WSR 24-07-008
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Aging and Long-Term Support Administration)
[Filed March 7, 2024, 7:40 a.m., effective April 7, 2024]

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

Purpose: The department of social and health services is adopting rules to identify the requirements in place during the COVID-19 pandemic in Washington state. The purpose of the rule change is to ensure consistent implementation and enforcement of rule requirements in effect during the COVID-19 pandemic in Washington state.

Citation of Rules Affected by this Order: New WAC 388-97-03001, 388-97-10001, 388-97-10201, 388-97-12601, 388-97-13801, 388-97-15801, 388-97-17401, 388-97-17601 and 388-97-24001; and amending WAC 388-97-0300, 388-97-0920, 388-97-1000, 388-97-1020, 388-97-1260, 388-97-1380, 388-97-1580, 388-97-1740, 388-97-1760, and 388-97-2400.

Statutory Authority for Adoption: RCW 74.42.620.

Other Authority: Chapter 18.51 RCW.

Adopted under notice filed as WSR 23-06-063 and 24-01-015 on February 28, 2023, and December 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Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 9, Amended 10, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 9, Amended 10, Repealed 0.

Date Adopted: March 6, 2024.

Katherine I. Vasquez
Rules Coordinator

SHS-4968.2

AMENDATORY SECTION (Amending WSR 14-12-040, filed 5/29/14, effective 6/29/14)

WAC 388-97-0300 Notice of rights and services. The department amended or suspended portions of this section from May 15, 2020, through May 7, 2022, in response to the state of emergency related to the COVID-19 pandemic. For requirements in place during that time, see WAC 388-97-03001.

(1) The nursing home must provide the resident, before admission, or at the time of admission in the case of an emergency, and as changes occur during the resident's stay, both orally and in writing

and in language and words that the resident understands, with the following information:

(a) All rules and regulations governing resident conduct, resident's rights and responsibilities during the stay in the nursing home;

(b) Advanced directives, and of any nursing home policy or practice that might conflict with the resident's advance directive if made;

(c) Advance notice of transfer requirements, consistent with RCW 70.129.110;

(d) Advance notice of deposits and refunds, consistent with RCW 70.129.150; and

(e) Items, services and activities available in the nursing home and of charges for those services, including any charges for services not covered under medicare or medicaid or by the home's per diem rate.

(2) The resident has the right:

(a) Upon an oral or written request, to access all records pertaining to the resident including clinical records within ((~~twenty-four~~)) 24 hours; and

(b) After receipt of ((~~his or her~~)) their records for inspection, to purchase at a cost not to exceed ((~~twenty-five~~)) 25 cents a page, photocopies of the records or any portions of them upon request and two working days advance notice to the nursing home. For the purposes of this chapter, **"working days"** means Monday through Friday, except for legal holidays.

(3) The resident has the right to:

(a) Be fully informed in words and language that ((~~he or she~~)) they can understand of ((~~his or her~~)) their total health status, including, but not limited to, ((~~his or her~~)) their medical condition;

(b) Accept or refuse treatment; and

(c) Refuse to participate in experimental research.

(4) The nursing home must inform each resident:

(a) Who is entitled to medicaid benefits, in writing, prior to the time of admission to the nursing facility or, when the resident becomes eligible for medicaid of the items, services and activities:

(i) That are included in nursing facility services under the medicaid state plan and for which the resident may not be charged; and

(ii) That the nursing home offers and for which the resident may be charged, and the amount of charges for those services.

(b) That deposits, admission fees, and prepayment of charges cannot be solicited or accepted from medicare or medicaid eligible residents; and

(c) That minimum stay requirements cannot be imposed on medicare or medicaid eligible residents.

(5) The nursing home must, except for emergencies, inform each resident in writing, ((~~thirty~~)) 30 days in advance before changes are made to the availability or charges for items, services, or activities specified in section (4)(a)(i) and (ii) of this section, or before changes to the nursing home rules.

(6) The private pay resident has the right to the following, regarding fee disclosure-deposits:

(a) Prior to admission, a nursing home that requires payment of an admission fee, deposit, or a minimum stay fee, by or on behalf of an individual seeking admission to the nursing home, must provide the individual:

(i) Full disclosure in writing in a language the potential resident or ((~~his or her~~)) their representative understands:

(A) Of the nursing home's schedule of charges for items, services, and activities provided by the nursing home; and

(B) Of what portion of the deposits, admissions fees, prepaid charges, or minimum stay fee will be refunded to the resident if the resident leaves the nursing home.

(ii) The amount of any admission fees, deposits, or minimum stay fees.

(iii) If the nursing home does not provide these disclosures, the nursing home must not keep deposits, admission fees, prepaid charges, or minimum stay fees.

(b) If a resident dies or is hospitalized or is transferred and does not return to the nursing home, the nursing home:

(i) Must refund any deposit or charges already paid, less the home's per diem rate, for the days the resident actually resided or reserved or retained a bed in the nursing home, regardless of any minimum stay or discharge notice requirements; except that

(ii) The nursing home may retain an additional amount to cover its reasonable, actual expenses incurred as a result of a private pay resident's move, not to exceed five days per diem charges, unless the resident has given advance notice in compliance with the admission agreement.

(c) The nursing home must refund any and all refunds due the resident within ((~~thirty~~)) 30 days from the resident's date of discharge from the nursing home; and

(d) Where the nursing home requires the execution of an admission contract by or on behalf of an individual seeking admission to the nursing home, the terms of the contract must be consistent with the requirements of this section.

(7) The nursing home must furnish a written description of legal rights which includes:

(a) A description of the manner of protecting personal funds, under WAC 388-97-0340;

(b) In the case of a nursing facility only, a description of the requirements and procedures for establishing eligibility for medicaid, including the right to request an assessment which determines the extent of a couple's nonexempt resources at the time of institutionalization and attributes to the community spouse an equitable share of resources which cannot be considered available for payment toward the cost of the institutionalized spouse's medical care in ((~~his or her~~)) their process of spending down to medicaid eligibility levels;

(c) A posting of names, addresses, and telephone numbers of all relevant state client advocacy groups such as the state survey and certification agency, the state licensure office, the state ombuds program, the protection and advocacy network, and the medicaid fraud control unit; and

(d) A statement that the resident may file a complaint with the state survey and certification agency concerning resident abandonment, abuse, neglect, financial exploitation, and misappropriation of resident property in the nursing home.

(8) The nursing home must:

(a) Inform each resident of the name, and specialty of the physician responsible for ((~~his or her~~)) their care; and

(b) Provide a way for each resident to contact ((~~his or her~~)) their physician.

(9) The skilled nursing facility and nursing facility must prominently display in the facility written information, and provide to residents and individuals applying for admission oral and written in-

formation, about how to apply for and use medicare and medicaid benefits, and how to receive refunds for previous payments covered by such benefits.

(10) The written information provided by the nursing home pursuant to this section, and the terms of any admission contract executed between the nursing home and an individual seeking admission to the nursing home, must be consistent with the requirements of chapters 74.42 and 18.51 RCW and, in addition, for facilities certified under medicare or medicaid, with the applicable federal requirements.

NEW SECTION

WAC 388-97-03001 Notice of rights and services—Requirements in effect May 15, 2020, through May 7, 2022, in response to the state of emergency related to the COVID-19 pandemic. In response to the state of emergency related to the COVID-19 pandemic, the department adopted emergency rules under RCW 34.05.350 on May 15, 2020, to amend and suspend portions of WAC 388-97-0300. The emergency rules remained in effect until May 7, 2022. The following rule was in effect during that time:

(1) The nursing home must provide the resident, before admission, or at the time of admission in the case of an emergency, and as changes occur during the resident's stay, both orally and in writing and in language and words that the resident understands, with the following information:

(a) All rules and regulations governing resident conduct, resident's rights and responsibilities during the stay in the nursing home;

(b) Advanced directives, and of any nursing home policy or practice that might conflict with the resident's advance directive if made;

(c) Advance notice of transfer requirements, consistent with RCW 70.129.110;

(d) Advance notice of deposits and refunds, consistent with RCW 70.129.150; and

(e) Items, services, and activities available in the nursing home and of charges for those services, including any charges for services not covered under medicare or medicaid or by the home's per diem rate.

(2) The resident has the right to purchase at a cost not to exceed 25 cents a page, photocopies of the records or any portions of them upon request and 10 working days advance notice to the nursing home. For the purposes of this chapter, "working days" means Monday through Friday, except for legal holidays.

(3) The resident has the right to:

(a) Be fully informed in words and language that he or she can understand of his or her total health status, including, but not limited to, his or her medical condition;

(b) Accept or refuse treatment; and

(c) Refuse to participate in experimental research.

(4) The nursing home must inform each resident:

(a) Who is entitled to medicaid benefits, in writing, prior to the time of admission to the nursing facility or, when the resident becomes eligible for medicaid of the items, services, and activities:

(i) That are included in nursing facility services under the medicaid state plan and for which the resident may not be charged; and

(ii) That the nursing home offers and for which the resident may be charged, and the amount of charges for those services.

(b) That deposits, admission fees, and prepayment of charges cannot be solicited or accepted from medicare or medicaid eligible residents; and

(c) That minimum stay requirements cannot be imposed on medicare or medicaid eligible residents.

(5) The nursing home must, except for emergencies, inform each resident in writing, 30 days in advance before changes are made to the availability or charges for items, services, or activities specified in section (4)(a)(i) and (ii) of this section, or before changes to the nursing home rules.

(6) The private pay resident has the right to the following, regarding fee disclosure-deposits:

(a) Prior to admission, a nursing home that requires payment of an admission fee, deposit, or a minimum stay fee, by or on behalf of an individual seeking admission to the nursing home, must provide the individual:

(i) Full disclosure in writing in a language the potential resident or his or her representative understands:

(A) Of the nursing home's schedule of charges for items, services, and activities provided by the nursing home; and

(B) Of what portion of the deposits, admissions fees, prepaid charges, or minimum stay fee will be refunded to the resident if the resident leaves the nursing home.

(ii) The amount of any admission fees, deposits, or minimum stay fees.

(iii) If the nursing home does not provide these disclosures, the nursing home must not keep deposits, admission fees, prepaid charges, or minimum stay fees.

(b) If a resident dies or is hospitalized or is transferred and does not return to the nursing home, the nursing home:

(i) Must refund any deposit or charges already paid, less the home's per diem rate, for the days the resident actually resided or reserved or retained a bed in the nursing home, regardless of any minimum stay or discharge notice requirements; except that

(ii) The nursing home may retain an additional amount to cover its reasonable, actual expenses incurred as a result of a private pay resident's move, not to exceed five days per diem charges, unless the resident has given advance notice in compliance with the admission agreement.

(c) The nursing home must refund any and all refunds due the resident within 30 days from the resident's date of discharge from the nursing home; and

(d) Where the nursing home requires the execution of an admission contract by or on behalf of an individual seeking admission to the nursing home, the terms of the contract must be consistent with the requirements of this section.

(7) The nursing home must furnish a written description of legal rights which includes:

(a) A description of the manner of protecting personal funds, under WAC 388-97-0340;

(b) In the case of a nursing facility only, a description of the requirements and procedures for establishing eligibility for medicaid, including the right to request an assessment which determines the ex-

tent of a couple's nonexempt resources at the time of institutionalization and attributes to the community spouse an equitable share of resources which cannot be considered available for payment toward the cost of the institutionalized spouse's medical care in his or her process of spending down to medicaid eligibility levels;

(c) A posting of names, addresses, and telephone numbers of all relevant state client advocacy groups such as the state survey and certification agency, the state licensure office, the state ombuds program, the protection and advocacy network, and the medicaid fraud control unit; and

(d) A statement that the resident may file a complaint with the state survey and certification agency concerning resident abandonment, abuse, neglect, financial exploitation, and misappropriation of resident property in the nursing home.

(8) The nursing home must:

(a) Inform each resident of the name, and specialty of the physician responsible for his or her care; and

(b) Provide a way for each resident to contact his or her physician.

(9) The skilled nursing facility and nursing facility must prominently display in the facility written information, and provide to residents and individuals applying for admission oral and written information, about how to apply for and use medicare and medicaid benefits, and how to receive refunds for previous payments covered by such benefits.

(10) The written information provided by the nursing home pursuant to this section, and the terms of any admission contract executed between the nursing home and an individual seeking admission to the nursing home, must be consistent with the requirements of chapters 74.42 and 18.51 RCW and, in addition, for facilities certified under medicare or medicaid, with the applicable federal requirements.

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

WAC 388-97-0920 Participation in resident and family groups.

The department repealed this section from April 13, 2020, through May 7, 2022, in response to the state of emergency related to the COVID-19 pandemic. The requirements of this section were not in effect during that time.

(1) A resident has the right to organize and participate in resident groups in the nursing home.

(2) The nursing home must provide a resident or family group, if one exists, with private space.

(3) Staff or visitors may attend meetings only at the group's invitation.

(4) The nursing home must provide a designated staff individual responsible for providing assistance and responding to written requests that result from group meetings.

(5) When a resident or family group exists, the nursing home must listen to the views and act upon the grievances and recommendations of residents and families concerning proposed policy and operational decisions affecting resident care and life in the nursing home.

(6) A resident's family has the right to meet in the nursing home with the families of other residents in the facility.

AMENDATORY SECTION (Amending WSR 18-11-001, filed 5/2/18, effective 6/2/18)

WAC 388-97-1000 Resident assessment. The department amended or suspended portions of this section from April 13, 2020, through May 10, 2021, in response to the state of emergency related to the COVID-19 pandemic. For requirements in place during that time, see WAC 388-97-10001.

(1) The nursing home must:

(a) Provide resident care based on a systematic, comprehensive, interdisciplinary assessment, and care planning process in which the resident participates, to the fullest extent possible;

(b) Conduct initially and periodically a comprehensive, accurate, standardized, reproducible assessment of each resident's functional capacity;

(c) At the time each resident is admitted:

(i) Have physician's orders for the resident's immediate care; and

(ii) Ensure that the resident's immediate care needs are identified in an admission assessment.

(d) Ensure that the comprehensive assessment of a resident's needs describes the resident's capability to perform daily life functions and significant impairments in functional capacity.

(2) The comprehensive assessment must include at least the following information:

(a) Identification and demographic information;

(b) Customary routine;

(c) Cognitive patterns;

(d) Communication;

(e) Vision;

(f) Mood and behavior patterns;

(g) Psychosocial well-being;

(h) Physical functioning and structural problems;

(i) Continence;

(j) Disease diagnosis and health conditions;

(k) Dental and nutritional status;

(l) Skin conditions;

(m) Activity pursuit;

(n) Medications;

(o) Special treatments and procedures;

(p) Discharge potential;

(q) Documentation of summary information regarding the assessment performed; and

(r) Documentation of participation in assessment.

(3) The nursing home must conduct comprehensive assessments:

(a) No later than ((~~fourteen~~)) 14 days after the date of admission;

(b) Promptly after a significant change in the resident's physical or mental condition; and

(c) In no case less often than once every ((~~twelve~~)) 12 months.

(4) The nursing home must ensure that:

(a) Each resident is assessed no less than once every three months, and as appropriate, the resident's assessment is revised to assure the continued accuracy of the assessment; and

(b) The results of the assessment are used to develop, review, and revise the resident's comprehensive plan of care under WAC 388-97-1020.

(5) The skilled nursing facility and nursing facility must:

(a) For the required assessment, complete the state approved resident assessment instrument (RAI) for each resident in accordance with federal requirements;

(b) Maintain electronic or paper copies of completed resident assessments in the resident's active medical record for ((~~fifteen~~)) 15 months; this information must be maintained in a centralized location and be easily and readily accessible;

(c) Place the hard copies of the signature pages in the clinical record of each resident if a facility maintains their RAI data electronically and does not use electronic signatures;

(d) Assess each resident not less than every three months, using the state approved assessment instrument; and

(e) Transmit all state and federally required RAI information for each resident to the department:

(i) In a manner approved by the department;

(ii) Within ((~~fourteen~~)) 14 days of completion of any RAI assessment required under this subsection; and

(iii) Within ((~~fourteen~~)) 14 days of discharging or admitting a resident for a tracking record.

NEW SECTION

WAC 388-97-10001 Resident assessment—Requirements in effect April 13, 2020, through May 10, 2021, in response to the state of emergency related to the COVID-19 pandemic. In response to the state of emergency related to the COVID-19 pandemic, the department adopted emergency rules under RCW 34.05.350 on April 13, 2020, to amend and suspend portions of WAC 388-97-0300. The emergency rules remained in effect until May 10, 2021. The following rule was in effect during that time:

(1) The nursing home must:

(a) Provide resident care based on a systematic, comprehensive, interdisciplinary assessment, and care planning process in which the resident participates, to the fullest extent possible;

(b) Conduct initially and periodically a comprehensive, accurate, standardized, reproducible assessment of each resident's functional capacity;

(c) As soon as practicable after each resident is admitted:

(i) Have physician's orders for the resident's immediate care; and

(ii) Ensure that the resident's immediate care needs are identified in an admission assessment.

(d) Ensure that the comprehensive assessment of a resident's needs describes the resident's capability to perform daily life functions and significant impairments in functional capacity.

(2) The comprehensive assessment must include at least the following information:

(a) Identification and demographic information;

(b) Customary routine;

(c) Cognitive patterns;

(d) Communication;

(e) Vision;

(f) Mood and behavior patterns;

(g) Psychosocial well-being;
(h) Physical functioning and structural problems;
(i) Continence;
(j) Disease diagnosis and health conditions;
(k) Dental and nutritional status;
(l) Skin conditions;
(m) Activity pursuit;
(n) Medications;
(o) Special treatments and procedures;
(p) Discharge potential;
(q) Documentation of summary information regarding the assessment performed; and
(r) Documentation of participation in assessment.
(3) The nursing home must ensure that:
(a) As appropriate, the resident's assessment is revised to assure the continued accuracy of the assessment; and
(b) The results of the assessment are used to develop, review, and revise the resident's comprehensive plan of care under WAC 388-97-1020.
(4) The skilled nursing facility and nursing facility must:
(a) For the required assessment, complete the state approved resident assessment instrument (RAI) for each resident in accordance with federal requirements;
(b) Maintain electronic or paper copies of completed resident assessments in the resident's active medical record for 15 months; this information must be maintained in a centralized location and be easily and readily accessible;
(c) Place the hard copies of the signature pages in the clinical record of each resident if a facility maintains their RAI data electronically and does not use electronic signatures;
(d) Transmit all state and federally required RAI information for each resident to the department in a manner and time period approved by the department.

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

WAC 388-97-1020 Comprehensive plan of care. The department amended or suspended portions of this section from April 13, 2020, through May 10, 2021, in response to the state of emergency related to the COVID-19 pandemic. For requirements in place during that time, see WAC 388-97-10201.

(1) The nursing home must develop a comprehensive plan of care for each resident that includes measurable objectives and timetables to meet a resident's medical, nursing and mental, and psychosocial needs that are identified in the comprehensive assessment.
(2) The comprehensive plan of care must:
(a) Describe the services that are to be furnished to attain or maintain the resident's highest practicable physical, mental, and psychosocial well-being as required under WAC 388-97-1060;
(b) Describe any services that would otherwise be required, but are not provided due to the resident's exercise of rights, including the right to refuse treatment (refer to WAC 388-97-0300 and 388-97-0260);

(c) Be developed within seven days after completion of the comprehensive assessment;

(d) Be prepared by an interdisciplinary team that includes the attending physician, a registered nurse with responsibility for the resident, and other appropriate staff in disciplines as determined by the resident's needs;

(e) Consist of an ongoing process which includes a meeting if desired by the resident or the resident's representative; and

(f) Include the ongoing participation of the resident to the fullest extent possible, the resident's family, or the resident's surrogate decision maker.

(3) The nursing home must implement a plan of care to meet the immediate needs of newly admitted residents, prior to the completion of the comprehensive assessment and plan of care.

(4) The nursing home must:

(a) Follow the informed consent process with the resident as specified in WAC 388-97-0260, regarding the interdisciplinary team's plan of care recommendations;

(b) Respect the resident's right to decide plan of care goals and treatment choices, including acceptance or refusal of plan of care recommendations;

(c) Include in the interdisciplinary plan of care process:

(i) Staff members requested by the resident; and

(ii) Direct care staff who work most closely with the resident.

(d) Respect the resident's wishes regarding which individuals, if any, the resident wants to take part in resident plan of care functions;

(e) Provide reasonable advance notice to and reasonably accommodate the resident family members or other individuals the resident wishes to have attend, when scheduling plan of care meeting times; and

(f) Where for practical reasons any individuals significant to the plan of care process, including the resident, are unable to attend plan of care meetings, provide a method for such individuals to give timely input and recommendations.

(5) The nursing home must ensure that each comprehensive plan of care:

(a) Designates the discipline of the individuals responsible for carrying out the program; and

(b) Is reviewed at least quarterly by qualified staff, as part of the ongoing process of monitoring the resident's needs and preferences.

NEW SECTION

WAC 388-97-10201 Comprehensive plan of care—Requirements in effect April 13, 2020, through May 10, 2021, in response to the state of emergency related to the COVID-19 pandemic. In response to the state of emergency related to the COVID-19 pandemic, the department adopted emergency rules under RCW 34.05.350 on April 13, 2020, to amend and suspend portions of WAC 388-97-0300. The emergency rules remained in effect until May 10, 2021. The following rule was in effect during that time:

(1) The nursing home must develop a comprehensive plan of care for each resident that includes measurable objectives and timetables

to meet a resident's medical, nursing and mental, and psychosocial needs that are identified in the comprehensive assessment.

(2) The comprehensive plan of care must:

(a) Describe the services that are to be furnished to attain or maintain the resident's highest practicable physical, mental, and psychosocial well-being as required under WAC 388-97-1060;

(b) Describe any services that would otherwise be required, but are not provided due to the resident's exercise of rights, including the right to refuse treatment (refer to WAC 388-97-0300 and 388-97-0260);

(c) Be prepared by an interdisciplinary team that includes the attending physician, a registered nurse with responsibility for the resident, and other appropriate staff in disciplines as determined by the resident's needs;

(d) Consist of an ongoing process which includes a meeting if desired by the resident or the resident's representative; and

(e) Include the ongoing participation of the resident to the fullest extent possible, the resident's family, or the resident's surrogate decision maker.

(3) The nursing home must implement a plan of care to meet the immediate needs of newly admitted residents, prior to the completion of the comprehensive assessment and plan of care.

(4) The nursing home must:

(a) Follow the informed consent process with the resident as specified in WAC 388-97-0260, regarding the interdisciplinary team's plan of care recommendations;

(b) Respect the resident's right to decide plan of care goals and treatment choices, including acceptance or refusal of plan of care recommendations;

(c) Include in the interdisciplinary plan of care process:

(i) Staff members requested by the resident; and

(ii) Direct care staff who work most closely with the resident.

(d) Respect the resident's wishes regarding which individuals, if any, the resident wants to take part in the resident's plan of care functions;

(e) Provide reasonable advance notice to and reasonably accommodate the resident family members or other individuals the resident wishes to have attend, when scheduling plan of care meeting times; and

(f) Where for practical reasons any individuals significant to the plan of care process, including the resident, are unable to attend plan of care meetings, provide a method for such individuals to give timely input and recommendations.

(5) The nursing home must ensure that each comprehensive plan of care:

(a) Designates the discipline of the individuals responsible for carrying out the program; and

(b) Is reviewed at least quarterly by qualified staff, as part of the ongoing process of monitoring the resident's needs and preferences.

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

WAC 388-97-1260 Physician services. The department amended or suspended portions of this section from April 28, 2020, through May 7,

2022, in response to the state of emergency related to the COVID-19 pandemic. For requirements in place during that time, see WAC 388-97-12601.

(1) The nursing home must ensure that the resident is seen by the physician whenever necessary.

(2) Except as specified in RCW 74.42.200, a physician must personally approve in writing a recommendation that an individual be admitted to a nursing home.

(3) The nursing home must ensure that:

(a) Except as specified in RCW 74.42.200, the medical care of each resident is supervised by a physician;

(b) Another physician supervises the medical care of residents when their attending physician is unavailable; and

(c) Physician services are provided ((~~twenty-four~~)) 24 hours per day, in case of emergency.

(4) The physician must:

(a) Write, sign, and date progress notes at each visit;

(b) Sign and date all orders; and

(c) In medicare and medicare/medicaid certified facilities, review the resident's total program of care, including medications and treatments, at each federally required visit.

(5) Except as specified in subsections (6), (7), and (9) of this section, a physician may delegate tasks to a physician's assistant or advanced registered nurse practitioner who is:

(a) Licensed by the state;

(b) Acting within the scope of practice as defined by state law; and

(c) Under the supervision of the physician.

(6) The physician may not delegate a task when the delegation is prohibited under state law or by the facility's own policies.

(7) If the resident's primary payor source is medicare, the physician may:

(a) Alternate federally required physician visits between personal visits by:

(i) The physician; and

(ii) An advanced registered nurse practitioner or physician's assistant; and

(b) Not delegate responsibility for the initial required physician visit. This initial visit must occur within the first ((~~thirty~~)) 30 days of admission to the facility.

(8) If the resident's payor source is medicaid, the physician may delegate any federally required physician task, including tasks which the regulations specify must be performed personally by the physician, to a physician's assistant or advanced registered nurse practitioner who is not an employee of the facility but who is working in collaboration with a physician.

(9) If the resident's payor source is not medicare or medicaid:

(a) In the medicare only certified facility or in the medicare certified area of a medicare/medicaid facility, the physician may alternate federally required physician visits between personal visits by the physician and an advanced registered nurse practitioner or physician's assistant. The physician may not delegate responsibility for the initial required physician visit.

(b) In the medicaid only certified facility or in the medicaid certified area of a medicare/medicaid facility, the physician may delegate any federally required physician task, including tasks which the regulations specify must be performed personally by the physician, to

a physician's assistant or advanced registered nurse practitioner who is not an employee of the facility but who is working in collaboration with a physician.

(10) The following table describes the physician visit requirements related to medicare or medicaid certified area and payor type.

	Beds in medicare only certified area	Beds in medicare/medicaid certified area	Beds in medicaid only certified area
Payor source:	Initial by physician	Initial by physician	N/A
medicare	Physician may delegate alternate visits	Physician may delegate alternate visits	
Payor source:	N/A	Delegate all tasks	Delegate all tasks
medicaid		Nonemployee	Nonemployee
Payor source:	Initial by physician	Initial by physician	Delegate all tasks
Others: such as insurance, private pay, Veteran Affairs	Physician may delegate alternate visits	Physician may delegate alternate visits	Nonemployee

(11) The attending physician, or the physician-designated advanced registered nurse practitioner or physician's assistant must:

(a) Participate in the interdisciplinary plan of care process as described in WAC 388-97-1020;

(b) Provide to the resident, or where applicable the resident's surrogate decision maker, information so that the resident can make an informed consent to care or refusal of care (see WAC 388-97-0260); and

(c) Order resident self-medication when appropriate.

(12) The nursing home must obtain from the physician the following medical information before or at the time of the resident's admission:

(a) A summary or summaries of the resident's current health status, including history and physical findings reflecting a review of systems;

(b) Orders, as necessary for medications, treatments, diagnostic studies, specialized rehabilitative services, diet, and any restrictions related to physical mobility; and

(c) Plans for continuing care and discharge.

NEW SECTION

WAC 388-97-12601 Physician services—Requirements in effect April 28, 2020, through May 7, 2022, in response to the state of emergency related to the COVID-19 pandemic. In response to the state of emergency related to the COVID-19 pandemic, the department adopted emergency rules under RCW 34.05.350 on April 28, 2020, to amend and suspend portions of WAC 388-97-1260. The emergency rules remained in effect until May 7, 2022. The following rule was in effect during that time:

(1) The nursing home must ensure that the resident is seen by the physician whenever necessary.

(2) Except as specified in RCW 74.42.200, a physician must personally approve in writing a recommendation that an individual be admitted to a nursing home.

(3) The nursing home must ensure that:

(a) Except as specified in RCW 74.42.200, the medical care of each resident is supervised by a physician;

(b) Another physician supervises the medical care of residents when their attending physician is unavailable; and

(c) Physician services are provided 24 hours per day, in case of emergency.

(4) The physician must:

(a) Write, sign, and date progress notes at each visit;

(b) Sign and date all orders; and

(c) In medicare and medicare/medicaid certified facilities, review the resident's total program of care, including medications and treatments, at each federally required visit.

(5) Except as specified in subsection (6) of this section, a physician may delegate tasks, including tasks that, under state law, must be performed personally by the physician, to a physician's assistant or advanced registered nurse practitioner who is:

(a) Licensed by the state;

(b) Acting within the scope of practice as defined by state law;

(c) Under the supervision of, and working in collaboration with the physician; and

(d) Not an employee of the facility, if caring for a resident whose payor source is medicaid.

(6) The physician may not delegate a task when the delegation is prohibited under state law or by the facility's own policies.

(7) The attending physician, or the physician-designated advanced registered nurse practitioner or physician's assistant must:

(a) Participate in the interdisciplinary plan of care process as described in WAC 388-97-1020;

(b) Provide to the resident, or where applicable the resident's surrogate decision maker, information so that the resident can make an informed consent to care or refusal of care (see WAC 388-97-0260); and

(c) Order resident self-medication when appropriate.

(8) The nursing home must obtain from the physician the following medical information before or at the time of the resident's admission:

(a) A summary or summaries of the resident's current health status, including history and physical findings reflecting a review of systems;

(b) Orders, as necessary for medications, treatments, diagnostic studies, specialized rehabilitative services, diet, and any restrictions related to physical mobility; and

(c) Plans for continuing care and discharge.

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

WAC 388-97-1380 Tuberculosis—Testing required. The department amended or suspended portions of this section from January 25, 2021, through September 23, 2021, in response to the state of emergency related to the COVID-19 pandemic. For requirements in place during that time, see WAC 388-97-13801.

(1) The nursing home must develop and implement a system to ensure that facility personnel and residents have tuberculosis testing within three days of employment or admission.

(2) The nursing home must also ensure that facility personnel are tested annually.

(3) For the purposes of WAC 388-97-1360 through 388-97-1580 **"person"** means facility personnel and residents.

NEW SECTION

WAC 388-97-13801 Tuberculosis—Testing required-Requirements in effect January 25, 2021, through September 23, 2021, in response to the state of emergency related to the COVID-19 pandemic. In response to the state of emergency related to the COVID-19 pandemic, the department adopted emergency rules under RCW 34.05.350 on January 25, 2021, to amend and suspend portions of WAC 388-97-1380. The emergency rules remained in effect until September 23, 2021. The following rule was in effect during that time:

(1) Unless the nursing home decides to defer tuberculosis testing in accordance with subsection (2) of this section, or the resident or staff person is excluded from testing from WAC 388-97-1440, the nursing home must:

(a) Ensure that facility personnel and residents have tuberculosis testing within three days of employment or admission; and

(b) Ensure that facility personnel are tested annually.

(2) The nursing home may defer tuberculosis testing of facility personnel and residents to complete the COVID-19 vaccination process if the nursing home has considered the risks and benefits of such delay and if the delay is consistent with the current centers for disease control and prevention COVID-19 vaccination guidance.

(3) If testing is deferred for a resident or facility staff person, in accordance with subsection (2) of this section, the nursing home must:

(a) Assess the person for symptoms of tuberculosis within three days of employment or admission, and if the person has tuberculosis symptoms, follow WAC 388-97-1560; and

(b) Complete tuberculosis testing in accordance with WAC 388-97-1400 through 388-97-1580 as soon as indicated by the centers for disease control and prevention COVID-19 vaccination guidelines.

(4) For the purposes of WAC 388-97-1360 through 388-97-1580, **"person"** means facility personnel and residents.

AMENDATORY SECTION (Amending WSR 10-02-021, filed 12/29/09, effective 1/29/10)

WAC 388-97-1580 Tuberculosis—Test records. (1) The department amended or suspended portions of this section from January 25, 2021, through September 23, 2021, in response to the state of emergency related to the COVID-19 pandemic. For requirements in place during that time, see WAC 388-97-15801.

(2) The nursing home must:

((~~(1)~~)) (a) Keep the records of tuberculin test results, reports of X-ray findings, and any physician or public health provider orders in the nursing home;

((~~(2)~~)) (b) Make the records readily available to the appropriate health authority and licensing agency;

((~~(3)~~)) (c) Retain the records for ((~~eighteen~~)) 18 months beyond the date of employment termination; and

((~~(4)~~)) (d) Provide the person a copy of ((~~his/her~~)) their test results.

NEW SECTION

WAC 388-97-15801 Tuberculosis—Test records—Requirements in effect January 25, 2021, through September 23, 2021, in response to the state of emergency related to the COVID-19 pandemic. (1) In response to the state of emergency related to the COVID-19 pandemic, the department adopted emergency rules under RCW 34.05.350 on January 25, 2021, to amend and suspend portions of WAC 388-97-1580. The emergency rules remained in effect until September 23, 2021. The following rule was in effect during that time:

(2) The nursing home must:

(a) Keep the records of tuberculin test results, reports of X-ray findings, and any physician or public health provider orders in the nursing home;

(b) Keep the records of the tuberculosis symptom assessment and the documented rationale for deferring the tuberculosis testing in the nursing home, if tuberculosis testing is deferred in accordance with WAC 388-97-1380(2);

(c) Make the records readily available to the appropriate health authority and licensing agency;

(d) Retain the records for 18 months beyond the date of employment termination; and

(e) Provide the person a copy of their test results.

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

WAC 388-97-1740 Disaster and emergency preparedness. The department amended or suspended portions of this section from June 23, 2020, through June 7, 2022, in response to the state of emergency related to the COVID-19 pandemic. For requirements in place during that time, see WAC 388-97-17401.

(1) The nursing home must develop and implement detailed written plans and procedures to meet potential emergencies and disasters. At a minimum the nursing home must ensure these plans provide for:

(a) Fire or smoke;
(b) Severe weather;
(c) Loss of power;
(d) Earthquake;
(e) Explosion;
(f) Missing resident, elopement;
(g) Loss of normal water supply;
(h) Bomb threats;
(i) Armed individuals;
(j) Gas leak, or loss of service; and
(k) Loss of heat supply.

(2) The nursing home must train all employees in emergency procedures when they begin work in the nursing home, periodically review emergency procedures with existing staff, and carry out unannounced staff drills using those procedures.

(3) The nursing home must ensure emergency plans:

(a) Are developed and maintained with the assistance of qualified fire, safety, and other appropriate experts as necessary;

(b) Are reviewed annually; and

(c) Include evacuation routes prominently posted on each unit.

NEW SECTION

WAC 388-97-17401 Disaster and emergency preparedness—Requirements in effect June 23, 2020, through June 7, 2022, in response to the state of emergency related to the COVID-19 pandemic. In response to the state of emergency related to the COVID-19 pandemic, the department adopted emergency rules under RCW 34.05.350 on June 23, 2020, to amend and suspend portions of WAC 388-97-1740. The emergency rules remained in effect until June 7, 2022. The following rule was in effect during that time:

(1) The nursing home must develop and implement detailed written plans and procedures to meet potential emergencies and disasters. At a minimum the nursing home must ensure these plans provide for:

(a) Fire or smoke;

(b) Severe weather;

(c) Loss of power;

(d) Earthquake;

(e) Explosion;

(f) Missing resident, elopement;

(g) Loss of normal water supply;

(h) Bomb threats;

(i) Armed individuals;

(j) Gas leak, or loss of service; and

(k) Loss of heat supply.

(2) The nursing home must train all employees in emergency procedures when they begin work in the nursing home, and periodically review emergency procedures with existing staff.

(3) The nursing home must ensure emergency plans:

(a) Are developed and maintained with the assistance of qualified fire, safety, and other appropriate experts as necessary;

(b) Are reviewed annually; and

(c) Include evacuation routes prominently posted on each unit.

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

WAC 388-97-1760 Quality assessment and assurance. The department amended or suspended portions of this section from June 23, 2020, through May 7, 2022, in response to the state of emergency related to the COVID-19 pandemic. For requirements in place during that time, see WAC 388-97-17601.

(1) The nursing home must maintain a process for quality assessment and assurance. The department may not require disclosure of the records of the quality assessment and assurance committee except in so far as such disclosure is related to ensuring compliance with the requirements of this section.

(2) The nursing home must ensure the quality assessment and assurance process:

(a) Seeks out and incorporates input from the resident and family councils, if any, or individual residents and support groups; and

(b) Reviews expressed concerns and grievances.

NEW SECTION

WAC 388-97-17601 Quality assessment and assurance—Requirements in effect June 23, 2020, through May 7, 2022, in response to the state of emergency related to the COVID-19 pandemic. In response to the state of emergency related to the COVID-19 pandemic, the department adopted emergency rules under RCW 34.05.350 on June 23, 2020, to amend and suspend portions of WAC 388-97-1760. The emergency rules remained in effect until May 7, 2022. The following rule was in effect during that time:

(1) The nursing home must maintain a process for quality assessment and assurance. The department may not require disclosure of the records of the quality assessment and assurance committee except in so far as such disclosure is related to ensuring compliance with the requirements of this section.

(2) The nursing home must ensure the quality assessment and assurance process:

(a) Seeks out and incorporates input from the residents and resident representatives; and

(b) At a minimum, reviews adverse events and infection control.

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

WAC 388-97-2400 Resident rooms. The department amended or suspended portions of this section from June 23, 2020, through June 7, 2022, in response to the state of emergency related to the COVID-19 pandemic. For requirements in place during that time, see WAC 388-97-24001.

(1) The nursing home must ensure that each resident bedroom:

(a) Has direct access to a hall or corridor;

(b) Is located on an exterior wall with a transparent glass window; and

(c) Is located to prevent through traffic.

(2) **In a new building or addition,** each resident bedroom must:

(a) Have an exterior transparent glass window:

(i) With an area equal to at least ((~~one-tenth~~)) 1/10th of the bedroom usable floor area;

(ii) Located ((~~twenty-four~~)) 24 feet or more from another building or the opposite wall of a court, or ((~~ten~~)) 10 feet or more away from a property line, except on street sides;

(iii) Located eight feet or more from any exterior walkway, paved surface, or driveway; and

(iv) With a sill three feet or less above the floor.

(b) Be located on a floor level at or above grade level except for earth berms. "Grade" means the level of ground adjacent to the building floor level measured at the required exterior window. The ground must be level or slope downward for a distance of at least ((~~ten~~)) 10 feet from the wall of the building. From there the ground may slope upward to the maximum sill height of the required window at a rate of one foot vertical for two feet horizontal.

NEW SECTION

WAC 388-97-24001 Resident rooms—Requirements in effect June 23, 2020, through June 7, 2022, in response to the state of emergency related to the COVID-19 pandemic. In response to the state of emergency related to the COVID-19 pandemic, the department adopted emergency rules under RCW 34.05.350 on June 23, 2020, to amend and suspend portions of WAC 388-97-2400. The emergency rules remained in effect until June 7, 2022. The following rule was in effect during that time:

(1) The nursing home must ensure that each resident bedroom:

(a) Has direct access to a hall or corridor; and

(b) Is located to prevent through traffic.

(2) In a new building or addition, unless otherwise necessary for infection control, each resident bedroom must:

(a) Have an exterior transparent glass window:

(i) With an area equal to at least 1/10th of the bedroom usable floor area;

(ii) Located 24 feet or more from another building or the opposite wall of a court, or 10 feet or more away from a property line, except on street sides;

(iii) Located eight feet or more from any exterior walkway, paved surface, or driveway; and

(iv) With a sill three feet or less above the floor.

(b) Be located on a floor level at or above grade level except for earth berms. "Grade" means the level of ground adjacent to the building floor level measured at the required exterior window. The ground must be level or slope downward for a distance of at least 10 feet from the wall of the building. From there the ground may slope upward to the maximum sill height of the required window at a rate of one foot vertical for two feet horizontal.

WSR 24-08-004
PERMANENT RULES
WASHINGTON STATE PATROL
[Filed March 21, 2024, 7:59 a.m., effective April 21, 2024]

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

Purpose: Changes to WAC 212-80-073, 212-80-205, 212-80-210, and 212-80-215 are needed to coincide with legislative changes to chapter 18.160 RCW that amended changes to the licensing fees and the enforcement and fines for a contractor who commits an infraction, which will become effective January 1, 2024. Changes within WAC 212-80-205 provide clarity.

Citation of Rules Affected by this Order: Amending WAC 212-80-073, 212-80-205, 212-80-210, and 212-80-215.

Statutory Authority for Adoption: RCW 18.160.030.

Adopted under notice filed as WSR 24-04-048 on January 31, 2024.

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 9, 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: March 21, 2024.

John R. Batiste
Chief

OTS-5154.1

AMENDATORY SECTION (Amending WSR 22-22-072, filed 10/31/22, effective 1/1/23)

WAC 212-80-073 Fire protection sprinkler system contractor license fees. (1) **Initial application fee** is $100 only charged once when a person makes the initial application for any fire protection sprinkler system contractor license.

(2) **Annual license fee** is paid by the contractor when:

(a) Submitting the application for a license; or

(b) Renewing the fire sprinkler system license. The annual license fees for each contractor license level are:

Level 1	((~~$100~~)) $125
Level 2	((~~$300~~)) $375
Level 3	$1,500
Level U	$1,500
Level I&T	$1,000

(3) Except as provided by (b) of this subsection, the annual license fee as provided by subsection (2)(a) of this section will be prorated based upon the portion of the year such license is in effect, provided that:

(a) The annual license fee is allowed to be prorated only once in the history of the company.

(b) When the director finds that a contractor performed work covered by this chapter and chapter 18.160 RCW, the contractor must pay the full annual licensing fees, in addition to any penalties assessed by the director for unlicensed operation(s).

(c) The prorated fees are as follows:

Fire Sprinkler System Contractor Initial Prorated License Fees					
Month	**1**	**2**	**3**	**U**	**I&T**
January	Not prorated for January				
February	(($~~$92.00~~$)) $115.00	(($~~$275.00~~$)) $344.00	$1,375.00	$1,375.00	$920.00
March	(($~~$83.00~~$)) $105.00	(($~~$250.00~~$)) $313.00	$1,250.00	$1,250.00	$830.00
April	(($~~$75.00~~$)) $95.00	(($~~$225.00~~$)) $282.00	$1,125.00	$1,125.00	$750.00
May	(($~~$67.00~~$)) $85.00	(($~~$200.00~~$)) $251.00	$1,000.00	$1,000.00	$670.00
June	(($~~$58.00~~$)) $75.00	(($~~$175.00~~$)) $220.00	$875.00	$875.00	$580.00
July	(($~~$50.00~~$)) $65.00	(($~~$150.00~~$)) $189.00	$750.00	$750.00	$500.00
August	(($~~$42.00~~$)) $55.00	(($~~$125.00~~$)) $158.00	$625.00	$625.00	$420.00
September	(($~~$33.00~~$)) $45.00	(($~~$100.00~~$)) $127.00	$500.00	$500.00	$330.00
October	(($~~$25.00~~$)) $35.00	(($~~$75.00~~$)) $96.00	$375.00	$375.00	$250.00
November	(($~~$17.00~~$)) $25.00	(($~~$50.00~~$)) $65.00	$250.00	$250.00	$170.00
December	(($~~$8.00~~$)) $15.00	(($~~$25.00~~$)) $34.00	$125.00	$125.00	$80.00

(4) License fees are nonrefundable once the director has issued the license.

(5) The director will invoice the annual license and certification fees for renewal to the contractor and the certificate of competency holders. Contractors may receive invoices for the certificate of competency holders they employ.

AMENDATORY SECTION (Amending WSR 22-22-072, filed 10/31/22, effective 1/1/23)

WAC 212-80-205 Suspension or revocation of licenses or certificates. (1) The director may refuse to issue or renew or may suspend or revoke the privilege of any individual acting as a certificate of competency holder, certified or not, or a licensed or unlicensed fire protection sprinkler system contractor to engage in the fire protection sprinkler system business. The director may establish penalties against a person or company who violates any provision of chapter 18.160 RCW or any provision of this chapter while he or she is engaged

in the design, installation, inspection, testing, maintenance, or repair, of a fire sprinkler system or any part of such system.

(2) The following actions will result in suspension, revocation, or civil penalties against a fire protection sprinkler system contractor ((~~or~~)) and suspension or revocation for certificate of competency holder:

(a) Gross incompetence - The licensed contractor and/or certificate of competency holder demonstrated he or she does not have the qualifications or ability to perform at the level of license or certificate required to contract or offer to bid on the design, installation, inspection, testing, maintenance, or repair, of a fire protection sprinkler system or any part of such system. For the purpose of this subsection, qualifications mean that the person did not possess or has not possessed a valid certificate to the level required for the work performed.

(b) Gross negligence - The licensed contractor and/or certificate of competency holder has demonstrated a habitual failure in the preparation of layout drawings, installation, repair, alteration, testing, maintenance, inspection, or addition to fire protection sprinkler systems in accordance with plans, specifications, building codes, or the publications of the National Fire Protection Association. For the purpose of this subsection, "habitual failure" means that the person has over a period of time committed five violations of chapter 18.160 RCW, or this chapter in separate offenses, or has failed to design or install sprinkler systems in accordance with plans, specifications, building codes, or the publications of the National Fire Protection Association. Violations for gross negligence identified and enforced by the authority having jurisdiction must:

(i) Show a pattern of performance issues or repetitive violations of chapter 18.160 RCW, and/or this chapter by the company or those it employs to the director;

(ii) Demonstrate that the pattern of performance issues or repetitive violations have occurred in any jurisdiction within the state of Washington beginning no more than five years from the date the authority having jurisdiction's investigation commences; and

(iii) Provide documentation to show the licensed contractor and/or certificate of competency holder's gross negligence including, but not limited to:

(A) Correspondence between the licensed contractor or certificate of competency holder and the local authority having jurisdiction that identifies violations of work that do not comply with the applicable standards;

(B) Failed permit or work inspections;

(C) Issued stop work order;

(D) Investigations resulting from a complaint;

(E) Violation notices; or

(F) Issued citations or infractions.

(c) Dishonest practices - The licensed contractor ((~~or~~)) and the certificate of competency holder will not engage in dishonest fire protection sprinkler systems business practices that include, but are not limited to:

(i) Charging customers for work not performed. When a licensee is suspended, revoked, or denied, as part of a complaint investigation where the licensed contractor or certificate of competency holder received payment for supplies or work not performed and did not return the funds to the person contracting for the service, the director may upon receipt of a renewal application require that the licensed con-

tractor or certificate of competency holder pay restitution as a condition to renew the license.

(ii) Receiving any payments on work that the licensed contractor or the certificate of competency holder is not licensed or certified to perform.

(iii) Implying either verbally or in writing that either the licensed contractor or the certificate of competency holder possesses the appropriate license or certificate to bid on or complete fire sprinkler work when he or she does not have that fire protection sprinkler system contractor license or certification level.

(iv) Performing certification, installation, inspection, testing, or maintenance for a water based fire protection sprinkler system or equipment contrary to the National Fire Protection Association codes, National Fire Protection Association standards, or manufacturer's specifications.

(v) Performing certification, installation, inspection, testing, or maintenance for a water based fire protection sprinkler system or equipment beyond that which the contractor is licensed and/or certificate of competency holder is certified, regardless of whether or not the work done was in compliance with the National Fire Protection Association codes, National Fire Protection Association standards, or manufacturer's specifications.

(d) Actions showing an indifference to comply with the fire protection sprinkler system business practices that include, but are not limited to a licensed contractor:

(i) Offering to contract for fire protection sprinkler system work without currently employing a certificate of competency holder.

(ii) Requiring or allowing employees to falsify any sprinkler tags, labels, or inspection reports.

(iii) Permitting or requiring a certificate of competency holder to use his or her certificate in connection with the preparation of any technical drawings that have not been prepared personally by the certificate of competency holder or under his or her direct supervision, or in violation of this chapter.

(e) Any violation of this section constitutes a Level 3 violation.

(3) The licensed contractor or certificate of competency holder will be notified in writing of the denial, suspension, or revocation action.

(4) The director may deny, suspend, or revoke a license or certificate under the following process:

(a) The director must give the licensed contractor or certificate of competency holder notice of the action and an opportunity to be heard as prescribed in chapter 34.05 RCW before the denial, suspension, or revocation of the license or certificate.

(b) Upon receiving notice of the denial, suspension, or revocation action, the licensed contractor or certificate of competency holder may, within 30 days from the date of the notice of action, request in writing to the director a hearing on the denial, suspension, or revocation of the license or certificate. An adjudicative proceeding will be commenced within 90 days of the receipt of a hearing request. Failure to request a hearing, or failure to appear at a requested hearing, a prehearing conference, or any other stage of an adjudicative proceeding, will constitute default and may result in the entry of a final order under RCW 34.05.440.

(c) Upon receiving a hearing request, the director may, at the request of the licensed contractor or certificate of competency hold-

er, or on his or her own initiative, schedule an informal settlement conference which will be without prejudice to the rights of the parties. The informal settlement conference will be held in Thurston County at a mutually agreed upon time and may result in a settlement agreement. If no agreement is reached, a hearing will be scheduled as outlined in chapter 34.05 RCW.

(d) The director may, without prior notification to the licensed contractor or certificate of competency holder, deny, suspend, or revoke a license or certificate if the director finds that there is a danger to the public health, safety, or welfare that requires immediate action. In every summary suspension of a license or certificate, an order signed by the director or designee must be entered, in compliance with the provisions of RCW 34.05.479. Administrative proceedings consistent with chapter 34.05 RCW for revocation or other action shall be promptly instated and determined. The director must give notice as is practicable to the licensed contractor or certificate of competency holder.

(5) The following penalties are associated with performing fire protection sprinkler system work while a license and/or certificate is denied, suspended, or revoked:

(a) Any person engaged in the trade of designing, installing, inspecting, testing, maintaining, or repairing a fire protection sprinkler systems or any part of such system while his or her license and/or certificate is denied, suspended, or revoked, will be issued a Level 3 violation.

(b) Any licensed or unlicensed fire protection sprinkler system contractor that allows an employee ((~~or trainee~~)) to engage in the trade designing, installing, inspecting, testing, maintaining, and/or repairing a fire protection sprinkler system or any part of such a system while his or her license or certificate has been denied, suspended, or revoked, will be issued a Level 3 violation.

AMENDATORY SECTION (Amending WSR 22-22-072, filed 10/31/22, effective 1/1/23)

WAC 212-80-210 Imposing citations and civil penalties. (1) The director may impose civil penalties or fines to any licensed contractor ((~~or~~)) for their actions and/or their employees/certificate of competency holder that violates any provision of chapter 18.160 RCW, or this chapter. The director may impose the civil penalties and/or fines listed herein to any unlicensed contractor ((~~or uncertified person~~)) who operates in the state of Washington as a licensed fire protection sprinkler system contractor ((~~or~~)) and/or employees of same acting as a certificate of competency holder. The director will record all violations.

(2) The director may issue a citation when an investigation verifies that the fire protection sprinkler system contractor or certificate of competency holder was not in compliance with or otherwise in violation of chapter 18.160 RCW, or this chapter.

(3) A violation is an action by a person or company who engages in the design, installation, inspection, testing, maintenance, or repair of a fire protection sprinkler system or any part of such a system, and fails to comply with chapter 18.160 RCW, or this chapter.

(4) The director must take action on a license or certificate within five years after the violation is reported to the director.

AMENDATORY SECTION (Amending WSR 22-22-072, filed 10/31/22, effective 1/1/23)

WAC 212-80-215 Citations and penalties. (1) The director may at his or her discretion issue either a monetary penalty and/or take an action against a license or certificate depending on the severity of the violation(s) evidenced in the investigation. Each violation is classified and penalties assessed according to the violation type as provided by the chart below:

((~~Violation Level~~	~~Monetary Penalty Issued~~	~~Action Taken Against License and/or Certificate~~
~~1~~	~~Warning to $500~~	~~License:~~ No action
		~~Certificate:~~ No action
~~2~~	~~$500 to $1,000~~	~~License:~~ Suspended immediately for remainder of the license year or 30 calendar days, whichever is longer.
		~~Certificate:~~ Suspended immediately for remainder of the license year or 30 calendar days, whichever is longer.
		~~Certificate:~~ If the individual is not part of the violation but will be affected by the loss of the employer's contractor license, the certificate will be changed to INACTIVE status until the contractor obtains a valid license or the certificate of competency holder has a new employer.
~~3~~	~~$1,000 to $5,000~~	~~License:~~ Suspended immediately for remainder of the license year or 90 calendar days, whichever is longer.
		~~Certificate:~~ Suspended immediately for remainder of the license year or 90 calendar days, whichever is longer.
		~~Certificate:~~ If individual is not part of the violation but will be affected by the loss of the employer's contractor license, the certificate will be changed to INACTIVE status until the contractor obtains a valid license or the certificate of competency holder has a new employer.))

Violation Level	Action Against the License	Monetary Penalty	Action Against the Certification	Penalty
1	No Action	$300 to $7,500	No Action	Warning
2	Suspended immediately for 30 calendar days.	$400 to $10,000	Suspended immediately for 30 calendar days.	Warning
3	Suspended immediately for 90 calendar days.	$1,500 to $15,000	Suspended immediately for 90 calendar days.	Warning

(2) If a licensed contractor or certificate of competency holder has incurred multiple findings of the same violation over a period of time, the director may classify the licensed contractor or certificate of competency holder as a habitual offender and issue either an increased monetary penalty or the action against the license or certificate depending on the severity of the violation(s) evidenced in multiple investigations as provided by the chart below:

((~~Violation Level~~	~~Monetary Penalty Issued~~	~~Violation Level and Action Taken Against License and/or Certificate~~
~~1~~	~~$1,000~~	~~Evidence of three or more Level 1 violations without compliance over a period of two calendar years constitutes an increase to a Level 2 violation.~~
~~2~~	~~$2,500 per violation~~	~~Evidence of three or more Level 2 violations without compliance over a period of two calendar years constitutes an increase to a Level 3 violation.~~ ~~**License:**~~ ~~Suspended immediately for remainder of the license year or 60 calendar days, whichever is longer.~~ ~~**Certificate:**~~ ~~Suspended immediately for remainder of the license year or 60 calendar days, whichever is longer.~~ ~~**Certificate:**~~ ~~If individual is not part of the violation but will be affected by the loss of the employer's contractor license, the certificate will be changed to INACTIVE status until the contractor obtains a valid license or the certificate of competency holder has a new employer.~~
~~3~~	~~$5,000 per violation~~	~~Evidence of two or more violations without compliance over a period of three calendar years constitutes an increase to a Level 3 violation.~~ ~~**License:**~~ ~~Suspended immediately for remainder of the license year or 180 calendar days, whichever is longer.~~ ~~**Certificate:**~~ ~~Suspended immediately for remainder of the license year or 180 calendar days, whichever is longer.~~ ~~**Certificate:**~~ ~~If individual is not part of the violation but will be affected by the loss of the employer's contractor license, the certificate will be changed to INACTIVE status until the contractor obtains a valid license or the certificate of competency holder has a new employer.~~))

Violation Level	Violation Threshold	Monetary Penalty	Action Against the License	Action Against the Certification
1	Evidence of three or more Level 1 violations without compliance over a period of 24 months constitutes an increase to a Level 2 violation.	$1,000	Warning	Warning
2	Evidence of three or more Level 2 violations without compliance over a period of 24 months constitutes an increase to a Level 3 violation.	$7,500 per violation	Suspended immediately for 60 calendar days.	Suspended immediately for 60 calendar days.
3	Evidence of two or more Level 3 violations without compliance over a period of 36 months.	$15,000 per violation	Suspended immediately for 180 calendar days.	Suspended immediately for 180 calendar days.

(3) Any fire protection sprinkler system contractor found to engage in the sprinkler trade using individuals not certified as a cer-

tificate of competency holder consistent with RCW 18.160.040 or this rule shall be assessed additional penalties based upon severity as follows:

Instance Using an Uncertified Certificate of Competency Holder	Penalty Range
First time	$1,500 - $7,500
Second time	$2,500 - $10,000
Third time and any instance subsequent	$5,000 - $25,000

(4) Level 1 violations include, but are not limited to:

(a) Failing to inform the director of the loss of their primary certificate of competency holder, as required by RCW 18.160.040.

(b) Failing to have the certificate of competency holder stamp plans, calculations, and/or test certificates.

(c) Allowing an employee to certify, install, inspect, maintain, and/or service water-based fire sprinkler systems or equipment contrary to NFPA codes, standards, or manufacturers' specifications without specific written permission from the location authority having jurisdiction.

(d) Working without a permit, or permission to do so, by the local authority having jurisdiction.

((~~(4)~~)) (5) Level 2 violations include, but are not limited to:

(a) Performing work on a sprinkler system where the employee's certificate of competency holder under RCW 18.160.040 does not have a current or valid license.

(b) Working without the appropriate level of license or certificate of competency.

(c) Permitting his or her license to be used in connection with the preparation of any technical drawings that have not been prepared by him or her personally, or under their direct supervision.

(d) Working with an expired license or permit (more than 90 days).

((~~(5)~~)) (6) Level 3 violations include, but are not limited to:

(a) Demonstrating gross incompetency or gross negligence in the preparation of technical drawings, the installation, inspection, testing, maintenance, repair, alteration, service, and/or addition to a fire sprinkler system.

(b) Allowing an employee to demonstrate gross incompetency or gross negligence in the installation, inspection, testing, maintenance, repair, alteration, service and/or addition to a fire sprinkler system.

(c) Charging a customer for fire sprinkler work not performed.

(d) Offering to contract for fire sprinkler work without a certificate of competency holder, as described in RCW 18.160.040.

(e) Allowing an employee to falsify any fire sprinkler tags, labels, or inspection reports.

(f) Working without a certified full-time certificate of competency holder on staff, or, in the case of an inspection and testing contractor, allowing any employee not certified by the chief of the Washington state patrol, through the director of fire protection, as an inspection and testing technician.

(g) Falsifying an application or document submitted to the chief of the Washington state patrol, through the director of fire protection, to obtain a sprinkler contractor license or certificate of competency.

(h) Committing three or more level II offenses within a three year period either as a company, through an employee of the company,

through an employee acting as a certificate of competency holder for the company, and/or any combination thereof.

(i) Permitting his or her license to be used in connection with the stamping of any test certificates for work performed by someone other than his or her full-time employees.

((~~(6)~~)) (7) Civil penalties shall be resolved through the following:

(a) **Pay the penalty** by returning the notice and payment to the director at State Fire Marshal's Office, P.O. Box 42642, Olympia, WA 98504-2642 within 30 days from the date the penalty was issued. Payments must be made by check or money order payable to the Washington state patrol.

(b) **Request an informal conference** as outlined in WAC 212-80-235.

(c) **Request a formal hearing** as outlined in WAC 212-80-205 or 212-80-240.

WSR 24-08-005
PERMANENT RULES
WASHINGTON STATE PATROL
[Filed March 21, 2024, 8:07 a.m., effective April 21, 2024]

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

Purpose: Changes to WAC 212-90-093, 212-90-205, and 212-90-215 are needed to coincide with legislative changes to RCW 18.270.020 and 18.270.070 that amended changes to the certification requirements which will become effective January 1, 2024.

Citation of Rules Affected by this Order: Amending WAC 212-90-093, 212-90-205, and 212-90-215.

Statutory Authority for Adoption: Chapter 18.270 RCW.

Adopted under notice filed as WSR 24-04-051 on January 31, 2024.

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 6, 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: March 21, 2024.

John R. Batiste
Chief

OTS-5155.2

AMENDATORY SECTION (Amending WSR 22-22-072, filed 10/31/22, effective 1/1/23)

WAC 212-90-093 Fitter certificate holder certification. (1) All applications must be made on the forms provided by the director and include the required fees provided by WAC 212-90-098 and documentation for the required level of experience as provided by this section.

(a) **For journey-level sprinkler fitter certification,** the applicant must:

(i) Provide evidence on the forms provided by the director of at least 8,000 hours of trade related fire protection sprinkler system experience in installation, alteration, and repair;

(ii) Not have more than 3,000 hours of the required 8,000 hours of experience in residential sprinkler fitting; and

(iii) Satisfactorily pass an examination provided by the director with a final score of 80 percent.

(b) **For residential level sprinkler fitter certification,** the applicant must:

(i) Provide evidence on the forms provided by the director, of at least 4,000 hours of trade related fire protection sprinkler system experience in installation, repair, and maintenance; ((~~and~~))

(ii) Satisfactorily pass an examination provided by the director with a final score of 80 percent; and

(iii) Be considered and acts as a trainee level fitter certification when working on journey level work.

(c) **For trainee level sprinkler fitter certification**, the applicant must:

(i) Provide evidence to the director, on the forms provided by the director, of trade related employment by a licensed contractor;

(ii) Remain employed by a licensed contractor to maintain trainee status; and

(iii) Only engage in the fire protection sprinkler system trade when under the supervision of a certified journey level or residential installer.

(A) All trainee level fitters must be supervised under the proper ratio prescribed by law of:

(I) Residential level work: A residential or journey level fitter can supervise not more than two trainee level fitters at any one time.

(II) Journey level work: A journey level fitter can supervise not more than one residential or trainee level fitter at any one time.

(B) Any sprinkler contractor, certificate holder, company, or individual found in operation without proper supervision will constitute a Level 1 violation.

Certificate Level	Application Required	Exam Required	Type of Work Performed by Certificate Holder
Journey Sprinkler Fitter	Yes	Pass an exam (See WAC 212-90-093)	Installs and repairs NFPA 13D, 13R, or 13 fire sprinkler systems
Residential Sprinkler Fitter	Yes	Pass an exam (See WAC 212-90-093)	Installs, repairs, and performs maintenance on fire sprinkler systems in residential occupancies
Trainee Sprinkler Fitter	Yes	No	Installs, repairs, and performs maintenance on a fire sprinkler system only under the supervision of a properly certified residential/journey level fitter

(2) All information submitted by an applicant to the director to apply for a certificate must be true and accurate. If the director finds that information or documents submitted by an applicant is false, misleading, or has been altered in an effort to meet the requirements provided by this chapter, the finding will constitute a Level 3 violation.

(3) A violation of this section that involves a contractor allowing an employee to engage in performing fire protection sprinkler fitting work:

(a) By engaging in the trade of fire sprinkler fitting without having a valid sprinkler fitter certificate of competency issued for the work being conducted is a Level 3 violation.

(b) By a trainee sprinkler fitter engaging in the trade of fire sprinkler fitting without the direct supervision of a certified residential or journey sprinkler fitter is a Level 3 violation.

(c) As a trainee without a trainee certificate but with the direct supervision of a certified residential or journey sprinkler fitter is a Level 1 violation.

(d) Any individual using a certification and/or certification number not issued to them by the director.

AMENDATORY SECTION (Amending WSR 22-22-072, filed 10/31/22, effective 1/1/23)

WAC 212-90-205 Suspension or revocation of ((~~licenses or~~)) certificates. (1) The director may refuse to issue or renew or may suspend or revoke the privilege of a certificate holder((~~, or a licensed or unlicensed fire protection sprinkler system contractor~~)) to engage in the fire protection sprinkler system business. The director may establish penalties against a person or company who violates any provision of chapter 18.270 RCW or any provision of this chapter while he or she is engaged in the trade of sprinkler fitting.

(2) The licensed contractor or certificate holder will be notified in writing of the ((~~denial, suspension, or revocation~~)) action.

(3) The director may deny, suspend, or revoke a ((~~license or~~)) certificate under the following process:

(a) The director must give the licensed contractor or certificate holder notice of the action and an opportunity to be heard as prescribed in chapter 34.05 RCW before the denial, suspension, or revocation of the ((~~license or~~)) certificate.

(b) Upon receiving notice of the denial, suspension, or revocation action, the licensed contractor or certificate holder may, within 30 days from the date of the notice of action, request in writing to the director a hearing on the denial, suspension, or revocation of the ((~~license or~~)) certificate. An adjudicative proceeding will be commenced within 90 days of the receipt of a hearing request. Failure to request a hearing, or failure to appear at a requested hearing, a prehearing conference, or any other stage of an adjudicative proceeding, will constitute default and may result in the entry of a final order under RCW 34.05.440.

(c) Upon receiving a hearing request, the director may, at the request of the licensed contractor or certificate holder, or on his or her own initiative, schedule an informal settlement conference which will be without prejudice to the rights of the parties. The informal settlement conference will be held in Thurston County at a mutually agreed upon time and may result in a settlement agreement. If no agreement is reached, a hearing will be scheduled as outlined in chapter 34.05 RCW.

(d) The director may, without prior notification to the licensed contractor or certificate holder, deny, suspend, or revoke a ((~~license or~~)) certificate if the director finds that there is a danger to the public health, safety, or welfare that requires immediate action. In every summary suspension of a ((~~license or~~)) certificate, an order signed by the director or designee must be entered, in compliance with the provisions of RCW 34.05.479. Administrative proceedings consistent with chapter 34.05 RCW for revocation or other action shall be promptly instated and determined. The director must give notice as is practicable to the licensed contractor or certificate holder.

(4) The following penalties are associated with performing fire protection sprinkler system fitter work while a certificate is denied, suspended, or revoked:

(a) Any person engaged in the trade of sprinkler fitting while his or her ((~~license or~~)) certificate is denied, suspended, or revoked, will be issued a Level 3 violation.

(b) Any licensed or unlicensed fire protection sprinkler system contractor that allows an employee or trainee to engage in the trade of sprinkler fitting while his or her license or certificate has been denied, suspended, or revoked, will be issued a Level 3 violation.

AMENDATORY SECTION (Amending WSR 22-22-072, filed 10/31/22, effective 1/1/23)

WAC 212-90-215 Citations and penalties. (1) The director may at his or her discretion issue either a monetary penalty and/or take an action against a ((~~license or~~)) certificate depending on the severity of the violation(s) evidenced in the investigation. Each violation is classified and penalties assessed according to the violation type as provided by the chart below:

Violation Level	Monetary Penalty Issued	Action Taken Against License and/or Certificate
1	Warning to $200	**License:** No action.
		Certificate: No action.
2	$100 to $500	**License:** ((~~Suspended immediately for remainder of the license year or 30 calendar days, whichever is longer.~~)) Only monetary penalties.
		Certificate: Suspended immediately for ((~~remainder of the license year or 30 calendar days, whichever is longer~~)) 30 calendar days.
		((**~~Certificate:~~** ~~If the individual is not part of the violation but will be affected by the loss of the employer's contractor license, the certificate will be changed to INACTIVE status until the contractor obtains a valid license or the certificate holder has a new employer.~~))
3	$500 to $5,000	**License:** ((~~Suspended immediately for remainder of the license year or 90 calendar days, whichever is longer.~~)) Only monetary penalties.
		Certificate: Suspended immediately for ((~~remainder of the license year or~~)) 90 calendar days((~~, whichever is longer~~)).
		((**~~Certificate:~~** ~~If the individual is not part of the violation but will be affected by the loss of the employer's contractor license, the certificate will be changed to INACTIVE status until the contractor obtains a valid license or the certificate holder has a new employer.~~))

(2) If a licensed contractor or certificate holder has incurred multiple findings of the same violation over a period of time, the director may classify the licensed contractor or certificate holder as a habitual offender and issue either an increased monetary penalty or

the action against the license or certificate depending on the severity of the violation(s) evidenced in multiple investigations as provided by the chart below:

Violation Level	Monetary Penalty Issued	Violation Level and Action Taken Against License and/or Certificate
1	$500	Evidence of three or more Level 1 violations without compliance over a period of ((~~two calendar years~~)) 24 months constitutes an increase to a Level 2 violation.
2	$1,500 per violation	Evidence of three or more Level 2 violations without compliance over a period of ((~~two calendar years~~)) 24 months constitutes an increase to a Level 3 violation. **License:** ((~~Suspended immediately for remainder of the license year or 60 calendar days, whichever is longer.~~)) Only monetary penalties. **Certificate:** Suspended immediately for ((~~remainder of the license year or~~)) 60 calendar days((~~, whichever is longer.~~ ~~**Certificate:**~~ ~~If the individual is not part of the violation but will be affected by the loss of the employer's contractor license, the certificate will be changed to INACTIVE status until the contractor obtains a valid license or the certificate holder has a new employer~~)).
3	$5,000 per violation	((~~Evidence of two or more violations without compliance over a period of three calendar years constitutes an increase to a Level 3 violation.~~)) **License:** ((~~Suspended immediately for remainder of the license year or 180 calendar days, whichever is longer.~~)) Only monetary penalties. **Certificate:** Suspended immediately for ((~~remainder of the license year or~~)) 180 calendar days((~~, whichever is longer.~~ ~~**Certificate:**~~ ~~If the individual is not part of the violation but will be affected by the loss of the employer's contractor license, the certificate will be changed to INACTIVE status until the contractor obtains a valid license or the certificate holder has a new employer~~)).

(3) Civil penalties shall be resolved through the following:

(a) **Pay the penalty** by returning the notice and payment to the director at State Fire Marshal's Office, P.O. Box 42642, Olympia, WA 98504-2642 within 30 days from the date the penalty was issued. Payments must be made by check or money order payable to the Washington state patrol.

(b) **Request an informal conference** as outlined in WAC 212-90-235.

(c) **Request a formal hearing** as outlined in WAC 212-90-205 or 212-90-240.

WSR 24-08-011
PERMANENT RULES
DEPARTMENT OF LICENSING
[Filed March 21, 2024, 3:14 p.m., effective April 21, 2024]

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

Purpose: Clarifying that applications for disabled parking privileges must reside in Washington state to qualify. Additionally, the department of licensing is defining the term "resident" in WAC 308-96B-010 to further clarify the proposed requirements.

Citation of Rules Affected by this Order: Amending WAC 308-96B-010 Definitions—Special parking privileges for persons with disabilities, and 308-96B-020 General provisions.

Statutory Authority for Adoption: RCW 46.01.110 Rule-making authority, 46.19.020 Eligible organizations—Rules, 46.19.040 Renewal—Rules, and 46.19.050 Restrictions—Prohibitions—Violations—Penalties.

Adopted under notice filed as WSR 24-04-104 on February 7, 2024.

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 0, Repealed 0.

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

Date Adopted: March 21, 2024.

Ellis Starrett
Rules and Policy Manager

OTS-5174.1

AMENDATORY SECTION (Amending WSR 18-24-057, filed 11/29/18, effective 12/30/18)

WAC 308-96B-010 Definitions—Special parking privileges for persons with disabilities. For the purposes of determining eligibility under chapter 46.19 RCW, for special parking privileges for persons with disabilities, the following definitions apply:

(1) "Identification card" means the identification card bearing the name and date of birth of the person to whom the placard/plate/tab is issued.

(2) "Health care practitioner" means that as defined in RCW 46.19.010(2). Health care practitioner does not include persons licensed in the professions of dentistry and optometry.

(3) "Permanent" means a health care practitioner has certified the qualifying disability condition is expected to last at least five years.

(4) "Permit" means the eligibility for the temporary or permanent placard or special license plate(s), license tab, and identification card.

(5) "Privilege" means the right to utilize the benefits associated with the special parking privileges for persons with disabilities.

(6) "Resident" means an individual who manifests an intent to live or be located in this state on more than a temporary or transient basis, or an individual or dependent of an Armed Forces member who is currently stationed in the state of Washington.

(7) "Signature" means any memorandum, mark, stamp, or sign made with intent to authenticate an application for a placard/plate, or the subscription of any person.

AMENDATORY SECTION (Amending WSR 18-24-057, filed 11/29/18, effective 12/30/18)

WAC 308-96B-020 General provisions. (1) **How to qualify for special parking privileges for persons with disabilities?** A health care practitioner must certify, on a department approved application form and on a written authorization, that an individual has a qualifying disability in accordance with those listed in RCW 46.19.010(1).

(2) **Who may apply?** To qualify for special parking privileges for persons with disabilities, you must be a Washington state resident or be stationed with the Armed Forces in Washington state.

(3) **How to apply for special parking privileges for persons with disabilities?** The individual must complete and sign the appropriate portion of the application. Once the health care practitioner portion of the application is completed, and the health care practitioner has provided a written authorization, submit these documents to a vehicle licensing office or the department. The application and written authorization are required on all applications, originals and renewals.

((~~(3)~~)) (4) **Can the materials be submitted electronically?** No. The health care practitioner may send you the signed application and written authorization by electronic means of their choosing. You must remit the application and written authorization in hard copy to a vehicle licensing office or the department.

((~~(4)~~)) (5) **Can my health care practitioner combine the application and written authorization?** Yes. The application may be printed on the health care practitioner's letterhead or prescription paper and be submitted as a complete application.

((~~(5)~~)) (6) **Who may sign the application for an individual who is unable to sign or is a minor?** An authorized representative of the individual applying for the parking privilege may sign the application. The application must be accompanied by a copy of one of the following:

(a) A power of attorney;

(b) A Washington state court order or certification from the clerk of court confirming the court's action; or

(c) A declaration under penalty of perjury explaining why the applicant is unable to sign and explaining the signing person's association with the applicant. Example: Signature, Jane Doe, daughter.

((~~(6)~~)) (7) **Why is the identification card issued?** The identification card is issued to identify the individual with the parking privilege and to ensure that only those who qualify use the parking

privilege. The identification card must be available for display to law enforcement or parking enforcement officials.

If you have just applied for the parking privilege and have not yet received the identification card, show the receipt you received at the time of application when requested.

((~~(7)~~)) (8) **How long is the special parking privilege for persons with disabilities valid?**

(a) Temporary privileges are valid for up to ((~~twelve~~)) 12 months from the date of authorization by the health care practitioner. The privilege is valid until the last day of the month of expiration.

(b) Permanent privileges are issued for five years from the date of authorization by the health care practitioner. The privilege is valid until the last day of the month of expiration. The expiration date can be located on the identification card or as marked on the placard.

((~~(8)~~)) (9) **How do I renew or extend my parking privilege?**

(a) For a temporary privilege, if your condition continues beyond the expiration date, you must apply for a new privilege as described in WAC 308-96B-010(2).

(b) For a permanent privilege, the department will mail you a notice before your privilege expires.

You must apply for a new privilege as described in WAC 308-96B-010(2).

((~~(9)~~)) (10) **What if the parking placard or identification card is lost, mutilated, destroyed, or stolen?** To replace your parking placard or identification card, complete and sign an authorized department of licensing form indicating such. A new parking placard or identification card will be issued, indicating the original expiration date. The placard or identification card being replaced are no longer valid and should be destroyed if located.

((~~(10)~~)) (11) **What should I do with my placard and identification card when they are no longer valid?** They should be destroyed.

WSR 24-08-017
PERMANENT RULES
DEPARTMENT OF CORRECTIONS
[Filed March 22, 2024, 2:39 p.m., effective April 22, 2024]

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

Purpose: Establish current and relevant rule violations with progressive discipline for partial confinement settings under the jurisdiction of the department of corrections. This process includes adding Graduated reentry—Electronic home monitoring, work/training release facilities, and the community parenting alternative—FOSA.

Citation of Rules Affected by this Order: New WAC 137-56-101, 137-56-105 and 137-56-107; repealing WAC 137-56-260 and 137-56-270; and amending WAC 137-56-010, 137-56-015, 137-56-020, 137-56-030, 137-56-040, 137-56-050, 137-56-070, 137-56-080, 137-56-090, 137-56-095, [1]37-56-110, 137-56-120, 137-56-140, 137-56-150, 137-56-160, 137-56-170, 137-56-175, 137-56-180, 137-56-200, 137-56-210, 137-56-220, 137-56-230, 137-56-240, 137-56-250, and 137-56-280.

Statutory Authority for Adoption: RCW 79.01.090.

Adopted under notice filed as WSR 23-23-021 on November 2, 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 3, Amended 25, Repealed 2.

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

Date Adopted: March 22, 2024.

Cheryl Strange
Secretary

OTS-4922.3

Chapter 137-56 WAC
((~~COMMUNITY RESIDENTIAL PROGRAMS, WORK/TRAINING RELEASE~~)) PARTIAL CONFINEMENT

AMENDATORY SECTION (Amending WSR 05-24-009 and 06-02-038, filed 11/28/05 and 12/28/05, effective 5/1/06)

WAC 137-56-010 Definitions. (1) "Secretary" is the secretary of the department of corrections or ((~~his/her~~)) their designee.

(2) "Department" is the department of corrections.

(3) ((~~"Work/training release facility~~)) "Partial confinement" means confinement for no more than one year in a facility or institution operated or utilized under contract by the state or any other unit of government, or, if home detention, electronic monitoring, or work crew has been ordered by the court or home detention has been ordered by the department as part of the community parenting program or the graduated reentry program for no more than 18 months, in an approved residence, for a substantial portion of each day with the balance of the day spent in the community. Partial confinement includes reentry center, home detention, work crew, electronic monitoring, and a combination of work crew, electronic monitoring, and home detention.

(4) "Home detention" is a subset of electronic monitoring and means a program of partial confinement available to individuals wherein the individual is confined in a private residence 24 hours a day, unless an absence from the residence is approved, authorized, or otherwise permitted in the order by the court or other supervising agency that ordered home detention, and the individual is subject to electronic monitoring.

(5) "Administrative termination" is the nondisciplinary reclassification of an individual from partial confinement to total confinement by the administrator/designee if they determine placement is no longer viable and/or if the circumstances of placement create a risk to the community, participant, child, or family, or the individual self-terminates, is no longer suitable, or fails to maintain placement requirements (e.g., no longer has viable housing options, medical condition, financial hardship, failing to maintain an operable telephone line).

(6) "Supervisor" is a staff member assigned by the ((~~community corrections regional~~)) administrators to administer and supervise a specific ((~~work/training release facility~~)) partial confinement program and includes ((~~his/her~~)) their designee.

((~~(4) "Work/training release community corrections officer"~~)) (7) "Community corrections officer" or "specialist" is a staff member also known as a "case manager" assigned by the ((~~work/training release facility~~)) community corrections supervisor/reentry center manager to supervise and counsel a caseload of ((~~work/training release residents at a specific work/training release facility~~)) individuals assigned to a reentry center or partial confinement program.

((~~(5)~~)) (8) "Contract staff" is the staff member(s) of an agency under contract to the department of corrections to provide housing and/or monitoring for ((~~work/training release residents~~)) reentry center individuals.

((~~(6) "Work/training release offender"~~)) (9) "Partial confinement individual" is any ((~~offender~~)) individual committed to or transferred to the department's custody pursuant to a valid criminal conviction who has been approved by the department for placement in a designated ((~~work/training release facility~~)) reentry center or partial confinement program.

((~~(7)~~)) (10) "Sponsor-escort" is a responsible citizen ((~~assigned~~)) screened and approved to escort and monitor ((~~a resident~~)) an individual during official and social activities outside of the ((~~work/training release facility~~)) reentry center.

((~~(8) "Work/training release facility"~~)) (11) "Reentry center" is an establishment approved for housing and monitoring of ((~~work/training release residents~~)) reentry center individuals during the ((~~resident's~~)) individual's stay in a ((~~work/training release program.~~

~~(9) "One working day"~~)) reentry center. It also includes individuals who have been screened and approved for placement on partial confinement programs.

(12) "Business" is a nine-hour day, 8:00 a.m. to 5:00 p.m. excluding weekends and holidays.

((~~(10)~~)) (13) "Hearing officer" means an employee of the department authorized to conduct disciplinary/department hearings.

((~~(11)~~)) (14) "Hearings program administrator" means the administrator of the hearings unit of the department, or the hearing program administrator's designee.

AMENDATORY SECTION (Amending WSR 05-24-009 and 06-02-038, filed 11/28/05 and 12/28/05, effective 5/1/06)

WAC 137-56-015 Disposition of earnings. Reasonable payment, as determined by the department ((~~of~~)), for board and room charges will be deducted from the ((~~work/training release residents'~~)) reentry center individual's earnings. For purposes of this section, earnings shall constitute all income and money received or possessed by the ((~~work/training release offender~~)) reentry center individual while under ((~~a work release~~)) an approved partial confinement plan. Nothing in this section shall prohibit the department's authority to obtain reimbursement for moneys advanced to a ((~~work/training release offender~~)) reentry center individual by the department.

AMENDATORY SECTION (Amending WSR 82-08-055, filed 4/5/82)

WAC 137-56-020 Secretary's authority to grant or deny. The secretary or ((~~his or her~~)) their designee may grant or deny ((~~work/training release~~)) placement in partial confinement as authorized by chapters 72.65 and 9.94A RCW subject to the rules of this chapter.

AMENDATORY SECTION (Amending WSR 05-24-009 and 06-02-038, filed 11/28/05 and 12/28/05, effective 5/1/06)

WAC 137-56-030 Reasons for placement in a ((~~work release program~~)) reentry center. ((~~Work/training release~~)) Reentry centers may be authorized for one or more of the following:

(1) To participate in full-time employment or part-time employment at specialized programs;

(2) To participate in a vocational training program, including attendance at an accredited college.

(3) To secure services to support transition back to the community.

(4) As a sanction for violating community ((~~supervision~~)) custody conditions.

(5) Transfer to a reentry center as a result of violation of conditions of partial confinement programs.

(6) Incarcerated individuals depending on the program, must apply and go through an investigative process, with a committee determination regarding suitability.

AMENDATORY SECTION (Amending WSR 05-24-009 and 06-02-038, filed 11/28/05 and 12/28/05, effective 5/1/06)

WAC 137-56-040 Eligibility criteria. (1) An ((~~offender~~)) individual is eligible for ((~~work/training release~~)) reentry center placement and/or graduated reentry programming provided that:

(a) ((~~He or she~~)) Individual has a minimum security status for the purpose of reentry center placement;

(b) ((~~He or she is within the last one hundred eighty days of their confinement.~~)) Individuals who are found eligible for the graduated reentry program must meet program criteria and either:

(i) Served at least six months total confinement and may serve no more than the last five months of the individual's term of confinement in a department approved release residence on electronic home monitoring; or

(ii) Able to complete the last 12 months of sentence in a reentry center with no more than the last five months of the individual's term of confinement in a department approved release residence on electronic home monitoring; or

(iii) Able to serve at least four months total confinement and may serve no more than the last 18 months of the individual's term of confinement in a department approved release residence on electronic home monitoring.

Partial confinement programs.

(2) ((~~Offenders~~)) Individuals convicted of rape in the first degree shall not be eligible for work/training release reentry centers or graduated reentry program at any time during the first three years of confinement.

(3) ((~~Offenders~~)) Individuals convicted of murder first degree are not eligible for work/training release reentry centers or graduated reentry program, without the written approval of the secretary or their designee.

(4) ((~~Offender~~)) Individual who violates condition(s) of community ((~~supervision and is~~)) custody may be sanctioned to a reentry center for a term ((~~less than one hundred eighty days~~)) of 90 days or less.

(5) Individual who violates condition(s) for partial confinement programs may be sanctioned to a reentry center for a term of 90 days or less, to more restrictive status, or returned to total confinement.

AMENDATORY SECTION (Amending WSR 05-24-009 and 06-02-038, filed 11/28/05 and 12/28/05, effective 5/1/06)

WAC 137-56-050 Application—Consideration. (1) Based on the ((~~offender's~~)) individual's request to participate in ((~~a work release~~)) partial confinement programs and/or the ((~~offender's~~)) individual's need to transition through ((~~a work release~~)) partial confinement programs, the ((~~facility classification review team will refer the offender to the appropriate program~~)) department will ensure a process for screening.

(2) The ((~~community corrections officer can~~)) case manager may make recommendation for placement in a ((~~work release program~~)) reentry center as a result of violation of conditions of ((~~supervision in the~~)) community custody or partial confinement programs.

AMENDATORY SECTION (Amending WSR 05-24-009 and 06-02-038, filed 11/28/05 and 12/28/05, effective 5/1/06)

WAC 137-56-070 Screening ((~~referrals~~)). (1) The ((~~work/training release facility supervisor or his or her designee~~)) supervisor/manager or designee shall screen the ((~~offenders~~)) individuals referred to the programs.

(2) The ((~~work/training release~~)) partial confinement programs participation is subject to a screening process ((~~will be~~)) based on established criteria for each program.

AMENDATORY SECTION (Amending WSR 05-24-009 and 06-02-038, filed 11/28/05 and 12/28/05, effective 5/1/06)

WAC 137-56-080 Plan—Approval or denial. (1) The ((~~work release~~)) supervisor/manager or designee's or program established committee screening decision will be documented by the ((~~work/training release facility supervisor/designee on the offender tracking system~~)) supervisor/manager or designee in the individual's electronic file indicating the action taken.

(2) Approved ((~~offenders~~)) individuals will be placed in the program based on ((~~priority with high risk offenders being placed first~~)) individual needs. Disapproved ((~~offenders~~)) individuals can obtain the reasons for the denial, as documented ((~~on the offender tracking system~~)) in the individual's electronic file.

(3) An individual who is denied placement in a reentry center or graduated reentry program will be reviewed by a headquarters committee who will uphold, modify, or overturn the denial.

AMENDATORY SECTION (Amending WSR 05-24-009 and 06-02-038, filed 11/28/05 and 12/28/05, effective 5/1/06)

WAC 137-56-090 Plan—Restrictions. The work or training site shall be within reasonable commuting distance (in most circumstances not more than ((~~fifty~~)) 50 miles) of the ((~~work/training release facility~~)) partial confinement program in which the ((~~offender~~)) individual is confined.

AMENDATORY SECTION (Amending WSR 05-24-009 and 06-02-038, filed 11/28/05 and 12/28/05, effective 5/1/06)

WAC 137-56-095 Orientation. (1) At the time of admission, each ((~~work/training release offender~~)) partial confinement individual shall be advised in writing of:

(a) Program goals and services available.

(b) Rules governing conduct and program rules.

(c) ((~~Disciplinary action which may be taken in the event of a serious infraction or violation of rules or special conditions.~~)) Incentives earned, as defined in policy, for positive behavior and program completions.

(d) Conditions for their specified program that is applicable to them and to their success.

(e) Disciplinary action which may be taken in the event of a serious violation of rules or special conditions. To include, but not be limited to:

(i) Remain confined to the ((~~work/training release~~)) partial confinement premises at all times other than the time necessary to implement the plan or when authorized under WAC 137-56-140. Any ((~~work/training release resident~~)) partial confinement individual approved for placement under a ((~~work/training release~~)) partial confinement plan who willfully fails to report to ((~~his or her~~)) their designated assignment or return to the designated place of confinement at the time specified may be deemed an escapee and fugitive from justice, and upon conviction shall be guilty of a felony and sentenced in accordance with state law.

(ii) Have employment or other approved resources in order to maintain ((~~himself or herself~~)) themselves financially.

(iii) Not consume, ingest, inject, or possess nonprescription narcotic or "dangerous" drugs or controlled substances, or any mood altering drug or alcoholic beverages.

(iv) Report all income to the ((~~work/training facility supervisor~~)) reentry center manager or ((~~his or her~~)) their designee. All income, for individuals in a reentry center from any source shall be immediately placed in the ((~~resident's inmate~~)) individual's banking account by the ((~~facility supervisor~~)) reentry center manager or ((~~his/her~~)) their designee. A receipt will be issued.

(v) Individuals in a partial confinement program, with case manager approval, may enter into contracts for banking accounts that support their transition to the community. Each individual must provide their account information.

(2) All amendments or additions to disciplinary rules, policies, and procedures shall be posted at a specifically designated place or places in each ((~~work/training release facility~~)) reentry center in advance of their effective date if possible and for at least ((~~thirty~~)) 30 days after their effective date. ((~~Work/training release offenders~~)) Partial confinement individuals shall be responsible for informing themselves of such postings. Complete and up-to-date copies of these rules and all program rules shall be available at each ((~~work/training release facility for examination~~)) reentry center and provided to each individual on partial confinement programs for review.

(3) The ((~~work/training release facility supervisor~~)) reentry center manager shall ensure that each ((~~work/training release resident~~)) individual has the opportunity to understand rules which relate to ((~~his/her~~)) their conduct. If the ((~~resident~~)) individual is unable to read or understand English, the rules shall be read to ((~~him/her~~)) them promptly in ((~~his/her~~)) their accustomed language.

(4) All ((~~offenders~~)) individuals will receive orientation within ((~~forty-eight~~)) 48 hours of ((~~arrival~~)) placement in a reentry center program. Orientation must be completed before the ((~~offender~~)) individual can leave the ((~~facility~~)) reentry center or leave the approved partial confinement programs location. The ((~~offender~~)) individual must sign the appropriate form indicating ((~~he/she~~)) they will comply with all the ((~~work release~~)) partial confinement program policies and program rules.

NEW SECTION

WAC 137-56-101 Application of behavior management chapter. The definitions and serious violations described herein apply to individuals committed to partial confinement programs. Partial confinement programs i.e., reentry center, community parenting alternative and graduated reentry may create their own separate agency policies if it is not viable or feasible to combine, if determined necessary by the respective administrator.

NEW SECTION

WAC 137-56-105 Definitions. For the purposes of serious violations, the following terms have the following meanings:

(1) Assault - A physical attack upon the body of another person. The attack may be made with any instrument including, but not limited to, weapons, body parts, food products, or bodily secretions.

(2) Attempting - Putting forth an effort to commit any violation.

(3) Bodily harm - Physical pain or injury, illness, or impairment of physical condition.

(4) Conspiring - Entering into an agreement with another person(s) to commit a violation.

(5) Individual - Offender or inmate as defined in RCW 72.09.015.

(6) Possessing - When an item(s) is found on an individual or in an individual's assigned area of responsibility.

(7) Sex act - Includes, but is not limited to, any of the following acts: Genital-genital, oral-genital, anal-genital, or oral-anal contact/penetration; genital or anal contact/penetration with an inanimate object; masturbation; sadistic/masochistic abuse; bondage; bestiality; and/or bodily excretory behavior which appears to be sexual in nature.

(8) Sexual assault against a staff member - An incident in which one or more of the following actions is taken or threatened against a staff member without his/her consent or when he/she is unable to consent or refuse:

(a) Contact between genitalia (i.e., penis, vagina) or between genitalia and the anus involving penetration, however slight. This does not include kicking, grabbing, or punching genitals when the intent is to harm or debilitate rather than to sexually exploit.

(b) Contact between the mouth and the penis, vagina, or anus.

(c) Penetration of the anal or genital opening of the staff member by hand, finger, or other object.

(9) Sexual contact against a staff member - Contact against a staff member without his/her consent or when the staff member is unable to consent or refuse which includes intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttock of the staff member. This does not include kicking, grabbing, or punching when the intent is to harm or debilitate rather than to sexually exploit.

(10) Sexual harassment against a staff member, visitor, or community member - Any word, action, gesture, or other behavior taken against a staff member, visitor, or community member that is sexual in nature and that would be offensive to a reasonable person.

(11) Staff member - A department of corrections employee, contract staff, or volunteer.

(12) Violation - The act of failing to comply with a rule enumerated in this chapter.

NEW SECTION

WAC 137-56-107 Adoption or revision of serious violations. (1) The secretary may adopt and/or revise serious violations.

(2) Before adopting or revising a serious violation, the secretary shall, when applicable, follow the rule-making procedures of chapter 34.05 RCW, Administrative Procedure Act.

(3) Nothing herein shall be construed as limiting the department of corrections' exclusion from the Administrative Procedure Act under RCW 34.05.030 (1)(c).

AMENDATORY SECTION (Amending WSR 05-24-009 and 06-02-038, filed 11/28/05 and 12/28/05, effective 5/1/06)

WAC 137-56-110 Serious ((~~infractions~~)) violations. ((~~Refer to chapter 137-25 WAC, serious infractions.~~))

(1) Any of the following types of behavior may constitute a serious violation. Attempting or conspiring to commit one of the following violations, or aiding and abetting another to commit one of the following violations, shall be considered the same as committing the violation.

(2) If contraband or another violation is discovered in an individual's assigned area of responsibility, such as within the confines or contents of an assigned room, the contraband or other violation shall be constructively attributed (i.e., cell tagged) to all individuals assigned responsibility for that area.

Seriousness Level: Category A: Egregious Acts/Inflicting Harm/Violence	
402	Committing an act that would constitute a felony or misdemeanor and that is not otherwise included in these rules.
403	Taking or holding any person hostage.
405	Possessing, manufacturing, or introducing an explosive device, any firearm, ammunition, weapon, sharpened instrument, knife, poison, or any components thereof.
611	Committing sexual assault against a staff member.
613	Committing any act of sexual contact against a staff member.
635	Committing sexual assault against another individual, as defined in department policy (i.e., aggravated sexual assault or individual-on-individual sexual assault).
637	Committing sexual abuse against another individual, as defined in department policy.

Seriousness Level: Category B: High Profile/Harmful/Violence Against Persons/Safety	
401	Assaulting another person.
404	Escaping from partial confinement.
406	Rioting, or inciting others to riot.
407	Setting fire.
408	Engaging in or inciting a group demonstration.
409	Fighting with another person.
415	Possessing, transferring, or soliciting any person's identification information, including current employees/contract staff or their immediate family members when not voluntarily given. Identification information includes Social Security numbers, home addresses, telephone numbers, driver's license numbers, medical, personnel, financial, or real estate information, bank or credit card numbers, or other like information not authorized by the community corrections supervisor.
416	Counterfeiting/forgery of official documents.
419	Possessing clothing or assigned equipment of an employee/contract staff.
437	Engaging in a sex act within facility boundaries.
438	Indecent exposure.
549	Providing false or misleading information during any stage of an investigation of sexual misconduct, as defined in department policy.
463	Making any drug, alcohol, or intoxicating substance, or possessing ingredients, equipment, items, formulas, or instructions that are used in making any drug, alcohol, or intoxicating substance.
700	Failing to complete or administrative termination from a DOSA treatment program. Note: This violation must be initiated by authorized employees/ contract staff and heard by a community corrections hearing officer in accordance with chapter 137-24 WAC. A guilty finding will result in reclassification.
701	Failure to comply with the DOSA program. Note: This violation must be initiated by authorized employees/ contract staff and heard by a community corrections hearings officer in accordance with chapter 137-24 WAC. A guilty finding may result in reclassification or lesser sanctions.

Seriousness Level: Category C: Noncompliance/Attitudes and Behaviors/Court and DOC Conditions Related	
410	Threatening another with bodily harm or with any offense against any person or property.
411	Extorting or blackmailing another person.
412	Refusing a direct order from an employee/contract staff member to proceed to or disperse from a particular area.
413	Interfering with an employee/contract staff or other personnel, in the performance of their duties.
414	Tampering with a locking device.
417	Committing fraud or embezzlement, or obtaining goods, services, money, or anything of value under false pretense.
418	Making a false fire alarm or tampering with, damaging, blocking, or interfering with fire alarms, fire extinguishers, fire hoses, fire exits, or other firefighting equipment or devices.
420	Stealing property, possessing stolen property, or possessing another individual's property.
423	Participating or engaging in the activities of any unauthorized club, organization, gang, or security threat group; or wearing or possessing the symbols of an unauthorized club, organization, gang, or security threat group.
425	Causing an innocent person to be penalized or proceeded against by providing false information.
659	Committing sexual harassment against another incarcerated individual, as defined in department policy.
896	Harassing, using abusive language, or engaging in other offensive behavior directed to or in the presence of another person(s) or group(s) based upon race, creed, color, age, sex, national origin, religion, sexual orientation, marital status or status as a state registered domestic partner, disability, veteran's status, or genetic information.
661	Committing sexual harassment against a staff member, visitor, or community member.
461	Introducing or transferring any unauthorized drug or drug paraphernalia.

462	Refusing to submit to or cooperate in a search, urinalysis, oral swab, breath alcohol test, or any testing required by policy, statute, or court order, not otherwise included in these rules, when ordered to do so by an employee/contract staff member.
464	Possessing or using an unauthorized drug, intoxicating substance or alcohol; receiving a positive test for an unauthorized drug, alcohol or intoxicating substance; possession of paraphernalia.
465	Providing a diluted, altered, or substituted urine sample.
472	Unauthorized contact with prohibited persons as defined in case plan.
899	Failing to obtain prior written authorization from the sentencing court, contrary to RCW 9.94A.645, prior to commencing or engaging in any civil action against any victim or family of the victim of any serious violent crime the individual committed.
477	Being in the community without authorization, being in an unauthorized location in the community, unaccounted time, or having unauthorized contact with prohibited persons in the community.
810 *Mandatory programming 72.09	Refusing to seek/maintain employment, training, or programming, or being terminated from work, training, education, or other programming for negative or substandard performance.
557 *Mandatory programming 72.09	Refusing to participate in an available work, training, education, or other mandatory programming assignment.
481	Violating conditions of furlough.
485	Using the mail, telephone, or electronic communications in violation of any law, court order, or previous written warning, direction, and/or documented disciplinary action, or initiating communication with a minor without the approval of that minor's parent or guardian.
494	Receiving or possessing contraband.
Seriousness Level: Category D: Self-Destructive Behavior/Risky Behavior/Case Plan Related	
421	Using facility phones, information technology resources/systems, or related equipment intended for employee/contract staff use without authorization.
422	Possessing, manufacturing, or introducing an unauthorized tool.

424	Damaging, altering, or destroying any item that results in the concealment of contraband or demonstrates the ability to conceal contraband.
435	Intentional destruction, damage, or altering any item that is not the individuals personal property, the value of which is $10 or more.
436	Possessing any sexually explicit material(s), as defined in WAC 137-48-020.
439	Urinating, defecating, or placing feces or urine in any location other than a toilet or authorized receptacle.
474	Unauthorized modification or noncompliance of an approved case plan.
482	Violating an imposed special condition.
483	Failing to comply with any administrative or post-hearing sanction imposed for committing any violation.
484	Operating motor vehicle or being in a motor vehicle without permission.
486	Telephoning, or sending written or electronic communication to any individual in a correctional facility, directly or indirectly, without prior written approval of the superintendent/community corrections supervisor/designee.
Seriousness Level: Category E: General Noncompliance	
471	Failing to comply with written rules, handbook, or case plan.
475	Entering into an unauthorized contract.
476	Failing to report/turn in all earnings.
487	Possession of unauthorized items, to include money or other negotiable instruments without proper authorization.
491	Introducing, possessing, or using a cell phone, electronic/wireless device, or related equipment, without proper authorization.
492	Misusing or wasting issued supplies, goods, services, or property.
493	Out-of-bounds: Being in the room/ dorm assigned to another individual under department jurisdiction or an area of the facility without authorization.
495	Giving, selling, purchasing, borrowing, lending, trading, or accepting money or anything of value except through approved channels.

AMENDATORY SECTION (Amending WSR 05-24-009 and 06-02-038, filed 11/28/05 and 12/28/05, effective 5/1/06)

WAC 137-56-120 Provisions of supervision. (1) In meeting its responsibilities for providing supervision of ((~~offenders~~)) individuals in the ((~~program~~)) reentry center(s), the following will be provided ((~~at the work release facility~~)):

((~~(1)~~)) (a) Staff on duty ((~~twenty-four~~)) 24 hours a day, seven days a week;

((~~(2)~~)) (b) A check-in and check-out system to ensure that the stated whereabouts of the ((~~offender~~)) individual is known at all times, including telephonic and on-site checks at school, work, furlough, sponsored outing, pass, etc.;

((~~(3)~~)) (c) Bed checks or head counts to account for the ((~~resident's~~)) individual's whereabouts; a minimum of three counts daily shall be required;

((~~(4)~~)) (d) Provide adequately for the ((~~resident~~)) individual with respect to sleeping quarters, bathroom facilities, and accommodations for cooking, dining, lounging and leisure time activities;

((~~(5)~~)) (e) Comply with state and local fire codes and applicable building, safety, and sanitation codes.

(2) In meeting its responsibilities for providing supervision of individuals in partial confinement programs, the following will be provided:

(a) Case managers available during business hours;

(b) A system of approved movement in the community to ensure that the stated whereabouts of the individual is known at all times, including telephonic and on-site checks at school, work, furlough, sponsored outing, pass, detention location, etc.;

(c) Reviews of electronic home monitoring equipment to ensure movement in the community was approved;

(d) Approve residential placement for the individual to ensure adequate sleeping quarters, bathroom facilities, and accommodations for cooking, dining, lounging and leisure time activities.

AMENDATORY SECTION (Amending WSR 05-24-009 and 06-02-038, filed 11/28/05 and 12/28/05, effective 5/1/06)

WAC 137-56-140 Limits of confinement. A ((~~work/training release offender~~)) partial confinement individual will follow specified program and/or condition requirements. If an individual is enrolled in partial confinement programs, they shall be confined to the ((~~facility~~)) reentry center/approved residence at all times except:

(1) When seeking or arranging for registration at a school or training facility;

(2) When working at paid employment or attending a training facility in a vocational or academic program;

(3) When in a reentry center, authorized a point-to-point pass not to exceed ((~~two~~)) four hours, ((~~excluding~~)) including travel, for the purpose of transacting personal business including a treatment regimen, between the hours of 7:00 a.m. and 10:00 p.m. and/or outside that time frame with written permission of the ((~~facility supervisor~~)) reentry center manager or designee;

(4) When authorized to participate in social and recreational activities ((~~in company with a~~)) accompanied by an authorized sponsor-escort ((~~between 8:00 a.m. and midnight~~));

(5) When on furlough;

(6) When on authorized medical/mental health appointments, substance use disorder treatment, or court appearances;

(7) When ordered to perform community service/restitution;

(8) When seeking employment ((~~as approved~~)) on an approved job search pass;

(9) When in partial confinement programs, movement allowed as approved by the case manager/designee;

(10) The administrator for the confinement programs may determine an individual's program status and take nondisciplinary administrative action when an individual is no longer suitable and/or eligible for the partial confinement program;

(11) The administrator for the confinement programs may not modify or adjust decision adjudicated by a hearings officer without secretary approval.

AMENDATORY SECTION (Amending WSR 05-24-009 and 06-02-038, filed 11/28/05 and 12/28/05, effective 5/1/06)

WAC 137-56-150 Sponsor-escort. (1) A sponsor-escort shall be a responsible citizen who shall accompany and monitor a ((~~work/training release offender~~)) reentry center individual during a preapproved social or recreational activity. The sponsor-escort must be approved by the ((~~work/training release facility supervisor or designee~~)) reentry center manager/designee; and the sponsor and ((~~resident~~)) individual must sign an agreement with the department which describes ((~~his or her~~)) their responsibilities.

(2) Persons who are on active/inactive felony probation or parole or under an active SRA sentence, shall not be approved as sponsor-escorts. Persons who have a past felony conviction and who have earned a discharge may be approved as sponsor-escorts on an individual basis by the ((~~work release supervisor, or his or her designee~~)) reentry center manager/designee.

(3) Sponsor-escorts must complete a sponsor orientation provided by the ((~~work/training release facility~~)) case manager at the reentry center before eligibility under this section.

(4) Sponsor-escorts may not be party to an active no-contact order with the ((~~offender~~)) individual.

AMENDATORY SECTION (Amending WSR 05-24-009 and 06-02-038, filed 11/28/05 and 12/28/05, effective 5/1/06)

WAC 137-56-160 Termination of plan. At any time after approval has been granted to any ((~~work/training release offender~~)) partial confinement program individual to participate in the ((~~work/training release~~)) program, such approval may be revoked, and the ((~~offender~~)) individual may be sent to a state correctional institution or jail. A ((~~work release offender~~)) partial confinement individual may be terminated from the program as a result of a disciplinary or classification decision or the following:

(1) If requested in writing by the ((~~work/training release offender~~)) partial confinement individual;

(2) If the ((~~work/training release offender~~)) partial confinement individual lacks aptitude for the assignment or is improperly placed; or

(3) If the ((~~work/training release offender~~)) partial confinement individual has been unable to adjust or adapt to the conditions of the ((~~work/training release facility~~)) partial confinement program; or

(4) If the ((~~work/training release offender's~~)) partial confinement individual's situation and circumstances have significantly changed; or

(5) If the individual is on partial confinement programs and their circumstances, situation or living arrangements change, they may be returned to a reentry center to develop a new plan; or

(6) If the ((~~work/training release offender~~)) partial confinement individual has failed to comply with federal or state laws or local ordinances.

AMENDATORY SECTION (Amending WSR 05-24-009 and 06-02-038, filed 11/28/05 and 12/28/05, effective 5/1/06)

WAC 137-56-170 Service of notice of proposed disciplinary action. (1) If disciplinary action is proposed, the ((~~work/training release facility~~)) supervisor/manager or ((~~community corrections officer~~)) case manager may suspend the ((~~work/training release~~)) partial confinement plan and place the ((~~offender in custody~~)) individual in total confinement pending a formal disciplinary hearing.

(2) The ((~~work/training release facility~~)) supervisor/manager or designee shall advise the ((~~offender~~)) individual in writing of the factual allegations which provide the basis for the proposed disciplinary action within one working day after the suspension of the ((~~work/training release~~)) partial confinement plan.

(3) If the ((~~work/training release~~)) partial confinement plan is not suspended pending the disciplinary hearing, then the ((~~facility~~)) program supervisor/manager or designee shall advise the ((~~offender~~)) individual at least ((~~twenty-four~~)) 24 hours prior to the scheduled hearing.

(4) The factual allegations may be amended and/or new allegations added at any time prior to the disciplinary hearing, provided ((~~that~~)) the ((~~work/training release offender~~)) partial confinement individual shall have notice of such new and/or amended allegations at least ((~~twenty-four~~)) 24 hours prior to the disciplinary hearing unless such notice shall be waived in writing by the ((~~offender~~)) individual.

AMENDATORY SECTION (Amending WSR 05-24-009 and 06-02-038, filed 11/28/05 and 12/28/05, effective 5/1/06)

WAC 137-56-175 Alternatives to the formal disciplinary hearing. When addressing serious ((~~infractions~~)) violations, the ((~~work/training release community corrections officer~~)) partial confinement case manager may, with the ((~~facility~~)) supervisor's/manager's permission, choose to address the ((~~infraction~~)) violation behavior through a re-

entry team meeting, or using ((~~either~~)) a department authorized stipulated agreement ((~~or the negotiated sanction agreement~~)) process.

AMENDATORY SECTION (Amending WSR 05-24-009 and 06-02-038, filed 11/28/05 and 12/28/05, effective 5/1/06)

WAC 137-56-180 Disciplinary hearing. (1) A ((~~work/training release offender~~)) partial confinement individual served with allegations providing the basis for a proposed disciplinary action shall be notified in writing that a hearing has been set before a department hearing officer. An allegation involving the commission by the ((~~offender~~)) individual of a serious ((~~infraction~~)) violation may be amended at anytime by the department, provided that ((~~twenty-four~~)) 24 hours notice be given to the ((~~offender~~)) individual or the ((~~offender~~)) individual agrees in writing to waive notice to respond to the allegations. The hearing will be held within eight working days of the suspension of the ((~~work/training release~~)) partial confinement plan, unless a longer time is approved by the hearings program administrator or ((~~his or her~~)) their designee. The written notice of hearing shall be given to the ((~~offender~~)) individual at least ((~~twenty-four~~)) 24 hours before the hearing unless notice is waived, in writing, and advise the ((~~offender of his or her~~)) individual of their rights, including the following:

(a) The ((~~offender~~)) individual shall be present at all stages of the hearing, except during deliberation in appropriate circumstances.

(b) The ((~~offender~~)) individual shall present ((~~his or her~~)) their own case to the hearing officer. If there is a language or communications barrier, the hearing officer shall appoint an advisor.

(c) The ((~~offender~~)) individual may have an attorney present at ((~~his/her expense, only when a felony has been alleged. Such representation is limited to advising the offender of his or her rights to remain silent, and does not include the right to act as an advocate throughout the hearing~~)) their hearing upon case-by-case determination by the hearing officer if one is warranted.

(d) The ((~~offender~~)) individual may testify during the hearing or remain silent, and ((~~his or her~~)) their silence will not be held against ((~~him or her~~)) them.

(e) The ((~~work/training release offender~~)) partial confinement individual may, in preparation for the hearing, ask the hearing officer that certain department or contract staff members, other ((~~work/training release offenders~~)) partial confinement individuals, and other persons be present as witnesses at the hearing. The hearing officer shall grant such request if it is determined by the hearing officer that to do so would not be unduly hazardous to the ((~~work/training release facility's~~)) partial confinement safety or correctional goals: Provided, however, limitations may be made by the hearing officer if the information to be presented by the witnesses is deemed to be irrelevant, duplicative, or unnecessary to the adequate presentation of the ((~~work/training release offender's~~)) partial confinement individual's case.

(2) Attendance at the hearing shall be limited to parties directly concerned. The hearing officer may exclude unauthorized persons.

(3) Hearings shall be recorded and a copy of the recording maintained in accordance with the statewide retention schedule.

AMENDATORY SECTION (Amending WSR 05-24-009 and 06-02-038, filed 11/28/05 and 12/28/05, effective 5/1/06)

WAC 137-56-200 Disciplinary hearing—Waiver. (1) At any time after having been served with an allegation providing the basis for a proposed disciplinary action, the ((~~offender~~)) individual may choose to waive ((~~his or her~~)) their right to a hearing by signing an admission of the allegation and request that the hearing be dispensed with entirely or limited only to questions of disposition. Also, the ((~~offender~~)) individual may waive, in writing, the ((~~twenty-four~~)) 24 hour notice.

(2) The ((~~offender~~)) individual may admit in writing to part of the allegations and thereby limit the scope of the hearing.

(3) In those cases where the allegation involves misbehavior or other culpability on the part of the ((~~offender, he or she~~)) individual, they shall be advised in writing that in admitting the violation and waiving the hearing, a report will be submitted which may result in the loss of ((~~work/training release~~)) partial confinement status, good time credits and/or the extension of the minimum term.

AMENDATORY SECTION (Amending WSR 05-24-009 and 06-02-038, filed 11/28/05 and 12/28/05, effective 5/1/06)

WAC 137-56-210 Disciplinary hearing—Rules of evidence. (1) All relevant and material evidence is admissible which, in the opinion of the hearing officer, is the best evidence reasonably obtainable having due regard for its necessity, availability, and trustworthiness.

(2) All evidence material to the issues raised in the hearing shall be offered into evidence. All evidence forming the basis for the hearing officer's decision in a matter shall be offered into evidence.

(3) The ((~~work/training release offender~~)) partial confinement individual shall be allowed to call witnesses approved by the hearing officer pursuant to WAC 137-56-180 (1)(e) and to present documentary evidence in ((~~his/her~~)) their defense at the hearing when permitting the ((~~work/training release offender~~)) partial confinement individual to do so will not be unduly hazardous to the ((~~work/training release facility's~~)) partial confinement program's safety or correctional goals unless the testimony to be presented by the witness and/or the information desired to be presented is deemed by the hearing officer to be irrelevant, immaterial, unnecessarily duplicative of other information and/or testimony before the hearing officer, or otherwise found to be unnecessary to the adequate presentation of the ((~~work/training release offender's~~)) partial confinement individual's case. The testimony of all witnesses from outside the ((~~work/training release facility~~)) partial confinement program shall be considered in writing. In the event the hearing officer determines that the presence of a witness is appropriate, the hearing officer should call the witness, or in its discretion, may continue the hearing if the witness is unavailable, but will become available within a reasonable period of time: Provided, however, that if the witness is unavailable, the hearing officer may, ((~~in his or her~~)) at their discretion, consider the written testimony previously submitted.

(4) The ((~~work/training release offender~~)) partial confinement individual may question witnesses against ((~~him/her~~)) them at the dis-

cretion of the hearing officer. If the hearing officer determines that a source of information would be subject to risk or harm if ((~~his/her~~)) their identity were disclosed, testimony of the confidential source may be introduced by the testimony of a staff member. The confidential testimony may be provided by the source or by the written and signed statement of the source. If the staff member to whom the source provided information is unavailable, the written statement of this staff member may be used. The hearing officer shall, out of the presence of all ((~~work/training release offenders~~)) partial confinement individuals and off the record, identify the confidential source, and how the testifying staff member received the confidential information. The staff member presenting the information from a confidential source shall identify the source and the circumstances surrounding the receipt of the confidential information to the hearing officer, off the record. The hearing officer shall make an independent determination regarding the reliability of the confidential source, the credibility of the confidential information, and the necessity of not revealing the source of the confidential information. In determining whether the confidential source is reliable and the confidential information is credible, the hearing officer should consider all relevant circumstances including, but not limited to:

(a) Evidence from other staff members that the confidential source has previously given reliable information;

(b) Evidence that the confidential source had no apparent motive to fabricate information;

(c) Evidence that the confidential source received no benefit from providing the information;

(d) Whether the confidential source is giving first-hand information;

(e) Whether the confidential information is internally consistent and is consistent with other known facts; and

(f) The existence of corroborating evidence.

The hearing officer shall also determine whether safety concerns justify nondisclosure of the source of confidential information. The reliability and credibility determination and the need for confidentiality must be made on the record.

(5) Documentary evidence, including written statements submitted by interested parties on behalf of the ((~~offender~~)) individual, may be received. Such evidence may include copies of documents, excerpts from documents and incorporation of written material by reference, including depositions.

(6) The hearing officer should determine if the ((~~offender~~)) individual is competent to understand the charges and proceedings or needs an interpreter to participate therein. If the ((~~offender~~)) individual is not competent or needs an interpreter, the hearing officer should postpone the hearing to secure a report on the competency of the ((~~offender~~)) individual, provide an interpreter, or take such other action as will assure the fairness and orderliness of the hearings.

AMENDATORY SECTION (Amending WSR 05-24-009 and 06-02-038, filed 11/28/05 and 12/28/05, effective 5/1/06)

WAC 137-56-220 Disciplinary hearing—Findings and conclusions.

(1) At the conclusion of the hearing, the hearing officer will make a

finding of fact as to whether ((~~or not~~)) the allegations made against the ((~~offender~~)) individual have been proven by a preponderance of the evidence presented at the hearing.

(2) If the hearing officer determines that the allegations have not been proven by a preponderance of the evidence presented at the hearing, the ((~~offender~~)) individual shall be restored/continued on ((~~work/training release~~)) partial confinement status.

(3) If the hearing officer determines that one or more of the allegations have been proven by a preponderance of the evidence presented at the hearing, the hearing officer will proceed to a disposition.

AMENDATORY SECTION (Amending WSR 05-24-009 and 06-02-038, filed 11/28/05 and 12/28/05, effective 5/1/06)

WAC 137-56-230 Disciplinary hearing—Disposition. (1) The hearing officer shall seek and consider input from the ((~~community corrections officer, the facility contract~~)) case manager, the reentry center contract/custody staff, if applicable, staff and pertinent treatment providers.

(2) The hearing officer will consider the ((~~offender's~~)) individual's total background, any previous interventions, adjustment on ((~~work/training release~~)) partial confinement, attitude, recommendations of interested parties, and any other information relative to the ((~~offender's~~)) individual's ability to continue ((~~in the program~~)) on partial confinement. The hearing officer shall make a determination as to whether or not the ((~~offender~~)) individual has earned good time credits toward release, and whether the matter should be referred to the indeterminate sentence review board or the court for possible increase in the inmate's or ((~~offender's~~)) individual's minimum term.

(3) The ((~~offender~~)) individual shall be present at all stages of the hearing, except for deliberation and even during deliberation when appropriate, and shall have the opportunity to make argument(s) ((~~in his or her~~)) on their own behalf.

AMENDATORY SECTION (Amending WSR 05-24-009 and 06-02-038, filed 11/28/05 and 12/28/05, effective 5/1/06)

WAC 137-56-240 Disciplinary hearing—Decision. (1) The hearing officer may:

(a) Restore the ((~~work/training release offender to his or her work/training release~~)) partial confinement individual to their partial confinement status under the same or modified conditions as the original plan; or

(b) Restrict the ((~~offender~~)) individual to the ((~~work/training release facility~~)) partial confinement program for up to ((~~thirty~~)) 30 days; or

(c) Require restitution be made by the ((~~work/training release offender~~)) partial confinement individual; or

(d) Require extra duty to be performed by the ((~~offender~~)) individual; or

(e) Revoke approval of an approved sponsor; or

(f) Deny good conduct time; or

(g) Terminate the ((~~work/training release~~)) reentry center plan and return the ((~~work/training release offender to an institution/jail, or facility~~)) partial confinement individual from a reentry center to a prison/institution/jail, or an electronic home monitoring individual to a reentry center or a prison/institution/jail.

(2) Nothing in this section shall preclude subsequent reclassification of the ((~~work/training release offender~~)) partial confinement individual or placement into administrative segregation if demonstrable cause exists to support this action and is approved by the administrator.

(3) The hearing officer shall notify the ((~~offender~~)) individual orally within one working day and confirm the decision in writing within five working days. The written decision shall specify the evidence upon which the hearing officer relied and shall include a description of the circumstances surrounding the allegation(s) upon which the termination of the ((~~work/training release~~)) partial confinement is based, the reasons for the decision, a discussion of the ((~~offender's~~)) individual's personal culpability in the actions which have led to the termination, and an evaluation of the ((~~offender's~~)) individual's progress, attitudes, need for further programs including ((~~work training~~)) reentry center alternatives.

AMENDATORY SECTION (Amending WSR 05-24-009 and 06-02-038, filed 11/28/05 and 12/28/05, effective 5/1/06)

WAC 137-56-250 Disciplinary hearing—Appeal. The ((~~offender~~)) individual may appeal the decision of the hearing officer to the area appeals panel. Appeal requests must be in writing, must be specific and based on objection to the procedures used or the information available to the hearing officer in making ((~~his or her~~)) their decision. Appeals must be submitted within seven calendar days of the hearing officer's written decision. For reasons of community protection, all sanctions ordered by the hearing officer will be imposed following the hearing and will not be stayed. The appeals panel, upon receipt of an appeal, will review the findings and decision of the hearing officer and either:

(1) Affirm, or affirm and modify to a lesser sanction the decision of the hearing officer; or

(2) Reverse the decision of the hearing officer; or

(3) Remand for a rehearing.

AMENDATORY SECTION (Amending WSR 86-06-012, filed 2/21/86)

WAC 137-56-280 Applicability. WAC 137-56-170 through ((~~137-56-260~~)) 137-56-250 shall not apply to the termination of a ((~~work/training release~~)) partial confinement plan pursuant to WAC 137-56-160 (2)((~~(a), (b), or (c)~~)). WAC 137-56-080 and 137-56-170 through ((~~137-56-260~~)) 137-56-250 shall not apply to the termination or modification of a ((~~work/training release~~)) partial confinement plan by the secretary pursuant to WAC 137-56-160(1).

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 137-56-260	Time limits.
WAC 137-56-270	Exceptions.

WSR 24-08-022
PERMANENT RULES
GAMBLING COMMISSION
[Filed March 25, 2024, 4:03 p.m., effective April 25, 2024]

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

Purpose: These rule changes amend several rules related to the conduct of raffles. The changes were proposed to: (1) Keep up with inflation in terms of maximum prize value and maximum ticket price; (2) alter some of the limitations on members-only raffles; and (3) ease the burden of record-keeping.

Citation of Rules Affected by this Order: Amending WAC 230-11-065 Raffle prizes, 230-11-067 Requesting commission approval prior to offering raffle prizes exceeding $40,000 per prize or $300,000 in a license year, 230-11-075 Limit number of guests for members-only raffles, 230-11-085 Modified and discounted pricing plans for tickets for members-only raffles, 230-11-086 Discounted pricing plans for tickets to members-only raffles, 230-11-087 Other pricing plans for members-only raffles, and 230-11-105 Retain and store raffle records.

Statutory Authority for Adoption: RCW 9.46.070.

Adopted under notice filed as WSR 24-03-066 on January 12, 2024.

Changes Other than Editing from Proposed to Adopted Version: WAC 230-11-065 (3)(c) was originally filed with a typographical error stating $300,000 would be the threshold for total raffle prizes in a year, except as authorized in WAC 230-11-067. The correct threshold that the gambling commission actually debated, discussed, and approved during the January and March 2024 commission meetings is $400,000. The adopted version of the rule reflects the corrected threshold of $400,000.

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 6, 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 7, 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: March 14, 2024.

Adam Amorine
Staff Attorney and Rules Coordinator

OTS-5064.3

AMENDATORY SECTION (Amending WSR 13-19-056, filed 9/16/13, effective 10/17/13)

WAC 230-11-065 Raffle prizes. (1) Organizations must own the prizes offered to winners before the date of the drawing. However, if

the winner has an option to receive a cash prize instead of the merchandise, the organization may enter into a contract to purchase the merchandise prize after the winner chooses his or her option. The organization must have the funds to make the purchase on account before the date of the drawing.

(2) At the time and date of any raffle drawing, the organization must have on deposit an unencumbered amount of money that is equal to or greater than all cash prizes being offered in the raffle. The organization must have these funds deposited in the gambling receipts account, if required, or in a recognized Washington state depository authorized to receive funds. The organization must not reduce the balance of funds available from this account below the required amount before awarding the prize(s).

(3) Raffle prizes must:

(a) Be available at the time and place of the drawing; and

(b) If cash, be United States currency or an equivalent amount of negotiable instruments; and

(c) For licensees, not exceed ((~~forty thousand dollars~~)) $60,000 per prize or ((~~three hundred thousand dollars~~)) $400,000 in total raffle prizes in a license year, except as authorized in WAC 230-11-067.

(4) For enhanced raffles, a purchase contract is not necessary for smaller noncash prizes, but the bona fide charitable or nonprofit organization must be able to demonstrate that such a prize is available and sufficient funds are held in reserve in the event that the winner chooses a noncash prize.

AMENDATORY SECTION (Amending WSR 12-05-067, filed 2/15/12, effective 3/17/12)

WAC 230-11-067 Requesting commission approval prior to offering raffle prizes exceeding ((~~forty thousand dollars~~)) $60,000 per prize or ((~~three hundred thousand dollars~~)) $400,000 in a license year. (1) The commissioners may vote to approve a licensee to exceed raffle prize limits if a licensee shows good cause in writing.

(2) Prior to offering raffle prizes that exceed ((~~forty thousand dollars~~)) $60,000 per prize, the licensee must submit a raffle plan to us that includes at least the following information:

(a) The organization's goals for conducting the raffle; and

(b) A brief overview of the licensee's mission and vision including the type of programs supported by the licensee and clients served; and

(c) Specific details of the raffle rules including:

(i) Date of the drawing; and

(ii) Cost of raffle tickets; and

(iii) Prizes available; and

(iv) Security of prizes; and

(v) Plans for selling raffle tickets; and

(vi) Description of how the licensee protects the integrity of the raffle; and

(d) An explanation of how the proceeds from the raffle will be used; and

(e) A plan to protect the licensee in the event of low ticket sales and other risks. Provided, that if the organization determines that ticket sales are below the number of tickets disclosed in the

raffle plan required to award the grand prize, the winner must receive at least 50 percent of the net proceeds in excess of expenses; and

(f) An explanation of how the licensee will purchase the prize(s) for the raffle; and

(g) A projected budget including:

(i) Estimated gross gambling receipts, expenses, and net income for the raffle; and

(ii) Minimum number of projected ticket sales to break even; and

(iii) Corresponding sales and prize levels with projected revenues and expenses for each level; and

(iv) Minimum and maximum prizes available; and

(h) Any other information that we request or any information the licensee wishes to submit.

(3) Prior to offering raffle prizes that exceed ((~~three hundred thousand dollars~~)) $400,000 in a license year, the licensee must submit a raffle plan that includes:

(a) The organization's goals for conducting raffles; and

(b) A brief overview of the licensee's mission and vision including the type of programs supported by the licensee and clients served; and

(c) Plans for selling raffle tickets; and

(d) Brief overview of prizes awarded; and

(e) Estimated gross gambling receipts, expenses, and net income for the raffles; and

(f) Any other information that we request or any information the licensee wishes to submit.

AMENDATORY SECTION (Amending WSR 06-20-040, filed 9/26/06, effective 1/1/08)

WAC 230-11-075 Limit number of guests for members-only raffles. If guests are allowed to participate in the raffle, the total number of guests ((~~participating in a raffle~~)) at the event must not exceed ((~~twenty-five~~)) 50 percent of the total attendance ((~~of the meeting~~)). The organization must maintain records to show compliance with this requirement.

AMENDATORY SECTION (Amending WSR 07-21-116, filed 10/22/07, effective 1/1/08)

WAC 230-11-085 Modified ((~~and discounted~~)) pricing plans for tickets for members-only raffles. (1) Licensees may use modified ticket pricing plans at members-only raffles when gross revenues do not exceed ((~~five thousand five dollars~~)) $5,005. One type of modified pricing plan is a penny raffle. A penny raffle is a raffle where licensees sell ((~~five hundred~~)) 500 consecutively numbered tickets. Participants randomly choose tickets and pay the consecutive number of the ticket multiplied by a predetermined cost, for instance, one penny.

(2) In modified pricing plans, licensees may sell tickets to enter a raffle for different values, not to exceed ((~~ten dollars~~)) $10 for a single ticket, if the licensee:

(a) Discloses to the participants the pricing plan before selling them a ticket to participate. The licensee must disclose to the participant the total number of tickets in the population available and the number of tickets at each price level; and

(b) Allows participants to randomly select their ticket from the population of remaining tickets and pay the amount printed on the ticket they select; and

(c) Establishes records for an adequate audit trail to determine gross gambling receipts; and

(d) Holds no more than two such drawings during a meeting or event((~~; and~~

~~(e) Sells multiple tickets to enter one or more drawings as a package and the total price of the package must not exceed twenty-five dollars~~)).

AMENDATORY SECTION (Amending WSR 06-20-040, filed 9/26/06, effective 1/1/08)

WAC 230-11-086 Discounted pricing plans for tickets to members-only raffles. In discounted pricing plans, licensees may sell tickets for a discounted price based on the number of tickets a player purchases if:

(1) The amount of the discount is set before any raffle tickets are sold; and

(2) Participants are allowed to purchase a single ticket; and

(3) There is only one discount plan for each raffle; and

(4) The cost of a single ticket, without a discount, does not exceed ((~~ten dollars; and~~

~~(5) The total cost of a discount package does not exceed twenty-five dollars~~)) $100; and

((~~(6)~~)) (5) The cost of a single ticket is printed on each ticket (for example, one dollar each); and

((~~(7)~~)) (6) The discounted tickets are identified by a unique ticket audit numbering system; and

((~~(8)~~)) (7) The licensee establishes an audit system that includes internal controls and procedures to determine gross gambling receipts from the sale of tickets using a discounted pricing plan.

AMENDATORY SECTION (Amending WSR 17-23-170, filed 11/21/17, effective 12/22/17)

WAC 230-11-087 Other pricing plans for members-only raffles. (1) Licensees may sell multiple tickets to enter one or more drawings as a package ((~~if the total price of the package does not exceed twenty-five dollars~~)).

(2) Licensees may include tickets to enter a raffle as a part of a package that includes dues, entertainment, or other fund-raising activities if:

(a) The package discloses the value of each component of the package to the purchaser; and

(b) The value of each individual raffle ticket does not exceed ((~~one hundred dollars~~)) $100.

(3) Individual tickets must be available for purchase for all raffles.

AMENDATORY SECTION (Amending WSR 14-21-079, filed 10/13/14, effective 1/1/15)

WAC 230-11-105 Retain and store raffle records. (1) Records for unlicensed raffles must be kept for one year following the date of the raffle drawing.

(2) Records for licensed raffles must be kept for three years from the end of the licensees' fiscal year in which the raffle was completed, with the exception of the following records, which must be retained for one year from the end of the licensee's fiscal year in which the raffle was completed:

(a) All ticket stubs for raffles that participants are not required to be present at the drawing; and

(b) All unsold tickets for individual raffles for which gross gambling receipts exceed $5,000.

(3) Organizations must keep all records at the main administrative or business office of all organizations that are located in Washington and have the records available for our review or audit.

(4) Organizations that do not have an administrative or business office must have and designate a records custodian that resides in Washington. The records custodian is responsible for retaining all raffle records in Washington state after the raffle has been completed. The organization will provide us with the following information:

(a) The name, address, and telephone number of the records custodian; and

(b) The address of the location where records will be maintained.

(5) We may allow an organization to maintain records outside the state of Washington if the organization submits a written request. We may withdraw this permission at any time. The request must include the following information:

(a) The reason records need to be maintained outside of the state of Washington;

(b) The name, address, and telephone number of the records custodian; and

(c) The address of the location where records will be maintained.

(6) Records approved to be maintained outside the state of Washington must be delivered to us within seven days of our request.

WSR 24-08-024
PERMANENT RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed March 26, 2024, 8:46 a.m., effective April 26, 2024]

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

Purpose: Update WAC with new language to align with newly adopted federal licensing guidelines for military servicemembers or their spouses. Newly adopted federal licensing guidelines for military servicemembers and their spouses requires alignment in state policy to avoid confusion in the field. This filing supersedes any previous emergency filing for this WAC section.

Citation of Rules Affected by this Order: Amending WAC 181-79A-257.

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

Adopted under notice filed as WSR 23-05-008 [24-03-158] on March 21, 2024 [January 24, 2024].

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: March 21, 2024.

Michael Nguyen
Rules Coordinator

OTS-4376.3

AMENDATORY SECTION (Amending WSR 21-19-131, filed 9/21/21, effective 10/22/21)

WAC 181-79A-257 Out-of-state candidates. Candidates for certification from other states who meet the general certificate requirements described in WAC 181-79A-150 (1) and (2), and the specific requirements for the certificate being sought in chapter 181-77 or 181-79A WAC including, but not limited to, degree, continuing education credit hours, and certification/licensure, shall be eligible for Washington certificates as follows:

(1) **Residency or initial certificates.** The residency or initial certificate shall be issued by the superintendent of public instruction to any candidate who meets requirements for the certificate including testing requirements as described in RCW 28A.410.220, and chapters 181-01 and 181-02 WAC, and who meets one of the following:

(a) Has completed a state approved preparation program in the professional field for which the certificate is to be issued and such additional professional fields as required by WAC 181-79A-150(4). Such programs shall include a defined course of study and a supervised internship.

(b) If a candidate for teacher, administrator, or educational staff associate certification does not meet the qualifications described in (a) of this subsection, a residency or initial certificate shall be issued to a candidate who holds or has held a certificate in the role, comparable to a residency or initial certificate, issued by another state and has practiced at the P-12 level in the role outside the state of Washington for at least three years.

(c) Holds an appropriate degree from an accredited college or university and has practiced three years as an educational staff associate in that role in a state where such certificate was not required.

(d) Holds a valid Nationally Certified School Psychologist (NCSP) credential issued by the National Association of School Psychologists (NASP); and applies for a residency educational staff associated school psychologist certificate.

(2) **Professional certificate.** The professional certificate shall be issued to out-of-state candidates if the candidate meets requirements for the initial or residency certificate including testing requirements as described in RCW 28A.410.220 and chapters 181-01 and 181-02 WAC, meets the issues of abuse or emotional or behavioral distress requirement as described in WAC 181-79A-200, and if one of the following conditions is met:

(a) The candidate has completed an advanced level certification procedure approved by the professional educator standards board as equivalent to the approved program procedure required in Washington; or

(b) The candidate holds a valid teaching certificate issued by the National Board for Professional Teaching Standards; or

(c) The candidate holds a valid school counselor certificate issued by the National Board for Professional Teaching Standards.

(3) **Military servicemembers and spouses of military servicemembers.**

(a) A residency, initial, or professional certificate shall be issued by the superintendent of public instruction to any candidate who holds a valid certificate in the role, comparable to a residency, initial, or professional certificate, who:

(i) Is a military servicemember or spouse of a military servicemember; and

(ii) Remains in good standing with the licensing authority that issued the certificate, and with every other licensing authority that has issued the servicemember or the spouse of a servicemember a license valid at a similar scope of practice.

(b) Under RCW 18.340.020 out-of-state candidates who are military spouses shall receive expedited issuance of the appropriate certificate within 30 days of receiving a completed application in accordance with this section.

(4)(a) Out-of-state candidates must meet the assessment requirements per chapters 181-01 and 181-02 WAC. Equivalent assessments will be published by the board.

(b) Military servicemembers or spouses of military servicemembers issued certificates under subsection (3)(a) of this section are considered to have met assessment requirements per chapters 181-01 and 181-02 WAC.

(5) Out-of-state candidates for educational staff associate certificates under WAC 181-79A-223 are considered to have met the requirement for the professional transitions to public schools course work provided they meet one or more of the following:

(a) Have completed a state-approved program as an educational staff associate in the role; or

(b) Hold or have held a certificate in the role, comparable to a residency or initial certificate, issued by another state and have practiced at the P-12 school level in the role outside the state of Washington for at least three years; or

(c) Hold an appropriate degree from an accredited college or university and have practiced three years as an educational staff associate in that role in a state where such certificate was not required.

WSR 24-08-025
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed March 26, 2024, 8:49 a.m., effective April 26, 2024]

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

Purpose: The department of labor and industries (L&I) is creating new rules in chapter 296-23 WAC, and amending one existing rule, WAC 296-23-362. The new rules define the recording notification process for when a worker wants to record independent medical examinations (IMEs) requested by L&I and self-insured employers. One existing rule, WAC 296-23-362, states an observer may not attend a psychiatric examination. This rule is updated as the amended statute includes an observer may be present for all examinations.

Citation of Rules Affected by this Order: New WAC 296-23-364 and 296-23-366; and amending WAC 296-23-362.

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

Other Authority: RCW 51.36.070.

Adopted under notice filed as WSR 24-02-068 on January 2, 2024.

Changes Other than Editing from Proposed to Adopted Version: In WAC 296-23-362, subsections (2) and (3) were reversed for ease of reading of the rule.

A final cost-benefit analysis is available by contacting Suzy Campbell, L&I, Insurance Services, Legal Services, P.O. Box 44270, Olympia, WA 98504-4270, phone 360-902-5003, fax 360-902-5029, email suzanne.campbell@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 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: March 26, 2024.

Joel Sacks
Director

OTS-4992.6

AMENDATORY SECTION (Amending WSR 04-04-029, filed 1/27/04, effective 3/1/04)

WAC 296-23-362 ((~~May a worker bring someone with them to an independent medical examination (IME)?~~)) Independent medical examination (IME)—Accompanying person. (1) Workers can bring an adult ((~~friend~~

~~or family member~~)) observer to the IME to provide comfort and reassurance. ((~~That accompanying person may attend the physical examination but may not attend a psychiatric examination.~~

~~(2)~~)) The accompanying person ((~~cannot~~)) will not be compensated for attending the examination by ((~~anyone in any manner~~)) the department or self-insured employer. The accompanying person must be unobtrusive at all times. Obtrusive behavior includes, but is not limited to, verbally or physically interrupting, interfering, or obstructing the examination in any way.

((~~(3) The worker may not bring an interpreter to the examination. If interpretive services are needed, the department or self-insurer will provide an interpreter.~~

~~(4) The purpose of the IME is to provide information to assist in the determination of the level of any permanent impairment not to conduct an adversarial procedure. Therefore, the accompanying person cannot be:~~

~~(a) The worker's attorney, paralegal, any other legal representative, or any other personnel employed by the worker's attorney or legal representative; or~~

~~(b) The worker's attending doctor, any other provider involved in the worker's care, or any other personnel employed by the attending doctor or other provider involved in the worker's care.~~

~~The department may designate other conditions under which the accompanying person is allowed to be present during the IME.~~)) (2) The accompanying person cannot be:

(a) The worker's attorney, paralegal, any other legal representative, or any other personnel employed by the worker's attorney or legal representative; or

(b) The worker's attending provider, any other provider involved in the worker's care, or any other personnel employed by the attending provider or other provider involved in the worker's care.

The department may designate other conditions under which the accompanying person is allowed to be present during the IME.

(3) The worker may not bring an interpreter to the examination. If interpretive services are needed, the department or self-insurer will provide an interpreter.

NEW SECTION

WAC 296-23-364 Definition of notification process required for workers to record independent medical examinations (IME). (1) After receipt of the IME appointment/assignment letter, but no less than seven calendar days before the date of the examination, the worker or their representative must provide written notice to the IME firm or an examiner not in a firm, as listed in the appointment/assignment letter, to inform of their intent to record the examination.

(2) Written notification of the workers' intent to record must be given for each IME appointment.

NEW SECTION

WAC 296-23-366 Independent medical examination (IME)—Recording notification time frame. If notice is received less than seven calendar days prior to the IME, a worker may record the examination **only if** the IME provider waives the seven calendar day notification requirement. If notification is received after 5:00 p.m., in the time zone of the examination location, the notification is considered received the next calendar day.

WSR 24-08-027
PERMANENT RULES
DEPARTMENT OF LICENSING
[Filed March 26, 2024, 9:14 a.m., effective April 26, 2024]

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

Purpose: The department of licensing is removing the requirement for firearm dealers to charge a fee for semiautomatic assault rifle purchases. This change is pursuant to HB 1143, passed during the 2023 legislative session, which now allows firearms dealers to charge a background check fee for the secure automated firearm e-check system run by the Washington state patrol.

Citation of Rules Affected by this Order: Amending [repealing] WAC 308-500-010 Semiautomatic assault rifle fee.

Statutory Authority for Adoption: RCW 9.41.090 (7)(a) Dealer deliveries regulated—Hold on deliver—Fees authorized, and 43.43.580 (4)(a) Firearms background check unit—Automated firearms background check system—Fee.

Adopted under notice filed as WSR 24-03-165 on January 24, 2024.

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 1.

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 1.

Date Adopted: March 26, 2024.

Ellis Starrett
Rules and Policy Manager

OTS-5099.1

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 308-500-010 Semiautomatic assault rifle fee.

WSR 24-08-034
PERMANENT RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed March 26, 2024, 3:17 p.m., effective April 26, 2024]

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

Purpose: The new WAC will add adapted physical education (PE) as a specialty endorsement to the state system along with prerequisite as to who can hold this specialty endorsement. The professional educator standards board approved of adding adapted PE specialty endorsement to the state system as well as prerequisites as to who can hold this specialty endorsement.

Citation of Rules Affected by this Order: Amending WAC 181-82A-208.

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

Adopted under notice filed as WSR 24-03-160 on March 21 [January 24], 2024.

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: March 21, 2024.

Michael Nguyen
Rules Coordinator

OTS-5109.1

AMENDATORY SECTION (Amending WSR 21-20-047, filed 9/28/21, effective 10/29/21)

WAC 181-82A-208 Specialty endorsements and educator certificates. (1) The following specialty endorsements may only be added to an existing endorsed teacher certificate:

(a) Environmental and sustainability education.

(b) Teacher of the visually impaired. Upon adoption of a content knowledge assessment by the professional educator standards board, teacher of the visually impaired will be available as an endorsement. Until adoption, teacher of the visually impaired will be available as a specialty endorsement.

(c) Gifted education.

(d) Elementary mathematics specialist.

(e) Adapted physical education. Only teachers holding a health/fitness, special education, early childhood special education, deaf

education, deaf education with American sign language (ASL) proficiency, or teacher of the visually impaired endorsement may add the adapted physical education specialty endorsement.

(f) Other specialty endorsements as approved by the professional educator standards board.

(2) The following specialty endorsements may be added to an existing administrator certificate, educational staff associate certificate, or endorsed teacher certificate:

(a) Elementary computer science.

(b) Secondary computer science.

(c) Other specialty endorsements as approved by the professional educator standards board.

(3) Providers approved by the professional educator standards board may recommend a candidate for a specialty endorsement to the superintendent of public instruction.

WSR 24-08-035
PERMANENT RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed March 26, 2024, 3:19 p.m., effective April 26, 2024]

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

Purpose: The new WAC language changes the name of 27-month review to initial review, and also addresses the barrier to school counselor preparation program approval timeline.

Citation of Rules Affected by this Order: Amending WAC 181-78A-105.

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

Adopted under notice filed as WSR 24-03-159 on March 21 [January 24], 2024.

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: March 21, 2024.

Michael Nguyen
Rules Coordinator

OTS-5108.2

AMENDATORY SECTION (Amending WSR 21-20-052, filed 9/28/21, effective 10/29/21)

WAC 181-78A-105 Procedures for initial approval of an educator preparation program. A prospective provider desiring to establish a preparation program shall comply with the following:

(1) Notification of intent. Prospective providers must submit the appropriate form, published by the professional educator standards board, declaring an intent to apply for approval to offer an educator preparation program or a new educator certification program.

(a) The notification of intent will be posted on the board website as public notice.

(b) The board will contact the prospective provider to begin the preproposal process.

(2) Preproposal. The prospective provider will develop and submit a preproposal that addresses all requirements approved and published by the board including evidence of necessary capacity, resources, and projected sustainability of the program. After board staff verify the preproposal is complete, the preproposal will be brought to the board.

(3) Final proposal. The prospective provider may be approved to develop a final proposal or the preproposal may be denied.

(a) If denied, the provider may resubmit its preproposal informed by suggestions of the board.

(b) If the preproposal is approved by the board, the prospective provider must develop and submit a written plan which addresses all final proposal elements including domains, components, and other program approval requirements contained in chapter 181-78A WAC and published by the board, including letters of support from partner districts and/or community agencies as evidence of how the program will meet Washington educator workforce needs.

(c) Final proposals submitted by prospective providers of school counselor preparation programs shall include evidence of seeking accreditation as soon as eligible by the council for the accreditation for counseling and related education programs.

(d) Final proposals submitted by prospective providers of school psychologist programs shall include evidence of seeking accreditation by the National Association for School Psychologists.

(4) After reviewing a prospective provider's final program proposal, the board may approve or deny the program approval:

(a) The program may be approved in a specific location(s) for an initial approval period of up to ((~~twenty-seven~~)) 27 months following the beginning of instruction. The prospective provider must notify the board when instruction has begun. If initial approval is denied, the prospective provider may resubmit a revised plan informed by suggestions given by the board and its staff.

(b) School counselor and school psychologist programs: Approve the program for a time period to align with their respective national association approvals.

(5) Prior to the expiration of initial approval, staff of the board shall conduct a site visit to determine if the program is in full compliance and performance aligned with the state approval requirements. This includes a review of all applicable indicators and domain components for the type of program.

(a) The ((~~twenty-seven-month~~)) initial review is a formal review to evaluate recently approved educator preparation programs and consider them for continued approval.

(i) The formal review will incorporate the following elements:

(A) The board shall determine the schedule for formal reviews and the forms of documentation and validation that will be used for evaluation.

(B) Preparation program providers will submit requested evidence to the staff of the board.

(C) A review team will review the evidence and request additional information including information provided through documents and interviews with program provider staff or affiliates as needed. One board staff member will serve as chair on the review team during the review process but will not serve in an evaluative role. Additional members of the review team shall include ((~~on~~)) one member of the ((~~programs~~)) program's professional educator advisory board, one P-12 practitioner with expertise related to the program scheduled for review, and two representatives of peer programs. Any two of these review team members, or two additional members must be identified individuals with expertise related to the domains of practice and standard components identified in annual written program feedback analyses.

(ii) The ((~~twenty-seven-month~~)) initial review team will use multiple data sources to address the specific goals listed in this section.

(A) The ((~~twenty-seven-month~~)) initial review team and the preparation program provider will use annual performance indicator data available at the time of review. Performance of programs on board approved indicators will be used by the review team to write the review report and by the board in consideration of the program's continued approval status.

(B) The ((~~twenty-seven-month~~)) initial review team and the preparation program provider will use evidence compiled by the provider that demonstrates performance aligned with all program standards and requirements. Programs' demonstration of upholding board approved standards and requirements will be used by the review team to write the review report and will be used by the board in consideration of continued approval status. Staff of the board will offer program providers guidance regarding the evidence required, how it may be gathered and used, and how it must be submitted.

(C) The ((~~twenty-seven-month~~)) initial review team and the preparation program provider will evaluate whether and to what degree the provider of the program under review has implemented the program in alignment with the goals and design for which it was approved. Fidelity to approved program designs and outcomes will be used by the review team to write the review report and by the board in consideration of continued approval status.

(D) The ((~~twenty-seven-month~~)) initial review team and the preparation program provider will evaluate whether and to what degree the provider of the program under review has demonstrated continuous improvement in its implementation and outcomes. Providers' ability to demonstrate continuous improvement in processes and outcomes will be used by the review team to write the review report and by the board in consideration of continued approval status.

(iii) Following the review, the review team will provide a report identifying any areas of practice in which program performance is out of alignment with standards and requirements.

(A) The report may also verify or contradict that the approved indicators or thresholds are functioning as intended.

(B) The review team's report and other appropriate documentation will be submitted to the provider and the board within six months of the formal ((~~twenty-seven-month~~)) initial review.

(C) Providers may submit a reply to the review team report within three weeks following receipt of the report. The board shall publish the process for submitting and reviewing the reply.

(D) In considering the review team's report, the board may request additional information for review, or take action to extend or change the educator preparation program's approval status.

(iv) Based upon the review team's report, the program provider's response, and any subsequent requests for information, as applicable, the board shall take one of the following actions:

(A) The board shall give full approval as described in WAC 181-78A-110 (1)(a).

(B) Limited approval as described in WAC 181-78A-110 (1)(b).

(C) Disapproval as described in WAC 181-78A-110 (1)(c).

(v) The board's staff may provide technical assistance to providers to help them improve their performance as described in WAC 181-78A-110 (1)(b)(iv).

(b) A provider may request a hearing in instances where it disagrees with the professional educator standards board's decision. This request must be made within ((~~twenty~~)) 20 days from the decision date. The hearing will be conducted through the office of administrative hearings by an administrative law judge under chapter 34.05 RCW. The provider seeking a hearing will provide a written request to the board in accordance with WAC 10-08-035.

WSR 24-08-040
PERMANENT RULES
LIQUOR AND CANNABIS
BOARD

[Filed March 27, 2024, 11:21 a.m., effective April 27, 2024]

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

Purpose: The Washington state liquor and cannabis board (board) has adopted amendments to the rules below to implement ESSB 5365 (chapter 398, Laws of 2023) that increases penalties the board can impose on licensed retailers who sell or give cigarette, tobacco, or vapor products to persons under 21 years of age.

Citation of Rules Affected by this Order: Amending WAC 314-35-075.

Statutory Authority for Adoption: RCW 70.155.110, 70.345.020.

Adopted under notice filed as WSR 24-03-089 on January 17, 2024.

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

Number of Sections Adopted at the Request of a 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 1, Repealed 0.

Date Adopted: March 27, 2024.

Ollie Garrett
Acting Chair

OTS-5152.1

AMENDATORY SECTION (Amending WSR 20-01-074, filed 12/11/19, effective 1/1/20)

WAC 314-35-075 Category I—Violations that create a direct or immediate threat to public health, safety, or both.

Category I: Violations that create a direct or immediate threat to public health, safety, or both.

Violation Type	1st Violation in a three-year period	2nd Violation in a three-year period	3rd Violation in a three-year window	4th Violation in a three-year window	5th Violation in a three-year window
Sales to persons under twenty-one. RCW 26-28-080	$1,000 monetary penalty	$2,500 monetary penalty	$5,000 monetary penalty and a 6-month license suspension	$10,000 monetary penalty and a 12-month license suspension	Cancellation of license with no possibility of reinstatement for 5 years

Violation Type	1st Violation in a three-year period	2nd Violation in a three-year period	3rd Violation in a three-year window	4th Violation in a three-year window	5th Violation in a three-year window
((~~Sales to persons under twenty-one,~~)) Allowing a person under twenty-one to frequent consumption of vapor products, or vapor product tasting. ((~~RCW 26.28.080~~)) RCW 70.345.100 WAC 314-35-040	$200 monetary penalty	$600 monetary penalty	$2,000 monetary penalty and a 6-month license suspension	$3,000 monetary penalty and a 12-month license suspension	Cancellation of license with no possibility of reinstatement for 5 years
Obstruction: Misrepresentation of fact; not permitting physical presence. RCW 70.345.030(2)	$200 monetary penalty	$600 monetary penalty	$2,000 monetary penalty and a 6-month license suspension	$3,000 monetary penalty and a 12-month license suspension	Cancellation of license with no possibility of reinstatement for 5 years
Sell, give, or permit to sell or give a product that contains any amount of any cannabinoid, synthetic cannabinoid, cathinone, or methcathinone, unless otherwise provided by law. RCW 70.345.030 WAC 314-35-055	$200 monetary penalty	$600 monetary penalty	$2,000 monetary penalty and a 6-month license suspension	$3,000 monetary penalty and a 12-month license suspension	Cancellation of license with no possibility of reinstatement for 5 years
Conduct violations: Permitting or engaging in criminal conduct, or both. Title 9 RCW Title 9A RCW Chapter 69.50 RCW Chapter 70.155 RCW Chapter 70.158 RCW Chapter 70.345 RCW Chapter 82.24 RCW Chapter 82.26 RCW WAC 314-35-045	$200 monetary penalty	$600 monetary penalty	$2,000 monetary penalty and a 6-month license suspension	$3,000 monetary penalty and a 12-month license suspension	Cancellation of license with no possibility of reinstatement for 5 years
Selling, giving, or permitting to give a vapor product or products to persons under twenty-one by any person other than a licensed retailer. RCW 26.28.080	$50 monetary penalty	$100 monetary penalty	$100 monetary penalty	$100 monetary penalty	$100 monetary penalty

WSR 24-08-057
PERMANENT RULES
DEPARTMENT OF HEALTH
(Dental Quality Assurance Commission)
[Filed March 29, 2024, 9:53 a.m., effective April 29, 2024]

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

Purpose: Dental school faculty member licenses. The dental quality assurance commission (commission) is adopting amendments to update rules regarding out-of-state licensure in line with SB 5113 (chapter 89, Laws of 2023). SB 5113 amended RCW 18.32.195 to include any institution of higher education in Washington state accredited by the Commission on Dental Accreditation (CODA) for faculty licensure. Prior to the passing of SB 5113, license barriers were removed only for the University of Washington faculty.

The commission amended WAC 246-817-150 to align with the recent statutory changes. The amendment removes specific references about granting licenses to University of Washington faculty and replaces this with a reference to faculty of any institution of higher education in Washington state accredited by CODA. The rule amendments implement changes in statute that will allow the commission to provide licensure through an academic pathway using a temporary permit without requiring an exam for dental practice while being employed by a Washington state CODA accredited dental school.

The rule also amends existing language to a gender-neutral format.

Citation of Rules Affected by this Order: Amending WAC 246-817-150.

Statutory Authority for Adoption: RCW 18.32.002, 18.32.0365; and SB 5113 (chapter 89, Laws of 2023), codified in RCW 18.32.195.

Adopted under notice filed as WSR 23-23-053 on November 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 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 1, Repealed 0.

Date Adopted: January 19, 2024.

David L. Carsten, DDS, Chair
Dental Quality Assurance Commission

OTS-4952.1

AMENDATORY SECTION (Amending WSR 16-05-083, filed 2/16/16, effective 3/18/16)

WAC 246-817-150 Licenses—Persons licensed or qualified out-of-state who are faculty at school of dentistry—Conditions. (1) The department shall provide an application for faculty licensure upon receipt of a written request from the dean of the ((~~University of Washington, School of Dentistry~~)) school of dentistry of any institution of higher education in Washington state accredited by the commission on dental accreditation.

(2) Applicants for faculty licensure shall submit a signed application, including applicable fees, and other documentation as required by the DQAC.

(3) The dean of the ((~~University of Washington, School of Dentistry, or his~~)) school of dentistry of any higher education in Washington state accredited by the commission on dental accreditation, or their designee, shall notify the department of health of any changes in employment status of any person holding a faculty license.

WSR 24-08-060
PERMANENT RULES
HEALTH CARE AUTHORITY
[Filed March 29, 2024, 10:20 a.m., effective April 29, 2024]

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

Purpose: The health care authority deleted subsections (9) and (10) within WAC 182-538-070 to be consistent with the integrated managed care contract standards for delivery case rate payments.

Citation of Rules Affected by this Order: Amending WAC 182-538-070.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 24-05-051 on February 16, 2024.

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: March 29, 2024.

Wendy Barcus
Rules Coordinator

OTS-5171.1

AMENDATORY SECTION (Amending WSR 23-24-026, filed 11/29/23, effective 1/1/24)

WAC 182-538-070 Payments, corrective action, and sanctions for managed care organizations (MCOs). (1) The medicaid agency pays apple health managed care organizations (MCOs) monthly capitated premiums that:

(a) Have been developed using generally accepted actuarial principles and practices;

(b) Are appropriate for the populations to be covered and the services to be furnished under the MCO contract;

(c) Have been certified by actuaries who meet the qualification standards established by the American Academy of Actuaries and follow the practice standards established by the Actuarial Standards Board;

(d) Are based on analysis of historical cost, rate information, or both; and

(e) Are paid based on legislative allocations.

(2) The MCO is solely responsible for payment of MCO-contracted health care services. The agency will not pay for a service that is the MCO's responsibility, even if the MCO has not paid the provider for the service.

(3) Home health services delivered through MCOs involving an in-home visit by a provider require the provider to comply with electronic visit verification requirements. See WAC 182-551-2220.

(4) The agency pays MCOs a service-based enhancement rate for wraparound with intensive services (WISe) administered by a certified WISe provider who holds a current behavioral health agency license issued by the department of health under chapter 246-341 WAC.

(5) For crisis services, the MCO must determine whether the person receiving the services is eligible for Washington apple health or if the person has other insurance coverage.

(6) The agency may require corrective action for:

(a) Substandard rates of clinical performance measures;

(b) Deficiencies found in audits and on-site visits; or

(c) Findings of noncompliance with any contractual, state, or federal requirements.

(7) The agency may:

(a) Impose sanctions for an MCO's noncompliance with any contractual, state, or federal requirements including, but not limited to, intermediate sanctions as described in 42 C.F.R. Sec. 438.700 and 42 C.F.R. Sec. 438.702; and

(b) Apply a monthly penalty assessment associated with poor performance on selected behavioral health performance measures.

(8) As authorized by 42 C.F.R. Sec. 438.702(b), if an MCO fails to meet any material obligation under the MCO contract including, but not limited to, the items listed in 42 C.F.R. Sec. 438.700 (b), (c), or (d), the agency may impose the maximum allowable sanction on a per-occurrence, per-day basis until the agency determines the MCO has:

(a) Corrected the violation; and

(b) Remedied any harm caused by the noncompliance.

((~~(9) The agency pays an enhancement rate for each MCO enrollee assigned to a federally qualified health center or rural health clinic, as authorized under chapters 182-548 and 182-549 WAC.~~

~~(10) The agency pays MCOs a delivery case rate, separate from the capitation payment, when an enrollee delivers a child or children and the MCO pays for any part of labor and delivery.~~))

WSR 24-08-061
PERMANENT RULES
HEALTH CARE AUTHORITY
[Filed March 29, 2024, 10:36 a.m., effective May 1, 2024]

Effective Date of Rule: May 1, 2024.

Purpose: The health care authority (HCA) amended these rules to add clarity and provide more detail on program requirements for how fee-for-service drugs must be billed to HCA for providers that are subject to the 340B program requirements.

Citation of Rules Affected by this Order: Amending WAC 182-530-1050, 182-530-7000, 182-530-7250, 182-550-7300, 182-530-7900, 182-530-8000, 182-530-8100, 182-531-0050, 182-531-1200, and 182-531-1450.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 24-05-054 on February 16, 2024.

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 10, 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 10, Repealed 0.

Date Adopted: March 29, 2024.

Wendy Barcus
Rules Coordinator

OTS-4994.4

AMENDATORY SECTION (Amending WSR 17-07-001, filed 3/1/17, effective 4/1/17)

WAC 182-530-1050 Definitions. In addition to the definitions and abbreviations found in chapter 182-500 WAC, Medical definitions, the following definitions apply to this chapter.

"340B program" - The federal program that requires drug manufacturers participating in the medicaid drug rebate program (MDRP) to provide covered outpatient drugs to enrolled "covered entities" at or below the ceiling price, as described in 42 U.S.C. § 256b. This requirement is described in section 340B of the Public Health Service Act and codified in 42 U.S.C. § 256b.

"340B provider" or **"PHS-qualified covered entity"** - Any provider including, but not limited to, a clinic, facility, hospital, pharmacy, or program listed in 42 U.S.C. § 256b as eligible to purchase, dispense, or administer outpatient drugs through the 340B program, has submitted its valid medicaid provider number(s) or national provider identification (NPI) number to the public health service (PHS), health

resources and services administration (HRSA), office of pharmacy affairs (OPA), and has registered with and been approved by OPA.

"340B maximum allowable cost (340B MAC)" - The maximum amount the medicaid agency reimburses a participating 340B public health services (PHS)-qualified covered entity to purchase, dispense, or administer a covered outpatient drug, device, or drug-related supply.

"Active ingredient" - The chemical component of a drug responsible for a drug's prescribed/intended therapeutic effect. The medicaid agency or ((~~its~~)) the agency's designee limits coverage of active ingredients to those with an ((~~eleven~~)) 11-digit national drug code (NDC) and those specifically authorized by the agency or ((~~its~~)) the agency's designee.

"Actual acquisition cost (AAC)" - ((~~Refers to one of the following:~~

~~(1) Provider AAC -~~)) The true cost ((~~a provider~~)) paid for a specific drug or product in the package size purchased, including discounts, rebates, charge backs that affect the provider's invoice price, and other adjustments to the price of the drug, device, or drug-related supply, excluding dispensing fees((~~;~~

~~(2) 340B AAC - The true cost paid by a public health service (PHS)-qualifying entity for a specific drug, excluding dispensing fees; or~~

~~(3) POS AAC - The agency-determined rate paid to pharmacies through the point-of-sale (POS) system, and intended to reflect pharmacy providers' actual acquisition cost~~)).

"Administer" - Includes the direct application of a prescription drug or device by injection, insertion, inhalation, ingestion, or any other means, to the body of a patient by a practitioner, or at the direction of the practitioner.

"Appointing authority" - ((~~Means~~)) The following people acting jointly: The director of the Washington state health care authority and the director of the Washington state department of labor and industries.

"Authorized generic drug" - Any drug sold, licensed, or marketed under a new drug application (NDA) approved by the Food and Drug Administration (FDA) under section 505(c) of the Federal Food, Drug and Cosmetic Act (FFDCA) that is marketed, sold or distributed under a different labeler code, product code, trade name, trademark, or packaging (other than repackaging the listed drug for use in institutions) than the brand name drug.

"Automated authorization" - Adjudication of claims using submitted NCPDP data elements or claims history to verify that the medicaid agency's or its designee's authorization requirements have been satisfied without the need for the medicaid agency or its designee to request additional clinical information.

((~~**"Automated maximum allowable cost (AMAC)" - The rate established by the medicaid agency or its designee for a multiple-source drug that is not on the maximum allowable cost (MAC) list and that is designated by two or more products at least one of which must be under a federal drug rebate contract.**~~))

"Average manufacturer price (AMP)" - The average price paid to a manufacturer by wholesalers for drugs distributed to retail pharmacies.

"Average sales price (ASP)" - The weighted average of all nonfederal sales to ((~~wholesalers~~)) wholesaler's net of charge backs, discounts, rebates, and other benefits tied to the purchase of the drug product, whether it is paid to the wholesaler or the retailer.

"Average wholesale price (AWP)" - A reference price of a drug product that is published at a point in time and reported to the medicaid agency or its designee by the agency's drug file contractor.

"Brand name drug" - A single-source or innovator multiple-source drug.

"Compendia of drug information" - Includes the following:

(1) The American Hospital Formulary Service Drug Information;

(2) The United States Pharmacopeia Drug Information; and

(3) DRUGDEX Information System.

"Compounding" - The act of combining two or more active ingredients or adjusting therapeutic strengths in the preparation of a prescription.

"Deliver or delivery" - The transfer of a drug or device from one person to another.

"Dispense as written (DAW)" - An instruction to the pharmacist forbidding substitution of a generic drug or a therapeutically equivalent product for the specific drug product prescribed.

"Dispensing fee" - Means professional dispensing fee. See professional dispensing fee.

"Drug file" - A list of drug products, pricing and other information provided to the medicaid agency or its designee and maintained by a drug file contractor.

"Drug file contractor" - An entity which has been contracted to provide regularly updated information on drugs, devices, and drug-related supplies at specified intervals, for the purpose of pharmaceutical claim adjudication. Information is provided specific to individual national drug codes, including product pricing.

"Drug-related supplies" - Nondrug items necessary for the administration, delivery, or monitoring of a drug or drug regimen.

"Drug use review (DUR)" - A review of covered outpatient drug use that assures prescriptions are appropriate, medically necessary, and not likely to result in adverse medical outcomes.

"Effectiveness" - The extent to which a given intervention is likely to produce beneficial results for which it is intended in ordinary circumstances.

"Efficacy" - The extent to which a given intervention is likely to produce beneficial effects in the context of the research study.

"Emergency kit" - A set of limited pharmaceuticals furnished to a nursing facility by the pharmacy that provides prescription dispensing services to that facility. Each kit is specifically set up to meet the emergency needs of each nursing facility's client population and is for use during those hours when pharmacy services are unavailable.

"Endorsing practitioner" - A practitioner who has reviewed the Washington preferred drug list (Washington PDL) and has enrolled with the health care authority (HCA), agreeing to allow therapeutic interchange (substitution) of a preferred drug for any nonpreferred drug in a given therapeutic class on the Washington PDL.

"Estimated acquisition cost (EAC)" - The medicaid agency's estimate of the price providers generally and currently pay for a drug marketed or sold by a particular manufacturer or labeler.

"Evidence-based drug reviews" - The application of a set of principles and methods for comprehensive independent and objective evaluation of clinical evidence provided in well-designed and well-conducted studies and objective clinical data to determine the level of evidence that proves to the greatest extent possible, that a health care service is safe, effective, and beneficial when making population-based coverage policies or individual medical necessity decisions. Classify-

ing evidence by its epistemologic strength and requiring that only the strongest types (coming from meta-analyses, systematic reviews, and randomized controlled trials) can yield strong recommendations; weaker types (such as from case-control studies) can yield weak recommendations.

"Evidence-based practice center" or **"EPC"** - A research organization that has been designated by the Agency for Healthcare Research and Quality (AHRQ) to develop evidence reports and technology assessments on topics relevant to clinical and other health care organization and delivery issues, specifically those that are common, expensive, or significant for the medicare and medicaid populations.

"Federal drug rebates" - Dollars returned to medicaid from pharmaceutical manufacturers under the terms of the manufacturers' national rebate agreement with the federal Department of Health and Human Services (DHHS).

"Federal upper limit (FUL)" - The maximum allowable reimbursement set by the Centers for Medicare and Medicaid Services (CMS) for a multiple-source drug.

"Generic drug" - A drug that is approved by the Food and Drug Administration (FDA) under an abbreviated new drug application.

"Inactive ingredient" - A drug component that remains chemically unchanged during compounding but serves as the:

(1) Necessary vehicle for the delivery of the therapeutic effect; or

(2) Agent for the intended method or rate of absorption for the drug's active therapeutic agent.

"Ingredient cost" - The portion of a prescription's cost attributable to the covered drug ingredients or chemical components.

"Innovator multiple-source drug" - A multiple-source drug that was originally marketed under a new drug application (NDA) approved by the Food and Drug Administration (FDA), including an authorized generic drug. This includes:

(1) A drug product marketed by any cross-licensed producers, labelers, or distributors operating under the NDA; or

(2) A covered outpatient drug approved under a biologics license application (BLA), product license application (PLA), establishment license application (ELA), or antibiotic drug application (ADA).

"Less than effective drug" or **"DESI"** - A drug for which:

(1) Effective approval of the drug application has been withdrawn by the Food and Drug Administration (FDA) for safety or efficacy reasons as a result of the drug efficacy study implementation (DESI) review; or

(2) The secretary of the federal Department of Health and Human Services (DHHS) has issued a notice of an opportunity for a hearing under section 505(e) of the federal Food, Drug, and Cosmetic Act on a proposed order of the secretary to withdraw approval of an application for such drug under such section because the secretary has determined the drug is less than effective for some or all conditions of use prescribed, recommended, or suggested in its labeling.

"Maximum allowable cost (MAC)" - The maximum amount the medicaid agency or its designee reimburses for a drug, device, or drug-related supply.

"Medicaid preferred drug list (medicaid PDL)" - The list of all drugs in drug classes approved for inclusion by the Washington medicaid drug use review (DUR) board and each drug's preferred or nonpreferred status as approved by the agency director or designee. The list includes at minimum all drugs and drug classes on the Washington PDL

and may include additional drugs and drug classes recommended by the DUR board and approved by the agency director or designee.

"Medically accepted indication" - Any use for a covered outpatient drug:

(1) Which is approved under the federal Food, Drug, and Cosmetic Act; or

(2) The use of which is supported by one or more citations included or approved for inclusion in any of the compendia of drug information, as defined in this chapter.

"Modified unit dose delivery system" (also known as blister packs or "bingo/punch cards") - A method in which each patient's medication is delivered to a nursing facility:

(1) In individually sealed, single dose packages or "blisters"; and

(2) In quantities for one month's supply, unless the prescriber specifies a shorter period of therapy.

"Multiple-source drug" - A drug for which there is at least one other drug product sold in the United States that is pharmaceutically equivalent and bioequivalent, as determined by the Food and Drug Administration (FDA).

"National drug code (NDC)" - The ((~~eleven~~)) 11-digit numerical code that includes the labeler code, product code, and package code.

"National rebate agreement" - The agreement developed by the Centers for Medicare and Medicaid Services (CMS) to implement section 1927 of the Social Security Act, and entered into by a manufacturer and the federal Department of Health and Human Services (DHHS).

"Noninnovator multiple-source drug" - A drug that is:

(1) A multiple-source drug that is not an innovator multiple-source drug or a single-source drug;

(2) A multiple-source drug marketed under an abbreviated new drug application (ANDA) or an abbreviated antibiotic drug application;

(3) A covered outpatient drug that entered the market before 1962 and was originally marketed under a new drug application (NDA); or

(4) Any drug that has not gone through a Food and Drug Administration (FDA) approval process but otherwise meets the definition of a covered outpatient drug.

If any of the drug products listed in this definition of a noninnovator multiple-source drug subsequently receive an NDA or ANDA approval from the FDA, the product's drug category changes to correlate with the new product application type.

"Nonpreferred drug" - A drug within a therapeutic class of drugs on the medicaid preferred drug list (medicaid PDL) that has not been selected as a preferred drug.

"Obsolete NDC" - A national drug code replaced or discontinued by the manufacturer or labeler.

"Over-the-counter (OTC) drugs" - Drugs that do not require a prescription before they can be sold or dispensed.

"Peer reviewed medical literature" - A research study, report, or findings regarding the specific use of a drug that has been submitted to one or more professional journals, reviewed by experts with appropriate credentials, and subsequently published by a reputable professional journal. A clinical drug study used as the basis for the publication must be a double blind, randomized, placebo or active control study.

"Pharmacist" - A person licensed in the practice of pharmacy by the state in which the prescription is filled.

"Pharmacy" - Every location licensed by the state board of pharmacy in the state where the practice of pharmacy is conducted.

"Pharmacy and therapeutic (P&T) committee" - The independent Washington state committee created by RCW 41.05.021 (1)(a)(iii) and 70.14.050. At the election of the medicaid agency or its designee, the committee may serve as the drug use review board provided for in WAC 182-530-4000.

"Point-of-sale (POS)" - A pharmacy claims processing system capable of receiving and adjudicating claims online.

"Practice of pharmacy" - The practice of and responsibility for:

(1) Accurately interpreting prescription orders;

(2) Compounding drugs;

(3) Dispensing, labeling, administering, and distributing of drugs and devices;

(4) Providing drug information to the client that includes, but is not limited to, the advising of therapeutic values, hazards, and the uses of drugs and devices;

(5) Monitoring of drug therapy and use;

(6) Proper and safe storage of drugs and devices;

(7) Documenting and maintaining records;

(8) Initiating or modifying drug therapy in accordance with written guidelines or protocols previously established and approved for a pharmacist's practice by a practitioner authorized to prescribe drugs; and

(9) Participating in drug use reviews and drug product selection.

"Practitioner" - An individual who has met the professional and legal requirements necessary to provide a health care service, such as a physician, nurse, dentist, physical therapist, pharmacist, or other person authorized by state law as a practitioner.

"Preferred drug" - A drug within a therapeutic class of drugs on the medicaid preferred drug list (medicaid PDL) that has been selected as a preferred drug.

"Prescriber" - A physician, osteopathic physician/surgeon, dentist, nurse, physician assistant, optometrist, pharmacist, or other person authorized by law or rule to prescribe drugs. See WAC 246-863-100 for pharmacists' prescriptive authority.

"Prescription" - An order for drugs or devices issued by a practitioner authorized by state law or rule to prescribe drugs or devices, in the course of the practitioner's professional practice, for a legitimate medical purpose.

"Prescription drugs" - Drugs required by any applicable federal or state law or regulation to be dispensed by prescription only or that are restricted to use by practitioners only.

"Professional dispensing fee":

(1) The fee the medicaid agency or its designee pays pharmacists and dispensing providers for covered prescriptions. The fee pays for costs in excess of the ingredient cost of a covered outpatient drug when a covered outpatient drug is dispensed; and

(2) Includes only costs associated with ensuring that possession of the appropriate covered outpatient drug is transferred to a medicaid beneficiary. Pharmacy and dispensing provider costs include, but are not limited to, reasonable costs associated with a prescriber's time in checking the computer for information about an individual's coverage, performing drug utilization review and preferred drug list review activities, measurement or mixing of the covered outpatient drug, filling the container, beneficiary counseling, physically providing the completed prescription to the medicaid beneficiary, deliv-

ery, special packaging, and overhead associated with maintaining the facility and equipment necessary to operate the dispensing entity.

"Prospective drug use review (Pro-DUR)" - A process in which a request for a drug product for a particular client is screened, before the product is dispensed, for potential drug therapy problems.

"Reconstitution" - The process of returning a single active ingredient, previously altered for preservation and storage, to its approximate original state. Reconstitution is not compounding.

"Retrospective drug use review (Retro-DUR)" - The process in which drug utilization is reviewed on an ongoing periodic basis to identify patterns of fraud, abuse, gross overuse, or inappropriate or not medically necessary care.

"Single-source drug" - A drug produced or distributed under an original new drug application (NDA) approved by the Food and Drug Administration (FDA) with an approved new drug application (NDA) number issued by the FDA. This includes:

(1) A drug product marketed by any cross-licensed producers, labelers, or distributors operating under the NDA; or

(2) A drug approved under a biologics license application (BLA), product license application (PLA), establishment license application (ELA), or antibiotic drug application (ADA).

For the purposes of this definition, an ANDA is not an NDA.

"Systematic review" - A specific and reproducible method to identify, select, and appraise all the studies that meet minimum quality standards and are relevant to a particular question. The results of the studies are then analyzed and summarized into evidence tables to be used to guide evidence-based decisions.

"Terminated NDC" - An ((~~eleven~~)) 11-digit national drug code (NDC) that is discontinued by the manufacturer for any reason. The NDC may be terminated immediately due to health or safety issues or it may be phased out based on the product's shelf life.

"Therapeutic alternative" - A drug product that contains a different chemical structure than the drug prescribed, but is in the same pharmacologic or therapeutic class and can be expected to have a similar therapeutic effect and adverse reaction profile when administered to patients in a therapeutically equivalent dosage.

"Therapeutic class" - A group of drugs used for the treatment, remediation, or cure of a specific disorder or disease.

"Therapeutic interchange" - To dispense a therapeutic alternative to the prescribed drug when an endorsing practitioner who has indicated that substitution is permitted, prescribes the drug. See therapeutic interchange program (TIP).

"Therapeutic interchange program (TIP)" - The process developed by participating state agencies under RCW 69.41.190 and 70.14.050, to allow prescribers to endorse a Washington preferred drug list, and in most cases, requires pharmacists to automatically substitute a preferred, equivalent drug from the list.

"Therapeutically equivalent" - Drug products that contain different chemical structures but have the same efficacy and safety when administered to an individual, as determined by:

(1) Information from the Food and Drug Administration (FDA);

(2) Published and peer-reviewed scientific data;

(3) Randomized controlled clinical trials; or

(4) Other scientific evidence.

"Tiered dispensing fee system" - A system of paying pharmacies different dispensing fee rates, based on the individual pharmacy's total annual prescription volume and/or the drug delivery system used.

"True unit dose delivery" - A method in which each patient's medication is delivered to the nursing facility in quantities sufficient only for the day's required dosage.

"Unit dose drug delivery" - True unit dose or modified unit dose delivery systems.

"Usual and customary charge" - The fee that the provider typically charges the general public for the product or service.

"Washington preferred drug list (Washington PDL)" - The list of drugs selected by the appointing authority to be used by applicable state agencies as the basis for purchase of drugs in state-operated health care programs.

"Wholesale acquisition cost" - Refers to either the actual wholesale cost paid by a wholesaler for drugs purchased from a manufacturer or a list price published as wholesale acquisition cost.

AMENDATORY SECTION (Amending WSR 17-07-001, filed 3/1/17, effective 4/1/17)

WAC 182-530-7000 Reimbursement. (1) The medicaid agency's reimbursement for a prescription drug dispensed through point-of-sale (POS) must not exceed the lesser of actual acquisition cost (AAC) plus a professional dispensing fee or the provider's usual and customary charge.

(2) The agency selects the sources for pricing information used to set ((~~POS~~)) AAC.

(3) The ((~~POS~~)) AAC is calculated as the lowest of:

(a) National average drug acquisition cost (NADAC);

(b) Maximum allowable cost (MAC);

(c) Federal upper limit (FUL);

(d) 340B ((~~Actual acquisition cost (340B AAC)~~)) MAC for covered outpatient drugs purchased, dispensed, or administered under section 340B of the Public Health Service (PHS) Act (see WAC 182-530-7900 for exceptions); or

(e) ((~~Automated maximum allowable cost (AMAC)~~)) Submitted ingredient cost.

(4) Where NADAC does not exist, other available reference prices from national sources such as wholesale acquisition cost, or average manufacturer price ((~~will~~)) may be used as the basis of the reimbursement.

(5) Where NADAC does not accurately reflect the actual acquisition costs in Washington state, a percentage adjustment to NADAC will be made to the reimbursement.

(6) The agency may set ((~~POS~~)) AAC for specified drugs ((~~or~~)), drug categories, or providers at a maximum allowable cost other than that determined in subsection (2) of this section based on specific product acquisition costs. The agency considers product acquisition costs in setting a rate for a drug or a class of drugs.

(7) The agency bases ((~~POS~~)) AAC drug reimbursement on the actual package size dispensed.

(8) The agency reimburses a pharmacy for the least costly dosage form of a drug within the same route of administration, unless the prescriber has designated a medically necessary specific dosage form or the agency has selected the more expensive dosage form as a preferred drug.

(9) If the pharmacy provider offers a discount, rebate, promotion, or other incentive which directly relates to the reduction of the price of a prescription to the individual nonmedicaid customer, the provider must similarly reduce its charge to the agency for the prescription.

(10) If the pharmacy provider gives an otherwise covered product for free to the general public, the pharmacy must not submit a claim to the agency.

(11) The agency does not reimburse for:

(a) Prescriptions written on presigned prescription blanks filled out by nursing facility operators or pharmacists;

(b) Prescriptions without the date of the original order;

(c) Drugs used to replace those taken from a nursing facility emergency kit;

(d) Drugs used to replace a physician's stock supply;

(e) Outpatient drugs, biological products, insulin, supplies, appliances, and equipment included in other reimbursement methods including, but not limited to:

(i) Diagnosis-related group (DRG);

(ii) Ratio of costs-to-charges (RCC);

(iii) Nursing facility daily rates;

(iv) Managed care capitation rates;

(v) Block grants; or

(vi) Drugs prescribed for clients who are on the agency's hospice program when the drugs are related to the client's terminal illness and related condition.

(f) Hemophilia and von Willebrand related products shipped to clients for administration in the home unless the products are provided through a qualified hemophilia treatment center of excellence (COE) as defined in WAC 182-531-1625.

AMENDATORY SECTION (Amending WSR 23-11-007, filed 5/4/23, effective 6/4/23)

WAC 182-530-7250 Reimbursement—Miscellaneous. (1) The medicaid agency reimburses for covered drugs, devices, and drug-related supplies provided or administered by nonpharmacy providers under specified conditions, as follows:

(a) The agency reimburses for drugs administered or prepared and delivered for individual use by an authorized prescriber during an office visit according to specific program rules found in:

(i) Chapter 182-531 WAC, Physician-related services;

(ii) Chapter 182-532 WAC, Reproductive health/family planning ((~~only~~)) programs; and

(iii) Chapter 182-540 WAC, Kidney disease program and kidney center services.

(b) Providers who are ((~~purchasers~~)) participating PHS-qualified covered entities under section 340B of the Public Health Services (PHS) ((~~discounted drugs~~)) Act must comply with PHS 340B program requirements and Washington medicaid requirements for 340B providers participating with medicaid. (See WAC 182-530-7900.)

(2) The agency may ((~~request~~)) require providers to submit a current invoice for the actual cost of the drug, device, or drug-related

supply billed. If an invoice is ((~~requested~~)) required, the invoice must show the:

(a) Name of the drug, device, or drug-related supply;
(b) Drug or product manufacturer;
(c) NDC of the product or products;
(d) Drug strength;
(e) Product description;
(f) Quantity; and
(g) Cost, including any discounts or free goods associated with the invoice.

(3) The agency does not reimburse providers for the cost of vaccines obtained through the state department of health (DOH). The agency does pay physicians, advanced registered nurse practitioners (ARNP), and pharmacists a fee for administering the vaccine.

AMENDATORY SECTION (Amending WSR 17-07-001, filed 3/1/17, effective 4/1/17)

WAC 182-530-7300 Reimbursement—Requesting a change. Upon request from a ((~~pharmacy~~)) provider, the medicaid agency may reimburse at the provider's actual acquisition cost (((~~provider~~)) AAC) for a drug that would otherwise be reimbursed at maximum allowable cost (MAC) when:

(1) The availability of lower cost equivalents in the marketplace is severely curtailed and the price disparity between AAC for the drug and the MAC reimbursement affects clients' access; and

(2) An invoice documenting ((~~actual acquisition cost~~)) AAC relevant to the date the drug was dispensed is provided to the agency.

AMENDATORY SECTION (Amending WSR 21-08-021, filed 3/29/21, effective 5/1/21)

WAC 182-530-7900 Drugs purchased under the Public Health Service (PHS) Act. (1) ((~~Providers dispensing or administering 340B drugs to Washington apple health clients are required to submit their valid medicaid provider number(s) or national provider identification (NPI) number to the PHS health resources and services administration, office of pharmacy affairs. See WAC 182-530-7500 for information on the drug rebate program.~~

~~(2) Drugs purchased under section 340B of the Public Health Service (PHS) Act can be billed to Washington apple health only by PHS-qualified entities. The Washington medicaid rebate process excludes 340B claims from invoicing only when the drug is billed by a medicaid provider number or national provider identification (NPI) number listed on the PHS office of pharmacy affairs national medicaid exclusion file. See WAC 182-530-7500 for information on the drug rebate program.~~

~~(3) As part of participation in the 340B program, providers must submit a completed annual attestation form (HCA 13-0047) to the agency acknowledging that all claims for Washington apple health clients in both fee-for-service and managed care are subject to their respective 340B rules. Providers who fail to submit a completed attestation form to the agency may receive a compliance audit and be at risk of dupli-~~

~~cate discounts.~~)) Providers registered and approved as PHS-qualified covered entities participate in the 340B program under their medicaid provider number or NPI listed on the quarterly medicaid exclusion file (MEF).

(2) PHS-qualified covered entities participating in the 340B program must follow federal and state 340B program requirements and applicable medicaid agency rules including, but not limited to, this chapter, chapters 182-501 and 182-502 WAC, and agency billing instructions.

(3) All claims submitted to Washington apple health through fee-for-service (FFS) or managed care for outpatient drugs purchased, dispensed, or administered by PHS-qualified covered entities participating in the 340B program:

(a) May be billed only by the PHS-qualified covered entity participating in the 340B program under their participating medicaid provider number or NPI listed in the quarterly medicaid exclusion file; and

(b) Are excluded from medicaid drug rebate invoicing. See WAC 182-530-7500 for information on the drug rebate program.

(4) With the exception of claim types identified in subsection (5) of this section, all ((~~340B purchased drugs under the medicaid fee-for-service program must be billed to the medicaid agency at the 340B actual acquisition cost (340B AAC)~~)) drugs purchased, dispensed, or administered by a PHS-qualified covered entity participating in the 340B program must be billed at the actual acquisition cost (AAC) when submitted through FFS to the agency.

(5) Exceptions to the ((~~340B~~)) AAC billing requirement are only made for:

(a) Outpatient hospital claims paid under the enhanced ambulatory payment group (EAPG) methodology (see WAC 182-550-7000); and

(b) Ambulatory surgery claims paid under payment groups methodology.

(6) As part of participation in the 340B program, providers must submit a completed annual attestation form (HCA 13-0047) to the agency acknowledging that all claims for Washington apple health clients in both FFS and managed care are subject to all applicable 340B rules. Providers who fail to submit a completed attestation form to the agency may receive a compliance audit and be at risk of duplicate discounts.

AMENDATORY SECTION (Amending WSR 17-07-001, filed 3/1/17, effective 4/1/17)

WAC 182-530-8000 Reimbursement method—Actual acquisition cost (AAC). The medicaid agency uses the following sources to determine ((~~point-of-sale~~)) actual acquisition cost (((~~POS~~)) AAC) including, but not limited to:

(1) National average drug acquisition cost (NADAC) published by the Centers for Medicare and Medicaid Services (CMS);

(2) Acquisition cost data made available to the agency by:

(a) Audit results from federal or state agencies;

(b) Other state health care purchasing organizations;

(c) Pharmacy benefit managers;

(d) Individual pharmacy providers participating in the agency's programs;
(e) Other third-party payers;
(f) Drug file databases; and
(g) Actuaries or other consultants.

AMENDATORY SECTION (Amending WSR 17-07-001, filed 3/1/17, effective 4/1/17)

WAC 182-530-8100 Reimbursement—Maximum allowable cost (MAC). (1) The medicaid agency establishes a maximum allowable cost (MAC) for ((~~a multiple-source drug which is available from at least two manufacturers/labelers~~)) covered outpatient drugs.
(2) The agency determines the MAC for ((~~a multiple-source~~)) covered outpatient drugs:
(a) When specific regional and local drug acquisition cost data is available, the agency:
(i) Identifies what products are available from wholesalers for each drug being considered for MAC pricing;
(ii) Determines pharmacy providers' approximate acquisition costs for these products; and
(iii) Establishes the MAC at a level which gives pharmacists access to at least one product from a manufacturer with a qualified rebate agreement (see WAC 182-530-7500(4)).
(b) When specific regional and local drug acquisition cost data is not available, the agency may estimate acquisition cost based on national pricing sources.
(3) The MAC established for ((~~a multiple-source~~)) covered outpatient drugs does not apply if the written prescription identifies that a specific brand is medically necessary for a particular client. In such cases, the actual acquisition cost (AAC) for the particular brand applies, provided authorization is obtained from the agency as specified under WAC 182-530-3000.
(4) Except as provided in subsection (3) of this section, the agency reimburses providers for ((~~a multiple-source~~)) covered outpatient drugs at the lowest of the rates calculated under the methods listed in WAC 182-530-7000.
(5) The MAC established for ((~~a multiple-source~~)) covered outpatient drugs may vary by package size, including those identified as unit dose national drug codes (NDCs) by the manufacturer or manufacturers of the drug.

OTS-4995.1

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

WAC 182-531-0050 Physician-related services definitions. The following definitions and abbreviations and those found in chapter 182-500 WAC, apply to this chapter.

((~~**"Acquisition cost"** - The cost of an item excluding shipping, handling, and any applicable taxes.~~))

"Actual acquisition cost" - See WAC 182-530-1050.

"Acute care" - Care provided for clients who are not medically stable. These clients require frequent monitoring by a health care professional in order to maintain their health status. See also WAC 246-335-015.

"Acute physical medicine and rehabilitation (PM&R)" - A comprehensive inpatient and rehabilitative program coordinated by a multidisciplinary team at ((~~an~~)) a medicaid agency-approved rehabilitation facility. The program provides ((~~twenty-four~~)) 24-hour specialized nursing services and an intense level of specialized therapy (speech, physical, and occupational) for a diagnostic category for which the client shows significant potential for functional improvement (see WAC 182-550-2501).

"Add-on procedure(s)" - Secondary procedure(s) that are performed in addition to another procedure.

"Admitting diagnosis" - The medical condition responsible for a hospital admission, as defined by the ICD diagnostic code.

"Advanced registered nurse practitioner (ARNP)" - A registered nurse prepared in a formal educational program to assume an expanded health services provider role in accordance with WAC 246-840-300 and 246-840-305.

"Allowed charges" - The maximum amount reimbursed for any procedure that is allowed by the medicaid agency.

"Anesthesia technical advisory group (ATAG)" - An advisory group representing anesthesiologists who are affected by the implementation of the anesthesiology fee schedule.

"Bariatric surgery" - Any surgical procedure, whether open or by laparoscope, which reduces the size of the stomach with or without bypassing a portion of the small intestine and whose primary purpose is the reduction of body weight in an obese individual.

"Base anesthesia units (BAU)" - A number of anesthesia units assigned to a surgical procedure that includes the usual preoperative, intraoperative, and postoperative visits. This includes the administration of fluids and/or blood incident to the anesthesia care, and interpretation of noninvasive monitoring by the anesthesiologist.

"Bundled services" - Services integral to the major procedure that are included in the fee for the major procedure. Bundled services are not reimbursed separately.

"Bundled supplies" - Supplies that are considered to be included in the practice expense RVU of the medical or surgical service of which they are an integral part.

"By report (BR)((~~,~~))" - See WAC 182-500-0015.

"Call" - A face-to-face encounter between the client and the provider resulting in the provision of services to the client.

"Cast material maximum allowable fee" - A reimbursement amount based on the average cost among suppliers for one roll of cast material.

"Center of excellence (COE)" - A hospital, medical center, or other health care provider that meets or exceeds standards set by the agency for specific treatments or specialty care.

"Centers for Medicare and Medicaid Services (CMS)((~~,~~))" - See WAC 182-500-0020.

"Certified registered nurse anesthetist (CRNA)" - An advanced registered nurse practitioner (ARNP) with formal training in anesthesia who meets all state and national criteria for certification. The

American Association of Nurse Anesthetists specifies the national certification and scope of practice.

"Children's health insurance plan (CHIP)((~~,~~))" - See chapter 182-542 WAC.

"Clinical Laboratory Improvement Amendment (CLIA)" - Regulations from the U.S. Department of Health and Human Services that require all laboratory testing sites to have either a CLIA registration or a CLIA certificate of waiver in order to legally perform testing anywhere in the U.S.

"Conversion factors" - Dollar amounts the medicaid agency uses to calculate the maximum allowable fee for physician-related services.

"Covered service" - A service that is within the scope of the eligible client's medical care program, subject to the limitations in this chapter and other published WAC.

"CPT((~~,~~))" - See "current procedural terminology."

"Critical care services" - Physician services for the care of critically ill or injured clients. A critical illness or injury acutely impairs one or more vital organ systems such that the client's survival is jeopardized. Critical care is given in a critical care area, such as the coronary care unit, intensive care unit, respiratory care unit, or the emergency care facility.

"Current procedural terminology (CPT)" - A systematic listing of descriptive terms and identifying codes for reporting medical services, procedures, and interventions performed by physicians and other practitioners who provide physician-related services. CPT is copyrighted and published annually by the American Medical Association (AMA).

"Emergency medical condition(s)((~~,~~))" - See WAC 182-500-0030.

"Emergency services" - Medical services required by and provided to a patient experiencing an emergency medical condition.

"Evaluation and management (E&M) codes" - Procedure codes that categorize physician services by type of service, place of service, and patient status.

"Expedited prior authorization" - The process of obtaining authorization that must be used for selected services, in which providers use a set of numeric codes to indicate to the medicaid agency which acceptable indications, conditions, diagnoses, and/or criteria are applicable to a particular request for services.

"Experimental" - A term to describe a health care service that lacks sufficient scientific evidence of safety and effectiveness. A service is not "experimental" if the service:

(a) Is generally accepted by the medical profession as effective and appropriate; and

(b) Has been approved by the federal Food and Drug Administration or other requisite government body, if such approval is required.

"Federally approved hemophilia treatment center" - A hemophilia treatment center (HTC) that:

(a) Receives funding from the U.S. Department of Health and Human Services, Maternal and Child Health Bureau National Hemophilia Program;

(b) Is qualified to participate in 340B discount purchasing as an HTC. See WAC 182-530-7900;

(c) Has a U.S. Center for Disease Control (CDC) and prevention surveillance site identification number and is listed in the HTC directory on the CDC website;

(d) Is recognized by the Federal Regional Hemophilia Network that includes Washington state; and

(e) Is a direct care provider offering comprehensive hemophilia care consistent with treatment recommendations set by the Medical and Scientific Advisory Council (MASAC) of the National Hemophilia Foundation in their standards and criteria for the care of persons with congenital bleeding disorders.

"Fee-for-service((~~,~~))" - See WAC 182-500-0035.

"Flat fee" - The maximum allowable fee established by the agency for a service or item that does not have a relative value unit (RVU) or has an RVU that is not appropriate.

"Geographic practice cost index (GPCI)" - As defined by medicare, means a medicare adjustment factor that includes local geographic area estimates of how hard the provider has to work (work effort), what the practice expenses are, and what malpractice costs are. The GPCI reflects one-fourth the difference between the area average and the national average.

"Global surgery reimbursement((~~,~~))" - See WAC 182-531-1700.

"HCPCS Level II" - Health care common procedure coding system, a coding system established by Centers for Medicare and Medicaid Services (CMS) to define services and procedures not included in CPT.

"Health care financing administration common procedure coding system (HCPCS)" - The name used for the Centers for Medicare and Medicaid Services (formerly known as the Health Care Financing Administration) codes made up of CPT and HCPCS level II codes.

"Health care team" - A group of health care providers involved in the care of a client.

"Hospice" - A medically directed, interdisciplinary program of palliative services which is provided under arrangement with a Title XVIII Washington licensed and certified Washington state hospice for terminally ill clients and the clients' families.

"ICD((~~,~~))" - See "International Classification of Diseases."

"Informed consent" - That an individual consents to a procedure after the provider who obtained a properly completed consent form has done all ((~~of~~)) the following:

(a) Disclosed and discussed the client's diagnosis;

(b) Offered the client an opportunity to ask questions about the procedure and to request information in writing;

(c) Given the client a copy of the consent form;

(d) Communicated effectively using any language interpretation or special communication device necessary per 42 C.F.R. Chapter IV 441.257; and

(e) Given the client oral information about all ((~~of~~)) the following:

(i) The client's right to not obtain the procedure, including potential risks, benefits, and the consequences of not obtaining the procedure;

(ii) Alternatives to the procedure including potential risks, benefits, and consequences; and

(iii) The procedure itself, including potential risks, benefits, and consequences.

"Inpatient hospital admission" - An admission to a hospital that is limited to medically necessary care based on an evaluation of the client using objective clinical indicators, assessment, monitoring, and therapeutic service required to best manage the client's illness or injury, and that is documented in the client's medical record.

"International Classification of Diseases (ICD)" - The systematic listing that transforms verbal descriptions of diseases, injuries,

conditions, and procedures into numerical or alphanumerical designations (coding).

"Investigational" - A term to describe a health care service that lacks sufficient scientific evidence of safety and effectiveness for a particular condition. A service is not "investigational" if the service:

(a) Is generally accepted by the medical professional as effective and appropriate for the condition in question; or

(b) Is supported by an overall balance of objective scientific evidence, that examines the potential risks and potential benefits and demonstrates the proposed service to be of greater overall benefit to the client in the particular circumstance than another generally available service.

"Life support" - Mechanical systems, such as ventilators or heart-lung respirators, which are used to supplement or take the place of the normal autonomic functions of a living person.

"Limitation extension((~~,~~))" - See WAC 182-501-0169.

"Long-acting reversible contraceptive (LARC)" - Subdermal implants and intrauterine devices (IUDs).

"Maximum allowable fee" - The maximum dollar amount that the medicaid agency will reimburse a provider for specific services, supplies, and equipment.

"Medically necessary((~~,~~))" - See WAC 182-500-0070.

"Medication assisted treatment (MAT)" - The use of Food and Drug Administration-approved medications that have published evidence of effectiveness, in combination with counseling and behavioral therapies, to provide a whole-patient approach to the treatment of substance use disorders.

"Medicare clinical diagnostic laboratory fee schedule" - The fee schedule used by medicare to reimburse for clinical diagnostic laboratory procedures in the state of Washington.

"Medicare physician fee schedule database (MPFSDB)" - The official CMS publication of the medicare policies and RVUs for the RBRVS reimbursement program.

"Medicare program fee schedule for physician services (MPFSPS)" - The official CMS publication of the medicare fees for physician services.

"Mentally incompetent" - A client who has been declared mentally incompetent by a federal, state, or local court.

"Modifier" - A two-digit alphabetic ((~~and/~~)) or numeric, or both, identifier that is added to the procedure code to indicate the type of service performed. The modifier provides the means by which the reporting physician can describe or indicate that a performed service or procedure has been altered by some specific circumstance but not changed in its definition or code. The modifier can affect payment or be used for information only. Modifiers are listed in fee schedules.

"Outpatient((~~,~~))" - See WAC 182-500-0080.

"Peer-reviewed medical literature" - A research study, report, or findings regarding a medical treatment that is published in one or more reputable professional journals after being critically reviewed by appropriately credentialed experts for scientific validity, safety, and effectiveness.

"Physician care plan" - A written plan of medically necessary treatment that is established by and periodically reviewed and signed by a physician. The plan describes the medically necessary services to be provided by a home health agency, a hospice agency, or a nursing facility.

"Physician standby" - Physician attendance without direct face-to-face client contact and which does not involve provision of care or services.

"Physician's current procedural terminology((~~,~~))" - See "current procedural terminology (CPT)."

"PM&R((~~,~~))" - See acute physical medicine and rehabilitation.

"Podiatric service" - The diagnosis and medical, surgical, mechanical, manipulative, and electrical treatments of ailments of the foot and ankle.

((~~**"Point-of-sale (POS) actual acquisition cost (AAC)" - The agency determined rate paid to pharmacies through the POS system, which is intended to reflect pharmacy providers' actual acquisition cost.**~~))

"Pound indicator (#)" - A symbol (#) indicating a CPT procedure code listed in the medicaid agency's fee schedules that is not routinely covered.

"Preventive" - Medical practices that include counseling, anticipatory guidance, risk factor reduction interventions, and the ordering of appropriate laboratory and diagnostic procedures intended to help a client avoid or reduce the risk or incidence of illness or injury.

"Prior authorization((~~,~~))" - See WAC 182-500-0085.

"Professional component" - The part of a procedure or service that relies on the provider's professional skill or training, or the part of that reimbursement that recognizes the provider's cognitive skill.

"Prognosis" - The probable outcome of a client's illness, including the likelihood of improvement or deterioration in the severity of the illness, the likelihood for recurrence, and the client's probable life span as a result of the illness.

"Prolonged services" - Face-to-face client services furnished by a provider, either in the inpatient or outpatient setting, which involve time beyond what is usual for such services. The time counted toward payment for prolonged E&M services includes only face-to-face contact between the provider and the client, even if the service was not continuous.

"Provider((~~,~~))" - See WAC 182-500-0085.

"Radioallergosorbent test" or **"RAST"** - A blood test for specific allergies.

"RBRVS((~~,~~))" - See resource based relative value scale.

"RBRVS RVU" - A measure of the resources required to perform an individual service or intervention. It is set by medicare based on three components - Physician work, practice cost, and malpractice expense. Practice cost varies depending on the place of service.

"Reimbursement" - Payment to a provider or other agency-approved entity who bills according to the provisions in WAC 182-502-0100.

"Reimbursement steering committee (RSC)" - An interagency work group that establishes and maintains RBRVS physician fee schedules and other payment and purchasing systems utilized by the medicaid agency and the department of labor and industries.

"Relative value guide (RVG)" - A system used by the American Society of Anesthesiologists for determining base anesthesia units (BAUs).

"Relative value unit (RVU)" - A unit that is based on the resources required to perform an individual service or intervention.

"Resource based relative value scale (RBRVS)" - A scale that measures the relative value of a medical service or intervention, based on the amount of physician resources involved.

"RSC RVU" - A unit established by the RSC for a procedure that does not have an established RBRVS RVU or has an RBRVS RVU deemed by the RSC as not appropriate for the service.

"RVU((~~,~~))" - See relative value unit.

"Stat laboratory charges" - Charges by a laboratory for performing tests immediately. "Stat" is an abbreviation for the Latin word "statim," meaning immediately.

"Sterile tray" - A tray containing instruments and supplies needed for certain surgical procedures normally done in an office setting. For reimbursement purposes, tray components are considered by CMS to be nonroutine and reimbursed separately.

"Technical advisory group (TAG)" - An advisory group with representatives from professional organizations whose members are affected by implementation of RBRVS physician fee schedules and other payment and purchasing systems utilized by the agency and the department of labor and industries.

"Technical component" - The part of a procedure or service that relates to the equipment set-up and technician's time, or the part of the procedure and service reimbursement that recognizes the equipment cost and technician time.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-531-1200 Physician office medical supplies. (1) Refer to ((~~RBRVS~~)) the medicaid agency's published physician-related services/health care professional services billing ((~~instructions~~)) guide for a list of:

(a) Supplies that are a routine part of office or other outpatient procedures and that cannot be billed separately; and

(b) Supplies that can be billed separately and that the ((~~department~~)) medicaid agency considers nonroutine to office or outpatient procedures.

(2) The ((~~department~~)) agency reimburses at actual acquisition cost certain supplies under ((~~fifty dollars~~)) $50 that do not have a maximum allowable fee listed in the fee schedule. The provider must retain invoices for these items and make them available to the ((~~department~~)) agency upon request.

(3) Providers must submit invoices for items costing ((~~fifty dollars~~)) $50 or more.

(4) The ((~~department~~)) agency reimburses for **sterile tray** for certain surgical services only. Refer to the fee schedule for a list of covered items.

AMENDATORY SECTION (Amending WSR 17-04-039, filed 1/25/17, effective 2/25/17)

WAC 182-531-1450 Radiology physician-related services. (1) The medicaid agency reimburses radiology services subject to the limitations in this section and under WAC 182-531-0300.

(2) The agency does not make separate payments for contrast material. The exception is low osmolar contrast media (LOCM) used in intrathecal, intravenous, and intra-arterial injections. Clients receiv-

ing these injections must have one or more of the following conditions:

(a) A history of previous adverse reaction to contrast material. An adverse reaction does not include a sensation of heat, flushing, or a single episode of nausea or vomiting;

(b) A history of asthma or allergy;

(c) Significant cardiac dysfunction including recent or imminent cardiac decompensation, severe arrhythmias, unstable angina pectoris, recent myocardial infarction, and pulmonary hypertension;

(d) Generalized severe debilitation;

(e) Sickle cell disease;

(f) Preexisting renal insufficiency; and/or

(g) Other clinical situations where use of any media except LOCM would constitute a danger to the health of the client.

(3) The agency reimburses separately for radiopharmaceutical diagnostic imaging agents for nuclear medicine procedures. Providers must submit invoices for these procedures when requested by the agency, and reimbursement is at actual acquisition cost.

(4) The agency reimburses general anesthesia for radiology procedures. See WAC 182-531-0300.

(5) The agency reimburses radiology procedures in combination with other procedures according to the rules for multiple surgeries. See WAC 182-531-1700. The procedures must meet all of the following conditions:

(a) Performed on the same day;

(b) Performed on the same client; and

(c) Performed by the same physician or more than one member of the same group practice.

(6) The agency reimburses consultation on X-ray examinations. The consulting physician must bill the specific radiological X-ray code with the appropriate professional component modifier.

(7) The agency reimburses for portable X-ray services furnished in the client's home or in nursing facilities, limited to the following:

(a) Chest or abdominal films that do not involve the use of contrast media;

(b) Diagnostic mammograms; and

(c) Skeletal films involving extremities, pelvis, vertebral column, or skull.

WSR 24-08-064
PERMANENT RULES
PENINSULA COLLEGE
[Filed March 29, 2024, 3:45 p.m., effective April 29, 2024]

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

Purpose: This WAC needs to be updated to reflect the changes in board meeting dates and communication methods.

Citation of Rules Affected by this Order: Amending chapter 132A-104 WAC.

Statutory Authority for Adoption: RCW 28B.B.50.130 [28B.50.130], 28B.50.140, and 34.05.010.

Adopted under notice filed as WSR 24-03-042 on January 9, 2024.

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: March 29, 2024.

Trisha Haggerty
Rules Coordinator

OTS-5142.2

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

WAC 132A-104-011 The board of trustees. The government of Community College District No. 1 (Peninsula College) is vested in a five-person board of trustees. The trustees are appointed by the governor and serve five-year terms and/or until their successors are appointed. ((~~At its annual October meeting, the board elects a chairperson and vice chairperson who serve for a term of one year and until their successors are elected from the membership of the board.~~)) The board annually elects from its membership a chair and vice chair to serve for the ensuing year.

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

WAC 132A-104-016 Meetings of the board of trustees. The board ((~~customarily holds meetings on the second Tuesday of each month at such place as it may designate~~)) of trustees customarily holds a regu-

lar meeting at such time and place as it may designate approximately every four weeks from February through June and from October through December. Notice of the time and place of all regular and special meetings shall be governed by the requirements of the Open Public Meetings Act, chapter 42.30 RCW.

(1) All regular and special meetings of the board of trustees shall be announced and held in accordance with chapter 42.30 RCW (the Open Public Meetings Act).

(2) No official business shall be conducted by the board of trustees except during a regular or special meeting.

(3) The board of trustees may convene in executive session whenever it is deemed necessary pursuant to RCW 42.30.110.

WSR 24-08-071
PERMANENT RULES
DEPARTMENT OF
RETIREMENT SYSTEMS

[Filed April 2, 2024, 11:44 a.m., effective April 3, 2024]

Effective Date of Rule: One day after filing.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: The law that this rule implements has been in effect since 2022, so the department of retirement systems is putting the rule into effect one business day after filing.

Purpose: Public safety employees' retirement system disability benefit: Implementing chapter 22, Laws of 2022, Public safety employees' retirement system—Line-of-duty disability benefit.

Citation of Rules Affected by this Order: New WAC 415-106-490, 415-106-510, 415-106-520, 415-106-530, 415-106-540, 415-106-550 and 415-106-560; and amending WAC 415-106-500 and 415-106-600.

Statutory Authority for Adoption: RCW 41.50.050 and 41.37.230.

Adopted under notice filed as WSR 24-05-040 on February 14, 2024.

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 7, 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 7, Amended 2, Repealed 0.

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

Number of Sections Adopted using Negotiated Rule Making: New 7, Amended 2, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: April 2, 2024.

Tracy Guerin
Director

OTS-5131.2

NEW SECTION

WAC 415-106-490 How are the PSERS disability benefits administered? This section applies to you if you are a PSERS member who becomes disabled.

This section covers disability benefits in RCW 41.37.230. Disability provisions are designed primarily to provide an income to members who have been forced to leave the workforce because of an incapacitating disability. This section applies equally to on-or-off-the-job injuries and/or illnesses.

Members may also be eligible for benefits from the Washington state departments of labor and industries (workers' compensation benefits) and social and health services, the U.S. Social Security Admin-

istration, employers, disability insurers, and others. Please contact these organizations directly for more information.

Definitions. As used in this section:

Disabled - A person who is totally incapacitated to perform the essential functions of their PSERS eligible position.

(1) **How do I apply for a disability benefit?**

(a) You or your representative must contact the department to request an application. The three-part application must be completed by the proper persons and returned to the department.

(b) The department must receive:

(i) A completed disability retirement application. When the department receives Part 1 of your application, you are considered to be an applicant for disability benefits. However, your eligibility will not be determined until the department receives all three parts of the application;

(ii) Additional information required by the department; and

(iii) Any other material you want the department to consider.

(c) The process for determining eligibility for a disability benefit can be lengthy and may require additional documentation to complete.

(2) **Is there a time limit for filing an application for disability benefits?** There is no time limit for applying. However, your eligibility for a benefit will be based on your condition at the time of separation.

(3) **What happens if I become disabled after I retire?** Your medical condition at the time of separation will determine whether you qualify for a disability retirement.

(4) **What evidence will the department use to determine whether I am entitled to benefits under this section?**

(a) To determine if you are entitled to disability benefits, the department will consider any relevant information submitted by you or your employer, or otherwise available to the department, including:

(i) Information and determinations by the department of labor and industries (L&I), a self-insurer or the Social Security Administration;

(ii) Medical, vocational, and other information about your disability;

(iii) Your job description;

(iv) Your membership records, maintained by the department;

(v) Independent medical reviews made by DRS contracted vendors; and

(vi) Any other relevant evidence.

(b) The department reserves the right to consult with a contracted vendor for the purpose of providing an independent medical review of any PSERS member who applies for disability benefits.

(5) **What would disqualify me for disability benefits?** You are not eligible for disability benefits if any of the following apply:

(a) Your application does not provide adequate proof that you are disabled;

(b) Your disability is the result of your criminal conduct committed after July 1, 2006 (RCW 41.37.100).

"Criminal conduct" means:

(i) If a member is a defendant in a criminal proceeding or has been formally charged in court with a crime, and the member is applying for or receiving a disability retirement benefit for a disability that is the result of the alleged criminal conduct, the department shall withhold payment of any disability benefits until:

(A) The case or charges, or both if both are pending, are dismissed; or

(B) The member is found not guilty in the criminal case or prevails in the criminal proceeding; or

(C) The member is convicted or found to have engaged in criminal conduct in the criminal proceeding.

(ii) If the case or charges are dismissed or if a member is found not guilty or prevails in the criminal proceeding, the department shall pay the member a disability benefit if they otherwise qualify.

(iii) If the member is convicted or found to be liable for criminal conduct in a criminal proceeding, and the member's disability is the result of the criminal conduct, the department shall not pay the member a disability benefit.

(iv) In the absence of a criminal conviction, a superior court may determine by a preponderance of the evidence whether the person participated in criminal conduct.

(6) **Who decides if I meet the requirements for benefits under this section?** The director of the department of retirement systems (DRS) or their designee will decide if you meet the requirements for benefits under this section.

(7) **What if I disagree with a decision made by the director or their designee?** If you disagree with the decision of the director of DRS or their designee, you may petition for review under chapter 415-04 WAC.

(8) **Are disability benefits subject to court or administrative orders?** Your benefits may be subject to orders for spousal maintenance, child support, property division, or any other administrative or court order expressly authorized by federal law. For more information, see RCW 41.37.090(3) or contact the department.

(9) **How is my disability benefit affected if I am a member of more than one retirement system?** If you are a member of more than one retirement system, your benefit is governed by portability law. See chapters 41.54 RCW and 415-113 WAC. You may apply for disability only from your active system. However, if you qualify for a disability benefit from your active system, you will also be eligible for a service retirement calculated under the laws governing the inactive system.

(10) **How long will I continue to receive a monthly disability allowance?** You may receive a monthly disability allowance throughout your lifetime, subject to the provisions of subsection (11) of this section.

(11) **Is it possible to lose my monthly disability allowance after I begin receiving it?**

(a) The department may, at its expense, require comprehensive medical examinations to reevaluate your eligibility for disability benefits. You will no longer be eligible to receive a disability allowance if the following apply:

(i) Medical evidence indicates you have recovered from the disability for which the department granted your disability benefits; and

(ii) You have been offered reemployment by an employer, as defined in RCW 41.37.010, at comparable compensation; and

(iii) If your monthly disability allowance is from a catastrophic duty disability, also refer to WAC 415-106-550.

(b) If you return to employment and reenter PSERS membership, your benefits will cease.

(12) **If I take my disability benefit in a lump sum and return to work, may I restore my service credit?** Yes. You may restore your serv-

ice credit if you take a lump-sum benefit and return to PSERS membership at a later date.

(a) You may restore your service credit within two years of reentering membership or prior to retirement, whichever comes first. You must pay back the lump-sum amount you received, minus the monthly amount for which you were eligible, plus interest as determined by the director.

(b) If you restore your service after two years, you must pay the actuarial value of the resulting increase in your future retirement benefit. See RCW 41.50.165 and 41.37.200.

(13) **Are my disability benefits taxable?** You should consult with your tax advisor regarding all questions of federal or state income, payroll, personal property or other tax consequences regarding any payments you receive from the department. The department does not:

(a) Guarantee that payments should or should not be designated as exempt from federal income tax;

(b) Guarantee that it was correct in withholding or not withholding taxes from disability payments;

(c) Represent or guarantee that any particular federal or state income, payroll, personal property or other tax consequence will occur because of its nontaxable determination; or

(d) Assume any liability for your compliance with the Internal Revenue Code.

AMENDATORY SECTION (Amending WSR 22-13-091, filed 6/13/22, effective 7/14/22)

WAC 415-106-500 PSERS disability benefit((s)). ((~~This section covers disability benefits provided for in RCW 41.37.230. Disability provisions are designed primarily to provide an income to members who have been forced to leave the workforce because of an incapacitating disability. This section applies equally to on-the-job or off-the-job injuries and/or illnesses.~~

~~Members may also be eligible for benefits from the Washington state departments of labor and industries (workers' compensation benefits) and social and health services, the U.S. Social Security Administration, employers, disability insurers, and others. Please contact these organizations directly for more information.~~))

(1) **Am I eligible for a PSERS disability benefit((s))?** You are eligible for a disability benefit((~~s~~)) if, at the time of your separation from employment, you are totally incapacitated to perform the duties of your job or any other PSERS position for which you are qualified by training or experience. Objective medical evidence is required to establish total incapacitation. Vocational and/or occupational evidence may be required at the discretion of the department.

(2) **If eligible, what will I receive as a monthly disability allowance?**

(a) If you have at least 10 years of service credit in PSERS, you will receive a monthly allowance equal to two percent of your AFC times your service credit years, permanently actuarially reduced to reflect the difference in the number of years between your age when you separate for disability and age **60**. Your monthly allowance may be further reduced to offset the cost of the benefit option you choose. See WAC 415-106-600.

(b) If you have less than 10 years of service credit, you will receive a monthly allowance[1] equal to two percent of your AFC times your service credit years, permanently actuarially reduced to reflect the difference in the number of years between your age when you separate for disability and age **65**. Your monthly allowance may be further reduced to offset the cost of the benefit option you choose. See WAC 415-106-600.

[1]*You may choose to receive a lump sum payment instead of a monthly allowance if your initial monthly allowance will be less than $50. See RCW 41.37.200.*

See WAC 415-02-320 for early retirement factors and examples.

(3) ((**~~How do I apply?~~**

~~(a) You or your representative must contact the department to request an application. The three-part application must be completed by the proper persons and returned to the department.~~

~~(i) **Part 1:** Disability retirement application. If you are married, your spouse's consent may be required as described in WAC 415-106-600.~~

~~(ii) **Part 2:** Employer's statement and report. Your employer must complete and sign Part 2, and return it directly to the department.~~

~~(iii) **Part 3:** Medical report. You must complete section one. Your physician must complete the remainder of the form, attach supporting documentation, sign and return it directly to the department. You are responsible for all medical expenses related to your application for benefits. A copy of your job description must be provided to the physician at time of examination.~~

~~(b) When the department receives Part 1 of your application, you are considered to be an applicant for disability benefits. However, your eligibility will not be determined until the department receives all three parts of the application.~~

~~(4) **What is the time limit for filing an application for disability benefits?** There is no time limit for applying for benefits. However, if you have separated from employment, your application must be based on your condition at the time of separation.~~

~~(5) **If I am eligible to retire, may I still apply for disability benefits?** Yes, however, you should request a benefit estimate from the department, as there may be a difference in the dollar amount of your monthly allowance.~~

~~(6)~~)) **Once my application is approved, when will my monthly allowance begin?**

(a) Your disability allowance will accrue from the first day of the calendar month immediately following your separation from employment. If you are continuing to earn service credit while on paid leave or through programs such as shared leave, you are not considered to be separated from employment.

(b) Your first payment will include all retroactive benefits to which you are entitled.

(c) Department approval will expire 90 days after the approval date if you have not officially separated from PSERS employment.

(i) If you are continuing to perform the duties of your position or another PSERS position, you may reapply for disability benefits according to ((~~subsection (3) of this section~~)) WAC 415-106-490 if your condition worsens.

(ii) If you are on leave, the department may reinstate approval upon your request and your employer's verification of your leave status.

((~~(7) **What are my options if my application is denied?**~~

~~(a) You may submit additional information that shows you were totally incapacitated at the time of your separation from employment.~~

~~(b) If you continue to work in a PSERS position, you may reapply for disability benefits at a later time if your condition worsens.~~

~~(c) You may petition for review of the department's decision according to the provisions of chapter 415-04 WAC.~~

~~(8) **Are my disability benefits taxable?** You should consult with your tax advisor regarding all questions of federal or state income, payroll, personal property or other tax consequences regarding any payments you receive from the department. The department does not:~~

~~(a) Guarantee that payments should or should not be designated as exempt from federal income tax;~~

~~(b) Guarantee that it was correct in withholding or not withholding taxes from disability payments;~~

~~(c) Represent or guarantee that any particular federal or state income, payroll, personal property or other tax consequence will occur because of its nontaxable determination; or~~

~~(d) Assume any liability for your compliance with the Internal Revenue Code.~~

~~(9) **Are disability benefits subject to court or administrative orders?** Your benefits may be subject to orders for spousal maintenance, child support, property division, or any other administrative or court order expressly authorized by federal law. For more information, see RCW 41.37.090(3) or contact the department.~~

~~(10) **Am I eligible for disability benefits if my disability is the result of my criminal conduct?** No. See RCW 41.37.100.~~

~~(11) **How is my disability benefit affected if I am a member of more than one retirement system?** If you are a member of more than one retirement system, your benefit is governed by portability law. See chapters 41.54 RCW and 415-113 WAC. You may apply for disability only from your active system. However, if you qualify for a disability benefit from your active system, you will also be eligible for a service retirement calculated under the laws governing the inactive system.~~

~~(12) **How long will I continue to receive a monthly disability allowance?** You may receive a monthly allowance throughout your lifetime, subject to the provisions of subsection (13) of this section.~~

~~(13) **Is it possible to lose my monthly disability allowance after I begin receiving it?**~~

~~(a) The department may, at its expense, require comprehensive medical examinations to reevaluate your eligibility for disability benefits. You will no longer be eligible to receive a disability allowance if both of the following apply:~~

~~(i) Medical evidence indicates you have recovered from the disability for which the department granted your disability benefits; and~~

~~(ii) You have been offered reemployment by an employer, as defined in RCW 41.37.010, at a comparable compensation.~~

~~(b) If you return to employment and reenter PSERS membership, your benefits will cease.~~

~~(14) **If I take my disability benefit in a lump sum and return to work, may I restore my service credit?** Yes, you may restore your service credit if you take a lump sum benefit and return to PSERS membership at a later date.~~

~~(a) You may restore your service credit within two years of reentering membership or prior to retirement, whichever comes first. You must pay back the lump sum amount you received, minus the monthly~~

~~amount for which you were eligible, plus interest as determined by the director.~~

~~(b) If you restore your service after two years, you will have to pay the actuarial value of the resulting increase in your future retirement benefit. See RCW 41.50.165 and 41.37.200.~~))

NEW SECTION

WAC 415-106-510 Does my disability qualify me for a PSERS catastrophic duty disability benefit? (1) If the department determines you are disabled and you became disabled in the line of duty, you qualify for a catastrophic duty disability if:

(a) The disability or disabilities that qualified you for a PSERS disability benefit are so severe that considering your age, education, work experience, and transferable skills, you cannot engage in any other kind of substantial gainful activity in the labor market; and

(b) Your disability or disabilities have lasted or are expected to last at least 12 months, or are expected to result in your death.

(2) A person with multiple injuries/conditions, some duty-related and some not, could qualify for a catastrophic duty disability but only if the duty injury or injuries, standing on their own, are catastrophically disabling.

Example 1:

Totally disabled, but not from a duty injury - Not eligible for a catastrophic duty disability benefit.

A PSERS member suffers a knee injury on duty, leaving them disabled from PSERS employment. The knee injury, by itself, is not totally disabling. The member also suffers from amyotrophic lateral sclerosis (ALS) or Lou Gehrig's disease, a progressive neurodegenerative disease that ultimately leaves the member totally disabled. Pursuant to the ALS diagnosis the member is granted a full disability from the Social Security Administration. In this case the member would qualify for a disability, but not for a catastrophic duty disability because the fully disabling condition, ALS, is not duty related.

Example 2:

Totally disabled, duty injury totally disabling - Eligible for catastrophic duty disability benefits.

A PSERS member suffers a knee injury while fishing. The knee injury, by itself, is neither duty related nor catastrophically disabling. The member also suffers severe injuries on the job while responding to an emergency event at a correctional facility, leaving the member fully disabled. The Social Security Administration grants the member a full disability based on the member's total condition. The member qualifies for a PSERS catastrophic duty disability benefit because the severe injuries, by themselves, render the member totally disabled.

(3) If you receive catastrophic duty disability benefits, the department will periodically review your income and medical status for continued eligibility. This review is not a reassessment of your initial determination, but an assessment of whether there has been any change in your condition. If it is determined that there has been a change in your condition and you are no longer eligible under subsection (1) of this section, or if you fail to provide required documentation or cooperate with the review, your catastrophic duty disability benefit may be discontinued or converted to a different retirement

type. DRS will notify you of your review at least 30 days before it starts.

(a) Income review: At least annually, you must submit documentation to verify that your income from earnings is below the defined income threshold as defined in subsection (4)(c) of this section. You must also notify the department within 30 calendar days of any changes in your income that could impact your eligibility including, but not limited to, wages and earnings from self-employment (see subsection (4)(c), (d) and (f) of this section). If DRS is not notified on time, you may be responsible for any resulting overpayment.

Documentation you may need to provide includes a federal or state income tax return from the most recent year, employment security records for the last four quarters, self-employment documents or 1099-R, or other documentation as requested by the department.

(b) Medical review: The department will conduct a continuing disability review (CDR) at least once every three years if at the time of your last determination your condition is expected to improve, or every six years if your condition is not expected to improve, until you reach age 65. The department may increase the frequency of your CDRs and reserves the right to require a CDR at any time if notified of a change in your condition, but not more than once every 12 months. The department may also waive the CDR if your disability is determined to be permanent or terminal.

(i) DRS will first review any updated medical information available from any labor and industries claims related to your line of duty injury to determine if additional medical information is needed from you and your primary care provider.

(ii) If needed, the department will provide you with a Disability Review form, which asks for information about whether your medical condition has improved since your last eligibility determination. You will have at least 30 days to complete and return this form to the department or notify the department that you need additional time. Once received, the department will have 90 days to review this information and either notify you of your continued eligibility or the need for additional information. Before making a change to your disability retirement status, the department may consult with a contracted vendor for the purpose of providing an independent medical review.

(4) Definitions. As used in this section:

(a) **Catastrophically disabled** means the same as "totally disabled" as defined under RCW 41.37.230(3).

(b) **Continuing disability review (CDR)** means an assessment of your current medical condition to determine if it continues to be catastrophically disabling. The department will review recent documentation, with supplemental assessment by external medical experts at the department's discretion.

(c) **Defined income threshold** means any substantial gainful activity that produces average earnings, as defined in (d) of this subsection, in excess of the federal Social Security disability standards, adjusted annually for inflation. Wages count toward earnings when they are earned, not when you receive them. Self-employment income counts when you receive it, not when you earn it.

(d) **Earnings** are any income or wages received, which are reportable as wages or self-employment income to the IRS.

(e) **Labor market** is the geographic area within reasonable commuting distance of where you were last gainfully employed or where you currently live, whichever provides the greatest opportunity for gainful employment.

(f) **Substantial gainful activity** describes a level of work activity and earnings. Substantial gainful activity is work activity that is both substantial and gainful, and it may be, but is not required to be, from work or self-employment. Earnings as defined in this section include compensated work activity that meets or exceeds the defined income threshold:

(i) Work activity is substantial if it involves doing significant physical or mental activities. Your work activity may be substantial even if it is done on a part-time basis or if you do less, or get paid less, or have less responsibility than when you worked in your PSERS position.

(ii) Work activity is gainful if it is work activity that you do for pay or profit. Work activity is gainful if it is the kind of work usually done for pay or profit, whether or not a profit is realized.

(iii) Generally, activities like taking care of yourself, household tasks, profits from rental income, hobbies, therapy, school attendance, club activities, or social programs are not substantial gainful activity.

(g) **Transferable skills** are any combination of learned or demonstrated behavior, education, training, work traits, and skills that you can readily apply. They are skills that are interchangeable among different jobs and workplaces.

NEW SECTION

WAC 415-106-520 How are the PSERS catastrophic duty disability benefits calculated? (1) **Catastrophic duty disability:** As a catastrophic duty disability retiree, you may choose between:

(a) A taxable, one-time lump-sum payment; or

(b) A monthly benefit equal to:

(i) Seventy percent of your average final compensation (AFC), which is nontaxable, reduced by any disability benefits provided under Title 51 RCW and federal Social Security disability benefits (SSDI), if necessary to ensure that the total combined benefits do not exceed 100 percent of the member's average final compensation (AFC). Any such adjustment will be applied prospectively from the time the Title 51 RCW or Social Security determination is made, even if the Title 51 RCW or Social Security disability (SSDI) benefits are retroactively adjusted.

(ii) The reduced benefit cannot be less than the earned service retirement benefit. When the earned service benefit is more than the reduced benefit, the difference is taxable (subject to any basis recovery).

Calculation of monthly disability benefit:

Example 1: Terry was approved for catastrophic duty disability. The average final compensation (AFC) was $10,000. Terry was not receiving benefits from L&I or Social Security disability insurance (SSDI). Terry had 20 years of service credit at the time of retirement. To determine the catastrophic duty disability benefit amount:

1. 70% of AFC = Monthly disability benefit
   .70 × $10,000 = $7,000

2. 2% × AFC × Service Years = Earned benefit
   .02 × $10,000 × 20 = $4,000

Since there is no offset and the monthly disability benefit is greater than the earned benefit, Terry's nontaxable monthly benefit will be $7,000.

Example 2: Pat was approved for catastrophic duty disability. The average final compensation (AFC) was $10,000. Pat was receiving benefits from L&I and Social Security disability insurance (SSDI) in the amounts of $5,000 and $2,000. Pat had 2 years of service credit at the time of retirement. To determine the catastrophic duty disability benefit amount:

1.	70% of AFC	=	Monthly disability benefit
	.70 × $10,000	=	$7,000
2.	Monthly disability benefit + L&I benefits + SSDI benefit	=	Total of all benefits
	$7,000 + $5,000 + $2,000	=	$14,000
3.	Total of all benefits - AFC	=	Reduction amount
	$14,000 - $10,000	=	$4,000
4.	Monthly disability benefit - Reduction amount	=	Reduced monthly benefit
	$7,000 - $4,000	=	$3,000
5.	2% × AFC × Service Years	=	Earned benefit
	.02 × $10,000 × 2	=	$400

Since the reduced monthly benefit amount is greater than the earned benefit, Pat's nontaxable monthly benefit will be $3,000.

Example 3: Chris was approved for catastrophic duty disability. The average final compensation (AFC) was $10,000. Chris was receiving benefits from L&I and Social Security disability insurance (SSDI) in the amounts of $5,000 and $2,000. Chris had 20 years of service credit at the time of retirement. To determine the catastrophic duty disability benefit amount:

1.	70% of AFC	=	Monthly disability benefit
	.70 × $10,000	=	$7,000
2.	Monthly disability benefit + L&I benefits + SSDI benefit	=	Total of all benefits
	$7,000 + $5,000 + $2,000	=	$14,000
3.	Total of all benefits - AFC	=	Reduction amount (to not exceed 100% of AFC)
	$14,000 - $10,000	=	$4,000
4.	Monthly disability benefit - Reduction amount	=	Reduced monthly benefit
	$7,000 - $4,000	=	$3,000
5.	2% × AFC × Service Years	=	Earned benefit
	.02 × $10,000 × 20	=	$4,000
6.	Earned benefit - Reduced monthly benefit	=	Difference
	$4,000 - $3,000	=	$1,000

Chris is entitled to the greater of the catastrophic duty disability retirement calculation or the earned benefit. Since the earned benefit is greater than the reduced catastrophic duty disability benefit, Chris' monthly benefit will be $4,000 and $1,000 of that benefit will be taxable (subject to any basis recovery).

NEW SECTION

WAC 415-106-530 Is my disability benefit affected by choosing a survivor option? (1) If you choose a benefit option with a survivor feature at the time of retirement, your survivor beneficiary will receive an ongoing monthly disability benefit after your death. Your disability benefit will be actuarially reduced to offset the cost of providing payments over two lifetimes. The survivor options are further described in WAC 415-106-600. See WAC 415-02-380 for more information and examples on how the actuarial reduction is applied for a survivor benefit.

(2) If your retirement status changes due to the department's acceptance of a new retirement application from service retirement to a disability retirement or catastrophic duty disability retirement, or a disability retirement to a catastrophic duty disability retirement, you may select a different survivor benefit option. Your benefit will be recalculated to reflect your new survivor option.

Example 1: Pat retired with a disability retirement benefit with survivor option three (50%). Pat's condition worsened. Pat applied for and was granted a catastrophic duty disability retirement. Pat selected survivor option two (100%) on the catastrophic application. Pat's catastrophic duty disability retirement benefit will be calculated to reflect this survivor option.

Example 2: Pat retired with a disability retirement benefit with survivor option two (100%) for their spouse. Pat's condition worsened. Pat applied for and was granted a catastrophic duty disability retirement benefit. Pat selected survivor option one (no ongoing survivor benefit after Pat's death). Pat's spouse will need to agree to this survivor option and the application will need to be notarized.

NEW SECTION

WAC 415-106-540 Is my catastrophic duty disability benefit reduced for early retirement? If you retire for a catastrophic duty disability, your disability benefit will not be reduced for early retirement.

NEW SECTION

WAC 415-106-550 When does my disability benefit end? The department may require comprehensive medical or psychological examinations to reevaluate your continued eligibility for disability benefits. For catastrophic duty disability benefits, the department may also require or offer to provide comprehensive vocational examinations and/or submission of earnings information to evaluate your continued eligibility. You are required to contact the department if your medical/vocational or financial situation changes.

(1) Your disability benefit will cease if:

(a) You return to work in a PSERS-eligible position; or

(b) Medical examination reveals you are no longer totally incapacitated for employment in a PSERS-eligible position.

(2) Your catastrophic duty disability benefit will cease if:

(a) You return to work in a PSERS-eligible position;

(b) Medical/vocational examination, or other information commonly available or provided to the department by an employer, reveals that your disability no longer prevents you from performing substantial gainful activity; or

(c) Your earnings exceed the threshold for substantial gainful activity.

If you believe you are capable of returning from your disability to work for your former employer and your employer agrees that you have met their requirements (examples could include a fit for duty test or polygraph), your disability benefit will end on the date you start working, as reported to the department by your employer. If you do not meet the requirements of your employer, you may challenge your employer's decision through the collective bargaining process, or other legal process against your employer.

NEW SECTION

WAC 415-106-560 Can my disability retirement type change? Your disability retirement type may change depending upon the circumstances.

If your original disabling condition or conditions worsen, improve, or you recover, the department may adjust your benefit.

(1) Worsening - If the condition or conditions that caused your disability worsen, your retirement may be changed to a catastrophic duty disability. The timing of this change is dependent on medical determination dates. You must submit an application and provide sufficient medical evidence to support a claim that your condition or conditions qualify you for a catastrophic duty disability. The worsening must be caused by or directly related to the original injury or injuries or illness and not due to the natural aging process or a succeeding cause.

Example 1: A member retires on a disability retirement due to a knee injury. The member has surgery related to the knee injury after retirement and suffers side effects from the surgery that prevent the member from performing any substantial gainful employment. The member is eligible to have their benefit adjusted because the aggravation is directly related to the original injury.

Example 2: A member retires on a disability retirement due to a knee injury. The member reinjures the knee in a skiing accident and is rendered unable to perform any substantial gainful employment. The member is not eligible to have their benefit adjusted because the aggravation is the result of a succeeding cause and not the original injury.

Example 3: A member retires on a disability retirement due to a knee injury. The condition gradually worsens over time until the member is no longer capable of substantial gainful employment. The member is not eligible to have their benefit adjusted because the aggravation is due to aging.

(2) Improvement - If your condition or conditions improve such that you are capable of substantial gainful employment, the department will adjust your catastrophic duty disability benefit to a disability benefit.

(3) Recovery - If your condition or conditions improve such that you are able to return to work in a PSERS-eligible position, the de-

partment will terminate your disability retirement or convert you to a normal retirement benefit if you are eligible.

AMENDATORY SECTION (Amending WSR 22-01-061, filed 12/8/21, effective 1/8/22)

WAC 415-106-600 What are my retirement benefit options? Upon retirement for service under RCW 41.37.210 or retirement for disability under RCW 41.37.230, you must choose to have your retirement benefit paid to you by one of the options described in this section.

(1) **Which option will pay my beneficiary a monthly benefit after my death?** Options described in subsection (2)(b) through (d) of this section will pay a monthly benefit to your survivor after your death. The person you name at the time of retirement to receive a monthly benefit after your death is referred to as your "survivor beneficiary." After your death, your survivor beneficiary will receive a monthly benefit for the duration of their life. Your monthly retirement benefit will be reduced to offset the cost of the survivor option. See WAC 415-02-380 for more information on how your monthly benefit will be affected if you choose a survivor option.

(2) **What are my benefit options?**

(a) **Option one: Standard benefit (nonsurvivor option).** The department will pay you a monthly retirement benefit throughout your lifetime. Your monthly benefit will cease upon your death.

(b) **Option two: Joint and 100 percent survivor benefit.** The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, your survivor beneficiary will receive a gross monthly benefit equal to your gross monthly benefit.

(c) **Option three: Joint and 50 percent survivor benefit.** The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, your survivor beneficiary will receive a gross monthly benefit equal to 50 percent of your gross monthly benefit.

(d) **Option four: Joint and two-thirds survivor benefit.** The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, your survivor beneficiary will receive a gross monthly benefit equal to two-thirds (66.667%) of your gross monthly benefit.

(3) **Do I need my spouse's consent on the option I choose?** The option you select will determine whether spousal consent is required.

(a) If you are married and select a nonsurvivor benefit option, you must provide your spouse's consent, verified by a notarized signature or other means acceptable to the department. If you do not provide verified spousal consent, the department will pay you a monthly retirement benefit based on option three (joint and ((~~fifty~~)) 50 percent benefit) with your spouse as the survivor beneficiary as required by RCW 41.37.170(2).

(b) If you are married and select a survivor benefit option for your spouse, spousal consent is not required. The department will pay you a monthly benefit based on the option you selected.

(c) If you are married and select a survivor benefit option for someone other than your spouse, spousal consent is required. If you do not provide spousal consent, verified by a notarized signature or other means acceptable to the department, the department will pay you a monthly retirement benefit based on option three (joint and 50 percent

benefit) with your spouse as the survivor beneficiary as required by RCW 41.37.170(2).

(d) If your survivor beneficiary has been designated by a dissolution order according to subsection (4) of this section, which was filed with the department at least 30 days before your retirement date, spousal consent is not required.

(4) **Can a dissolution order require that a former spouse be designated as a survivor beneficiary?** Yes. A dissolution order may require that a former spouse be designated as a survivor beneficiary. The department is required to pay survivor benefits to a former spouse pursuant to a dissolution order that complies with RCW 41.50.790.

(5) **What happens if I choose a benefit with a survivor option and my survivor beneficiary dies before I do?** If your survivor beneficiary dies before you do, you may request to have your benefit increased as described in WAC 415-02-380.

(6) **May I change my benefit option after retirement?** Your choice of a benefit option is irrevocable with the following ((~~four~~)) five exceptions:

(a) **Return to membership.** If you retire and then return to membership for at least two years of uninterrupted service, you may choose a different retirement option upon your subsequent retirement. See RCW 41.37.050(3).

(b) **Postretirement marriage option.** If you select the standard benefit option at the time of retirement and marry after retirement, you may select a survivor benefit option and name your current spouse as survivor beneficiary, provided that:

(i) Your benefit is not subject to a property division obligation pursuant to a dissolution order. See WAC 415-02-500;

(ii) The selection is made during a one-year window, on or after the date of the first anniversary and before the second anniversary of your postretirement marriage;

(iii) You provide a copy of your certified marriage certificate to the department; and

(iv) You provide proof of your current spouse's birth date.

(c) **Removal of a nonspouse survivor option.** If you select a survivor benefit option and name a nonspouse as your survivor beneficiary at the time of retirement, you may remove that survivor beneficiary designation and have your benefit adjusted to a standard benefit. You may exercise this option one time only.

(d) **One-time change of survivor.** You may change your benefit option and/or designated survivor one time within 90 days from the date your first benefit payment is issued. Your change request must be in writing, and must comply with other requirements as described in this section. Your new benefit amount will be effective the first of the month following the receipt of your request by the department.

(e) **Retirement type changes.** If your retirement status changes due to the acceptance of a new retirement application from service retirement to a disability or catastrophic retirement, or disability to catastrophic retirement, you may select a different survivor benefit option. Your benefit will be recalculated to reflect your new survivor option in accordance with WAC 415-106-530.

(7) **Who will receive the balance of my accumulated contributions, if any, after my death?**

(a) If you do not have a survivor beneficiary at the time of your death, and you die before the total of the retirement benefit paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid:

(i) To the person or entity (i.e., trust, organization, or estate) you have nominated by written designation, executed and filed with the department.

(ii) If you have not designated a beneficiary, or if your designated beneficiary is no longer living or in existence, then to your surviving spouse.

(iii) If not paid according to (a)(i) or (ii) of this subsection, then to your estate.

(b) If you have a survivor beneficiary at the time of your death, and your survivor beneficiary dies before the total of the retirement benefit paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid:

(i) To the person or entity (i.e., trust, organization, or estate) your survivor beneficiary has nominated by written designation, executed and filed with the department.

(ii) If your survivor beneficiary has not designated a beneficiary, or if the designated beneficiary is no longer living or in existence, then to your survivor beneficiary's spouse.

(iii) If not paid according to (b)(i) or (ii) of this subsection, then to your survivor beneficiary's estate. See RCW 41.37.170.