

**WSR 22-20-088**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Aging and Long-Term Support Administration)  
[Filed October 4, 2022, 9:20 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-07-064.

Title of Rule and Other Identifying Information: Amending WAC 388-06-0030, 388-06-0500, 388-06-0510, 388-06-0525 and 388-06-0530; new WAC 388-06-0550; and repealing WAC 388-06-0520, 388-06-0535, and 388-06-0540 in chapter 388-06 WAC, One hundred twenty-day provisional hire—Pending FBI background check results.

Hearing Location(s): On November 8, 2022, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington [Street S.E.], Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2>; or virtually. Due to the COVID-19 pandemic, hearings are held virtually. See the DSHS website <https://www.dshs.wa.gov/office-of-the-secretary/filings-and-rules> for the most current information.

Date of Intended Adoption: No earlier than November 9, 2022.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email [DSHSRPAURulesCoordinator@dshs.wa.gov](mailto:DSHSRPAURulesCoordinator@dshs.wa.gov), fax 360-664-6185, by 5:00 p.m. on November 8, 2022.

Assistance for Persons with Disabilities: Contact DSHS rules consultant, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service, email [shelley.tencza@dshs.wa.gov](mailto:shelley.tencza@dshs.wa.gov), by 5:00 p.m. on October 25, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposal grants the department rule-making authority in ESHB 1120 (chapter 203, Laws of 2021) to allow a long-term care worker or service provider to work on a conditional basis pending the completion of a background check. The long-term care worker or service provider may have unsupervised access to vulnerable adults pending the results of a fingerprint-based background check required under RCW 74.39A.056 or 43.43.837.

The department filed two emergency rules, one on March 1, 2022, as WSR 22-06-074, and a second one on June 27, 2022, as WSR 22-14-038 that reinstate the fingerprinting requirement for providers that were temporarily suspended by the governor's proclamation due to the public health emergency (PHE). The proposal also amends other rules in chapter 388-06 WAC to ensure they are consistent with one another and do not conflict with current background check rules in chapter 388-113 WAC. The governor's proclamation temporarily waived fingerprinting and will be in place until the PHE end date.

Reasons Supporting Proposal: The reason for supporting this proposal is to reinstate state fingerprinting rules for applicants, long-term care workers, and service providers.

Statutory Authority for Adoption: RCW 43.20A.710, 43.43.837, 74.08.090, 74.09.520, 74.39A.056; ESHB 1120, chapter 203, Laws of 2021.

Statute Being Implemented: RCW 43.43.837 and 74.39A.056.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Stacy Graff, P.O. Box 45600, Olympia, WA 98504-5600, 360-742-2071.

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

A cost-benefit analysis is not required under RCW 34.05.328. Even though long-term care workers, applicants, and service providers are subject to these rules, this proposal reinstates rules that had been suspended and adds clarifying language. Additionally, a cost-benefit analysis is not necessary because a substantially similar rule was in place and suspended temporarily due to the governor's proclamation during a PHE. This rule making does not impose any new costs; it reinstates requirements previously in rule and adds clarifying language.

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

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; rule content is explicitly and specifically dictated by statute; and rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

Explanation of exemptions: RCW 34.05.310 (4)(d) correct or clarify language, 34.05.310 (4)(e), and 34.05.310 (4)(g) because it reinstates rules that already exist and were suspended due to governor's proclamation in a PHE.

Scope of exemption for rule proposal:

Is fully exempt.

October 3, 2022  
Katherine I. Vasquez  
Rules Coordinator

## SHS-4874.7

AMENDATORY SECTION (Amending WSR 15-05-030, filed 2/10/15, effective 3/13/15)

**WAC 388-06-0030 What is the purpose of this chapter?** (1) WAC 388-06-500 through ((~~388-06-0540 defines~~)) 388-06-0550 define when ((~~the one hundred twenty-day provisional hire is allowed by DSHS~~)) an applicant, long-term care worker, or service provider may have unsupervised access to vulnerable adults and children pending the results of a fingerprint-based background check required by RCW 74.39A.056 or RCW 43.43.837.

(2) WAC 388-06-0700 through 388-06-0720 ((~~describes~~)) describe the responsibilities of the background check central unit.

[Statutory Authority: RCW 43.43.832, 43.20A.710, and 43.43.837. WSR 15-05-030, § 388-06-0030, filed 2/10/15, effective 3/13/15.]

AMENDATORY SECTION (Amending WSR 01-15-019, filed 7/10/01, effective 8/10/01)

**WAC 388-06-0500 What is the purpose of the ((one hundred twenty)) 120-day provisional ((hire)) period?** The ((one hundred and twenty)) 120-day provisional ((hire)) period allows ((an employee)) applicants, long-term care workers, and service providers to have unsupervised access to vulnerable adults and children((, juveniles and vulnerable adults on a provisional basis)) pending the results of ((their Federal Bureau of Investigation (FBI))) a fingerprint-based background check.

[Statutory Authority: Chapter 43.20A RCW, RCW 72.05.440 and 74.15.030. WSR 01-15-019, § 388-06-0500, filed 7/10/01, effective 8/10/01.]

AMENDATORY SECTION (Amending WSR 01-15-019, filed 7/10/01, effective 8/10/01)

**WAC 388-06-0510 What definitions apply to ((one hundred twenty)) 120-day provisional ((hires)) period rules?** (("Agency" means any agency of the state or any private agency providing services to children, juveniles, and vulnerable adults.

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

"Disqualified" means the results of an individual's background check disqualifies them from a position which will or may provide unsupervised access to children, juveniles, and vulnerable adults.

"Entity" means, but is not limited to, a licensed facility, a corporation, a partnership, a sole proprietorship, or a contracted or certified service provider.

"Hire" means engagement by an agency, entity or a hiring individual to perform specific agreed duties as a paid employee, a contract employee, a volunteer, or a student intern.

"Hiring individual" means a DSHS client who is eligible to hire an individual to provide in-home service with state funding.

"Individual" means an employee, a contract employee, a volunteer, or a student intern.

"Qualified" means an individual can be hired into a position that includes unsupervised access to children, juveniles, and vulnerable adults because the results of their background check are not disqualifying.

"Unsupervised access" means that:

(1) An individual will or may have the opportunity to be alone with a child, juvenile, or a vulnerable adult; and

(2) Neither a qualified employee, contract employee, volunteer, or student intern of the agency, or entity nor a relative or guardian of the child, juvenile or vulnerable adult is present)) "Applicant" has the same meaning as defined in RCW 43.43.830.

"Completed fingerprint check" means the applicant has a final fingerprint notification from the background check central unit that is not disqualifying.

"Long-term care worker" has the same meaning as defined in RCW 74.39A.009.

"Service provider" means entities, facilities, agencies, businesses, or individuals who are licensed, certified, authorized, or

regulated by, receive payment from, or have contracts or agreements with, the department of social and health services or its designee, to provide services to vulnerable adults or children.

[Statutory Authority: Chapter 43.20A RCW, RCW 72.05.440 and 74.15.030. WSR 01-15-019, § 388-06-0510, filed 7/10/01, effective 8/10/01.]

AMENDATORY SECTION (Amending WSR 14-14-026, filed 6/24/14, effective 7/25/14)

**WAC 388-06-0525** ~~When are ((individuals)) applicants, long-term care workers, and service providers eligible for the ((one hundred twenty)) 120-day provisional ((hire)) period?~~ When are ((individuals)) applicants, long-term care workers, and service providers eligible for the ((one hundred twenty)) 120-day provisional ((hire)) period? ~~((Individuals)) Applicants, long-term care workers, and service providers are eligible for the ((one hundred twenty)) 120-day provisional ((hire immediately. The signed)) period once they have passed a state name and date of birth background check ((application and fingerprinting process must be completed as required by the applicable DSHS program)) and have scheduled their appointment to have their fingerprints taken for the fingerprint-based background check.~~

[Statutory Authority: RCW 43.43.832, 74.15.030 and 43.43.837. WSR 14-14-026, § 388-06-0525, filed 6/24/14, effective 7/25/14. Statutory Authority: RCW 43.43.832 and 74.39A.056 as amended by 2012 c 164 and 2012 c 1. WSR 12-21-053, § 388-06-0525, filed 10/15/12, effective 12/25/12. Statutory Authority: RCW 43.43.832, 74.39A.055, 74.39A.050, 74.39A.095, 74.39A.260, 43.20A.710, and 43.43.837. WSR 10-16-083, § 388-06-0525, filed 7/30/10, effective 8/30/10. Statutory Authority: Chapter 43.20A RCW, RCW 72.05.440 and 74.15.030. WSR 01-15-019, § 388-06-0525, filed 7/10/01, effective 8/10/01.]

AMENDATORY SECTION (Amending WSR 01-15-019, filed 7/10/01, effective 8/10/01)

**WAC 388-06-0530** ~~When does the ((one hundred twenty)) 120-day provisional ((hire)) period begin?~~ When does the ((one hundred twenty)) 120-day provisional ((hire)) period begin? ~~The ((one hundred twenty)) 120-day provisional ((hire may begin from either:~~  
~~(1)) period begins on the date ((of hire of an individual; or~~  
~~(2) After completion of a state background check on an individual.~~

~~The agency, entity, or hiring individual makes this decision)) an applicant, long-term care worker, or service provider begins providing care to a vulnerable adult or child.~~

[Statutory Authority: Chapter 43.20A RCW, RCW 72.05.440 and 74.15.030. WSR 01-15-019, § 388-06-0530, filed 7/10/01, effective 8/10/01.]

NEW SECTION

**WAC 388-06-0550** How does the state of emergency declared in response to the COVID-19 pandemic affect the provisional period for ap

**plicants, long-term care workers, and service providers?** Notwithstanding WAC 388-06-0530, applicants, long-term care workers, and service providers who began providing care to vulnerable adults between November 1, 2019, and April 30, 2022, will have until August 28, 2022, to complete the fingerprint background check. Providers who begin providing care on or after May 1, 2022, are subject to the rules set forth in WAC 388-06-0525 and WAC 388-06-0530.

[]

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 388-06-0520      Who is responsible for approving the one hundred twenty-day provisional hire?
- WAC 388-06-0535      Who approves one hundred twenty-day provisional hire extensions?
- WAC 388-06-0540      Are there instances when the one hundred twenty-day provisional hire is not available?

**WSR 22-20-095**  
**PROPOSED RULES**  
**OFFICE OF**  
**FINANCIAL MANAGEMENT**  
[Filed October 4, 2022, 12:45 p.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Title of Rule and Other Identifying Information: WAC 357-13-090

How is an employee affected when their position is reallocated?,  
357-28-190 When must an employee receive shift premium?, 357-28-203  
When must an employee receive location based premium pay?, 357-28-215  
When must an employee receive supervisory pay differential?,  
357-31-133 When may an employer allow an employee to use their accrued  
sick leave?, and 357-31-345 How does leave without pay affect a general  
government employee's seniority date?

Hearing Location(s): On November 10, 2022, at 8:30 a.m., Zoom  
meeting (with call-in option), ID 830 9875 7996, Call in 253-215-8782,  
Passcode 814462, Zoom link [https://ofm-wa-gov.zoom.us/j/83098757996?](https://ofm-wa-gov.zoom.us/j/83098757996?pwd=TkJkOGR5d2dFeDNZVHFHsk4rdHlDdz09)  
pwd=TkJkOGR5d2dFeDNZVHFHsk4rdHlDdz09.

Date of Intended Adoption: November 17, 2022.

Submit Written Comments to: Brandy Chinn, Office of Financial  
Management (OFM), Raad Building, 128 10th Avenue S.W., P.O. Box 47500,  
Olympia, WA 98504, email [brandy.chinn@ofm.wa.gov](mailto:brandy.chinn@ofm.wa.gov), by 11:59 p.m., No-  
vember 3, 2022.

Assistance for Persons with Disabilities: Contact OFM, TTY 711 or  
1-800-833-6384, by 11:59 p.m., November 3, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including  
Any Changes in Existing Rules: Amend WAC 357-13-090 to state when an  
employee is reallocated to a higher class, the employee must advance  
to a step of the range for the new class that is nearest to five per-  
cent above their previous salary, not to exceed step M of the range as  
provided in WAC 357-28-115. Amend WAC 357-28-190 to add the word "reg-  
ularly" to subsection [(1)](a) and add subsection [(1)](c) to clarify  
that the compensation plan allows for dayshift employees, who are tem-  
porarily assigned to work the majority of their hours between 6:00  
p.m. and 6:00 a.m., to be eligible to receive a shift premium. Amend  
WAC 357-28-203 to clarify when an employee must receive location-based  
premium pay. Amend WAC 357-31-133 to make corrections to references to  
an incorrect subsection. Repeal WAC 357-31-345 to remove redundant  
language.

Reasons Supporting Proposal: Housekeeping in nature. The amend-  
ment to WAC 357-13-090 is stemming from the new IT professional struc-  
ture implementation that went into effect on July 1, 2019. The amend-  
ment to WAC 357-28-190 is to provide clarity and to align with the  
compensation plan. The amendment to WAC 357-28-203 is changing the  
word "and" to "or." This will clarify that location-based premiums  
must be paid when an employee is assigned to work on McNeil Island **or**  
when an employee is assigned to a permanent duty station in King Coun-  
ty. The amendment to WAC 357-28-215 is to correct the reference from  
base pay to base salary. The amendment to WAC 357-31-133 is to fix an  
oversight from renumeration of the section stemming from rule changes  
in 2019. WAC 357-31-350 addresses how leave without pay affects a gen-  
eral government employee's seniority date; therefore, WAC 357-31-345  
is no longer needed. The retention of WAC 357-31-345 was an oversight  
when rules were amended, effective July 1, 2022, as reflected on WSR  
22-06-006.

Statutory Authority for Adoption: RCW 41.06.133 and 41.06.150.

Statute Being Implemented: RCW 41.06.133 and 41.06.150.

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

Name of Proponent: OFM, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Brandy Chinn, 128 10th Avenue S.W., Olympia, WA 98501, 360-878-2901.

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

A cost-benefit analysis is not required under RCW 34.05.328.

Rules are related to internal government operations and are not subject to violation by a nongovernmental party. See RCW 34.05.328

(5)(b)(ii) for exemption.

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

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party.

Scope of exemption for rule proposal:

Is fully exempt.

October 4, 2022

Nathan Sherrard

Assistant Legal Affairs Counsel

## OTS-4085.2

AMENDATORY SECTION (Amending WSR 22-12-076, filed 5/27/22, effective 7/1/22)

**WAC 357-31-133 When may an employer allow an employee to use their accrued sick leave?** The employer may require verification or certification of the reason for sick leave use in accordance with the employer's leave policy.

Employers **may** allow the use of accrued sick leave under the following conditions:

(1) For condolence or bereavement;

(2) When an employee is unable to report to work due to inclement weather in accordance with the employer's policy on inclement weather as described in WAC 357-31-255;

(3) To bond with a newborn, adoptive or foster child for a period beyond 18 weeks as allowed in WAC 357-31-130 (~~((1)-(j))~~) (12). Sick leave for this purpose must be taken during the first year following the child's birth or placement. The total amount of sick leave allowed to be used, beyond WAC 357-31-130 (~~((1)-(i))~~) (12) must be addressed in the employer's leave policy in accordance with WAC 357-31-100; or

(4) When a child is a family member of an employee or member of an employee's household and:

(a) The child's school or place of care has been closed by order or recommendation of a public official for any health-related reason; or

(b) The child has been exposed to a contagious disease and is required to quarantine.

[Statutory Authority: Chapter 41.06 RCW. WSR 22-12-076, § 357-31-133, filed 5/27/22, effective 7/1/22.]

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 357-31-345            How does leave without pay affect a general government employee's seniority date?

#### **OTS-4040.1**

AMENDATORY SECTION (Amending WSR 20-24-025, filed 11/20/20, effective 12/28/20)

**WAC 357-28-190 When must an employee receive shift premium?** (1) Shift premium at the rate specified in the compensation plan must be paid when:

(a) An employee is regularly scheduled to work a shift in which the majority of hours worked daily or weekly are between 6:00 p.m. and 6:00 a.m.; (~~(or)~~)

(b) An employee is scheduled to work a shift which is split with a minimum of four intervening hours not worked; or

(c) An employee is regularly scheduled to work a day shift but is assigned to work a night or evening shift in which the majority of hours worked are between 6:00 p.m. and 6:00 a.m.

(2) Shift premium must be paid for the entire daily or weekly shift that qualifies under subsection (1) of this section. Additionally, these employees are entitled to shift premium for all hours that the employees work adjoining that evening or night shift.

(3) Shift premium may be paid at a monthly rate as specified in the compensation plan for full time employees regularly assigned to a qualifying shift.

(4) An employee assigned to a shift that qualifies for shift premium pay must receive the same shift premium for authorized periods of paid leave and holidays and for up to five days of a temporary assignment to a shift that does not qualify. Continued payment of shift premium for a temporary assignment exceeding five days is at the discretion of the employer.

(5) Compensation under the provisions of this section must be in accordance with the employer's policy, as approved by the director, for the following individuals:

(a) Employees dispatched to emergency response duty under an incident command system as defined in RCW 38.52.010; and



(b) Employees of the department of corrections who are in charge of offenders assigned to assist in forest fire suppression and other emergency incidents.

(6) Exceptions to shift premium provisions may be approved by the director.

(7) For higher education employers, shift premium must not apply to police and fire officers where special pay salaries are correlated with a rotating shift in accordance with local practice.

(8) Employees may waive shift premium.

(9) Employees who voluntarily request to work a shift as described in subsection (1) (a) (~~and~~), (b), and (c) of this section will not be eligible for shift premium.

[Statutory Authority: Chapter 41.06 RCW. WSR 20-24-025, § 357-28-190, filed 11/20/20, effective 12/28/20; WSR 05-01-205, § 357-28-190, filed 12/21/04, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 19-17-040, filed 8/15/19, effective 9/23/19)

**WAC 357-28-203 When must an employee receive location based premium pay?** Location based premium pay at the rate specified in the compensation plan must be paid when an employee is:

(1) Assigned to work on McNeil Island at the special commitment center and for each day the employee is physically working on the island. Days in paid status not working on the island will not qualify for premium pay; (~~and~~) or

(2) Assigned to a permanent duty station in King County.

(a) This subsection does not apply to employees who are employed by the University of Washington.

(b) When an employee is no longer permanently assigned to a King County duty station they will not be eligible for location based premium pay.

[Statutory Authority: Chapter 41.06 RCW and RCW 41.06.133. WSR 19-17-040, § 357-28-203, filed 8/15/19, effective 9/23/19.]

AMENDATORY SECTION (Amending WSR 19-11-134, filed 5/22/19, effective 7/1/19)

**WAC 357-28-215 When must an employee receive supervisory pay differential?** Employees within the information technology professional structure who are in the entry, journey and senior/specialist levels designated as and performing all the duties of a supervisor, in accordance with WAC 357-01-317, must receive a five percent supervisory pay differential in addition to their base (~~pay~~) salary as long as they meet the definition of supervisor.

[Statutory Authority: Chapter 41.06 RCW and RCW 41.06.150. WSR 19-11-134, § 357-28-215, filed 5/22/19, effective 7/1/19.]

OTS-4039.3

AMENDATORY SECTION (Amending WSR 16-17-089, filed 8/18/16, effective 9/20/16)

**WAC 357-13-090 How is an employee affected when ((his/her)) their position is reallocated?**

This table is used to determine how an employee whose position is reallocated is affected.			
	Employee's position reallocated to:		
	Class with a higher salary range maximum	Class with an equal salary range maximum	Class with a lower salary range maximum
Reallocation results from:			
A position review requested by the employee or initiated by the employer	<p><i>If the employee has performed the higher level duties for at least six months and meets the competencies and other position requirements:</i></p> <p>→ The employee remains in the position and is appointed with permanent status provided the probationary or trial service period for the class to which the position is reallocated is six months in duration. If the probationary period or trial service period is longer than six months and the employee has not performed higher level duties for the length of the probationary period or trial service period, the employer may require the employee serve the remainder of the probationary or trial service period before gaining permanent status in the reallocated position.</p> <p><i>If the reallocation is the result of a change in the duties of the position and the employee has not performed the higher level duties for six months or more:</i></p> <p>→ The employer must give the employee the opportunity to compete for the position. The employer may choose to promote the employee without competition as long as the employee meets the competencies and any other position requirements.</p> <p>If the employee is not selected for the position, the employer's layoff procedure applies. If the employee is appointed and ((he/she)) has already gained permanent status, the employee must serve a trial service period. If the employee has not completed the probationary period, then the new trial service period will overlap provided the higher and lower classes are in the same or a closely related field. If the classes are not in the same or closely related field, then the employee will start their probationary period over in the new class.</p>	<p><i>If the employee meets the competencies and other position requirements:</i></p> <p>→ The employee remains in the position and retains existing appointment status.</p> <p>→ The employee retains the previous base salary in accordance with WAC 357-28-120.</p> <p><i>If the employee does not meet the competencies and other position requirements:</i></p>	<p><i>If the employee meets the competencies and other position requirements and chooses to remain in the reallocated position:</i></p> <p>→ The employee retains appointment status; has the right to be placed on the employer's internal layoff list and in the general government transition pool; and has ((his/her)) <u>their</u> salary set in accordance with WAC 357-28-120.</p> <p><i>If the employee chooses to vacate the position or does not meet the competencies and other position requirements:</i></p> <p>→ The employer's layoff procedure applies.</p>

This table is used to determine how an employee whose position is reallocated is affected.			
	Employee's position reallocated to:		
	Class with a higher salary range maximum	Class with an equal salary range maximum	Class with a lower salary range maximum
Reallocation results from:			
A position review requested by the employee or initiated by the employer	<i>If the employee has performed the higher level duties for at least six months and meets the competencies and other position requirements:</i>  Upon appointment to the higher class, the <del>((employee's base salary must be increased a minimum of a two step increase))</del> <u>employee must advance to a step of the range for the new class that is nearest to five percent above their previous salary</u> , not to exceed step M of the range as provided in WAC 357-28-115.	<i>If the employee meets the competencies and other position requirements:</i>  → The employer's layoff procedure applies.	<i>If the employee meets the competencies and other position requirements and chooses to remain in the reallocated position:</i>
The director revising the classification plan.	The employee remains in the position and keeps existing appointment status. See WAC 357-28-130 for determining the employee's salary.		

[Statutory Authority: Chapter 41.06 RCW. WSR 16-17-089, § 357-13-090, filed 8/18/16, effective 9/20/16; WSR 14-24-026, § 357-13-090, filed 11/21/14, effective 12/22/14; WSR 13-19-043, § 357-13-090, filed 9/13/13, effective 10/18/13; WSR 11-23-054, § 357-13-090, filed 11/10/11, effective 12/13/11; WSR 06-23-090, § 357-13-090, filed 11/14/06, effective 12/18/06; WSR 05-12-088, § 357-13-090, filed 5/27/05, effective 7/1/05; WSR 05-01-201, § 357-13-090, filed 12/21/04, effective 7/1/05.]

**WSR 22-20-096**  
**PROPOSED RULES**  
**OFFICE OF**  
**FINANCIAL MANAGEMENT**  
[Filed October 4, 2022, 12:45 p.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Title of Rule and Other Identifying Information: WAC 357-01-304 Seniority date (higher education), 357-31-027 When must a higher education employer allow a part-time employee to use accrued holiday credit?, 357-31-070 When is an employer required to approve an employee's request to use a personal holiday?, 357-31-100 Must an employer have a policy for requesting and approving leave?, 357-31-130 When must an employer allow an employee to use their accrued sick leave?, 357-31-200 When must an employer grant the use of vacation leave?, 357-31-230 When must an employee be granted the use of accrued compensatory time?, 357-31-327 When must an employer grant leave without pay?, 357-31-374 When must an employer grant a temporary leave of absence for service in an elective office or for legislative service?, 357-31-3745 How does a temporary leave of absence for service in an elective office or for legislative service impact an employee's probationary, trial service or transition review period?, 357-31-567 When must an employer grant the use of recognition leave?, 357-46-053 How is a higher education employee's seniority date determined?, 357-46-055 How is a general government employee's seniority date determined?, 357-52-010 What actions may be appealed?, and 357-58-300 Does time spent on leave without pay, shared leave, or time spent on a temporary leave of absence for service in an elective office or legislative service count towards completion of an employee's review period?

Hearing Location(s): On November 10, 2022, at 8:30 a.m., Zoom meeting (with call-in option), ID 830 9875 7996, Call in 253-215-8782, Passcode 814462, Zoom link <https://ofm-wa-gov.zoom.us/j/83098757996?pwd=TkJkOGR5d2dFeDNZVHFHsk4rdHlDdz09>.

Date of Intended Adoption: November 17, 2022.

Submit Written Comments to: Brandy Chinn, Office of Financial Management (OFM), Raad Building, 128 10th Avenue S.W., P.O. Box 47500, Olympia, WA 98504, email [brandy.chinn@ofm.wa.gov](mailto:brandy.chinn@ofm.wa.gov), by 11:59 p.m., November 3, 2022.

Assistance for Persons with Disabilities: OFM, TTY 711 or 1-800-833-6384, by 11:59 p.m., November 3, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To align Title 357 WAC with the requirements of new and existing laws specifically to: (1) Require an employer to grant an employee's request to use their accrued leave or leave without pay for legislative service leave in accordance with chapter 49.100 RCW; (2) require an employer to grant an employee's request to use leave without pay for service in an elective office in accordance with RCW 41.04.120; (3) allow an employee who is serving a probationary period, trial service period, transitional review period, or Washington management service review period to resume/complete their review period when the employee returns from the leave of absence due to legislative service and due to service in an elective office; (4) state employees who are on an approved leave of absence for legislative service must not have their seniority date adjusted for time spent during a leave of absence for legislative service and for

service in an elective office; and (5) exclude legislative service leave violations under chapter 49.100 RCW from rule violation appeals.

Reasons Supporting Proposal: Chapter 271, Laws of 2022 (HB 1927) passed during the 2022 legislative session with an effective date of June 9, 2022. HB 1927 adds a new chapter to Title 49 RCW, Labor regulations, encouraging citizens to serve in the legislature by creating leave provisions for legislative service. Section 3 *requires* an employer to grant a temporary leave of absence without loss of *job status* or *seniority* to an employee who is a member of the state legislature to perform any official duty during regular and special legislative sessions. The leave granted *may* be unpaid, or the employee may substitute *any* accrued paid leave. In addition, RCW 41.04.120 allows for leave of absence by reason of having been elected or appointed to an elective office (service in an elective office) while preserving an employee's civil service status and seniority. Unlike HB 1927, RCW 41.04.120 is not restricted to regular and special legislative sessions, and applies to any elective office. This rule making will align Title 357 WAC with the requirements of these new and existing laws.

Statutory Authority for Adoption: RCW 41.06.133.

Statute Being Implemented: RCW 41.04.120; and chapter 49.100 RCW.

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

Name of Proponent: OFM, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Brandy Chinn, 128 10th Avenue S.W., Olympia, WA 98501, 360-878-2901.

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

A cost-benefit analysis is not required under RCW 34.05.328.

Rules are related to internal government operations and are not subject to violation by a nongovernmental party. See RCW 34.05.328 (5)(b)(ii) for exemption.

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

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party.

Scope of exemption for rule proposal:

Is fully exempt.

October 4, 2022

Nathan Sherrard

Assistant Legal Affairs Counsel

## OTS-4087.1

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

**WAC 357-01-304 Seniority date (higher education).** For higher education employees, the seniority date is determined in accordance with the employer's layoff procedure. The employer's layoff procedure must specify a uniform method for determining the seniority date for

employees of the higher education institution or related board who are covered by the civil service rules. (~~Employees on military leave as provided in WAC 357-31-370 must not have their seniority date adjusted for the time spent on military leave without pay.~~) Seniority dates will not be adjusted for any time period an employee is on approved leave without pay for reasons defined in WAC 357-46-053.

[Statutory Authority: Chapter 41.06 RCW. WSR 14-06-007, § 357-01-304, filed 2/20/14, effective 3/24/14.]

### OTS-4088.3

AMENDATORY SECTION (Amending WSR 22-01-022, filed 12/3/21, effective 7/1/22)

**WAC 357-31-027 When must a higher education employer allow a part-time employee to use accrued holiday credit?** Higher education employers must allow a part-time employee as defined in WAC 357-01-2290(2) to use accrued holiday credit for the following reasons:

(1) Employees must request to use accrued holiday credit in accordance with the employer's leave policy. When considering employees' requests to use accrued holiday credit, employers must consider their business needs and the wishes of the employee.

(2) An employee must be granted the use of accrued holiday credit to care for a spouse, registered domestic partner, parent, parent-in-law, or grandparent of the employee who has a serious health condition or an emergency health condition, or to care for a minor/dependent child with a health condition that requires treatment or supervision. In accordance with the employer's leave policy, approval of the employee's request to use accrued holiday credit may be subject to verification that the condition exists.

(3) An employee must be granted the use of accrued holiday credit if the employee or the employee's family member, as defined in chapter 357-01 WAC, is a victim of domestic violence, sexual assault, or stalking as defined in RCW 49.76.020. An employer may require the request for leave under this section be supported by verification in accordance with WAC 357-31-730.

(4) In accordance with WAC 357-31-373, an employee must be granted the use of accrued holiday credit to be with a spouse or registered domestic partner who is a member of the armed forces of the United States, National Guard, or reserves after the military spouse or registered domestic partner has been notified of an impending call or order to active duty, before deployment, or when the military spouse or registered domestic partner is on leave from deployment.

(5) An employee must be granted the use of accrued holiday credit when requested as a supplemental benefit while receiving a partial wage replacement for paid family and/or medical leave under Title 50A RCW as provided in WAC 357-31-248. Leave taken under this subsection may be subject to verification that the employee has been approved to receive benefits for approved paid family and/or medical leave under Title 50A RCW.

(6) Employers may require that accumulated holiday credit be used before vacation leave is approved, except in those instances where this requirement would result in loss of accumulated vacation leave.

(7) If the employee requests to use their accrued holiday credit when granted a temporary leave of absence for legislative service in accordance with WAC 357-31-374(2).

[Statutory Authority: Chapter 41.06 RCW. WSR 22-01-022, § 357-31-027, filed 12/3/21, effective 7/1/22.]

AMENDATORY SECTION (Amending WSR 22-12-076, filed 5/27/22, effective 7/1/22)

**WAC 357-31-070 When is an employer required to approve an employee's request to use a personal holiday?** (1) An employer must approve the use of a personal holiday as long as:

(a) The employee is entitled to a personal holiday in accordance with RCW 1.16.050 and WAC 357-31-055;

(b) The employee has requested the personal holiday in accordance with the employer's leave procedures; and

(c) The employee's absence does not interfere with the operational needs of the employer.

(2) At any time, an employer must allow an employee to use part or all of the personal holiday for any of the following reasons:

(a) To care for a minor/dependent child with a health condition that requires treatment or supervision;

(b) To care for a spouse, registered domestic partner, parent, parent-in-law or grandparent of the employee who has a serious health condition or an emergency health condition;

(c) If the employee or the employee's family member is a victim of domestic violence, sexual assault, or stalking as defined in RCW 49.76.020. An employer may require the request for leave under this section be supported by verification in accordance with WAC 357-31-730;

(d) In accordance with WAC 357-31-373, for an employee to be with a spouse or registered domestic partner who is a member of the armed forces of the United States, National Guard, or reserves after the military spouse or registered domestic partner has been notified of an impending call or order to active duty, before deployment, or when the military spouse or registered domestic partner is on leave from deployment;

(e) If the employee requests to use their personal holiday as a supplemental benefit while receiving a partial wage replacement for paid family and/or medical leave under Title 50A RCW. Leave taken under this subsection may be subject to verification that the employee has been approved to receive benefits for paid family and/or medical leave under Title 50A RCW; ((e))

(f) When a high-risk employee, as defined in RCW 49.17.062, seeks a reasonable accommodation to protect themselves from the risk of exposure to an infectious or contagious disease and the employer determines no other accommodation is reasonable besides the use of leave; or

(g) If the employee requests to use their personal holiday when granted a temporary leave of absence for legislative service in accordance with WAC 357-31-374(2).

[Statutory Authority: Chapter 41.06 RCW. WSR 22-12-076, § 357-31-070, filed 5/27/22, effective 7/1/22. Statutory Authority: Chapter 41.06 RCW and RCW 50A.15.060. WSR 20-06-008, § 357-31-070, filed 2/20/20, effective 5/1/20. Statutory Authority: Chapter 41.06 RCW. WSR 09-17-057 and 09-18-112, § 357-31-070, filed 8/13/09 and 9/2/09, effective 12/3/09; WSR 09-03-013, § 357-31-070, filed 1/9/09, effective 2/13/09; WSR 08-15-043, § 357-31-070, filed 7/11/08, effective 10/1/08; WSR 07-03-054, § 357-31-070, filed 1/12/07, effective 2/15/07; WSR 05-08-136, § 357-31-070, filed 4/6/05, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 22-12-076, filed 5/27/22, effective 7/1/22)

**WAC 357-31-100 Must an employer have a policy for requesting and approving leave?** Each employer must develop a leave policy which specifies the procedure for requesting and approving all leave, as provided in the civil service rules. The employer's policy must:

- (1) Allow an employee to use vacation leave without advance approval when the employee is requesting to use vacation leave to respond to family care emergencies or for an emergency health condition as provided in WAC 357-31-200 (1)(b);
  - (2) Allow an employee to use a reasonable amount of accrued leave or unpaid leave when the employee is a victim or has a family member, as defined in chapter 357-01 WAC, who is a victim of domestic violence, sexual assault or stalking as defined in RCW 49.76.020;
  - (3) Allow an employee to use accrued leave as a supplemental benefit as provided in WAC 357-31-248;
  - (4) Address advance notice from the employee when the employee is seeking leave under subsections (2) and (3) of this section. When advance notice cannot be given because of an emergency or unforeseen circumstances due to domestic violence, sexual assault or stalking, the employee or the employee's designee must give notice to the employer no later than the end of the first day that the employee takes such leave;
  - (5) Allow an employee to use sick leave for the purpose of parental leave to bond with a newborn, adoptive or foster child. The policy must state the total amount of sick leave allowed to be used beyond 18 weeks in accordance with WAC 357-31-133;
  - (6) Address overtime eligible employees that are required to provide medical certification or verification to their employer for the use of paid sick leave under chapter 296-128 WAC;
  - (7) Address overtime eligible employees that are required to provide reasonable notice to their employer for an absence from work for the use of paid sick leave under chapter 296-128 WAC;
  - (8) Address whether a general government employee may take additional accrued leave beyond 30 days in a two-year period to participate in life-giving procedures in accordance with RCW 41.06.570;
- ((and))
- (9) Allow a high-risk employee, as defined in RCW 49.17.062, seeking a reasonable accommodation to protect themselves from the risk of exposure to an infectious or contagious disease to use their accrued leave and leave without pay if the employer determines no other accommodation is reasonable besides the use of leave;



(10) Allow an employee to use unpaid leave when the employee is granted a temporary leave of absence for service in an elective office in accordance with WAC 357-31-374(1); and

(11) Allow an employee to use unpaid and/or accrued paid leave when the employee is granted a temporary leave of absence for legislative service in accordance with WAC 357-31-374(2). The policy must state employees who request a leave of absence for legislative service must provide notice to the employer at least 30 days in advance for a regular legislative session or as soon as the session is proclaimed for a special session.

[Statutory Authority: Chapter 41.06 RCW. WSR 22-12-076, § 357-31-100, filed 5/27/22, effective 7/1/22; WSR 20-24-019, § 357-31-100, filed 11/20/20, effective 12/28/20. Statutory Authority: Chapter 41.06 RCW and RCW 50A.15.060. WSR 20-06-008, § 357-31-100, filed 2/20/20, effective 5/1/20. Statutory Authority: Chapter 41.06 RCW and RCW 41.06.133. WSR 19-11-135, § 357-31-100, filed 5/22/19, effective 7/1/19. Statutory Authority: Chapter 41.06 RCW. WSR 18-05-032, § 357-31-100, filed 2/10/18, effective 3/13/18; WSR 14-11-035, § 357-31-100, filed 5/14/14, effective 6/16/14; WSR 10-11-071, § 357-31-100, filed 5/14/10, effective 6/15/10; WSR 09-03-013, § 357-31-100, filed 1/9/09, effective 2/13/09; WSR 08-15-043, § 357-31-100, filed 7/11/08, effective 10/1/08; WSR 05-08-136, § 357-31-100, filed 4/6/05, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 22-12-076, filed 5/27/22, effective 7/1/22)

**WAC 357-31-130 When must an employer allow an employee to use their accrued sick leave?** The employer may require medical verification or certification of the reason for sick leave use in accordance with the employer's leave policy and in compliance with chapter 296-128 WAC.

Employers **must** allow the use of accrued sick leave under the following conditions:

(1) An employee's mental or physical illness, disability, injury or health condition that has incapacitated the employee from performing required duties; to accommodate the employee's need for medical diagnosis, care or treatment of a mental or physical illness, injury or health condition; or an employee's need for preventive medical care.

(2) By reason of exposure of the employee to a contagious disease when the employee's presence at work would jeopardize the health of others.

(3) When a high-risk employee, as defined in RCW 49.17.062, seeks a reasonable accommodation to protect themselves from the risk of exposure to an infectious or contagious disease and the employer determines no other accommodation is reasonable besides the use of leave.

(4) To allow an employee to provide care for a child who has been exposed to a contagious disease and is required to quarantine; or when a household or family member needs additional care, not covered by subsection (6) of this section, who has been exposed to a contagious disease and is required to quarantine.

(5) When the employee's place of business has been closed by order of a public official for any health-related reason, or when an em-

ployee's child's school or place of care has been closed for such reason.

(6) To allow an employee to provide care for a family member with a mental or physical illness, injury or health condition; care of a family member who needs medical diagnosis, care or treatment of a mental or physical illness, injury or health condition; or care for a family member who needs preventive medical care.

(7) For family care emergencies per WAC 357-31-290, 357-31-295, 357-31-300 and 357-31-305.

(8) When an employee is required to be absent from work to care for members of the employee's household or relatives of the employee or relatives of the employee's spouse/registered domestic partner who experience an illness or injury, not including situations covered by subsection (6) of this section.

(a) The employer must approve up to five days of accumulated sick leave each occurrence. Employers may approve more than five days.

(b) For purposes of this subsection, "relatives" is limited to spouse, registered domestic partner, child, grandchild, grandparent or parent.

(9) When requested as a supplemental benefit while receiving a partial wage replacement for paid family and/or medical leave under Title 50A RCW as provided in WAC 357-31-248. Leave taken under this subsection may be subject to verification that the employee has been approved to receive benefits for paid family and/or medical leave under Title 50A RCW.

(10) If the employee or the employee's family member, as defined in chapter 357-01 WAC, is a victim of domestic violence, sexual assault or stalking as defined in RCW 49.76.020. An employer may require the request for leave under this section be supported by verification in accordance with WAC 357-31-730.

(11) In accordance with WAC 357-31-373, for an employee to be with a spouse or registered domestic partner who is a member of the armed forces of the United States, National Guard, or reserves after the military spouse or registered domestic partner has been notified of an impending call or order to active duty, before deployment, or when the military spouse or registered domestic partner is on leave from deployment.

(12) When an employee requests to use sick leave for the purpose of parental leave to bond with a newborn, adoptive or foster child for a period up to 18 weeks. Sick leave for this purpose must be taken during the first year following the child's birth or placement.

(13) If the employee requests to use sick leave when granted a temporary leave of absence for legislative service in accordance with WAC 357-31-374(2).

[Statutory Authority: Chapter 41.06 RCW. WSR 22-12-076, § 357-31-130, filed 5/27/22, effective 7/1/22; WSR 20-24-025, § 357-31-130, filed 11/20/20, effective 12/28/20. Statutory Authority: Chapter 41.06 RCW and RCW 50A.15.060. WSR 20-06-008, § 357-31-130, filed 2/20/20, effective 5/1/20. Statutory Authority: Chapter 41.06 RCW and RCW 41.06.133. WSR 19-11-135, § 357-31-130, filed 5/22/19, effective 7/1/19. Statutory Authority: Chapter 41.06 RCW. WSR 18-05-032, § 357-31-130, filed 2/10/18, effective 3/13/18; WSR 14-11-035, § 357-31-130, filed 5/14/14, effective 6/16/14; WSR 09-17-057 and 09-18-112, § 357-31-130, filed 8/13/09 and 9/2/09, effective 12/3/09; WSR 09-03-013, § 357-31-130, filed 1/9/09, effective 2/13/09; WSR 08-15-043, §

357-31-130, filed 7/11/08, effective 10/1/08; WSR 05-08-136, § 357-31-130, filed 4/6/05, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 22-12-076, filed 5/27/22, effective 7/1/22)

**WAC 357-31-200 When must an employer grant the use of vacation leave?** (1) An employee's request to use vacation leave must be approved under the following conditions:

- (a) As a result of the employee's serious health condition.
  - (b) To care for a spouse, registered domestic partner, parent, parent-in-law, or grandparent of the employee who has a serious health condition or an emergency health condition.
  - (c) To care for a minor/dependent child with a health condition that requires treatment or supervision.
  - (d) For parental leave as provided in WAC 357-31-460.
  - (e) If the employee or the employee's family member, as defined in chapter 357-01 WAC, is a victim of domestic violence, sexual assault, or stalking as defined in RCW 49.76.020. An employer may require the request for leave under this section be supported by verification in accordance with WAC 357-31-730.
  - (f) In accordance with WAC 357-31-373, for an employee to be with a spouse or registered domestic partner who is a member of the armed forces of the United States, National Guard, or reserves after the military spouse or registered domestic partner has been notified of an impending call or order to active duty, before deployment, or when the military spouse or registered domestic partner is on leave from deployment.
  - (g) When requested as a supplemental benefit while receiving a partial wage replacement for paid family and/or medical leave under Title 50A RCW as provided in WAC 357-31-248.
  - (h) When a high-risk employee, as defined in RCW 49.17.062, seeks a reasonable accommodation to protect themselves from the risk of exposure to an infectious or contagious disease and the employer determines no other accommodation is reasonable besides the use of leave.
  - (i) When the employee requests to use their vacation leave when granted a temporary leave of absence for legislative service in accordance with WAC 357-31-374(2).
- (2) In accordance with the employer's leave policy, approval for the reasons listed in (1)(a) through (g) above may be subject to verification that the condition or circumstance exists or that paid family and/or medical leave under Title 50A RCW has been approved.

[Statutory Authority: Chapter 41.06 RCW. WSR 22-12-076, § 357-31-200, filed 5/27/22, effective 7/1/22. Statutory Authority: Chapter 41.06 RCW and RCW 50A.15.060. WSR 20-06-008, § 357-31-200, filed 2/20/20, effective 5/1/20. Statutory Authority: Chapter 41.06 RCW. WSR 09-17-057 and 09-18-112, § 357-31-200, filed 8/13/09 and 9/2/09, effective 12/3/09; WSR 09-03-013, § 357-31-200, filed 1/9/09, effective 2/13/09; WSR 08-15-043, § 357-31-200, filed 7/11/08, effective 10/1/08; WSR 05-08-137, § 357-31-200, filed 4/6/05, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 22-12-076, filed 5/27/22, effective 7/1/22)

**WAC 357-31-230 When must an employee be granted the use of accrued compensatory time?** (1) Employees must request to use accrued compensatory time in accordance with the employer's leave policy. When considering employees' requests, employers must consider their business needs and the wishes of the employee.

(2) An employee must be granted the use of accrued compensatory time to care for a spouse, registered domestic partner, parent, parent-in-law, or grandparent of the employee who has a serious health condition or an emergency health condition, or to care for a minor/dependent child with a health condition that requires treatment or supervision. In accordance with the employer's leave policy, approval of the employee's request to use accrued compensatory time may be subject to verification that the condition exists.

(3) An employee must be granted the use of accrued compensatory time if the employee or the employee's family member, as defined in chapter 357-01 WAC, is a victim of domestic violence, sexual assault, or stalking as defined in RCW 49.76.020. An employer may require the request for leave under this section be supported by verification in accordance with WAC 357-31-730.

(4) In accordance with WAC 357-31-373, an employee must be granted the use of accrued compensatory time to be with a spouse or registered domestic partner who is a member of the armed forces of the United States, National Guard, or reserves after the military spouse or registered domestic partner has been notified of an impending call or order to active duty, before deployment, or when the military spouse or registered domestic partner is on leave from deployment.

(5) When requested as a supplemental benefit while receiving a partial wage replacement for paid family and/or medical leave under Title 50A RCW as provided in WAC 357-31-248. Leave taken under this subsection may be subject to verification that the employee has been approved to receive benefits for approved paid family and/or medical leave under Title 50A RCW.

(6) Compensatory time off may be scheduled by the employer during the final 60 days of a biennium.

(7) Employers may require that accumulated compensatory time be used before vacation leave is approved, except in those instances where this requirement would result in loss of accumulated vacation leave.

(8) A high-risk employee, as defined in RCW 49.17.062, seeking a reasonable accommodation to protect themselves from the risk of exposure to an infectious or contagious disease must be granted the use of accrued compensatory time if the employer determines no other accommodation is reasonable besides the use of leave.

(9) An employee must be granted the use of compensatory time when granted a temporary leave of absence for legislative service in accordance with WAC 357-31-374(2).

[Statutory Authority: Chapter 41.06 RCW. WSR 22-12-076, § 357-31-230, filed 5/27/22, effective 7/1/22. Statutory Authority: Chapter 41.06 RCW and RCW 50A.15.060. WSR 20-06-008, § 357-31-230, filed 2/20/20, effective 5/1/20. Statutory Authority: Chapter 41.06 RCW. WSR 11-23-054, § 357-31-230, filed 11/10/11, effective 12/13/11; WSR 10-23-120, § 357-31-230, filed 11/17/10, effective 12/18/10; WSR 09-17-056 and 09-18-113, § 357-31-230, filed 8/13/09 and 9/2/09, ef-

fective 12/3/09; WSR 09-03-013, § 357-31-230, filed 1/9/09, effective 2/13/09; WSR 08-15-043, § 357-31-230, filed 7/11/08, effective 10/1/08; WSR 05-08-137, § 357-31-230, filed 4/6/05, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 22-12-076, filed 5/27/22, effective 7/1/22)

**WAC 357-31-327 When must an employer grant leave without pay?**

An employer must grant leave without pay under the following conditions:

- (1) When an employee who is a volunteer firefighter is called to duty to respond to a fire, natural disaster, or medical emergency;
- (2) If the employee or the employee's family member, as defined in chapter 357-01 WAC, is a victim of domestic violence, sexual assault, or stalking as defined in RCW 49.76.020. An employer may require the request for leave under this section be supported by verification in accordance with WAC 357-31-730; or
- (3) In accordance with WAC 357-31-373, for an employee to be with a spouse or registered domestic partner who is a member of the armed forces of the United States, National Guard, or reserves after the military spouse or registered domestic partner has been notified of an impending call or order to active duty, before deployment, or when the military spouse or registered domestic partner is on leave from deployment.
- (4) When an employee requests a day off for a reason of faith or conscience or an organized activity conducted under the auspices of a religious denomination, church, or religious organization in accordance with WAC 357-31-052.
- (5) When an employee is on approved paid family and/or medical leave under Title 50A RCW. Leave taken under this subsection may be subject to verification that the employee has been approved to receive benefits for paid family and/or medical leave under Title 50A RCW and qualifies for employment protection in accordance with RCW 50A.35.010.
- (6) When a high-risk employee, as defined in RCW 49.17.062, seeks a reasonable accommodation to protect themselves from the risk of exposure to an infectious or contagious disease and the employer determines no other accommodation is reasonable besides the use of leave.
- (7) When an employee is granted a temporary leave of absence for service in an elective office or for legislative service in accordance with WAC 357-31-374.

[Statutory Authority: Chapter 41.06 RCW. WSR 22-12-076, § 357-31-327, filed 5/27/22, effective 7/1/22. Statutory Authority: Chapter 41.06 RCW and RCW 50A.15.060. WSR 20-06-008, § 357-31-327, filed 2/20/20, effective 5/1/20. Statutory Authority: Chapter 41.06 RCW. WSR 14-24-024, § 357-31-327, filed 11/21/14, effective 12/22/14; WSR 09-17-057 and 09-18-112, § 357-31-327, filed 8/13/09 and 9/2/09, effective 12/3/09; WSR 09-03-014, § 357-31-327, filed 1/9/09, effective 2/13/09; WSR 08-15-043, § 357-31-327, filed 7/11/08, effective 10/1/08; WSR 07-17-129, § 357-31-327, filed 8/20/07, effective 9/20/07.]

NEW SECTION

**WAC 357-31-374 When must an employer grant a temporary leave of absence for service in an elective office or for legislative service?** An employer must grant a temporary leave of absence for:

(1) Service in an elective office without loss of job status or seniority to an employee by reason of having been elected or appointed to an elective office in accordance with RCW 41.04.120.

(2) Legislative service without loss of job status or seniority to an employee who is a member of the state legislature in order for the employee to perform any special duty as a member of the legislature during regular and special legislative sessions in accordance with chapter 49.100 RCW.

(a) The leave of absence may be unpaid or the employee may substitute any combination of accrued paid leave.

(b) An employee seeking a temporary leave of absence must provide notice to the employer:

(i) At least 30 days in advance for a regular legislative session; or

(ii) As soon as the session is proclaimed for a special session.

[]

NEW SECTION

**WAC 357-31-3745 How does a temporary leave of absence for service in an elective office or for legislative service impact an employee's probationary period, trial service period, or transition review period?** When an employee is granted a temporary leave of absence for service in an elective office or for legislative service during a probationary period, trial service period, or transition review period, the employer must suspend the employee's probationary period, trial service period, or transition review period and allow the employee to resume when they return from their leave of absence.

[]

AMENDATORY SECTION (Amending WSR 22-12-076, filed 5/27/22, effective 7/1/22)

**WAC 357-31-567 When must an employer grant the use of recognition leave?** (1) An employee's request to use recognition leave must be approved under the following conditions:

(a) An employee must be granted the use of recognition leave if the employee or the employee's family member, as defined in chapter 357-01 WAC, is a victim of domestic violence, sexual assault, or stalking as defined in RCW 49.76.020. An employer may require the request for leave under this section be supported by verification in accordance with WAC 357-31-730;

(b) In accordance with WAC 357-31-373, an employee must be granted the use of recognition leave to be with a spouse or registered domestic partner who is a member of the Armed Forces of the United States, National Guard, or Reserves after the military spouse or reg-

istered domestic partner has been notified of an impending call or order to active duty, before deployment, or when the military spouse or registered domestic partner is on leave from deployment;

(c) When requested as a supplemental benefit while receiving a partial wage replacement for paid family and/or medical leave under Title 50A RCW as provided in WAC 357-31-248. Leave taken under this subsection may be subject to verification that the employee has been approved to receive benefits for approved paid family and/or medical leave under Title 50A RCW; (~~and~~)

(d) When a high-risk employee, as defined in RCW 49.17.062, seeks a reasonable accommodation to protect themselves from the risk of exposure to an infectious or contagious disease and the employer determines no other accommodation is reasonable besides the use of leave; and

(e) When an employee requests to use recognition leave when granted a temporary leave of absence for legislative service in accordance with WAC 357-31-374(2).

(2) In accordance with the employer's leave policy, approval for the reasons listed in (1)(a) and (b) above may be subject to verification that the condition or circumstance exists.

[Statutory Authority: Chapter 41.06 RCW. WSR 22-12-076, § 357-31-567, filed 5/27/22, effective 7/1/22. Statutory Authority: Chapter 41.06 RCW and RCW 50A.15.060. WSR 20-06-008, § 357-31-567, filed 2/20/20, effective 5/1/20. Statutory Authority: Chapter 41.06 RCW. WSR 10-23-120, § 357-31-567, filed 11/17/10, effective 12/18/10; WSR 09-17-056 and 09-18-113, § 357-31-567, filed 8/13/09 and 9/2/09, effective 12/3/09; WSR 09-03-013, § 357-31-567, filed 1/9/09, effective 2/13/09; WSR 08-15-043, § 357-31-567, filed 7/11/08, effective 10/1/08.]

### OTS-4089.3

AMENDATORY SECTION (Amending WSR 21-18-038, filed 8/24/21, effective 9/24/21)

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

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

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

(3) Employees on leave without pay as authorized by a proclamation issued by the governor directly related to health and safety must not have their seniority date adjusted for the time spent on leave without pay.

(4) Employees on an approved leave of absence in accordance with WAC 357-31-374 must not have their seniority date adjusted for time spent on the leave of absence.

[Statutory Authority: Chapter 41.06 RCW. WSR 21-18-038, § 357-46-053, filed 8/24/21, effective 9/24/21; WSR 05-12-075, § 357-46-053, filed 5/27/05, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 21-18-038, filed 8/24/21, effective 9/24/21)

**WAC 357-46-055 How is a general government employee's seniority date determined?** (1) For a full-time general government employee, the seniority date is the employee's most recent date of hire into state service (including exempt service) as adjusted for any period of leave without pay which exceeds (~~fifteen~~) 15 consecutive calendar days except when the leave without pay is taken for:

(a) Military leave as provided in WAC 357-31-370;  
 (b) Compensable work-related injury or illness leave;  
 (c) Government service leave not to exceed two years and one month;

(d) Educational leave, contingent upon successful completion of the coursework;

(e) Reducing the effects of layoff; (~~and/or~~)

(f) Leave without pay as authorized by a proclamation issued by the governor directly related to health and safety; and/or

(g) Leave for service in an elective office or legislative service as provided in WAC 357-31-374.

(2) When an employee is on leave without pay for more than (~~fifteen~~) 15 consecutive calendar days and the absence is not due to one of the reasons listed above, the employee's seniority date must be moved forward in an amount equal to the number of calendar days on leave without pay.

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

(a) Military leave as provided in WAC 357-31-370;  
 (b) Compensable work-related injury or illness leave;  
 (c) Government service leave not to exceed two years and one month;

(d) Educational leave, contingent upon successful completion of the coursework;

(e) Reducing the effects of layoff; (~~and/or~~)

(f) Leave without pay as authorized by a proclamation issued by the governor directly related to health and safety; and/or

(g) Leave for service in an elective office or legislative service as provided in WAC 357-31-374.

[Statutory Authority: Chapter 41.06 RCW. WSR 21-18-038, § 357-46-055, filed 8/24/21, effective 9/24/21; WSR 14-06-007, § 357-46-055, filed 2/20/14, effective 3/24/14; WSR 09-11-063, § 357-46-055, filed 5/14/09, effective 6/16/09; WSR 05-08-135, § 357-46-055, filed 4/6/05, effective 7/1/05.]



OTS-4091.1

AMENDATORY SECTION (Amending WSR 14-24-023, filed 11/21/14, effective 12/22/14)

**WAC 357-52-010 What actions may be appealed?** (1) Within WGS, the following actions may be appealed:

(a) Any permanent WGS employee subject to the statutory jurisdiction of the board who is dismissed, suspended, demoted, or separated or whose base salary is reduced may appeal to the board.

(b) Any employee, subject to the statutory jurisdiction of the board who adversely is affected by a violation of the state civil service law (chapter 41.06 RCW) or the rules contained in Title 357 WAC, may appeal to the board as follows:

(i) For a violation of state civil service law or rules relating to a layoff action, excluding removal from a layoff list, the employee may appeal directly to the board.

(ii) For a violation of state civil service law or rules relating to any other subject, including removal from a layoff list, the employee may appeal directly to the board, except as provided in WAC 357-49-010(1) and chapter 49.100 RCW.

(c) An employee in a position at the time of its allocation or reallocation or the employer may appeal to the personnel resources board by filing written exceptions to the director's review determination.

(d) An employee whose position has been exempted from chapter 41.06 RCW or the exclusive bargaining unit representative for a vacant position that has been exempted from chapter 41.06 RCW may appeal the exemption to the board.

(e) An individual or the employer may appeal remedial action to the board by filing written exceptions to the director's review determination.

(2) Within WMS, the following actions may be appealed:

(a) Any permanent Washington management service employee who is dismissed, suspended, demoted, laid off, or separated, or whose base salary is reduced may appeal to the board. A determination of which Washington management service positions will be eliminated in a layoff action is not subject to appeal.

(b) For a violation of state civil service law or rules pertaining to WMS employees, a WMS employee who is adversely affected by a violation of the state civil service law (chapter 41.06 RCW) or the rules pertaining to WMS employees (chapter 357-58 WAC) may appeal directly to the board, except violations under chapter 49.100 RCW.

(c) An employee whose position has been exempted from chapter 41.06 RCW may appeal the exemption to the board.

[Statutory Authority: Chapter 41.06 RCW. WSR 14-24-023, § 357-52-010, filed 11/21/14, effective 12/22/14; WSR 09-17-065, § 357-52-010, filed 8/13/09, effective 9/16/09; WSR 06-03-072, § 357-52-010, filed 1/12/06, effective 2/13/06; WSR 05-19-011, § 357-52-010, filed 9/8/05, effective 10/10/05; WSR 05-01-190, § 357-52-010, filed 12/21/04, effective 7/1/05.]

## OTS-4090.3

AMENDATORY SECTION (Amending WSR 08-07-062, filed 3/17/08, effective 4/18/08)

**WAC 357-58-300 Does time spent on leave without pay ((~~or~~), shared leave, or time spent on a temporary leave of absence for service in an elective office or legislative service count towards completion of an employee's review period?** (1) Time spent on leave without pay or shared leave counts towards completion of the employee's review period if the total time does not exceed ((~~one hundred seventy-four~~)) 174 hours. If the total time on leave without pay or shared leave exceeds ((~~one hundred seventy-four~~)) 174, the employer determines whether or not the time in excess of ((~~one hundred seventy-four~~)) 174 hours will count towards completion of the review period. The granting of leave shall be in compliance with chapter 357-31 WAC and the Fair Labor Standards Act.

(2) Time spent on a temporary leave of absence for service in an elective office or legislative service does not count towards the completion of the employee's review period. Employees who are granted a temporary leave of absence for service in an elective office or legislative service while serving a review period must have their review period suspended and be allowed to resume when they return from their leave of absence.

[Statutory Authority: Chapter 41.06 RCW. WSR 08-07-062, § 357-58-300, filed 3/17/08, effective 4/18/08; WSR 05-12-070, § 357-58-300, filed 5/27/05, effective 7/1/05.]

## WSR 22-20-097

## PROPOSED RULES

## OFFICE OF

## FINANCIAL MANAGEMENT

[Filed October 4, 2022, 12:45 p.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Title of Rule and Other Identifying Information: WAC 357-31-248

May an employee use vacation leave, sick leave, personal holiday, compensatory time, holiday credit, recognition leave, bereavement leave, or holiday pay as a supplemental benefit during a period when the employee is receiving partial wage replacement for paid family and/or medical leave under Title 50A RCW?

Hearing Location(s): On November 10, 2022, at 8:30 a.m., Zoom meeting (with call-in option), ID 830 9875 7996, Call in 253-215-8782, Passcode 814462, Zoom link <https://ofm-wa-gov.zoom.us/j/83098757996?pwd=TkJkOGR5d2dFeDNZVHFHsk4rdHlDdz09>.

Date of Intended Adoption: November 17, 2022.

Submit Written Comments to: Brandy Chinn, Office of Financial Management (OFM), Raad Building, 128 10th Avenue S.W., P.O. Box 47500, Olympia, WA 98504, email [brandy.chinn@ofm.wa.gov](mailto:brandy.chinn@ofm.wa.gov), by 11:59 p.m., November 3, 2022.

Assistance for Persons with Disabilities: Contact OFM, TTY 711 or 1-800-833-6384, by 11:59 p.m., November 3, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amend WAC 357-31-248 to add bereavement leave as a supplemental benefit during a period an employee is receiving partial wage replacement for paid family and/or medical leave for the death of an employee's family member or household member in accordance with WAC 357-31-250.

Reasons Supporting Proposal: The Washington's paid family and medical leave, or PFML insurance program, as codified in Title 50A RCW, became effective on October 19, 2017. Beginning January 1, 2020, the PFML program provides a partial wage replacement for Washington workers for an employee's own medical condition, to care for family members, bonding with a child, or for certain military-related events. Under the PFML program, the employment security department will replace up to 90 percent of an employee's average weekly wage (up to \$1,000 per week). During the 2019 legislative session, the law was amended to allow the employer to offer a "supplemental benefit" to employees while they are on approved PFML. Chapter 233, Laws of 2022 (2SSB 5649), effective June 9, 2022, expanded Title 50A RCW to provide seven calendar days of leave to an employee following the death of their child when the employee would have: (1) Been approved for medical leave for the birth of their child; or (2) approved for family leave to bond with their child during the first 12 months after the child's birth or placement. This rule making will help implement these recent amendments to the PFML program.

Statutory Authority for Adoption: RCW 41.06.133.

Statute Being Implemented: RCW 50A.05.010.

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

Name of Proponent: OFM, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Brandy Chinn, 128 10th Avenue S.W., Olympia, WA 98501, 360-878-2901.

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

A cost-benefit analysis is not required under RCW 34.05.328. Rules are related to internal government operations and are not subject to violation by a nongovernmental party. See RCW 34.05.328 (5)(b)(ii) for exemption.

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

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party.

Scope of exemption for rule proposal:

Is fully exempt.

October 4, 2022

Nathan Sherrard

Assistant Legal Affairs Counsel

#### OTS-4084.1

AMENDATORY SECTION (Amending WSR 22-01-022, filed 12/3/21, effective 7/1/22)

**WAC 357-31-248 May an employee use vacation leave, sick leave, personal holiday, compensatory time, holiday credit, recognition leave, bereavement leave, or holiday pay as a supplemental benefit during a period when the employee is receiving partial wage replacement for paid family and/or medical leave under Title 50A RCW?** An employee may use vacation leave, sick leave, personal holiday, compensatory time, holiday credit, recognition leave, bereavement leave, or holiday pay during a period when the employee is receiving partial wage replacement under Title 50A RCW as a supplemental benefit. The use of bereavement leave as a supplemental benefit is limited to the death of an employee's family member or household member in accordance with WAC 357-31-250.

[Statutory Authority: Chapter 41.06 RCW. WSR 22-01-022, § 357-31-248, filed 12/3/21, effective 7/1/22. Statutory Authority: Chapter 41.06 RCW and RCW 50A.15.060. WSR 20-06-008, § 357-31-248, filed 2/20/20, effective 5/1/20.]

## WSR 22-20-100

## PROPOSED RULES

## DEPARTMENT OF HEALTH

(Pharmacy Quality Assurance Commission)

[Filed October 4, 2022, 1:48 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-17-143.

Title of Rule and Other Identifying Information: New WAC

246-945-486 Return and reuse of unexpired medications—Department of corrections and 246-945-488 Safe donation of unexpired prescription drugs. The pharmacy quality assurance commission (commission) is proposing new sections in chapter 246-945 WAC for the implementation of SSB 6526, an act relating to the reuse and donation of unexpired prescription drugs.

Hearing Location(s): On November 17, 2022, at 9:20 a.m. The commission will provide a virtual and physical location for this hearing to promote social distancing and the safety of the citizens of Washington state.

Physical location: Capital Region ESD 113, 6005 Tye Drive S.W., Lewis Room, Tumwater, WA 98512.

Virtual: Please download and import the following iCalendar (.ics) files to your calendar system. Daily: <https://us02web.zoom.us/webinar/tZIsdu2hqzMuHNJhllH4KKYkCjwBU5J0e2Ps/ics?icsToken=98tyKuGurzouE9GdtB-BRpwABYj4LPPwmFxbgo13lBppK3R4Str9FehVEIcqOojV>; Topic: PQAC Business Meeting 2022.

To access the meeting on November 17 at 9 a.m., go to <https://zoom.us/join> or <https://us02web.zoom.us/j/86114958466> and use the Webinar ID 861 1495 8466.

The access options include one-tap mobile US +12532158782,,86114958466# or +16699009128,,86114958466#; or telephone, dial (for higher quality, dial a number based on your current location) US +1 253 215 8782 or +1 669 900 9128 or +1 346 248 7799 or +1 669 444 9171 or +1 386 347 5053 or +1 564 217 2000 or +1 646 558 8656 or +1 646 931 3860 or +1 301 715 8592 or +1 312 626 6799, Webinar ID 861 1495 8466. International numbers available <https://us02web.zoom.us/j/86114958466>.

Date of Intended Adoption: November 17, 2022.

Submit Written Comments to: Joshua Munroe, P.O. Box 47582, Olympia, WA 98504-7852, email <https://fortress.wa.gov/doh/policyreview>, fax 360-236-2901, by November 3, 2022.

Assistance for Persons with Disabilities: Contact Joshua Munroe, phone 360-236-2987, fax 360-236-2901, TTY 711, email [PharmacyRules@doh.wa.gov](mailto:PharmacyRules@doh.wa.gov), by November 10, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The 2020 Washington state legislature passed SSB 6526, an act relating to the reuse and donation of unexpired prescription drugs. SSB 6526 permits the department of corrections (DOC) pharmacy to accept returns of unit dose packages. The law also allows the commission to adopt rules to allow the safe donation of prescription drugs under chapter 69.70 RCW including, but not limited to, allowing pharmacy-to-pharmacy donation of unexpired prescription drug stock.

Proposed WAC 246-945-486 specifically allows the DOC pharmacy to accept for return and reuse of noncontrolled, unexpired legend drugs in unit dose packages, or full or partial multiple dose medication

cards from the facilities it serves. The DOC pharmacy must ensure product integrity by adhering to RCW 69.70.050 (1), (2), and (5).

The proposed language in WAC 246-945-488 adopts the required conditions for donated prescription drugs outlined in chapter 69.70 RCW, but also adds a requirement that participating pharmacies must submit an additional form to the commission as notification of participation in the program. They must also notify the commission when terminating participation in the program. The proposed rule also directs participating pharmacies to develop policies and procedures that facilitate compliance with the statutory requirements. The policies and procedures must also include an additional requirement to notify the prescriber when donated medications are dispensed to a patient.

In addition, WAC 246-945-488 contains measures to ensure patient safety and product integrity such as separating the donated drugs from the rest of the pharmacy's drug stock and maintaining a separate inventory. Finally, the rule also adds the clarification that practitioners, pharmacists, medical facilities, manufacturers, wholesalers, or persons to whom a prescription drug was prescribed are not required to obtain a wholesaler license when donating drugs to a pharmacy.

Reasons Supporting Proposal: SSB 6526 requires the commission to adopt rules allowing the DOC pharmacy to accept returns of unit dose packages or full or partial multiple dose medication cards from the facilities it serves and reuse the unexpired medication. The bill also allows the commission to adopt rules allowing the safe donation of prescription drugs under chapter 69.70 RCW including, but not limited to, allowing pharmacy-to-pharmacy donations of unexpired prescription drug stock. The proposed rules improve accessibility and visibility of the drug donation program under chapter 69.70 RCW while ensuring optimal patient safety and product integrity.

Statutory Authority for Adoption: RCW 18.64.005; SSB 6526 (chapter 264, Laws of 2020) codified as RCW 18.64.610 and 69.70.110.

Statute Being Implemented: SSB 6526 (chapter 264, Laws of 2020) codified as RCW 18.64.610 and 69.70.110.

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

Name of Proponent: Washington state pharmacy quality assurance commission, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Joshua Munroe, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-2987; and Enforcement: Marlee O'Neill, 111 Israel Road S.E., Tumwater, WA 98501, 360-480-9108.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Joshua Munroe, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-2987, fax 360-236-2901, TTY 711, email [pharmacyrules@doh.wa.gov](mailto:pharmacyrules@doh.wa.gov).

Scope of exemption for rule proposal:

Is not exempt.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The proposed rule does not require changes to a licensee's or a pharmacy's existing practices or infrastructure. For pharmacies that choose to participate in the prescription donation program, costs are limited to one-time costs, procuring additional shelving/storage, time taken creating policies and procedures, and time taken to fill out the necessary registration form, and the recur-

ring cost of maintaining a separate inventory for donated items. The agency estimates that the probable one-time cost to comply with the optional program could be as high as \$733.50, which is significantly less than the minor cost threshold of either one percent of average annual payroll (\$6,639.73) or .3 percent of average annual gross business income (\$53,119.28). The agency determined that the requirements to comply with the optional program did not impose more-than-minor costs on small businesses.

October 4, 2022  
Teri Ferreira, RPh  
Pharmacy Quality Assurance Chair

## OTS-3189.2

### NEW SECTION

**WAC 246-945-486 Return and reuse of unexpired medications—Department of corrections.** (1) For the purposes of this section, the term "facilities" includes all facilities served by the Washington state department of corrections pharmacy.

(2) The Washington state department of corrections pharmacy may accept for return and reuse noncontrolled legend drugs in unit dose packages, or full or partial multiple dose medication cards from the facilities it serves, if product integrity can be assured and the Washington state department of corrections pharmacy complies with RCW 69.70.050 (1), (2), and (5).

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### NEW SECTION

**WAC 246-945-488 Safe donation of unexpired prescription drugs.**

(1) For the purposes of this section, the definitions in RCW 69.70.010 apply.

(2) A pharmacy that accepts, distributes, or dispenses prescription drugs and supplies under WAC 246-945-485 (1)(b) that are donated shall:

(a) Comply with the requirements in RCW 69.70.020, 69.70.030, 69.70.040, and 69.70.050, when applicable;

(b) Complete and return an attestation form developed and supplied by the commission attesting to participation in the drug donation program;

(c) Notify the commission in writing if it is no longer accepting donated prescription drugs and supplies. This notification must occur within thirty calendar days of the pharmacy no longer accepting donated prescription drugs and supplies;

(d) Not accept donations of prescription drugs and supplies via a drop box;

(e) Ensure that prescription drugs and supplies donated by the person to whom the prescription drug was prescribed or the person's

representative are accompanied by the department's drug donation form in accordance with RCW 69.70.020(2);

(f) Ensure clear separation of the pharmacy's donated prescription drug stock from the rest of the pharmacy's drug stock;

(g) Maintain a separate inventory of all prescription drugs and supplies donated to the pharmacy; and

(h) Develop and implement policies and procedures addressing:

(i) When prescription drugs or supplies may be accepted and dispensed. The policy and procedure shall require a pharmacist to inspect the donated prescription drugs and supplies and to notify the prescriber when delivering donated prescription drugs and supplies to a patient; and

(ii) How the pharmacy will respond when it is informed of a recall for donated prescription drugs and supplies.

(3) Practitioners, pharmacists, medical facilities, drug manufacturers, drug wholesalers, persons to whom a prescription drug was prescribed, or the person's representative, are not required to obtain a wholesaler license when donating prescription drugs to a pharmacy.

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## WSR 22-20-101

## PROPOSED RULES

## DEPARTMENT OF HEALTH

(Pharmacy Quality Assurance Commission)

[Filed October 4, 2022, 2:03 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-09-063.

Title of Rule and Other Identifying Information: New WAC 246-945-171 Retired active pharmacist license status. The pharmacy quality assurance commission (commission) is proposing adding a new section in chapter 246-945 WAC to allow retired pharmacists to apply for a retired active pharmacist license status and practice pharmacy under certain conditions.

Hearing Location(s): On November 17, 2022, at 10:30 a.m. The commission will provide a virtual and a physical location for this hearing to promote social distancing and the safety of the citizens of Washington state.

Physical location: Capital Region ESD 113, 6005 Tye Drive S.W., Lewis Room, Tumwater, WA 98512.

Virtual: Please download and import the following iCalendar (.ics) files to your calendar system. Daily: <https://us02web.zoom.us/join/zoom/join?meetingid=86114958466&from=ics> icsToken=98tyKuGurzouE9GdtB-BRpwABYj4LPPwmFxbgo13lBPpK3R4Str9FehVEIcqOojV; Topic: PQAC Business Meeting 2022.

To access the meeting on November 17 at 9 a.m., go to <https://zoom.us/join> or <https://us02web.zoom.us/j/86114958466> and use the Webinar ID 861 1495 8466. Other access options include one-tap mobile US +12532158782,,86114958466# or +16699009128,,86114958466#; or telephone, dial (for higher quality, dial a number based on your current location) US +1 253 215 8782 or +1 669 900 9128 or +1 346 248 7799 or +1 669 444 9171 or +1 386 347 5053 or +1 564 217 2000 or +1 646 558 8656 or +1 646 931 3860 or +1 301 715 8592 or +1 312 626 6799, Webinar ID 861 1495 8466. International numbers available <https://us02web.zoom.us/j/86114958466>.

Date of Intended Adoption: November 17, 2022.

Submit Written Comments to: Joshua Munroe, P.O. Box 47852, Olympia, WA 98504-7852, email <https://fortress.wa.gov/doh/policyreview>, fax 360-236-2901, by November 3, 2022.

Assistance for Persons with Disabilities: Contact Joshua Munroe, phone 360-236-2987, fax 360-236-2901, TTY 711, email [PharmacyRules@doh.wa.gov](mailto:PharmacyRules@doh.wa.gov), by November 10, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: On March 26, 2020, Governor Inslee signed Proclamation 20-32 to help increase the number of health care workers available to meet the needs of patients during the coronavirus disease 2019 (COVID-19) pandemic. This proclamation included a provision that allows a pharmacist with a retired active pharmacist license status to practice pharmacy. Specifically, the proclamation waived "shall not be authorized to practice pharmacy and" from WAC 246-863-080(2) Retired pharmacist license. In other words, the proclamation amended WAC 246-863-080(2) to read: "The holder of a retired pharmacist license ... need not comply with the continuing education requirements of chapter 246-861 WAC."

However, the commission recently updated and consolidated all rules under its authority into one new chapter (chapter 246-945 WAC).

In this rewrite process, WAC 246-863-080 and the retired active pharmacist license was removed, effective July 1, 2020, as the retired active pharmacist status at the time did not allow for the practice of pharmacy in any capacity and was deemed unnecessary.

The COVID-19 pandemic illustrated the need for additional qualified and licensed personnel in intermittent and emergency settings, and the commission chose to reinstate the retired active pharmacist license status. However, the interaction between the old rule language and Proclamation 20-32 prompted the commission to approve new rule language to both accommodate the proclamation language and update the retired active pharmacist licensing requirements and fees.

In order to allow retired pharmacists to assist with the COVID-19 response with pharmacy services such as vaccine administration while permanent rule making was ongoing, the commission adopted an emergency rule on February 1, 2021, under WSR 21-04-116, temporarily creating a retired active pharmacy license status in the new chapter. This emergency rule has been continuously adopted to retain the licensure statutes until permanent rules could be adopted. Permanent rules are required to keep the retired active pharmacist license status in place. The proposed rule differs from the emergency rules in that it includes updated references to license application fees, license renewal fees, and the license renewal period in rule. The proposed language also adds a reference to continuing education requirements for licensees.

Governor Inslee announced on July 29, 2022, that multiple proclamations will be rescinded on October 27, 2022, including Proclamation 20-32. However, should relevant proclamations be rescinded or the state of emergency end, this permanent rule will continue to provide guidance for prospective and current licensees should another state of emergency be declared in the future.

Reasons Supporting Proposal: Additional qualified, experienced, and licensed personnel is needed to address public health needs during the state of emergency declared under Governor Inslee's Proclamation 20-05. The retired active pharmacist license status created under proposed WAC 246-945-171 will help make more health care providers available during other states of emergency.

Statutory Authority for Adoption: RCW 16.64.005, 18.64.205.

Statute Being Implemented: RCW 18.64.205.

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

Name of Proponent: Pharmacy quality assurance commission, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Joshua Munroe, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-2987.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Joshua Munroe, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-2987, fax 360-236-2901, TTY 711, email PharmacyRules@doh.wa.gov.

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

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

October 4, 2022

Teri Ferreira, RPH, Chair  
Pharmacy Quality Assurance Commission

**OTS-2798.4**NEW SECTION

**WAC 246-945-171 Retired active pharmacist license status.** (1) A pharmacist may apply for a retired active pharmacist license status if they:

(a) Hold an active pharmacist license issued by the commission under chapter 18.64 RCW that is in good standing;

(b) Submit an application on a form provided by the commission; and

(c) Pay the retired credential status application fee as specified in WAC 246-945-990.

(2) A pharmacist with a retired active pharmacist license status shall practice only in emergent or intermittent circumstances.

(a) "Emergent" includes, but is not limited to, earthquakes, floods, times of declared war or other states of emergency.

(b) "Intermittent" means no more than a total of ninety days each year in Washington state.

(3) A pharmacist with a retired active pharmacist license status must meet the continuing education requirements in WAC 246-945-178.

(4) A pharmacist with a retired active pharmacist license status must renew their license every two years in compliance with WAC 246-12-130 and pay the retired active credential status renewal fee set in WAC 246-945-990.

(5) A pharmacist with a retired active pharmacist license status must meet the requirements in WAC 246-12-140 to return their license to active status and pay the active renewal fee set in WAC 246-945-990.

[ ]

## WSR 22-20-105

## PROPOSED RULES

## BELLEVUE COLLEGE

[Filed October 4, 2022, 2:59 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-10-075.

Title of Rule and Other Identifying Information: Chapter 132H-126 WAC, BC Policy 2050, student conduct code revision. New WAC 132H-126-111; and amending WAC 132H-126-030, 132H-126-040, 132H-126-100, 132H-126-120, 132H-126-130, 132H-126-400, 132H-126-410, and 132H-126-460.

Hearing Location(s): On Tuesday, November 8, 2022, at 3 to 4 p.m. (PT), virtual meeting <https://bellevuecollege.zoom.us/j/89202779756?pwd=RXlCaEtNa2lQQUVjN1FsYVliS3RMdz09&from=addon>. Meeting will be held virtually.

Date of Intended Adoption: January 23, 2023.

Submit Written Comments to: Megan Kaptik, 3000 Landerholm Circle S.E., Bellevue, WA 98007, email [megan.kaptik@bellevuecollege.edu](mailto:megan.kaptik@bellevuecollege.edu), 425-564-2757.

Assistance for Persons with Disabilities: Contact Megan Kaptik, phone 425-564-2757, email [megan.kaptik@bellevuecollege.edu](mailto:megan.kaptik@bellevuecollege.edu).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 132H-126-030 amends student group references; WAC 132H-126-040 amends new student group definition and references; WAC 132H-126-100 added definitions for abuse later in life and economic and technological abuse; amended definitions for domestic violence and hazing; WAC 132H-126-111 new section addressing hazing sanctions; WAC 132H-126-120 amends hazing by student groups; WAC 132H-126-130 amends student group sanctions; WAC 132H-126-300 amends student group sanctions; WAC 132H-126-400 amends order of precedence; WAC 132H-126-410 amended definitions of domestic violence and economic and technological abuse; and WAC 132H-126-460 removes cross-examination requirement.

Reasons Supporting Proposal: On August 10, 2021, a decision from a federal district vacated a portion of the 2020 amendments to the Title IX regulations related to cross-examination, 34 C.F.R. § 106.45 (b)(6)(i). This needs to be removed from the code.

On March 15, 2022, President Biden signed the Violence Against Women Act Reauthorization Act of 2022 (VAWA) into law. This changed the definition of domestic violence and added definitions for different aspects of domestic abuse. VAWA takes effect on October 1, 2022.

On March 30, 2022, Governor Inslee signed Sam's Law (HB 1751) into law. This bill requires the college to update the definition of hazing and extend the prohibition to include off-campus hazing.

Statutory Authority for Adoption: Chapter 34.05 RCW; and RCW 28B.50.140(13).

Statute Being Implemented: P.L. 113-4, 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq.; 34 C.F.R. § 106.45 (b)(6)(i).

Rule is necessary because of federal law and federal court decision, 34 C.F.R. § 106.45 (b)(6)(i).

Name of Proponent: Bellevue College, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Megan Kaptik, 3000 Landerholm Circle S.E., Bellevue, WA 98007, Mailstop U307B, 425-564-2757.

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

A cost-benefit analysis is not required under RCW 34.05.328. Bellevue College is not one of the enumerated agencies required to conduct cost-benefit analyses under RCW 34.05.328(5).

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

Is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Citation of the specific federal statute or regulation and description of the consequences to the state if the rule is not adopted: 34 C.F.R. § 106.45 (b) (6) (i) United States Department of Education Title IX regulations.

October 4, 2022

Loreen McRea Keller

Associate Director of Policies and Special Projects

## OTS-4125.2

AMENDATORY SECTION (Amending WSR 19-01-082, filed 12/17/18, effective 1/17/19)

**WAC 132H-126-030 Statement of jurisdiction.** (1) The student conduct code shall apply to (~~student~~) conduct by students or student groups that occurs:

(a) On college premises;  
 (b) At or in connection with college-sponsored activities; or  
 (c) Off-campus, if in the judgment of the college the conduct adversely affects the college community or the pursuit of its objectives.

(2) Jurisdiction extends to locations in which students are engaged in official college activities including, but not limited to, foreign or domestic travel, activities funded by the Bellevue College's associated student government, athletic events, training internships, cooperative and distance education, online education, internships, practicums, supervised work experiences, or any other college-sanctioned social or club activities and college-sponsored housing.

(3) The college has sole discretion, on a case-by-case basis, to determine whether the student conduct code will be applied to conduct that occurs off campus.

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

(5) These standards shall apply to a student's conduct even if the student withdraws from college while a disciplinary matter is pending.

(6) In addition to initiating discipline proceedings for violation of the student conduct code, the college may refer any violations of federal, state, or local laws to civil and criminal authorities for disposition. The college shall proceed with student disciplinary pro-

ceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution.

[Statutory Authority: Chapter 34.05 RCW and RCW 28B.50.140(13); P.L. 113-4, 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. WSR 19-01-082, § 132H-126-030, filed 12/17/18, effective 1/17/19.]

AMENDATORY SECTION (Amending WSR 21-01-008, filed 12/2/20, effective 1/2/21)

**WAC 132H-126-040 Definitions.** The following definitions shall apply for the purposes of this student conduct code:

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

(2) **"College official"** is an employee of the college performing assigned administrative, security, professional, or paraprofessional duties.

(3) **"College premises"** shall include all campuses of the college, wherever located, and includes all land, buildings, facilities, vehicles, equipment, other property owned, used, or controlled by the college, study abroad program, retreat, and conference sites, and college-sponsored and/or college-hosted online platforms.

(4) **"Complainant"** is a student or another member of the college community who is allegedly directly affected by a reported violation of this student conduct code. The complainant may be the reporting party, but not necessarily; witnesses or other third parties may report concerns. In any case involving a report of sexual misconduct as defined in this student conduct code, a complainant is afforded certain rights under this student conduct code including, but not limited to:

(a) The right to be informed of all orders issued in the disciplinary case in which this person is a complainant;

(b) The right to appeal a disciplinary decision; and

(c) The right to be accompanied by a process advisor.

(5) **"Conduct review officer"** is the provost for academic and student affairs or designee or other college administrator designated by the president to be responsible for receiving and reviewing or referring appeals of student disciplinary actions in accordance with the procedures of this code. The president is authorized to reassign any and all of the conduct review officer's duties or responsibilities, as set forth in this chapter, as may be reasonably necessary.

(6) **"Disciplinary action"** is the process by which the student conduct officer imposes discipline against a student for a violation of the student conduct code.

(7) **"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~~) 10 instructional days or a dismissal are heard by the student conduct committee. Appeals of all other appealable disciplinary action shall be reviewed through brief adjudicative proceedings (BAP).

(8) **"Filing"** is the process by which a document is officially delivered to a college official responsible for facilitating a disciplinary review. Papers required to be filed shall be deemed filed upon actual receipt during office hours at the office of the specified col-

lege official. Unless otherwise provided, filing shall be accomplished by:

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

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

(9) "**Process advisor**" is a person selected by a respondent or a complainant to provide support and guidance during disciplinary proceedings under this student conduct code.

(10) "**Respondent**" is a student against whom disciplinary action is initiated. Each respondent is afforded certain rights including, but not limited to:

(a) The right to be presumed not responsible for the reported misconduct unless or until a determination of responsibility is reached after completion of the disciplinary process;

(b) The right to be informed of all orders issued in the respondent's disciplinary case;

(c) The right to appeal a disciplinary decision; and

(d) The right to be accompanied by a process advisor.

(11) "**Service**" is the process by which a document is officially delivered to a party. Service is deemed complete upon hand delivery of the document or upon the date the document is emailed and deposited in the mail. Unless otherwise provided, service upon a party shall be accomplished by:

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

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

(12) "**Sexual misconduct**" includes prohibited sexual- or gender-based conduct by a student including, but not limited to, sexual harassment, sexual violence, sexual exploitation, indecent exposure, dating violence, or domestic violence.

(13) "**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, graduate, or complete courses after the date of a reported violation, 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."

(14) "**Student conduct officer**" is a college administrator designated by the president or provost for academic and student affairs or designee to be responsible for implementing and enforcing the student conduct code. The president or provost for academic and student affairs or designee is authorized to reassign any and all of the student conduct officer's duties or responsibilities, as set forth in this chapter, as may be reasonably necessary.

(15) "**Student group**" is a student organization, athletic team, or living group including, but not limited to, student clubs and organizations, members of a class or student cohort, student performance groups, and student living groups within student housing.

(16) "**The president**" is the president of the college. The president is authorized to delegate any and all of their responsibilities, as set forth in this chapter, as may be reasonably necessary.

[Statutory Authority: Chapter 34.05 RCW and RCW 28B.50.140(13); P.L. 113-4, 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. WSR 21-01-008, § 132H-126-040, filed

12/2/20, effective 1/2/21; WSR 19-01-082, § 132H-126-040, filed 12/17/18, effective 1/17/19.]

AMENDATORY SECTION (Amending WSR 21-01-008, filed 12/2/20, effective 1/2/21)

**WAC 132H-126-100 Prohibited student conduct.** The college may impose disciplinary sanctions against a student who commits or attempts to commit, or aids, abets, incites, encourages, or assists another person to commit the following acts of misconduct:

(1) **Abuse of others.** Assault, physical abuse, verbal abuse, threat(s), intimidation, or other conduct that harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property unless otherwise protected by law.

(2) **Abuse in later life.**

(a) Neglect, abandonment, economic abuse, or willful harm of an adult aged 50 or older by an individual in an ongoing relationship of trust with the victim; or

(b) Domestic violence, dating violence, sexual assault, or stalking of an adult aged 50 or older by any individual; and

(c) Does not include self-neglect.

(3) **Abuse of the student conduct process.**

(a) Abuse of the student conduct process includes:

(i) Attempting to influence the impartiality or participation of any decision maker including a student conduct officer, conduct review officer, or presiding student conduct committee member;

(ii) Influencing or attempting to influence another person to commit an abuse of the student conduct process;

(iii) Harassment or intimidation of any participant in the student conduct process; or

(iv) Submitting or providing false or misleading information in bad faith or with a view to personal gain or intentional harm to another in the conduct process.

(b) This provision does not apply to reports made or information provided in good faith, even if the respondent is ultimately found not responsible in that conduct proceeding.

~~((3))~~ (4) **Academic dishonesty.** Any act of academic dishonesty including, but not limited to, cheating, plagiarism, and fabrication. The decision to bring a student conduct proceeding under this code for academic dishonesty is at the sole discretion of the student conduct officer. Nothing in this code prohibits instructors and/or academic divisions or departments from imposing academic consequences, up to and including a failing grade in an academic course or dismissal from an academic program, in response to academic dishonesty. Policies and procedures governing the imposition of academic consequences for academic dishonesty can be found in the course syllabus and any applicable program handbook.

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

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



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

(d) **Multiple submissions.** Submitting the same work in separate courses without the express permission of the instructor(s).

(e) **Deliberate damage.** Taking deliberate action to destroy or damage another's academic work or college property in order to gain an advantage for oneself or another.

~~((4))~~ (5) **Acts of dishonesty.** Acts of dishonesty include, but are not limited to:

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

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

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

~~((5))~~ (6) **Alcohol.** Use, possession, manufacture, or distribution of alcoholic beverages or paraphernalia (except as expressly permitted by college policies, and federal, state, and local laws), or public intoxication on college premises or at college-sponsored events. Alcoholic beverages may not, in any circumstance, be used by, possessed by, or distributed to any person not of legal age.

~~((6))~~ (7) **Cyber misconduct.** Cyberstalking, cyberbullying, or online harassment. Use of electronic communications including, but not limited to, electronic mail, text messaging, social media sites, or applications (apps), to harass, abuse, bully, or engage in other conduct that harms, threatens, or is reasonably perceived as threatening the health or safety of another person. Prohibited activities include, but are not limited to, unauthorized monitoring of another's electronic communications or computer activities directly or through spyware, sending threatening emails or texts, disrupting electronic communications with spam or by sending a computer virus, or sending false emails or texts to third parties using another's identity (spoofing).

~~((7))~~ (8) **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.

~~((8))~~ (9) **Discriminatory harassment.**

(a) Unwelcome and offensive conduct, including verbal, nonverbal, or physical conduct, not otherwise protected by law, that is directed at a person because of such person's protected status and that is sufficiently severe, persistent, or pervasive so as to:

(i) Limit the ability of a student to participate in or benefit from the college's educational and/or social programs and/or student housing;

(ii) Alter the terms of an employee's employment; or

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

(b) Protected status includes a person's race; color; creed/religion; national origin; presence of any sensory, mental or physical disability; use of a trained service animal; sex, including pregnancy; marital status; age; genetic information; sexual orientation; gender identity or expression; honorably discharged veteran or military status; HIV/AIDS and hepatitis C status; or membership in any other group protected by federal, state, or local law.

(c) Discriminatory harassment may be physical, verbal, or nonverbal conduct and may include written, social media, and electronic communications not otherwise protected by law.

~~((9))~~ (10) Disorderly conduct. Conduct that is disorderly, lewd, or indecent; disturbing the peace; or assisting or encouraging another person to disturb the peace.

~~((10))~~ (11) Disruption or obstruction. Disruption or obstruction of any instruction, research, administration, disciplinary proceeding, or other college activity, including the obstruction of the free flow of pedestrian or vehicular movement on college property or at a college activity, or any activity that is authorized to occur on college property, whether or not actually conducted or sponsored by the college.

~~((11))~~ (12) 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))~~ Use or attempted use of physical abuse or sexual abuse, or a pattern of any other coercive behavior committed, enabled, or solicited to gain or maintain power and control over a victim, including verbal, psychological, economic, or technological abuse that may or may not constitute criminal behavior, by a person:

(a) Who is a current or former spouse or intimate partner of the victim, or a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington;

(b) Who is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner;

(c) Who shares a child in common with the victim; or

(d) Who commits acts 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.

~~((12))~~ (13) Economic abuse. In the context of domestic violence dating violence, economic abuse includes behavior that is coercive, deceptive, or unreasonably controls or restrains a person's ability to acquire, use, or maintain economic resources to which they are entitled, including using coercion, fraud, or manipulation to:

(a) Restrict a person's access to money, assets, credit, or financial information;

(b) Unfairly use a person's personal economic resources, including money, assets, and credit, for one's own advantage; or

(c) Exert undue influence over a person's financial and economic behavior or decisions, including forcing default on joint or other financial obligations, exploiting powers of attorney, guardianship, or conservatorship, or failing or neglecting to act in the best interests of a person to whom one has a fiduciary duty.

(14) 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.

~~((13))~~ (15) Failure to comply with directive. Failure to comply with the reasonable direction of a college official or employee who is acting in the legitimate performance of their duties, including failure to properly identify oneself to such a person when requested to do so.

~~((14))~~ (16) Harassment or bullying. Conduct unrelated to a protected class that is unwelcome and sufficiently severe, persistent, or pervasive such that it could reasonably be expected to create an intimidating, hostile, or offensive environment, or has the purpose or effect of unreasonably interfering with a person's academic or work performance, or a person's ability to participate in or benefit from the college's programs, services, opportunities, or activities.

(a) Harassing conduct may include, but is not limited to, physical, verbal, or nonverbal conduct, including written, social media and electronic communications unless otherwise protected by law.

(b) For purposes of this code, "bullying" is defined as repeated or aggressive unwanted behavior not otherwise protected by law when a reasonable person would feel humiliated, harmed, or intimidated.

(c) For purposes of this code, "intimidation" is an implied threat. Intimidation exists when a reasonable person would feel threatened or coerced even though an explicit threat or display of physical force has not been made. Intimidation is evaluated based on the intensity, frequency, or duration of the comments or actions.

~~((15))~~ (17) 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.~~

~~(16))~~ (a) Hazing is any act committed as part of:

(i) A person's recruitment, initiation, pledging, admission into, or affiliation with a student group; or

(ii) Any pastime or amusement engaged in with respect to such a student group that causes, or is likely to cause, bodily danger or physical harm, or serious psychological or emotional harm, to any student.

(b) Examples of hazing include, but are not limited to:

(i) Causing, directing, coercing, or forcing a person to consume any food, liquid, alcohol, drug, or other substance which subjects the person to risk of such harm;

(ii) Humiliation by ritual act;

(iii) Striking another person with an object or body part;

(iv) Causing someone to experience excessive fatigue, or physical and/or psychological shock; or

(v) Causing someone to engage in degrading or humiliating games or activities that create a risk of serious psychological, emotional, and/or physical harm.

(c) "Hazing" does not include customary athletic events or other similar contests or competitions.

(d) Consent is not a valid defense against hazing.

(18) Indecent exposure. The intentional or knowing exposure of a person's genitals or other private body parts when done in a place or

manner in which such exposure is likely to cause affront or alarm. Breastfeeding or expressing breast milk is not indecent exposure.

~~((17))~~ **(19) Cannabis or other drugs.**

(a) ~~((**Marijuana**))~~ **Cannabis.** The use, possession, growing, delivery, sale, or being visibly under the influence of ~~((**marijuana**))~~ **cannabis** or the psychoactive compounds found in ~~((**marijuana**))~~ **cannabis** and intended for human consumption, regardless of form, or the possession of ~~((**marijuana**))~~ **cannabis** paraphernalia on college premises or college-sponsored events. While state law permits the recreational use of ~~((**marijuana**))~~ **cannabis**, federal law prohibits such use on college premises or in connection with college activities.

(b) **Drugs.** The use, possession, production, delivery, sale, or being under the influence of any prescription drug or possession of drug paraphernalia, 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.

~~((18))~~ **(20) 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 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 computer time or resources to interfere with someone else's work;

(e) Use of computer time or resources to send, display, or print an obscene or abusive message, text, or image;

(f) Use of computer time or resources to interfere with normal operation of the college's computing system or other electronic information resources;

(g) Use of computer 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.

~~((19))~~ **(21) Property violation.** Damage to, misappropriation of, unauthorized use or possession of, vandalism of, or other nonaccidental damaging or destruction of college property or the property of another person. Property, for purposes of this subsection, also includes computer passwords, access codes, identification cards, personal financial account numbers, other confidential personal information, intellectual property, and college trademarks.

~~((20))~~ **(22) Retaliation.** Harming, threatening, intimidating, coercing, or taking adverse action of any kind against a person because such person reported a violation of this code or college policy, provided information about a reported violation, or participated as a witness or in any other capacity in a college investigation or disciplinary proceeding.

~~((21))~~ **(23) Safety violations.** Safety violations include committing any reckless or unsafe act that endangers others, failing to follow established safety procedures (e.g., failing to evacuate during a fire alarm), or interfering with or otherwise compromising any college equipment relating to the safety and security of the campus community including, but not limited to, tampering with fire safety or

first-aid equipment, or triggering false alarms or other emergency response systems.

~~((22))~~ (24) **Sexual exploitation.** Taking nonconsensual or abusive sexual advantage of another for the respondent's own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, when the behavior does not otherwise constitute one of the other sexual misconduct offenses described herein. Examples of sexual exploitation may include, but are not limited to:

- (a) Invading another person's sexual privacy;
- (b) Prostituting another person;
- (c) Nonconsensual photography and digital or video recording of nudity or sexual activity, or nonconsensual audio recording of sexual activity;
- (d) Unauthorized sharing or distribution of photographs or digital or video recording of nudity or sexual activity, or audio recording of sexual activity, unless otherwise protected by law;
- (e) Engaging in voyeurism. A person commits voyeurism if they knowingly view, photograph, record, or film another person, without that person's knowledge and consent, while the person being viewed, photographed, recorded, or filmed is in a place where the person has a reasonable expectation of privacy;
- (f) Knowingly or recklessly exposing another person to a significant risk of sexually transmitted disease or infection; or
- (g) Causing the nonconsensual indecent exposure of another person, as defined by subsection ~~((13))~~ (18) of this section.

~~((23))~~ (25) **Sexual harassment.** Unwelcome sexual- or gender-based conduct, including unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual- or gender-based nature that is sufficiently severe, persistent or pervasive as to:

- (a) Deny or limit the ability of a student to participate in or benefit from the college's educational program;
- (b) Alter the terms or conditions of employment; or
- (c) Create an intimidating, hostile, or offensive environment for other campus community members.

For sexual harassment prohibited under Title IX, refer to WAC 132H-126-410.

~~((24))~~ (26) **Sexual violence.** A type of sexual harassment that includes nonconsensual intercourse, nonconsensual sexual contact, and sexual coercion.

- (a) Consent is knowing, voluntary, and clear permission by word or action to engage in mutually agreed upon sexual activity.
  - (i) Effective consent cannot result from force, or threat of physical force, coercion, dishonesty, or intimidation.
  - (ii) Physical force means someone is physically exerting control of another person through violence. Physical force includes, but is not limited to, hitting, kicking, and restraining.
  - (iii) Threatening someone to obtain consent for a sexual act is a violation of this policy. Threats exist where a reasonable person would have been compelled by the words or actions of another to give permission to sexual activity to which they otherwise would not have consented.
  - (iv) 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.

(v) A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct. Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

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

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

(d) **Sexual coercion.** Unreasonably pressuring another for sexual contact. When a complainant makes it clear through words or actions that they do not want to engage in sexual contact, want to stop, or do not want to go past a certain point of sexual interaction, continued pressure beyond that point is presumptively unreasonable and coercive. Other examples of coercion may include using blackmail or extortion, or administering drugs and/or alcohol to overcome resistance or gain consent to sexual activity. Sexual contact that is the result of coercion is nonconsensual.

(e) **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))~~ 18.

(f) **Statutory rape.** Consensual sexual intercourse between someone who is ~~((eighteen))~~ 18 years of age or older and someone who is under the age of ~~((sixteen))~~ 16.

~~((+25+))~~ (27) 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. Stalking also includes instances where the perpetrator knows or reasonably should know that the person is frightened, intimidated, or harassed, even if the perpetrator lacks such an intent.

~~((+26+))~~ (28) Technological abuse. An act or pattern of behavior that occurs within domestic violence, sexual assault, dating violence, or stalking and is intended to harm, threaten, intimidate, control, stalk, harass, impersonate, exploit, extort, or monitor, except as otherwise permitted by law, another person, that occurs using any form of technology including, but not limited to: Internet-enabled devices, online spaces and platforms, computers, mobile devices, cameras and imaging programs, apps, location tracking devices, or communication technologies, or any other emerging technologies.

(29) Tobacco, electronic cigarettes, and related products. The use of tobacco, electronic cigarettes, and related products is prohibited in any building owned, leased, or operated by the college or in any location where such use is prohibited, including ~~((twenty-five))~~ 25 feet from entrances, exits, windows that open, and ventilation intakes of any building owned, leased, or operated by the col-

lege. Related products include, but are not limited to, cigarettes, pipes, bidi, clove cigarettes, waterpipes, hookahs, chewing tobacco, and snuff.

~~((27))~~ **(30) Unauthorized access.** Unauthorized possession, duplication, or other use of a key, keycard, or other restricted means of access to college property, or unauthorized entry onto or into college property. Providing keys to an unauthorized person or providing access to an unauthorized person is also prohibited.

~~((28))~~ **(31) Unauthorized recording.** The following conduct is prohibited:

(a) Making audio, video, digital recordings, or photographic images of a person without that person's consent in a location where that person has a reasonable expectation of privacy (e.g., restroom or residence hall room).

(b) Storing, sharing, publishing, or otherwise distributing such recordings or images by any means.

~~((29))~~ **(32) Violation of other laws or policies.** Violation of any federal, state, or local law, rule, or regulation or other college rules or policies, including on-campus housing policies and college traffic and parking rules.

~~((30))~~ **(33) Weapons.**

(a) Possessing, holding, wearing, transporting, storing, or exhibiting 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:

(i) Commissioned law enforcement personnel; or

(ii) Legally authorized military personnel while in performance of their official duties.

(b) Students with legally issued concealed weapons permits may store their weapons in vehicles parked in accordance with RCW 9.41.050 on campus provided the vehicle is locked and the weapon is concealed from view.

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

(d) Possession and/or use of disabling chemical sprays for purposes of self-defense is not prohibited.

[Statutory Authority: Chapter 34.05 RCW and RCW 28B.50.140(13); P.L. 113-4, 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. WSR 21-01-008, § 132H-126-100, filed 12/2/20, effective 1/2/21; WSR 19-01-082, § 132H-126-100, filed 12/17/18, effective 1/17/19.]

#### NEW SECTION

**WAC 132H-126-115 Hazing prohibited—Sanctions.** (1) Hazing by a student or a student group is prohibited pursuant to WAC 132H-126-100(17).

(2) No student may conspire to engage in hazing or participate in hazing of another. State law provides that hazing is a criminal offense, punishable as a misdemeanor.

(3) Washington state law provides that:

(a) Any student group that knowingly permits hazing is strictly liable for harm caused to persons or property resulting from hazing. If the organization, association, or student living group is a corporation whether for profit or nonprofit, the individual directors of the corporation may be held individually liable for damages.

(b) Any person who participates in the hazing of another shall forfeit any entitlement to state-funded grants, scholarships, or awards for a period of time determined by the college.

(c) Student groups that knowingly permit hazing to be conducted by its members or by others subject to its direction or control shall be deprived of any official recognition or approval granted by the college.

(d) Student groups found responsible for violating the code of student conduct, college antihazing policies, or state or federal laws relating to hazing or offenses related to alcohol, drugs, sexual assault, or physical assault will be disclosed in a public report issued by the college setting forth the name of the student group, the date the investigation began, the date the investigation ended, a finding of responsibility, a description of the incident(s) giving rise to the finding, and the details of the sanction(s) imposed.

[ ]

AMENDATORY SECTION (Amending WSR 21-01-008, filed 12/2/20, effective 1/2/21)

**WAC 132H-126-120 Initiation of disciplinary action.** (1) Any member of the college community may file a complaint against a student or student group for possible violations of the student conduct code.

(2) Upon receipt, a student conduct officer, or designee, may review and investigate any complaint to determine whether it appears to state a violation of the student conduct code.

(a) **Student on student sexual misconduct.** The college's Title IX coordinator or designee shall investigate complaints or other reports of sexual misconduct by a student against a student.

(b) **Sexual misconduct involving an employee.** The college's human resource office or designee shall investigate complaints or other reports of sexual misconduct in which an employee is either the complainant or respondent.

(c) **Hazing by student groups.** A student conduct officer, or designee, may review and investigate any complaint or allegation of hazing by a student group. A student group will be notified through its named officer(s) and address on file with the college. A student group may designate one representative who may speak on behalf of a student group during any investigation and/or disciplinary proceeding. A student group will have the rights of a respondent as set forth below.

(d) Investigations will be completed in a timely manner and the results of the investigation shall be referred to the student conduct officer for student disciplinary action.

~~((d))~~ (e) College personnel will honor requests to keep sexual misconduct complaints confidential to the extent this can be done in compliance with federal and state laws and without unreasonably risking the health, safety, and welfare of the complainant or other members of the college community.



(3) If a student conduct officer determines that a complaint appears to state a violation of the student conduct code, the student conduct officer will consider whether the matter might be resolved through agreement with the respondent or through alternative dispute resolution proceedings involving the complainant and the reporting party.

(a) Informal dispute resolution shall not be used to resolve sexual misconduct complaints without written permission from both the complainant and the respondent.

(b) If the parties elect to mediate a dispute, either party shall be free to discontinue mediation at any time.

(4) If the student conduct officer has determined that a complaint has merit and if the matter is not resolved through agreement or alternative dispute resolution, the student conduct officer may initiate disciplinary action against the respondent.

(a) 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.

(b) The student conduct officer, prior to initiating disciplinary action in cases 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.

(5) All disciplinary actions will be initiated by a student conduct officer. If that officer is the subject of a complaint initiated by the respondent or the complainant, the president shall, upon request and when feasible, designate another person to fulfill any such disciplinary responsibilities.

(6) A student conduct officer shall initiate disciplinary action by serving the respondent with written notice directing them to attend a disciplinary meeting.

(a) The notice shall briefly describe the factual allegations, the provision(s) of the student conduct code the respondent is reported to have violated, the range of possible sanctions for the reported violation(s), and it will specify the time and location of the meeting.

(b) At the disciplinary meeting, the student conduct officer will present the allegations to the respondent, and the respondent shall be afforded an opportunity to explain what occurred.

(c) If the respondent fails to attend the meeting, the student conduct officer may take disciplinary action based upon the available information.

(7) Within (~~ten~~) 10 days of the initial disciplinary meeting and after considering the evidence in the case, including any facts or argument presented by the respondent, the student conduct officer shall serve the respondent with a written decision setting forth the facts and conclusions supporting the decision, the specific student conduct code provisions found to have been violated, the discipline imposed, if any, and a notice of any appeal rights with an explanation of the consequences of failing to file a timely appeal. This period may be extended if the student conduct officer, based on information presented at the disciplinary meeting, concludes that additional investigation is necessary. If the period is extended, the student conduct officer will notify the respondent, and the complainant in cases

involving allegations of sexual misconduct, of this extension, the reason(s), and the anticipated extension time frame.

(8) A 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), with or without condition(s), as described in WAC 132H-126-110 and 132H-126-115.

(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.

(9) 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 of the decision, the reasons for the decision, and any disciplinary sanctions and/or conditions that may have been imposed upon the respondent, including disciplinary suspension or dismissal of the respondent. The notice will also inform the complainant of their appeal rights. If protective sanctions and/or conditions are imposed, the student conduct officer shall make a reasonable effort to contact the complainant to ensure prompt notice of the protective disciplinary sanctions and/or conditions.

[Statutory Authority: Chapter 34.05 RCW and RCW 28B.50.140(13); P.L. 113-4, 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. WSR 21-01-008, § 132H-126-120, filed 12/2/20, effective 1/2/21; WSR 19-01-082, § 132H-126-120, filed 12/17/18, effective 1/17/19.]

AMENDATORY SECTION (Amending WSR 21-01-008, filed 12/2/20, effective 1/2/21)

**WAC 132H-126-130 Appeal from disciplinary action.** (1) The respondent may appeal a disciplinary action by filing a written notice of appeal with the conduct review officer within (~~twenty-one~~) 21 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 student conduct officer. If a case involves allegations of sexual misconduct, a complainant also has a right to appeal a disciplinary decision or to intervene in the respondent's appeal of a disciplinary decision to the extent the disciplinary decision, sanctions or conditions relate to allegations of sexual misconduct against the respondent.

(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 the respondent has been summarily suspended.

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

(a) The imposition of disciplinary suspensions in excess of ~~((ten))~~ 10 instructional days or, for a student group, suspensions in excess of two academic quarters;

(b) Dismissals or, for a student group, deprivation of recognition or approval granted by the college; 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) Residence hall dismissals;

(b) Residence hall suspensions;

(c) Suspensions of ~~((ten))~~ 10 instructional days or less;

(d) Disciplinary probation;

(e) Written reprimands;

(f) Sanctions against a student group, other than those set forth in subsection (7) (a) and (b) of this section;

(g) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions; and

~~((g))~~ (h) Appeals by a complainant in student disciplinary proceedings involving allegations of sexual misconduct in which the student conduct officer:

(i) Dismisses disciplinary proceedings based upon a finding that the allegations of sexual misconduct have no merit; or

(ii) Issues a verbal warning to the respondent.

(9) Except as provided elsewhere in these rules, disciplinary warnings and dismissals of disciplinary complaints are final actions 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.

[Statutory Authority: Chapter 34.05 RCW and RCW 28B.50.140(13); P.L. 113-4, 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. WSR 21-01-008, § 132H-126-130, filed 12/2/20, effective 1/2/21; WSR 19-01-082, § 132H-126-130, filed 12/17/18, effective 1/17/19.]

AMENDATORY SECTION (Amending WSR 21-01-008, filed 12/2/20, effective 1/2/21)

**WAC 132H-126-400 Order of precedence.** This supplemental procedure applies to allegations of sexual harassment subject to Title IX jurisdiction pursuant to regulations promulgated by the United States Department of Education. See 34 C.F.R. Part 106. To the extent these supplemental hearing procedures conflict with the college's standard disciplinary procedures, WAC 132H-126-100 through 132H-126-340, these supplemental procedures shall take precedence. Bellevue College may, at its discretion, contract with an administrative law judge or other person to act as presiding officer and assign such presiding officer to exercise any or all of the duties in lieu of the student conduct committee and committee chair.

[Statutory Authority: Chapter 34.05 RCW and RCW 28B.50.140(13); P.L. 113-4, 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. WSR 21-01-008, § 132H-126-400, filed 12/2/20, effective 1/2/21.]

AMENDATORY SECTION (Amending WSR 21-01-008, filed 12/2/20, effective 1/2/21)

**WAC 132H-126-410 Prohibited conduct under Title IX.** Pursuant to RCW 28B.50.140(13) and Title IX of the Education Amendments Act of 1972, 20 U.S.C. Sec. 1681, the college may impose disciplinary sanctions against a student who commits, attempts to commit, or aids, abets, incites, encourages, or assists another person to commit, an act(s) of "sexual harassment."

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

(1) **Quid pro quo harassment.** A college employee conditioning the provision of an aid, benefit, or service of the college on an individual's participation in unwelcome sexual conduct.

(2) **Hostile environment.** Unwelcome conduct that a reasonable person would find to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the college's educational programs or activities, or employment.

(3) **Sexual assault.** Sexual assault includes the following conduct:

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

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

(c) **Incest.** Sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either wholly or half

related. Descendant includes stepchildren and adopted children under the age of ~~((eighteen))~~ 18.

(d) **Statutory rape.** Consensual sexual intercourse between someone who is ~~((eighteen))~~ 18 years of age or older and someone who is under the age of ~~((sixteen))~~ 16.

(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))~~ Use or attempted use of physical abuse or sexual abuse, or a pattern of any other coercive behavior committed, enabled, or solicited to gain or maintain power and control over a victim, including verbal, psychological, economic, or technological abuse that may or may not constitute criminal behavior, by a person:

(a) Who is a current or former spouse or intimate partner of the victim, or a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington;

(b) Who is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner;

(c) Who 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))~~ with the victim; or

(d) Who commits acts 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) **Economic abuse.** In the context of domestic violence dating violence, economic abuse includes behavior that is coercive, deceptive, or unreasonably controls or restrains a person's ability to acquire, use, or maintain economic resources to which they are entitled, including using coercion, fraud, or manipulation to:

(a) Restrict a person's access to money, assets, credit, or financial information;

(b) Unfairly use a person's personal economic resources, including money, assets, and credit, for one's own advantage; or

(c) Exert undue influence over a person's financial and economic behavior or decisions, including forcing default on joint or other financial obligations, exploiting powers of attorney, guardianship, or conservatorship, or failing or neglecting to act in the best interests of a person to whom one has a fiduciary duty.

(7) **Technological abuse.** An act or pattern of behavior that occurs within domestic violence, sexual assault, dating violence, or stalking and is intended to harm, threaten, intimidate, control, stalk, harass, impersonate, exploit, extort, or monitor, except as otherwise permitted by law, another person, that occurs using any form of technology including, but not limited to: Internet-enabled devices,

online spaces and platforms, computers, mobile devices, cameras and imaging programs, apps, location tracking devices, or communication technologies, or any other emerging technologies.

(8) **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.

[Statutory Authority: Chapter 34.05 RCW; and RCW 28B.50.140(13); P.L. 113-4, 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. WSR 21-01-008, § 132H-126-410, filed 12/2/20, effective 1/2/21.]

AMENDATORY SECTION (Amending WSR 21-01-008, filed 12/2/20, effective 1/2/21)

**WAC 132H-126-460 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 reported misconduct; or

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

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

~~(5))~~ **No negative inference:** The committee may not make an inference regarding responsibility solely on a witness's or party's absence from the hearing or refusal to answer questions.

~~((6))~~ **(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.

[Statutory Authority: Chapter 34.05 RCW; and RCW 28B.50.140(13); P.L. 113-4, 20 U.S.C. § 1092(f); Title IX of the Education Amendments of

1972, 20 U.S.C. § 1681 et seq. WSR 21-01-008, § 132H-126-460, filed  
12/2/20, effective 1/2/21.]

**WSR 22-20-106**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**FINANCIAL INSTITUTIONS**  
(Division of Consumer Services)  
[Filed October 4, 2022, 4:30 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-10-055.

Title of Rule and Other Identifying Information: Amending the rules (chapter 208-620 WAC) under the Consumer Loan Act (chapter 31.04 RCW).

Hearing Location(s): On November 16, 2022, at 10 a.m., at Department of Financial Institutions, 150 Israel Road S.W., Tumwater, WA 98501, Room 319, or via phone at 360-725-7839.

Date of Intended Adoption: November 31, 2022.

Submit Written Comments to: Ashley Sutherland, P.O. Box 41200, Olympia, WA 98504-1200, email Ashley.Sutherland@dfi.wa.gov, www.dfi.wa.gov, by October 30, 2022.

Assistance for Persons with Disabilities: Contact Ashley Sutherland, phone 360-664-7866, TTY 1-800-833-6384, by October 30, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amending the rules (chapter 208-620 WAC) under the Consumer Loan Act (chapter 31.04 RCW) to implement amendments (SB 5077, chapter 15, Laws of 2021) which provide authority, under certain circumstances, for licensed companies to allow licensed mortgage loan originators to work from their residences without the company licensing the residence as a branch office. Additionally, technical changes will be made for clarity and consistency.

Reasons Supporting Proposal: The statutory change acknowledged the fact that technology advancements have greatly changed the way in which mortgage loan originators engage in business, with most work being completed digitally and through secure origination systems.

Statutory Authority for Adoption: RCW 43.320.040 and 31.04.165.

Statute Being Implemented: Chapter 31.04 RCW.

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

Name of Proponent: Department of financial institutions, division of consumer services, governmental.

Name of Agency Personnel Responsible for Drafting: Devon Phelps, 150 Israel Road S.W., Tumwater, WA 98501, 360-664-7894; Implementation and Enforcement: Lucinda Fazio, 150 Israel Road S.W., Tumwater, WA 98501, 360-902-8800.

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

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable to these rules.

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

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rule content is explicitly and specifically dictated by statute.

Explanation of exemption: RCW 34.05.310 (4)(d) applies to one portion of the rule that makes only a technical change to correct language. RCW 34.05.310 (4)(e) applies to some portions of the rules as



the statute was amended in 2021 to no longer require a branch location for mortgage loan originators working from home.

Scope of exemption for rule proposal:

Is partially exempt:

Explanation of partial exemptions:

	<b>Proposed WAC Sections and Title</b>	<b>This proposed rule section is <i>not exempt</i> - Analysis is required</b>	<b>This proposed rule section is <i>exempt</i>. Provide RCW to support this exemption.</b>
1.	WAC 208-620-010 definitions.	X	
2.	WAC 208-620-250(2) out-of-state company.	X	
3.	WAC 208-620-251(1) requirements for out-of-state licensees.	X	
4.	WAC 208-620-300 operating from more than one location.	X	
5.	WAC 208-620-301 manager licensing requirements.	<input type="checkbox"/>	RCW 34.05.310 (4)(d), renumbered sections to fix confusion about requirements.
6.	WAC 208-620-310 locations providing underwriting and other back-office services.	X	
7.	WAC 208-620-510(8) disclosure requirements for student education loans.	<input type="checkbox"/>	RCW 34.05.310 (4)(d), fix a typo (from "servicer member" to "service member").
8.	WAC 208-620-660 requirements for loan originators working from home without licensing the location.	X	
9.	WAC 208-620-700(1) location where mortgage loan originator can work.	<input type="checkbox"/>	RCW 34.05.310 (4)(e), deleted statement that the loan originator may only work from a main or branch office.
10.	WAC 208-620-700(7) working for a company located out of the state.	<input type="checkbox"/>	RCW 34.05.310 (4)(e), deleted statement that the company must license a branch in Washington for the loan originator to work from.
11.	WAC 208-620-700(11) physical location requirement.	X	

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The majority of changes in the rule actually save licensees money, as it removes the requirement for companies to pay \$106.71 yearly to license or renew a branch office for each mortgage loan originator that worked from the loan originator's residence. The new section that was added to the rules does not impose any new requirements on licensees and therefore did not impose any costs. Licensees were already required to have certain policies and procedures and comply with specific federal laws. Lastly, all other changes did not impose a cost on licensees.

October 4, 2022  
Charles Clark  
Director

**OTS-4123.1**

AMENDATORY SECTION (Amending WSR 18-24-013, filed 11/27/18, effective 1/1/19)

**WAC 208-620-010 Definitions.** The definitions set forth in this section apply throughout this chapter unless the context clearly requires a different meaning.

(1) "Act" means the Consumer Loan Act, chapter 31.04 RCW.

(2) "Advertise, advertising, and advertising material" means any form of sales or promotional materials used in connection with the business. Advertising material includes, but is not limited to, newspapers, magazines, leaflets, flyers, direct mail, indoor or outdoor signs or displays, point-of-sale literature or educational materials, other printed materials; radio, television, public address system, or other audio broadcasts; internet pages, social media, instant messages, or electronic bulletin boards.

(3) "Annual percentage rate" has the same meaning as defined in Regulation Z, 12 C.F.R. Part 1026, implementing the Truth in Lending Act.

(4) "Application" means the submission of a borrower's financial information in anticipation of a credit decision relating to a residential mortgage loan, which includes the borrower's name, monthly income, Social Security number to obtain a credit report, the property address, an estimate of the value of the property, and the mortgage loan amount sought. An application may be submitted in writing or electronically and includes a written record of an oral application. If the submission does not state or identify a specific property, the submission is an application for a prequalification and not an application for a residential mortgage loan under this part. The subsequent addition of an identified property to the submission converts the submission to an application for a residential mortgage loan.

(5) "Bank Secrecy Act" means the Bank Secrecy Act (BSA), 31 U.S.C. 1051 et seq. and 31 C.F.R. Part 103.

(6) "Bond substitute" means unimpaired capital, surplus and qualified long-term subordinated debt.

(7) "Business day" means Monday through Friday excluding federally recognized bank holidays.

(8) "Commercial context" or "commercial purpose" means actions taken for the purpose of obtaining anything of value for oneself, or for an entity or individual for which the individual acts, rather than exclusively for public, charitable, or family purposes.

(9) "Common ownership" exists if an entity or entities possess an ownership or equity interest of five percent or more in another entity.

(10) "Creditor" has the same meaning as in the Truth in Lending Act, 15 U.S.C. 1602(f) and Regulation Z, 12 C.F.R. Part 1026.

(11) "Depository Institutions Deregulatory and Monetary Control Act" means the Depository Institutions Deregulatory and Monetary Control Act of 1980 (DIDMCA), 12 U.S.C. Sec. 1735f-7a.

(12) "Dwelling" means the same as in Regulation Z implementing the Truth in Lending Act which is a residential structure that contains one to four units, whether or not that structure is attached to real property. The term includes an individual condominium unit, cooperative unit, mobile or manufactured home, and trailer, if it is used as a residence. See 12 C.F.R. Sec. 1026.2.

(13) "Equal Credit Opportunity Act" means the Equal Credit Opportunity Act (ECOA), 15 U.S.C. Sec. 1691 and Regulation B, 12 C.F.R. Part 1002.

(14) "Fair Credit Reporting Act" means the Fair Credit Reporting Act (FCRA), 15 U.S.C. Sec. 1681 et seq.

(15) "Fair Debt Collection Practices Act" means the Fair Debt Collection Practices Act, 15 U.S.C. Sec. 1692, 12 C.F.R. Part 1006.

(16) "Federal Trade Commission Act" means the Federal Trade Commission Act, 15 U.S.C. Sec. 45(a).

(17) "Filing" means filing, recording, releasing or reconveying mortgages, deeds of trust, security agreements or other documents, or transferring certificates of title to vehicles.

(18) "Gramm-Leach-Bliley Act (GLBA)" means the Financial Modernization Act of 1999, 15 U.S.C. Sec. 6801-6809, and the GLBA-mandated Federal Trade Commission (FTC) privacy rules, at 16 C.F.R. Parts 313-314.

(19) "Higher education institution" means a private, nonprofit educational institution, the main campus of which is permanently situated in the state, which is open to residents of the state, which neither restricts entry on racial or religious grounds, which provides programs of education beyond high school leading at least to the baccalaureate degree, and which is accredited by the Northwest Association of Schools and Colleges or by an accrediting association recognized by the council for higher education. RCW 28B.07.020(4).

(20) "Home Mortgage Disclosure Act" means the Home Mortgage Disclosure Act (HMDA), 12 U.S.C. Secs. 2801 through 2810 and 12 C.F.R. Part 1003 (formerly Part 203).

(21) "Immediate family member" means a spouse, child, sibling, parent, grandparent, or grandchild. This includes stepparents, stepchildren, stepsiblings, and adoptive relationships.

(22) "Lender" means any person that extends money to a borrower with the expectation of being repaid.

(23) "License number" means your NMLS unique identifier displayed as prescribed by the director. Some examples of the way you may display your license number are: NMLS ID 12345, NMLS 12345, NMLS #12345, MB-12345, or MLO-12345.

(24) "Licensed location" means a main office or branch office, including an individual loan originator's residence, where the licensee conducts business under the act with Washington residents or Washington residential real estate and the licensee has obtained a main or branch license through NMLS for that location.

(25) "Live check" means a loan solicited through the mail in the form of a check, which, when endorsed by the payee, binds the payee to the terms of the loan agreement contained on the check.

(26) "Loan originator" means the same as mortgage loan originator.

(27) "Loan originator's residence" means a loan originator's primary or secondary residence located in the United States.

(28) "Long-term subordinated debt" means for the purposes required in RCW 31.04.045 outstanding promissory notes or other evidence of debt with initial maturity of at least seven years and remaining maturity of at least two years.

(29) "Material litigation" means proceedings that differ from the ordinary routine litigation incidental to the business. Litigation is ordinary routine litigation if it ordinarily results from the business and does not deviate from the normal business litigation. Litigation involving five percent of the licensee's assets or litigation involving the government would constitute material litigation.

(30) "NMLS" means the Nationwide Multistate Licensing System and Registry, Nationwide Mortgage Licensing System, NMLSR, or such other

name or acronym as may be assigned to the multistate system developed by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators and owned and operated by the state regulatory registry, LLC, or any successor or affiliated entity, for the licensing and registration of persons in the mortgage and other financial services industries.

(31) "Out-of-state licensee" means a licensee that does not maintain a physical presence within the state, or a licensee that maintains headquarters or books and records outside Washington.

(32) "Principal amount" means the loan amount advanced to or for the direct benefit of the borrower.

(33) "Principal balance" means the principal amount plus any allowable origination fee.

(34) "RCW" means the *Revised Code of Washington*.

(35) "Real estate brokerage activity" means any activity that involves offering or providing real estate brokerage services to the public, including ~~((1))~~ (a) acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property; ~~((2))~~ (b) bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property; ~~((3))~~ (c) negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property, other than in connection with providing financing with respect to such a transaction; ~~((4))~~ (d) engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law; and ~~((5))~~ (e) offering to engage in any activity, or act in any capacity, described in ~~((1))~~ (a) through ~~((4))~~ (d) of this ~~(definition)~~ subsection.

(36) "Real Estate Settlement Procedures Act" means the Real Estate Settlement Procedures Act (RESPA), 12 U.S.C. Secs. 2601 et seq., and Regulation X, 12 C.F.R. Part 1024.

(37) "Records" mean books, accounts, papers, records and files, no matter in what format they are kept, which are used in conducting business under the act.

(38) "Referring a delinquent loan to foreclosure" means taking any step in furtherance of foreclosure. Examples include, but are not limited to: Sending a referral to a foreclosure trustee or attorney inside or outside of the servicing entity requesting they begin the foreclosure process; making a record in written or electronic form that flags, comments, blocks, suspends or in any way indicates in the electronic record of a mortgage loan that foreclosure has begun; any such marking of an electronic record that impairs the record in a way that payments will not be applied or will be routed into a suspense account.

(39) "State" means the state of Washington.

(40) "Student education loan borrower" means:

(a) Any resident of this state who has received or agreed to pay a student education loan; or

(b) Any person who shares responsibility with such resident for repaying the student education loan.

(41) "Student education loan servicing" or "service a student education loan" means:

(a) Receiving any scheduled periodic payments from a student education loan borrower pursuant to the terms of a student education loan;

(b) Applying the payments of principal and interest and such other payments with respect to the amounts received from a student education loan borrower, as may be required pursuant to the terms of a student education loan;

(c) Working with the student education loan borrower to collect data, or collecting data, to make decisions to modify the loan; or

(d) Performing other administrative services with respect to a student education loan including collection activities. "Student education loan servicing" does not include third-party student education loan modification services.

(42) "Subsidiary" means a person that is controlled by another.

(43) "Table funding" means a settlement at which a mortgage loan is funded by a contemporaneous advance of loan funds and an assignment of the loan to the person advancing the funds.

(44) "Telemarketing and Consumer Fraud and Abuse Act" means the Telemarketing and Consumer Fraud and Abuse Act, 15 U.S.C. Sec. 6101 to 6108.

(45) "Telemarketing Sales Rule" means the rules promulgated in 16 C.F.R. Part 310.

(46) "Truth in Lending Act" means the Truth in Lending Act (TILA), 15 U.S.C. Secs. 1601 et seq., and Regulation Z, 12 C.F.R. Part 1026.

[Statutory Authority: RCW 43.320.040, and 31.04.165. WSR 18-24-013, § 208-620-010, filed 11/27/18, effective 1/1/19; WSR 18-16-024, § 208-620-010, filed 7/24/18, effective 9/1/18. Statutory Authority: Chapter 43.320 RCW, RCW 31.04.165. WSR 16-08-026, § 208-620-010, filed 3/30/16, effective 4/30/16. Statutory Authority: RCW 43.320.040 and 31.04.165. WSR 13-24-024, § 208-620-010, filed 11/22/13, effective 1/1/14; WSR 12-18-047, § 208-620-010, filed 8/29/12, effective 11/1/12. Statutory Authority: RCW 43.320.040, 31.04.165 and 2010 c 35. WSR 10-20-122, § 208-620-010, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149. WSR 09-24-090, § 208-620-010, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040, 19.144.070, 2008 c 78. WSR 09-01-159, § 208-620-010, filed 12/23/08, effective 1/23/09. Statutory Authority: RCW 31.04.165, 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. WSR 06-04-053, § 208-620-010, filed 1/27/06, effective 2/27/06. Statutory Authority: RCW 43.320.040, 31.04.045, [31.04].105, [31.04].145, [31.04].155 and [31.04].165. WSR 96-04-013, § 208-620-010, filed 1/26/96, effective 2/26/96.]

AMENDATORY SECTION (Amending WSR 13-24-024, filed 11/22/13, effective 1/1/14)

**WAC 208-620-250 ((If my out-of-state company applies for a license under the Consumer Loan Act do we have)) Is my company required to have a ((branch)) licensed location in the state of Washington?**

(1) No. You are not required to maintain a physical presence in this state to hold a license but any location doing business under the act, wherever located, must be licensed, except those locations consistent with subsection (2) of this section. Your company's main office (headquarters), wherever located, must have a license.

(2) If you employ mortgage loan originators, those licensed (~~(employees)~~) loan originators must work from a licensed location (~~(. A licensed location is a main or branch office and an individual loan originator's home can be licensed as a branch office)~~) or from the loan originator's residence pursuant to WAC 208-620-660.

[Statutory Authority: RCW 43.320.040 and 31.04.165. WSR 13-24-024, § 208-620-250, filed 11/22/13, effective 1/1/14. Statutory Authority: RCW 43.320.040, 31.04.165 and 2010 c 35. WSR 10-20-122, § 208-620-250, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 31.04.165, 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. WSR 06-04-053, § 208-620-250, filed 1/27/06, effective 2/27/06.]

AMENDATORY SECTION (Amending WSR 18-16-024, filed 7/24/18, effective 9/1/18)

**WAC 208-620-251 Are there any additional requirements for out-of-state licensees?** (1) (~~(All locations must be licensed. Any person that conducts business under the act with Washington residents or Washington residential real estate must obtain a license for all locations from which such business is conducted, including out-of-state locations, with the exception of those office locations providing only underwriting and back office services under WAC 208-620-310. The main office (headquarters), wherever located, must be licensed.~~

~~(2))~~ **Keeping records out-of-state.** You must keep your books and records location information updated in the NMLS and provide the director with access to the books and records.

~~((3))~~ **(2) Service on out-of-state licensee.** An out-of-state licensee's registered agent in Washington is the licensee's agent for service of process, notice, or demand.

[Statutory Authority: RCW 43.320.040 and 31.04.165. WSR 18-16-024, § 208-620-251, filed 7/24/18, effective 9/1/18; WSR 13-24-024, § 208-620-251, filed 11/22/13, effective 1/1/14. Statutory Authority: RCW 43.320.040, 31.04.165 and 2010 c 35. WSR 10-20-122, § 208-620-251, filed 10/5/10, effective 11/5/10.]

AMENDATORY SECTION (Amending WSR 18-24-013, filed 11/27/18, effective 1/1/19)

**WAC 208-620-300 If I want to operate my business from more than one ((office)) location, do I have to license each location?** Yes. You must submit a branch office application through the NMLS for each branch office, residential mortgage loan servicing location, student education loan servicing location, or direct solicitation location. You may not operate from a location until a license is granted for that location. However, a branch license is not required for a loan originator to conduct activities under the act from the loan originator's residence pursuant to WAC 208-620-660.

[Statutory Authority: RCW 43.320.040, and 31.04.165. WSR 18-24-013, § 208-620-300, filed 11/27/18, effective 1/1/19. Statutory Authority:

Chapter 43.320 RCW, RCW 31.04.165. WSR 16-08-026, § 208-620-300, filed 3/30/16, effective 4/30/16. Statutory Authority: RCW 43.320.040 and 31.04.165. WSR 13-24-024, § 208-620-300, filed 11/22/13, effective 1/1/14. Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149. WSR 09-24-090, § 208-620-300, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 31.04.165, 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. WSR 06-04-053, § 208-620-300, filed 1/27/06, effective 2/27/06.]

AMENDATORY SECTION (Amending WSR 19-21-157, filed 10/22/19, effective 11/24/19)

**WAC 208-620-301 If I make residential mortgage loans and employ managers, must they license individually as mortgage loan originators?**

(1) Your managers, including branch managers, must license individually as mortgage loan originators if they conduct any one of the following activities:

~~((1))~~ (a) Take residential mortgage loan applications, negotiate the terms or conditions of residential mortgage loans, or hold themselves out as being able to conduct these activities;

~~((2))~~ (b) Supervise your loan processor or underwriting employees; or

~~((3))~~ (c) Supervise your licensed mortgage loan originators.

~~((4))~~ (2) Specifically:

(a) Any manager or any person who takes a residential mortgage loan application in Washington, negotiates the terms or conditions of a residential mortgage loan on Washington property, or holds themselves out as being able to conduct those activities, must have a Washington mortgage loan originator license. Washington licensed loan originators must work from a licensed location or the loan originator's residence pursuant to WAC 208-620-660.

(b) Any manager who directly supervises loan processor or underwriting employees must hold a mortgage loan originator license. The loan originator license can be from any state. Washington licensed loan originators must work from a licensed location or the loan originator's residence pursuant to WAC 208-620-660.

(c) Any manager who directly supervises Washington licensed mortgage loan originators must themselves hold a Washington loan originator license. Washington licensed loan originators must work from a licensed location or the loan originator's residence pursuant to WAC 208-620-660.

~~((5))~~ (3) As to ~~((subsections (2) and (3) of this section))~~ subsection (1)(a) and (b) of this section, licensure is for the day-to-day operational supervisors.

~~((6))~~ (4) Each licensed manager must prepare and maintain written supervisory plan for the employees they supervise. The details of the plan must include the number of employees supervised and their physical location, how the supervisor will adequately supervise the employees if an employee is not in the same location as the supervisor, and the type and volume of work performed by the supervised employees. Supervisory plans must be maintained as part of the business books and records.

[Statutory Authority: RCW 43.320.040 and 31.04.165. WSR 19-21-157, § 208-620-301, filed 10/22/19, effective 11/24/19. Statutory Authority: Chapter 43.320 RCW, RCW 31.04.165. WSR 16-08-026, § 208-620-301, filed 3/30/16, effective 4/30/16. Statutory Authority: RCW 43.320.040 and 31.04.165. WSR 13-24-024, § 208-620-301, filed 11/22/13, effective 1/1/14.]

AMENDATORY SECTION (Amending WSR 16-08-026, filed 3/30/16, effective 4/30/16)

**WAC 208-620-310 Is it necessary to license an office that is only providing underwriting and other back-office services?** A location that is solely providing loan processing or underwriting or other back-office services on Washington loans and has only incidental contact with the borrower after an application has been taken, is not required to be licensed. Back office services do not include loan servicing. (~~However, any location where a licensed mortgage loan originator works must be licensed. Also, your company's main office (headquarters), wherever located, must be licensed.~~)

[Statutory Authority: Chapter 43.320 RCW, RCW 31.04.165. WSR 16-08-026, § 208-620-310, filed 3/30/16, effective 4/30/16. Statutory Authority: RCW 43.320.040 and 31.04.165. WSR 13-24-024, § 208-620-310, filed 11/22/13, effective 1/1/14. Statutory Authority: RCW 43.320.040, 31.04.165 and 2010 c 35. WSR 10-20-122, § 208-620-310, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 31.04.165, 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. WSR 06-04-053, § 208-620-310, filed 1/27/06, effective 2/27/06.]

AMENDATORY SECTION (Amending WSR 19-21-157, filed 10/22/19, effective 11/24/19)

**WAC 208-620-510 What are my disclosure obligations to consumers?** Some types of loans may not be covered by the integrated TILA-RESPA rule. Examples include: Reverse mortgages and (~~HELOCs~~) HELOCs. Creditors originating these types of mortgages must continue to use, as applicable, the federal Good Faith Estimate, HUD-1, and Truth in Lending disclosures. Creditors are not prohibited from using the integrated TILA-RESPA disclosures. However, they cannot replace the required federal Good Faith Estimate, HUD-1, and Truth in Lending disclosures.

(1) **Content requirements.** In addition to complying with the applicable disclosure requirements in the federal and state statutes referred to in WAC 208-620-505 if the loan will be secured by a lien on real property, you must also provide the borrower or potential borrower an estimate of the annual percentage rate on the loan and a disclosure of whether or not the loan contains a prepayment penalty within three business days of receipt of a loan application.

(2) **Proof of delivery.** The licensee must be able to prove that the disclosures under subsection (1) of this section were provided within the required time frames. For purposes of determining the timeliness of the required early disclosures, the department may use the



date of the credit report or may use the date of an application received from a broker. In most cases, proof of mailing is sufficient evidence of delivery. If the licensee has an established system of disclosure tracking that includes a disclosure and correspondence log, checklists, and a reasonable system for determining if a borrower did receive the documents, the licensee will be presumed to be in compliance.

(3) **Residential mortgage loans—Rate locks.** Within three business days of receipt of a residential mortgage loan application you must provide the borrower with the following disclosure about the interest rate:

(a) If a rate lock agreement has not been entered into, you must disclose to the borrower that the disclosed interest rate and terms are subject to change. Compliance with the federal good faith estimate or loan estimate is considered compliance.

(b) If a rate lock agreement has been entered into, you must disclose to the borrower whether the rate lock agreement is guaranteed and if so, if guaranteed by a company other than your company, you must provide the name of that company, whether and under what conditions any rate lock fees are refundable to the borrower, and:

(i) The number of days in the rate lock period;

(ii) The date of the rate lock and expiration date of the rate lock;

(iii) The rate of interest locked;

(iv) Any other terms and conditions of the rate lock agreement; and

(v) The date the rate lock agreement was provided to the borrower.

(c) If the borrower wants to lock the rate after the initial disclosure, you must provide a rate lock agreement within three business days of the rate lock date that includes the items from (b) of this subsection.

(d) Prior to closing, you must disclose payment of a rate lock as a cost in Block 2 of the federal good faith estimate or in "Loan Cost" on the loan estimate. At closing, you must disclose payment of a rate lock in section 800 "Items Payable" on a HUD-1 or in "Loan Cost" on the closing disclosure.

(e) You may rely on a broker's rate lock agreement if it complies with this subsection.

(4) **Residential mortgage loans—Loans brokered to other creditors.** Within three business days following receipt of a residential mortgage loan application you must provide to each borrower or potential borrower:

(a) If a rate lock agreement has not been entered into, you must disclose to the borrower that the disclosed interest rate and terms are subject to change. Compliance with the federal good faith estimate or loan estimate is considered compliance with this subsection;

(b) An estimate of the annual percentage rate on the loan and a disclosure of whether or not the loan contains a prepayment penalty;

(c) A good faith estimate or loan estimate that conforms with RE-SPA, Regulation X, 12 C.F.R. Part 1024 and TILA, Regulation Z, 12 C.F.R. Part 1026;

(d) A rate lock disclosure containing the following:

(i) If a rate lock agreement has been entered into, you must disclose to the borrower whether the rate lock agreement is guaranteed and if so, the name of the company providing the guarantee, whether

and under what conditions any rate lock fees are refundable to the borrower, and:

(A) The number of days in the rate lock period;

(B) The date of the rate lock and the expiration date of the rate lock;

(C) The rate of interest locked;

(D) The date the rate lock was provided to the borrower; and

(E) Any other terms and conditions of the rate lock agreement.

(ii) If the borrower wants to lock the rate after the initial disclosure, you must provide a rate lock agreement within three business days of the rate lock date. The rate lock agreement must include the items from (d) of this subsection.

(e) Prior to closing, you must disclose payment of a rate lock as a cost in Block 2 of the federal good faith estimate or in "Loan Cost" on the loan estimate. At closing, you must disclose payment of a rate lock in section 800 "Items Payable" on a HUD-1 or in "Loan Cost" on the closing disclosure.

(f) You may rely on a lender's rate lock agreement if it is in compliance with this subsection.

(5) **Are there additional disclosure requirements related to interest rate locks?** Yes. You must provide the borrower a new rate lock agreement within three business days of a change in the locked interest rate. The new rate lock agreement must include all the terms required under subsection (3)(b) of this section. Changes to a locked interest rate can occur only if the borrower requests the change or for valid reasons such as changes in loan to value, credit scores, or other loan factors directly affecting pricing. Lock extensions and relocks are also valid reasons for changes to a previously locked interest rate. You may rely on a lender's rate lock agreement if it is in compliance with this subsection.

(6) **Residential mortgage loans—Shared appreciation mortgages (SAM) or mortgages with shared appreciation provisions.** Within three business days following receipt of a loan application for a shared appreciation mortgage, or a mortgage with a shared appreciation provision, in addition to the disclosures required by federal law or by this chapter, you must provide each borrower with a written disclosure containing at a minimum the following:

(a) The percentage of shared equity or shared appreciation you will receive (or a formula for determining it);

(b) The value the borrower will receive for sharing his or her equity or appreciation;

(c) The conditions that will trigger the borrower's duty to pay;

(d) The conditions that may cause the lender to terminate the mortgage or shared appreciation provision early;

(e) The procedure for including qualifying major home improvements in the home's basis (if any);

(f) Whether a prepayment penalty applies or other conditions applicable, if a borrower wishes to repay the loan early, including but not limited to, any date certain after which the borrower can repay the loan by paying back the lender's funds plus accrued equity; and

(g) The date on which the SAM terminates and the equity or appreciation becomes payable if no triggering event occurs.

(7) **Residential mortgage loan modifications.** You must immediately inform the borrower in writing if the owner of the loan requires additional information from the borrower, or if it becomes apparent that a residential mortgage loan modification is not possible.

(8) **Student education loans.**

(a) All loans. In addition to the applicable disclosures required for all consumer loans made by a licensee, the licensee making a loan to a (~~servicee~~) service member must disclose to the service members their rights under state and federal service member laws and regulations.

(b) Refinance loans. In addition to the applicable disclosures required for all consumer loans made by a licensee, for all consumer loans made by a licensee that are a refinance of a federal student education loan, the licensee must provide to the borrower a clear and conspicuous disclosure that some repayment and forgiveness options available under federal student education loan programs, including without limitation, income-driven repayment plans, economic hardship deferments, or public service loan forgiveness, will no longer be available to the borrower if he or she chooses to refinance federal student education loans with one or more consumer loans.

(9) Each licensee must maintain in its files sufficient information to show compliance with state and federal law.

[Statutory Authority: RCW 43.320.040 and 31.04.165. WSR 19-21-157, § 208-620-510, filed 10/22/19, effective 11/24/19; WSR 18-24-013, § 208-620-510, filed 11/27/18, effective 1/1/19. Statutory Authority: Chapter 43.320 RCW, RCW 31.04.165. WSR 16-08-026, § 208-620-510, filed 3/30/16, effective 4/30/16. Statutory Authority: RCW 43.320.040 and 31.04.165. WSR 13-24-024, § 208-620-510, filed 11/22/13, effective 1/1/14; WSR 12-18-047, § 208-620-510, filed 8/29/12, effective 11/1/12. Statutory Authority: RCW 43.320.040, 31.04.165 and 2010 c 35. WSR 10-20-122, § 208-620-510, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149. WSR 09-24-090, § 208-620-510, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 31.04.165, 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. WSR 06-04-053, § 208-620-510, filed 1/27/06, effective 2/27/06.]

NEW SECTION

**WAC 208-620-660 What is required for a Washington licensed loan originator to work from their residence without licensing the residence as a branch location?** A licensed company may permit a sponsored and licensed loan originator to work from the loan originator's residence without licensing it as a branch location under RCW 31.04.075 and subject to the following conditions:

(1) The company must have written policies and procedures that include appropriate risk-based monitoring and oversight processes for the supervision of loan originators working from their residence without licensing it as a branch location. The loan originator must comply with the licensee's policies and procedures.

(2) Access to the company platforms and customer information must be in accordance with the licensee's comprehensive written information security plan, as required by WAC 208-620-571, which must include safeguards that protect borrower information.

(3) Communications that contain a customer's protected personal information must be in compliance with federal and state information security requirements, including the applicable provisions under the

Gramm-Leach-Bliley Act and the Safeguards Rule. See WAC 208-620-571 and 208-620-572 for more information.

(4) The loan originator's residence may not be held out in any manner, directly or indirectly, as a licensed main or branch location unless it is licensed as a main or branch location. The following is not allowed at the loan originator's residence unless it is licensed as a main or branch location:

- (a) Conducting in-person customer interactions;
- (b) Storing physical records containing customer information;
- (c) Receiving physical records containing customer information;

and

- (d) Advertising the location as a licensed main or branch office.

(5) The NMLS record of the loan originator must designate the licensed main office headquarters or a licensed branch office as their registered location.

(6) The loan originator must use their registered location from NMLS in the "loan originator information" section on residential mortgage loan applications.

[]

AMENDATORY SECTION (Amending WSR 19-21-157, filed 10/22/19, effective 11/24/19)

**WAC 208-620-700 Mortgage loan originator—General.** (1) **May I work from any location when I am a licensed loan originator?** No. You can only work from a licensed location (~~(. The licensed location can be the main office, or any licensed branch)~~) unless you conduct activity under the act from your residence pursuant to WAC 208-620-660.

(2) **May I transfer loan files to another licensed entity?** No. Loan files are the property and responsibility of the company named on the loan application. Only the borrower may submit a written request to the company to transmit the borrower's selected information to another entity. The company must transmit the information within five business days after receiving the borrower's written request.

(3) **May I act as a loan originator and a real estate agent in the same transaction or for the same borrower in different transactions?** Yes, you may be both the loan originator and real estate broker or salesperson in the same transaction, or for the same borrower in different transactions. When either of these occur, you must provide to the borrower the following written disclosure:

"THIS IS TO GIVE YOU NOTICE THAT I OR ONE OF MY ASSOCIATES HAVE/HAS ACTED AS A REAL ESTATE BROKER OR SALESPERSON REPRESENTING THE BUYER/SELLER IN THE SALE OF THIS PROPERTY TO YOU. I AM ALSO A LOAN ORIGINATOR AND WOULD LIKE TO PROVIDE MORTGAGE SERVICES TO YOU IN CONNECTION WITH YOUR LOAN TO PURCHASE THE PROPERTY.

YOU ARE NOT REQUIRED TO USE ME AS A LOAN ORIGINATOR IN CONNECTION WITH THIS TRANSACTION. YOU ARE FREE TO COMPARISON SHOP AND TO SELECT ANY MORTGAGE BROKER OR LENDER OF YOUR CHOOSING."

(4) **As a loan originator, may I be paid directly by the borrower for my services?** No. You may not be paid any compensation or fees directly by the borrower.

(5) **May I charge the borrower a fee, commission, or other compensation for preparing, negotiating, or brokering a loan for the borrower?** No. You may not charge the borrower a fee, commission, or compensation of any kind in connection with the preparation, negotiation, or brokering of a residential mortgage loan.

(6) **May I bring a lawsuit against a borrower for the collection of compensation?** No. Only the company may bring collection actions against borrowers to collect compensation.

(7) **May I work as a licensed loan originator for a licensed consumer loan company located out of the state?** Yes. You may originate loans for any company you are sponsored by as long as (~~the out-of-state company licenses a branch in Washington for you to~~) you work from a licensed location or your residence pursuant to WAC 208-620-660. See subsection (1) of this section.

(8) **May I hire employees or independent contractors to assist me?** No. Only the consumer loan company can hire employees or independent contractors to work for the company. This prohibition against loan originators hiring employees or independent contractors includes clerical or administrative personnel and loan processors and underwriters whose work is related to the consumer loan company's activities.

(9) **Do loan processors and underwriters have to be licensed as loan originators?** W-2 employee loan processors and underwriters are not required to have a loan originator license provided they work under the supervision and instruction of an individual licensed or exempt from licensing and do not hold themselves out as able to conduct the activities of a loan originator.

(10) **May loan processors and underwriters work on files from an unlicensed location?** A loan processor or underwriter may work on loan files from an unlicensed location under the following circumstances:

(a) The loan files are in electronic format and the loan processor or underwriter accesses the files directly from the licensee's main computer system. The loan processor or underwriter may not maintain any electronic files on any computer system other than the system belonging to the licensee;

(b) The loan processor or underwriter does not conduct any of the activities of a licensed loan originator;

(c) The licensee must have safeguards in place for the computer system that safeguards borrower information; and

(d) The loan processor or underwriter is not a licensed mortgage loan originator who supervises other loan processors or underwriters.

(11) **May I work as a licensed loan originator in Washington if I do not have a physical location in Washington?** Yes. You may originate loans from any licensed location or your residence pursuant to WAC 208-620-660, inside or outside of Washington, as long as the company that sponsors you is licensed to do business in Washington.

[Statutory Authority: RCW 43.320.040 and 31.04.165. WSR 19-21-157, § 208-620-700, filed 10/22/19, effective 11/24/19; WSR 13-24-024, § 208-620-700, filed 11/22/13, effective 1/1/14. Statutory Authority: RCW 43.320.040, 31.04.165 and 2010 c 35. WSR 10-20-122, § 208-620-700, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149. WSR 09-24-090, § 208-620-700, filed 12/1/09, effective 1/1/10.]

**WSR 22-20-107**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**FINANCIAL INSTITUTIONS**  
(Division of Consumer Services)  
[Filed October 4, 2022, 4:31 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-10-056.

Title of Rule and Other Identifying Information: Amending the rules (chapter 208-660 WAC) under the Mortgage Broker Practices Act (chapter 31.04 RCW).

Hearing Location(s): On November 16, 2022, at 10 a.m., at Department of Financial Institutions, Room 319, 150 Israel Road S.W., Tumwater, WA 98501, or via phone at 360-725-7839.

Date of Intended Adoption: November 31, 2022.

Submit Written Comments to: Ashley Sutherland, P.O. Box 41200, Olympia, WA 98504-1200, email Ashley.Sutherland@dfi.wa.gov, www.dfi.wa.gov.

Assistance for Persons with Disabilities: Contact Ashley Sutherland, phone 360-664-7866, TTY 1-800-833-6384.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amending the rules (chapter 208-660 WAC) under the Mortgage Broker Practices Act (chapter 19.146 RCW) to implement amendments (SB 5077, chapter 15, Laws of 2021) that provide authority, under certain circumstances, for licensed companies to allow licensed mortgage loan originators to work from their residences without the company licensing the residence as a branch office. Additionally, technical changes will be made for clarity and consistency.

Reasons Supporting Proposal: The statutory change acknowledged the fact that technology advancements have greatly changed the way in which mortgage loan originators engage in business, with most work being completed digitally and through secure origination systems.

Statutory Authority for Adoption: RCW 43.320.040 and 19.146.225.

Statute Being Implemented: Chapter 19.146 RCW.

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

Name of Proponent: Department of financial institutions, governmental.

Name of Agency Personnel Responsible for Drafting: Devon Phelps, 150 Israel Road S.W., Tumwater, WA 98501, 360-664-7894; Implementation and Enforcement: Lucinda Fazio, 150 Israel Road S.W., Tumwater, WA 98501, 360-902-8800.

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

A cost-benefit analysis is not required under RCW 34.05.328.

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

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rule content is explicitly and specifically dictated by statute.

Explanation of exemptions: RCW 34.05.310 (4) (d) applies to one portion of the rule that makes only a technical change to correct language. RCW 34.05.310 (4) (e) applies to some portions of the rules as the statute was amended in 2021 to no longer require a branch location for mortgage loan originators working from home.

Scope of exemption for rule proposal:

Is partially exempt:

Explanation of partial exemptions:

	<b>Proposed WAC Sections and Title</b>	<b>This proposed rule section is <i>not exempt</i>. Analysis is required.</b>	<b>This proposed rule section is <i>exempt</i>. Provide RCW to support this exemption.</b>
1.	WAC 208-660-006 Definitions	X	
2.	WAC 208-660-106 definition of loan processor	<input type="checkbox"/>	RCW 34.05.310 (4)(d) - deleted reference to underwriters, as mortgage brokers do not have underwriters, only loan processors.
3.	WAC 208-660-300(4) location where mortgage loan originator can work	<input type="checkbox"/>	RCW 34.05.310 (4)(e) - deleted statement that the loan originator may only work from a main or branch office.
4.	WAC 208-660-420(4) physical location requirement	X	
5.	WAC 208-660-420(5) working for a company located out of the state	<input type="checkbox"/>	RCW 34.05.310 (4)(e) - deleted statement that the company must license a branch in Washington for the loan originator to work from.
6.	WAC 208-660-505 requirements for loan originators working from home without licensing the location	X	

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The majority of changes in the rule actually save licensees money as it removes the requirement for companies to pay \$185 to license and \$530 each year to renew a branch office for each mortgage loan originator that worked from the loan originator's residence. The new section that was added to the rules does not impose any new requirements on licensees and therefore does not impose any costs. Licensees were already required to have certain policies and procedures and comply with specific federal laws. Lastly, all other changes do not impose a cost on licensees.

October 4, 2022  
 Charles Clark  
 Agency Director

**OTS-4122.2**

AMENDATORY SECTION (Amending WSR 19-21-142, filed 10/22/19, effective 11/24/19)

**WAC 208-660-006 Definitions. What definitions are applicable to these rules?** Unless the context clearly requires otherwise, the definitions in this section apply throughout these rules.

(1) "Act" means the Mortgage Broker Practices Act, chapter 19.146 RCW.

(2) "Advertising material" means any form of sales or promotional materials used in connection with the mortgage broker business. Advertising material includes, but is not limited to, newspapers, magazines, leaflets, flyers, direct mail, indoor or outdoor signs or dis-

plays, point-of-sale literature or educational materials, other printed materials; radio, television, public address system, or other audio broadcasts; or internet pages or social media pages.

(3) "Application" means the submission of a borrower's financial information in anticipation of a credit decision relating to a residential mortgage loan, which includes the borrower's name, monthly income, Social Security number to obtain a credit report, the property address, an estimate of the value of the property, and the mortgage loan amount sought. An application may be in writing or electronically submitted, including a written record of an oral application. If the submission does not state or identify a specific property, the submission is an application for a prequalification and not an application for a residential mortgage loan under this part. The subsequent addition of an identified property to the submission converts the submission to an application for a residential mortgage loan.

(4) "Appraisal" means the act or process of developing an opinion of value, the act pertaining to an appraisal-related function, or any verbal or written opinion of value offered by an appraiser. The opinion of value by the appraiser includes any communication that is offered as a single point, a value range, a possible value range, exclusion of a value, or a minimum value.

(5) "Branch office" means a fixed physical location such as an office, separate from the principal place of business of the licensee, where the licensee holds itself out as a mortgage broker.

(6) "Branch office license" means a branch office license issued by the director allowing the licensee to conduct a mortgage broker business at the location indicated on the license.

(7) "Business day" means Monday through Friday excluding federally recognized bank holidays.

(8) "Compensation or gain" means remuneration, benefits, or an increase in something having monetary value including, but not limited to, moneys, things, discounts, salaries, commissions, fees, duplicate payments of a charge, stock, dividends, distributions of partnership profits, franchise royalties, credits representing moneys that may be paid at a future date, the opportunity to participate in a money-making program, retained or increased earnings, increased equity in a parent or subsidiary entity, special or unusual bank or financing terms, services of all types at special or free rates, sales or rentals at special prices or rates, lease or rental payments based in whole or in part on the amount of business referred, trips and payments of another person's expenses, or reduction in credit against an existing obligation. "Compensation or gain" is not evaluated solely on a loan by loan basis.

For example, a realtor advertising that buyers using their services will receive free loan origination assistance is doing so in the anticipation of "compensation or gain" through increased real estate business.

(9) "Computer loan information systems" or "CLI system" means a real estate mortgage financing information system that facilitates the provision of information to consumers by a mortgage broker, loan originator, lender, real estate agent, or other person regarding interest rates and other loan terms available from different lenders.

For purposes of this definition, the CLI system includes computer hardware or software, an internet-based system, or any combination of these, which provides information to consumers about residential mortgage interest rates and other loan terms which are available from another person.



(10) "Computer loan information system provider" or "CLI provider" is any person who provides a computer loan information service, either directly, or as an owner-operator of a CLI system, or both.

(11) "Consumer Protection Act" means chapter 19.86 RCW.

(12) "Control" including the terms "controls," "is controlled by," or "is under common control" means the power, directly or indirectly, to direct or cause the direction of the management or policies of a person, whether through ownership of the business, by contract, or otherwise. A person is presumed to control another person if such person is:

((+)) (a) A general partner, officer, director, or employer of another person;

((+)) (b) Directly or indirectly or acting in concert with others, or through one or more subsidiaries, owns, holds with power to vote, or holds proxies representing, more than ((twenty)) 20 percent of the voting interests of another person; or

((+)) (c) Has similar status or function in the business as a person in this definition.

(13) "Convicted of a crime," irrespective of the pronouncement or suspension of sentence, means a person:

((+)) (a) Has been convicted of the crime in any jurisdiction;

((+)) (b) Has been convicted of a crime which, if committed within this state would constitute a crime under the laws of this state;

((+)) (c) Has plead guilty or no contest or nolo contendere or stipulated to facts that are sufficient to justify a finding of guilt to such a charge before a court or federal magistrate; or

((+)) (d) Has been found guilty of a crime by the decision or judgment of a state or federal judge or magistrate, or by the verdict of a jury.

(14) "Depository institution" has the same meaning as in section 3 of the Federal Deposit Insurance Act on the effective date of this section, and includes credit unions.

(15) "Discount points" or "points" means a fee paid by a borrower, upfront or at closing, to a lender to reduce the interest rate of a residential mortgage loan. Pursuant to Regulation X, discount points are to be reflected on the good faith estimate or loan estimate and applicable settlement statement as points and as a dollar amount.

(16) "Division of consumer services" means the division of consumer services within the department of financial institutions, or such other division within the department delegated by the director to oversee implementation of the act and these rules.

(17) "Dwelling" means the same as in Regulation Z implementing the Truth in Lending Act which is a residential structure that contains one to four units, whether or not that structure is attached to real property. The term includes an individual condominium unit, cooperative unit, mobile or manufactured home, and trailer, if it is used as a residence. See 12 C.F.R. 1026.2.

(18) "Examination" or "compliance examination" means the examination performed by the division of consumer services, or such other division within the department delegated by the director to oversee implementation of the act and these rules to determine whether the licensee is in compliance with applicable laws and regulations.

(19) "Federal statutes and regulations" includes, among others, the following:

((+)) (a) "Alternative Mortgage Transaction Parity Act" means the Alternative Mortgage Transaction Parity Act (AMTPA), 12 U.S.C. Sec. 3801 et seq.

((+)) (b) "Equal Credit Opportunity Act" means the Equal Credit Opportunity Act (ECOA), 15 U.S.C. Sec. 1691 et seq., Regulation B, 12 C.F.R. Part 1002.

((+)) (c) "Fair Credit Reporting Act" means the Fair Credit Reporting Act (FCRA), 15 U.S.C. Sec. 1681 et seq.

((+)) (d) "Federal Trade Commission Act" means the Federal Trade Commission Act, 15 U.S.C. Sec. 41-58.

((+)) (e) "Gramm-Leach-Bliley Act (GLBA)" means the Financial Modernization Act of 1999, 15 U.S.C. Sec. 6801-6809, and the GLBA-mandated Federal Trade Commission (FTC) privacy rules, at 16 C.F.R. Parts 313-314.

((+)) (f) "Home Equity Loan Consumer Protection Act" means the Home Equity Loan Consumer Protection Act, 15 U.S.C. Sec. 1637 and 1647.

((+)) (g) "Home Mortgage Disclosure Act" means the Home Mortgage Disclosure Act (HMDA), 12 U.S.C. Sec. 2801-2810, Regulation C, 12 C.F.R. Part 203.

((+)) (h) "Home Ownership and Equity Protection Act" means the Home Ownership and Equity Protection Act (HOEPA), 15 U.S.C. Sec. 1639.

((+)) (i) "Homeowners Protection Act" means the Homeowners Protection Act of 1998 (HPA), 12 U.S.C. Sec. 4901 et seq.

((+)) (j) "MAP" means the Mortgage Acts and Practices - Advertising, Regulation N, 12 C.F.R. Part 1014.

((+)) (k) "Real Estate Settlement Procedures Act" means the Real Estate Settlement Procedures Act (RESPA), 12 U.S.C. Sec. 2601 et seq., Regulation X, 12 C.F.R. Part 1024.

((+)) (l) "S.A.F.E. Act" means the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, Title V of the Housing and Economic Recovery Act of 2008 (HERA), P.L. 110-289, effective July 30, 2008, codified at 12 U.S.C. 5101; Regulation G, 12 C.F.R. Part 1007; and Regulation H, 12 C.F.R. Part 1008.

((+)) (m) "Telemarketing and Consumer Fraud and Abuse Prevention Act" means the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. Sec. 6101-6108, Telemarketing Sales Rule, 16 C.F.R. Part 310.

((+)) (n) "Truth in Lending Act" means the Truth in Lending Act (TILA), 15 U.S.C. Sec. 1601 et seq., Regulation Z, 12 C.F.R. Part 1026.

(20) "Federally insured financial institution" means a savings bank, savings and loan association, or credit union, whether state or federally chartered, or a federally insured bank, authorized to conduct business in this state.

(21) "Financial misconduct," for the purposes of the act, means a criminal conviction for any of the following:

((+)) (a) Any conduct prohibited by the act;

((+)) (b) Any conduct prohibited by statutes governing mortgage brokers in other states, or the United States, if such conduct would constitute a violation of the act;

((+)) (c) Any conduct prohibited by statutes governing other segments of the financial services industry, including but not limited to the Consumer Protection Act, statutes governing the conduct of securities broker dealers, financial advisers, escrow officers, title insurance companies, limited practice officers, trust companies, and other licensed or chartered financial service providers; or

((+)) (d) Any conduct commonly known as white collar crime, including, but not limited to, embezzlement, identity theft, mail or

wire fraud, insider trading, money laundering, check fraud, or similar crimes.

(22) "License number" means the NMLS unique identifier displayed as prescribed by the director. Some examples of the way you may display your license number are: NMLS ID 12345, NMLS 12345, NMLS #12345, MB-12345, or MLO-12345.

(23) "Licensed location" means a main office or branch office, including an individual loan originator's residence, where the licensee conducts business under the act with Washington residents or Washington residential real estate and the licensee has obtained a main or branch license through NMLS for that location.

(24) "Loan originator licensee" means a natural person who is licensed as a loan originator or is subject to licensing under RCW 19.146.200 or who is acting as a loan originator subject to any provisions of the act.

(25) "Loan originator's residence" means a loan originator's primary or secondary residence located in the United States.

(26) "Material litigation" means any litigation that would be relevant to the director's ruling on an application for a license including, but not limited to, criminal or civil action involving dishonesty or financial misconduct.

(27) "Mortgage broker licensee" means a person that is licensed as a mortgage broker or is subject to licensing under RCW 19.146.200 or is acting as a mortgage broker subject to any provisions of the act.

(28) "Mortgage Broker Practices Act" means chapter 19.146 RCW.

(29) "NMLS" means the Nationwide Multistate Licensing System and Registry, Nationwide Mortgage Licensing System, NMLSR, or such other name or acronym as may be assigned to the multistate system developed by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators and owned and operated by the state regulatory registry, LLC, or any successor or affiliated entity, for the licensing and registration of persons in the mortgage and other financial services industries.

(30) "Out-of-state applicant or licensee" means a person subject to licensing that maintains an office outside of this state.

(31) "Prepaid escrowed costs of ownership," as used in RCW 19.146.030(4), means any amounts prepaid by the borrower for the payment of taxes, property insurance, interim interest, and similar items in regard to the property used as security for the loan.

(32) "Principal" means any person who controls, directly or indirectly through one or more intermediaries, or alone or in concert with others, a ~~((ten))~~ 10 percent or greater interest in a partnership, company, association, or corporation, and the owner of a sole proprietorship.

(33) "Rate lock agreement" means an agreement with a borrower made by a mortgage broker, loan originator, or lender in which the mortgage broker, loan originator, or lender agrees that, for a period of time, a specific interest rate or other financing terms will be the rate or terms at which it will make a loan available to that borrower.

(34) "Registered agent" means a person located in Washington appointed to accept service of process for a licensee.

(35) "Registered mortgage loan originator" means any individual who meets the definition of mortgage loan originator and is an employee of:

(a) A depository institution, a subsidiary that is owned and controlled by a depository institution and regulated by a federal banking

agency, or an institution regulated by the farm credit administration; and

(b) Is registered with, and maintains a unique identifier through, the NMLS.

(36) "Residential real estate" is real property upon which is constructed or intended to be constructed, a single family dwelling or multiple family dwelling of four or less units.

(\*) (a) Residential real estate includes, but is not limited to:

(-) (i) A single family home;

(-) (ii) A duplex;

(-) (iii) A triplex;

(-) (iv) A fourplex;

(-) (v) A single condominium in a condominium complex;

(-) (vi) A single unit within a cooperative;

(-) (vii) A manufactured home; or

(-) (viii) A fractile, fee simple interest in any of the above.

(\*) (b) Residential real estate does not include:

(-) (i) An apartment building or dwelling of five or more units; or

(-) (ii) A single piece of real estate with five or more single family dwellings unless each dwelling is capable of being financed independently of the other dwellings.

(~~"Table-funding"~~) (37) "Table funding" means a settlement at which a mortgage loan is funded by a contemporaneous advance of loan funds and an assignment of the loan to the person advancing the funds. The mortgage broker originates the loan and closes the loan in its own name with funds provided contemporaneously by a lender to whom the closed loan is assigned.

(38) "Third-party provider" means any person other than a mortgage broker or lender who provides goods or services to the mortgage broker in connection with the preparation of the borrower's loan and includes, but is not limited to, credit reporting agencies, title companies, appraisers, structural and pest inspectors, or escrow companies.

A lender is considered a third party only when the lender provides lock-in arrangements to the mortgage broker in connection with the preparation of a borrower's loan.

(39) "Underwriting" means a lender's detailed credit analysis preceding the offering or making of a loan. The analysis may be based on information furnished by the borrower (employment history, salary, financial statements), the borrower's credit history from a credit report, the lender's evaluation of the borrower's credit needs and ability to pay, and an assessment of the collateral for the loan. While mortgage brokers may have access to various automated underwriting systems to facilitate an evaluation of the borrower's qualifications, the mortgage broker who qualifies or approves a borrower in this manner is not the underwriter of the loan and cannot charge a fee for underwriting the loan. Third-party charges the mortgage broker incurs in using or accessing an automated system to qualify or approve a borrower may, like other third-party expenses, be passed on to the borrower.

[Statutory Authority: RCW 43.320.040 and 19.146.225. WSR 19-21-142, § 208-660-006, filed 10/22/19, effective 11/24/19. Statutory Authority: Chapter 43.320 RCW, RCW 19.146.223. WSR 16-08-027, § 208-660-006, filed 3/30/16, effective 4/30/16. Statutory Authority: RCW 43.320.040 and 19.146.225. WSR 13-24-023, § 208-660-006, filed 11/22/13, effec-

tive 1/1/14. Statutory Authority: Chapter 43.320 RCW and RCW 19.146.223. WSR 12-18-048, § 208-660-006, filed 8/29/12, effective 11/1/12. Statutory Authority: RCW 43.320.040, 19.146.223, and 2010 c 35. WSR 10-20-125, § 208-660-006, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 43.320.040, 19.146.223, and 2009 c 528. WSR 09-24-091, § 208-660-006, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040, 19.144.070, 2008 c 109. WSR 09-01-156, § 208-660-006, filed 12/23/08, effective 1/23/09. Statutory Authority: RCW 43.320.040, 19.146.223. WSR 08-11-103, § 208-660-006, filed 5/20/08, effective 6/20/08; WSR 08-05-126, § 208-660-006, filed 2/20/08, effective 3/22/08. Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19. WSR 06-23-137, § 208-660-006, filed 11/21/06, effective 1/1/07.]

AMENDATORY SECTION (Amending WSR 19-21-142, filed 10/22/19, effective 11/24/19)

**WAC 208-660-106 How does the department interpret the definition of loan processor in RCW 19.146.010(12)?** "Loan processor" (~~(or "underwriter")~~) means an individual who performs clerical or support duties as an employee (not as an independent contractor) of a person licensed or exempt from licensing and at the direction of and subject to the supervision and instruction of an individual licensed, or exempt from licensing, under this chapter. The job responsibilities may include the receipt, collection and distribution of information common for the processing of a loan. The loan processor may also communicate with a borrower to obtain the information necessary for the processing of a loan, provided that such communication does not include offering or negotiating loan rates or terms, or counseling borrowers about loan rates or terms. A loan processor (~~(or underwriter)~~) engaged as an independent contractor by a licensee must hold a mortgage loan originator license. See WAC 208-660-300(13).

[Statutory Authority: RCW 43.320.040 and 19.146.225. WSR 19-21-142, § 208-660-106, filed 10/22/19, effective 11/24/19; WSR 13-24-023, § 208-660-106, filed 11/22/13, effective 1/1/14.]

AMENDATORY SECTION (Amending WSR 16-08-027, filed 3/30/16, effective 4/30/16)

**WAC 208-660-300 Loan originators—General.** (1) **May I work as a loan originator for more than one mortgage broker?** Yes.

(2) **How do I obtain approval to work for more than one mortgage broker?** Using the NMLS, the company will submit a sponsorship request. The department will notify you and others associated with your license upon approval of your request. The NMLS will charge a fee for the additional relationship. See also WAC 208-660-550.

(3) **If I work as a loan originator for more than one mortgage broker, may I take an application from a borrower without identifying one specific mortgage broker?** No. You may take an application for only one mortgage broker at a time in any one transaction. Prior to presenting yourself to a specific borrower as licensed to originate mort-

gage loans, you must state who you represent. You must clearly identify the mortgage broker by name and address on the application, on all disclosures, authorization forms, and other material provided to the borrower. There must be no confusion by the borrower as to which mortgage broker you are representing at any given time.

(4) **May I work from any location when I am a licensed loan originator?** No. You can only work from a licensed location (~~(. The licensed location can be the main company office, or any licensed branch)~~) unless you conduct activity under the act from your residence pursuant to WAC 208-660-505.

(5) **May a loan originator transfer loan files to a mortgage broker other than the mortgage broker the loan originator is associated with?** No. Only the borrower may submit a written request to the licensed mortgage broker to transmit the borrower's selected information to another mortgage broker or lender. The licensed mortgage broker must transmit the information within five business days after receiving the borrower's written request.

(6) **Who owns loan files?** Loan files are the property of the mortgage broker named on the loan application and the mortgage broker must keep the original files and documents.

(7) **May I act as a loan originator and a real estate agent or with someone in the same real estate agency in the same transaction or for the same borrower in different transactions?** Yes, for required disclosure language see RCW 19.146.0201(14).

(8) **As a loan originator, may I be paid directly by the borrower for my services?** No. As a loan originator, you may not be paid any compensation or fees directly by the borrower.

(9) **May a loan originator charge the borrower a fee, commission, or other compensation for preparing, negotiating, or brokering a loan for the borrower?** No. A loan originator may not charge the borrower a fee, commission, or compensation of any kind in connection with the preparation, negotiation, and brokering of a residential mortgage loan.

(10) **May a loan originator bring a lawsuit against a borrower for the collection of compensation?** No. Only licensed mortgage brokers, or exempt mortgage brokers, may bring collection actions against borrowers to collect compensation.

(11) **May I work as a licensed loan originator for a mortgage broker located out of the state?** Yes. You may originate loans for any mortgage broker who sponsors you and who is licensed under Washington law.

(12) **May a licensed loan originator hire employees or independent contractors to assist in the mortgage broker licensee's activities?** No. Only the mortgage broker licensee can have employees or independent contractors. This prohibition against loan originators hiring employees or independent contractors includes clerical or administrative personnel whose work is related to the mortgage broker licensee's activities, and loan processors.

(13) **Do loan processors have to be licensed as loan originators?** W-2 employee loan processors are not required to have a loan originator license provided they work under the supervision and instruction of a licensed mortgage loan originator (including the designated broker) and do not hold themselves out as able to conduct the activities of a licensed mortgage broker or loan originator. Independent contractor loan processing companies must be licensed as a mortgage broker, have a designated broker, and have at least one licensed mortgage loan originator (who can be the designated broker). The W-2 employee loan

processors are not then required to be licensed mortgage loan originators. Individual independent contractor loan processors must be licensed as mortgage loan originators, be sponsored by a licensed mortgage broker, and be supervised by that licensee's licensed mortgage loan originator (including the designated broker).

**(14) May loan processors work on files from an unlicensed location?** A loan processor may work on loan files from an unlicensed location under the following circumstances:

(a) The loan files are in electronic format and the loan processor accesses the files directly from the licensed mortgage broker's main computer system. The loan processor may not maintain any electronic files on any computer system other than the system belonging to the licensed mortgage broker.

(b) The loan processor does not conduct any of the activities of a licensed loan originator.

(c) The licensed mortgage broker must have safeguards in place for the computer system that safeguards borrower information.

[Statutory Authority: Chapter 43.320 RCW, RCW 19.146.223. WSR 16-08-027, § 208-660-300, filed 3/30/16, effective 4/30/16; WSR 12-18-048, § 208-660-300, filed 8/29/12, effective 11/1/12. Statutory Authority: RCW 43.320.040, 19.146.223, and 2009 c 528. WSR 09-24-091, § 208-660-300, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040, 19.144.070, 2008 c 109. WSR 09-01-156, § 208-660-300, filed 12/23/08, effective 1/23/09. Statutory Authority: RCW 43.320.040, 19.146.223. WSR 08-05-126, § 208-660-300, filed 2/20/08, effective 3/22/08. Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19. WSR 06-23-137, § 208-660-300, filed 11/21/06, effective 1/1/07.]

AMENDATORY SECTION (Amending WSR 12-18-048, filed 8/29/12, effective 11/1/12)

**WAC 208-660-420 Out-of-state mortgage brokers and loan originators.** (1) **May I be a licensed mortgage broker in Washington without a physical office in Washington?** Yes. You are not required by the act to have a physical location in Washington.

(2) **May I be a licensed mortgage broker in Washington and have branch offices both in Washington and outside of Washington?** Yes. However, each of your branch offices that offer Washington residential mortgage loans must hold a Washington license, even if the location is outside Washington.

(3) **May my mortgage broker business be conducted entirely on the internet?** Yes. But you must have a license for all locations including those that offer loans by mail or internet.

(4) **May I work as a loan originator in Washington if I do not have a physical location in Washington?** Yes. You may originate Washington loans from any licensed location (~~(licensed under the act)~~) or your residence pursuant to WAC 208-660-505, inside or outside of Washington, as long as the company that sponsors you is licensed to do business in Washington.

(5) **May I work as a licensed loan originator for a licensed mortgage broker that is out of the state?** Yes, as long as (~~(the location from which)~~) you work (~~(is)~~) from a licensed (~~(under the act)~~) location or your residence pursuant to WAC 208-660-505.

(6) **If my mortgage broker business is not located in Washington, where must I keep my records?** If your business is located outside of Washington, you may either maintain the books and records at a location in Washington, or pay the department's travel expenses to the out-of-state location to examine the books and records. Travel expenses may include, but are not limited to, transportation, meals, and lodging.

(7) **What additional requirements must I comply with if my business does not have a physical location in Washington?** You must continuously maintain a registered agent in Washington and provide the department, through the NMLS, with the registered agent's name, physical and mailing address, and written consent to be the registered agent.

(8) **How do I change the information about my registered agent?** You must update the information in the NMLS within (~~ten~~) 10 business days from the change.

(9) **If I am a registered agent under the act, what must I do to resign as registered agent?**

(a) Provide the department with a statement of resignation at least (~~thirty-one~~) 31 days prior to the intended effective date of your resignation.

(b) Provide a copy of the statement of resignation to the licensed mortgage broker.

(c) The department will terminate your appointment on the (~~thirty-first~~) 31st day after the date on which the statement of resignation was delivered.

[Statutory Authority: Chapter 43.320 RCW and RCW 19.146.223. WSR 12-18-048, § 208-660-420, filed 8/29/12, effective 11/1/12. Statutory Authority: RCW 43.320.040, 19.146.223, and 2009 c 528. WSR 09-24-091, § 208-660-420, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040, 19.144.070, 2008 c 109. WSR 09-01-156, § 208-660-420, filed 12/23/08, effective 1/23/09. Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19. WSR 06-23-137, § 208-660-420, filed 11/21/06, effective 1/1/07.]

#### NEW SECTION

**WAC 208-660-505 What is required for a Washington licensed loan originator to work from their residence without licensing the residence as a branch location?** A licensed company may permit a sponsored and licensed loan originator to work from the loan originator's residence without licensing it as a branch location under RCW 19.146.265 and subject to the following conditions:

(1) The company must have written policies and procedures that include appropriate risk-based monitoring and oversight processes for the supervision of loan originators working from their residence without licensing it as a branch location. The loan originator must comply with the licensee's policies and procedures.

(2) Access to the company platforms and customer information must be in accordance with the licensee's comprehensive written information security plan, as required by WAC 208-660-460, which must include safeguards that protect customer information.

(3) Communications that contain a customer's protected personal information must be in compliance with federal and state information security requirements, including the applicable provisions under the



Gramm-Leach-Bliley Act and the Safeguards Rule. See WAC 208-660-460 and 208-660-470 for more information.

(4) The loan originator's residence may not be held out in any manner, directly or indirectly, as a licensed main or branch location unless it is licensed as a main or branch location. The following is not allowed at the loan originator's residence unless it is licensed as a main or branch location:

- (a) Conducting in-person customer interactions;
- (b) Storing physical records containing customer information;
- (c) Receiving physical records containing customer information;

and

- (d) Advertising the location as a licensed main or branch office.

(5) The NMLS record of the loan originator must designate the licensed main office headquarters or a licensed branch office as their registered location.

(6) The loan originator must use their registered location from NMLS in the "loan originator information" section on residential mortgage loan applications.

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**WSR 22-20-108**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Economic Services Administration)  
[Filed October 5, 2022, 9:15 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-14-060.

Title of Rule and Other Identifying Information: The department proposes amending WAC 388-484-0006 TANF/SFA time limit extensions.

Hearing Location(s): On November 8, 2022, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington [Street S.E.], Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/office-of-the-secretary/drivingdirections-office-bldg-2>; or virtually. Due to the COVID[-19] pandemic, hearings are being held virtually. Please see the DSHS website for the most up-to-date information.

Date of Intended Adoption: No earlier than November 9, 2022.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email [DSHSRPAURulesCoordinator@dshs.wa.gov](mailto:DSHSRPAURulesCoordinator@dshs.wa.gov), fax 360-664-6185, by November 8, 2022, at 5:00 p.m.

Assistance for Persons with Disabilities: Contact Shelley Tencza, DSHS rules consultant, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service, email [Tenczsa@dshs.wa.gov](mailto:Tenczsa@dshs.wa.gov), by October 25, 2022, at 5:00 p.m.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Proposed amendments expand time limit extensions to TANF/SFA recipients during times of high unemployment, when the Washington state employment security department's most recent published unemployment rate is seven percent or higher. These amendments are necessary to implement HB 1755 (chapter 24, Laws of 2022).

Emergency amendments to implement this change took effect July 1, 2022, under WSR 22-14-037.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.770, 74.08.090, 74.08A.010, and 74.08A.015.

Statute Being Implemented: HB 1755 (chapter 24, Laws of 2022).

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Sarah Mintzer, P.O. Box 45470, Olympia, WA 98504-5770, 360-764-0050.

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

A cost-benefit analysis is not required under RCW 34.05.328. This amendment is exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in part, "this section does not apply rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents."

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

Is exempt under RCW 34.05.328 (5)(b)(vii).

Explanation of exemptions: The proposed rules do not impact small businesses. They only impact DSHS clients.

Scope of exemption for rule proposal:  
Is fully exempt.

October 4, 2022  
Katherine I. Vasquez  
Rules Coordinator

#### SHS-4924.4

AMENDATORY SECTION (Amending WSR 21-22-053, filed 10/28/21, effective 11/28/21)

**WAC 388-484-0006 TANF/SFA time limit extensions. (1) What happens after I receive ((sixty)) 60 or more months of TANF/SFA cash assistance?**

After you receive ((sixty)) 60 or more months of TANF/SFA cash assistance according to WAC 388-484-0005, you may qualify for additional months of cash assistance. We call these additional months of TANF/SFA cash assistance a hardship TANF/SFA time limit extension.

**(2) Who is eligible for a hardship TANF/SFA time limit extension?**

You are eligible for a hardship TANF/SFA time limit extension if you are on TANF, are otherwise eligible for TANF, or are an ineligible parent, and you have received ((sixty)) 60 cumulative months of TANF and:

(a) You are approved for one of the exemptions from mandatory participation according to WAC 388-310-0350 (1)(a) through (d) or you are an ineligible parent who meets the criteria for an exemption from mandatory WorkFirst participation; or

(b) You:

(i) Are a supplemental security income recipient or a Social Security disability insurance recipient; or

(ii) Are at least ((sixty-five)) 65 years old, blind as defined by the Social Security Administration or disabled as determined under chapter 388-449 WAC; or

(iii) Have an open child welfare case with a state or tribal government and this is the first time you have had a child dependent under RCW 13.34.030 in this or another state or had a child a ward of a tribal court; or

(iv) Are working in unsubsidized employment for ((thirty-two)) 32 hours or more per week; or

(v) Document that you meet the family violence option criteria in WAC 388-61-001 and are participating satisfactorily in specialized activities needed to address your family violence according to a service plan developed by a person trained in family violence or have a good reason, as described in WAC 388-310-1600(3) for failure to participate satisfactorily in specialized activities; or

(vi) Are homeless by reason of hardship, including when your family includes a child or youth who is without a fixed regular, and adequate nighttime residence as described in the federal McKinney-Vento Homeless Assistance Act (Title 42, U.S.C. 11434a(2), chapter 119, subchapter VI, part B) as it existed on January 1, 2020; or

(vii) Are an active TANF recipient from July 1, 2021, through June 30, ~~((2022))~~ 2023; or

(viii) Are an active TANF recipient, beginning July 1, 2022, when Washington state employment security department's most recently published unemployment rate is seven percent or above.

~~((viii))~~ (ix) Do not qualify for other time limit extension criteria in this section and received TANF during a month on or after March 1, 2020, when the ~~((state's))~~ Washington state employment security department's unemployment rate was at seven percent or above. The extension provided for under this subsection (2)(b) ~~((viii))~~ (ix) is equal to the number of months that you received TANF on or after March 1, 2020, when the ~~((state's))~~ Washington state employment security department's unemployment rate was at seven percent or above.

**(3) Who reviews and approves a hardship time limit extension?**

(a) Your case manager or social worker will review your case and determine whether a hardship time limit extension type will be approved.

(b) This review will not happen until after you have received at least ~~((fifty-two))~~ 52 months of assistance but before you reach your time limit or lose cash assistance due to the time limit.

(c) Before you reach your time limit or lose cash assistance due to the time limit, the department will send you a notice that tells you whether a hardship time limit extension will be approved when your time limit expires and how to request an administrative hearing if you disagree with the decision.

**(4) When I have an individual responsibility plan, do my WorkFirst participation requirements change when I receive a hardship TANF/SFA time limit extension?**

(a) Even if you qualify for a hardship TANF/SFA time limit extension you will still be required to participate as required in your individual responsibility plan (WAC 388-310-0500). You must still meet all of the WorkFirst participation requirements listed in chapter 388-310 WAC while you receive a hardship TANF/SFA time limit extension.

(b) If you do not participate in the WorkFirst activities required by your individual responsibility plan, and you do not have a good reason under WAC 388-310-1600, the department will follow the sanction rules in WAC 388-310-1600.

**(5) Do my benefits change if I receive a hardship TANF/SFA time limit extension?**

(a) You are still a TANF/SFA recipient or an ineligible parent who is receiving TANF/SFA cash assistance on behalf of your child and your cash assistance, services, or supports will not change as long as you continue to meet all other TANF/SFA eligibility requirements.

(b) During the hardship TANF/SFA time limit extension, you must continue to meet all other TANF/SFA eligibility requirements. If you no longer meet TANF/SFA eligibility criteria during your hardship time limit extension, your benefits will end.

**(6) How long will a hardship TANF/SFA time limit extension last?**

(a) We will review your hardship TANF/SFA time limit extension and your case periodically for changes in family circumstances:

(i) If you are extended under WAC 388-484-0006 (2)(a), (b)(i) or (ii) then we will review your extension at least every ~~((twelve))~~ 12 months;

(ii) If you are extended under WAC 388-484-0006 (2)(b)(iii), (iv), (v), or (vi) then we will review your extension at least every six months.

(b) Your hardship TANF/SFA time limit extension may be renewed for as long as you continue to meet the criteria to qualify for a hardship time limit extension.

(c) If during the extension period we get proof that your circumstances have changed, we may review your case and determine if you continue to qualify for a hardship TANF/SFA time limit extension. When you no longer qualify for a hardship TANF/SFA time limit extension we will stop your TANF/SFA cash assistance. You will be notified of your case closing and will be given the opportunity to request an administrative hearing before your benefits will stop.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.770, 74.08.090, 74.08A.010 and 2021 c 334, 2021 c 239. WSR 21-22-053, § 388-484-0006, filed 10/28/21, effective 11/28/21. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.770, 74.08.090, 2020 c 320 and C.F.R. 20 § 416.2095 through 416.2099. WSR 21-12-077, § 388-484-0006, filed 5/28/21, effective 7/1/21. Statutory Authority: RCW 41.05.021, 74.04.050, 74.04.055, 74.04.057, 74.08.025, 74.08.090, 74.09.035, 74.09.530, 74.62.030, chapters 74.08A, and 74.12 RCW. WSR 20-05-046, § 388-484-0006, filed 2/13/20, effective 3/15/20. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and 74.08A.010. WSR 15-24-056, § 388-484-0006, filed 11/24/15, effective 1/1/16. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, chapters 74.08A and 74.12 RCW, 2011 1st sp.s. c 42, and 2011 1st sp.s. c 2. WSR 12-05-039, § 388-484-0006, filed 2/10/12, effective 3/12/12. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and chapters 74.08A and 74.12 RCW. WSR 10-24-013, § 388-484-0006, filed 11/18/10, effective 12/19/10. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and chapter 74.08A RCW. WSR 06-10-034, § 388-484-0006, filed 4/27/06, effective 6/1/06. Statutory Authority: RCW 74.08.090, 74.04.050, and 74.08A.340. WSR 03-24-057, § 388-484-0006, filed 12/1/03, effective 1/1/04. Statutory Authority: RCW 74.08A.010(4), 74.08A.340, 74.08.090, 74.04.050. WSR 02-12-068, § 388-484-0006, filed 5/31/02, effective 6/1/02.]

## WSR 22-20-109

## PROPOSED RULES

## DEPARTMENT OF HEALTH

[Filed October 5, 2022, 9:23 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-02-008.

Title of Rule and Other Identifying Information: WAC 246-310-290 Hospice services—Standards and need forecasting method. The department of health (department) is proposing changes that intend to provide a more accurate measurement of hospice service utilization using reported admissions in calculating need within Washington communities.

Hearing Location(s): On November 10, 2022, at 11:00 a.m. Department of health will be holding a virtual public hearing. Register in advance for this webinar [https://us02web.zoom.us/webinar/register/WN\\_CM1LSct\\_Ri6OgE5bRfVMNw](https://us02web.zoom.us/webinar/register/WN_CM1LSct_Ri6OgE5bRfVMNw). After registering, you will receive a confirmation email containing information about joining the webinar.

Date of Intended Adoption: November 17, 2022.

Submit Written Comments to: Eric Hernandez, P.O. Box 47852, Olympia, WA 98504-7852, email <https://fortress.wa.gov/doh/policyreview>, [CNRulemaking@doh.wa.gov](mailto:CNRulemaking@doh.wa.gov), by November 10, 2022.

Assistance for Persons with Disabilities: Contact Eric Hernandez, phone 360-236-2956, TTY 711, email [CNRulemaking@doh.wa.gov](mailto:CNRulemaking@doh.wa.gov), by November 3, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed amendments to WAC 246-310-290 allow for a more accurate measurement of hospice service utilization within Washington communities using reported admissions. The current rule under-reports capacity within the various planning areas, which results in under-calculation of numeric need throughout Washington communities. This proposed change to the methodology calculation will achieve a more accurate measure of utilization to reflect a truer calculation of numeric need for hospice services. The hospice community requested an update to the hospice methodology calculation. This will ensure an accurate representation of need for future application cycles and keep the methodology application consistent across review cycles. The initial CR-101 filed was intended to work on the entire chapter. Remaining items not covered in this CR-102, including petitions, will have a new CR-101 filed to continue that work.

Reasons Supporting Proposal: The goals and objectives of chapter 70.38 RCW are to "promote, maintain and assure the health of all citizens in the state, to provide accessible health services, health manpower, health facilities, and other resources while controlling excessive increases in costs." The statute states that health planning "should be concerned with public health and health care financing, access and quality, recognizing their close interrelationship and emphasizing cost controls of health services, including cost effectiveness and cost-benefit analysis."

The proposed rule change allows for more accurate measurement and projection of hospice utilization within the state, which results in a more accurate numeric need calculation, and helps to ensure enough hospice providers are available in local communities.

Statutory Authority for Adoption: RCW 70.38.115, 70.38.135, and 43.70.040.

Statute Being Implemented: RCW 70.38.115, 70.38.135, and 43.70.040.

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Eric Hernandez, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-2956.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Eric Hernandez, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-2956, TTY 711, email CNRulemaking@doh.wa.gov.

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

Is exempt under RCW 19.85.025(3) as the rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

Explanation of exemptions: WAC 246-310-290 details the methodology to calculate need in a planning area which is one part of the information used in granting a certificate of need.

Scope of exemption for rule proposal:

Is fully exempt.

October 5, 2022  
 Kristin Peterson, JD  
 Chief of Policy  
 for Umair A. Shah, MD, MPH  
 Secretary

## OTS-4010.1

AMENDATORY SECTION (Amending WSR 18-19-051, filed 9/14/18, effective 10/15/18)

**WAC 246-310-290 Hospice services—Standards and need forecasting method.** The following rules apply to any in-home services agency licensed or an applicant intending to become licensed to provide hospice services, and intending to become a medicare certified or medicaid contracted service provider in a designated planning area.

(1) The definitions in this subsection apply throughout this section unless the context clearly indicates otherwise:

(a) "ADC" means average daily census and is calculated by:

(i) Multiplying projected annual hospice agency admissions by the most recent average length of stay in Washington, based on the most recent data reported to the Centers for Medicare and Medicaid Services (CMS) to derive the total annual days of care;

(ii) Dividing the total calculated in (a) (i) of this subsection by three hundred sixty-five (days per year) to determine the ADC.

(b) "Average length of stay" means the average covered days of care per person for Washington state as reported by CMS.

(c) "Base year" means the most recent calendar year for which hospice survey data is available as of September 30th of each year.

(d) "CMS" means the Centers for Medicare and Medicaid Services.

(e) "Current supply of hospice providers" means all providers of hospice services that have received certificate of need approval to provide services within a planning area. State licensed only and volunteer hospices are excluded from the current supply of hospice providers.

(f) "Hospice services" means symptom and pain management provided to a terminally ill person, and emotional, spiritual and bereavement support for the terminally ill person and family in a place of temporary or permanent residence provided under the direction of an interdisciplinary team composed of at least a registered nurse, social worker, physician, spiritual counselor, and a volunteer.

(g) "OFM" means the Washington state office of financial management.

(h) "Planning area" or "service area" means an individual geographic area designated by the department for which hospice need projections are calculated. For the purposes of hospice services, planning area and service area have the same meaning.

(i) "Projection year" means the third calendar year after the base year. For example, reviews using 2016 survey data as the base year will use 2019 as the projection year.

(2) The department will review a hospice application using the concurrent review cycle described in subsection (3) of this section, except when the sole hospice provider in the service area ceases operation. Applications to meet this need may be accepted and reviewed in accordance with the regular review process described in WAC 246-310-110 (2) (c).

(3) Applications must be submitted and reviewed according to Table A:

Table A

		Application Submission Period			Department Action	Application Review Period		
Concurrent Review Cycle	Letters of Intent Due	Receipt of Initial Application	End of Screening Period	Applicant Response	Beginning of Review	Public Comment	Rebuttal	Ex Parte Period
<b>Cycle 1</b> (Chelan, Douglas, Clallam, Clark, Skamania, Cowlitz, Grant, Grays Harbor, Island, Jefferson, King, Kittitas, Klickitat, Okanogan, Pacific, San Juan, Skagit, Spokane, and Yakima).	Last working day of <b>November</b> of each year.	Last working day of <b>December</b> of each year.	Last working day of <b>January</b> of each year.	Last working day of <b>February</b> of each year.	<b>March 16</b> of each year or the first working day thereafter.	<b>45-Day</b> public comment period (including public hearing). Begins <b>March 17</b> or the first working day thereafter.	<b>30-Day</b> rebuttal period. Applicant and affected person response to public comment.	<b>75-Day</b> ex parte period. Department evaluation and decision.
<b>Cycle 2</b> (Adams, Asotin, Benton, Columbia, Ferry, Franklin, Garfield, Kitsap, Lewis, Lincoln, Mason, Pend Oreille, Pierce, Snohomish, Stevens, Thurston, Wahkiakum, Walla Walla, Whatcom, and Whitman).	Last working day of <b>December</b> of each year.	Last working day of <b>January</b> of each year.	Last working day of <b>February</b> of each year.	Last working day of <b>March</b> of each year.	<b>April 16</b> of each year or the first working day thereafter.	<b>45-Day</b> public comment period (including public hearing). Begins <b>April 17</b> or the first working day thereafter.	<b>30-Day</b> rebuttal period. Applicant and affected person response to public comment.	<b>75-Day</b> ex parte period. Department evaluation and decision.



(4) Pending certificate of need applications. A hospice service application submitted prior to the effective date of these rules will be reviewed and action taken based on the rules that were in effect on the date the application was received.

(5) The department will notify applicants fifteen calendar days prior to the scheduled decision date if it is unable to meet the decision deadline on the application(s). In that event, the department will establish and commit to a new decision date.

(6) When an application initially submitted under the concurrent review cycle is deemed not to be competing, the department may convert the review to a regular review process.

(7) Current hospice capacity will be determined as follows:

(a) For hospice agencies that have operated in a planning area for three years or more, current hospice capacity is calculated by determining the average number of unduplicated admissions for the last three years of operation;

(b) For hospice agencies that have operated (or been approved to operate) in a planning area for less than three years, an ADC of thirty-five and the most recent Washington average length of stay data will be used to calculate assumed annual admissions for the hospice agency as a whole for the first three years to determine current hospice capacity. If a hospice agency's reported admissions exceed an ADC of thirty-five, the department will use the actual reported admissions to determine current hospice capacity;

(c) For a hospice agency that is no longer in operation, the department will use the historical three-year admissions to calculate the statewide use rates, but will not use the admissions to calculate planning area capacity;

(d) For a hospice agency that has changed ownership, the department will use the historical three-year admissions to calculate the statewide use rates, and will use the admissions to calculate planning area capacity.

(8) Need projection. The following steps will be used to project the need for hospice services.

(a) Step 1. Calculate the following two statewide predicted hospice use rates using department of health survey and vital statistics death data:

(i) The percentage of patients age sixty-five and over who will use hospice services. This percentage is calculated by dividing the average number of unduplicated admissions over the last three years for patients sixty-five and over by the average number of past three years statewide total deaths age sixty-five and over.

(ii) The percentage of patients under sixty-five who will use hospice services. This percentage is calculated by dividing the average number of unduplicated admissions over the last three years for patients under the age of sixty-five by the average number of past three years statewide total deaths under sixty-five.

(b) Step 2. Calculate the average number of total resident deaths over the last three years for each planning area by age cohort.

(c) Step 3. Multiply each hospice use rate determined in Step 1 by the planning areas average total resident deaths determined in Step 2, separated by age cohort.

(d) Step 4. Using the projected patients calculated in Step 3, calculate a use rate by dividing projected patients by the three-year historical average population by county. Use this use rate to determine the potential volume of hospice use by the projected population

by the two age cohorts identified in Step 1, (a)(i) and (ii) of this subsection using OFM data.

(e) Step 5. Combine the two age cohorts. (~~Subtract~~)

(i) Calculate the most recent three-year average hospice capacity in each planning area using hospice agency admissions. Subtract the calculated hospice capacity from the projected volumes calculated in Step 4 to determine the number of projected admissions beyond the planning area capacity.

(ii) For hospice agencies qualified under subsection (7)(b) of this section, and whose recent three-year average hospice capacity is below an ADC of 35, replace any reported admissions with default admissions for each year over which the three-year average is calculated.

(f) Step 6. Multiply the unmet need from Step 5 by the statewide average length of stay as determined by CMS to determine unmet need patient days in the projection years.

(g) Step 7. Divide the unmet patient days from Step 6 by 365 to determine the unmet need ADC.

(h) Step 8. Determine the number of hospice agencies in the planning areas that could support the unmet need with an ADC of thirty-five.

(9) If the department becomes aware of a facility closure fifteen calendar days or more prior to the letter of intent submission period, the department will update the methodology for the application cycle. If a closure occurs fewer than fifteen calendar days prior to the letter of intent submission period, the department will not update the methodology until the next year.

(10) In addition to demonstrating numeric need under subsection (7) of this section, applicants must meet the following certificate of need requirements:

(a) Determination of need under WAC 246-310-210;

(b) Determination of financial feasibility under WAC 246-310-220;

(c) Criteria for structure and process of care under WAC 246-310-230; and

(d) Determination of cost containment under WAC 246-310-240.

(11) To conduct the superiority evaluation to determine which competing applications to approve, the department will use only the criteria and measures in this section to compare two or more applications to each other.

(a) The following measures must be used when comparing two or more applications to each other:

(i) Improved service to the planning area;

(ii) Specific populations including, but not limited to, pediatrics;

(iii) Minimum impact on existing programs;

(iv) Greatest breadth and depth of hospice services; and

(v) Published and publicly available quality data.

(b) An application will be denied if it fails to meet any criteria under WAC 246-310-210, 246-310-220, 246-310-230, or 246-310-240 (2) or (3).

(12) The department may grant a certificate of need for a new hospice agency in a planning area where there is not numeric need.

(a) The department will consider if the applicant meets the following criteria:

(i) All applicable review criteria and standards with the exception of numeric need have been met;

(ii) The applicant commits to serving medicare and medicaid patients; and

(iii) A specific population is underserved; or

(iv) The population of the county is low enough that the methodology has not projected need in five years, and the population of the county is not sufficient to meet an ADC of thirty-five.

(b) If more than one applicant applies in a planning area, the department will give preference to a hospice agency that proposes to be physically located within the planning area.

(c) The department has sole discretion to grant or deny application(s) submitted under this subsection.

(13) Any hospice agency granted a certificate of need for hospice services must provide services to the entire county for which the certificate of need was granted.

(14) Failure to operate the hospice agency as approved in the certificate of need may be a basis for revocation or suspension of a hospice agency's certificate of need, or other appropriate action.

[Statutory Authority: RCW 70.38.135 and 70.38.115. WSR 18-19-051, § 246-310-290, filed 9/14/18, effective 10/15/18. Statutory Authority: Chapters 70.127 and 70.38 RCW. WSR 03-07-096, § 246-310-290, filed 3/19/03, effective 4/19/03.]

**WSR 22-20-110**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**CHILDREN, YOUTH, AND FAMILIES**

[Filed October 5, 2022, 10:01 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-12-064.

Title of Rule and Other Identifying Information: For license-exempt child care: WAC 110-16-0005 Definitions and 110-16-0045 Waiver from department rules—WAC.

Hearing Location(s): On November 8, 2022, telephonic. Make oral comments by calling 360-522-2826 and leaving a voicemail that includes the comment and an email or physical mailing address where the department of children, youth, and families (DCYF) will send its response. Comments received through and including November 8, 2022, will be considered.

Date of Intended Adoption: November 10, 2022.

Submit Written Comments to: Rules Coordinator, email dcyf.rulescoordinator@dcyf.wa.gov, by November 8, 2022.

Assistance for Persons with Disabilities: Contact rules coordinator, email dcyf.rulescoordinator@dcyf.wa.gov, by November 4, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Allow DCYF to grant waivers that allow license-exempt family, friend, and neighbor (FFN) child care providers to not comply with a rule due to the specific needs of a child who is in their care. The proposals clarify the conditions under which DCYF may not grant a waiver, that FFN providers whose requests are denied may request a department management review, and that FFN providers whose requests are denied do not have administrative hearing rights.

Reasons Supporting Proposal: The license-exempt child care program authorizes payment of child care subsidies to FFN providers who care for children from eligible families. In Washington, and around the country, FFN care is the most common type of child care for infants and toddlers, as well as before- and after-school care. Families may choose FFN child care for the benefits of shared language, culture, and values, existing bonds of love and trust between their children, FFNs' flexibility to meet nontraditional work hours, or because it's the best option to meet their childrens' special needs. Allowing waivers that do not compromise the health, safety, and welfare of the children in care will remove barriers for potential providers and allow the department to authorize a greater number of FFNs to provide this much needed type of child care.

Statutory Authority for Adoption: 42 U.S.C. 9858; RCW 43.216.055 and 43.216.065.

Statute Being Implemented: RCW 43.216.136.

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

Name of Proponent: DCYF, governmental.

Name of Agency Personnel Responsible for Drafting: Judy Jaramillo, 360-529-6542; Implementation and Enforcement: DCYF, statewide.

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

A cost-benefit analysis is not required under RCW 34.05.328. DCYF is not among the agencies listed as required to comply with RCW 34.05.328 (5)[(a)](i). Further, DCYF does not voluntarily make that section applicable to the adoption of this rule.

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

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

October 5, 2022  
Brenda Villarreal  
Rules Coordinator

## OTS-4033.2

AMENDATORY SECTION (Amending WSR 21-15-022, filed 7/12/21, effective 8/12/21)

**WAC 110-16-0005 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

((1)) **"Benefit"** means a regular payment made by a government agency on behalf of a person eligible to receive it.

((2)) **"Child"** or **"children,"** except when otherwise specified, means a child or children eligible for WCCC benefits under chapter 110-15 WAC.

((3)) **"Days"** means calendar days unless otherwise specified.

((4)) **"Department"** or **"DCYF"** means the department of children, youth, and families.

((5)) **"In-home/relative provider"** or **"family, friends, and neighbors (FFN) provider"** means an individual who is exempt from child care licensing requirements and is approved for WCCC payments under WAC 110-15-0125. Reference in this chapter to the term "provider" means an in-home/relative or FFN provider, except when otherwise specified.

((6)) **"In loco parentis"** means the adult caring for a child eligible for WCCC in the absence of the biological adoptive, or step-parents, and who is not a relative, court-ordered guardian, or custodian, and who is responsible for exercising day-to-day care and control of the child.

((7)) **"Infant"** is a child birth through ((eleven)) 11 months of age.

((8)) **"Lockdown"** or **"shelter-in-place"** means to remain inside the home when police or an official emergency response agency notifies a provider that it is unsafe to leave or be outdoors during an emergency situation.

((9)) **"Parent"** means, for the purposes of this chapter, the "in loco parentis" or the biological, adoptive, or step-parent, court-ordered guardian, or custodian eligible for WCCC benefits under this chapter.

((10)) **"State plan"** means the DCYF child care and development fund plan submitted by DCYF that must be approved by the United States Department of Health and Human Services.

**"Subsidy payment begin date"** means the first day a provider is authorized to start billing for care provided to eligible children.

~~((11))~~ **"Supervise"** or **"supervision"** means a provider must be able to see or hear the children they are responsible for at all times. Providers must use their knowledge of each child's development and behavior to anticipate what may occur to prevent unsafe or unhealthy events or conduct, or to intervene in such circumstances as soon as possible. Providers must also reposition themselves or the children to be aware of where children are and what they are doing during care. Providers must reassess and adjust their supervision each time child care activities change.

~~((12))~~ **"Swimming pool"** means a pool that has a water depth greater than two feet.

~~((13))~~ **"Technical assistance"** means the provision of customized supports to develop or strengthen processes, knowledge application, or implementation of services by providers.

~~((14))~~ **"Toddler"** means a child (~~(twelve)~~) 12 months through (~~(twenty-nine)~~) 29 months of age.

~~((15))~~ **"Wading pool"** means a pool that has a water depth of less than two feet. A portable wading pool is one that is formed of molded plastic or inflatable parts and can be removed after use.

~~((16))~~ **"Waiver"** is an official approval by the department allowing an FFN provider not to meet or satisfy a rule in this chapter due to specific needs of a child who is in the FFN provider's care.

**"Water activities"** refers to the activities in which children in care swim or play in a body of water that poses a risk of drowning for children.

~~((17))~~ **"WCCC"** means the working connections child care program, a child care subsidy program available to eligible families to help pay for child care.

[Statutory Authority: RCW 43.216.055, 43.216.065 and chapter 43.216 RCW. WSR 21-15-022, § 110-16-0005, filed 7/12/21, effective 8/12/21. Statutory Authority: RCW 43.216.055, 43.216.065, chapter 43.216 RCW and 42 U.S.C. 9858 et seq. WSR 18-20-081, § 110-16-0005, filed 10/1/18, effective 11/1/18.]

## NEW SECTION

**WAC 110-16-0045 Waiver from department rules—WAC.** (1) The department may grant a request for a waiver if the proposed waiver provides clear and convincing evidence that the health, welfare, and safety of all WCCC eligible children in their care is not jeopardized.

(2) The department cannot waive the following:

(a) Requirements described in a federal statute.

(b) Requirements described in a Washington state statute.

(c) State and federal regulations and policies that must be followed by FFN participants and that are referenced in the state plan. If authorized by the state plan, such requirements, regulations, and policies may be waived by DCYF.

(d) Requirements described in a state rule or regulation that is not codified in Title 110 WAC.

(3) The department may approve a waiver from a rule in this chapter if:

(a) The waiver does not jeopardize the health, safety, and welfare of the WCCC-eligible children in care; and

(b) The waiver is not in conflict with the requirements described in subsection (2) of this section.

(4) An FFN provider's request for a waiver from a rule in this chapter must be:

(a) Submitted in writing on the department's form to the department's license exempt team;

(b) Approved in writing by the department secretary or the secretary's designee prior to the FFN provider implementing the waiver from the rule; and

(c) For a specific FFN provider need or WCCC-eligible child.

(5) A granted waiver may be time specific or may remain in effect for as long as the FFN provider continues to comply with the conditions of the waiver. If the waiver from the rule is time limited, the FFN provider must not exceed the time frame established by the department.

(6) The department may revoke a granted waiver if a rule in this chapter was considered in granting the waiver and the rule is materially altered or amended.

(7) An FFN provider does not have the right to appeal the department's disapproval of a waiver request to the office of administrative hearings under chapter 110-03 WAC (Administrative hearings). An FFN provider may request a management review of the disapproval using a department-provided form.

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