

WSR 23-16-001

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed July 19, 2023, 12:22 p.m., effective August 19, 2023]

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

Purpose: The department is amending WAC 458-20-300 to fix an incorrect URL in subsection (2)(e).

Citation of Rules Affected by this Order: New WAC 458-20-300 Capital gains excise tax—Overview and administration.

Statutory Authority for Adoption: RCW 82.01.060, 82.32.300.

Adopted under notice filed as WSR 23-09-025 on April 11, 2023.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: July 19, 2023.

Atif Aziz
Rule Coordinator

OTS-4505.1

AMENDATORY SECTION (Amending WSR 23-02-025, filed 12/28/22, effective 1/28/23)

WAC 458-20-300 Capital gains excise tax—Overview and administration. (1) **Introduction and overview.** Beginning January 1, 2022, Washington law imposes an excise tax on individuals with sales or exchanges of long-term capital assets (capital gains excise tax). See RCW 82.87.040. This rule provides information regarding the administration of the capital gains excise tax and is divided into six subsections as follows: Introduction and overview; returns; extensions; payment of tax; penalties and interest; and general administration.

(a) **Imposition.** The capital gains excise tax is imposed on the sale or exchange of long-term capital assets. The capital gains excise tax is not imposed on any sale or exchange occurring prior to January 1, 2022. A "long-term capital asset" is a capital asset that is held for more than one year. A "capital asset" has the same meaning as provided by section 1221 of the federal Internal Revenue Code and includes any other property if the sale or exchange of the property results in a gain that is treated as a long-term capital gain under section 1231 or any other provision of the federal Internal Revenue Code.

(b) **Who is taxable?** Only individual natural persons (referred to in this rule as "taxpayer," "you," or "your") are subject to the capital gains excise tax.

(c) **What is the tax rate?** The tax rate is seven percent. The tax is calculated by multiplying a taxpayer's Washington capital gains by the seven percent tax rate.

(d) **Washington capital gains.** Washington capital gains is your federal net long-term capital gain with certain adjustments made under RCW 82.87.020 (1)(a) through (e) and further modified by the deductions in RCW 82.87.060. The adjustments are primarily aimed at removing capital gains and losses allocated to places outside of Washington from your Washington capital gains figure.

(i) "Federal net long-term capital gain" means the net long-term capital gain reportable for federal income tax purposes, determined as if Title 26 U.S.C. Secs. 55 through 59 and 1400Z-1 and 1400Z-2 of the federal Internal Revenue Code did not exist. Title 26 U.S.C. Secs. 55 through 59 relate to the alternative minimum tax and Title 26 U.S.C. Secs. 1400Z-1 and 1400Z-2 relate to opportunity zones.

(ii) The deductions in RCW 82.87.060 are as follows:

(A) A standard deduction. If you are married or a state-registered domestic partner, the total combined standard deduction for both you and your spouse or domestic partner is \$250,000, regardless of whether you and your spouse or domestic partner file a joint or separate return. In all other cases, the standard deduction is \$250,000 per individual natural person. The \$250,000 deduction amount may be adjusted for inflation every December, beginning in December 2023. See RCW 82.87.150 for additional information.

(B) Amounts that the state is prohibited from taxing under the Constitution of this state or the Constitution or laws of the United States.

(C) Adjusted capital gain derived from the sale or transfer of your interest in a qualified family-owned small business pursuant to RCW 82.87.070.

(D) Charitable donations deductible under RCW 82.87.080. The charitable donation deduction cannot exceed \$100,000. The \$100,000 deduction cap may be adjusted for inflation every December, beginning in December 2023. See RCW 82.87.150 for additional information.

(e) **Exemptions.** Certain sales or exchanges, such as sales of real estate, are exempt from the capital gains excise tax. See RCW 82.87.050 for additional information.

(f) **Examples.** This rule contains examples. These examples identify a number of facts and then state a conclusion. They are provided only as a general guide. The tax results of other situations must be determined after a review of all the facts and circumstances.

(2) **Returns.**

(a) **Filing obligation and due date.** Only taxpayers owing Washington's capital gains excise tax in a taxable year are required to file a capital gains excise tax return with the department.

(i) If you are required to file a capital gains excise tax return, you must file the return with the department on or before the date your federal income tax return is required to be filed for the same taxable year.

(ii) If you owe capital gains excise tax, you are required to file a capital gains excise tax return whether or not you filed a federal income tax return.

(iii) If you did not file a federal income tax return, the due date for your capital gains excise tax return is the date your federal income tax return would have been due.

Example 1 - Return due date

Facts: The due date for Michael's federal income tax return is April 18, 2023. Michael has a Washington capital gains excise tax liability.

Result: The capital gains excise tax return due date is April 18, 2023, which is the date Michael's federal income tax return is due. Michael must file his capital gains excise tax return on or before April 18, 2023, or the return will be late and penalties will apply.

(b) **Separate and joint filers, single filers.** If you are required to file a capital gains excise tax return, your federal income tax filing status may affect how you must file your capital gains excise tax return as follows:

(i) Spouses filing jointly. Spouses who file a joint federal income tax return for the taxable year must file a joint capital gains excise tax return for the same taxable year. Accordingly, if you are married and file a joint federal income tax return with your spouse, you must file a joint capital gains excise tax return with your spouse.

(ii) Spouses filing separately. If a spouse files a separate federal income tax return for the taxable year, each spouse that owes capital gains excise tax must file a separate capital gains excise tax return for the same taxable year. Accordingly, if you are married and file a separate federal income tax return from your spouse, you must file a separate capital gains excise tax return.

(iii) State-registered domestic partners. State-registered domestic partners may file a joint capital gains excise tax return even if they filed separate federal income tax returns for the taxable year. Accordingly, if you are a state-registered domestic partner and file a separate federal income tax return from your partner, you and your partner may file either a joint capital gains excise tax return or separate capital gains excise tax returns.

(iv) Single filers. Any individual that is not married and is not a state-registered domestic partner must file their capital gains excise tax return as a single individual.

(c) **Required documentation with the capital gains excise tax return.** All taxpayers required to file a capital gains excise tax return for a taxable year must submit, along with the capital gains excise tax return form, all of the following:

(i) A copy of the complete, filed federal individual income tax return, including all supporting schedules and documentation filed with the Internal Revenue Service (IRS), for the taxable year.

(ii) For any claim for exemption under RCW 82.87.050(2), which may exempt the sale or exchange of an interest in a privately held entity directly owning real estate, documentation that substantiates the following:

(A) The fair market value and basis of the real estate held directly by the privately held entity;

(B) The percentage of the ownership interest sold or exchanged in the privately held entity that owns the real estate; and

(C) The methodology established by the privately held entity for allocating gains or losses from the sale of real estate among the owners, partners, or shareholders of the entity.

(d) **Incomplete returns.** A capital gains excise tax return is considered complete only if the return is filed in accordance with the

filing requirements described in RCW 82.87.110 and subsection (2) of this rule. If a complete capital gains excise tax return is not filed on or before the due date for the capital gains excise tax return, the return will be late and the late filing penalty may apply. See subsection (5) of this rule for more information.

Example 2 - Incomplete return

Facts: Jane filed her federal income tax return on April 18, 2023. Jane owes capital gains excise tax and is required to file a capital gains excise tax return. She filed the return on April 18, 2023, but did not provide the department with a copy of her federal income tax return until April 30, 2023.

Result: Jane was required to file a complete return by April 18, 2023. Jane did not file a complete return on April 18, 2023, because she failed to include a copy of her federal individual income tax return along with the capital gains excise tax return. Jane's return is late. See subsection (5) of this rule for additional information on the late filing penalty.

(e) **Electronic filing.** All taxpayers must electronically file their capital gains excise tax returns and all required documentation identified in subsection (2)(c) of this rule. Electronic filings must be submitted to the department via the "My DOR" portal at (~~www.secure.dor.wa.gov~~) secure.dor.wa.gov. The department may waive the electronic filing requirement for good cause as provided in RCW 82.32.080. See RCW 82.32.080 and WAC 458-20-22802 for additional information regarding electronic filing and the good cause waiver.

(f) **Amended returns.**

(i) **Amended return required.** If you or the IRS make any changes to your federal income tax return for any reason, and the changes affect the reported capital gains or the capital gains excise tax liability, you must file an amended capital gains excise tax return reflecting all changes made to the federal income tax return. You must also file an amended capital gains excise tax return if the original capital gains excise tax return needs to be corrected for errors identified after the due date for the original capital gains excise tax return, including, for example, situations where the statute of limitations for assessment of federal tax for a particular tax year is closed but the Washington nonclaim period remains open.

(ii) **Assessments and penalties.** The amendment of a capital gains excise tax return is not subject to a specific deadline. However, if the department finds that your failure to file an amended capital gains excise tax return shows evasion or misrepresentation of a material fact, the department can make assessments or corrections of assessments outside of the usual nonclaim period and impose penalties and interest at any time. See subsection (6) of this rule for more information.

(iii) **Filing and payment requirements for amended returns.** The documentation requirements described in subsection (2) of this rule apply to amended returns. This means, for instance, a copy of the complete, filed amended federal individual income tax return and all supporting amended schedules and documentation must be filed along with the amended return. If an amended capital gains excise tax return is filed and there is no amendment made to the federal tax return, other documentation supporting the changes must be submitted with the amended capital gains excise tax return. You must file your amended capital gains excise tax return electronically and electronically pay any additional tax due unless granted a waiver from the electronic filing/payment requirements by the department.

(3) **Extensions.**

(a) **Extension period; timely payment still required.** If a taxpayer obtains an extension of time for filing the federal income tax return for the taxable year and provides the department proof of the extension, the capital gains excise tax return is considered due on or before the extended due date for the federal income tax return. However, an extension for filing the capital gains excise tax return does not extend the due date for paying the capital gains excise tax.

(b) **Extension filing; certification.** You must submit an extension request electronically with the department on or before the original due date via the My DOR portal at secure.dor.wa.gov. During the submission process, you will certify that federal Form 4868, *Application for Automatic Extension of Time to File U.S. Individual Income Tax Return* or Form 2350, *Application for Extension of Time to File U.S. Income Tax Return*, was properly filed for the tax year. You must attach a copy of the properly filed federal Form 4868 or Form 2350 when filing the capital gains excise tax return.

(4) **Payment of tax.**

(a) **Due date.** If you owe the capital gains excise tax, you must remit the tax to the department on or before the date your federal income tax return is required to be filed without regard to any extension granted to you for the filing of your federal income tax return. The extension of time for filing the federal income tax return or capital gains excise tax return does not extend the due date for paying your capital gains excise tax. If you pay your capital gains excise tax late, the late payment penalty and interest may apply. See subsection (5) of this rule for more information.

Example 3 - Late payment - No federal extension

Facts: Jeannette filed her federal income tax return on April 18, 2023. Jeannette files a capital gains excise tax return on April 18, 2023. She later remits her capital gains excise tax to the department on April 20, 2023.

Result: Jeannette was required to pay the capital gains excise tax on April 18, 2023, when her federal income tax return was due. Jeannette paid the capital gains excise tax late and is subject to penalties and interest.

Example 4 - Late payment - Federal income tax return extension

Facts: Gil requested a federal income tax return extension on April 12, 2023, and received an automatic extension of time to file his federal tax return to October 16, 2023. Gil properly submits an extension request certification to the department before April 18, 2023, the original due date for the federal tax return and capital gains excise tax return. Gil files a capital gains excise tax return and pays his capital gains excise tax on October 13, 2023.

Result: Gil paid his capital gains excise tax late and is subject to penalties and interest with respect to the late payment. While Gil extended the date for filing the capital gains excise tax return, the due date for the payment of the capital gains excise tax remained April 18, 2023.

(b) **Electronic payment.** Capital gains excise tax must be paid by electronic funds transfer or other form of department authorized electronic payment, such as by credit card. The department may waive the electronic payment requirement for good cause. See RCW 82.32.080 and WAC 458-20-22802 for additional information regarding electronic payment requirements and the good cause waiver.

(c) **Joint and several liability.** The capital gains excise tax liability of each spouse or state-registered domestic partner filing a

capital gains excise tax return is joint and several unless one of the spouses is relieved of liability for federal tax purposes as provided under section 6015 of the federal Internal Revenue Code or the department determines that the domestic partner would qualify for relief under the same parameters provided in section 6015.

(5) **Penalties and interest**

(a) **Late filing penalty.** If you do not file a complete capital gains excise tax return by the due date, the department will assess a late filing penalty in the amount of five percent of the tax due for the taxable year covered by the return for each month or portion of a month that the return remains unfiled. See RCW 82.87.110. The total late filing penalty may not exceed 25 percent of the tax due for the taxable year covered by the late return.

(b) **Late payment penalty.** If you do not remit your capital gains excise tax on or before the due date for payment of the capital gains excise tax, you are subject to the late payment penalty. If payment is not received by the department by the due date, the department will assess a penalty of nine percent of the amount of the tax due; if the tax is not received on or before the last day of the month following the due date, the department will assess a total penalty of 19 percent of the amount of the tax due; and if the tax is not received on or before the last day of the second month following the due date, the department will assess a total penalty of 29 percent of the amount of the tax due. See RCW 82.32.090(1) and WAC 458-20-228 for more information regarding late payment penalties.

(c) **Other penalties.**

(i) Other penalties imposed under chapter 82.32 RCW may apply. These penalties include the penalties for substantial underpayment of tax, disregard of specific written instructions, and intent to evade tax. See RCW 82.32.090 and WAC 458-20-228 for additional information.

(ii) Any taxpayer who knowingly attempts to evade payment of the capital gains excise tax is guilty of a class C felony as provided in chapter 9A.20 RCW. Any taxpayer who knowingly fails to pay tax, make returns, keep records, or supply information required under the capital gains excise tax, is guilty of a gross misdemeanor as provided in chapter 9A.20 RCW. RCW 82.87.140.

(d) **Amended returns.** The penalties described in this subsection may apply to amended capital gains excise tax returns, except the department will not assess late return or late payment penalties on increased amounts of tax due as a result of the amendment if the original capital gains excise tax return and tax due were timely filed and paid.

(e) **Penalty waivers.**

(i) The department will waive the late filing penalty only if the department determines either of the following:

(A) The taxpayer's failure to timely file the return was due to circumstances beyond their control; or

(B) The taxpayer has not been delinquent in filing any capital gains excise tax returns due during the preceding five calendar years.

(ii) The department will waive the late payment (RCW 82.32.090(1)) and substantial underpayment penalties (RCW 82.32.090(2)) if the department determines that the taxpayer's failure to timely pay was due to circumstances beyond their control. See RCW 82.32.105 and WAC 458-20-228 for additional information regarding waivers due to circumstances beyond the taxpayer's control.

(f) **Interest.**

(i) If you do not pay your capital gains excise tax by the due date described in subsection (4) of this rule, you will be assessed interest on the unpaid amounts. See RCW 82.32.050 and WAC 458-20-228 for additional information on interest assessed on underpayments and interest waivers.

(ii) If you have paid more tax than is properly due, you will receive interest for your overpayment. See RCW 82.32.060 and WAC 458-20-229 for information on interest on tax overpayments.

(6) General administration

(a) **Application of chapter 82.32 RCW.** The department administers the capital gains excise tax in accordance with chapter 82.32 RCW except as otherwise provided by law and to the extent not inconsistent with chapter 82.87 RCW.

(b) **Preserving accurate and complete records.** You have the burden of proving any claimed deductions, exemptions, and credits. Washington law requires you to keep accurate and complete records and timely respond to communications from the department. You must preserve records that substantiate the amounts of all deductions, exemptions, or credits claimed, as well as any documentation that substantiates your allocation of capital gains and losses. Claims for exemptions, deductions, and credits from the capital gains excise tax may require additional documents to be submitted to the department at the department's request. See RCW 82.32.070 and WAC 458-20-254 for additional information on recordkeeping requirements.

(c) **Refunds.** If you discover that you have overpaid taxes, penalties, or interest, you may file an amended capital gains excise tax return or apply for a refund or credit. The provisions under WAC 458-20-229 apply to refunds of overpaid capital gains excise tax.

(d) **Informal administrative reviews.** If you disagree with the department's assessment of tax, penalties, or interest; a department letter ruling; or the department's denial of a refund, you may seek an informal review of that action by submitting a petition for review with the department's administrative review and hearings division. The petition must be filed within 30 days of the department action. See WAC 458-20-100 for additional information.

(e) **Nonclaim period.** The nonclaim period provided under RCW 82.32.050 and 82.32.060 for deficient tax or penalty payments and excess payment of tax, penalty, or interest, respectively, apply to the capital gains excise tax. However, there is no limitation for the period in which an assessment or correction of an assessment can be made upon a showing of evasion or of misrepresentation of a material fact. See RCW 82.32.050 and WAC 458-20-230.

[Statutory Authority: RCW 82.01.060 and 82.32.300. WSR 23-02-025, § 458-20-300, filed 12/28/22, effective 1/28/23.]

WSR 23-16-004

PERMANENT RULES

DEPARTMENT OF HEALTH

[Filed July 19, 2023, 2:13 p.m., effective August 19, 2023]

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

Purpose: Medical assistants (MA) updated credentialing and licensure requirements in WAC 246-827-0010, 246-827-0110, 246-827-0120, 246-827-0140, 246-827-0200, 246-827-0300, 246-827-0400, and 246-827-0610. The department of health (department) is adopting revisions to MA rules to remove outdated language, remove English language requirements, and update credentialing requirements. Outdated language includes removing language concerning the obsolete health care assistant credential. Removing English requirements will remove unnecessary barriers for otherwise well-qualified medical assistant staff to enter the workforce. RCW 18.360.010 was updated by HB 1378 (chapter 44, Laws of 2021) to allow medical assistant supervision using audio and video technology during a telemedicine visit. The department is adding a new section to detail regulation for telemedicine supervision in response to HB 1378. Amendments remove irrelevant or confusing rule language, which will make the rules more easily understood. Updating credentialing requirements to remove licensure barriers will allow experienced MAs to enter the Washington workforce.

Citation of Rules Affected by this Order: New WAC 246-827-0140; and amending WAC 246-827-0010, 246-827-0110, 246-827-0120, 246-827-0200, 246-827-0300, 246-827-0400, and 246-827-0610.

Statutory Authority for Adoption: RCW 18.360.030, 18.360.040, and 18.360.070.

Adopted under notice filed as WSR 23-09-061 on April 18, 2023.

A final cost-benefit analysis is available by contacting Becky McElhiney, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-4766, fax 360-236-2901, TTY 711, email medical.assistants@doh.wa.gov.

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

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Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 7, Repealed 0.

Date Adopted: July 19, 2023.

Kristin Peterson, JD
Chief of Policy
for Umair A. Shah, MD, MPH
Secretary

OTS-4140.3

AMENDATORY SECTION (Amending WSR 17-15-075, filed 7/14/17, effective 8/14/17)

WAC 246-827-0010 Definitions. The following definitions apply throughout this chapter unless the context clearly indicates otherwise:

(1) **"Direct visual supervision"** means the supervising health care practitioner is physically present and within visual range of the medical assistant.

(2) **"Forensic blood draw"** means a blood sample drawn at the direction of a law enforcement officer for the purpose of determining its alcoholic or drug content by a person holding one of the credentials listed in RCW 46.61.506, including a medical assistant-certified, medical assistant-phlebotomist, or forensic phlebotomist.

(3) **"Health care practitioner"** means a physician licensed under chapter 18.71 RCW; an osteopathic physician and surgeon licensed under chapter 18.57 RCW; or acting within the scope of their respective licensure, a podiatric physician and surgeon licensed under chapter 18.22 RCW, a registered nurse or advanced registered nurse practitioner licensed under chapter 18.79 RCW, a naturopath licensed under chapter 18.36A RCW, a physician assistant licensed under chapter 18.71A RCW, (~~(an osteopathic physician assistant licensed under chapter 18.57A RCW,)~~) or an optometrist licensed under chapter 18.53 RCW.

(4) **"Hemodialysis"** is a procedure for removing metabolic waste products or toxic substances from the human body by dialysis.

(5) **"Immediate supervision"** means the supervising health care practitioner is on the premises and available for immediate response as needed.

(6) **"Legend drug"** means any drug which is required by any applicable federal or state law or regulation to be dispensed on prescription only or is restricted to use by practitioners only.

(7) **"Medical assistant"** without further qualification means a person credentialed under chapter 18.360 RCW as a:

- (a) Medical assistant-certified;
- (b) Medical assistant-registered;
- (c) Medical assistant-hemodialysis technician; and
- (d) Medical assistant-phlebotomist.

(8) **"Medical assistant-hemodialysis technician"** means a patient care dialysis technician trained in compliance with federal requirements for end stage renal dialysis facilities.

(9) **"Secretary"** means the secretary of the department of health or the secretary's designee.

(10) **"Telemedicine supervision"** means the delivery of direct patient care under supervision by a health care practitioner provided through the use of interactive audio and video technology, permitting real-time communication between a medical assistant at the originating site and a health care practitioner off premises. "Telemedicine" does not include the use of audio-only telephone, facsimile, or electronic mail.

[Statutory Authority: RCW 18.360.030, 18.360.040, and 18.360.070. WSR 17-15-075, § 246-827-0010, filed 7/14/17, effective 8/14/17. Statutory Authority: Chapter 18.360 RCW, RCW 43.70.280, and 2012 c 153. WSR 13-12-045, § 246-827-0010, filed 5/31/13, effective 7/1/13.]

AMENDATORY SECTION (Amending WSR 13-12-045, filed 5/31/13, effective 7/1/13)

WAC 246-827-0110 Delegation and supervision. (1) The medical assistant functions in a dependent role when providing direct patient care under the delegation and supervision of a health care practitioner.

(2) "Delegation" means direct authorization granted by a health care practitioner to a medical assistant to perform the functions authorized in RCW 18.360.050 which fall within the scope of practice of the health care practitioner and the training and experience of the medical assistant.

(3) A medical assistant may only accept delegated tasks when:

(a) The health care practitioner follows the requirements of RCW 18.360.060;

(b) The task can be performed without requiring the exercise of judgment based on clinical knowledge;

(c) The results of the task are reasonably predictable;

(d) The task can be performed without a need for complex observations or critical decisions;

(e) The task can be performed without repeated clinical assessments; and

(f) The task, if performed improperly by:

(i) A medical assistant-certified, medical assistant-registered, or a medical assistant-phlebotomist would not present life-threatening consequences or the danger of immediate and serious harm to the patient.

(ii) A medical assistant-hemodialysis technician is not likely to present life-threatening consequences or the danger of immediate and serious harm to the patient.

(4) A medical assistant may not accept delegation of acts that are not within ~~((his or her))~~ their scope of practice.

(5) A medical assistant is responsible and accountable for ~~((his or her))~~ their practice based upon and limited to:

(a) Scope of ~~((his or her))~~ their education or training;

(b) Scope of practice set forth in law and applicable sections of this chapter;

(c) Demonstration of competency to the delegating health care practitioner;

(d) Written documentation of competency as required by this rule and the health care employer's policies and procedures. The documentation will be maintained by the health care employer.

~~((6) A medical assistant who has transitioned from a health care assistant credential as of July 1, 2013, may not accept delegated tasks unless he or she has received the necessary education or training to safely and competently perform the task.))~~

[Statutory Authority: Chapter 18.360 RCW, RCW 43.70.280, and 2012 c 153. WSR 13-12-045, § 246-827-0110, filed 5/31/13, effective 7/1/13.]

AMENDATORY SECTION (Amending WSR 13-12-045, filed 5/31/13, effective 7/1/13)

WAC 246-827-0120 General standards. (1) ~~((The medical assistant shall have the ability to read, write, and converse in the English language.~~

~~(2))~~) The medical assistant shall have knowledge and understanding of the laws and rules regulating medical assistants, including chapter 18.130 RCW, Uniform Disciplinary Act.

~~((3))~~) (2) The medical assistant shall function within ~~((his or her))~~ their scope of practice.

~~((4))~~) (3) The medical assistant shall obtain instruction from the delegating health care practitioner and demonstrate competency before performing new or unfamiliar duties which are in ~~((his or her))~~ their scope of practice.

~~((5))~~) (4) The medical assistant shall demonstrate a basic understanding of the patient's rights and responsibilities.

~~((6))~~) (5) The medical assistant must respect the client's right to privacy by protecting confidential information and may not use confidential health care information for other than legitimate patient care purposes or as otherwise provided in chapter 70.02 RCW, the Uniform Health Care Information Act.

~~((7))~~) (6) The medical assistant shall comply with all federal and state laws and regulations regarding patient rights and privacy.

[Statutory Authority: Chapter 18.360 RCW, RCW 43.70.280, and 2012 c 153. WSR 13-12-045, § 246-827-0120, filed 5/31/13, effective 7/1/13.]

NEW SECTION

WAC 246-827-0140 Telemedicine supervision—Activities allowed or prohibited. (1) A medical assistant may be supervised by a health care practitioner through telemedicine supervision during a telemedicine visit. Tasks assigned to the medical assistant by a health care practitioner providing telemedicine supervision must fall within the medical assistant's legal scope of practice. The health care practitioner must ensure the task is delegated appropriately under RCW 18.360.060 and is consistent with the standard of care applicable for those tasks when provided in-person. Some tasks are subject to limitations as required in this chapter.

(2) A medical assistant providing direct patient care under telemedicine supervision is subject to this section only if no other health care practitioner is physically present and immediately available in the place where the medical assistant and patient are located.

(3) A medical assistant may perform the following tasks under telemedicine supervision without a health care practitioner present and immediately available during a telemedicine visit:

- (a) Preparing and maintaining examination and treatment areas;
- (b) Taking vital signs;
- (c) Obtaining and recording patient history;
- (d) Observing and reporting patients' signs or symptoms;
- (e) Preparing patients for examination;
- (f) Instructing patients in proper technique to collect urine or fecal specimens; and

(g) Obtaining specimens for microbiological testing.

(4) A person employed by a health care practitioner or facility is not practicing as a medical assistant as defined in this chapter if the person only performs the following tasks as part of a telemedicine visit:

- (a) Maintaining medication and immunization records;
- (b) Obtaining and recording patient history;
- (c) Reception;
- (d) Scheduling;
- (e) Screening limited to intake and gathering of information; or
- (f) Similar administrative tasks.

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AMENDATORY SECTION (Amending WSR 18-04-080, filed 2/2/18, effective 3/5/18)

WAC 246-827-0200 Medical assistant-certified—Training and examination. An applicant for a medical assistant-certified credential must meet the following requirements:

(1) Successful completion of one of the following medical assistant training programs:

(a) Postsecondary school or college program accredited by the Accrediting Bureau of Health Education Schools (ABHES) or the Commission of Accreditation of Allied Health Education Programs (CAAHEP);

(b) Postsecondary school or college accredited by a regional or national accrediting organization recognized by the U.S. Department of Education, which includes a minimum of (~~seven hundred twenty~~) 720 clock hours of training in medical assisting skills, including a clinical externship of no less than (~~one hundred sixty~~) 160 hours;

(c) A registered apprenticeship program administered by a department of the state of Washington unless the secretary determines that the apprenticeship program training or experience is not substantially equivalent to the standards of this state. The apprenticeship program shall ensure a participant who successfully completes the program is eligible to take one or more examinations identified in subsection (2) of this section; (~~or~~)

(d) The secretary may approve an applicant who submits documentation that (~~he or she~~) they completed postsecondary education with a minimum of (~~seven hundred twenty~~) 720 clock hours of training in medical assisting skills. The documentation must include proof of training in all of the duties identified in RCW 18.360.050(1) and a clinical externship of no less than (~~one hundred sixty~~) 160 hours; or

(e) The secretary may approve an applicant who submits documentation that they completed a career and technical education program approved by the office of the superintendent of public instruction with a minimum of 720 clock hours of training in medical assisting skills. The documentation must include proof of training in all of the duties identified in RCW 18.360.050(1) and a clinical externship of no less than 160 hours.

(2) Pass a medical assistant certification examination, approved by the secretary, within the preceding five years of submitting an initial application or currently hold a national medical assistant cer-

tification with a national examining organization approved by the secretary. A medical assistant certification examination approved by the secretary means an examination that:

- (a) Is offered by a medical assistant program that is accredited by the National Commission for Certifying Agencies (NCCA); and
- (b) Covers the clinical and administrative duties under RCW 18.360.050(1).

[Statutory Authority: RCW 18.360.030, 18.360.070, and 18.360.040. WSR 18-04-080, § 246-827-0200, filed 2/2/18, effective 3/5/18. Statutory Authority: Chapter 18.360 RCW, RCW 43.70.280, and 2012 c 153. WSR 13-12-045, § 246-827-0200, filed 5/31/13, effective 7/1/13.]

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

WAC 246-827-0300 Medical assistant-registered—Application.

~~((Registration requirements — Applicants))~~ An applicant registering for a medical assistant-registered credential shall submit the following:

- (1) A completed application on forms provided by the department;
- (2) (a) Proof of completion of high school education or its equivalent; or
- (b) Proof of enrollment in a health career training or career and technical education program. The training program must comply with all applicable federal and state regulations related to minors in the workforce.
- (3) An endorsement signed by a health care practitioner;
- (4) Any fee required in WAC 246-827-990; and
- (5) Fingerprint cards for national fingerprint based background check pursuant to RCW 18.130.064(2), if requested by the department.

[Statutory Authority: RCW 18.19.050, 18.29.130, 18.29.210, 18.34.120, 18.46.060, 18.55.095, 18.84.040, 18.88B.060, 18.89.050, 18.130.050, 18.138.070, 18.155.040, 18.200.050, 18.205.060, 18.215.040, 18.230.040, 18.240.050, 18.250.020, 18.290.020, 18.360.030, 18.360.070, 70.41.030, 70.230.020, 71.12.670, and 18.108.085. WSR 21-02-002, § 246-827-0300, filed 12/23/20, effective 1/23/21. Statutory Authority: Chapter 18.360 RCW, RCW 43.70.280, and 2012 c 153. WSR 13-12-045, § 246-827-0300, filed 5/31/13, effective 7/1/13.]

AMENDATORY SECTION (Amending WSR 13-12-045, filed 5/31/13, effective 7/1/13)

WAC 246-827-0400 Medical assistant-phlebotomist—Certification and training. ~~((Certification requirements — Applicants))~~ An applicant applying for a medical assistant-phlebotomist credential must meet the following requirements:

- (1) Successful completion of a phlebotomy program through a post-secondary school or college accredited by a regional or national accrediting organization recognized by the U.S. Department of Education; or

(2) Currently hold a national phlebotomy certification from one of the following national examining organizations:

(a) American Certification Agency certification for phlebotomist;
(b) American Medical Certification Association certification for phlebotomist;

(c) American Medical Technologists certification for phlebotomist;

(d) American Society of Clinical Pathology certification for phlebotomist;

(e) National Center for Competency Testing certification for phlebotomist;

(f) National Healthcareer Association certification for phlebotomist; or

(3) Successful completion of a phlebotomy training program. The phlebotomy training program must be approved by a health care practitioner who is responsible for determining the content of the training and for ascertaining the proficiency of the trainee. The phlebotomy training program must include the following:

(a) Training to include evaluation and assessment of knowledge and skills to determine entry level competency in the following areas:

(i) Responsibilities to be delegated which include ethical implications and patient confidentiality;

(ii) Patient identification process;

(iii) Procedure requesting process, including forms used, accessing process, and collection patterns;

(iv) Materials to be used;

(v) Anatomic considerations for performing such functions as venipuncture, capillary finger collection, and heel sticks;

(vi) Procedural standards and techniques for blood collection;

(vii) Common terminology and practices such as medical classifications, standard diagnoses, test synonyms, background information on procedures, and interferences;

(viii) Physical layout of the work place, including patient care areas; and

(ix) Safety requirements including infection prevention and control, dealing with a client who has an infectious disease, and the handling and disposal of biohazardous materials.

(b) Direct visual supervision by a health care practitioner or a delegated and certified medical assistant-phlebotomist to the trainee to ensure competency in the following:

(i) Practice technique in a simulated situation;

(ii) Observe and perform procedures on patients until the trainee demonstrates proficiency to be certified at the minimum entry level of competency. The trainee must have adequate physical ability, including sufficient manual dexterity to perform the requisite health care services. The number of specific procedures may vary with the skill of the trainee.

(c) Documentation of all phlebotomy training, duties, and responsibilities of the trainee must be completed, signed by the supervising health care practitioner and the trainee, and placed in the trainee's personnel file.

~~(d) ((A trainee must complete the training program and submit an application within ninety days of starting the phlebotomy training program to continue to perform procedures on patients.~~

~~(e))~~ Training programs that meet the requirements described in this subsection are approved by the secretary.

[Statutory Authority: Chapter 18.360 RCW, RCW 43.70.280, and 2012 c 153. WSR 13-12-045, § 246-827-0400, filed 5/31/13, effective 7/1/13.]

AMENDATORY SECTION (Amending WSR 13-12-045, filed 5/31/13, effective 7/1/13)

WAC 246-827-0610 Expired credential—Return to active status.

(1) A person holding an expired medical assistant credential may not practice until the credential is returned to active status.

(2) If the medical assistant credential has expired for less than three years, ~~((he or she))~~ they shall meet the requirements of ~~((chapter 246-12 WAC, Part 2))~~ WAC 246-12-020 through 246-12-051.

(3) If the medical assistant credential has been expired for three years or more, and ~~((he or she is))~~ they currently ~~((practicing))~~ practice as a medical assistant in another state or U.S. jurisdiction, ~~((he or she))~~ they shall:

(a) Meet the requirements of ((chapter 246-12 WAC, Part 2,)) WAC 246-12-020 through 246-12-051; and

(b) Provide verification of a current unrestricted active medical assistant credential in another state or U.S. jurisdiction which is substantially equivalent to the qualifications for ((his or her)) the credential in the state of Washington.

(4) If a medical assistant-certified, a medical assistant-hemodialysis technician, or a medical assistant-phlebotomist credential has been expired for three years or more and the person does not meet the requirements of subsection (3) of this section, ~~((he or she))~~ they shall comply with ~~((chapter 246-12 WAC, Part 2,))~~ WAC 246-12-020 through 246-12-051 and demonstrate competence in one of the following ways:

(a) A medical assistant-certified must successfully pass an examination as identified in WAC 246-827-0200 within six months prior to reapplying for the credential or currently hold a national medical assistant certification with a national examining organization approved by the secretary.

(b) A medical assistant-phlebotomist must complete the training requirements of WAC 246-827-0400 within six months prior to reapplying for the credential.

(c) A medical assistant-hemodialysis technician must complete the training requirements of WAC 246-827-0500 within six months prior to reapplying for the credential.

(5) If the medical assistant-registered credential has expired, ~~((he or she))~~ they must also submit a new application as provided for in WAC 246-827-0300.

[Statutory Authority: Chapter 18.360 RCW, RCW 43.70.280, and 2012 c 153. WSR 13-12-045, § 246-827-0610, filed 5/31/13, effective 7/1/13.]

WSR 23-16-005

PERMANENT RULES

STATE BOARD OF HEALTH

[Filed July 19, 2023, 2:20 p.m., effective August 1, 2024]

Effective Date of Rule: August 1, 2024.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: Restrictions imposed by the 2009 legislature on the implementation of new or amended school facility rules are retained in the 2023-2025 supplemental state operating budget, prohibiting implementation of the rules through June 2024.

Purpose: This filing delays the effective date of new sections of chapter 246-366 WAC, Primary and secondary schools, and new chapter 246-366A WAC, Environmental health and safety standards for primary and secondary schools, one year due to legislative direction in the supplemental state operating budget (ESSB 5187) prohibiting implementation until the legislature acts to formally fund implementation. The rules provide minimum environmental health and safety standards for schools.

New sections of chapter 246-366 WAC, Primary and secondary schools, and new chapter 246-366A WAC, Environmental health and safety standards for primary and secondary schools, were adopted by the state board of health (board) on August 12, 2009, filed as WSR 09-14-136. The board filed a rule-making order (CR-103), WSR 10-01-174, on December 22, 2009, setting the effective date of the rules as July 1, 2010. However, in advance of the board's actions, the 2009 legislature adopted a proviso in the state operating budget (ESHB 1244) suspending implementation of the rules until the legislature acts to formally fund implementation. The proviso has been included in all subsequent state operating budgets, including the 2023-2025 supplemental state operating budget (ESSB 5187). In response, the board has taken the following series of actions to delay implementation of the rules:

Voted on March 10, 2010, to file an amended rule-making order, filed as WSR 10-12-018 on May 21, 2010, to delay the effective date to July 1, 2011;

Voted on April 13, 2011, to file an amended rule-making order, filed as WSR 11-10-080 on May 3, 2011, to delay the effective date to July 1, 2013;

Voted on March 13, 2013, to file an amended rule-making order, filed as WSR 13-09-040 on April 11, 2013, to delay the effective date to July 1, 2015;

Voted on March 11, 2015, to file an amended rule-making order, filed as WSR 15-09-070 on April 15, 2015, to delay the effective date to July 1, 2017;

Voted on June 14, 2017, to file an amended rule-making order, filed as WSR 17-14-055 on June 28, 2017, to delay the effective date to August 1, 2019;

Voted on June 12, 2019, to file an amended rule-making order, filed as WSR 19-14-107 on July 2, 2019, to delay the effective date to August 1, 2021;

Voted on June 9, 2021, to file an amended rule-making order, filed as WSR 21-14-056 on July 1, 2021, to delay the effective date to August 1, 2022; and

Voted on June 8, 2022, to file an amended rule-making order, filed as WSR 22-14-021 on June 24, 2021, to delay the effective date to August 1, 2023.

Action by the board in June 2023 extends the effective date of the new rules to August 1, 2024. The board will continue to monitor the state budget and budget proviso suspending implementation of the new rules in the coming legislative sessions for possible implementation in 2024.

Statutory Authority for Adoption: RCW 43.20.050.

Adopted under notice filed as WSR 09-14-136 on July 11 [1], 2009.

Changes Other than Editing from Proposed to Adopted Version: See WSR 10-01-174.

A final cost-benefit analysis is available by contacting Andrew Kamali, P.O. Box 47990, Olympia, WA 98504-7990, phone 360-584-6737, TTY 711, email andrew.kamali@sboh.wa.gov, website www.sboh.wa.gov.

Date Adopted: July 19, 2023.

Michelle A. Davis
Executive Director

WSR 23-16-006

PERMANENT RULES

DEPARTMENT OF HEALTH

(Dental Quality Assurance Commission)

[Filed July 19, 2023, 2:26 p.m., effective August 19, 2023]

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

Purpose: The dental quality assurance commission (commission) is adopting amendments to update rules regarding health profession monitoring programs in line with the passage of SSB 5496. SSB 5496 updated terminology, definitions, and references for dentists in RCW 18.32.534 and clarified confidentiality protections in RCW 18.131.070 for health professional monitoring programs. The adopted rules in WAC 246-817-801, 236-817-810 [246-817-810], 246-817-820, and 246-817-830 make technical amendments to align with changes required from SSB 5496 without changing the effect.

Citation of Rules Affected by this Order: Amending WAC 246-817-801, 246-817-810, 246-817-820, and 246-817-830.

Statutory Authority for Adoption: RCW 18.32.0365; SSB 5496 (chapter 43, Laws of 2022).

Adopted under notice filed as WSR 23-08-067 on April 4, 2023.

Changes Other than Editing from Proposed to Adopted Version: None other than editing. Two typographical edits were made: The word "substance" was added in two places to the definition of "Approved use disorder monitoring program" in WAC 246-817-810.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 4, Repealed 0.

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

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

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

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

Date Adopted: June 5, 2023.

Lyle McClellan, DDS, Chair
Dental Quality Assurance Commission

OTS-4287.3

AMENDATORY SECTION (Amending WSR 95-21-041, filed 10/10/95, effective 11/10/95)

WAC 246-817-801 Intent. It is the intent of the legislature that the DQAC seek ways to identify and support the rehabilitation of dentists where practice or competency may be impaired due to (~~the abuse of drugs including alcohol~~) an applicable impairing or potentially impairing health condition. The legislature intends that these dentists be treated so that they can return to or continue to practice

dentistry in a way which safeguards the public. The legislature specifically intends that the DQAC establish an alternate program to the traditional administrative proceedings against such dentists.

In lieu of disciplinary action under RCW 18.130.160 and if the DQAC determines that the unprofessional conduct may be the result of ~~((substance abuse))~~ an applicable impairing or potentially impairing health condition, the DQAC may refer the license holder to a physician health program or a voluntary substance ((abuse)) use disorder monitoring program approved by the DQAC.

[Statutory Authority: RCW 18.32.035. WSR 95-21-041, § 246-817-801, filed 10/10/95, effective 11/10/95.]

AMENDATORY SECTION (Amending WSR 95-21-041, filed 10/10/95, effective 11/10/95)

WAC 246-817-810 Terms used in WAC 246-817-801 through 246-817-830. "Aftercare" is that period of time after intensive treatment that provides the dentist or the dentist's family with group or individual counseling sessions, discussions with other families, ongoing contact and participation in self-help groups, and ongoing continued support of treatment and/or monitoring program staff.

~~(("Approved substance abuse monitoring program" or "approved monitoring program" is a program the DQAC has determined meets the requirements of the law and the criteria established by the DQAC in the Washington Administrative Code which enters into a contract with dentists who have substance abuse problems regarding the required components of the dentist's recovery activity and oversees the dentist's compliance with these requirements. Substance abuse monitoring programs may provide evaluation and/or treatment to participating dentists.))~~

"Approved substance use disorder monitoring program" or "approved physician health monitoring program" is a program the DQAC has determined meets the requirements of the law and the criteria established by the DQAC in the Washington Administrative Code which enters into a contract with dentists who have substance use disorders or other potentially impairing health conditions regarding the required components of the dentist's recovery activity and oversees the dentist's compliance with these requirements. Substance use disorder or other potentially impairing health conditions monitoring programs may provide evaluation or treatment to participating dentists.

"Approved treatment facility" is a facility approved by the bureau of alcohol and substance abuse, department of social and health services according to RCW 18.130.175.

"Contract" is a comprehensive, structured agreement between the recovering dentist and the approved physician health program or substance use disorder monitoring program wherein the dentist consents to comply with the physician health program or substance use disorder monitoring program and the required components for the dentist's recovery activity.

"Dentist support group" is a group of dentists and/or other health professionals meeting regularly to support the recovery of its members. The group provides a confidential setting with a trained and experienced facilitator in which participants may safely discuss drug

diversion, licensure issues, return to work, and other professional issues related to recovery.

"**Random drug screens**" are laboratory tests to detect the presence of drugs of abuse in bodily fluids collected under observation which are performed at irregular intervals not known in advance by the person to be tested.

"**Substance ((abuse)) use disorder**" is the impairment, as determined by the DQAC, of a dentist's professional services by an addiction to, a dependency on, or the use of alcohol, legend drugs, or controlled substances.

"**Twelve-steps groups**" are groups such as Alcoholics Anonymous, Narcotics Anonymous, and related organizations based on a philosophy of anonymity, belief in a power outside of oneself, peer group association, and self-help.

[Statutory Authority: RCW 18.32.035. WSR 95-21-041, § 246-817-810, filed 10/10/95, effective 11/10/95.]

AMENDATORY SECTION (Amending WSR 95-21-041, filed 10/10/95, effective 11/10/95)

WAC 246-817-820 Approval of physician health programs or substance ((abuse)) use disorder monitoring programs. The DQAC will approve the physician health program or substance use disorder monitoring program(s) which will participate in the recovery of dentists. The DQAC will enter into a contract with the approved physician health program or substance ((abuse)) use disorder monitoring program(s) on an annual basis.

(1) An approved physician health program or substance use disorder monitoring program may provide evaluations and/or treatment to the participating dentists.

(2) An approved physician health program or substance use disorder monitoring program staff must have the qualifications and knowledge of both substance ((abuse)) use disorders, other potentially impairing health conditions, and the practice of dentistry as defined in this chapter to be able to evaluate:

- (a) Drug screening laboratories;
- (b) Laboratory results;
- (c) Providers of substance abuse treatment for substance use disorders or other potentially impairing health conditions, both individual and facilities;
- (d) Dentists' support groups;
- (e) The dentists' work environment; and
- (f) The ability of the dentist to practice with reasonable skill and safety.

(3) An approved physician health program or substance use disorder monitoring program shall enter into a contract with the dentist and the DQAC to oversee the dentist's compliance with the requirements of the program.

(4) An approved physician health program or substance use disorder monitoring program staff shall evaluate and recommend to the DQAC, on an individual basis, whether a dentist will be prohibited from engaging in the practice of dentistry for a period of time and restrictions, if any, on the dentist's access to controlled substances in the work place.

(5) An approved physician health program or substance use disorder monitoring program shall maintain records on participants.

(6) An approved physician health program or substance use disorder monitoring program shall be responsible for providing feedback to the dentist as to whether treatment progress is acceptable.

(7) An approved physician health program or substance use disorder monitoring program shall report to the DQAC any dentist who fails to comply with the requirements of the physician health program or substance use disorder monitoring program.

(8) An approved physician health program or substance use disorder monitoring program shall provide the DQAC with a statistical report on the program, including progress of participants, at least annually, or more frequently as requested by the DQAC.

(9) The approved physician health program or substance use disorder monitoring program shall receive from the DQAC guidelines on treatment, monitoring, and/or limitations on the practice of dentistry for those participating in the program.

(10) An approved physician health program or substance use disorder monitoring program shall provide for the DQAC a complete financial breakdown of cost for each individual dental participant by usage at an interval determined by the DQAC in the annual contract.

(11) An approved physician health program or substance use disorder monitoring program shall provide for the DQAC a complete annual audited financial statement.

(12) An approved physician health program or substance use disorder monitoring program shall enter into a written contract with the DQAC and submit monthly billing statements supported by documentation.

[Statutory Authority: RCW 18.32.035. WSR 95-21-041, § 246-817-820, filed 10/10/95, effective 11/10/95.]

AMENDATORY SECTION (Amending WSR 95-21-041, filed 10/10/95, effective 11/10/95)

WAC 246-817-830 Participation in physician health programs or approved substance ((abuse)) use disorder monitoring programs. (1) In lieu of disciplinary action, the dentist may accept DQAC referral into an approved physician health program or substance ((abuse)) use disorder monitoring program.

(a) The dentist shall undergo a complete physical and psychosocial evaluation before entering the approved physician health program or substance use disorder monitoring program. This evaluation shall be performed by health care professionals with expertise in ~~((chemical dependency))~~ substance use disorders or other potentially impairing health conditions.

(b) The dentist shall enter into a contract with the approved physician health program or substance ((abuse)) use disorder monitoring program to comply with the requirements of the physician health program or substance use disorder program which shall include, but not be limited to, the following:

(i) The dentist shall agree to remain free of all mind-altering substances, including alcohol, except for medications prescribed by an authorized prescriber, as defined in RCW 69.41.030 and 69.50.101.

(ii) The dentist shall submit to random drug screening as specified by the approved physician health program or substance use disorder monitoring program.

(iii) The dentist shall sign a waiver allowing the approved physician health program or substance use disorder monitoring program to release information to the DQAC if the dentist does not comply with the requirements of this contract.

(iv) The dentist shall undergo intensive (~~substance abuse~~) treatment of a substance use disorder or other potentially impairing health condition in an approved treatment facility.

(v) The dentist must complete the prescribed aftercare program of the approved physician health program or substance use disorder treatment facility, which may include individual (~~and/or~~) or group psychotherapy.

(vi) The treatment counselor(s) shall provide reports, as requested by the dentist, to the approved physician health program or substance use disorder monitoring program at specified intervals. Reports shall include treatment prognosis and goals.

(vii) The dentist shall attend dentists' support groups and/or twelve-step group meetings as specified by the contract.

(viii) The dentist shall comply with specified practice conditions and restrictions as defined by the contract.

(ix) Except for (b)(i) through (iii) of this subsection, an approved physician health program or substance use disorder monitoring program may make an exception to the foregoing comments on individual contracts.

(c) The dentist is responsible for paying the costs of the physical and psychosocial evaluation, substance (~~abuse~~) use disorder or other potentially impairing health condition treatment, random drug screens, and therapeutic group sessions.

(d) The dentist may be subject to disciplinary action under RCW 18.130.160 and 18.130.180 if the dentist does not consent to be referred to the approved physician health program or substance use disorder monitoring program, does not comply with specified practice restrictions, or does not successfully complete the program.

(2) A dentist who is not being investigated by the DQAC or subject to current disciplinary action, not currently being monitored by the DQAC for substance (~~abuse~~) use disorder or other potentially impairing health condition, may voluntarily participate in the approved physician health program or substance use disorder monitoring program without being referred by the DQAC. Such voluntary participants shall not be subject to disciplinary action under RCW 18.130.160 and 18.130.180 for their substance (~~abuse~~) use disorder or other potentially impairing health condition, and shall not have their participation made known to the DQAC if they meet the requirements of the approved physician health program or substance use disorder monitoring program:

(a) The dentist shall undergo a complete physical and psychosocial evaluation before entering the approved physician health program or substance use disorder monitoring program. This evaluation shall be performed by health care professional(s) with expertise in (~~chemical dependency~~) substance use disorders or other potentially impairing health conditions.

(b) The dentist shall enter into a contract with the approved physician health program or substance use disorder monitoring program to comply with the requirements of the program which may include, but not be limited to the following:

(i) The dentist shall undergo approved substance ((abuse)) use disorder or other potentially impairing health condition treatment in an approved treatment facility.

(ii) The dentist shall agree to remain free of all mind-altering substances, including alcohol, except for medications prescribed by an authorized prescriber as defined in RCW 69.41.030 and 69.50.101.

(iii) The dentist must complete the prescribed aftercare program of the approved physician health program or substance use disorder treatment facility, which may include individual ((and/or)) or group psychotherapy.

(iv) The dentist must cause the treatment counselor(s) to provide reports to the approved physician health program or substance use disorder monitoring program at specified intervals. Reports shall include treatment prognosis and goals.

(v) The dentist shall submit to random observed drug screening as specified by the approved physician health program or substance use disorder monitoring program.

(vi) The dentist shall attend dentists' support groups ((and/or)) or twelve-step group meetings as specified by the contract.

(vii) The dentist shall comply with practice conditions and restrictions as defined by the contract.

(viii) The dentist shall sign a waiver allowing the approved physician health program or substance use disorder monitoring program to release information to the DQAC if the dentist does not comply with the requirements of this contract.

(c) The dentist is responsible for paying the costs of the physical and psychosocial evaluation, substance ((abuse)) use disorder or other potentially impairing health condition treatment, random drug screens, and therapeutic group sessions.

(3) Treatment and pretreatment records shall be confidential as provided by law.

[Statutory Authority: RCW 18.32.035. WSR 95-21-041, § 246-817-830, filed 10/10/95, effective 11/10/95.]

WSR 23-16-040

PERMANENT RULES

BOARD OF ACCOUNTANCY

[Filed July 24, 2023, 2:28 p.m., effective August 24, 2023]

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

Purpose: Rule making is needed to: (1) Provide guidance for resignations, vacancies, and removal of board officers; and (2) rename the rule.

Citation of Rules Affected by this Order: Amending WAC 4-30-022.

Statutory Authority for Adoption: RCW 18.04.055.

Adopted under notice filed as WSR 23-11-005 on May 4, 2023.

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

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

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

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

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

Date Adopted: July 21, 2023.

Michael J. Paquette, CPA
Executive Director

OTS-4564.1

AMENDATORY SECTION (Amending WSR 10-24-009, filed 11/18/10, effective 12/19/10)

WAC 4-30-022 (~~(What is the board's meeting schedule and how are officers elected?)~~) **Meetings and officers.** (1) Meetings.

(a) Regular board meetings begin at 9:00 a.m. on the last Friday of the month in the months of January, April and July or as otherwise determined by the board. The board holds an annual meeting beginning at 9:00 a.m. on the last Friday of October or as otherwise determined by the board.

~~((The board consists of nine members.))~~ (b) Either the chair or a quorum of the board has the authority to call special meetings of the board. The chair presides at all meetings. In the event of the chair's absence or inability to act, the vice chair presides.

(c) The board determines duties of the officers.

(d) The board's meetings are open public meetings conducted pursuant to chapter 42.30 RCW. WAC 4-30-026 provides information on how to contact the board's office for meeting times and locations or additional information regarding the board's activities.

(2) Officers.

(a) At the annual meeting the board elects the chair, vice chair, and secretary from its members. The newly elected officers assume the

duties of their offices on January 1 following the annual board meeting.

(b) Officers serve a term of one year and can be reelected for one additional term.

~~((Either the chair or a quorum of the board has the authority to call meetings of the board. The chair presides at all meetings. In the event of the chair's absence or inability to act, the vice chair presides. The board determines other duties of the officers.~~

~~The board's meetings are open public meetings conducted pursuant to chapter 42.30 RCW. WAC 4-30-026 provides information on how to contact the board's office for meeting times and locations or additional information regarding the board's activities.)~~ (c) Any officer may resign their position by tendering a written resignation to the board.

(d) If a vacancy shall occur in an officer position, the board may either elect a member to fill the officer vacancy for the unexpired term or allow the position to remain vacant until the end of that position's term. If the board decides to elect a member to fill the unexpired term of the officer position, it shall give notice of the board meeting at which a member is to be elected to fill the vacancy. A majority of the board serving is required to elect a member to fill a vacancy. Partial terms do not count against term limits for officers.

(e) The removal of any officer shall require a majority of the serving board plus one additional member including all current officers, provided such action shall not be taken unless notice of such action and vote has been included in the notice for the board meeting.

[Statutory Authority: RCW 18.04.055, 42.30.070. WSR 10-24-009, amended and recodified as § 4-30-022, filed 11/18/10, effective 12/19/10; WSR 07-14-034, § 4-25-510, filed 6/26/07, effective 7/27/07; WSR 05-01-137, § 4-25-510, filed 12/16/04, effective 1/31/05; WSR 01-22-036, § 4-25-510, filed 10/30/01, effective 12/1/01; WSR 00-11-068, § 4-25-510, filed 5/15/00, effective 6/30/00; WSR 99-18-111, § 4-25-510, filed 9/1/99, effective 1/1/00. Statutory Authority: RCW 18.04.055. WSR 93-12-077, § 4-25-510, filed 5/27/93, effective 7/1/93.]

WSR 23-16-041
PERMANENT RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed July 24, 2023, 3:37 p.m., effective August 24, 2023]

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

Purpose: Change the name of the out-of-endorsement waiver to special education preendorsement authorization and shortening validity period from five years to three years, effective September 1, 2023. Update WAC language to more closely align with federal guidance regarding special education qualifications.

Citation of Rules Affected by this Order: Amending WAC 181-82-110.

Statutory Authority for Adoption: Chapter 28A.410 RCW.

Adopted under notice filed as WSR 23-12-115 on July [June] 7, 2023.

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

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

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

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

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

Date Adopted: July 7, 2023.

Jisu Ryu
 Rule Coordinator

OTS-4377.1

AMENDATORY SECTION (Amending WSR 22-23-047, filed 11/8/22, effective 12/9/22)

WAC 181-82-110 School district response and support for non-matched endorsements to course assignment of teachers. (1) Individuals with initial, residency, endorsed continuing, professional, transitional, or emergency teacher certificates who are employed with a school district may be assigned to classes other than in their areas of endorsement. If teachers are so assigned, the following shall apply:

(a) A designated representative of the district and any teacher so assigned shall mutually develop a written plan which provides for necessary assistance to the teacher, and which provides for a reasonable amount of planning and study time associated specifically with the out-of-endorsement assignment;

(b) Such teaching assignments shall be approved by a formal vote of the local school board for each teacher so assigned.

(2) Special education preendorsement (~~(waiver)~~) authorization:

(a) A teacher who has completed 240 continuing education credit hours under WAC 181-85-030 of course work applicable to a special education, early childhood special education, teacher of the visually impaired, deaf education, or deaf education with ASL proficiency endorsement shall be eligible for a preendorsement (~~(waiver)~~) authorization from the special education office under chapter 392-172A WAC. Individuals with a preendorsement (~~(waiver)~~) authorization are considered to have met the requirements for "substantial professional training" for the appropriate endorsement under WAC 392-172A-02090.

(b) On or after September 1, 2023, all remaining requirements for the special education, early childhood special education, teacher of the visually impaired, deaf education, or deaf education with ASL proficiency endorsement shall be completed within (~~(five)) three years.~~

(c) Preendorsement waivers or preendorsement authorizations issued before September 1, 2023, shall have a validity period of five years from the date of issue.

(d) A preendorsement waiver shall be considered equivalent to a preendorsement authorization.

(3) Teachers are not subject to nonrenewal or probation based on evaluation of their teaching effectiveness in the out-of-endorsement assignments under this section.

[Statutory Authority: Chapter 28A.410 RCW. WSR 22-23-047, § 181-82-110, filed 11/8/22, effective 12/9/22; WSR 21-22-104, § 181-82-110, filed 11/2/21, effective 12/3/21; WSR 21-08-024, § 181-82-110, filed 3/29/21, effective 4/29/21; WSR 20-16-144, § 181-82-110, filed 8/4/20, effective 9/4/20. Statutory Authority: RCW 28A.410.210. WSR 14-20-051, § 181-82-110, filed 9/25/14, effective 10/26/14; WSR 14-11-106, § 181-82-110, filed 5/21/14, effective 6/21/14; WSR 12-16-107, § 181-82-110, filed 8/1/12, effective 9/1/12; WSR 08-12-056, § 181-82-110, filed 6/2/08, effective 7/3/08; WSR 06-14-010, § 181-82-110, filed 6/22/06, effective 7/23/06. WSR 06-02-051, recodified as § 181-82-110, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.410.010. WSR 03-04-023, § 180-82-110, filed 1/27/03, effective 2/27/03. Statutory Authority: RCW 28A.150.220(4), 28A.305.130(1), 28A.410.018. WSR 00-18-063, § 180-82-110, filed 9/1/00, effective 10/2/00. Statutory Authority: RCW 28A.305.130 (1) and (2), 28A.410.010 and 28A.150.220(4). WSR 99-04-008, § 180-82-110, filed 1/21/99, effective 2/21/99.]

WSR 23-16-048
PERMANENT RULES
PENINSULA COLLEGE

[Filed July 25, 2023, 3:38 p.m., effective August 25, 2023]

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

Purpose: This WAC needs to be updated in accordance with state law that prohibits withholding official transcripts to collect debt.

Citation of Rules Affected by this Order: Amending chapter 132A-122 WAC.

Statutory Authority for Adoption: HB [2SHB] 2513 (2020); RCW 28B.10.293.

Adopted under notice filed as WSR 23-11-066 on May 15, 2023.

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

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

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

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

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

Date Adopted: July 25, 2023.

Trisha Haggerty
Rules Coordinator

OTS-4594.1

AMENDATORY SECTION (Amending WSR 99-15-072, filed 7/20/99, effective 8/20/99)

WAC 132A-122-011 Policy. ~~If any student or former student ((is indebted to the institution for an outstanding overdue debt, the institution need not provide services of any kind to such individual, including, but not limited to, conferring degrees and transmitting files, records, transcripts or other services which have been requested by such person))~~ fails to meet financial obligations to the college, the college shall not provide further services except as required by applicable laws or regulations, or as approved by the president or president's designee.

[Statutory Authority: RCW 28B.50.140 and chapter 28B.50 RCW. WSR 99-15-072, § 132A-122-011, filed 7/20/99, effective 8/20/99.]

OTS-4595.2

AMENDATORY SECTION (Amending WSR 99-15-072, filed 7/20/99, effective 8/20/99)

WAC 132A-122-021 Withholding services for outstanding debts.

~~((Upon receipt of a request for services where there is an outstanding debt due the institution from the requesting person, the institution shall notify the person in writing by certified mail to the last known address, that the services will not be provided since there is an outstanding debt due the institution, and further that until that debt is satisfied, no such services will be provided to the individual.~~

~~Notification that services will be withheld shall also inform the individual that he or she has a right to a hearing before a person designated by the president of the institution if he or she believes that no debt is owed. Notification shall also indicate that the request for the hearing must be made within fifteen days from the date such notice is received. Upon receipt of a timely request for a hearing, the person designated by the president shall have the records and files of the institution available for review and, at that time, shall hold a brief adjudicative proceeding concerning whether the individual owes or owed any outstanding debts to the institution. After the brief adjudicative proceeding, an order shall be entered by the president's designee indicating whether the institution is correct in withholding services and/or applying off set for outstanding debt. If the outstanding debt is owed by the individual involved, no further services shall be provided. Notification of the decision shall be sent to the individual within ten days after the hearing. This hearing shall constitute a brief adjudicative proceeding in accordance with RCW 34.05.482 through 34.05.494.))~~

Upon notification of an outstanding financial obligation to the enrollment services office or another authorized college department, an administrative hold will be placed on the student's records and/or access to registration. The extent of the hold will be recommended by the reporting department and, once approved by enrollment services in compliance with applicable laws and regulations, may include denial of access to:

Student files.

Registration.

Financial aid.

(1) Student notification of debts: Pursuant to SSHB 2513 (effective June 11, 2020) and consistent with SBCTC guidelines, students with debts to the college shall be notified of the following through either a secure portal or college email (the college may additionally notify the student through first-class mail):

(a) The amount of debt owed.

(b) What services will be denied.

(c) Information on payment of the debt, including whom to contact to set up a payment plan.

(d) Any consequences that will result from the nonpayment of the debt.

(e) Right of appeal and how to request a hearing.

The notification will further state that specified services will not be provided until the obligation is satisfied or arrangements have been made under terms and conditions, which are satisfactory to the college.

(2) Student's right to an informal hearing: The notification shall inform the individual of their right to an informal hearing before the president's designee for the purpose of challenging the val-

idity of the debt. The notification shall inform the individual that any request for such a hearing must be made within 15 workdays from the sending of said notice and that the request for a hearing must state the individual's reasons for challenging the financial obligation.

(3) Procedure for informal hearing: Upon receipt of a timely request for a hearing, president's designee shall hold an informal hearing with the student as soon as practicable to evaluate the validity of the outstanding debt. The designee shall ensure that the appropriate records and files of the institution are available for review at the time of the informal hearing. Within 10 workdays after the informal hearing, the designee shall determine whether the outstanding debt is owed to the college and provide the individual with written notification of the decision.

(4) Formal hearing: Within 10 workdays of the designee's communication that the student's request was denied, in an informal hearing, the student may request a formal hearing. The formal hearing will include the president's designee, representatives of the office(s) reporting or maintaining record of debt, and the student. Detailed records documenting the debt shall be provided to all in attendance.

(5) Withholding services: If the individual fails to request or participate in an informal hearing within 15 workdays of initial notification of the debt, or fails to request a formal hearing within 10 workdays after the decision of the president's designee to deny the student's appeal, or if both the informal and formal hearings uphold the validity of the debt, the college will continue to withhold services as indicated above.

(6) Reporting: The business services office shall report annually to the state board for community and technical colleges, which will forward to the governor's office and legislature. The annual report shall include data related to:

(a) The use of transcript holds (this should be zero due to debt).

(b) Registration holds, number of student accounts denied registration privileges.

(c) Student debt levels for financial obligations to the college.

(d) Collection practices, including the number of student accounts referred to outside collection agencies and the dollar threshold for which a student account is referred to a collection agency.

[Statutory Authority: RCW 28B.50.140 and chapter 28B.50 RCW. WSR 99-15-072, § 132A-122-021, filed 7/20/99, effective 8/20/99.]

WSR 23-16-051

PERMANENT RULES

DEPARTMENT OF LICENSING

[Filed July 26, 2023, 9:05 a.m., effective August 26, 2023]

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

Purpose: The department is removing the requirement for applicants to complete training before taking the license examination in accordance with HB 1017, passed during the 2023 legislative session, which allows applicants to register for or take their exam if they are within 100 hours of completing the required coursework.

Citation of Rules Affected by this Order: Amending 2 [WAC 308-20-080 and 308-20-105].

Statutory Authority for Adoption: RCW 18.16.030.

Adopted under notice filed as WSR 23-11-154 on May 24[, 2023].

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

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

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

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

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

Date Adopted: July 26, 2023.

Ellis Starrett
Rules and Policy Manager

OTS-4612.1

AMENDATORY SECTION (Amending WSR 17-19-049, filed 9/12/17, effective 10/13/17)

WAC 308-20-080 Minimum instruction ((guidelines)) requirements for cosmetology, hair design, barbering, manicuring, esthetics and master esthetics training. The minimum ((instruction guidelines for training required)) training requirements for a student or apprentice to be eligible ((to take the license examination)) for licensure in the following professions shall include:

(1) For cosmetology:

(a) Theory of the practice of cosmetology including business practices and basic human anatomy and physiology;

(b) At least 100 hours of skills in the application of manicuring and pedicuring services;

(c) At least 100 hours of skills in the application of esthetics services;

(d) Shampooing including draping, brushing, scalp manipulations, conditioning and rinsing;

(e) Scalp and hair analysis;

- (f) Hair cutting and trimming including scissors, razor, thinning shears and clippers;
 - (g) Hair styling including wet, dry and thermal styling, braiding and styling aids;
 - (h) Cutting and trimming of facial hair including beard and mustache design and eyebrow, ear and nose hair trimming;
 - (i) Artificial hair;
 - (j) Permanent waving including sectioning, wrapping, preperm test curl, solution application, processing test curl, neutralizing and removal of chemicals;
 - (k) Chemical relaxing including sectioning, strand test, relaxer application, and removal of chemicals;
 - (l) Hair coloring and bleaching including predisposition test and strand test, and measurement, mixing, application and removal of chemicals;
 - (m) Cleaning and disinfecting of individual work stations, individual equipment and tools and proper use and storage of linens;
 - (n) Diseases and disorders of the scalp, hair, skin and nails;
 - (o) Safety including proper use and storage of chemicals, implements and electrical appliances;
 - (p) First aid as it relates to cosmetology; and
 - (q) Not all training may be on mannequins.
- (2) For hair design:
- (a) Theory of the practice of hair design including business practices and basic human anatomy and physiology;
 - (b) Shampooing including draping, brushing, scalp manipulations, conditioning and rinsing;
 - (c) Scalp and hair analysis;
 - (d) Hair cutting and trimming including scissors, razor, thinning shears and clippers;
 - (e) Hair styling including wet, dry and thermal styling, braiding and styling aids;
 - (f) Cutting and trimming of facial hair including beard and mustache design and eyebrow, ear and nose hair trimming;
 - (g) Artificial hair;
 - (h) Permanent waving including sectioning, wrapping, preperm test curl, solution application, processing test curl, neutralizing and removal of chemicals;
 - (i) Chemical relaxing including sectioning, strand test, relaxer application, and removal of chemicals;
 - (j) Hair coloring and bleaching including predisposition test and strand test, and measurement, mixing, application and removal of chemicals;
 - (k) Cleaning and disinfecting of individual work stations, individual equipment and tools and proper use and storage of linens;
 - (l) Diseases and disorders of the scalp and hair;
 - (m) Safety including proper use and storage of chemicals, implements and electrical appliances;
 - (n) First aid as it relates to hair design; and
 - (o) Not all training may be on mannequins.
- (3) For barbering:
- (a) Theory of the practice of barbering services and business practices and basic human anatomy and physiology;
 - (b) Shampooing including draping, brushing, scalp manipulations, conditioning and rinsing;
 - (c) Scalp and hair analysis;

- (d) Hair cutting and trimming including scissors, razor, thinning shears and clippers;
 - (e) Hair styling, wet, dry and thermal styling and styling aids;
 - (f) Cutting and trimming of facial hair including shaving, beard and mustache design and eyebrow, ear and nose hair trimming;
 - (g) Artificial hair;
 - (h) Cleaning and disinfecting of individual work stations, individual equipment and tools and proper use and storage of linens;
 - (i) Diseases and disorders of the skin, scalp and hair;
 - (j) Safety including proper use of implements and electrical appliances;
 - (k) First aid as it relates to barbering; and
 - (l) Not all training may be on mannequins.
- (4) For manicuring:
- (a) Theory in the practice of manicuring and pedicuring services, business practices and basic human anatomy and physiology;
 - (b) Artificial nails including silk, linen, fiberglass, acrylic, gel, powder, extensions and sculpting, preparation, application, finish and removal;
 - (c) Cleaning, shaping and polishing of nails of the hands and feet and treatment of cuticles;
 - (d) Cleaning and disinfecting of individual work station, individual equipment and tools and proper use and storage of linens;
 - (e) Diseases and disorders of the nails of the hands and feet;
 - (f) Safety including proper use and storage of chemicals, implements and electrical appliances;
 - (g) First aid as it relates to manicuring and pedicuring; and
 - (h) Not all training may be on mannequins.
- (5) For esthetics:
- Theory in the practice of esthetics services, business practices and basic human anatomy and physiology (750 hours):
- (a) Care of the skin compresses, massage, facials, wraps, masks, exfoliation, use of electrical or mechanical appliances or chemical compounds;
 - (b) Temporary removal of superfluous hair of the skin by means including tweezing, waxing, tape, chemicals, lotions, creams, sugaring, threading, mechanical or electrical apparatus and appliances;
 - (c) Cleaning and disinfecting of individual work stations, individual equipment and tools and proper use and storage of linens;
 - (d) Diseases and disorders of the skin;
 - (e) Safety including proper use and storage of chemicals, implements and electrical appliances;
 - (f) First aid as it relates to esthetics; and
 - (g) Not all training may be on mannequins.
- (6) Master esthetics (450 additional hours):
- Theory in the practice of master esthetics, business practices, and basic human anatomy and physiology including all of subsection (4) of this section and the following:
- (a) Laser, light frequency, radio frequency, ultrasound, and plasma practices;
 - (b) Medium depth chemical peels;
 - (c) Advanced client assessment, documentation, and indications/contraindications;
 - (d) Pretreatment and post-treatment procedures;
 - (e) Lymphatic drainage and advanced facial massage;
 - (f) Advanced diseases and disorders of the skin; and

(g) Advanced theories; alternative, touch, and spa body treatments.

(h) The use of medical devices during instruction of the master esthetics curriculum must comply with state law and rules, including any laws that require delegation or supervision by a licensed health professional acting within the scope of practice of that health professional. A detailed written explanation of how the course will be taught must be submitted and approved by the department.

(7) Online training curriculums must be approved by the department.

[Statutory Authority: RCW 18.16.030 and 43.24.023. WSR 17-19-049, § 308-20-080, filed 9/12/17, effective 10/13/17. Statutory Authority: RCW 18.16.030, 43.24.023, 43.24.086. WSR 16-02-033, § 308-20-080, filed 12/29/15, effective 1/29/16. Statutory Authority: RCW 43.24.023 and 18.16.030. WSR 13-24-042, § 308-20-080, filed 11/26/13, effective 1/1/14; WSR 08-22-029, § 308-20-080, filed 10/28/08, effective 2/1/09. Statutory Authority: RCW 18.16.030(2). WSR 02-04-012, § 308-20-080, filed 1/24/02, effective 6/30/02. Statutory Authority: Chapter 18.16 RCW and RCW 34.05.220. WSR 92-04-006, § 308-20-080, filed 1/23/92, effective 2/23/92. Statutory Authority: RCW 18.16.030. WSR 91-11-042, § 308-20-080, filed 5/10/91, effective 6/10/91; WSR 88-19-047 (Order PM 772), § 308-20-080, filed 9/14/88. Statutory Authority: 1984 c 208. WSR 84-19-020 (Order PL 480), § 308-20-080, filed 9/12/84.]

AMENDATORY SECTION (Amending WSR 13-24-042, filed 11/26/13, effective 1/1/14)

WAC 308-20-105 Minimum instruction requirements for instructor-trainees. The minimum (~~(instruction)~~) training requirements for a student to be eligible (~~(to take the examination to be licensed)~~) for licensure as an instructor shall include(~~(, but not be limited to)~~):

(1) Preparation for classroom activities including, but not limited to:

- (a) Choice of teaching methods;
- (b) Classroom setup;
- (c) Topic/subject matter;
- (d) Written lesson plans;
- (e) Student assignments;
- (f) Materials and supplies; and
- (g) Recordkeeping.

(2) Presentation of information including, but not limited to:

- (a) Lectures;
- (b) Demonstrations;
- (c) Questions and answers;
- (d) Project methods; and
- (e) Discussions.

(3) Application of practice including, but not limited to:

- (a) Clinic supervision;
- (b) Classroom management; and
- (c) Client relations.

(4) Evaluation by the instructor-trainee of the student's understanding and performance including, but not limited to:

- (a) Written/practical assessment; and
- (b) Communication skills.

[Statutory Authority: RCW 43.24.023 and 18.16.030. WSR 13-24-042, § 308-20-105, filed 11/26/13, effective 1/1/14; WSR 03-14-046, § 308-20-105, filed 6/24/03, effective 7/25/03. Statutory Authority: RCW 18.16.030(2). WSR 02-04-012, § 308-20-105, filed 1/24/02, effective 6/30/02. Statutory Authority: Chapter 18.16 RCW and RCW 34.05.220. WSR 92-04-006, § 308-20-105, filed 1/23/92, effective 2/23/92. Statutory Authority: RCW 18.16.030. WSR 91-11-042, § 308-20-105, filed 5/10/91, effective 6/10/91; WSR 88-19-047 (Order PM 772), § 308-20-105, filed 9/14/88. Statutory Authority: 1984 c 208. WSR 84-19-020 (Order PL 480), § 308-20-105, filed 9/12/84.]

WSR 23-16-052

PERMANENT RULES

DEPARTMENT OF LICENSING

[Filed July 26, 2023, 9:12 a.m., effective August 26, 2023]

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

Purpose: Update WAC 308-56A-460 to update the current market value threshold amount to \$11,780; update WAC 308-94A-035 to replace temporary permit references to temporary license plates per HB 1790.

Citation of Rules Affected by this Order: Amending WAC 308-56A-460 Destroyed or wrecked vehicle—Reporting—Rebuilt, and 308-94A-035 Delivery of off-road on dealer temporary permit.

Statutory Authority for Adoption: RCW 46.01.110 Rule-making authority, and 46.12.600 Destruction of vehicle—Surrender of certificate, penalty—Report of settlement by insurance company—Market value threshold.

Adopted under notice filed as WSR 23-11-152 on May 24, 2023.

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

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

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

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

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

Date Adopted: July 26, 2023.

Ellis Starrett
Rules and Policy Manager

OTS-4611.1

AMENDATORY SECTION (Amending WSR 23-10-065, filed 5/2/23, effective 6/2/23)

WAC 308-56A-460 Destroyed or wrecked vehicle—Reporting—Rebuilt.

(1) **What are total loss, destroyed, salvage, and wrecked vehicles?** For the purposes of this section:

(a) A total loss vehicle is one whose destruction has been reported to the department as described in RCW 46.12.600 by an insurer (insurance companies and self-insurers as described in RCW 46.29.630);

(b) A destroyed vehicle is one whose destruction has been reported to the department as described in RCW 46.12.600 by the vehicle's owner;

(c) A salvage vehicle as defined in RCW 46.04.514;

Note: When used in this section, the terms "destroyed" and "destroyed vehicle" include total loss, destroyed, and salvage vehicles.

(d) A wrecked vehicle as defined in RCW 46.80.010(6).

Note: A vehicle may be considered destroyed or wrecked when the evidence of ownership is a salvage certificate/title, insurance company bill of sale, or wrecker bill of sale from any jurisdiction, or when the evidence of ownership indicates the vehicle may be a destroyed vehicle not reported to the department.

(2) How are vehicles reported to the department as total loss, destroyed, salvage, or wrecked?

(a) Insurers may report total loss vehicles to the department:

(i) Electronically through the department's online reporting system. Insurers must destroy ownership documents for a vehicle reported this way; or

(ii) By submitting the certificate of title or affidavit in lieu of title indicating the vehicle is "DESTROYED"; or

(iii) By submitting a completed total loss claim settlement form.

Note: Reports of total loss vehicles must include the insurer's name, address, and the date of loss.

(b) Registered or legal owners report a vehicle as destroyed by submitting the certificate of title or affidavit in lieu of title indicating the vehicle is "DESTROYED," and must include the registered owner's name, address, and date of loss.

(c) Licensed wreckers report wrecked vehicles as required in RCW 46.80.090.

(d) For vehicles six through 20 years old a statement whether or not the vehicle meets the market value threshold amount as defined in RCW 46.12.600 is also required.

(3) What is the current market value threshold amount? The current market value threshold amount is (~~(\$10,430)~~) \$11,780.

(4) How is the market value threshold amount determined? Using the current market value threshold amount described in RCW 46.12.600 each year the department will add the increased value if the increase is equal to or greater than \$50.

(5) What if the "market value threshold amount" is not provided as required? If the market value threshold amount is not provided when required, the department would treat the report of destruction as if the market value threshold as described in RCW 46.12.600 has been met. The certificate of title will be branded according to WAC 308-56A-530.

(6) What documentation is required to obtain a certificate of title after a vehicle is destroyed? After a vehicle has been reported destroyed or wrecked and is rebuilt, you must submit the following documentation to the department in order to obtain a new certificate of title:

(a) Application for certificate of title as described in RCW 46.12.530;

(b) Certificate of vehicle inspection as described in WAC 308-56A-150;

(c) Bill of sale from the insurer, owner, or wrecker who reported the vehicle's destruction to the department.

(i) Bills of sale from insurers must include a representative's signature and title of office;

(ii) Bills of sale from insurers and wreckers do not need to be notarized;

(iii) Bills of sale from owners shown on department records must be notarized or certified;

(iv) A bill of sale is not required when owners shown on department records retain a destroyed vehicle and apply for a new certificate of ownership;

(v) Releases of interest from lien holder(s) or proof of payment such as a canceled check bearing a notation that it has been paid by the bank on which it was drawn or a notarized statement on a receipt

from the legal owner that the debt is satisfied are required when the vehicle is retained by the registered owner(s).

(d) Odometer disclosure statement, if applicable.

(7) **What is required of a Washington licensed vehicle dealer prior to selling a destroyed or wrecked vehicle?** Except as permitted by RCW 46.70.101 (1)(b)(viii), before a dealer may sell a destroyed or wrecked vehicle under their Washington vehicle dealer license, the dealer must:

(a) Rebuild the vehicle to standards set by the state of Washington or the federal government pertaining to the construction and safety of vehicles; and

(b) Obtain a vehicle inspection by the Washington state patrol; and

(c) Apply for and receive a certificate of ownership for the vehicle, issued in the name of the vehicle dealer.

(8) **Once a destroyed or wrecked vehicle is rebuilt, do the license plates remain with the vehicle?** Whether or not the license plates remain with the vehicle depends on the circumstance:

(a) Standard issue license plates may remain with a destroyed vehicle unless they are severely damaged or the vehicle was issued a department temporary license plate described in WAC 308-56A-140;

(b) Replacement license plates are required for wrecked vehicles since Washington licensed wreckers are required by WAC 308-63-070 to remove them;

(c) Special license plates may remain with or be transferred to a destroyed or wrecked vehicle;

(d) Applicants may retain the current license plate number as provided for in RCW 46.16A.200, unless the vehicle was issued a department temporary license plate as described in WAC 308-56A-140.

(9) **Will the certificate of ownership or registration certificate indicate "WA REBUILT"?** Salvage or wrecked vehicles meeting the criteria described in WAC 308-56A-530 will be branded "WA REBUILT."

[Statutory Authority: RCW 46.12.600, 46.01.110, and 46.16A.220. WSR 23-10-065, § 308-56A-460, filed 5/2/23, effective 6/2/23. Statutory Authority: RCW 46.12.600. WSR 22-10-102, § 308-56A-460, filed 5/4/22, effective 7/1/22; WSR 22-02-056, § 308-56A-460, filed 1/4/22, effective 2/4/22; WSR 20-19-113, § 308-56A-460, filed 9/21/20, effective 10/22/20; WSR 19-13-008, § 308-56A-460, filed 6/6/19, effective 7/7/19. Statutory Authority: RCW 46.01.110 and 46.12.600. WSR 12-20-032, § 308-56A-460, filed 9/27/12, effective 10/28/12; WSR 11-22-034, § 308-56A-460, filed 10/26/11, effective 11/26/11. Statutory Authority: RCW 46.01.110. WSR 10-19-045, § 308-56A-460, filed 9/13/10, effective 10/14/10. Statutory Authority: RCW 46.12.005 and 46.01.110. WSR 09-19-113, § 308-56A-460, filed 9/22/09, effective 10/23/09. Statutory Authority: RCW 46.01.110. WSR 04-08-080, § 308-56A-460, filed 4/6/04, effective 5/7/04; WSR 02-19-016, § 308-56A-460, filed 9/9/02, effective 10/10/02; WSR 01-20-010, § 308-56A-460, filed 9/20/01, effective 10/21/01. Statutory Authority: RCW 46.01.110 and 46.12.070. WSR 00-06-025, § 308-56A-460, filed 2/23/00, effective 3/25/00. Statutory Authority: RCW 46.01.110. WSR 92-15-024, § 308-56A-460, filed 7/6/92, effective 8/6/92. Statutory Authority: RCW 46.01.110 and 46.12.070. WSR 91-04-025, § 308-56A-460, filed 1/29/91, effective 3/1/91; Order MV 208, § 308-56A-460, filed 7/31/74.]

OTS-4347.1

AMENDATORY SECTION (Amending WSR 11-18-047, filed 8/31/11, effective 10/1/11)

WAC 308-94A-035 Delivery of off-road vehicle on dealer temporary ((permit)) license plate. What are the requirements for Washington licensed off-road vehicle dealers when purchasing and issuing dealer temporary ((permits)) license plates? Washington licensed off-road vehicle dealers must follow the same requirements as provided in WAC 308-56A-420 and 308-56A-425, with the exception that the off-road vehicle dealer must apply for title in the purchaser's name within ((fifteen)) 15 days following the sale as defined in RCW 46.09.330.

[Statutory Authority: RCW 46.01.110. WSR 11-18-047, § 308-94A-035, filed 8/31/11, effective 10/1/11.]

WSR 23-16-056

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed July 26, 2023, 10:05 a.m., effective August 26, 2023]

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

Purpose: This rule-making order amends chapter 16-157 WAC, Organic food standards and certification, by adopting the current, March 30, 2022, version of the United States Department of Agriculture (USDA) organic regulations (7 C.F.R. Part 205).

The department adopts these national standards for organically produced agricultural products in order to remain uniform with the National Organic Program. These standards assure consumers that products with the USDA organic seal meet consistent, uniform standards that are in compliance with federal regulations.

Citation of Rules Affected by this Order: Amending WAC 16-157-020.

Statutory Authority for Adoption: RCW 15.86.060(1), [15.86.]065(3).

Adopted under notice filed as WSR 23-09-036 on April 14, 2023.

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

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

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

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

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

Date Adopted: July 25, 2023.

Derek I. Sandison
Director

OTS-4250.2

AMENDATORY SECTION (Amending WSR 22-15-010, filed 7/7/22, effective 8/7/22)

WAC 16-157-020 Adoption of the National Organic Program. The Washington state department of agriculture adopts the standards of the National Organic Program, 7 C.F.R. Part 205, effective March (~~30, 2022~~) 20, 2023, for the production and handling of organic crops, livestock, and processed agricultural products. The National Organic Program rules may be obtained from the department by emailing the organic program at organic@agr.wa.gov, by phone at 360-902-1805 or accessing the National Organic Program's website at <https://www.ams.usda.gov/rules-regulations/organic>.

[Statutory Authority: RCW 15.86.060(1), [15.86.]065(3), and [15.86.]065(4). WSR 22-15-010, § 16-157-020, filed 7/7/22, effective 8/7/22; WSR 21-21-027, § 16-157-020, filed 10/11/21, effective 11/11/21. Statutory Authority: RCW 15.86.060(1) and [15.86.]065(3). WSR 19-14-129, § 16-157-020, filed 7/3/19, effective 8/3/19. Statutory Authority: RCW 15.86.060 and 15.86.070. WSR 19-01-062, § 16-157-020, filed 12/14/18, effective 1/14/19. Statutory Authority: RCW 15.86.060(1), [15.86.]065(3) and chapter 34.05 RCW. WSR 18-03-154, § 16-157-020, filed 1/23/18, effective 2/23/18. Statutory Authority: Chapter 15.86 and 34.05 RCW. WSR 09-15-152, § 16-157-020, filed 7/21/09, effective 8/21/09. Statutory Authority: RCW 15.86.060 and 15.86.070. WSR 06-23-108, § 16-157-020, filed 11/17/06, effective 12/18/06. Statutory Authority: Chapters 15.86 and 34.05 RCW. WSR 04-24-015, § 16-157-020, filed 11/22/04, effective 12/23/04. Statutory Authority: Chapter 15.86 RCW. WSR 03-03-044, § 16-157-020, filed 1/10/03, effective 2/10/03; WSR 02-10-090, § 16-157-020, filed 4/29/02, effective 5/30/02.]

WSR 23-16-058

PERMANENT RULES

HEALTH CARE AUTHORITY

[Filed July 26, 2023, 1:05 p.m., effective August 26, 2023]

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

Purpose: The health care authority is removing any mention of the DATA 2000 waiver in WAC 182-531-2040.

Citation of Rules Affected by this Order: Amending WAC 182-531-2040.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 23-13-103 on June 20, 2023.

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

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

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

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

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

Date Adopted: July 26, 2023.

Wendy Barcus
Rules Coordinator

OTS-4618.1

AMENDATORY SECTION (Amending WSR 19-09-052, filed 4/12/19, effective 5/13/19)

WAC 182-531-2040 Enhanced reimbursement—Medication assisted treatment for opioid use disorder. (1) The medicaid agency pays an enhanced reimbursement using the medicare rate when medication assisted treatment (MAT) is part of the visit for selected evaluation and management (E/M) codes and the provider meets the criteria in this section.

(2) The purpose of this enhanced reimbursement is ~~((to encourage providers to obtain and use a Drug Addiction Treatment Act of 2000 waiver (DATA 2000 waiver)))~~ to increase client access to evidence-based treatment using medications for opioid use disorder.

(3) To receive the enhanced reimbursement for MAT, a provider must:

(a) Bill using the agency's expedited prior authorization process;

(b) ~~((Currently use a DATA 2000 waiver to prescribe MAT to clients with opioid use disorder;~~

~~(e))~~ Bill for treating a client with a qualifying diagnosis for opioid use disorder; and

~~((d))~~ (c) Provide opioid-related counseling during the visit.

(4) The agency payment for MAT under this section is limited to one enhanced reimbursement, per client, per day.

(5) The agency does not pay an enhanced reimbursement for services a client receives for opioid use disorder through an opioid treatment program facility licensed by the department of health.

[Statutory Authority: RCW 41.05.021, 41.05.160, and 2018 c 299. WSR 19-09-052, § 182-531-2040, filed 4/12/19, effective 5/13/19.]

WSR 23-16-059

PERMANENT RULES

HEALTH CARE AUTHORITY

[Filed July 26, 2023, 1:12 p.m., effective August 26, 2023]

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

Purpose: The health care authority (HCA) is amending this rule to explain how HCA updates the state-only composite rate, correct or remove outdated information, and clarify language throughout.

Citation of Rules Affected by this Order: Amending WAC 182-531-1850.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 23-13-083 on June 15, 2023.

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

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

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

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

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

Date Adopted: July 26, 2023.

Wendy Barcus
Rules Coordinator

OTS-4623.1

AMENDATORY SECTION (Amending WSR 21-23-050, filed 11/10/21, effective 12/11/21)

WAC 182-531-1850 Payment methodology for physician-related services—General and billing modifiers.

GENERAL PAYMENT METHODOLOGY

(1) The medicaid agency bases the payment methodology for most physician-related services on medicare's resource-based relative value scale (RBRVS). The agency obtains information used to update the agency's RBRVS from the ((MPFSPS)) centers for medicare and medicaid services (CMS) relative value unit (RVU) file.

(2) The agency updates and revises the ((following)) RBRVS ((areas each January prior to)) calculations during the agency's annual update.

(3) The agency determines a budget-neutral conversion factor (CF) for each RBRVS update, by doing the following:

(a) First, determining the units of service and expenditures for a base period((. Then,));

(b) Second, applying the latest medicare RVU obtained from the medicare physician fee schedule database (MPFSDB), as published in the

((MPFSPS)) CMS RVU file, and blended Washington (WA) geographic practice cost indices (GCPI) ~~((changes))~~ to obtain projected units of service for the new period ~~((Then))~~;

(c) Third, multiplying the projected units of service by conversion factors to obtain estimated expenditures ~~((Then))~~;

(d) Fourth, comparing expenditures obtained in (c) of this subsection with base period expenditure levels ~~((Then))~~; and

(e) Fifth, adjusting the dollar amount for the conversion factor until the product of the conversion factor and the projected units of service at the new RVUs equals the base period amount.

(4) The agency calculates maximum allowable fees (MAFs) in the following ways:

(a) For procedure codes that have applicable medicare RVUs, the ~~((three components (practice, malpractice, and work) of the RVU are))~~ agency determines RBRVS RVUs by:

(i) ~~((Each multiplied))~~ First, multiplying the medicare RVU by the blended statewide geographic practice cost index (GPCI) ~~((Then))~~; and

(ii) Second, multiplying the sum of these products ~~((is multiplied))~~ by the applicable conversion factor. ~~((The resulting RVUs are known as RBRVS RVUs.))~~

(b) ~~((For procedure codes that have no applicable medicare RVUs, RSC RVUs are established in the following way:~~

~~(i) When there are three RSC RVU components (practice, malpractice, and work):~~

~~(A) Each component is multiplied by the statewide GPCI. Then,~~

~~(B) The sum of these products is multiplied by the applicable conversion factor.~~

~~(ii) When the RSC RVUs have just one component, the RVU is not GPCI adjusted and the RVU is multiplied by the applicable conversion factor.~~

~~(e))~~ For procedure codes with no RBRVS ~~((or RSC))~~ RVUs, the agency establishes maximum allowable fees, also known as "flat" fees.

(i) The agency does not use the conversion factor for these codes.

(ii) The agency updates flat fee reimbursement ~~((only))~~ based on market research or when the legislature authorizes a vendor rate increase, except for the following categories which are revised annually during the update:

(A) ~~((Immunization))~~ The agency reimburses for professional administered drug codes ~~((are reimbursed))~~ at the medicare Part B drug file price or using point-of-sale (POS) ~~((AAC))~~ pricing methodology, described in WAC 182-530-7000, when there is no Part B rate. ~~((See WAC 182-530-1050 for explanation of POS AAC.))~~ When the provider receives immunization materials from the department of health, the agency pays only a flat administrative fee for ~~((administering the immunization))~~ storage.

(B) ~~((A cast material maximum allowable fee is set using an average of wholesale or distributor prices for cast materials))~~ The agency uses established medicare contractor rates.

(iii) For information regarding the agency's reimbursement of other supplies ~~((are reimbursed at physicians' acquisition cost, based on manufacturers' price sheets. Reimbursement applies only to supplies that are not considered part of the routine cost of providing care (e.g., intrauterine devices (IUDs))))~~, see WAC 182-543-9000.

~~((d))~~ (c) For procedure codes with no RVU or maximum allowable fee, the agency reimburses "by report." The agency reimburses for by

report codes ((are reimbursed)) at a percentage of the amount billed for the service.

~~((e) For supplies that are dispensed in a physician's office and reimbursed separately, the provider's acquisition cost when flat fees are not established.~~

~~(f) The agency reimburses at acquisition cost those HCPCS J and Q codes that do not have flat fees established)~~ (d) The agency adjusts composite rates annually when the codes that make up the composite rates are updated.

(5) ~~The ((technical advisory group))~~ agency reviews RBRVS changes.

(6) The agency also makes fee schedule changes when:

(a) The legislature grants a vendor rate increase ((and the effective date of that increase is not the same as)) outside of the agency's annual update;

(b) There are coverage changes due to policy updates; or

(c) CMS adds or deletes procedure codes.

(7) If the legislatively authorized vendor rate increase, or other increase, becomes effective at the same time as the annual update, the agency applies the increase after calculating budget-neutral fees. The agency pays providers a higher reimbursement rate for primary health care evaluation and management (E&M) services that are provided to children age 20 and ~~((under))~~ younger.

(8) The agency may adjust rates to maintain or increase access to health care services as directed by the legislature.

(9) The agency does not allow separate reimbursement for CMS bundled services. ~~((However, the agency allows separate reimbursement for items considered prosthetics when those items are used for a permanent condition and are furnished in a provider's office.))~~

(10) Variations of payment methodology which are specific to particular services, and which differ from the general payment methodology described in this section, are included in the sections dealing with those particular services.

((CPT/HCFA)) CURRENT PROCEDURAL TERMINOLOGY (CPT)/HEALTHCARE FINANCING ADMINISTRATION (HCFA) MODIFIERS

(11) ~~((A modifier is a code a provider uses on a claim in addition to a billing code for a standard procedure. Modifiers eliminate the need to list separate procedures that describe the circumstance that modified the standard procedure. A modifier may also be used for information purposes.~~

~~(12))~~ Certain services and procedures require modifiers ~~((in order))~~ for the agency to reimburse the provider. This information is included in the sections dealing with those particular services and procedures, as well as the fee schedule.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 21-23-050, § 182-531-1850, filed 11/10/21, effective 12/11/21; WSR 17-21-040, § 182-531-1850, filed 10/12/17, effective 11/12/17; WSR 17-04-039, § 182-531-1850, filed 1/25/17, effective 2/25/17. WSR 11-14-075, recodified as § 182-531-1850, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.08.090. WSR 10-19-057, § 388-531-1850, filed 9/14/10, effective 10/15/10. Statutory Authority: RCW 74.08.090, 74.09.520. WSR 01-01-012, § 388-531-1850, filed 12/6/00, effective 1/6/01.]

WSR 23-16-085
PERMANENT RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed July 28, 2023, 7:21 p.m., effective August 28, 2023]

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

Purpose: Amending WAC 388-106-0010 What definitions apply to this chapter? and 388-106-0130 How does the department determine the number of hours I may receive for in-home care? Most changes are a result of the department's efforts to modernize the comprehensive assessment and reporting evaluation (CARE) assessment tool. The amendments are consistent with updates made to the CARE tool. The changes were intended to be a part of WSR 20-23-124 and went through the majority of the rule-making review process, but had to be withdrawn in order to prioritize other rule-making priorities. There have been no changes that affect how the department determines eligibility or benefit level using the CARE tool.

In addition, in WAC 388-106-0010, "Turning and repositioning program," "Passive range of motion," "Active range of motion," and "Bowel program" definitions are being added. A couple of definitions that are no longer relevant are being removed.

In WAC 388-106-0130, subsection (6)(d) indicating "home health aide" is being removed because it has not been a service available in the COPES waiver since 2017 (public notice filed as WSR 16-15-065). Subsection (6)(c) is being removed because it is being added to WAC 388-106-0010, "Informal support" definition in this rule-making effort. Other updates to terminology were made due to CARE modernization.

Citation of Rules Affected by this Order: Amending WAC 388-106-0010 and 388-106-0130.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Adopted under notice filed as WSR 23-08-041 on March 29, 2023.

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

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

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

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

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

Date Adopted: July 28, 2023.

Katherine I. Vasquez
Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the [23-17](#) issue of the Register.

WSR 23-16-093
PERMANENT RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed July 31, 2023, 11:52 a.m., effective August 31, 2023]

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

Purpose: In alignment with SHB 1658 (2023), the new and amended rules provide for consistent implementation of elective high school credit for paid work experience. The new and amended sections clarify definitions and provide for consistent application of funding calculations and reporting requirements. The rules are intended to ensure that local education agencies increase access to credit for paid work experiences in an equitable way, honoring the value of work.

Citation of Rules Affected by this Order: New WAC 392-121-139 and 392-410-316; and amending WAC 392-121-107, 392-121-124, 392-410-315, and 392-410-340.

Statutory Authority for Adoption: RCW 28A.230.100 and new section of chapter 28A.600 RCW as established by SHB 1658 (2023).

Adopted under notice filed as WSR 23-13-130 on June 21, 2023.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 2, Amended 4, Repealed 0.

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

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

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

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

Date Adopted: July 31, 2023.

Chris P.S. Reykdal
State Superintendent of Public Instruction

OTS-4316.2

AMENDATORY SECTION (Amending WSR 16-11-104, filed 5/18/16, effective 6/18/16)

WAC 392-121-107 Definition—Course of study. As used in this chapter, "course of study" means those activities for which students enrolled pursuant to chapters 180-16, 180-51, 392-169, 392-134, and 392-410 WAC may be counted as enrolled students for the purpose of full-time equivalent student enrollment counts.

(1) Course of study includes:

(a) Instruction - Teaching/learning experiences conducted by school district staff as directed by the administration and the board of directors of the school district, or teaching/learning experiences conducted by charter school staff as directed by the charter school administration and charter school board, inclusive of intermissions

for class changes, recess and teacher/parent-guardian conferences that are planned and scheduled by the district or charter school for the purpose of discussing students' educational needs or progress, and exclusive of time for meals.

(b) Alternative learning experience - Alternative learning experience provided by the school district or charter school in conformance with WAC 392-121-182.

(c) Instruction provided by a contractor - Instruction provided by a contractor in conformance with WAC 392-121-188 or 392-121-1885.

(d) National guard - Participation in a national guard high school career training program for which credit is being given toward either required or elective high school credits pursuant to RCW 28A.300.165 and WAC 392-410-320.

(e) Ancillary service - Any cocurricular service or activity, any health care service or activity, and any other services or activities, for or in which enrolled students are served by appropriate school district or charter school staff. The term shall include, but not be limited to, counseling, psychological services, testing, remedial instruction, speech and hearing therapy, health care services, and if such service is provided by the district or charter school, certificated contact time pursuant to RCW 28A.225.010 (4) (a) with students who are in a home-based instruction program. The term shall exclude all extracurricular activities and all other courses of study defined in this section. In conformance with WAC 392-134-025, school districts and charter schools report the actual number of student contact hours of ancillary service for part-time, private school, and home-based students to the superintendent of public instruction.

(f) (~~Work-based~~) Worksite learning - Training provided (~~pursuant to~~) in accordance with WAC 392-410-315 and reported as provided in WAC 392-121-124.

(g) Running start - Attendance at an institution of higher education pursuant to RCW 28A.600.300 through 28A.600.400, chapter 392-169 WAC.

(h) Transition school - Participation in the University of Washington's transition school and early entrance program pursuant to RCW 28A.185.040, and chapter 392-120 WAC. Such participation shall be reported by the University of Washington and shall not be reported by a school district or charter school.

(i) Technical college direct funding - Enrollment at a technical college pursuant to RCW 28A.150.275 and WAC 392-121-187. Such participation shall be reported by the technical college and shall not be reported by a school district unless the technical college and the school district agree to have the school district report such enrollment.

(j) Dropout reengagement program - Enrollment in a state approved dropout reengagement program pursuant to RCW 28A.175.100 and chapter 392-700 WAC.

(k) Paid work experience - Training provided in accordance with WAC 392-410-316 and reported as provided in WAC 392-121-139.

(2) Course of study does not include:

(a) Home-based instruction pursuant to RCW 28A.225.010(4): Education programs provided by a parent which do not meet the requirements of WAC 392-121-182 cannot be claimed for state funding;

(b) Private school instruction pursuant to chapter 28A.195 RCW;

(c) Adult education as defined in RCW 28B.50.030(12);

(d) Instruction provided to students who do not reside in Washington state (RCW 28A.225.260);

(e) Enrollment in state institutions, i.e., state operated group homes, county juvenile detention centers, state institutions for juvenile delinquents, county and city adult jails, and state residential habilitation centers;

(f) Instruction preparing a student for the general education development (GED) test if such instruction generates state or federal moneys for adult education;

(g) Enrollment in education centers except as provided under contract with a school district pursuant to RCW 28A.150.305 and WAC 392-121-188 or 392-121-1885;

(h) Enrollment for residents of the Washington state school for the deaf and the Washington state school for the blind;

(i) Extracurricular activities including but not limited to before and after school activities such as classes, sports and other activities offered outside the regular curriculum or for which credit is not earned; or

(j) Attendance at universities, colleges, community colleges, or technical colleges of students not earning high school credit.

[Statutory Authority: RCW 28A.150.290. WSR 16-11-104, § 392-121-107, filed 5/18/16, effective 6/18/16. Statutory Authority: RCW 28A.150.290 and 28A.710.220. WSR 15-18-078, § 392-121-107, filed 8/28/15, effective 9/28/15. Statutory Authority: RCW 28A.150.305. WSR 13-02-004, § 392-121-107, filed 12/19/12, effective 1/19/13. Statutory Authority: RCW 28A.150.290. WSR 09-06-038, § 392-121-107, filed 2/25/09, effective 3/28/09; WSR 07-23-008, § 392-121-107, filed 11/8/07, effective 12/9/07. Statutory Authority: 1997 c 265 § 6 and RCW 28A.150.290. WSR 99-08-008 (Order 99-01), § 392-121-107, filed 3/25/99, effective 4/25/99. Statutory Authority: RCW 28A.150.290. WSR 97-22-013 (Order 97-06), § 392-121-107, filed 10/27/97, effective 11/27/97; WSR 95-18-097, § 392-121-107, filed 9/6/95, effective 10/7/95; WSR 95-01-013, § 392-121-107, filed 12/8/94, effective 1/8/95. Statutory Authority: 1990 c 33. WSR 90-16-002 (Order 18), § 392-121-107, filed 7/19/90, effective 8/19/90. Statutory Authority: RCW 28A.41.055 and 28A.41.170. WSR 88-03-013 (Order 88-8), § 392-121-107, filed 1/11/88.]

AMENDATORY SECTION (Amending WSR 16-14-031, filed 6/27/16, effective 7/28/16)

WAC 392-121-124 Full-time equivalent enrollment for ((work based)) worksite learning. For ((work-based)) worksite learning provided ((pursuant to)) in accordance with WAC 392-410-315 or by charter schools, a student's full-time equivalent shall be determined as follows:

(1) For cooperative ((work-based)) worksite learning experience, in accordance with WAC 392-410-315 (1)(g) and instructional worksite learning in accordance with WAC 392-410-315 (1)(f) and 296-125-043(4), divide the student's hours of work experience for the month by ((two hundred;)) 100. For example: ((Forty)) Twenty hours of cooperative work experience equals two tenths of a full-time equivalent ((40 ÷ 200 = 0.20). For instructional work based learning experience, in accordance with WAC 392-410-315 (1)(f) and 296-125-043(4), divide the student's enrolled hours of work experience for the month by one hundred; for example: Twenty hours of instructional work experience equals two tenths of a full-time equivalent)) (20 ÷ 100 = 0.20). En-

rollment exclusions in WAC 392-121-108 apply to (~~instructional work based~~) worksite learning enrolled hours.

(2) Estimated or scheduled hours of cooperative (~~work based~~) worksite learning experience may be used in determining a student's full-time equivalent on an enrollment count date: Provided, That the combined monthly hours reported for the school year shall not exceed the student's actual hours of cooperative (~~work based~~) worksite learning experience documented on the student's work records and maintained by the school district or charter school for audit purposes.

(3) (~~Work based~~) Worksite learning provided as part of a state-approved vocational education (~~program~~) course qualifies for enhanced vocational funding and may be included in determining a student's vocational full-time equivalent enrollment.

(4) Preparatory (~~work based~~) worksite learning provided as part of a state-approved skill center program qualifies for enhanced skill center vocational funding and may be included in determining a student's skill center vocational full-time equivalent enrollment.

(5) No more than (~~three hundred sixty~~) 360 hours of cooperative (~~work based~~) worksite learning may be claimed for funding for each credit a student pursues as reported on the student's transcript. No more than (~~one hundred eighty~~) 180 hours of instructional (~~work based~~) worksite learning may be claimed for funding for each credit a student pursues as reported on the student's transcript.

(6) Funding may be claimed only for (~~work based~~) worksite learning hours that occur after the (~~work based~~) worksite learning plan, (~~work based~~) worksite agreement, program orientation and new employee orientation, as defined in WAC 392-410-315, are completed.

[Statutory Authority: RCW 28A.150.305. WSR 16-14-031, § 392-121-124, filed 6/27/16, effective 7/28/16. Statutory Authority: RCW 28A.150.305, 28A.150.290. WSR 16-06-124, § 392-121-124, filed 3/2/16, effective 4/2/16. Statutory Authority: RCW 28A.150.290 and 28A.710.220. WSR 15-18-078, § 392-121-124, filed 8/28/15, effective 9/28/15. Statutory Authority: RCW 28A.150.305. WSR 13-02-004, § 392-121-124, filed 12/19/12, effective 1/19/13. Statutory Authority: RCW 28A.150.290. WSR 07-23-026, § 392-121-124, filed 11/9/07, effective 12/10/07; WSR 04-14-068, § 392-121-124, filed 7/2/04, effective 9/1/04; WSR 98-07-060 (Order 98-03), § 392-121-124, filed 3/17/98, effective 4/17/98.]

NEW SECTION

WAC 392-121-139 Full-time equivalent enrollment for paid work experience for elective credit. For paid work experience for elective credit provided under WAC 392-410-316 or by charter schools, a student's full-time equivalent shall be determined as follows:

(1) For paid work experience, in accordance with WAC 392-410-316, divide the student's actual hours of work experience for the month by 100. For example, 20 hours of paid work experience equals 0.20 (two-tenths) of a full-time equivalent ($20 \div 100 = 0.20$).

(2) Actual hours of paid work experience shall be reported monthly provided no student's total monthly enrollment exceeds the limitations under WAC 392-121-136 and the annual average enrollment under WAC 392-121-123. The student's actual hours of paid work experience

must be documented and maintained by the school district or charter school for audit purposes.

(3) No more than 360 hours of paid work experience may be claimed for funding for each credit a student pursues as reported on the student's transcript. A maximum of two elective credits may be earned through paid work experience calculated in accordance with this subsection.

(4) Funding may be claimed only for paid work experience hours that occur as part of a school monitored placement scheduled as part of the student's school day. A minimum per term hour verification is required, and should be completed by an employee of the district possessing a valid Washington state secondary education teaching certificate (under chapter 181-79A or 181-77 WAC).

[]

OTS-4317.2

AMENDATORY SECTION (Amending WSR 08-12-094, filed 6/4/08, effective 7/5/08)

WAC 392-410-315 Equivalency course of study—Credit for ((work based)) worksite learning. School districts may accept worksite learning in lieu of either required or elective high school credits if such worksite learning meets the standards under subsections (1) through ((+5)) (4) of this section. Comprehensive guidelines are available on the OSPI website in the worksite learning manual.

(1) Definitions:

(a) "Work based learning" means ~~((a learning experience that connects knowledge and skills obtained in the classroom to those needed outside the classroom, and comprises a range of activities and instructional strategies designed to assist students in developing or fulfilling their education plans))~~ sustained interactions with industry or community professionals in real workplace settings, to the extent practicable, or simulated environments at an educational institution that foster in-depth, firsthand engagement with the tasks required in a given career field, that are aligned to curriculum and instruction.

(b) "Worksite learning" means a learning experience that occurs at a qualified worksite outside the classroom in fulfillment of a student's educational or career plan through the coordination of a worksite learning certified teacher. Direct instruction and supervision is provided by a qualified worksite supervisor.

(c) "Worksite learning coordinator" means a certified school district employee responsible for coordinating worksite learning experiences. For career and technical education programs, the coordinator must possess a worksite learning certificate ((+) in accordance with WAC 181-77-068 (+)). For noncareer and technical education programs, the coordinator must successfully demonstrate competencies related to coordination techniques as verified by a professional educator standards board approved program.

(d) "Worksite supervisor" means a qualified adult from the worksite responsible for overseeing the worksite learning experience and acting as liaison between the worksite and school district.

(e) "Worksite learning agreement" means a contract that specifies the terms and conditions under which the worksite learning experience shall occur. It is agreed to and signed by the school district, worksite supervisor, student, and the student's parents/guardians.

(f) "Program orientation" means a meeting conducted by a worksite learning coordinator giving information to a worksite supervisor about the worksite learning program of the school. The orientation clarifies program objectives, establishes support systems, and delineates the responsibilities and rights of the various parties—school/district, worksite, students, and parents/guardians. The worksite learning coordinator qualifies the worksite and the worksite supervisor.

(g) "Employee orientation" means training for the student facilitated by a worksite supervisor or designee (e.g., human resources). This is necessary for students in cooperative worksite learning and instructional worksite learning experiences. The orientation includes worksite safety procedures and practices, workers' rights and responsibilities, issues related to harassment, and employer policies, procedures and expectations. The orientation shall also include a description of the formal accident prevention program of the worksite.

(h) "Instructional worksite learning" means a learning experience that takes place in the community (or school if the experience is comparable to that in a community setting) as part of a specific course content where the student performs tasks in order to gain desired skills, competencies, qualifications or industry certifications through direct instruction.

(i) "Cooperative worksite learning" means a learning experience where a student practices in the community (or school if the experience is comparable to that in a community setting) the skills and knowledge learned in the classroom. An employer/employee relationship must exist if the work performed by the student results in a net increase in productivity or profitability for the business or organization.

(j) "Qualifying class" means any high school class previously ~~((completed (successfully)))~~ passed or concurrently taken that directly connects the knowledge and skills learned in the class to opportunities provided by the worksite learning experience. For career and technical education funding, "qualifying classes" mean classes approved for career and technical education in the district offering worksite learning credit.

(2) The student shall be placed in a worksite that is appropriate to his or her previous learning experience and educational goals which shall be formalized through a worksite learning agreement and worksite learning plan. The worksite learning experience shall be connected to the student's high school and beyond plan ~~((WAC 180-51-061))~~ in accordance with WAC 180-51-220. The student must have taken or be concurrently enrolled in a qualifying class.

(a) The worksite learning plan shall articulate the connection between the education plan of the student and the worksite learning experience.

(b) Evaluation of learning progress related to the worksite learning plan shall occur during the worksite learning experience.

~~((c) Evaluation of learning progress related to the worksite learning plan shall occur during the work based learning experience.))~~

(i) Learning objectives shall be evaluated and updated on a regular basis as outlined in the worksite learning agreement.

(ii) Documentation of progress shall be on file in the district as outlined in the worksite learning agreement.

(3) The worksite learning experience shall be supervised by the school. A worksite learning coordinator shall be responsible for:

(a) Aligning the worksite learning experience to the education plan of the student;

(b) Identifying and developing worksite learning sites, establishing worksite learning agreements and worksite learning plans, orienting and coordinating with a worksite supervisor on the worksite, and assessing and reporting student progress;

(c) Ensuring that a worksite supervisor:

(i) Has received an orientation on the worksite learning program of the school prior to placement of the student on the worksite;

(ii) Has provided the student with a new-employee orientation upon placement;

(iii) Applies legal requirements of the employment of minors in accordance with chapters 296-125 and 296-131 WAC, particularly on issues of occupational health and safety, discrimination, harassment, worker/employer rights and responsibilities, and work rules for minors;

(d) Possessing a valid Washington state secondary teaching certificate ((+) in accordance with chapter 181-79A or 181-77 WAC((+));

(e) Successfully demonstrating competencies related to coordination techniques as verified by a professional educator standards board approved program; and

(f) Supervising the experience and communicating with the worksite supervisor when not on-site.

(4) A 1.0 credit may be granted for no less than ((~~one hundred eighty~~)) 180 hours for instructional worksite learning experience, and not less than ((~~three hundred sixty~~)) 360 hours of cooperative worksite learning experience, or one credit may be granted on a competency basis as provided under WAC 180-51-050 (1)(b).

(a) A student participating in an instructional worksite learning experience shall receive instruction supervised by the school. The worksite learning coordinator oversees the experience but does not need to be on-site with the student during the entire experience unless specific accommodations and a plan to address those accommodations are on file with the district requiring direct supervision of the student at the worksite. The student shall be ((~~sixteen~~)) 16 years of age or older unless under direct supervision of a school district employee.

Career and technical education approved instructional worksite learning shall be coordinated by a certificated worksite learning coordinator who is also certificated in the program area where credit is offered.

(b) A student participating in a cooperative worksite learning experience shall be legally employed if the work being performed by the student results in a net increase in productivity or profitability for the business or organization. The student shall be ((~~sixteen~~)) 16 years of age or older.

(i) Career and technical education approved cooperative worksite learning shall be coordinated by a certificated worksite learning coordinator.

(ii) The cooperative worksite learning experience shall be a direct extension of a qualifying class.

~~((5) The superintendent of public instruction shall report biennially at the state board's fall meeting on the use of the worksite learning credit option authorized in this section.))~~

(iii) For cooperative worksite learning, the learning experience must be reported using the specific worksite placement state course code and course designation code per OSPI guidance.

[Statutory Authority: RCW 28A.305.130. WSR 08-12-094, § 392-410-315, filed 6/4/08, effective 7/5/08; WSR 08-04-074, § 392-410-315, filed 2/4/08, effective 3/6/08. Statutory Authority: 2006 c 263. WSR 06-14-009, recodified as § 392-410-315, filed 6/22/06, effective 6/22/06. Statutory Authority: RCW 28A.305.130 (8), (9), and 28A.230.100. WSR 03-04-054, § 180-50-315, filed 1/29/03, effective 3/1/03. Statutory Authority: RCW 28A.04.120. WSR 00-19-106, § 180-50-315, filed 9/20/00, effective 10/21/00. Statutory Authority: RCW 28A.04.120 (6) and (8) and 28A.05.060. WSR 85-12-037 (Order 13-85), § 180-50-315, filed 6/3/85. Statutory Authority: RCW 28A.04.120 (6) and (8). WSR 84-21-004 (Order 12-84), § 180-50-315, filed 10/4/84.]

NEW SECTION

WAC 392-410-316 Equivalency course of study—Elective credit for paid work experience. (1) The board of directors of a district offering a high school diploma and providing students with the opportunity to learn and master the state financial education learning standards adopted in RCW 28A.300.469, shall adopt written policies providing for the granting of elective high school graduation credit for paid work experience. Credit is earned when the following conditions are met:

(a) The student is legally eligible for paid employment and is at least 16 years old.

(b) A 1.0 credit is granted for no less than 360 hours of paid work, a .5 credit may be granted for no less than 180 hours of paid work.

(c) The student's High School and Beyond Plan is updated to reflect the paid work experience.

(d) The paid work experience is approved in advance and in writing by the school counselor, principal, or principal designee. Approval is contingent upon submission of the following information:

(i) Identification of the work-based sponsor (employer) who will serve as the point of contact and supervise the student during employment.

(ii) A student narrative that describes how the paid work experience will develop knowledge and skills for basic education; an understanding of work and finance; and how performance, effort, and decisions affect future career and educational opportunities as provided in RCW 28A.150.210(4).

(iii) A plan to include how the student will demonstrate or be assessed on:

(A) Grade-level proficiency of the state financial education learning standards for employment, income, or financial decisions adopted in RCW 28A.300.469; and

(B) Growth in proficiency in meeting the state financial education learning standards that occurred between pre-work and post-work experiences.

(e) Paid hour verification is completed by the school district no less than once per term.

(f) Students may earn credit under this section for work experiences scheduled as part of their school day, experiences that occur outside of the regular school calendar, or through WAC 180-51-050 and 180-51-051.

(g) The learning experience must be reported using the specific state course code and course designation code per OSPI guidance.

(2) A maximum of two elective credits may be earned through paid work experience reflected in this section.

(3) This section does not impact the legal requirements of the employment of minors in accordance with chapters 296-125 and 296-131 WAC, particularly on issues of occupational health and safety, discrimination, harassment, worker/employer rights and responsibilities, and work rules for minors.

(4) This subsection does not modify a district's ability to adopt policies to increase student access to credit for worksite learning that includes cooperative worksite learning for nonelective credit as referenced in WAC 392-410-315; or through mastery-based education as referenced in WAC 180-51-051.

(5) Paid work experience scheduled as part of the student's school day may be claimed for apportionment in alignment with WAC 392-121-140.

[]

AMENDATORY SECTION (Amending WSR 06-14-009, filed 6/22/06, effective 6/22/06)

WAC 392-410-340 Equivalency credit for alternative learning experiences, nonhigh school courses, electronically mediated courses, work experience, and challenges. The board of directors of a district offering a high school diploma shall adopt written policies providing for the granting of high school graduation credit for alternative learning experiences, nonhigh school courses, work experience, and challenges. High school credits may be given for, but not limited to, the following:

(1) Planned learning experiences conducted away from the school under the supervision or with the approval of the school and linked to one or more of the state learning goals and related essential academic learning requirements;

(2) Work experience on the basis that ((~~four hundred five~~)) 360 hours of work experience equals one credit;

(3) National Guard high school career training and National Guard youth challenge;

(4) Postsecondary courses in accredited colleges and universities. In the case of courses taken under the statutory running start option under RCW 28A.600.300 through 28A.600.400, the district shall award high school credit pursuant to RCW 28A.230.090(6);

(5) Courses in accredited or approved technical colleges;

(6) Correspondence courses from accredited colleges and universities or schools approved by the National University Education Association or the Distance Education and Training Council;

(7) Electronically mediated courses meeting standards which shall be adopted by written policy by the school district, or standards adopted by the Northwest Association of Schools and Colleges, or the Distance Education and Training Council, or the Commission for International and Trans-regional Accreditation;

(8) Other courses offered by any school or institution if specifically approved for credit by the district; and

(9) Credit based on competency testing, in lieu of enrollment or taking specific courses, may be granted by the district.

[Statutory Authority: 2006 c 263. WSR 06-14-009, recodified as § 392-410-340, filed 6/22/06, effective 6/22/06. Statutory Authority: RCW 28A.230.090. WSR 05-23-058, § 180-51-110, filed 11/10/05, effective 12/11/05; WSR 00-19-108, § 180-51-110, filed 9/20/00, effective 10/21/00. Statutory Authority: RCW 28A.05.060. WSR 85-12-041 (Order 12-85), § 180-51-110, filed 6/5/85. Statutory Authority: Chapter 28A.05 RCW. WSR 84-11-049 (Order 7-84), § 180-51-110, filed 5/17/84.]

WSR 23-16-105

PERMANENT RULES

HEALTH CARE AUTHORITY

[Filed July 31, 2023, 3:21 p.m., effective August 31, 2023]

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

Purpose: The Federal Consolidated Appropriations Act of 2023 amended Section 6008 of the Families First Coronavirus Response Act to change the end date of medicaid continuous coverage from the end date of the public health emergency to March 31, 2023. The agency filed an emergency rule (WSR 23-08-051) effective April 1, 2023, so that WAC 182-521-0200 conforms to federal law. This rule makes those changes permanent. The rule also includes express language regarding permanent resource exclusion for pandemic-related disaster assistance.

Citation of Rules Affected by this Order: Amending WAC 182-521-0200.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160,
Other Authority: 42 U.S.C. § 1396d note.

Adopted under notice filed as WSR 23-13-005 on June 8, 2023.

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

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

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

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

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

Date Adopted: July 31, 2023.

Wendy Barcus
Rules Coordinator

OTS-4474.3

AMENDATORY SECTION (Amending WSR 22-12-004, filed 5/19/22, effective 7/1/22)

WAC 182-521-0200 Coverage after the public health emergency (PHE) ends. (1) In response to the coronavirus (COVID-19) public health emergency (PHE) declared by the Secretary of the U.S. Department of Health and Human Services (HHS) and in response to Section 6008 of the Families First Coronavirus Response Act (Public Law 116-127), the medicaid agency:

(a) Continues your Washington apple health coverage (~~until the end of the PHE~~) unless your eligibility determination was made incorrectly, or you:

- (i) Are deceased;
- (ii) Move out-of-state;
- (iii) Request termination of your coverage; or

(iv) No longer meet citizenship or immigration requirements as described in WAC 182-503-0535.

(b) Waives and suspends the collection of premiums through the last day of the calendar quarter in which the PHE ends for:

(i) Apple health for kids with premiums (CHIP), as described in WAC 182-505-0215; and

(ii) Health care for workers with disabilities (HWD) program, as described in WAC 182-511-1250.

(c) As required by Social Security Administration guidance, excludes permanently from resources federal, state, and local pandemic-related disaster assistance that has been retained.

(d) Excludes, for the duration of the PHE and a period of 12 months after the PHE ends, any resources not permanently excluded under (c) of this subsection and which accumulated from participation that did not increase in response to Section 6008(b) of the Families First Coronavirus Response Act (FFCRA), as described in WAC 182-512-0550(24).

(2) Based on Section 5131 of the Consolidated Appropriations Act, 2023 (Public Law 117-328), effective April 1, 2023, if you receive continued apple health due to the suspension of certain eligibility rules during the PHE, the agency will, after (~~the PHE ends~~) April 1, 2023:

(a) Redetermine(~~s~~) your eligibility for ongoing coverage using the process and timelines described in WAC 182-504-0035 and (~~notifies~~) notify you as required under chapter 182-518 WAC. You may update any information needed to complete a redetermination of eligibility, as described in WAC 182-504-0035.

(i) If you are no longer eligible for apple health, or you do not respond to our renewal request notice, you will receive at least 10 calendar days' advance notice before your coverage is terminated, as described in WAC 182-518-0025.

(ii) If your modified adjusted gross income (MAGI)-based coverage ends because you did not renew it, you have 90 calendar days from the termination date to complete your renewal. If you are still eligible for apple health, your benefits will be restored without a gap in coverage.

(iii) If your coverage is terminated, you have a right to an administrative hearing, as described in chapter 182-526 WAC.

(b) Begin(~~s~~) collecting premiums for CHIP and HWD clients prospectively, beginning with the month following the quarter in which the PHE ends, based upon reported circumstances, and without collecting arrears.

(c) Resume(~~s~~) eligibility verification based on the factors described in WAC 182-503-0050.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 22-12-004, § 182-521-0200, filed 5/19/22, effective 7/1/22.]

WSR 23-16-106
PERMANENT RULES
OFFICE OF
ADMINISTRATIVE HEARINGS

[Filed July 31, 2023, 3:32 p.m., effective August 31, 2023]

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

Purpose: The amendment to the rule improves clarity and readability. The existing rule did not state how a party can request, and other persons can refer the party for, a suitable representative accommodation. The amended rule clarifies which records are confidential under the Public Records Act. Other changes improve procedural transparency. The office of administrative hearings (OAH) removed the reporting requirements that expired December 31, 2019, and some training requirements that are now in OAH policy. OAH failed to establish a network of individuals who were available to be appointed as suitable representatives and removed creation of a network in the amended rule.

Citation of Rules Affected by this Order: Amending WAC 10-24-010.

Statutory Authority for Adoption: RCW 34.12.030 and 34.12.[0]80.

Adopted under notice filed as WSR 23-08-086 on April 5, 2023.

Changes Other than Editing from Proposed to Adopted Version:

There are no substantial differences between the proposed rule and the adopted rule. The differences reflect OAH response to comments about plain language, excess verbiage, grammar, and consistent use of terms. When comments expressed confusion about language in the existing rule that OAH proposed be deleted, the adopted rule reinstated the existing language. The adopted rule clarified that as a result of a disability a self-represented party may need alternative accommodations in addition to a suitable representative accommodation.

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

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

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

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

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

Date Adopted: July 31, 2023.

Lorraine Lee
Chief Administrative Law Judge

OTS-4497.3

AMENDATORY SECTION (Amending WSR 17-17-079, filed 8/16/17, effective 1/1/18)

WAC 10-24-010 ((Accommodation-)) Representation as an accommodation for a party with disabilities. (1) Purpose. The office of admin-

istrative hearings (OAH) addresses all accommodation requests under OAH policy, the federal Americans with Disabilities Act (ADA) ((by a party to an office of administrative hearings adjudicative proceeding are handled pursuant to the office of administrative hearings' policy)), and the Washington law against discrimination (WLAD). This section ((specifically)) applies to requests and referrals for representation as ((an)) a necessary accommodation in adjudicative proceedings before ((the office of administrative hearings. The appointment of)) OAH. A suitable representative may be an appropriate ((response in those cases where the)) accommodation where a party is unable to meaningfully participate in an adjudicative proceeding as a result of a disability. ((This section is intended to ensure that all requests for accommodation are addressed in accordance with the requirements of the ADA and that any accommodation response is the minimum necessary to effectively address the needs of the party.))

(2) **Definitions.**

(a) "Disability" as used in this section is defined under 42 U.S.C. Sec. 12102. Disability does not include factors such as lack of education, lack of English proficiency, or other nondisability factors.

(b) "Suitable representative" means an individual who is ((qualified)) appointed under subsection ((11)) (12) of this section to provide the assistance needed to enable ((an otherwise unrepresented)) a self-represented party with a disability to meaningfully participate in the adjudicative proceeding.

(c) "((Agency)) ADA coordinator" is an ((administrative law judge)) employee designated by the chief administrative law judge ((to make the assessment and accommodation determinations described in subsection (3) of this section)) (ALJ).

(3) ((If, during any stage of an adjudicative proceeding, the administrative law judge or any party has a reasonable belief that an otherwise unrepresented party may be)) **Requests and referrals.**

(a) Requests. The party may request a suitable representative accommodation in the hearing request form or by contacting OAH:

- (i) By telephone;
- (ii) By fax;
- (iii) By mail;
- (iv) Using the OAH online accommodation request form;
- (v) Directly asking the ALJ.

Requests should be made in advance whenever possible.

(b) Referrals by others. Other persons, including participants to the proceeding, may inform the ADA coordinator that the party may need a suitable representative accommodation. The ADA coordinator will contact the party.

(c) Referral by administrative law judge (ALJ). If the ALJ believes that a self-represented party may be unable to meaningfully participate in the adjudicative proceeding ((because)) as a result of a disability, ((with that)) the ALJ will ask the party to consent to referral to the ADA coordinator. With the party's consent the ((administrative law judge shall refer the party to the agency ADA coordinator and delay commencing)) ALJ will delay starting or resuming the adjudicative proceeding until the accommodation request is addressed by the ADA coordinator.

(4) **Expedited process.** The ((agency)) ADA coordinator will ((expedite)) hasten the assessment and accommodation process ((to the greatest extent practicable and consistent with the party's limitations.

~~(5) All records considered in the decision whether to appoint a suitable representative shall be kept confidential and held separately from the adjudicative proceeding record.~~

~~(6) Upon a party's request for a suitable representative or referral from the administrative law judge, the agency)) as quickly as practical.~~

(5) Confidentiality. OAH keeps confidential all health information from health care providers, health plans, and other covered entities under the federal Health Insurance Portability and Accountability Act and the state Health Care Information Access and Disclosure Act in chapter 70.02 RCW. However, all other records considered or created during the accommodation process may be subject to public disclosure under the state Public Records Act in chapter 42.56 RCW. The ADA coordinator will not add records to the adjudicative proceeding record unless at the self-represented party's request.

(6) Disability determination. The ADA coordinator ~~((must))~~ will promptly review requests and referrals and determine whether the party ~~((is a person with))~~ has a disability. The ~~((agency))~~ ADA coordinator may require documentation ~~((from the party at the coordinator's discretion))~~.

(7) Meaningful participation determination. If the party ~~((is a person with))~~ has a disability, the ~~((agency))~~ ADA coordinator ~~((must))~~ will determine whether as a result of the disability the party is unable to meaningfully participate in the adjudicative proceeding ~~((as a result of the disability))~~. The existing assistance of a legal guardian, near relative, or friend shall not affect the ~~((agency))~~ ADA coordinator's determination ~~((of whether the party is able to meaningfully participate in the adjudicative proceeding))~~. The ~~((agency))~~ ADA coordinator ~~((shall))~~ will consider the following:

- (a) Whether the party has a rational and factual understanding of:
- (i) The nature and object of the adjudicative proceeding;
 - (ii) The right of representation;
 - (iii) The right to present, examine, and object to evidence;
 - (iv) The right to cross-examine witnesses; and
 - (v) The right to appeal.
- (b) Whether the party has sufficient present ability to:
- (i) Exercise the rights in (a) of this subsection;
 - (ii) Make informed decisions about whether to waive the rights in (a) of this subsection;
 - (iii) Physically participate in the adjudicative proceeding;
 - (iv) Respond to any allegations, issues, arguments, and evidence presented by other parties;
 - (v) Evaluate and coherently discuss arguments and defenses;
 - (vi) Present evidence relevant to eligibility for relief;
 - (vii) Present coherent testimony based upon adequate recall; and
 - (viii) Act upon instructions and information presented by other parties and the ~~((administrative law judge))~~ ALJ.

(c) Whether the party's spouse or registered domestic partner is their co-party in the adjudicative proceeding and the co-party can meaningfully participate without a suitable representative.

(8) Accommodation determination. If the party is unable to meaningfully participate in the adjudicative proceeding as a result of a disability, the ~~((agency))~~ ADA coordinator will ~~((commence an interactive process))~~ communicate with the party to determine the types of accommodations ~~((required))~~ the party requires to allow the party to

meaningfully participate in the adjudicative proceeding (~~(, specifically)~~). The ADA coordinator will determine:

(a) Whether ~~((an))~~ alternative accommodations can adequately address the party's ~~((specific))~~ disability-related limitations; or

(b) If alternative accommodations do not adequately address the party's needs, whether a suitable representative accommodation is ((the most appropriate accommodation)) necessary. The ADA coordinator may determine that the party needs a suitable representative accommodation in addition to alternative accommodations.

(9) **Representative accommodation denial.** If the ((agency)) ADA coordinator determines ~~((that appointment of))~~ a suitable representative is not ~~((the accommodation))~~ needed, the ((agency)) ADA coordinator will inform the party in writing, or any other communication appropriate to the situation, of ~~((the denial of a suitable representative, including how to seek review of the decision under subsection (16))~~) the reasons for denial and how to seek review of the decision under subsection (17) of this section.

(10) **No cost to party.** If the ((agency)) ADA coordinator determines that appointment of a suitable representative is the necessary accommodation ~~((necessary for a party's meaningful participation in an adjudicative proceeding))~~, the ((agency)) ADA coordinator will identify an individual to assist the party at no cost to the party.

(11) **Suitable representative factors.** To identify an individual, the ((agency)) ADA coordinator will consider the needs identified in the assessment under subsection (7) of this section and any other factors, including:

(a) The party's preferences;

(b) The knowledge, skills and abilities of the individual being considered, including:

(i) Knowledge of or the ability to timely attain knowledge of the procedural rules;

(ii) Knowledge of or ability to timely attain knowledge of the substance at issue;

(iii) Experience and training in advocating for people with disabilities; and

(iv) The individual's availability to meet the timelines and duration of the particular adjudicative proceeding.

~~((c) An individual is not eligible to be appointed as a suitable representative if the individual is employed by the office of administrative hearings, or is prohibited by law from representing the party.~~

~~(d))~~ (12) **Acceptance and appointment.** After the ((agency)) ADA coordinator has identified an individual to be the party's suitable representative, the ADA coordinator will inform the party ~~((with a disability that an individual has been identified to assist as the party's suitable representative))~~. The party will show acceptance of the appointment in writing or in any other form consistent with the party's disability. The appointment of a suitable representative is made by the chief ALJ. The appointment is effective upon acceptance of the accommodation by the party with a disability.

(13) **Rejection.** The party has the right to reject the identified suitable representative. If the party disagrees with the appointment, the party will contact the ((agency)) ADA coordinator ~~((The agency))~~ to request a new representative. If the request contains new disability or suitability-related information, the ADA coordinator ~~((will evaluate the party's reconsideration request, and))~~ may consider identifying another individual to be appointed as the party's suitable

representative (~~(, if the request for reconsideration contains new disability or suitability related information.~~

~~(12) The appointment of a suitable representative is made by the chief administrative law judge. The appointment is effective upon acceptance of the accommodation by the party with a disability. The party has the right to reject the appointment of a suitable representative).~~

~~((13))~~ **(14) Notice of appearance.** Upon appointment the suitable representative will file a notice of appearance under WAC 10-08-083 or other applicable rule or law to inform all parties and representatives of record of the ~~((suitable representative's))~~ individual's name, address, and telephone number.

~~((14))~~ **(15) End of appointment.** The appointment ~~((under this section))~~ ends automatically when the time expires to file a petition for review of the ~~((administrative law judge's))~~ ALJ's initial or final order ~~((, unless earlier terminated by the party or the suitable representative)).~~ Alternatively, the party or the suitable representative may end the appointment at any stage. The suitable representative will file a notice of withdrawal under WAC 10-08-083 or other applicable rule or law if the appointment ~~((is terminated))~~ ends prior to the deadline for the petition for review.

~~((15) In the event)~~ **(16) In case of remand.** If a higher authority remands the case to ~~((the office of administrative hearings, the agency))~~ OAH, the ADA coordinator will ~~((determine))~~ redetermine whether ~~((the party is able to meaningfully participate in the remanded adjudicative proceeding under subsection (7) of this section and the appropriate accommodation under subsection (8) of this section. If))~~ a suitable representative is still the ~~((most appropriate))~~ necessary accommodation ~~((, the agency)).~~ The ADA coordinator will ~~((determine))~~ verify if the individual previously appointed is available or will identify another individual to be the suitable representative. The party ~~((with a disability may state a preference for or disagree with an individual's appointment, or reject an appointment))~~ retains the right to accept or reject the identified suitable representative.

~~((16))~~ **(17) Grievance.** If the party is not satisfied with a representative accommodation decision by the ~~((agency))~~ ADA coordinator, the party may request review of the accommodation request by the chief ~~((administrative law judge))~~ ALJ, whose decision ~~((shall))~~ will be final.

~~((17) The office of administrative hearings will establish a network of individuals who are able and available to be appointed by the chief administrative law judge as suitable representatives.~~

~~(18) The chief administrative law judge will ensure that all office of administrative hearings staff receive both initial and annual training commensurate with the scope of their duties. The training selected will include specific reference to the requirements of the ADA, as amended, as well as the Washington state law against discrimination, as they relate to the issues of reasonable accommodation throughout an adjudicative proceeding, with particular regard to the process for assessing and determining accommodations necessary to ensure meaningful participation in an adjudicative proceeding.~~

~~(19))~~ **(18) ADA coordinator training.** The ~~((agency))~~ ADA coordinator will ~~((also))~~ receive specialized training ~~((initially and thereafter as necessary))~~ to assure an adequate knowledge and understanding of ~~((the requirements of))~~ adjudicative proceedings and federal and state law requirements with respect to assessing the need for reasonable accommodations. The ~~((agency))~~ ADA coordinator will make

recommendations to the chief ((administrative law judge)) ALJ regarding the necessary training for agency staff and for suitable representatives.

~~((20) Suitable representatives shall receive uniform)) (19)~~
Suitable representative training. Before serving as a suitable representative, an individual must complete qualification training, or demonstrate equivalent experience or training, as established by the chief ((administrative law judge)) ALJ.

~~((21) The chief administrative law judge or his/her designee will develop routine reports that reflect the number of requests for accommodation pursuant to this section, the result of those requests, and the costs, if any, associated with any such accommodation. Personal health information and other confidential data will be redacted from reports in order to comply with relevant privacy laws.~~

~~(22) Two years following the effective date of this section the program will be reviewed and assessed for its effectiveness. The results of this assessment will be made available on the OAH public website for inspection and will also be provided to the office of financial management and all persons or organizations who express an interest in receiving the report. The assessment will include a review of:~~

~~(a) The timeliness of the process, including the suitable representative process and the impact on the scheduling of the adjudicative proceeding;~~

~~(b) The adjudicative proceeding outcome for parties with suitable representation, including how many cases resulted in: Settlement, orders affirming or reversing agency action, or defaults;~~

~~(c) The number of suitable representation requests granted and denied;~~

~~(d) The sources of referrals to the agency ADA coordinator;~~

~~(e) The number and outcome of appeals of denials to the chief administrative law judge; and~~

~~(f) Feedback from parties, the agency ADA coordinator, persons appointed as suitable representatives, administrative law judges, and referring agency representatives on how the provisions of this section may be improved.))~~

[Statutory Authority: RCW 34.12.080, 34.05.250, and 34.12.030. WSR 17-17-079, § 10-24-010, filed 8/16/17, effective 1/1/18.]

WSR 23-16-115
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed August 1, 2023, 8:33 a.m., effective September 1, 2023]

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

Purpose: The purpose of this rule making is to address how to accommodate the worker by providing alternative pathways to having an in-person independent medical exam (IME) performed when a worker cannot access a provider in a reasonably convenient location; and to ensure mutual understanding of when telemedicine may be appropriate for IME. This rule making aligns with changes to RCW 51.36.070 under 2020's ESSB 6440 which states an IME "must be at a place reasonably convenient to the injured worker, or alternatively utilize telemedicine if the department determines telemedicine is appropriate for the examination." Under RCW 51.36.070, "reasonably convenient" means at a place where residents in the injured worker's community would normally travel to seek medical care for the same specialty as the examiner. 2020's ESSB 6440 also required the department of labor and industries (L&I) adopt rules, policies, and processes governing the use and appropriateness of telemedicine for IME. The rules ensure consistency when L&I or a self-insured employer schedules an in-person or telemedicine IME.

Citation of Rules Affected by this Order: New WAC 296-23-358 and 296-23-359.

Statutory Authority for Adoption: RCW 51.04.020, 51.04.030, 51.36.070.

Other Authority: RCW 51.32.055, 51.32.110, 51.32.112, 51.32.114, 51.32.072.

Adopted under notice filed as WSR 23-09-053 on April 18, 2023.

A final cost-benefit analysis is available by contacting Kristen Baldwin-Boe, L&I, Health Services Analysis, P.O. Box 44322, Olympia, WA 98504-4322, phone 360-902-6815, fax 360-902-4249, email Kristen.Baldwin-Boe@Lni.wa.gov.

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

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

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

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

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

Date Adopted: August 1, 2023.

Joel Sacks
Director

OTS-4399.2

NEW SECTION

WAC 296-23-358 What happens when there is no approved independent medical exam (IME) provider in the specialty needed available in a reasonably convenient location for the worker? When there is no approved examiner in the worker's community or in a reasonably convenient location for the worker, the department or self-insurer may make alternate arrangements for the examination including, but not limited to:

- (1) Considering whether a consultation might be a sufficient alternative;
- (2) Using telemedicine where appropriate;
- (3) Notifying the worker or their representative before scheduling the IME in the nearest location available. In this case:
 - (a) Travel must not exceed any travel restrictions imposed by the attending provider unless alternative methods of travel will overcome the travel limitations.
 - (b) The department or self-insured employer will assist the worker with travel accommodations when requested by the worker.
 - (c) Travel accommodations are paid by the department or self-insured employer as listed in the fee schedule.

[]

NEW SECTION

WAC 296-23-359 When is telemedicine appropriate for an independent medical exam (IME)? (1) The following exams may be conducted via telehealth:

- (a) Mental health;
 - (b) Dermatology;
 - (c) Speech when there is no documented hearing loss;
 - (d) Kidney function;
 - (e) Hematopoietic system;
 - (f) Endocrine.
- (2) The terms telehealth and telemedicine are used interchangeably and have the same requirements as in-person visits. Telemedicine may be appropriate to effectively conduct an independent medical exam when:
- (a) Face-to-face services by a qualified medical provider can be delivered through a real-time, two-way, audio video connection, and complies with all federal, state, and local rules and laws; and
 - (b) A worker is able and willing to participate in an exam via telemedicine; and
 - (c) The department or self-insured employer, and worker, have agreed a telemedicine IME is appropriate; these individuals should also agree to the location of the worker during the exam; and
 - (d) The agreement is documented in the claim file; and
 - (e) A physical or hands-on exam is not required.
- (3) Upon request of the department or self-insured employer and with the agreement of the worker, a telemedicine IME may be approved on a case-by-case basis for additional specialties not listed under subsection (1) of this section.

[]

WSR 23-16-119

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed August 1, 2023, 10:50 a.m., effective September 1, 2023]

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

Purpose: The purpose of this proposal is to combine districts within the turfgrass seed commission marketing order due to the decreasing numbers of turfgrass seed growers and handlers in the state.

Citation of Rules Affected by this Order: Amending WAC 16-545-015 and 16-545-020.

Statutory Authority for Adoption: RCW 15.65.047.

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 23-09-076 on April 19, 2023.

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

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

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

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

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

Date Adopted: August 1, 2023.

Derek I. Sandison
Director

OTS-4465.1

AMENDATORY SECTION (Amending WSR 16-19-046, filed 9/15/16, effective 10/16/16)

WAC 16-545-015 Turfgrass seed districts. (1) District 1 consists of Asotin, Chelan, Columbia, Douglas, Ferry, Garfield, Okanogan, Pend Oreille, Spokane, ~~((and)) Stevens, Walla Walla, and Whitman~~ counties.

(2) District 2 consists ~~((of Asotin, Columbia, Garfield, Walla Walla, and Whitman counties.~~

~~(3) District 3 consists))~~ of Adams, Benton, Franklin, Grant, ~~((and)) Kittitas, Klickitat, Lincoln, and Yakima~~ counties.

~~((4) District 4 consists of Benton, Kittitas, Klickitat, and Yakima counties.))~~

[Statutory Authority: RCW 15.65.047, 15.65.050, and chapter 34.05 RCW. WSR 16-19-046, § 16-545-015, filed 9/15/16, effective 10/16/16. Statutory Authority: RCW 15.65.050. WSR 99-02-064, § 16-545-015, filed 1/6/99, effective 2/6/99.]

AMENDATORY SECTION (Amending WSR 18-13-015, filed 6/7/18, effective 7/8/18)

WAC 16-545-020 Turfgrass seed board. (1) **Administration.** The provisions of this order and the applicable provisions of the act is administered and enforced by the board as the designee of the director.

(2) **Board membership.**

(a) The board consists of seven voting members numbered positions one through seven.

(b) Except as otherwise provided by this chapter, each district has ~~((one board member in positions one through four representing each of the numbered districts))~~ the following positions represented:

District 1 - Positions one and two.

District 2 - Positions three and four.

(c) Position five represents the district with the highest reported value of production of turfgrass seed the previous three years.

(d) Position six is a handler appointed by the appointed or elected producer members of the board.

(e) Position seven represents and is appointed by the director.

(3) **Board membership qualifications.**

(a) Positions one through five.

(i) Except as otherwise provided by this chapter, board members in positions one through five must be practical producers of turfgrass seed in the district in and for which they are nominated, appointed, or elected and each shall be a citizen and resident of the state, over the age of eighteen years. Each producer board member must be and have been actually engaged in producing turfgrass seed within the state of Washington for a period of three years and has during that time derived a substantial portion of his or her income therefrom and who is not engaged in business as a handler or other dealer.

(ii) If any district has fewer than three practical producers of turfgrass seed or if no nominations are made for a district, that district's position is deemed "at large" for that term of office and may be filled by a producer of turfgrass seed in another district who meets all membership qualifications. This provision does not apply to position five.

(b) The board member in position six must be a practical handler of turfgrass seed and must be a citizen and resident of the state, over the age of eighteen years. The handler board member must be and have been, either individually or as an officer or an employee of a corporation, firm, partnership, association or cooperative actually engaged in handling turfgrass seed within the state of Washington for a period of five years and has during that period derived a substantial portion of his or her income therefrom.

(c) The board member in position seven must be neither a producer nor a handler.

(d) The qualifications of members of the board must continue during their term of office.

(4) **Term of office.** The term of office for members of the board is three years. One-third of the membership as nearly as possible must be appointed or elected each year.

(5) **Nomination of elected or director-appointed board members.**

(a) Each year the director shall call a nomination meeting for elected and/or director-appointed producer board members in those districts whose board members term is about to expire. The meeting(s)

must be held at least thirty days in advance of the date set by the director for the election or advisory vote of board members.

(b) Notice of a nomination meeting must be published in a newspaper of general circulation within the affected district at least ten days in advance of the date of the meeting and in addition, written notice of every meeting must be given to all affected producers within the affected district according to the list maintained by the board pursuant to RCW 15.65.295.

(c) Nonreceipt of notice by any interested person will not invalidate the proceedings at the nomination meeting.

(d) Any qualified affected producer may be nominated orally for membership on the board at the nomination meetings. Nominations may also be made within five days after the meeting by written petition filed with the director, signed by at least five affected producers.

(e) When only one nominee is nominated by the affected producers for an elected and/or director-appointed position, RCW 15.65.250 shall apply.

(f) If the board moves and the director approves that the nomination meeting procedure be deleted, the director shall give notice of the open board position(s) by mail to all affected producers. Nominating petitions for producers must be signed by at least five affected producers of the district from which the candidate will be appointed or elected. The final date for filing nominations must be at least twenty days after the notice was mailed.

(6) Election or advisory vote of board members.

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

(b) Elected members of the board must be elected by a majority of the votes cast by the affected producers within the affected district. If a nominee does not receive a majority of the votes on the first ballot a runoff election must be held by mail in a similar manner between the two candidates for the position receiving the largest number of votes.

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

(d) Notice of every election or advisory vote for board membership must be published in a newspaper of general circulation within the affected district at least ten days in advance of the date of the election or advisory vote. At least ten days before every election or advisory vote for board membership, the director shall mail a ballot of the candidates to each affected producer entitled to vote whose name appears upon the list of the affected producers maintained by the board pursuant to RCW 15.65.295. Any other affected producer entitled to vote may obtain a ballot by application to the director upon establishing their qualifications.

(e) Nonreceipt of a ballot by an affected producer will not invalidate the election or advisory vote of any board member.

(7) Vacancies.

(a) In the event of a vacancy on the board in an elected or commission-appointed position, the remaining members shall select a

qualified person to fill the unexpired term. The appointment shall be made at the board's first or second meeting after the position becomes vacant.

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

(8) **Quorum.** A majority of the members is a quorum for the transaction of all business and to execute the duties of the board.

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

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

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

(b) To elect a chairman and other officers as the board deems advisable.

(c) To employ and discharge at its discretion the personnel, including attorneys engaged in the private practice of law subject to the approval and supervision of the attorney general, as the board determines are necessary and proper to execute the purpose of the order and effectuate the declared policies of the act.

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

(e) To reimburse any applicant who has deposited money with the director to defray the costs of formulating the order.

(f) To establish a "turfgrass seed board marketing revolving fund" and to deposit the fund in a bank or banks or financial institution or institutions, approved for the deposit of state funds, in which all money received by the board, except as the amount of petty cash for each day's needs, not to exceed one hundred dollars, shall be deposited each day or as often during the day as advisable.

(g) To keep or cause to be kept in accordance with accepted standards of good accounting practice accurate records of all assessments, collections, receipts, deposits, withdrawals, disbursements, paid outs, moneys and other financial transactions made and done under this order. The records, books and accounts must be audited at least once every five years subject to procedures and methods lawfully prescribed by the state auditor. The books and accounts must be closed as of the last day of each fiscal year of the commission. A copy of the audit shall be delivered within thirty days after completion to the governor, the director, the state auditor and the board.

(h) To require a bond of all board members and employees of the board in a position of trust in the amount the board may deem necessary. The board must pay the premium for the bond or bonds from assessments collected. The bond may not be necessary if any blanket bond covering officials or employees of the state of Washington covers any board member or employee.

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

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

(k) To adopt rules of a technical or administrative nature for the operation of the board, under chapter 34.05 RCW (Administrative Procedure Act).

(l) To execute RCW 15.65.510 covering the obtaining of information necessary to effectuate the order and the act, along with the necessary authority and procedure for obtaining the information.

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

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

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

(p) To sue or be sued.

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

(r) To enter into contracts or interagency agreements with any private or public agency, whether federal, state, or local.

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

(t) To enter into contracts or agreements for research in the production, irrigation, and transportation of turfgrass seed.

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

(v) To engage in appropriate fund-raising activities for the purpose of supporting activities authorized by this order.

(w) To participate in international, federal, state, and local hearings, meetings, and other proceedings relating to the production, irrigation, manufacture, regulation, and transportation of turfgrass seed including activities authorized under RCW 42.17.190, including the reporting of those activities to the public disclosure commission.

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

(y) To maintain a list of the names and addresses of persons who handle turfgrass seed within the affected area and data on the amount and value of the turfgrass seed handled for a minimum three-year period by each person pursuant to RCW 15.65.280.

(z) To maintain a list of names and addresses of all affected persons who produce turfgrass seed and the amount, by unit, of turf-

grass seed produced during the past three years pursuant to RCW 15.65.295.

(aa) To maintain a list of all persons who handle turfgrass seed and the amount of turfgrass seed handled by each person during the past three years pursuant to RCW 15.65.295.

(bb) To establish a foundation using commission funds as grant money for the purposes established in this marketing order.

(11) **Procedures for board.**

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

(b) The board shall hold an annual meeting, at which time an annual report will be presented. The proposed budget must be presented for discussion at the meeting. Notice of the annual meeting must be filed in accordance with chapter 42.30 RCW (Open Public Meetings Act). Notice of the annual meeting must be given at least ten days prior to the meeting by written notice to each producer and by notifying the regular news media.

(c) The board shall establish by resolution the time, place, and manner of calling special meetings of the board with twenty-four hours written notice to the members. A board member may waive in writing his or her notice of any special meeting. Notice for special meetings shall be in compliance with chapter 42.30 RCW.

[Statutory Authority: RCW 15.65.047 and chapter 34.05 RCW. WSR 18-13-015, § 16-545-020, filed 6/7/18, effective 7/8/18. Statutory Authority: RCW 15.65.047, 15.65.050, and chapter 34.05 RCW. WSR 16-19-046, § 16-545-020, filed 9/15/16, effective 10/16/16. Statutory Authority: RCW 15.65.047 and chapter 34.05 RCW. WSR 04-22-073, § 16-545-020, filed 11/1/04, effective 12/2/04. Statutory Authority: RCW 15.65.050. WSR 99-02-064, § 16-545-020, filed 1/6/99, effective 2/6/99.]

WSR 23-16-125

PERMANENT RULES

DEPARTMENT OF HEALTH

(Board of Physical Therapy)

[Filed August 1, 2023, 11:43 a.m., effective September 1, 2023]

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

Purpose: Changing English test passing scores and removing a requirement related to an accredited program for licensure as a physical therapist. The board of physical therapy (board) is adopting amendments to WAC 246-915-120 Foreign educated applicants to change the Test of English as a Foreign Language (TOEFL) minimum passing scores. Washington state's current passing score requirements were originally established based on the Federation of State Boards of Physical Therapy (FSBPT) passing score recommendation. FSBPT's minimum passing score recommendations have since been updated. To align with FSBPT's recommendation, the board is adopting this rule to lower the minimum passing score for the writing and speaking tests and raise the minimum passing score requirements for the reading and listening tests. The board is also adopting amendments to remove the requirement that an applicant's first professional degree must only be from a Commission on Accreditation in Physical Therapy Education (CAPTE) accredited program, in order to allow applicants who went on to pursue additional professional degrees in physical therapy through a CAPTE accredited program to pursue licensure outside of the foreign-educated pathway.

Citation of Rules Affected by this Order: Amending WAC 246-915-120.

Statutory Authority for Adoption: RCW 18.74.023.

Adopted under notice filed as WSR 23-08-031 on March 28, 2023.

A final cost-benefit analysis is available by contacting Allyson McIver, P.O. Box 47877, Olympia, WA 98504-7877, phone 360-236-2878, fax 360-236-2901, TTY 711, email physical.therapy@doh.wa.gov, website doh.wa.gov.

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

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

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

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

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

Date Adopted: July 29, 2023.

Kathryn Dale PT, DSc
Chair

OTS-4267.1

AMENDATORY SECTION (Amending WSR 22-10-016, filed 4/25/22, effective 5/26/22)

WAC 246-915-120 Foreign educated applicants. (1) An applicant whose (~~first~~) professional degree in physical therapy was awarded from a foreign physical therapy program that is not or was not accredited by the CAPTE shall submit:

(a) An application for review by the board;

(b) A credentials evaluation report of professional education and training prepared by a board-approved credentials evaluation agency. The report must be sent directly from the credentialing agency to the board. It is the responsibility of the applicant to pay the expenses associated with the credentials evaluation:

(i) The report must provide evidence and documentation that the applicant completed education outside a state or territory of the United States that is substantially equivalent to the education of a physical therapist who graduated from a physical therapy education program accredited by CAPTE.

(ii) To be approved as a credentialing agency, the agency must use the appropriate course work tool (CWT) adopted by the Federation of State Boards of Physical Therapy to determine substantial equivalency. The appropriate CWT means the CWT in place at the time the foreign educated physical therapist earned their first professional degree in physical therapy.

(c) Evidence of English language proficiency:

(i) Verification that English is the native language of the country of origin, and the physical therapy program employs English as the language of training; or

(ii) Verification that the applicant has achieved a score of not less than 560 on the paper Test of English as a Foreign Language (TOEFL) or a score of not less than 220 on the computer Test of English as a Foreign Language (TOEFL), a score of not less than 50 on the Test of Spoken English (TSE) and a score of not less than four and one-half on the Test of Written English (TWE); or

(iii) Verification that the applicant has achieved an overall score of not less than 89, and the following minimum scores for each category of the internet-based TOEFL (ibTOEFL) examination: Writing, (~~(24)~~) 22; speaking, (~~(26)~~) 24; reading, (~~(21)~~) 22; listening, (~~(18)~~) 21.

(d) Verification of a valid, unencumbered license or authorization to practice physical therapy in the country in which the physical therapy education was obtained;

(e) Official transcripts from the physical therapy program showing degree date;

(f) Passing scores for the Washington jurisprudence examination;

(g) Passing scores for the National Physical Therapy Examination (NPTE) as described in WAC 246-915-030; and

(h) Any additional supporting documentation as requested by the board.

(2) The applicant shall have received a grade of "C" or higher (or equivalent) in all professional education course work;

(3) The applicant may apply for the college-level education program (CLEP) and their scores may be applied toward college credit. The board will consider the conversion of CLEP scores to college credits provided by a board-approved credentialing agency;

(4) The board may allow applicants to correct general education and professional education course work deficiencies by:

(a) Completing ((board-approved)) course work pre-approved by the board. To obtain ((professional)) course work preapproval, the applicant shall submit a written request along with the course description/syllabus for the proposed course; or

(b) Obtaining a new passing education evaluation from a board-approved credentials evaluation agency after correcting deficiencies as recommended by the credentialing agency. The report must be sent directly from the credentialing agency to the board; and

(5) An applicant whose ((first)) professional degree in physical therapy was awarded from a foreign physical therapy program that is or was accredited by the CAPTE shall follow the requirements under WAC 246-915-030 and 246-915-100.

[Statutory Authority: RCW 18.74.023. WSR 22-10-016, § 246-915-120, filed 4/25/22, effective 5/26/22. Statutory Authority: RCW 18.74.023 and chapter 18.74 RCW, RCW 18.340.020. WSR 18-15-067, § 246-915-120, filed 7/17/18, effective 8/17/18. Statutory Authority: RCW 18.74.023. WSR 08-17-026, § 246-915-120, filed 8/13/08, effective 8/13/08; WSR 07-07-066, § 246-915-120, filed 3/15/07, effective 4/15/07; WSR 94-05-014 (Order 403B), § 246-915-120, filed 2/4/94, effective 3/7/94; WSR 93-04-081 (Order 328B), § 246-915-120, filed 2/1/93, effective 3/4/93; WSR 92-08-039 (Order 259B), § 246-915-120, filed 3/24/92, effective 4/24/92; WSR 91-02-011 (Order 103B), recodified as § 246-915-120, filed 12/21/90, effective 1/31/91; WSR 84-13-057 (Order PL 471), § 308-42-125, filed 6/19/84.]

WSR 23-16-135
PERMANENT RULES
GAMBLING COMMISSION

[Filed August 1, 2023, 4:03 p.m., effective September 1, 2023]

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

Purpose: The amended rule would allow the connection of more than one progressive jackpot on different card games.

Citation of Rules Affected by this Order: Amending WAC 230-15-685 Restrictions on progressive jackpots.

Statutory Authority for Adoption: RCW 9.46.070.

Adopted under notice filed as WSR 23-11-107 on May 19, 2023.

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

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 1, Repealed 0.

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

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

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

Date Adopted: August 1, 2023.

Lisa C. McLean
Legislative and Policy Manager

OTS-4601.1

AMENDATORY SECTION (Amending WSR 21-11-057, filed 5/14/21, effective 6/14/21)

WAC 230-15-685 Restrictions on progressive jackpots. House-banked card room licensees operating progressive jackpots must follow these restrictions and procedures:

(1) Progressive jackpot funds must accrue according to the rules of the game.

(2) At each gambling table, licensees must prominently post the amount of the progressive jackpot that players can win along with any associated pay tables.

(3) Licensees may establish a maximum limit on a progressive jackpot prize. If licensees establish a limit, they must make the amount equal to, or greater than, the amount of the jackpot when they imposed the limit. They must prominently post a notice of the limit at or near the game.

(4) Licensees may connect progressive jackpots. Progressive jackpots are considered "connected" when jackpot prize displays at gaming tables incrementally increase at the same time after players place jackpot wagers. Connected progressive jackpot displays must show the same prize amounts. Licensees may only connect progressive jackpots:

(a) When offered on the same card game on multiple tables within the same licensed location; or

(b) When offered on different card games on multiple tables within the same licensed location (~~(when the following requirements are met. Only one progressive jackpot may be operated on a card game at a time and the card games)~~). The card games offering the progressive jackpot(s) must have:

(i) The same probability of winning the jackpot prize; and

(ii) The same winning hand.

(5) When gambling equipment will allow a progressive jackpot between different manufacturers, the gambling equipment must be submitted for testing for interoperability in accordance with WAC 230-06-050.

[Statutory Authority: RCW 9.46.070. WSR 21-11-057, § 230-15-685, filed 5/14/21, effective 6/14/21. Statutory Authority: RCW 9.46.070 and 9.46.0282. WSR 15-21-005 (Order 715), § 230-15-685, filed 10/8/15, effective 11/8/15; WSR 13-13-060 (Order 688), § 230-15-685, filed 6/18/13, effective 7/19/13. Statutory Authority: RCW 9.46.070. WSR 07-09-033 (Order 608), § 230-15-685, filed 4/10/07, effective 1/1/08.]

WSR 23-16-139
PERMANENT RULES
COUNTY ROAD
ADMINISTRATION BOARD

[Filed August 2, 2023, 9:11 a.m., effective September 2, 2023]

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

Purpose: Amending chapter 136-03 WAC to make changes to the public records process of the agency.

Citation of Rules Affected by this Order: New WAC 136-03-045, 136-03-081 and 136-03-115; repealing WAC 136-03-060, 136-03-070, 136-03-080, 136-03-100 and 136-03-110; and amending WAC 136-03-010, 136-03-020, 136-03-030, 136-03-040, 136-03-060, and 136-03-090.

Statutory Authority for Adoption: RCW 36.78.070.

Other Authority: RCW 42.56.040.

Adopted under notice filed as WSR 23-07-093 on March 17, 2023.

Changes Other than Editing from Proposed to Adopted Version: Minor change made to WAC 136-03-040 regarding location for in-person public record requests and clarifying that requests must be submitted rather than made or sent.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 3, Amended 6, Repealed 5.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 3, Amended 6, Repealed 5.

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

Date Adopted: August 1, 2023.

Jane Wall
Executive Director

OTS-4441.3

AMENDATORY SECTION (Amending WSR 99-01-021, filed 12/7/98, effective 1/7/99)

WAC 136-03-010 Purpose and authority. The purpose of this chapter is to establish rules for compliance by the Washington county road administration board with the provisions of chapter 42.56 RCW ((42.17.250 through 42.17.340)) dealing with public records. This chapter describes the places at which, the employees from whom, and the methods whereby persons may obtain information, make submittals or requests, or obtain copies of agency decisions. Other chapters in Title 136 WAC describe the general course and method of the board's operations and the nature and requirements of all ((of)) its formal and informal procedures. For a description of the board's organization, see chapter 136-01 WAC.

[Statutory Authority: Chapter 36.79 RCW. WSR 99-01-021, § 136-03-010, filed 12/7/98, effective 1/7/99. Statutory Authority: RCW 36.78.070 and 42.17.250 through [42.17].340. WSR 92-13-037 (Order 87), § 136-03-010, filed 6/10/92, effective 7/11/92.]

AMENDATORY SECTION (Amending WSR 99-01-021, filed 12/7/98, effective 1/7/99)

WAC 136-03-020 Public records officer. The board's public records officer shall be the executive assistant to the county road administration board. The public records officer shall be officed at 2404 Chandler Court S.W., Suite 240, Olympia, Washington. The public records officer shall be responsible for:

(1) Implementation of chapter 42.56 RCW (~~(42.17.250 through 42.17.340)~~) and (~~(these rules and regulations)~~) this chapter regarding release of public records;

(2) Coordinating staff efforts of the county road administration board in this regard; and

(3) Ensuring compliance of the staff with (~~(RCW 42.17.250 through 42.17.340 and these regulations)~~) chapter 42.56 RCW and this chapter.

(~~(The public records officer shall establish and maintain the index system required by RCW 42.17.260(4).)~~)

[Statutory Authority: Chapter 36.79 RCW. WSR 99-01-021, § 136-03-020, filed 12/7/98, effective 1/7/99. Statutory Authority: RCW 36.78.070 and 42.17.250 through [42.17].340. WSR 92-13-037 (Order 87), § 136-03-020, filed 6/10/92, effective 7/11/92.]

AMENDATORY SECTION (Amending WSR 99-01-021, filed 12/7/98, effective 1/7/99)

WAC 136-03-030 Public records available. (~~(All public records of the county road administration board not exempted by RCW 42.17.310, or other statute which exempts or prohibits disclosure (see RCW 47.17.260(1)), shall be available for public inspection and copying pursuant to these rules.)~~) Public records shall be available for inspection and copying from 9:00 a.m. to noon and from 1:00 p.m. to 3:30 p.m. Monday through Friday, excluding legal holidays.

[Statutory Authority: Chapter 36.79 RCW. WSR 99-01-021, § 136-03-030, filed 12/7/98, effective 1/7/99. Statutory Authority: RCW 36.78.070 and 42.17.250 through [42.17].340. WSR 92-13-037 (Order 87), § 136-03-030, filed 6/10/92, effective 7/11/92.]

AMENDATORY SECTION (Amending WSR 99-01-021, filed 12/7/98, effective 1/7/99)

WAC 136-03-040 Requests for public records. (~~(Public records of the county road administration board shall be obtainable by persons who comply with the following procedures:~~

~~(1) A written request for public records shall be addressed to the public records officer. Such request shall include the following:~~

~~(a) The name of the person requesting the records (requestor).~~

~~(b) The calendar date on which the request was made.~~

~~(c) If the requested records are referenced in the current index maintained by the county road administration board, a reference to the requested record as it is described in such current index.~~

~~(d) If the requested records are not referenced in the current index, a statement that identifies the specific records requested.~~

~~(e) Where the requested records might be used for such a purpose, a verification that the records requested shall not be used to compile a commercial sales list.~~

~~(2) The public records officer shall inform the requestor whether and when the requested records will be available for inspection or copying at 2404 Chandler Court S.W., Suite 240, Olympia, Washington. If the requestor asks that the records be mailed to him or her, the public records officer shall do so, provided the records can be copied and sent without unreasonably disrupting the operations of the county road administration board, as provided in RCW 42.17.270.~~

~~(3) When it appears that a request for a record is made by or on behalf of a party to a lawsuit or a controversy to which the county road administration board is also a party (or when such a request is made by or on behalf of an attorney for such a party) the request shall be referred to the assistant attorney general assigned to the county road administration board for appropriate response.))~~

(1) Website records: Persons seeking public records of the county road administration board under the act are strongly encouraged to, before submitting a records request, first review the board's website at www.crab.wa.gov.

(2) Public Records Act requests: Public Records Act requests to the board must be submitted only to the public records officer in the Olympia office, in one of the following ways:

Online form: www.crab.wa.gov/

Email: publicrecords@crab.wa.gov

U.S. Mail, delivery, in-person:

County Road Administration Board

2404 Chandler Ct. S.W., Suite 240

Olympia, WA 98502

Requestors are strongly encouraged to submit requests in writing. Requestors are encouraged to use the online Public Records Act request form, which, once completed, is automatically submitted to the board's public records officer. The board accepts in-person requests at the Olympia office during normal office hours, 9:00 a.m. to noon and 1:00 p.m. to 3:30 p.m. Monday through Friday, excluding holidays and days the agency is closed. If the agency receives an oral request, the agency will reduce the request in writing and verify in writing with the requestor that it correctly memorialized the request.

Communications seeking agency records, but which are sent or provided to unauthorized staff will not be accepted as or processed as Public Records Act requests. The agency will process such communications as general informal inquiries, general correspondence, general requests for information, or discovery, as appropriate. The requestor may resubmit their request to the public records officer.

This Public Records Act request procedure provides the fullest assistance to requestors by:

(a) Establishing a uniform point of contact for all Public Records Act requests to the agency and related inquiries, consistent with the public records officer contact information published in the Washington State Register, and pursuant to RCW 42.56.580; and

(b) Enabling the agency to promptly distinguish Public Records Act requests as high volume of other daily communications to the agency on multiple topics, so as to enable appropriate responses and thereby avoid excessive interference with other essential agency functions as provided in RCW 42.56.100; and

(c) Ensuring that records requests submitted under the act are centrally reviewed during business hours by the public records officer or designee, so the agency may more efficiently assign a tracking number to the request, log it in, review it, provide an initial or other response within five business days after receipt as provided in RCW 42.56.520, and otherwise timely process the request pursuant to the act and these rules.

(3) The public records officer will oversee compliance with the act, but a designee may process the request. The public records officer or designee and the agency will provide the fullest assistance to requestors; ensure that public records are protected from damage or disorganization; and prevent fulfilling public records requests from causing excessive interference with essential functions of the agency. More information about submitting public records requests to the agency is in this chapter and on the board's website.

[Statutory Authority: Chapter 36.79 RCW. WSR 99-01-021, § 136-03-040, filed 12/7/98, effective 1/7/99. Statutory Authority: RCW 36.78.070 and 42.17.250 through [42.17].340. WSR 92-13-037 (Order 87), § 136-03-040, filed 6/10/92, effective 7/11/92.]

NEW SECTION

WAC 136-03-045 Response to public records act requests. (1)

General. The agency shall respond promptly to requests for records made under chapter 42.56 RCW, the Public Records Act. Within five business days of receiving a Public Records Act request, the agency will assign the request a tracking number and log it in. The public records officer or designee will evaluate the request according to the nature of the request, clarity, volume, and availability of requested records.

(2) **Response.** Following the initial evaluation of the request, and within five business days of receipt of the request, the public records officer or designee will do one of the following:

(a) Make the records available for inspection or copying including:

(i) If copies are available on the agency's website, provide an internet address and link on the website to specific records requested;

(ii) If copies are requested and payment of a deposit for the copies, if any, is made or other terms of payment agreed upon and satisfied, send the copies to the requestor.

(b) Acknowledge receipt of the request and provide a reasonable estimate of when records or an installment of records will be available (the public records officer or designee may revise the estimate of when records will be available).

(c) Acknowledge receipt of the request and ask the requestor to provide clarification for the request or part of a request that is unclear, to provide, to the greatest extent possible, a reasonable estimate of the time the agency will require to respond to the unclear request or unclear part of a request if it is not clarified.

(i) Such clarification may be requested and provided by telephone and memorialized in writing, or by email or letter;

(ii) If the requestor fails to respond to a request for clarification and the entire request is unclear, the agency need not respond to it. The agency will respond to those portions of a request that are clear.

(d) Deny the request.

(3) **Additional time to respond.** Additional time for the agency to respond to a request may be based upon the need to clarify the request, locate and assemble the records requested, notify third persons or agencies affected by the request, or determine whether any of the information requested is exempt and that a denial should be made as to all or a part of the request.

(4) (a) **Communication encouraged.** If the requestor has not received a response in writing or has questions or concerns regarding the records request, the requestor is encouraged to contact the public records officer.

(b) **Reasonable estimate of time or costs.** The agency will provide an estimate of the time required to respond to the request, and may provide an estimate of copying costs pursuant to a specific request seeking an estimate of cost. If the requestor believes the amount of time or estimated costs stated are not reasonable, the requestor may petition the public records officer for a formal review under WAC 136-03-090.

(5) **Third-party notice.** In the event that the requested records contain information that may affect rights of others and may be exempt from disclosure, the public records officer or designee may, prior to providing the records, give notice to such others whose rights may be affected by the disclosure under RCW 42.56.540. Such notice should be given so as to make it possible for those other persons to contact the requestor to revise their request, or, if necessary, seek an order from a court to prevent or limit the disclosure. The notice to the affected persons will include a copy of the request.

(6) **Exemptions from disclosure.** Some records are exempt from disclosure, in whole or in part. If the agency believes that a record or part of a record is exempt from disclosure and should be withheld, the public records officer or designee will state the specific exemption and provide a brief written explanation of why the record or a portion of the record is being withheld. If only a portion of a record is exempt from disclosure, but the remainder is not exempt, the public records officer or designee will redact the exempt portions, provide the nonexempt portions, and indicate to the requestor why portions of the record are being redacted.

(7) **Inspection of records.**

(a) Consistent with other demands, the agency shall provide space to inspect public records at a location designated by the agency. No member of the public may remove a document from the viewing area or disassemble or alter any document. The requestor shall indicate which documents they wish the agency to copy.

(b) The requestor must claim or review the assembled records within 30 days of the agency's notification to them that the records are available for inspection or copying. The agency will notify the

requestor in writing of this requirement and inform the requestor that they should contact the agency to make arrangements to claim or review the records. If the requestor or a representative of the requestor fails to claim or review the records within the 30 day period or make other arrangements, the agency may close the request and refile the assembled records. Multiple public records requests from the same requestor can be processed in a manner so as not to interfere with essential agency functions, including processing records requests from other requestors.

(8) **Providing copies of records.** After inspection is complete, and the requestor asks for copies of some or all of the inspected records, or where copies are otherwise requested by the requestor, the public records officer or designee shall make the requested copies or arrange for copying.

(a) Where the agency charges for copies, the requestor must pay for the copies prior to the copies being provided to the requestor.

(b) Electronic records will be provided as a link to the records on the agency's website if the records are located on the website, or in a format used by the agency and which is generally commercially available. Records will generally not be provided by email, particularly for larger records responses with multiple records, or where records may not be successfully delivered or received via the agency's or the requestor's email systems.

(9) **Providing records in installments.** When the request is for a large number of records, the public records officer or designee will provide access for inspection and copying in installments, if they reasonably determine that it would be practical to provide the records in that way. If, within 30 days, the requestor fails to inspect or pay for the entire set of records or one or more of the installments, the public records officer or designee may stop searching for or producing the remaining records and close the request.

(10) **Completion of inspection.** When the inspection of the requested records is complete and all requested copies are provided, the public records officer or designee will indicate that the agency has completed a reasonable search for the requested records and made any located nonexempt records available for inspection.

(11) **Closing withdrawn or abandoned request.** When the requestor either withdraws the request, or fails to clarify an entirely unclear request, or fails to fulfill their obligations to inspect the records, pay the deposit, pay the required fees for an installment, or make final payment for the requested copies, the public records officer or designee will close the request and, unless the agency has already indicated in previous correspondence that the request would be closed under the above circumstances, indicate to the requestor that the agency has closed the request.

(12) **Later discovered documents.** If, after the agency has informed the requestor that it has provided all available records, the agency becomes aware of additional responsive documents existing at the time of the request, it will promptly inform the requestor of the additional documents and provide them on an expedited basis.

[]

AMENDATORY SECTION (Amending WSR 99-01-021, filed 12/7/98, effective 1/7/99)

WAC 136-03-060 ((Inspection and)) Copying ((costs)) fees—Pay-ments. ((1) No fee shall be charged for inspection of public records.

~~(2) The county road administration board shall impose a reasonable charge for providing copies of public records and for the use by any person of agency equipment to copy records; such charges shall not exceed the amount necessary to reimburse the county road administration board for its actual costs incident to such copying. Actual costs shall include:~~

~~(a) The labor and overhead costs of staff associated with responding to the request;~~

~~(b) Computer and/or copying machine costs and overhead; and~~

~~(c) Paper and/or other duplicating medium costs.)~~

(1) The following copy fees and payment procedures apply to requests to the agency under chapter 42.56 RCW.

(2) Pursuant to RCW 42.56.120 (2) (b), the agency is not calculating all actual costs for copying records because to do so would be unduly burdensome for the following reasons:

(a) The agency does not have the resources to conduct a study to determine all its actual copying costs;

(b) To conduct such a study would interfere with other essential agency functions; and

(c) Through the 2017 legislative process, the public and requestors have commented on and been informed of authorized fees and costs, including for electronic records, provided in RCW 42.56.120 (2) (b) and (c), (3), and (4).

(3) The agency will charge for copies of records pursuant to the default fees in RCW 42.56.120 (2) (b) and (c). The agency will charge for customized services pursuant to RCW 42.56.120(3). Under RCW 42.56.130, the agency may charge other copying fees authorized by statutes outside of chapter 42.56 RCW. The agency may enter into an alternative fee agreement with a requestor under RCW 42.56.120(4). The charges for copying methods used by the agency are summarized in the fee schedule available on the agency's website at www.crab.wa.gov.

(4) Requestors are required to pay for copies in advance of receiving records. Fee waivers are an exception and are available for some small requests under the following conditions:

(a) It is within the discretion of the public records officer to waive copying fees when:

(i) All of the records responsive to an entire request are paper copies only and are 25 or fewer pages; or

(ii) All of the records responsive to an entire request are electronic and can be provided in a single email with attachments of a size totaling no more than the equivalent of 100 printed pages. If that email for any reason is undeliverable, records will be provided through another means of delivery, and the requestor will be charged in accordance with this rule.

(b) Fee waivers are not applicable to records provided in installments.

(5) The public records officer may require an advance deposit of 10 percent of the estimated fees when the copying fees for an installment or entire request, or customized service charge, exceeds \$25.

(6) All required fees must be paid in advance of release of the copies or an installment of copies, or in advance of when a deposit is required. The agency will notify the requestor when payment is due.

(7) Payment should be made by check or money order to the county road administration board. The agency prefers not to receive cash. For cash payments, it is within the public records officer's discretion to determine the denomination of bills and coins that will be accepted.

(8) The agency will close a request when a requestor fails by the payment date to pay in the manner prescribed for records, an installment of records, or a required deposit.

[Statutory Authority: Chapter 36.79 RCW. WSR 99-01-021, § 136-03-060, filed 12/7/98, effective 1/7/99. Statutory Authority: RCW 36.78.070 and 42.17.250 through [42.17].340. WSR 92-13-037 (Order 87), § 136-03-060, filed 6/10/92, effective 7/11/92.]

NEW SECTION

WAC 136-03-081 Exemptions. (1) The Public Records Act provides that a number of types of documents are exempt from public inspection and copying. In addition, documents are exempt from disclosure if any "other statutes" exempts or prohibits disclosure. The attorney general's office maintains a list of exemptions commonly applicable to records which can be found on the attorney general's office website www.atg.wa.gov. Requestors should view this list to be aware of some of the exemptions, some of which are outside of the Public Records Act, that restrict the availability of some records held by the agency including, but not limited to, attorney-client privilege and work product doctrine.

(2) The agency is prohibited by statute from disclosing lists of individuals for commercial purposes.

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AMENDATORY SECTION (Amending WSR 99-01-021, filed 12/7/98, effective 1/7/99)

WAC 136-03-090 Review of denial of public records request, estimates of time, estimates of cost. (~~(1) Any person who objects to the denial of a request for a public record may petition the public records officer for prompt review of such decision by tendering a written request for review. The written request shall specifically refer to the written statement by the public records officer or other staff member which constituted or accompanied the denial.~~

~~(2) If the public records officer decides to affirm the denial, then the written request for review shall immediately be referred to the assistant attorney general assigned to the county road administration board. The assistant attorney general shall promptly consider the matter and either affirm or reverse such denial. In any case, the request shall be returned with a final decision within two business days following the original denial.~~

~~(3) Administrative remedies shall not be considered exhausted until the public records officer has returned the petition with a deci-~~

~~sion or until the close of the second business day following denial of inspection, whichever occurs first.))~~

~~(1) The requestor is encouraged to communicate with the public records officer or assigned designee regarding denials of public records requests, estimates of time, or estimates of costs. If the requestor remains unsatisfied, the requestor may seek formal review of the issue.~~

~~(2) Any person who objects to the agency's denial or partial denial of a request for a public record or contends an estimate of time to provide records or copying costs to provide records is not reasonable, may petition for prompt review of such decision by submitting a written request for a formal internal administrative review to the public records officer.~~

~~(3) The written request for formal review shall specifically refer to the written statement by the public records officer or designee which constituted or accompanied the denial or estimate.~~

~~(4) The request for formal review is to be directed to:~~

~~Executive Director
County Road Administration Board
2404 Chandler Ct. S.W., Suite 204
Olympia, WA 98502~~

~~(5) After receiving a written request for formal review of a decision denying a public record or estimate, the public records officer or designee denying the request shall refer it to the executive director. The agency will, within two business days following receipt of written request, respond with an estimate of time to consider the matter. Following such review, the executive director will either affirm, reverse, or amend the denial or estimate.~~

~~(6) For purposes of WAC 136-03-115, the agency shall have concluded a public record is exempt from disclosure only after the review conducted under this section has been completed.~~

[Statutory Authority: Chapter 36.79 RCW. WSR 99-01-021, § 136-03-090, filed 12/7/98, effective 1/7/99. Statutory Authority: RCW 36.78.070 and 42.17.250 through [42.17].340. WSR 92-13-037 (Order 87), § 136-03-090, filed 6/10/92, effective 7/11/92.]

NEW SECTION

WAC 136-03-115 Requests for review. A person may request that the attorney general's office conduct a review pursuant to RCW 42.56.530 of the agencies denial of records requested. Requests for such review shall be directed to the attorney general's office in accordance with WAC 44-06-160.

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REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 136-03-050	Availability for public inspection and copying of public records—Office hours.
WAC 136-03-070	Protection of public records.
WAC 136-03-080	Denial of request.
WAC 136-03-100	Records index.
WAC 136-03-110	Availability.

WSR 23-16-142

PERMANENT RULES

DEPARTMENT OF HEALTH

(Board of Osteopathic Medicine and Surgery)

[Filed August 2, 2023, 10:07 a.m., effective September 2, 2023]

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

Purpose: Provides prescribing requirement exemptions in specific circumstances. WAC 246-853-661 Exclusions, the board of osteopathic medicine and surgery is adopting amendments to expand the types of patients who are exempt from opioid prescribing rules. The adopted language aligns with the Washington medical commission's recently adopted rules to ensure consistency and alignment with best practices.

Citation of Rules Affected by this Order: Amending WAC 246-853-661.

Statutory Authority for Adoption: RCW 18.57.005, 18.57.800, and 18.130.050.

Adopted under notice filed as WSR 23-09-063 on April 18, 2023.

A final cost-benefit analysis is available by contacting Becky McElhiney, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-4766, fax 360-236-2901, TTY 711, email osteopathic@doh.wa.gov.

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

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

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

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

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

Date Adopted: August 2, 2023.

Shannon Phipps, DO, Chair
Board of Osteopathic Medicine and Surgery

OTS-4251.1

AMENDATORY SECTION (Amending WSR 18-20-087, filed 10/1/18, effective 11/1/18)

WAC 246-853-661 Exclusions. WAC 246-853-660 through 246-853-790 do not apply to:

- (1) The treatment of patients with cancer-related pain;
- (2) The provision of palliative, hospice, or other end-of-life care;
- (3) ~~((The treatment of inpatient hospital patients. As used in this section, "inpatient" means a person who has been admitted to a hospital for more than twenty-four hours; or~~
- ~~(4))~~ The provision of procedural premedications;

(4) The treatment of patients who have been admitted to any of the following facilities for more than 24 hours:

(a) Acute care hospitals licensed under chapter 70.41 RCW;

(b) Psychiatric hospitals licensed under chapter 71.12 RCW;

(c) Nursing homes licensed under chapter 18.51 RCW and nursing facilities as defined in WAC 388-97-0001;

(d) Long-term acute care hospitals as defined in RCW 74.60.010;

or

(e) Residential treatment facilities as defined in RCW 71.12.455;

or

(5) The treatment of patients in residential habilitation centers as defined in WAC 388-825-089 when the patient has been transferred directly from a facility listed in subsection (4) of this section.

[Statutory Authority: RCW 18.57.800, 18.57A.800 and 2017 c 297. WSR 18-20-087, § 246-853-661, filed 10/1/18, effective 11/1/18. Statutory Authority: RCW 18.57.285, 18.57A.090, 18.57.005, 18.57A.020. WSR 11-10-062, § 246-853-661, filed 5/2/11, effective 7/1/11.]

WSR 23-16-143

PERMANENT RULES

DEPARTMENT OF HEALTH

(Board of Denturists)

[Filed August 2, 2023, 10:15 a.m., effective September 2, 2023]

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

Purpose: Health equity continuing competency training for denturists. RCW 43.70.613 (3)(b) directed the rule-making authority for each health profession licensed under Title 18 RCW that is subject to continuing education (CE) to adopt rules requiring a licensee to complete health equity CE training at least once every four years. The statute also directed the department of health (department) to create model rules establishing the minimum standards for health equity CE programs. The department filed model rules for health equity CE minimum standards on November 23, 2022, under WSR 22-23-167. Any rules developed by the board of denturists (board) must meet or exceed the minimum standards in the model rules in WAC 246-12-800 through 246-12-830.

The board is adopting new WAC 246-817-159001 to implement ESSB 5229 (chapter 276, Laws of 2021). The board is adopting the health equity model rules, WAC 246-12-800 through 246-12-830, for denturists to comply with RCW 43.70.613. The adopted rule adds two hours of health equity education, as required in the model rules, to be completed as part of the current continuing competency requirements every four years.

The adopted rule does not change the total CE hours but requires two hours in health equity CE every four years which is absorbed into the existing number of CE hours required. The health equity CE requirement is counted under existing, unspecified CE requirements for the profession.

Citation of Rules Affected by this Order: New WAC 246-812-159001.

Statutory Authority for Adoption: RCW 18.30.065, 43.70.040, 43.70.613, 18.130.040.

Adopted under notice filed as WSR 23-10-071 on May 2, 2023.

A final cost-benefit analysis is available by contacting Vicki Brown, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-4865, fax 360-236-2901, TTY 711, email vicki.brown@doh.wa.gov, website www.doh.wa.gov.

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

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

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

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

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

Date Adopted: June 16, 2023.

Joshua Brooks, Chair
Board of Denturists

OTS-4341.3

NEW SECTION

WAC 246-812-159001 Denturist health equity continuing competency training requirements. (1) A licensed denturist must complete two hours in health equity continuing competency training every four years as described in WAC 246-12-800 through 246-12-830.

(2) The two hours of health equity continuing competency a licensed denturist completes counts toward meeting the applicable continuing competency requirements under WAC 246-812-159.

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WSR 23-16-149

PERMANENT RULES

DEPARTMENT OF HEALTH

[Filed August 2, 2023, 10:39 a.m., effective September 2, 2023]

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

Purpose: Chapter 246-770 WAC, Fruit and vegetable incentives. The department of health (department) created a new chapter to implement a fruit and vegetable incentives program. The new rules establish the criteria for food retailers, farmers' markets, and farm stands to participate in the fruit and vegetables incentives program, as well as the eligibility criteria for consumers to receive and use fruit and vegetable incentives.

Citation of Rules Affected by this Order: New [chapter 246-770 WAC].

Statutory Authority for Adoption: RCW 43.70.780.

Adopted under notice filed as WSR 23-07-125 on March 21, 2023.

A final cost-benefit analysis is available by contacting Alyssa Auvinen, P.O. Box 47830, Olympia, WA 98540-7830, phone 360-999-8967, email alyssa.auvinen@doh.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 6, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: August 2, 2023.

Kristin Peterson, JD
Chief of Policy
for Umair A. Shah, MD, MPH
Secretary

OTS-3301.5

**Chapter 246-770 WAC
FRUIT AND VEGETABLE INCENTIVES PROGRAM**

NEW SECTION

WAC 246-770-010 Fruit and vegetable incentives program—Purpose.
The purpose of the fruit and vegetable incentives program is to:

- (1) Improve access and affordability to culturally relevant fruits and vegetables for individuals and families with limited financial resources;
- (2) Increase fruit and vegetable consumption and nutrition security among program participants; and
- (3) Support Washington's food systems and agriculture and promote local economic development.

[]

NEW SECTION

WAC 246-770-020 Definitions. The following definitions apply throughout this chapter unless otherwise specified:

- (1) "Authorized farm stand" means a farm stand in Washington that has met the selection criteria established by the department and has signed a contract with the department allowing participation in basic food incentives.
- (2) "Authorized farmers' market" means a farmers' market in Washington that has met the selection criteria established by the department and has signed a contract with the department allowing participation in basic food incentives.
- (3) "Authorized grocery store" means a grocery store in Washington that has met the selection criteria established by the department and has signed a contract with the department allowing participation in basic food incentives.
- (4) "Authorized health care system" means an organization whose primary intent is to deliver health care services.
- (5) "Authorized retailer" means any retail outlet that has met the selection criteria established by the department and has signed a contract with the department allowing participation in fruit and vegetable vouchers.
- (6) "Basic food incentives" includes farmers' market basic food incentives and grocery store basic food incentives.
- (7) "County with high food insecurity" means a county located within the borders of the state of Washington where the resident population experiences rates of food insecurity higher than the state average.
- (8) "Culturally relevant" means the acknowledgment and appreciation of experiences, traditions, and diverse preferences of a group of people.
- (9) "Department" means the Washington state department of health.
- (10) "Electronic benefit transfer" means the method of transferring basic food benefits from eligible participants to eligible participating retailers via a benefits card.
- (11) "Eligible fruits and vegetables" means:
 - (a) For farmers market basic food incentives, eligible fruits and vegetables means fruits, vegetables, herbs, plants, and seeds that produce food.
 - (b) For grocery store basic food incentives and fruit and vegetable vouchers, eligible fruits and vegetables means fruits and vegetables that are unprocessed or minimally processed including, but not limited to, frozen or cut products.
- (12) "Eligible participant" means:

(a) For basic food incentives, a recipient of basic food benefits, including the supplemental nutrition assistance program and the food assistance program, as authorized under Title 74 RCW;

(b) For fruit and vegetable vouchers, a person who is determined to be experiencing food insecurity by a participating health care provider.

(13) "Farmers' market basic food incentives" means incentives provided to basic food program beneficiaries at authorized farmers' markets and farm stands to improve beneficiaries' purchase of eligible fruits and vegetables.

(14) "Food insecurity" means the limited or uncertain availability of nutritionally adequate and safe foods or limited or uncertain ability to acquire acceptable foods with dignity and without resorting to emergency food supplies or other coping strategies.

(15) "Fruit and vegetable vouchers" means cash-value benefits given to patients of approved health care systems to improve patient access to eligible fruit and vegetables.

(16) "Grocery store basic food incentives" means incentives provided to basic food program beneficiaries at approved grocery stores to improve beneficiaries' ability to purchase eligible fruits and vegetables.

(17) "Health care system" includes participating health care providers, health educators, community health workers, or other health professionals who provide care to patients who experience food insecurity.

(18) "High food insecurity" means food insecurity rates higher than the state average.

(19) "Qualifying health condition" means any diet-related health condition including, but not limited to, diabetes mellitus, prediabetes, and hypertension.

(20) "Supplemental nutrition assistance program (SNAP)" means the supplemental nutrition assistance program established under the Food and Nutrition Act of 2008 (7 U.S.C. 2011 et seq.).

(21) "Trafficking" means the purchase or exchange of basic food incentives or fruit and vegetable vouchers for cash or other compensation.

[]

NEW SECTION

WAC 246-770-030 Farmers' market and farm stand basic food incentives. (1) To become authorized to offer basic food incentives, a farmers' market or farm stand must:

(a) Be in good standing with the United States Department of Agriculture as an authorized farmers' market or farm stand that can accept SNAP benefits through electronic benefit transfer;

(b) Provide documentation to the department showing United States Department of Agriculture approval to accept SNAP benefits;

(c) Apply as a farmers' market or farm stand on a form determined by the department including documentation demonstrating that the farmers' market or farm stand applicant meets the following criteria:

(i) Have a designated staff member on-site during operating hours that has completed all required basic food incentive training;

(ii) Have days and times posted for operating hours; and

(iii) Have at least one vendor selling fresh fruits and vegetables.

(d) Execute a contract with the department.

(2) The department is not required to authorize all applicants. Selection is based on available funding and community needs and preferences.

(3) An authorized farmers' market or farm stand must reapply at the end of the contract period; however, neither the department nor the participant has an obligation to renew a contract.

(4) Authorized farmers' markets and farm stands must, at a minimum:

(a) Comply with the basic food incentives requirements and the terms of their contract;

(b) Accept annual training and other technical assistance on basic food incentives requirements from department staff;

(c) Provide training to employees and volunteers on basic food incentive requirements including, but not limited to, eligible foods, distribution and redemption procedures, data tracking, evaluation requirements, and fiscal recordkeeping;

(d) Be accountable for the actions of employees and volunteers;

(e) Ensure basic food incentives are only redeemed for eligible foods;

(f) Comply with federal and state nondiscrimination laws;

(g) Ensure that participants receive the same courtesies as other customers;

(h) Promote the availability of basic food incentives with materials provided by the department;

(i) Promptly provide the department, upon request, with any information it has available regarding its participation in basic food incentives;

(j) Allow the department to share information about the farmers' market or farm stand related to basic food incentives with program partners and in public reports;

(k) Allow the department to monitor the farmers' market for compliance with basic food incentive requirements and fiscal recordkeeping;

(l) Notify the department immediately if the farmers' market's operations cease; and

(m) Comply with department instructions and guidance with respect to the program.

(5) Authorized farmers' markets or farm stands that do not comply with requirements of this chapter are subject to termination of their contract. Such noncompliance includes, but is not limited to:

(a) Violating the requirements of any applicable state or federal law;

(b) Violating any provision of the contract between the department and the authorized farmers' market or farm stand; or

(c) Accepting basic food incentives without having a signed contract with the department.

(6) Prior to contract termination, the department must consider whether the contract termination would create undue hardships to participants.

(7) Trafficking in basic food incentives in any amount will result in contract termination. Farmers' markets and farm stands should ensure basic food incentives are not trafficked among any participants.

(8) An authorized farmers' market or farm stand that has a terminated contract may reapply for reauthorization.

[]

NEW SECTION

WAC 246-770-040 Grocery store basic food incentives. (1) To become authorized to offer basic food incentives, the grocery store must:

(a) Be in good standing with the United States Department of Agriculture as an authorized grocer that can accept SNAP benefits through electronic benefit transfer;

(b) Apply as a grocery store on a form determined by the department, including documentation demonstrating that the grocery store meets the following criteria:

(i) Have a point-of-sale mechanism that allows tracking and redemption of basic food incentives, including either automated or manual tracking;

(ii) Have a designated staff member on-site during operating hours that has completed all required basic food incentive training; and

(iii) Sells fresh fruits and vegetables.

(c) Execute a contract with the department.

(2) The department is not required to authorize all applicants. Selection is based on available funding and community needs and preferences as collected by the department.

(3) An authorized grocery store must reapply at the end of the contract period; however, neither the department nor the participant has an obligation to renew a contract.

(4) The authorized grocery store must, at a minimum:

(a) Comply with the grocery store basic food incentives requirements and the terms of their contract;

(b) Accept annual training and other technical assistance on basic food incentives requirements from department staff;

(c) Provide training to employees and volunteers on basic food incentive requirements including, but not limited to, eligible foods, redemption procedures, data tracking and evaluation requirements;

(d) Be accountable for actions of employees and volunteers;

(e) Ensure basic food incentives are only redeemed for eligible foods;

(f) Comply with federal and state nondiscrimination laws;

(g) Ensure that participants receive the same courtesies as other customers;

(h) Promote the availability of basic food incentives with materials provided by the department;

(i) Promptly provide the department, upon request, with any information it has available regarding its participation in basic food incentives;

(j) Allow the department to share information about the grocery store related to basic food incentives with program partners and in public reports;

(k) Allow the department to monitor the grocery store for compliance with basic food incentive requirements and fiscal recordkeeping;

- (l) Notify the department immediately if the grocery store's operations cease; and
- (m) Comply with department instructions and guidance with respect to the program.
- (5) Authorized grocery stores that do not comply with requirements of this chapter are subject to termination of their contract. Noncompliance includes, but is not limited to:
- (a) Violating any applicable state or federal law;
 - (b) Violating any provision of the contract; or
 - (c) Accepting basic food incentives without having a signed contract with the department.
- (6) Prior to disqualification, the department must consider whether the contract termination would create undue hardships to participants.
- (7) Trafficking in basic food incentives in any amount will result in contract termination. Grocery stores should ensure basic food incentives are not trafficked among any participants.
- (8) An authorized grocery store that has a terminated contract may reapply for reauthorization.

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NEW SECTION

- WAC 246-770-050 Fruit and vegetable vouchers for health care systems.** (1) To become a health care system authorized to distribute fruit and vegetable vouchers, an applicant must:
- (a) Apply as a health care system on a form determined by the department;
 - (b) Complete all required training on fruit and vegetable voucher requirements offered by the department; and
 - (c) Receive a contract from the department signed by both the department and the applicant.
- (2) The department is not required to authorize all applicants. Priority authorization will be given to applicants that:
- (a) Routinely screen patients for food insecurity;
 - (b) Have a high percentage of patients who are medicaid clients;
 - (c) Are located in a county with a high level of food insecurity;
 - (d) Are a federally qualified health center or tribal health clinic;
 - (e) Have previously operated fruit and vegetable voucher programs; or
 - (f) Plan to distribute fruit and vegetable vouchers to people who have, or are at risk of developing, a qualifying health condition.
- (3) An authorized health care system must reapply at the end of the current contract period; however, neither the department nor the participant has an obligation to renew a contract.
- (4) The authorized health care system must, at a minimum:
- (a) Comply with the fruit and vegetable voucher requirements and the terms of their contract;
 - (b) Have at least one staff member who has completed training for fruit and vegetable vouchers;
 - (c) Accept annual training and other technical assistance on fruit and vegetable voucher requirements from department staff;
 - (d) Be accountable for the actions of employees and volunteers;

- (e) Ensure fruit and vegetable vouchers are only distributed to eligible participants;
 - (f) Consistently follow a distribution plan to assure equitable access to fruit and vegetable vouchers;
 - (g) Comply with federal and state nondiscrimination laws;
 - (h) Comply with federal laws regarding patient privacy, specifically the Health Insurance Portability and Accountability Act of 1995 and any regulations enacted to its provisions ("HIPAA Standards") and Washington state law;
 - (i) Ensure that participants receive the same courtesies as other customers;
 - (j) Promptly provide the department, upon request, with any information it has available regarding its participation in offering fruit and vegetable vouchers;
 - (k) Allow the department to share information about the health care system's participation related to fruit and vegetable vouchers with program partners and in public reports;
 - (l) Allow the department to monitor the health care system for compliance with fruit and vegetable voucher requirements;
 - (m) Notify the department immediately if the health care system's operations cease; and
 - (o) Comply with department instructions and guidance with respect to the program.
- (5) Authorized health care systems that do not comply with requirements in this chapter are subject to termination of their contract. Such noncompliance includes, but is not limited to:
- (a) Violating the provisions of the contract; or
 - (b) Distributing fruit and vegetable vouchers without having a signed contract with the department.
- (6) Prior to contract termination, the department must consider whether the disqualification would create undue hardships to participants.
- (7) Any trafficking in fruit and vegetable vouchers in any amount will result in contract termination. Health care systems should ensure fruit and vegetable vouchers are not trafficked among any of their organization's participants.
- (8) An authorized health care system that has a terminated contract may reapply for reauthorization.

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NEW SECTION

WAC 246-770-060 Fruit and vegetable vouchers for retailers. (1)

To become authorized to accept fruit and vegetable vouchers as distributed by a health care system under WAC 246-770-050, a retailer must:

- (a) Apply as a retailer on a form provided by the department including documentation that the retailer meets the following criteria:
 - (i) Have a point-of-sale mechanism that allows either automated or manual tracking and redemption of fruit and vegetable vouchers;
 - (ii) Have a designated staff member on-site during operating hours that has completed all required fruit and vegetable voucher training; and
 - (iii) Sells fresh fruits and vegetables.

(b) Complete all required trainings on fruit and vegetable vouchers requirements offered by the department; and

(c) Execute a contract with the department.

(2) The department is not required to authorize all applicants. Selection is based on available funding and community need and preferences.

(3) An authorized retailer must reapply at the end of the contract period; however, neither the department nor the participant has an obligation to renew a contract.

(4) An authorized retailer must, at a minimum:

(a) Comply with the fruit and vegetable voucher requirements and the terms of their contract;

(b) Accept annual training and other technical assistance on fruit and vegetable voucher requirements from department staff;

(c) Provide training to employees and volunteers on fruit and vegetable vouchers requirements including, but not limited to, eligible foods, redemption procedures, data tracking and evaluation requirements;

(d) Be accountable for the actions of employees and volunteers;

(e) Ensure fruit and vegetable vouchers are redeemed only once;

(f) Comply with federal and state nondiscrimination laws;

(g) Ensure that participants receive the same courtesies as other customers;

(h) Promptly provide the department, upon request, with any information it has available regarding its participation in accepting fruit and vegetable vouchers;

(i) Allow the department to share information about the retailer related to fruit and vegetable vouchers with program partners and in public reports;

(j) Allow the department to monitor the retailer for compliance with fruit and vegetable voucher requirements and fiscal recordkeeping;

(k) Notify the department immediately if the retailer's operations cease; and

(l) Comply with department instructions with respect to the program.

(5) Authorized retailers that do not comply with requirements in this chapter are subject to termination of their contract. Noncompliance includes, but is not limited to:

(a) Violating the provisions of the contract; or

(b) Accepting fruit and vegetable vouchers without having a signed contract with the department.

(6) Prior to contract termination, the department must consider whether termination of a contract would create undue hardships to participants.

(7) Any trafficking in fruit and vegetable vouchers in any amount will result in termination of a contract.

(8) An authorized retailer that has a terminated contract may reapply for reauthorization.

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