notice must set forth the reasons why the appellant believes their application should have been granted or why their certificate should not be suspended or revoked, or why the reprimand should not be issued whichever is applicable.

Following timely notice of appeal, the superintendent of public instruction shall appoint a review officer who shall proceed as follows:

(1) If the appeal does not involve good moral character, personal fitness, or unprofessional conduct, the review officer shall review the application and appeal notice and may request further written information including, but not limited to, an explanation from the person or persons who initially reviewed the application of the reason(s) why the application was denied. If the review officer deems it advisable, they shall schedule an informal meeting with the appellant, the person or persons who denied the application, and any other interested party designated by the review officer to receive oral information concerning the application. Any such meeting must be held within thirty calendar days of the date of

receipt by the superintendent of public instruction of the timely filed appeal notice.

(2) If the appeal involves good moral character, personal fitness, or acts of unprofessional conduct, the review officer shall schedule an informal meeting of the applicant or education practitioner, the office of superintendent of public instruction, and/or counsel for the applicant or education practitioner with the admissions and professional conduct advisory committee. Such meeting shall be scheduled in accordance with the calendar of meetings of the advisory committee. However, the notice of appeal must be received at least thirty calendar days in advance of a scheduled meeting.

(3) Send by certified mail a written decision (i.e., findings of fact and conclusions of law) on the appeal within thirty calendar days from the date of post-marked mailing the timely filed appeal notice or informal meeting, whichever is later. The review officer may (~~uphold, reverse, or~~) modify the decision to deny the application, the order to reprimand, or the order to suspend or revoke the certificate. Modifying the decision may include upholding, reversing, decreasing, or increasing the discipline, including changing the level of discipline imposed.

(4) The timelines stated herein may be extended by the review officer for cause.

(5) In the case of an action for suspension or revocation of a certificate, the review officer, if so requested by an appellant, shall delay any review under this section until all quasi-judicial administrative or judicial proceedings (i.e., criminal and civil actions), which the review officer and the appellant agree are factually related to the suspension or revocation proceeding, are completed, including appeals, if the appellant signs the agreement stated in WAC 181-86-160. In requesting such delay, the appellant shall disclose fully all pending quasi-judicial administrative proceedings in which the appellant is involved.

(6) Forms of written notice accepted will be as published by the superintendent of public instruction.

AMENDATORY SECTION (Amending WSR 21-08-022, filed 3/29/21, effective 4/29/21)

WAC 181-86-150 Appeal procedure—Formal SPI review process. Formal appeals to the superintendent of public instruction shall be provided as follows:

(1) Any person who has filed an appeal in accordance with WAC 181-86-140 and desires to have the decision of the review officer formally reviewed by the superintendent of public instruction may do so. To instigate review under this section, a person must file a written notice with the superintendent of public instruction within thirty calendar days following the date of post-marked mailing of the review officer's written decision. A written notice of appeal is deemed filed upon actual receipt during office hours by the section of the superintendent of public instruction's office responsible for certification of the decision or order.

(2) For purposes of hearing an appeal under this section, the superintendent of public instruction shall conduct a formal administrative hearing in conformance with the Administrative Procedure Act, chapter 34.05 RCW. The superintendent of public instruction, in carrying out this duty, may con-

tract with the office of administrative hearings under RCW 28A.300.120 to hear a particular appeal. Decisions in cases formally appealed under this section may be made by the administrative law judge selected by the chief administrative law judge if the superintendent of public instruction delegates this authority under RCW 28A.300.120.

(3) The decision of the superintendent of public instruction or the administrative law judge, whichever is applicable, shall be sent by certified mail to the appellant's last known address and if the decision is to reprimand, suspend, or revoke, the appellant shall be notified that such order takes effect upon signing of the final order.

The superintendent of public instruction or the administrative law judge, whichever is applicable, may (~~uphold, reverse, or~~) modify the decision to deny the application, the order to reprimand, or the order to suspend or revoke the certificate. Modifying the decision may include upholding, reversing, decreasing, or increasing the discipline, including changing the level of discipline imposed.

(4) Forms of written notice accepted will be as published by the superintendent of public instruction.

WSR 21-20-083

PERMANENT RULES

OFFICE OF THE

CORRECTIONS OMBUDS

[Filed September 30, 2021, 1:44 p.m., effective October 31, 2021]

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

Purpose: Rules implementing Public Records Act for the office of the corrections ombuds.

Citation of Rules Affected by this Order: New WAC 138-12-010 through 138-12-080.

Statutory Authority for Adoption: RCW 42.56.040, 42.56.070, 34.05.310 - [34.05.]395.

Adopted under notice filed as WSR 21-17-025 on August 6, 2021.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 8, 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 8, 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: September 30, 2021.

Joanna Carns
Director

Chapter 138-12 WAC

PUBLIC RECORDS ACCESS

NEW SECTION

WAC 138-12-010 Authority and purpose. (1) The office of the corrections ombuds serves the purpose of providing information to incarcerated individuals and their families; promoting public awareness and understanding of the rights and responsibilities of incarcerated individuals; identifying system issues and responses for the governor and the legislature to act upon; and ensuring compliance with relevant statutes, rules, and policies pertaining to corrections facilities, services, and treatment of incarcerated individuals under the jurisdiction of the department. The administrative office of the corrections ombuds and its staff are located at 2700 Evergreen Parkway N.W., Olympia, Washington 98505.

(2) The purpose of these rules is to establish the procedures the ombuds 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 ombuds office and establish processes for both requestors and ombuds office staff that are designed to best assist members of the public in obtaining such access.

NEW SECTION

WAC 138-12-020 Contact information—Public records officer. The public records officer for the ombuds shall be responsible for responses to requests for public records. Any person wishing to request access to public records of the corrections ombuds office, or seeking assistance in making such a request should contact the public records officer of the ombuds office:

Public Records Officer
 Corrections Ombuds Office
 2700 Evergreen Parkway N.W.
 Olympia, WA 98505
 email: OCOPDR@gov.wa.gov

Information and public records are also available at the ombuds office website at <https://oco.wa.gov/>. Requestors are encouraged to view the information and records available on the website prior to contacting the records officer.

NEW SECTION

WAC 138-12-030 Availability of public records. (1) **Hours for inspection of records.** Public records are available for inspection and copying by appointment during normal business hours of the ombuds office, Monday through Friday, 9:00 a.m. to 4:00 p.m., excluding legal holidays. Original records must be inspected at the ombuds office. A requestor shall not take ombuds office records from ombuds offices without the permission of the public records officer or designee.

(2) **Records index and records available online.** An index of public records is available for use by members of the public. The index may be accessed online at <https://oco.wa.gov/>.

[gov/](https://oco.wa.gov/). A variety of records is also available on the ombuds office website.

(3) **Making a request for public records.**

(a) Any person wishing to inspect or obtain copies of public records of the ombuds office should make the request in writing by letter or email addressed to the public records officer. Records requests should include the following information:

- Name of requestor;
- Address of requestor;
- Other contact information, including telephone number and email address;
- Identification of the public records adequate for the public records officer or designee to locate the records; and
- The date and time of day of the request.

(b) If the requestor wishes to retain photocopies or electronic versions of nonelectronic records instead of simply inspecting them, he or she should so indicate and make arrangements to pay for copies of the records. A deposit may be required prior to the office's collection of the records requested. Pursuant to WAC XXX.

NEW SECTION

WAC 138-12-040 Processing of public records requests—General. (1) **Order of response.** 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) **Acknowledging receipt of request.** Within five business days of receipt of the request, the public records officer will do one or more of the following:

- (a) Make the records available for inspection or copying; or
- (b) If copies or scanned records are requested and terms of payment are met, send the copies to the requestor;
- (c) Provide a reasonable estimate of when records will be available; or
- (d) If the request is unclear or does not sufficiently identify the requested records, request clarification from the requestor. Such clarification may be requested and provided by telephone. The public records officer or designee may revise the estimate of when records will be available; or
- (e) Deny the request.

(3) **Clarifications.**

(a) If a requestor fails to respond to a request to clarify the request and the entire request is unclear, the request may be closed without further action.

(b) If portions of the request are clear, those portions of the request will be processed.

(4) **Failure to respond.** If the ombuds does not respond in writing within five business days of receipt of the request for disclosure, the requestor should consider contacting the public records officer to determine the reason for the failure to respond.

(5) **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 dis-

closure. Such notice should be given so as to make it possible for those other persons to contact the requestor and ask him or her to revise the request, or, if necessary, seek an order from a court to prevent or limit the disclosure. The notice to the affected persons will include a copy of the request.

(6) **Records exempt from disclosure.** Some records are exempt from disclosure, in whole or in part. If the ombuds office believes that a record is exempt from disclosure and should be withheld in whole or in part, the public records officer will state the specific exemption and provide a brief explanation of why the record or a portion of the record is being withheld or redacted. 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.

(7) **Inspection of records.**

(a) Consistent with other demands, the ombuds office shall promptly provide space to inspect public records. No member of the public may remove a record from the viewing area or disassemble or alter any record. The requestor shall indicate which documents he or she wishes the agency to copy.

(b) The requestor must claim or review the assembled records within thirty days of the ombuds office notification to him or her that the records are available for inspection. The agency will notify the requestor in writing of this requirement and inform the requestor that he or she should contact the agency to make arrangements to claim or review the records. If the requestor or a representative of the requestor fails to claim or review the records within the thirty-day period or make other arrangements, the ombuds office 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.

(8) **Providing copies of records.** After inspection is complete, the public records officer or designee shall make the requested copies or arrange for copying.

(9) **Providing records in installments.** When the request is for a large number of records or records requiring extensive review for confidential information, the public records officer or designee will provide access for inspection and copying in installments, if he or she reasonably determines that it would be practical to provide the records in that way. If, within thirty days, the requestor fails to inspect the entire set of records or one or more of the installments, the public records officer or designee may stop searching for the remaining records and close the request.

(10) **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 that the ombuds office has completed a diligent search for the requested records and made any located nonexempt records available for inspection.

(11) **Closing withdrawn or abandoned request.** When the requestor either withdraws the request or fails to fulfill his or her obligations to inspect the records or pay the deposit or final payment for the requested copies, the public records

officer will close the request and indicate to the requestor that the ombuds office has closed the request.

(12) **Later discovered records.** If, after the ombuds office has informed the requestor that it has provided all available records, the ombuds office becomes aware of additional responsive records existing at the time of the request, it will promptly inform the requestor of the additional documents and provide them on an expedited basis.

(13) Detailed policy can be found on office website at <https://oco.wa.gov/>.

NEW SECTION

WAC 138-12-050 Processing of public records requests—Electronic records. (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 will provide the nonexempt records or portions of such records that are reasonably locatable in an electronic format that is used by the agency and is generally commercially available, or in a format that is reasonably translatable from the format in which the agency keeps the record.

NEW SECTION

WAC 138-12-060 Exemptions. (1) The Public Records Act provides that a number of types of records are exempt from public inspection and copying. In addition, records are exempt from disclosure if any "other statute" exempts or prohibits disclosure. Requestors should be aware of the following exemptions, outside the Public Records Act, that restrict the availability of some records held by ombuds office for inspection and copying: RCW 43.06C.060, corrections ombuds confidentiality provisions.

(2) The ombuds office is prohibited by statute from disclosing lists of individuals for commercial purposes.

NEW SECTION

WAC 138-12-070 Costs of providing copies of public records. (1) **Copying fees - Payments.** The following copy fees and payment procedures apply to requests to the office under chapter 42.56 RCW and received on or after July 23, 2017.

(2) Pursuant to RCW 42.56.120 (2)(b), the office is not calculating all actual costs for copying records because to do so would be unduly burdensome for the following reasons:

(a) The office does not have the resources to conduct a study to determine all its actual copying costs;

(b) To conduct such a study would interfere with other essential agency functions; and

(c) Through the 2017 legislative process, the public and requestors have commented on and been informed of authorized fees and costs, including for electronic records, provided in RCW 42.56.120 (2)(b) and (c), (3), and (4).

(3) The office will charge for copies of records pursuant to the default fees in RCW 42.56.120 (2)(b) and (c). The office will charge for customized services pursuant to RCW 42.56.120(3). Under RCW 42.56.130, the office may charge

other copy fees authorized by statutes outside of chapter 42.56 RCW. The office may enter into an alternative fee agreement with a requestor under RCW 42.56.120(4). The charges for copying methods used by the office are summarized in the fee schedule available on the office's website at <https://oco.wa.gov/>.

(4) Requestors are required to pay for copies in advance of receiving records. Fee waivers are an exception and are at the discretion of the public records officer.

(5) The public records officer may require an advance deposit of ten percent of the estimated fees when the copying fees for an installment or an entire request, or customized service charge, exceeds twenty-five dollars.

(6) All required fees must be paid in advance of release of the copies or an installment of copies, or in advance of when a deposit is required. The office will notify the requestor of when payment is due.

(7) Payment should be made by check or money order to the ombuds office. The office prefers not to receive cash. For cash payments, it is within the public records officer's discretion to determine the denomination of bills and coins that will be accepted.

(8) The office will close a request when a requestor fails by the payment date to pay in the manner prescribed for records, an installment of records, or a required deposit.

NEW SECTION

WAC 138-12-080 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 director of the ombuds office. The petition will be affirmed or reversed within five business days following the ombuds office receipt of the petition, or within such other time as the ombuds office and the requestor mutually agree.

(3) **Review by the attorney general's office.** Pursuant to RCW 42.56.530, if the ombuds office 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 21-20-101

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed October 4, 2021, 7:17 a.m., effective November 4, 2021]

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

Purpose: This rule making order amends chapter 16-302 WAC, General rules for seed certification by:

- Changing the requirement for Ascochyta Blight being found anywhere on the plant to just being found on the pod;
- Allowing producers for all classes of chickpea seed to not treat for Ascochyta Blight if they have a waiver for the organic market (and/or research) and no Ascochyta Blight was found during inspection;
- Removing the additional Ascochyta Blight treatment requirement for the certified class of chickpea seed, if a grower has already applied a fungicide during the growing season and Ascochyta Blight was not found during the field inspection. This amendment would also remove the requirement for a second inspection if Ascochyta Blight is found during the field inspection and instead allow the certifying agency to determine if a second inspection is necessary;
- Standardizing how varieties containing the Clearfield and AXigen traits are certified;
- Reducing the tolerance of triticale in wheat to "None Found";
- Moving the reference to rye, in regards to triticale tolerance, out of the footnote and into the table;
- Adopting the current hemp seed certification rules established by the Association of Official Seed Certifying Agencies; and
- Replacing references to 'industrial hemp' with 'hemp' to align with the Federal Seed Act.

Citation of Rules Affected by this Order: New WAC 16-302-870, 16-302-875, 16-302-880, 16-302-885, 16-302-890, 16-302-895, 16-302-900, 16-302-905, 16-302-910, 16-302-915, 16-302-920, 16-302-925, 16-302-930, 16-302-935 and 16-302-940; and amending WAC 16-302-560, 16-302-685, 16-302-690, 16-302-840, 16-302-845, 16-302-850, 16-302-855, 16-302-860, and 16-302-865.

Statutory Authority for Adoption: RCW 15.49.005, [15.49].021, [15.49].310, [15.49].370, and 15.140.030.

Adopted under notice filed as WSR 21-16-108 on August 4, 2021.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 6, 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 3, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 15, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 9, 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: October 1, 2021.

Derek I. Sandison
Director

AMENDATORY SECTION (Amending WSR 18-10-055, filed 4/27/18, effective 5/28/18)

WAC 16-302-560 Miscellaneous field and seed inspection standards for buckwheat, chickpea, field pea, lentil, millet, soybean, sorghum, small grain seed certification. (1) Field inspection timing for buckwheat, chickpea, field pea, lentil, millet, soybean, sorghum, small grain seed entered in the certification program are:

(a) For field pea and lentil - When seed crop is in full bloom;

(b) For chickpea (garbanzo bean) - When seed crop is mature enough to differentiate leaf type (compound or simple leaf type), with a second inspection occurring between full bloom and late pod stage for registered and foundation class. Certified class (~~requires~~) may be subject to a second inspection at the discretion of the certifying agency at late pod stage if ascochyta blight is observed during the first inspection and the crop has been treated with an EPA-approved fungicide;

(c) For soybean - When seed crop is in full bloom and of mature color;

(d) For open pollinated sorghum - When seed crop is in full bloom, and optionally again when seed crop begins to show mature color;

(e) For hybrid sorghum - Two inspections during bloom and one inspection after seed begins to show mature color;

(f) For small grains - When seed crop is fully headed and of mature color;

(g) For millet - One inspection during bloom and one inspection after seed begins to show mature color; and

(h) For buckwheat - One inspection when seed crop is in full bloom.

(2) Any condition or practice which permits or causes contamination of the seed crop, such as failure to prevent seed formation of prohibited noxious weeds, or excess weeds including excessive objectionable or restricted noxious weeds, or mechanical field mixing, is cause for rejection upon inspection. Fields rejected for jointed goatgrass or jointed goatgrass hybrids are not eligible for reinspection and must remain ineligible for any production of certified classes of small grain seed until a reclamation procedure, as specified in subsection (3) of this section has been completed. Fields rejected for other causes will remain eligible for reinspection.

(3) The jointed goatgrass reclamation procedure includes the following:

(a) Each grower must develop a reclamation plan for his/her affected fields. The plan must be based on the most current recommendations of Pacific Northwest scientists and Washington State University cooperative extension as well as good management practices. The plan may include use of certified seed, spring cropping practices, and late tilling and planting. No particular program is specified or endorsed and compliance with a program does not assure eligibility for the production of certified classes of small grain seed. Eligibility

is based solely upon results of field inspections as provided in (b) through (e) of this subsection.

(b) The rehabilitation and inspection program duration is three years for irrigated land and five years for dryland without production of certified small grain seed and the first year of certified seed production thereafter.

(c) Annual inspections of the affected fields are conducted by the certifying agency during the prescribed rehabilitation period at such time that the jointed goatgrass or jointed goatgrass hybrids would be most visible.

(d) Following the prescribed period of rehabilitation and during the first certified seed production year, a minimum of three field inspections are conducted by the certifying agency.

(e) If jointed goatgrass or jointed goatgrass hybrids are found during any inspection as provided in (c) and (d) of this subsection, the rehabilitation program is determined unsuccessful or the field is declared ineligible and the rehabilitation and inspection program for that field must begin again at year one of the procedure.

(4) Field run lots of seed of the same variety may be commingled to facilitate storage and conditioning.

(5) No prohibited noxious weed seeds are permitted upon inspection for seed standards.

(6) Germination minimum refers to germination when sampled.

(7) If chemically controllable seed-borne diseases are noted upon inspection for field standards and seed standards for small grains, treatment of seed is required.

(8) Wild oat, isolated patches and borders must be removed or clearly marked so as to avoid harvesting with the rest of the field. If rejected, a reinspection is necessary to assure clean-up efforts are satisfactory. Spot checks are conducted on fields where heavy patches or contaminated borders were noted. Harvesting these areas with the rest of the field is cause for rejection of the entire field.

(9) The official laboratory providing seed analysis for the purpose of certification is the department.

(10) For all fields planted with varieties that contain the CLEARFIELD trait as defined in the variety description, documentation will be required to be submitted with the certification application verifying that the production field meets all production guidelines and was sprayed with the appropriate herbicide. CLEARFIELD is a trait that makes a plant resistant to the Imazamox herbicide.

(11) For all fields planted with varieties that contain the AXigen trait as defined in the variety description, documentation will be required to be submitted with the certification application verifying that the production field meets all production guidelines and was sprayed with the appropriate herbicide. AXigen is a trait that makes a plant resistant to Aggressor® (Quizalofop-P-ethyl) brand herbicide.

AMENDATORY SECTION (Amending WSR 14-20-050, filed 9/25/14, effective 10/26/14)

WAC 16-302-685 Small grains standards for seed certification. (1) Land, isolation, and field standards for small grains (barley, oat, rye, triticale, and wheat) seed certification are:

LAND, ISOLATION, AND FIELD STANDARDS

CLASS	LAND STANDARDS MINIMUM YEARS	ISOLATION STANDARDS MINIMUM FEET	OFF-TYPE MAXIMUM HEAD RATIO	OTHER CROP MAXIMUM HEAD RATIO	((FRITICALE PLANTS PER ACRE IN BARLEY, WHEAT, AND OAT))	WILD OAT MAXIMUM PLANTS/ACRE
Foundation	2 (a)	50 same genus (b) 3 different genus	None found	None found (c), (d)	((None found (d)))	None found
Registered	1 (a)	10 same genus 3 different genus (b)	1/148,000	1/148,000 (c)	((None found (d)))	5
Certified	1 (a)	10 same genus 3 different genus (b)	1/49,000	1/49,000 (c)	((None found (d)))	5

- (a) Waived if the previous crop is grown from an equal or higher certified class of seed of the same variety.
- (b) Each rye field for certification must be isolated by three feet from fields producing a certified class of the same variety, and by six hundred sixty feet from other rye fields. Each triticale field for certification must be isolated by three feet from fields producing a certified class of the same variety, and by three hundred feet from other triticale, rye and wheat fields for foundation and registered class, and ten feet for certified class, unless otherwise stated by the plant breeder.
- (c) Refers to other small grains, except that no rye or triticale is permitted in barley, oat, or wheat; and no vetch is permitted in barley, oat, rye, triticale, or wheat.
- (d) Only one reinspection is allowed for foundation fields when triticale is found in the first inspection. Additional inspections are allowed if the field is downgraded to the registered or certified class.

(2) Small grains - Seed standards:

For CLEARFIELD and CoAXium varieties: For all classes - Each lot must pass ~~((the CLEARFIELD Confirm test by))~~ bioassay or PCR as defined by the trait owner. ~~((The CLEARFIELD Confirm test verifies that the seed is resistant to the Imazamox herbicide.))~~

Class	Foundation	Registered	Certified
Pure seed % (minimum)	98	98	98
Inert % (maximum)	2	2	2
Off-type (a) % (maximum)	None found	2/lb	4/lb
Other small grain excluding triticale and rye (a) (maximum)	None found	1/lb	2/lb
Triticale allowed in wheat ((+)) and rye	None found	None found	((1/1000 grams)) None found
Triticale allowed in oats and barley	None found	None found	1/lb
Other crop (b) % (maximum)	None found	0.03	0.05
Weed seed % (maximum)	0.01	0.01	0.03
Objectionable weed seed (c) (maximum)	None found	None found	None found
Wild oat (maximum)	None found	None found	None found (d)
Viability (e) % (minimum)	85	85	85

- (a) The combination of other small grain and off-type must not exceed 2/lb for registered class, and 4/lb for certified class. The tolerance for rye is none found in barley, oat, triticale, or wheat. ~~((The tolerance for rye is none found in triticale. The tolerance for triticale is none found in rye.))~~
 - (b) Excluding off-type and other small grain. No vetch is allowed in small grain seed.
 - (c) Excluding wild oat.
 - (d) 1/lb for certified class oat.
 - (e) A certification certificate is issued upon receipt of either an official AOSA tetrazolium or germination test which meets minimum Washington viability standards. NOTE: State and federal seed laws require seed be labeled based on a germination test.
- ~~((f In wheat, the foundation standard is based on a 1000 gram crop exam. The registered standard is based on a 500 gram crop exam. The certified standard is based on a 500 gram crop exam. If one triticale seed is found in 500 grams, a second 500 gram crop exam is required for a total 1000 gram crop exam. No triticale is allowed in the second 500 grams with the total standard of 1 triticale seed per 1000 grams allowed.))~~

Note: For all classes the purity analysis is based on 100 grams examined. For registered and certified classes, noxious weed, vetch, off-type, and other small grain determinations are based on 500 grams ~~((examined except as allowed in footnote (f) of this subsection))~~. For foundation class, noxious weed, vetch, off-type, and other small grain determinations are based on 1000 grams examined.

AMENDATORY SECTION (Amending WSR 18-10-055, filed 4/27/18, effective 5/28/18)

WAC 16-302-690 Chickpea standards for seed certification. (1) Land, isolation, and field standards for chickpea seed certification are:

FIELD STANDARDS

Land Requirements (a) (minimum years)	Isolation (min- imum feet) ((e)) (b)	Off-type (plants/acre)	<u>Inseparable</u> <u>Other Crop</u> ((b)) (plants/acre))	Noxious (c) Weeds (plants/acre)	<u>Pods with</u> <u>Ascochyta</u> <u>Blight</u> (d)
Class					
Foundation	2	25	none found	(c)	none found
Registered	1	10	5	(c)	none found
Certified	1	10	10	(c)	10 plants/acre

- ~~((a) Waived if the previous crop is grown and passes certification field standards of equal or higher certified class of seed of the same variety.~~
- ~~(b) Inseparable other crops.~~
- ~~(c) Prohibited, restricted, and other weeds difficult to separate must be controlled.~~
- ~~(d) None found in all classes of varieties not tolerant to ascochyta.~~
- ~~(e) Reduce to three feet from fields producing a certified class of the same variety. In addition, each chickpea field for certification must be isolated by three feet from small grain fields. To prevent mechanical field mixing of swathed chickpea seed crop, the planting of small grain between fields, except for three feet of isolation, is recommended.)~~
- (a) Waived if the previous crop is grown and passes certification field standards of equal or higher certified class of seed of the same variety.
- (b) Reduce to three feet from fields producing the same variety. In addition, each chickpea field for certification must be isolated by three feet from small grain fields. To prevent mechanical field mixing of swathed chickpea seed crop, the planting of small grain between fields, except for three feet of isolation, is recommended.
- (c) Prohibited, restricted, and other weeds difficult to separate must be controlled.
- (d) If an EPA-approved product for control of Ascochyta rabiei (ascochyta blight) was applied according to labeled rate during the growth cycle, and followed by additional application(s) if infection is found at field inspection, there is no standard to apply in certified class fields.

(2) Seed standards for chickpea seed certification are:

SEED STANDARDS

	Pure seed %	Inert %	Other Crop	Weed Seed	Germination %
Class ((e)) (a)					
Foundation	99	1	none found	none found	85
Registered	99	1	none found	none found	85
Certified ((d))	99	1	2 seeds/lb ((a)) (b)	2 seeds/lb ((b)) (c)	85

- ~~((a) None found for Austrian pea, rye, or vetch.~~
- ~~(b) None found for nightshade berries or prohibited noxious weed seeds.~~
- ~~(c) All classes of varieties not tolerant to ascochyta must be treated with a fungicide registered to control ascochyta at the labeled rate.~~
- ~~(d) Seed from a field where ascochyta was found at inspection must be treated with a fungicide registered to control ascochyta at the labeled rate.)~~
- (a) All classes must be treated with a fungicide registered to control ascochyta blight at the labeled rate. A seed treatment waiver can be obtained if no ascochyta blight was observed at field inspection. This is an allowance for seed intended for organic markets and/or research.
- (b) None found for Austrian pea, rye, or vetch.
- (c) None found for nightshade berries or prohibited noxious weed seeds.

Standards for ~~((Industrial))~~ Hemp ~~((Seed))~~ Certification

AMENDATORY SECTION (Amending WSR 17-08-090, filed 4/5/17, effective 5/6/17)

WAC 16-302-840 ~~((Standards for industrial hemp seed production.))~~ Hemp (Cannabis sativa L. subsp. sativa) certification standards. (1) ~~((The general seed certification definitions and standards in this chapter are basic and together with WAC 16-302-845 through 16-302-865 constitute the standards for industrial hemp seed certification.~~

~~(2) Fees for seed certification are assessed as established in chapter 16-303 WAC.~~

~~(3) All growers of industrial hemp certified seed crops are required to be licensed under the department's industrial hemp licensing rules adopted under chapter 15.120 RCW.~~

(4) The general requirements for seed certification found in WAC 16-302-005 through 16-302-130 of the genetic and crop standards apply to (are basic) all crops, and together with the following specific standards, constitute the certified hemp standards.

(2) The genetic and crop standards are modified as follows:

(a) All production of hemp crops are subject to license application approval under the department's hemp licensing rules adopted under chapter 15.140 RCW.

(b) Only varieties of ~~((industrial))~~ hemp approved by the ~~((department))~~ association of official seed certifying agencies shall be eligible for certification. ~~((An approved variety must be a variety recognized by an international organization recognized by the department, such as the association of official seed certifying agencies or the organization for economic cooperation and development (OECD) seed scheme.~~

~~(5))~~ (c) The allowable area of ~~((an industrial hemp seed crop area or seed production field))~~ hemp production may be determined ~~((and limited))~~ by the department under the terms of rules adopted under chapter ~~((15.120))~~ 15.140 RCW.

~~((6))~~ All industrial hemp fields established for seed certification shall be planted with thirty inch row spacing to facilitate inspection, roguing, and harvesting.

(7) Growers must post signage approved by the department on at least four sides, including the main entry point of each authorized field.

~~(8))~~ (d) Growers are required to obtain tetrahydrocannabinol (THC) test results as required by ~~((rules adopted under))~~ chapter ~~((15.120 RCW))~~ 16-306 WAC.

(e) Fees for seed certification are assessed as established in chapter 16-303 WAC.

AMENDATORY SECTION (Amending WSR 17-08-090, filed 4/5/17, effective 5/6/17)

WAC 16-302-845 Definitions specific to ~~((industrial))~~ hemp ~~((seed production))~~ certification standards. ~~(("Dioecious type" means a type of industrial hemp that has male and female flowers on separate plants.~~

~~(("Industrial hemp" means all parts and varieties of the genera Cannabis, cultivated or possessed by a grower, whether growing or not, that contain a THC concentration of 0.3 percent or less by dry weight. Industrial hemp does not include plants of the genera Cannabis that meet the definition of "marijuana" as defined in RCW 69.50.101.~~

~~(("Industrial hemp seed production" means an industrial hemp seed production field established with an appropriate generation of certified seed intended to produce a subsequent generation of certified seed.~~

~~(("Monoecious type" means a type of industrial hemp that has male and female flowers on the same plant.~~

~~(("Too male" means an intersexual plant that exceeds the ratio of male and female flowers as described in the variety description.~~

~~(("Unisexual female" means a monoecious type of industrial hemp plant that has sterile male and fertile female flowers.~~

~~(("Unisexual female hybrid" means a hybrid where the A line is a unisexual female type and the B line produces male fertile flowers.))~~ "Approved cultivar" means any variety designated as eligible for production by federal or state regulatory authorities.

"Hemp" (Cannabis sativa L. subsp. sativa) includes varieties of these kinds:

(a) Dioecious type: With male and female flowers on separate plants.

(b) Monoecious type: With male and female flowers on the same plant.

(c) Hybrids (unisexual female): With sterile male and fertile female flowers on the same plant.

Note: Although traditionally a crop with a dioecious plant type, many monoecious varieties of hemp (Cannabis sativa L. subsp. sativa) have been developed. Hemp is sexually polymorphic and often produces many different ratios of intersexual plant types that can increase roguing requirements. Variety descriptions normally define these ratios.

"Hemp seed production" means a hemp seed production field established with an appropriate generation of certified seed intended to produce a subsequent generation of certified seed.

"THC" means delta-nine ($\Delta 9$) tetrahydrocannabinol, which is the component of hemp regulated by federal or state regulatory authorities.

"Variety" means a subdivision of a kind that is distinct, uniform, and stable; "distinct" in the sense that the variety can be differentiated by one or more identifiable morphological, physiological, or other characteristics from all other varieties of public knowledge; "uniform" in the sense that variations in essential and distinctive characteristics are describable; and "stable" in the sense that the variety will remain unchanged in its essential and distinctive characteristics and its uniformity when reproduced or reconstituted as required by the different categories of varieties.

"Volunteer plant" means an industrial hemp plant that was not intentionally planted and results from a previous crop.

AMENDATORY SECTION (Amending WSR 17-08-090, filed 4/5/17, effective 5/6/17)

WAC 16-302-850 Land requirements for ~~((industrial))~~ hemp ~~((seed))~~ certification standards. Land requirements for the production of ~~((an industrial))~~ a hemp seed crop are as follows:

(1) ~~((Crops must not be planted on land where foreseeable volunteer growth from a previous crop may cause contamination detrimental to certification.~~

(2) ~~((Fields for foundation and registered classes must not be planted on land which in the previous five years grew a different crop of industrial hemp or marijuana.~~

(3) ~~((Crops for certified class must not be planted on land which in the previous three years produced a crop of industrial hemp or marijuana.))~~ Hemp crops for foundation and registered classes must not be grown on land which in any of the preceding three years produced a crop of hemp.

(2) Hemp crops for certified classes must not be grown on land which:

(a) In the preceding year produced a certified crop of the same variety.

(b) In either of the preceding two years produced a non-certified crop of hemp or a different variety of hemp.

(3) Weeds: The presence of broomrape (Orobancha spp.) in hemp crops is cause for declining certified status.

AMENDATORY SECTION (Amending WSR 17-08-090, filed 4/5/17, effective 5/6/17)

WAC 16-302-855 Isolation requirements for ((~~industrial~~)) hemp ((~~seed~~)) certification standards. ((~~Isolation requirements for industrial hemp seed production are as follows:~~

(1) ~~Isolation areas must be kept free of any harmful plants that can cause contamination. Not more than one plant per eleven square feet of harmful contaminants (species that can cross pollinate with the inspected crop) is permitted within the required isolation distance(s) adjacent to the inspected crop. The conditions of each crop are assessed by the department, which may alter this standard, usually by reducing the number of contaminant plants permitted per square yard, according to identified contamination risks.~~

(2) ~~Foundation, registered and certified industrial hemp must be isolated from any marijuana production licensed by the liquor and cannabis board by a distance of fifteen miles.~~

(3) ~~Industrial hemp seed production crops for certification must be isolated from all other industrial hemp varieties or fields not meeting the varietal purity requirements for certification as follows:~~

Inspected Crop	Isolation Factor	Isolation Distance in Feet
Dioecious type: Foundation and Registered	Different varieties of industrial hemp	16,150
	Noncertified industrial hemp	16,150
	Lower certified class of same variety	6,460
	Same class of same variety	3
Dioecious type: Certified	Different varieties of industrial hemp	16,150
	Noncertified industrial hemp	16,150
	Certified class of the same variety	3
Monoecious type and hybrids: Foundation and Registered	Dioecious variety of industrial hemp	16,150
	Noncertified industrial hemp	16,150
	Different varieties of monoecious or female hybrid	6,460
	Certified class of same variety	3
Monoecious type and hybrids: Certified	Dioecious variety of industrial hemp	3,230
	Noncertified industrial hemp	3,230
	Different varieties of monoecious or female hybrid	646
	Certified class of same variety	3))

(1) The area, density, stage of maturity and location of any contaminating pollen source is an important factor in cross pollinations, and therefore must be noted on the seed crop inspection report for consideration in determining certification status. There shall not be any Cannabis sativa L. plants within 100m (328.08 feet) of the crop and not more than ten plants/ha beyond 100m within the isolation requirement.

(2) The required isolation must be present prior to flowering and crop inspection.

Table 1: Minimum Isolation Distances Required Between Inspected Hemp and Other Crops

<u>Inspected Crop</u>	<u>Other Crops</u>	<u>Isolation Distance Required (feet)</u>
<u>Dioecious type - Foundation</u>	- Different varieties of hemp	<u>15,748</u>
	- Noncertified crop of hemp	
	- Lower certified class seed crop of same variety	<u>6,460</u>
	- Same class of certified seed crop of same variety	<u>10</u>
<u>Dioecious type - Registered</u>	- Different varieties of hemp	<u>15,748</u>
	- Noncertified crop of hemp	
	- Seed crop of same variety that meets certified standards for varietal purity	<u>5,249</u>
	- Seed crop of same variety that meets registered standards for varietal purity	<u>3</u>

<u>Inspected Crop</u>	<u>Other Crops</u>	<u>Isolation Distance Required (feet)</u>
<u>Dioecious type - Certified</u>	- Different varieties of hemp - Noncertified hemp	2,624
	- Planted with certified seed of the same variety that meets certified standards for varietal purity	656
	- Seed crop of same variety that meets certified standards for varietal purity	3
<u>Monoecious type - Foundation</u>	- Dioecious variety of hemp - Noncertified crop of hemp	15,748
	- Other monoecious varieties - Lower certified class seed crop of same variety	9,690
	- Same class of certified seed of same variety	16
<u>Monoecious type - Registered</u>	- Dioecious variety of hemp - Noncertified crop of hemp	15,748
	- Different varieties of the same type of hemp (monoecious or female hybrid)	6,460
	- Seed crop of same variety that meets certified standards for varietal purity	3,230
	- Seed crop of same variety that meets registered standards for varietal purity	3
<u>Monoecious type - Certified</u>	- Dioecious variety of hemp - Noncertified crop of hemp	3,230
	- Different varieties of the same type of hemp (monoecious or female hybrid) - Planted with certified seed of the same variety that meets certified standards for varietal purity	656
	- Seed crop of same variety that meets certified standards for varietal purity	3

AMENDATORY SECTION (Amending WSR 17-08-090, filed 4/5/17, effective 5/6/17)

WAC 16-302-860 Field ((inspection)) standards ((and tolerances)) for ((industrial)) hemp ((seed)) certification. ((+) Industrial hemp seed production crop fields shall be inspected by the department in three stages.

(a) The first inspection should be conducted before female (pistillate) flowers of the inspected crop are receptive and after the formation of male (staminate) flowers before pollen is shed.

(b) The second inspection should be conducted during the receptive stage of the female plants in the inspected field, normally within three weeks of first inspection.

(c) The third inspection should be conducted within ten days prior to harvest. The grower must notify the department of anticipated harvest date. Fields not harvested within ten days of the third inspection will require an additional inspection and THC test.

(d) Isolation areas will be inspected for volunteer plants and harmful contaminants at each department inspection.

(2) Off-type male flowers must be removed by the grower prior to producing pollen and evidence of removal must be identifiable during the department's crop inspection.

Rogued male flowers must be removed from the field and buried or otherwise destroyed by the grower to prevent pollen production.

(3) If dioecious male plants start flowering before removal from field, all plants around them must be destroyed by the grower within a radius of ten feet for foundation seed, six feet for registered seed and three feet for certified seed.

If dioecious male plants or if other off-type male flowers are found to be shedding pollen during any inspection, an additional inspection will be required within seven days to verify adequate control of detrimental pollen. An additional reinspection fee will be assessed by the department.

(4) Plant samples will be taken by the department for THC testing at the third inspection. Test results in excess of 0.3% THC will be cause for rejection and the field may be subject to destruction.

The seed crop for certification may be harvested after the third inspection and the THC sample has been submitted for testing. However, no seed or other industrial hemp by products may be transported off of the registered land area until THC testing with a result of 0.3% THC or less has been received and a release notice to the grower has been issued by the department.

(5) Intersexual plant type ratios shall not exceed the limits when defined in the variety description by the breeder.

(6) Excessive weeds or other factors that prevent varietal purity and identity determination shall be cause for the department to reject the affected field for certification purposes.

(7) Fields planted in such a manner that prevents inspector access shall be cause for the department to reject the affected field for certification purposes unless the grower remedies the condition in a timely manner as required by the department.

(8) Maximum impurity standards must not be exceeded based on six replicated counts of ten thousand plants according to the following table:

	Maximum impurity standards per 10,000 plants		
	Maximum number of "too-male" monoecious plants	Maximum number of dioecious male plants shedding pollen	Maximum number of other impurities including other varieties
Dioecious type: Foundation	-	-	3
Dioecious type: Registered and Certified	-	-	10
Monoecious: Foundation	500	1	3
Monoecious: Registered	1000	2	10
Monoecious: Certified	2000	100	10))

(1) Crop inspection:

(a) It is the grower's responsibility to ensure that fields are inspected by an authorized inspector at least once prior to swathing or harvesting, except in the case of foundation, registered, and certified monoecious types and unisexual hybrids and foundation dioecious types, in which two inspections are required.

(b) A field that is cut, swathed, or harvested prior to crop inspection is not eligible for certification.

(c) Fields must be inspected at a stage of growth when varietal purity is best determined. Crops not inspected at the proper stage for best determining varietal purity may be cause for declining certified status.

(i) First inspection for all classes of monoecious types must be made just before or at early flowering. First inspection for all classes of dioecious types must be made after flowering when male plants are beginning to senesce.

(ii) Second inspection for all classes of monoecious types, and the foundation class of dioecious types must be made when seeds are well forming.

(iii) Isolation areas will be inspected for volunteer hemp plants on each inspection.

(iv) Excessive weeds or other factors that prevent varietal purity and identity determination shall be cause for the department to reject the affected field for certification purposes.

(v) Fields planted in such a manner that prevents inspector access shall be cause for the department to reject the affected field for certification purposes unless the grower remedies the condition in a timely manner as required by the department.

(2) Impurity standards:

(a) Impurities should be removed prior to crop inspection.

(b) Any combination of impurities may be reason for declining certified status.

(c) Table 2 indicates the maximum number of impurities permitted in approximately ten thousand plants of the inspected crop. The inspector makes at least six counts (ten thousand plants each) or the equivalent to determine the number of impurities. The resulting average of these counts must not exceed the maximum impurity standards in Table 2.

Table 2: Maximum Impurity Standards

Plot Crop	Maximum Impurity Standards per 10,000 plants in Hemp Seed Crops	
	Maximum Number of Dioecious Male Plants Shedding Pollen	Maximum Number of Off-Types or Other Varieties
<u>Dioecious type - Foundation</u>	=	3
<u>Dioecious type - Registered</u>	=	10
<u>Dioecious type - Certified</u>	=	20
<u>Monoecious type - Foundation</u>	1	3
<u>Monoecious type - Registered</u>	2	10

<u>Plot Crop</u>	<u>Maximum Impurity Standards per 10,000 plants in Hemp Seed Crops</u>	
	<u>Maximum Number of Dioecious Male Plants Shedding Pollen</u>	<u>Maximum Number of Off-Types or Other Varieties</u>
<u>Monoecious type - Certified</u>	<u>100</u>	<u>20</u>

AMENDATORY SECTION (Amending WSR 17-08-090, filed 4/5/17, effective 5/6/17)

WAC 16-302-865 Seed standards for (~~industrial~~) hemp (~~seed~~) certification. (~~Seed standards for industrial~~) Hemp seed (~~production crops~~) standards for each class are as follows:

	Foundation	Registered	Certified
Pure seed (minimum)	98.00%	98.00%	98.00%
<u>Inert matter (maximum)*</u>	<u>2.00%</u>	<u>2.00%</u>	<u>2.00%</u>
<u>Weed seed (maximum)</u>	<u>0.10%</u>	<u>0.10%</u>	<u>0.10%</u>
<u>Total Other crop (maximum)</u>	0.01%	0.03%	0.08%
((Inert matter (maximum)*	2.00%	2.00%	2.00%
Weed seed (maximum)	0.10%	0.10%	0.10%
<u>Other varieties (maximum)</u>	<u>0.005%</u>	<u>0.01%</u>	<u>0.05%</u>
<u>Other kinds (maximum)**</u>	0.01%	0.03%	0.07%
((Other kinds (maximum)	2 per lb.	6 per lb.	10 per lb.
Other varieties (maximum)**	None found	0.01%	0.05%
<u>Germination (minimum)***</u>	80.00%	80.00%	80.00%

(~~* Inert matter shall not contain more than 0.50% of material other than seed fragments.~~
~~** Other varieties when distinguishable.)~~
~~* Inert matter shall not include more than 0.5 percent of material other than seed fragments of the variety under consideration.~~
~~** Other kinds shall not exceed 2 per lb. (454 grams) for foundation; 6 per lb for registered; 10 per lb for certified.~~
~~*** Exclusive of dormancy, firm or hard seed, or any other reference to viability.~~

- (1) Foundation seed production: Any means of processing or conditioning of seed from a foundation production area which may contaminate the varietal purity of the seed is prohibited.
- (2) Area of foundation fields:
 - (a) When unforeseen circumstances do not permit proper maintenance of the entire field, it is recommended that the

area be reduced by destroying part of the field or by isolating a part to meet the requirements of a lower status of certified seed. The remainder of the field must meet the requirements for foundation field production.

(b) The area of a foundation field includes the "walkways" provided within the field to facilitate effective roguing.

(3) Recommended production procedures:

(a) Field planting:

(i) Fields should be planted to facilitate inspection, roguing, and harvesting.

(ii) Fields should be planted in areas easily accessible for frequent maintenance and to provide the maximum protection from outside sources of contamination, such as roadways and building sites.

(iii) Regulations for land requirements are minimum standards and caution is necessary in choosing land, as volunteer growth from previous crops may vary according to local conditions.

(iv) The regulations for isolation are minimum standards. It is always to the grower's advantage to provide more isolation than required. When planting foundation fields, specific requirements may influence the location and size of the field. It is a safeguard if adjacent crops are the same variety as the field and are inspected for certified status.

(b) Roguing:

(i) The field must be thoroughly and intensively rogued many times throughout the crop season.

(ii) Off-type male flowers must be removed before the receptive stage of female flowers in the inspected crop.

(iii) The numbers and kinds of plants removed should be recorded and described on the appropriate forms.

(iv) All male flowers rogued from the crop must be removed from the production area and burial is recommended.

(v) Regrowth of rogued flowers or plants must be prevented.

(c) Harvesting, cleaning, and storing:

(i) A seed grower should have access to the necessary equipment for harvesting and cleaning the seed from the field in such a manner as to ensure that the varietal purity of the seed is maintained.

(ii) The seed should be stored, in compliance with federal or state regulations, in a clean, cool, dry area.

(iii) The seed containers should be labeled for identification in compliance with chapter 16-301 WAC.

VEGETATIVELY PROPAGATED HEMP (CANNABIS SATIVA L. SUBSP. SATIVA) CERTIFICATION STANDARDS

NEW SECTION

WAC 16-302-870 General standards specific to vegetatively propagated hemp. The general requirements for seed certification found in WAC 16-302-005 through 16-302-130 of the genetic and crop standards apply to (are basic) all crops, and together with the following specific standards, constitute the certified vegetatively propagated hemp standards.

NEW SECTION

WAC 16-302-875 Definitions specific to vegetatively propagated hemp. "Clones" are asexually propagated progeny genetically identical to the stock plant.

"Cuttings" are portions of stems containing leaves which are rooted to produce clones.

"Micropropagation" is the science of plant multiplication in-vitro.

"Structure or field" is the production area enclosed by natural borders such as ditches, tree lines, buildings, roads, or an enclosed growth facility.

NEW SECTION

WAC 16-302-880 General planting stock certification standards for vegetatively propagated hemp. The general planting stock certification standards are further defined to apply specifically to hemp planting stocks. Classes and sources of certified planting stocks are:

(1) Breeder plant stock (source seed) is propagation material identified by the breeder, or the breeder's representative. The breeder must also declare and document the way parent lines are selected and how the plant stock is maintained.

(2) Mother plant is a plant produced from a breeder plant stock.

(3) Certified plants are plants produced from mother plants. Certified plants may be used to produce certified stock in the growth facility or D1 daughter stock. Certified plants are propagated as follows:

(a) Mother plants may be cut repeatedly to produce D1 daughter plants. D1 daughter plants are produced by cuttings from mother plants.

(b) D1 daughter plants may be cut repeatedly to produce D2 daughter plants. D2 daughter plants are produced by cuttings from D1 daughter plants.

(c) D2 daughter plants may be cut repeatedly to produce D3 daughter plants. D3 daughter plants are produced by cuttings from D2 daughter plants.

(4) The grower shall retain documentation of the parent being used to generate clones.

(5) All grower records and grower developed best management practices (BMPs) related to the production of hemp clones shall be available for inspection by the certifying agency.

NEW SECTION

WAC 16-302-885 Production certification standards for vegetatively propagated hemp. (1) Mother plant production:

(a) All Mother plants are to be inspected by a certifying agency periodically.

(b) Inspection of structures and fields will conform to documented and verifiable production standards listed below.

(2) Growth facilities and field production:

(a) Production requirements for growth facility production:

(i) Facility is to be apparently free of diseases, insects, and other pests.

(ii) Hemp clones are to be handled in such a manner as to prevent co-mingling of varieties or types.

(iii) Facility is to have sufficient physical barriers between growth areas of hemp and other potential contaminating crops prior to flowering and inspection to prevent cross-contamination of type.

(b) Production requirements for open field production:

(i) Field eligibility - Crops should not be grown on land where remnant seed from a previous crop may germinate and produce volunteers that may cause contamination. Crops for mother plants must not be grown on land that produced another crop of hemp within the previous five years. Crops for certified class must not be grown on land that had a hemp crop in the preceding three years.

(ii) Field isolation - Ten feet or an appropriate barrier to alleviate accidental mixing of plants.

NEW SECTION

WAC 16-302-890 Inspection standards for vegetatively propagated hemp. (1) Grower responsibility: Maintain certification standards.

(2) Certifying agency responsibility:

(a) The agency will inspect growth facilities and fields and to audit compliance with the grower developed BMPs and their effectiveness.

(b) Mother plants are inspected within seven days before first cutting of daughters for certification.

(c) Daughter plants are inspected within seven days after planting.

(3) General requirements: Plant increase standards are described in WAC 16-302-880 (1)(c)(i), (ii), and (iii) (General planting stock certification standards for vegetatively propagated hemp).

(4) General inspection standards of plants:

(a) Apparently free of diseases, insects, and other pests.

(b) True-to-type characteristics.

HEMP TRANSPLANTS (CANNABIS SATIVA L. SUBSP. SATIVA) CERTIFICATION STANDARDS

NEW SECTION

WAC 16-302-895 General certification standards specific to hemp transplants. (1) The general requirements for seed certification found in WAC 16-302-005 through 16-302-130 of the genetic and crop standards apply to (are basic)

all crops, and together with the following specific standards, constitute the standards for certification of hemp transplants (including seedlings and plugs).

(2) All certified transplants must be grown from a class of certified seed or certified clones. Proof of seed/clone eligibility shall be established by providing either a certified tag/label with invoice showing the lot number and pounds received or documentation of clone propagation under clone standards found in the hemp section of the *AOSCA Seed Certification Handbook* published in June 2020. This section of the handbook will be provided by the department upon request.

(3) Seed coated or pelleted by nonapproved conditioners will not be eligible for certification.

(4) All containers must be labeled in a manner that maintains the source, identity, and certification eligibility of the transplants. All containers offered for sale must be identified by the official seed certification tag/label. The tag/label must be affixed (stapled, for example) to trays so tags/labels are not misplaced.

NEW SECTION

WAC 16-302-900 Definitions specific to hemp transplants (*Cannabis sativa* L. subsp. *sativa*) certification standards. "Clones" are asexually propagated progeny genetically identical to the stock plant.

"Plugs" are young plants raised in small, individual cells, intended for transplanting at another production site.

"Seedlings" are plants grown from seeds.

"Transplants" means hemp plants that originate from either seed or clones that are kept in a vegetative state (before flowering) that will be moved to another production site.

NEW SECTION

WAC 16-302-905 Growth facility, field and transplant standards. (1) Traditional outdoor plant beds (fields) will be inspected at least two times for phenotypic purity, isolation, general physical condition, and appearance of plants.

(2) Growth facility produced plants shall be inspected at least two times for varietal labeling, phenotypic purity, isolation, general physical condition, and appearance of plants.

(3) Maximum off-type or other variety shall not exceed 0.2%, or 20 in 10,000. Nonconforming plants must be removed and destroyed.

(4) At the time of the final inspection, the number of transplants produced must be verified by agency personnel.

(5) Transplants may be rejected for noncompliance with these standards.

(6) Inspectors may also reject transplants due to unsatisfactory appearance such as any plants that are diseased, insect infestation, or otherwise stressed or any condition which prevents thorough inspection.

(7) Unlabeled or inadequately labeled transplants will be ineligible for certification.

(8) At the final inspection, transplants may be collected for post-control grow outs or other identification verification tests if required by agency.

(9) Certifying agency personnel may conduct additional inspections as necessary to ensure certification standards are met.

NEW SECTION

WAC 16-302-910 Growth facility isolation standards. (1) When two or more varieties are being grown in the same greenhouse or traditional outdoor plant bed (field), there must be an eighteen-inch unplanted area between the varieties. The production area, flats, and/or containers for each variety must be clearly labeled in a manner that prevents mixing or misidentification.

(2) Growers must handle transplants throughout the growing, harvesting, and transplant sales in a manner that prevents the accidental or mechanical mixture of containers of different varieties.

NEW SECTION

WAC 16-302-915 Labeling standards for certified transplants. All certified transplants offered for sale must be labeled with official certification tags or labels. Each container of transplants must have an agency certification label firmly attached to be sold as certified transplants. Failure to properly label transplants at the time of sale, will revoke the certification status and will result in not being eligible for sale as certified transplants.

FEMINIZED HEMP SEED (FHS) (*CANNABIS SATIVA* L. SUBSP. *SATIVA*) CERTIFICATION STANDARDS

NEW SECTION

WAC 16-302-920 Application of genetic certification standards specific to feminized hemp seed (FHS). (1) The general requirements for seed certification found in WAC 16-302-005 through 16-302-130 of the genetic and crop standards apply (and are basic) to all crops, and together with the following specific standards, constitute the certified feminized hemp seed standards.

(2) The genetic and crop standards are modified as follows:

(a) To be eligible for seed certification under this standard, hemp varieties must have received favorable action by one or more of the following processes recognized by AOSCA, including:

- (i) AOSCA variety review board; or
- (ii) Plant variety protection office or breeder rights statements; or
- (iii) Any individual AOSCA vested member agency; or
- (iv) Acceptance for certification under the OECD seed schemes.

(b) Designation of classes of seed:

(i) Only the certified class is recognized in the production of feminized hemp seed. The foundation class is allowed for the purpose of variety maintenance.

(ii) A feminized seed variety to be certified must be produced from seed or clonal stocks approved by the official certifying agency. These seed and clonal stocks shall consist of

female lines and chemically assisted pollen shedding female lines of any class of certified seed or clones.

(c) Growers are required to obtain tetrahydrocannabinol (THC) test results as required by chapter 16-306 WAC.

NEW SECTION

WAC 16-302-925 Definitions and common terms specific to feminized hemp seed (*Cannabis sativa* L. subsp. *sativa*) certification standards. "Approved cultivar" is any variety designated as eligible for production by federal or local regulatory authorities.

"Dioecious type" means with male and female flowers on separate plants.

"Feminized hemp seed (FHS)" is the progeny of a dioecious female plant that has been pollinated with pollen derived from the same or another dioecious female plant that has been induced to produce pollen. It is a true female plant with XX chromosomes.

"Hemp" is defined by the U.S. Domestic Hemp Production Program as the plant species *Cannabis sativa* L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis or as otherwise defined by federal law.

"Hermaphroditic plants" are plants exhibiting male and female flowers, not true females.

"Monoecious type" means with male and female flowers on the same plant.

"Pollen parent" means a reversed female plant from the female line or another reversed female line to create a hybrid.

"Reversed female" means female plants that are induced to produce pollen in replacement of true male plants.

"Seed parent" means female plants used to produce feminized hemp seed.

"Sporting male" is a female plant that produces sterile male flowers.

"THC" means delta-nine ($\Delta 9$) tetrahydrocannabinol, which is the component of hemp regulated by federal or local regulatory authorities.

"Variety" means a subdivision of a kind that is distinct, uniform, and stable; "distinct" in the sense that the variety can be differentiated by one or more identifiable morphological, physiological, or other characteristics from all other varieties of public knowledge; "uniform" in the sense that variations in essential and distinctive characteristics are describable; and "stable" in the sense that the variety will remain unchanged in its essential and distinctive characteristics and its uniformity when reproduced or reconstituted as required by the different categories of varieties.

"Volunteer plant" is a hemp plant that was not intentionally planted and is the result from a previous crop.

NEW SECTION

WAC 16-302-930 Growth facility and land requirements specific to feminized hemp seed (*Cannabis sativa* L. subsp. *sativa*) certification standards. (1) Growth facility must only contain certified hemp production. Multiple FHS

varieties may be present but no other hemp plants are allowed except for pollen parent plants that are the pollen source.

(2) Growth facility must be free of all plants for a minimum of six weeks prior to receiving plants at the beginning of the crop year or production season unless the previous crop was the same variety. If sanitation is used to reduce the hemp free period, a sanitation plan must be submitted to the certifying agency. Pollen sanitation is not required if the entire greenhouse facility produces only one pollen source and other female lines are continually rogued to prevent contaminating pollen sources.

(3) Certified feminized hemp seed crops must not be grown on land which:

(a) In either of the preceding two years produced a non-certified crop of hemp or a different variety of hemp.

(b) In the preceding year produced a certified crop of a different variety.

(4) Weeds:

(a) The presence of broomrape (*Orobanche* spp.) in hemp crops is cause for rejection.

(b) Excessive weeds obscuring field inspection shall be grounds for rejection.

NEW SECTION

WAC 16-302-935 Growth facility and field standards specific to feminized hemp seed (*Cannabis sativa* L. subsp. *sativa*) certification standards. (1) Crop inspection:

(a) It is the grower's responsibility to ensure that growth facility and field inspections are conducted by the authorized inspector at least twice prior to swathing or harvesting.

(b) A growth facility or field that is cut, swathed, or harvested prior to crop inspection is not eligible for certification.

(c) Inspections of pollen parent plants and seed parent plants must be at a stage of growth when varietal purity is best determined. Crops not inspected at the proper stage for best determining varietal purity may be cause for rejection. A minimum of two inspections are required.

(i) First inspection for pollen parent and seed parent plants must be made just before or at early flowering. The pollen parent must be inspected prior to pollen collection or dispersal.

(ii) Second inspection for pollen parent and seed parent types must be completed after pollen shed and seed fill.

(iii) Isolation areas will be inspected for any volunteer hemp plants on each inspection.

(2) Specific: For the production of FHS varieties via pollen shedding by the chemically reversed female plants:

(a) Detailed records shall be created and maintained on the pollen parent, such as the chemical application dates, concentration, and the pollen collection date.

(b) Pollen storage containers (if used) must be marked with lot number and source.

(c) Chemically reversed female plants (pollen parent) must be removed and destroyed after pollen collection is complete.

(d) Male, sporting male, and hermaphroditic plants must be removed from the growth facility or field and a record of roguing activities must be maintained.

(3) Isolation:

- (a) Certified feminized hemp seed fields must be isolated from all other contaminating pollen sources by the distances provided in Table 1. Roguing to eliminate all possible contaminating pollen must be accomplished prior to visible flower formation.
- (b) Greenhouse production of certified feminized seed is allowed if mechanical isolation of pollen sources is provided. Additional greenhouse requirements include:
 - (i) Method of pollen exclusion must be documented and submitted to the certifying agency.
 - (ii) Each greenhouse facility is limited to one variety or multiple varieties when one pollen parent is utilized for all varieties.
 - (iii) Each variety must be clearly labeled and easily identifiable from one another.
- (c) Off season greenhouse production when outside pollen sources are not alive may reduce the isolation requirement.

Table 1: Minimum Isolation Distances Required Between Inspected Hemp and Other Crops

Inspected Crop	Other Hemp Crops	Isolation Distance Required (feet)
Feminized hemp seed	- Variety of hemp, or other contaminating pollen source that has pollen shedders present, this includes other greenhouse complexes - Noncertified crop of hemp - Different varieties of the same type of hemp with no male shedders present in field that is not for seed production - Planted with certified seed of the same variety that meets certified standards for varietal purity and no male shedders present in field	15,748
	- Certified seed crop of the same variety that meets certified standards for varietal purity	3

- (4) Impurity standards:
 - (a) Impurities should be removed prior to crop inspection.
 - (b) Any combination of impurities may be reason for declining certified status.
 - (c) Table 2 indicates the maximum number of impurities permitted in approximately ten thousand plants of the inspected crop. The inspector makes at least six counts of a total of at least ten thousand plants to determine the number of impurities. The resulting average of these counts must not exceed the maximum impurity standards in Table 2.

Table 2

Inspected Crop	Maximum Impurity Standards per 10,000 plants in Hemp Seed Crops	
	Maximum Number of Plants Shedding Pollen	Maximum Number of Off-Types or Other Varieties
Feminized hemp seed	0	20

NEW SECTION

WAC 16-302-940 Seed standards for feminized hemp seed (*Cannabis sativa* L. subsp. *sativa*) certification standards.

**Feminized Hemp Seed Standards
Standards for Each Class**

Factor	Foundation	Certified
Pure seed (minimum)	98.00%	98.00%
Inert matter (maximum)*	2.00%	2.00%
Weed seed (maximum)	0.10%	0.10%
Total other crop (maximum)	0.01%	0.08%
Other varieties (maximum)	0.005%	0.05%
Other kinds (maximum)**	0.01%	0.07%
Germination (minimum)***	80.00%	80.00%
Feminized Seed***	99.00%	99.00%

* Inert matter shall not include more than 0.5 percent of material other than seed fragments of the variety under consideration.
 ** Other kinds shall not exceed 2 per lb. (454 grams) for foundation; 10 for certified.
 *** Determined by variety verification trial or approved molecular testing.

WSR 21-20-118
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed October 5, 2021, 8:37 a.m., effective November 5, 2021]

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

Purpose: The purpose of this rule making is to adopt changes that correct the boiler fees under WAC 296-104-700. On June 1, 2021, the board of boiler rules and the department of labor and industries adopted a 5.79 percent fee increase to support operating expenses for the boiler program (WSR 21-12-088). This is the office of financial management's maximum allowable fiscal growth factor rate for fiscal year 2022. Because of a typographical error, four of the inspection fees pertaining to power boilers and pressure vessels are incorrect. This rule making corrects the error by reducing the four fees to the fiscal growth factor amount.

Citation of Rules Affected by this Order: Amending WAC 296-104-700.

Statutory Authority for Adoption: Chapter 70.79 RCW.

Adopted under notice filed as WSR 21-16-098 on August 3, 2021.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 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: October 5, 2021.

Joel Sacks
 Director

AMENDATORY SECTION (Amending WSR 21-12-088, filed 6/1/21, effective 7/2/21)

WAC 296-104-700 What are the inspection fees—Examination fees—Certificate fees—Expenses? The following fees shall be paid by, or on behalf of, the owner or user upon the completion of the inspection. The inspection fees apply to inspections made by inspectors employed by the state.

The boiler and pressure vessel installation/reinstallation permit fee of \$66.00 shall be paid by the installer, as defined in WAC 296-104-010.

Certificate of inspection fees: For objects inspected, the certificate of inspection fee per object is \$28.40.

Hot water heaters per RCW 70.79.090, inspection fee: \$8.50.

The department shall assess a \$7.00 fee, per object, for processing of jurisdictional inspection reports to any authorized in-service inspection agency or inspector who does not file the report directly into the department's electronic inspection report system.

	Internal	External
Heating boilers:		
Cast iron—All sizes	\$48.00	\$38.40
All other boilers less than 500 sq. ft.	\$48.00	\$38.40
500 sq. ft. to 2500 sq. ft.	\$96.00	\$48.00
Each additional 2500 sq. ft. of total heating surface, or any portion thereof	\$38.40	\$18.70
Power boilers:		
Less than 100 sq. ft.	\$48.00	\$38.40
100 sq. ft. to less than 500 sq. ft.	\$58.10	(\$48.00) \$38.40
500 sq. ft. to 2500 sq. ft.	\$96.00	\$48.00
Each additional 2500 sq. ft. of total heating surface, or any portion thereof	(\$48.00) \$38.40	\$18.70
Pressure vessels:		
Square feet shall be determined by multiplying the length of the shell by its diameter.	Internal	External
Less than 15 sq. ft.	(\$48.00) \$38.40	\$28.40
15 sq. ft. to less than 50 sq. ft.	\$57.00	\$28.40
50 sq. ft. to 100 sq. ft.	\$66.50	(\$48.00) \$38.40
For each additional 100 sq. ft. or any portion thereof	\$66.40	\$18.70
Nonnuclear shop inspections, field construction inspections, and special inspection services:		
For each hour or part of an hour up to 8 hours		\$58.10
For each hour or part of an hour in excess of 8 hours		\$86.80
Nuclear shop inspections, nuclear field construction inspections, and nuclear triennial shop survey and audit:		
For each hour or part of an hour up to 8 hours		\$86.80
For each hour or part of an hour in excess of 8 hours		\$136.00
Nonnuclear triennial shop survey and audit:		
When state is authorized inspection agency:		
For each hour or part of an hour up to 8 hours		\$58.10

For each hour or part of an hour in excess of 8 hours	\$86.80
When insurance company is authorized inspection agency:	
For each hour or part of an hour up to 8 hours	\$86.80
For each hour or part of an hour in excess of 8 hours	\$136.00

Examination fee: A fee of \$107.50 will be charged for each applicant sitting for an inspection examination(s).

Special inspector commission: A fee of \$58.00 for initial work card. A fee of \$36.00 for annual renewal.

If a special inspector changes companies: A work card fee of \$58.00.

Expenses shall include:

Travel time and mileage: The department shall charge for its inspectors' travel time from their offices to the inspection sites and return. The travel time shall be charged for at the same rate as that for the inspection, audit, or survey. The department shall also charge the current Washington office of financial management accepted mileage cost fees or the actual cost of purchased transportation. Hotel and meals: Actual cost not to exceed the office of financial management approved rate.

Requests for Washington state specials and extensions of inspection frequency: For each vessel to be considered by the board, a fee of \$541.70 must be paid to the department before the board meets to consider the vessel. The board may, at its discretion, prorate the fee when a number of vessels that are essentially the same are to be considered.

WSR 21-20-132
PERMANENT RULES
HEALTH CARE AUTHORITY

[Filed October 6, 2021, 9:04 a.m., effective November 6, 2021]

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

Purpose: The health care authority is amending these rules to change "chemical dependency" to "substance use disorder." This is a housekeeping fix to align with behavioral health integration.

Citation of Rules Affected by this Order: Amending WAC 182-531-0425 and 182-531-1710.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 21-16-003 on July 22, 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: October 6, 2021.

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 19-13-022, filed 6/10/19, effective 7/11/19)

WAC 182-531-0425 Collaborative care. (1) Under the authority of RCW 74.09.497, and subject to available funds, the medicaid agency covers collaborative care provided in clinical care settings.

(2) For the purposes of this section:

(a) **Collaborative care** means a specific type of integrated care where medical providers and behavioral health providers work together to address behavioral health conditions, including mental health conditions and substance use disorders.

(b) **Collaborative care model** is a model of behavior health integration that enhances usual clinical care by adding two key services:

(i) Care management support for clients receiving behavioral health treatment; and

(ii) Regular psychiatric or board certified addiction medicine consultation with the clinical care team, particularly for clients whose conditions are not improving.

(c) **Collaborative care team** means a team of licensed behavioral health professionals operating within their scope of practice who participate on the clinical care team along with the collaborative care billing provider to provide collaborative care to eligible clients. The team must include a collaborative care billing provider, a behavioral health care manager, and a psychiatric consultant. Professionals making up this team include, but are not limited to:

(i) Advanced registered nurses;

(ii) ~~((Chemical dependency))~~ Substance use disorder professionals (SUDP);

(iii) ~~((Chemical dependency))~~ Substance use disorder professional trainees (SUDPT) under the supervision of a certified ~~((chemical dependency professional))~~ SUDP;

(iv) Marriage and family therapists;

(v) Marriage and family therapist associates under the supervision of a licensed marriage and family therapist or equally qualified mental health practitioner;

(vi) Mental health counselors;

(vii) Mental health counselor associates under the supervision of a licensed mental health counselor, psychiatrist, or physician;

(viii) Physicians;

(ix) Physician assistants under the supervision of a licensed physician;

(x) Psychiatrists;

- (xi) Psychiatric advanced registered nurses;
- (xii) Psychologists;
- (xiii) Registered nurses;
- (xiv) Social workers;
- (xv) Social worker associate-independent clinical, under the supervision of a licensed independent clinical social worker or equally qualified mental health practitioner; and
- (xvi) Social worker associate-advanced, under the supervision of a licensed independent clinical social worker, advanced social worker, or equally qualified mental health practitioner.

(3) The behavioral health care manager is a designated licensed professional with formal education or specialized training in behavioral health (including social work, nursing, or psychology), working under the oversight and direction of the treating medical provider.

(4) The collaborative care billing provider must meet all of the following:

- (a) Be enrolled with the agency as one of the following:
 - (i) A physician licensed under Titles 18 RCW and 246 WAC;
 - (ii) An advanced registered nurse practitioner licensed under Titles 18 RCW and 246 WAC;
 - (iii) A federally qualified health center (FQHC);
 - (iv) A rural health clinic (RHC); or
 - (v) A clinic that is not an FQHC or RHC that meets the requirements of Titles 70 RCW and 247 WAC.

(b) Complete, sign, and return the Attestation for Collaborative Care Model, form HCA 13-0017, to the agency; and

(c) Agree to follow the agency's guidelines for practicing a collaborative care model.

(5) Providers of collaborative care must:

- (a) Use a registry to track the client's clinical outcomes;
- (b) Use at least one validated clinical rating scale;
- (c) Ensure the registry is used in conjunction with the practice's electronic health records (EHR);
- (d) Include a plan of care; and
- (e) Identify outcome goals of the treatments.

(6) If a provider no longer meets the agreed upon requirements in the agency's Attestation for Collaborative Care Model, form HCA 13-0017, the provider must immediately notify the agency. The agency does not pay for collaborative care if a provider does not meet the agreed upon requirements.

(7) Providers are subject to post pay review by the agency. The agency may recoup payment if the provider is found to have not met the requirements for providing collaborative care as agreed to in the agency's Attestation for Collaborative Care Model, form HCA 13-0017.

AMENDATORY SECTION (Amending WSR 18-12-045, filed 5/30/18, effective 7/1/18)

WAC 182-531-1710 Alcohol and substance misuse counseling. (1) The medicaid agency covers alcohol and substance misuse counseling through screening, brief intervention, and referral to treatment (SBIRT) services when delivered by, or under the supervision of, a qualified licensed physician or other qualified licensed health care professional within the scope of their practice.

(2) SBIRT is a comprehensive, evidence-based public health practice designed to identify, reduce and prevent problematic use, abuse, and dependence on alcohol and illicit drugs. SBIRT can be used to identify people who are at risk for or have some level of substance use disorder which can lead to illness, injury, or other long-term morbidity or mortality. SBIRT services are provided in a wide variety of medical and community health care settings such as primary care centers, hospital emergency rooms, trauma centers, and dental offices.

(3) The following health care professionals are eligible to become qualified SBIRT providers to deliver SBIRT services or supervise qualified staff to deliver SBIRT services:

(a) Advanced registered nurse practitioners, in accordance with chapters 18.79 RCW and 246-840 WAC;

(b) ~~((Chemical dependency professionals))~~ Substance use disorder professionals (SUDP), in accordance with chapters 18.205 RCW and 246-811 WAC;

(c) Licensed practical nurses, in accordance with chapters 18.79 RCW and 246-840 WAC;

(d) Mental health counselors, in accordance with chapters 18.225 RCW and 246-809 WAC;

(e) Marriage and family therapists, in accordance with chapters 18.225 RCW and 246-809 WAC;

(f) Independent and advanced social workers, in accordance with chapters 18.225 RCW and 246-809 WAC;

(g) Physicians, in accordance with chapters 18.71 RCW and 246-919 WAC;

(h) Physician assistants, in accordance with chapters 18.71A RCW and 246-918 WAC;

(i) Psychologists, in accordance with chapters 18.83 RCW and 246-924 WAC;

(j) Registered nurses, in accordance with chapters 18.79 RCW and 246-840 WAC;

(k) Dentists, in accordance with chapters 18.260 and 246-817; and

(l) Dental hygienists, in accordance with chapters 18.29 and 246-815 WAC.

(4) To become a qualified SBIRT provider, eligible licensed health care professionals must:

(a) Complete agency-approved SBIRT training and mail or fax the SBIRT training certificate or other proof of this training completion to the agency; or

(b) Have an addiction specialist certification and mail or fax proof of this certification to the agency.

(5) The agency pays for SBIRT as follows:

(a) Screenings, which are included in the reimbursement for the evaluation and management code billed;

(b) Brief interventions, limited to four sessions per client, per provider, per calendar year; and

(c) When billed by one of the following qualified SBIRT health care professionals:

(i) Advanced registered nurse practitioners;

(ii) Mental health counselors;

(iii) Marriage and family therapists;

(iv) Independent and advanced social workers;

(v) Physicians;

(vi) Psychologists;

(vii) Dentists; and

(viii) Dental hygienists.

(6) The agency evaluates a request for additional sessions in excess of the limitations or restrictions according to WAC 182-501-0169.

(7) To be paid for providing alcohol and substance misuse counseling through SBIRT, providers must bill the agency using the agency's published billing instructions.

~~800-544-2121 voice/TTY)~~ 206-849-2939, or by accessing the CAP website at <http://www.washingtoncap.org>.

(3) A CAP representative may represent you with DVR if a disagreement occurs that you cannot resolve on your own. CAP attempts to resolve disagreements informally through discussions with the DVR employee(s) involved as a first step. If informal efforts are not successful, CAP may represent you in mediation and in a fair hearing.

(4) CAP services are available at no cost to you.

WSR 21-20-135

PERMANENT RULES DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Division of Vocational Rehabilitation)

[Filed October 6, 2021, 10:32 a.m., effective November 6, 2021]

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

Purpose: The proposed amendment is necessary to update the contact information by which a customer can reach the client assistance program, a significant policy stakeholder for the division of vocational rehabilitation and provider for recipients of vocational rehabilitation services.

Citation of Rules Affected by this Order: Amending WAC 388-891A-0220.

Statutory Authority for Adoption: RCW 74.29.020(8); and 34 C.F.R. Parts 361, 363, 397.

Adopted under notice filed as WSR 21-14-036 on June 29, 2021.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 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: October 6, 2021.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 18-12-035, filed 5/29/18, effective 6/30/18)

WAC 388-891A-0220 What is the client assistance program (CAP)? (1) The client assistance program (CAP) is a program independent of DVR that offers information and advocacy regarding your rights as a DVR customer and offers assistance to help you receive services.

(2) You may ask for help or information from CAP at any time during the rehabilitation process by asking a DVR staff person for information about how to contact CAP ~~((☎))~~, by calling or texting CAP at ~~((206-721-5999 or toll free at 1-~~