

WSR 24-11-013
PROPOSED RULES
DEPARTMENT OF
FINANCIAL INSTITUTIONS
[Filed May 6, 2024, 9:51 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-08-058.

Title of Rule and Other Identifying Information: Broker-dealers and salespersons of broker-dealers.

Hearing Location(s): On June 26, 2024, at 10:30 a.m., at the Department of Financial Institutions (DFI), 150 Israel Road S.W., Tumwater, WA 98501.

Date of Intended Adoption: June 27, 2024.

Submit Written Comments to: Jill Valley, P.O. Box 41200, Olympia, WA 98504-1200, email jill.valley@dfi.wa.gov, fax 360-902-0524, by June 25, 2024.

Assistance for Persons with Disabilities: Contact Keera Earskine, phone 360-902-8760, fax 360-902-0524, TTY 1-800-833-6384, email keera.earskine@dfi.wa.gov, by June 25, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule making creates a new chapter of rules for broker-dealers and salespersons of broker-dealers at chapter 460-20C WAC, and repeals the existing rules in chapters 460-20B, 460-21B, and 460-22B WAC. The proposed rules update the rules consistent with current federal law and the Financial Industry Regulatory Authority (FINRA) rules, incorporate North American Securities Administrators Association (NASAA) model rules, and describe the application filing procedures and registration requirements for broker-dealers and salespersons. As compared to the current rules, the proposed rules:

- Add a statement that the rules in the chapter apply to broker-dealers to the extent permitted by the National Securities Markets Improvement Act of 1996.
- Add definitions for "Branch Office," "Chief Compliance Officer," "Principal," "FINRA," "FINRA Member," "Form BD," "Form BR," "Form BDW," "Form U4," and "Form U5."
- Add a definition for "Solicited" based on Securities Act Interpretive Statement 16.
- Describe and clarify current application procedures for both FINRA member and nonmember broker-dealers with respect to initial applications, renewals, and amendments.
- Describe and clarify current application procedures for registering as a salesperson of a broker-dealer.
- Add a requirement for persons who supervise salespersons in Washington to register as salespersons in Washington.
- Add a requirement of the notification of branch office on Form BR.
- Update the Canadian broker-dealer exemption to specify the current exemption notice filing procedures, including that broker-dealers must submit a consent to service of process (Form U2).
- Clarify that a broker-dealer must maintain at least one principal who has passed the Series 24.
- Adopt the NASAA Model Rule: Examination Requirements for Broker-Dealer Agents, which will extend the validity of exam scores for up to five years for persons who participate in the FINRA Main-

taining Qualifications Program and the NASAA Examination Validity Extension Program.

- Add a new rule allowing the securities division, after providing at least 30 days' notice, to terminate pending applications on which an applicant has taken no action for nine months.
- Add a procedure for effecting the mass transfer of salespersons.
- Add a rule requiring the filing of Form BDW to terminate a broker-dealer registration.
- Update and specify the current federal rules that apply with respect to minimum capital requirements, reserve and custody requirements, books and records, and financial reporting requirements.
- Specify that FINRA members must file the financial statements required by the Securities and Exchange Commission in Washington upon request.
- Specify that nonmembers of FINRA must file financial statements annually through the securities division's eFin filing system, and that the securities division may require quarterly filings upon request.
- Revise the supervision rule to state that broker-dealers must reasonably supervise employees (in addition to its salespersons), must comply with supervision requirements in FINRA conduct standards, and must comply with training regarding detecting the financial exploitation of vulnerable adults consistent with the existing requirements in RCW 74.34.220(3). The revision removes the existing requirement that the supervisors of salespersons in Washington be located in Washington, and provides that the securities division may require heightened supervision as a condition of salesperson registration.
- Revise the fraudulent practices rule to specify additional fraudulent practices, including making false or misleading statements in examinations or in documents filed with the securities division, holding out as providing investment advisory services if not registered as an investment adviser, and giving gifts in excess of \$100 per individual per year where the gift is in relation to the business of the employer of the recipient (consistent with FINRA Rule 3220).
- Revise the excessive trading rule to clarify that the securities division may consider cost-to-equity ratio and turnover ratio, as well as other methods, to determine whether trading is excessive.
- Add a communications rule that adopts the content standards in FINRA Rule 2210 (d)(1)(A), (B), (D), (E), and (d)(3).
- Add a variable annuities sales practices rule based on FINRA Rule 2330.
- Revise the rule regarding unethical practices of broker-dealers to add additional unethical practices, including practices specified in the most recent version of the NASAA Dishonest or Unethical Practices of Broker-Dealers Model Rule.
- Revise the rule regarding unethical practices of salespersons to add additional unethical practices, including practices specified in the most recent version of the NASAA Dishonest or Unethical Practices of Broker-Dealers Model Rule.

Reasons Supporting Proposal: The securities division has not updated its rules for broker-dealers and salespersons of broker-dealers in many years, and several of the rules need revision to make them consistent with federal law, FINRA rules, NASAA model rules, or the

securities division's current licensing procedures. The consolidation of the three current rule chapters into a single chapter will make the rules easier to use. The proposed rules clarify the filing procedures and requirements applicable to broker-dealers who are not members of FINRA, which the current rules do not address. These updates will improve the functionality of the rules, promote uniformity with federal law and other states, and increase investor protection.

Statutory Authority for Adoption: RCW 21.20.070, 21.20.450.

Statute Being Implemented: Chapter 21.20 RCW.

Rule is necessary because of federal law, [NISBA].

Name of Proponent: DFI, governmental.

Name of Agency Personnel Responsible for Drafting: Jill Vallely, 150 Israel Road S.W., Tumwater, WA 98501, 360-902-8760; Implementation: Mark Kissler, 150 Israel Road S.W., Tumwater, WA 98501, 360-902-8760; and Enforcement: Bill Beatty, Director, Securities, 150 Israel Road S.W., Tumwater, WA 98501, 360-902-8760.

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

A cost-benefit analysis is not required under RCW 34.05.328. DFI is not one of the agencies listed in RCW 34.05.328.

Scope of exemption for rule proposal from Regulatory Fairness Act (RFA) requirements:

Is not exempt.

The proposed rule does impose more-than-minor costs on businesses.

Small Business Economic Impact Statement (SBEIS)

Chapter 460-20C WAC

Broker-Dealers and Salespersons of Broker-Dealers

April 16, 2024

SECTION 1: Description of the Proposed Rule Chapter: DFI, securities division has prepared this SBEIS in support of the proposal of new chapter 460-20C WAC pertaining to broker-dealers and salespersons of broker-dealers. The proposed rule making will repeal the existing rules for broker-dealers and salespersons in chapters 460-20B, 460-21B, and 460-22B WAC. The securities division's broker-dealer rules have not been significantly updated in over 20 years, and several rules are outdated with respect to current federal law and the securities division's current licensing practices.

Prior to preparing this SBEIS in support of the proposed rules, the securities division prepared a preliminary draft of potential rule revisions. In December 2023, the securities division posted the draft rules on its website, and conducted an electronic mailing to all broker-dealers registered in Washington. In the mailing, the securities division distributed a link to the draft rules and a link to a small business economic impact survey. The results of the survey are discussed in Sections 3 through 6 of this SBEIS.

The preliminary rules draft combined the three current rule chapters into a single chapter for ease of use. The draft revised the existing rules to reflect the securities division's current licensing procedures and practices, and added filing procedures and requirements specific to broker-dealers who are not members of FINRA. The draft also updated existing rules to bring Washington's broker-dealer rules up to date with federal rules and FINRA rules, and to incorporate NASAA model rules, among other updates. As compared to the current rules for broker-dealers, the preliminary rules draft included the following substantive changes:

- Added a statement that the rules in the chapter apply to broker-dealers to the extent permitted by the National Securities Markets Improvement Act of 1996.
- Added definitions for "Branch Office," "Chief Compliance Officer," "Principal," "FINRA," "FINRA Member," "Form BD," "Form BR," "Form BDW," "Form U4," and "Form U5."
- Added a definition for "Solicited" based on Securities Act Interpretive Statement 16.
- Described and clarified current application procedures for both FINRA member and nonmember broker-dealers with respect to initial applications, renewals, and amendments.
- Described and clarified current application procedures for registering as a salesperson of a broker-dealer.
- Added a requirement for principals to register as salespersons in Washington.*
- Added a requirement for persons who supervise salespersons in Washington to register as salespersons in Washington.
- Added a requirement of the notification of branch office on Form BR.
- Updated the Canadian broker-dealer exemption to specify current exemption notice filing procedures, including that broker-dealers must submit a consent to service of process (Form U2).
- Clarified that a broker-dealer must maintain at least one principal who has passed the Series 24.
- Adopted the NASAA Model Rule: Examination Requirements for Broker-Dealer Agents, which will extend the validity of exam scores for up to five years for persons who participate in the FINRA Maintaining Qualifications Program and the NASAA Examination Validity Extension Program.
- Added a new rule allowing the securities division, after providing at least 30 days' notice, to terminate pending applications on which an applicant has taken no action for nine months.
- Increased the fee for delinquent applications from \$100 to \$200, as permitted by RCW 21.20.340(8).*
- Required salespersons to file a current business email address electronically with the securities division.*
- Added a procedure for effecting the mass transfer of salespersons.
- Added a rule requiring the filing of Form BDW to terminate a broker-dealer registration.
- Updated and specified the current federal rules that apply with respect to minimum capital requirements, reserve and custody requirements, books and records, and financial reporting requirements.
- Specified that FINRA members must file the financial statements required by the securities and exchange commission in Washington upon request.
- Specified that nonmembers of FINRA must file financial statements annually through the securities division's eFin filing system, and that the securities division may require quarterly filings upon request.
- Revised the supervision rule to state that broker-dealers must reasonably supervise employees (in addition to its salespersons), must comply with supervision requirements in FINRA conduct standards, and must comply with training regarding detecting the financial exploitation of vulnerable adults consistent with the ex-

isting requirements in RCW 74.34.220(3). The revision removes the existing requirement that the supervisors of salespersons in Washington be located in Washington, and provides that the securities division may require heightened supervision as a condition of salesperson registration.

- Revised the fraudulent practices rule to specify additional fraudulent practices, including making false or misleading statements in examinations or in documents filed with the securities division, holding out as providing investment advisory services if not registered as an investment adviser, and giving gifts in excess of \$100 per individual per year where the gift is in relation to the business of the employer of the recipient (consistent with FINRA Rule 3220).
- Revised the excessive trading rule to clarify that the securities division may consider cost-to-equity ratio and turnover ratio, as well as other methods, to determine whether trading is excessive.
- Added a communications rule that adopts the content standards in FINRA Rule 2210 (d)(1)(A), (B), (D), (E), and (d)(3).
- Added a variable annuities sales practices rule based on FINRA Rule 2330.
- Revised the rule regarding unethical practices of broker-dealers to add additional unethical practices, including practices specified in the most recent version of the NASAA Dishonest or Unethical Practices of Broker-Dealers Model Rule.
- Revised the rule regarding unethical practices of salespersons to add additional unethical practices, including practices specified in the most recent version of the NASAA Dishonest or Unethical Practices of Broker-Dealers Model Rule.

* The securities division revised or eliminated these provisions upon review of the economic impact survey results, as described in Section 6 below. The proposed rules are otherwise consistent with the preliminary draft rules.

SECTION 2: Identify which businesses must comply with the proposed rule using the North American Industry Classification System (NAICS) codes and the minor cost thresholds: All broker-dealers registered or required to be registered in Washington under RCW 21.20.040(1) will be required to comply with the proposed rules. In addition, all salespersons of broker-dealers who are registered or required to be registered in Washington under RCW 21.20.040(1) will be required to comply with the proposed rules.

The NAICS code for securities brokerages is 523150. The minor cost threshold that applies to this rule making under RFA, chapter 19.85 RCW, is a cost per business of less than three-tenths of one percent of annual revenue or income, or \$100, whichever is greater, or one percent of annual payroll.

SECTION 3: Analyze the probable cost of compliance: In drafting the proposed rules, the securities division attempted to balance the business concerns of registered broker-dealers with the securities division's mission to protect the investing public and to promote confidence in the capital markets. In general, the rule proposals create uniformity with federal law, FINRA rules, and NASAA Model Rules, and are consistent with broker-dealer rules in other states. Washington's rule-making authority with respect to broker-dealers is limited by the National Securities Markets Improvement Act of 1996 (NSMIA), which restricts states from establishing capital, custody, margin, financial responsibility, recordkeeping, bonding, or financial or operational reporting requirements for broker-dealers that differ from, or are in addition to, the requirements in those areas established under federal

law. The securities division drafted its proposed rules in consideration of the restrictions under NSMIA. In addition, much of the chapter restates existing rules, or describes current registration procedures followed by the securities division. Regardless, we anticipate that compliance with certain proposed rules may increase compliance costs for some broker-dealers. While the proposed rules may increase costs to licensees, the securities division believes the proposed rules will increase investor protection. Further, as described in Section 6, the securities division made certain revisions to the initial rules draft to reduce costs.

Survey of Broker-Dealers: RCW 19.85.040 provides that an agency may survey a representative sample of affected businesses to assist in the accurate assessment of the costs of proposed rules for the preparation of an SBEIS. To that end, the securities division conducted a survey to gather information from its registered broker-dealers regarding any anticipated cost increases associated with the initial rules draft.

The securities division prepared an online survey designed to determine the economic impact of the proposed amendments on small businesses. On December 19, 2023, the securities division sent an email containing a link to the online survey to the Central Registration Depository (CRD) contact person for all Washington-registered broker-dealers. At the time of the survey, the securities division had 1746 Washington-registered broker-dealers. The email explained the reasons for conducting the survey and requested that each broker-dealer's chief compliance officer or other appropriate representative complete the online survey by clicking on the provided link. The email also provided links to the draft rules, a copy of the survey questions, and a section-by-section analysis that detailed the changes in the draft rules as compared to the current rules in chapters 460-20B, 460-21B, and 460-22B WAC. The email noted that respondents could submit a hard copy of the survey in lieu of completing the electronic version.

The survey consisted of 35 questions. Each question in the survey focused on a section of the draft rules and provided a background statement briefly explaining any changes as compared to the current rules. The survey asked whether the proposed changes to each rule section would increase costs. If a respondent answered "yes," the survey requested information on the additional costs of compliance with that rule in the categories of professional services, equipment, supplies, labor, and administrative costs. Each question also provided a free-form response section for survey takers to make comments or provide additional information. The survey requested that responding broker-dealers provide their number of employees. The survey also queried whether the rule making in its entirety would cause a loss of revenue or the loss or addition of any jobs.

The survey period lasted from December 20, 2023, until February 1, 2024. The securities division received 63 unique responses that provided the respective broker-dealer's number of employees, although some respondents did not complete all the questions in the survey. These 63 respondents included 45 small businesses as defined by RCW 19.85.020(3) of RFA (business with 50 or fewer employees). The securities division also received four responses that did not provide their number of employees, therefore preventing us from determining whether the businesses were small businesses or calculating their costs per employee.

The following table provides the responses from the survey question regarding whether compliance with the proposed changes to each rule section would create any additional costs:

Whether Rule Changes Would Create Additional Costs		
Rule Provision	Yes	No
Application of Chapter: WAC 460-20C-010	16%	84%
Cross-Reference to Other Sections: WAC 460-20C-015	10%	90%
Definitions: WAC 460-20C-020	0%*	100%
Filings Made Through CRD: WAC 460-20C-025	7%	93%
Registration Procedure: WAC 460-20C-030	39%	61%
Canadian Broker-Dealers and Salespersons: WAC 460-20C-035	4%	96%
Examination Requirements: WAC 460-20C-040	2%	98%
Notice of Termination of Pending Applications: WAC 460-20C-045	0%	100%
Expiration and Renewal of Registration: WAC 460-20C-050	9%	91%
Notice of Changes by Broker-Dealers: WAC 460-20C-060	4%	96%
Submission of Business Email Address: WAC 460-20C-070	17%	83%
Mass Transfer of Salespersons: WAC 460-20C-080	6%	94%
Termination of Broker-Dealer Registration: WAC 460-20C-090	0%	100%
Termination of Salesperson Registration: WAC 460-20C-100	2%	98%
Minimum Net Capital Requirements: WAC 460-20C-110	0%	100%
Reserve and Custody Requirements: WAC 460-20C-120	2%	98%
Books and Records of Broker-Dealers: WAC 460-20C-130	4%	96%
Financial Reporting Requirements: WAC 460-20C-140	2%	98%
Supervision of Salespersons and Employees: WAC 460-20C-150	8%	92%
Fraudulent Practices of Broker-Dealers: WAC 460-20C-160	0%	100%
Excessive Trading: WAC 460-20C-170	4%	96%
Transmission of Underwriting Payments: WAC 460-20C-180	0%	100%
Communications with Public: WAC 460-20C-190	2%	98%
Deferred Variable Annuities: WAC 460-20C-200	2%	98%
Dishonest or Unethical Practices—Broker-Dealers: WAC 460-20C-210	2%	98%
Dishonest or Unethical Practices—Salespersons: WAC 460-20C-220	4%	96%
Will the rules result in lost sales or revenue?	4%	96%
Will the rules cause your business to eliminate jobs?	0%	100%
Will the rules cause your business to add jobs?	2%	98%

* Question included in hard copy survey only.

The securities division used the survey data to calculate the increased costs per employee for the broker-dealers responding to the survey in the categories of professional services, equipment, supplies, labor, and administrative costs for each section of the draft rules. The following table provides the average cost increase per employee for each rule for all survey respondents.

Average Cost Increase Per Employee (All Respondents)					
Rule Provision	Professional Services	Equipment	Supplies	Labor	Admin
Application of Chapter: WAC 460-20C-010	\$105.70	\$ -	\$ -	\$32.24	\$10.93
Cross-Reference to Other Sections: WAC 460-20C-015	\$10.55	\$ -	\$ -	\$7.02	\$3.54

Average Cost Increase Per Employee (All Respondents)					
Rule Provision	Professional Services	Equipment	Supplies	Labor	Admin
Definitions: WAC 460-20C-020	\$ -	\$ -	\$ -	\$ -	\$ -
Filings Made Through CRD: WAC 460-20C-025	\$18.67	\$ -	\$ -	\$18.67	\$ -
Registration Procedure: WAC 460-20C-030	\$170.13	\$ -	\$0.53	\$114.89	\$52.34
Canadian Broker-Dealers and Salespersons: WAC 460-20C-035	\$ -	\$ -	\$ -	\$ -	\$ -
Examination Requirements: WAC 460-20C-040	\$3.96	\$ -	\$0.06	\$2.88	\$1.02
Notice of Termination of Pending Applications: WAC 460-20C-045	\$ -	\$ -	\$ -	\$ -	\$ -
Expiration and Renewal of Registration: WAC 460-20C-050	\$0.16	\$ -	\$ -	\$ -	\$0.16
Notice of Changes by Broker-Dealers: WAC 460-20C-060	\$8.00	\$ -	\$ -	\$7.84	\$0.16
Submission of Business Email Address: WAC 460-20C-070	\$11.71	\$ -	\$ -	\$8.32	\$0.79
Mass Transfer of Salespersons: WAC 460-20C-080	\$2.54	\$ -	\$ -	\$1.21	\$1.33
Termination of Broker-Dealer Registration: WAC 460-20C-090	\$ -	\$ -	\$ -	\$ -	\$ -
Termination of Salesperson Registration: WAC 460-20C-100	\$8.00	\$ -	\$ -	\$8.00	\$ -
Minimum Net Capital Requirements: WAC 460-20C-110	\$ -	\$ -	\$ -	\$ -	\$ -
Reserve and Custody Requirements: WAC 460-20C-120	\$ -	\$ -	\$ -	\$ -	\$ -
Books and Records of Broker-Dealers: WAC 460-20C-130	\$1.61	\$ -	\$ -	\$ -	\$ -
Financial Reporting Requirements: WAC 460-20C-140	\$1.18	\$ -	\$ -	\$0.59	\$0.59
Supervision of Salespersons and Employees: WAC 460-20C-150	\$1.09	\$ -	\$ -	\$ -	\$4.34
Fraudulent Practices of Broker-Dealers: WAC 460-20C-160	\$ -	\$ -	\$ -	\$ -	\$ -
Excessive Trading: WAC 460-20C-170	\$1.81	\$ -	\$ -	\$ -	\$0.56
Transmission of Underwriting Payments: WAC 460-20C-180	\$ -	\$ -	\$ -	\$ -	\$ -
Communications with Public: WAC 460-20C-190	\$200	\$ -	\$ -	\$ -	\$200
Deferred Variable Annuities: WAC 460-20C-200	\$ -	\$ -	\$ -	\$ -	\$ -
Dishonest or Unethical Practices— Broker-Dealers: WAC 460-20C-210	\$8.00	\$ -	\$ -	\$8.00	\$ -
Dishonest or Unethical Practices— Salespersons: WAC 460-20C-220	\$7.84	\$ -	\$ -	\$ -	\$7.84

The following table provides the average cost increase per employee only for those broker-dealers who indicated that a particular rule change would create additional costs:

Average Cost Increase Per Employee (Responses Greater than \$0)					
Rule Provision	Professional Services	Equipment	Supplies	Labor	Admin
Application of Chapter: WAC 460-20C-010	\$906.01	\$ -	\$ -	\$483.82	\$327.96
Cross-Reference to Other Sections: WAC 460-20C-015	\$300.81	\$ -	\$ -	\$400.00	\$201.61
Definitions: WAC 460-20C-020	\$ -	\$ -	\$ -	\$ -	\$ -
Filings Made Through CRD: WAC 460-20C-025	\$522.73	\$ -	\$ -	\$522.73	\$ -
Registration Procedure: WAC 460-20C-030	\$935.70	\$ -	\$29.41	\$902.71	\$319.88
Canadian Broker-Dealers and Salespersons: WAC 460-20C-035	\$ -	\$ -	\$ -	\$ -	\$ -
Examination Requirements: WAC 460-20C-040	\$205.88	\$ -	\$2.94	\$150.00	\$52.94
Notice of Termination of Pending Applications: WAC 460-20C-045	\$ -	\$ -	\$ -	\$ -	\$ -
Expiration and Renewal of Registration: WAC 460-20C-050	\$8.06	\$ -	\$ -	\$ -	\$8.06
Notice of Changes by Broker-Dealers: WAC 460-20C-060	\$204.03	\$ -	\$ -	\$400.00	\$8.06
Submission of Business Email Address: WAC 460-20C-070	\$99.54	\$ -	\$ -	\$106.14	\$13.51
Mass Transfer of Salespersons: WAC 460-20C-080	\$63.60	\$ -	\$ -	\$60.61	\$33.30
Termination of Broker-Dealer Registration: WAC 460-20C-090	\$ -	\$ -	\$ -	\$ -	\$ -
Termination of Salesperson Registration: WAC 460-20C-100	\$400.00	\$ -	\$ -	\$400.00	\$ -
Minimum Net Capital Requirements: WAC 460-20C-110	\$ -	\$ -	\$ -	\$ -	\$ -
Reserve and Custody Requirements: WAC 460-20C-120	\$ -	\$ -	\$ -	\$ -	\$ -
Books and Records of Broker-Dealers: WAC 460-20C-130	\$80.65	\$ -	\$ -	\$ -	\$ -
Financial Reporting Requirements: WAC 460-20C-140	\$58.82	\$ -	\$ -	\$29.41	\$29.41
Supervision of Salespersons and Employees: WAC 460-20C-150	\$27.37	\$ -	\$ -	\$ -	\$108.62
Fraudulent Practices of Broker-Dealers: WAC 460-20C-160	\$ -	\$ -	\$ -	\$ -	\$ -
Excessive Trading: WAC 460-20C-170	\$45.36	\$ -	\$ -	\$ -	\$28.23
Transmission of Underwriting Payments: WAC 460-20C-180	\$ -	\$ -	\$ -	\$ -	\$ -
Communications with Public: WAC 460-20C-190	\$100,000*	\$ -	\$ -	\$ -	\$100,000*
Deferred Variable Annuities: WAC 460-20C-200	\$ -	\$ -	\$ -	\$ -	\$ -
Dishonest or Unethical Practices—Broker-Dealers: WAC 460-20C-210	\$400.00	\$ -	\$ -	\$400.00	\$ -
Dishonest or Unethical Practices—Salespersons: WAC 460-20C-220	\$400.00	\$ -	\$ -	\$400.00	\$ -

* Represents the response of a single survey taker.

The following table presents the survey results for the lost revenue anticipated to be caused by the draft rules as a whole:

Amount of Lost Revenue Caused by the Rules (Per Employee)	
Average of All Survey Respondents	\$132.02
Average of Responses Greater than \$0	\$3,367.65

Discussion of Survey Results: The survey results indicated that respondents anticipated that certain draft rule sections would be likely to increase costs. These included the draft rules regarding registration procedure (39 percent indicating increased costs), submission of business email address (17 percent indicating increased costs), application of chapter (16 percent indicating increased costs), cross-reference to other sections (10 percent indicating increased costs), expiration and renewal of registration (nine percent indicating increased costs), supervision of salespersons and employees (eight percent indicating increased costs), filings made through CRD (seven percent indicating increased costs), and mass transfer of salespersons (six percent indicating increased costs). We discuss the survey results in further detail below.

WAC 460-20C-030 Registration procedure: The draft rule WAC 460-20C-030 specified the registration procedure for broker-dealers and salespersons. The rule will replace the existing registration procedures currently in WAC 460-20B-030 (broker-dealers) and 460-22B-030 (salespersons). As compared to the current rules, the draft rule added a requirement for all principals of a broker-dealer in Washington to register as salespersons in Washington. It also added a requirement that persons who supervise salespersons in Washington register as salespersons in Washington. In addition, it added a requirement of notification of branch office by submitting Form BR on CRD.

The requirement added to the draft rules that all principals and supervisors of salespersons operating in Washington register as salespersons in Washington would increase costs for broker-dealers whose principals and supervisors are not currently registered in Washington. The cost of an initial salesperson registration in Washington is \$50 per salesperson, and annual renewals are \$30 per salesperson. To register, salespersons must demonstrate passage of the Series 63 exam. Persons who do not have current exam scores may incur costs to purchase study materials and pay the current examination fee of \$147. Firms may incur professional services, labor, or administrative expenses in preparing and filing Form BR in Washington.

The survey results indicated that approximately 39 percent of survey respondents believed that the draft rule at WAC 460-20C-030 would increase costs. For all survey respondents, these costs included an average of \$170.13 per employee for professional services, \$0.53 for supplies, \$114.89 for labor, and \$52.34 for administrative costs. Of the 39 percent of survey respondents who indicated that the rule amendments would increase costs, those costs included an average cost increase per employee of \$935.70 for professional services, \$29.41 for supplies, \$902.71 for labor, and \$319.88 for increased administrative costs. After reviewing the survey results, the securities division revised the draft rule to reduce costs, as described in Section 6.

WAC 460-20C-070 Submission of business email address: The initial draft created a new rule, WAC 460-20C-070, that would require broker-dealers to file an email address for each salesperson registered in Washington, and periodically update the addresses to reflect any

changes. Our current rules do not contain this provision, and therefore it would represent a new filing requirement. This would require broker-dealers to develop new internal procedures to ensure compliance with the requirement in Washington, and might increase professional services, labor, or administrative costs.

The survey results indicated that approximately 17 percent of survey respondents believed that the proposed rule at WAC 460-20C-070 would increase costs. For all survey respondents, these costs included an average of \$11.71 per employee for professional services, \$8.32 for labor, and \$0.79 for administrative costs. Of the 17 percent of survey respondents who indicated that the rule amendments would increase costs, those costs include an average cost increase per employee of \$99.54 for professional services, \$106.14 for labor, and \$33.30 for increased administrative costs. After reviewing the survey results, the securities division revised the draft rule to reduce costs, as described in Section 6.

WAC 460-20C-010 Application of chapter and WAC 460-20C-015 Cross-reference to other sections: The draft rule WAC 460-20C-010 stated that the chapter applies to broker-dealers and salespersons of broker-dealers. The draft rule was substantially similar to the current rules at WAC 460-20B-010 and 460-22B-010, except that the securities division removed a reference to chapter 460-33A WAC because that chapter was repealed in 2022. In addition, the securities division added a statement that the chapter applies to broker-dealers to the extent permitted by the National Securities Markets Improvement Act of 1996. This language merely acknowledges the federal preemption that has applied to the state regulation of broker-dealers since 1996. For these reasons, we do not believe the draft rule represents any substantive changes that would increase costs.

However, the survey results indicated that approximately 16 percent of survey respondents believed that the proposed rule at WAC 460-20C-010 would increase costs. For all survey respondents, these costs included an average of \$105.70 per employee for professional services, \$32.24 for labor, and \$10.93 for administrative costs. Of the 16 percent of survey respondents who indicated that the rule amendments would increase costs, those costs include an average cost increase per employee of \$906.01 for professional services, \$483.82 for labor, and \$327.96 for increased administrative costs.

The draft rule WAC 460-20C-015 provided a cross-reference to other chapters that pertain to broker-dealers and salespersons. The draft rule was substantially similar to the current rule at WAC 460-22B-020. As compared to the current rule, the draft rule added a reference to chapter 460-21C WAC, which concerns to the provision of broker-dealer services on the premises of financial institutions. This rule chapter currently applies to broker-dealers regardless of whether it is mentioned in the cross-reference rule. The securities division also removed a reference to chapter 460-33A WAC because that chapter was repealed in 2022. Accordingly, we do not believe the draft rule represents any substantive changes that would increase costs.

The survey results indicated that approximately 10 percent of survey respondents believed that the proposed rule at WAC 460-20C-015 would increase costs. For all survey respondents, these costs included an average of \$10.55 per employee for professional services, \$7.02 for labor, and \$3.54 for administrative costs. Of the 10 percent of survey respondents who indicated that the rule amendments would increase costs, those costs include an average cost increase per employee of

\$300.81 for professional services, \$400.00 for labor, and \$201.61 for increased administrative costs.

The securities division reasonably believes that WAC 460-20C-010 and 460-20C-015 will not increase expenses for broker-dealers because these rules do not represent any substantive change as compared to our current rules. The survey questions regarding the anticipated expenses related to draft rules WAC 460-20C-010 and 460-20C-015 were the first two substantive questions in the survey. Based on our assessment that these draft rules should not increase expenses, we conclude that some survey respondents may have responded to these questions by providing information regarding the economic impact of the rule making in its entirety. However, the securities division invites interested persons who may disagree with this assessment to submit comments, as specified in the CR-102, to explain why the individual proposed rules WAC 460-20C-010 and 460-20C-015 would increase costs.

WAC 460-20C-050 Expiration and renewal of registration: The draft rule WAC 460-20C-050 addressed the expiration and renewal of broker-dealer registration for broker-dealers and salespersons, and would replace the existing provision currently in WAC 460-20B-050 (broker-dealers) and WAC 460-22B-050 (salespersons). The rule clarified the current procedures for the renewal or expiration of registration. The draft rule also raised the delinquency fee for late broker-dealer renewal applications from \$100 to \$200. This would increase costs by \$100 in the event a broker-dealer submitted a delinquent renewal application.

The survey results indicated that approximately nine percent of survey respondents believed that the proposed rule at WAC 460-20C-015 would increase costs. For all survey respondents, these costs included an average of \$0.16 per employee for professional services and \$0.16 for administrative costs. Of the nine percent of survey respondents who indicated that the rule amendments would increase costs, those costs include an average cost increase per employee of \$8.06 for professional services and \$8.06 for increased administrative costs. After reviewing the survey results, the securities division revised the draft rule to reduce costs, as described in Section 6.

WAC 460-20C-025 Filings made through CRD: The draft rules included a new rule at WAC 460-20C-025 that designated CRD to receive and store filings and collect fees with respect to initial and renewal applications of FINRA-member broker-dealers. Currently, all broker-dealers who are members of FINRA must submit initial and renewal registration applications through CRD. The draft rule simply reflected this fact. Regardless, the survey results indicated that approximately seven percent of survey respondents believed that the proposed rule at WAC 460-20C-025 would increase costs. For all survey respondents, these costs included an average of \$18.67 per employee for professional services and \$18.67 for labor. Of the seven percent of survey respondents who indicated that the rule amendments would increase costs, those costs include an average cost increase per employee of \$522.73 for professional services and \$522.73 for labor.

WAC 460-20C-150 Supervision of salespersons and employees: The draft rules included a supervision rule at WAC 460-20C-150 that would replace the rule currently at WAC 460-21B-070. As compared to the current rule, the draft rule added that the broker-dealer must reasonably supervise employees (in addition to the current requirement to supervise salespersons), added that the broker-dealer must comply with supervision requirements set forth in FINRA conduct rules, and stated that the director may require heightened supervision as a condition of

registration for salespersons with a history of past misconduct or industry or regulatory-related incidents that may pose a risk to customers. The rule also adds that broker-dealers must provide training regarding detecting the financial exploitation of vulnerable adults. The training must be provided to employees who have contact with customers and access to account information on a regular basis and as part of their jobs. This training is currently required in Washington under RCW 74.34.220(3), and therefore does not represent a new requirement. However, compliance with the draft rule may potentially increase professional services, labor, or administrative expenses related to reviewing supervision procedures to ensure compliance with the rule.

The survey results indicated that approximately eight percent of survey respondents believed that the proposed rule at WAC 460-20C-015 would increase costs. For all survey respondents, these costs included an average of \$1.09 per employee for professional services and \$4.34 for administrative costs. Of the eight percent of survey respondents who indicated that the rule amendments would increase costs, those costs included an average cost increase per employee of \$27.37 for professional services and \$108.62 for increased administrative costs.

WAC 460-20C-080 Mass transfer of salespersons: The draft rules included a new rule, WAC 460-20C-080, to describe the procedure for completing a mass transfer of salespersons from one FINRA-member broker-dealer to another. The rule would require the submission of a roster of all the salespersons the broker-dealer intends to transfer, together with an indication of whether any of the salespersons had disclosable items in Section 14 of Form U4 or were subject to heightened supervision. The draft rule would facilitate the transfer of large numbers of salespersons, with the goal of speeding up the process. The draft rule might increase costs for broker-dealers by requiring the preparation of a roster and a review of which salespersons have disclosable items. However, the rule would only apply in the infrequent event that a broker-dealer merges with or otherwise acquires a large number of salespersons from another broker-dealer.

The survey results indicated that approximately six percent of survey respondents believed that the draft rule at WAC 460-20C-015 would increase costs. For all survey respondents, these costs included an average of \$2.54 per employee for professional services, \$1.21 for labor, and \$1.33 for administrative costs. Of the six percent of survey respondents who indicated that the rule amendments would increase costs, those costs included an average cost increase per employee of \$63.60 for professional services, \$60.61 for labor, and \$33.30 for increased administrative costs.

Lost Sales or Revenue: The securities division's survey revealed that four percent of respondents believed that compliance with the draft rule changes would result in lost sales or revenue. In contrast, 96 percent of respondents did not believe the rule changes would cause lost sales or revenue. For all survey respondents, the estimated lost revenue per employee was \$132.02. The four percent who believed the changes would lead to lost sale or revenue estimated they would lose \$3,367.65 in revenue per employee.

The survey requested a free-form answer regarding which specific provisions in the proposed rules would cause lost sales or revenue. The comments received suggested that spending additional money on legal and compliance matters would mean fewer funds available for advertising. This in turn could decrease revenue. We note that any change in rules will typically result in chief compliance officers or similar employees at a broker-dealer spending time to review and implement any

rule changes, including changing processes and educating employees. While these expenses may reasonably represent the activities for which a chief compliance officer is currently compensated, certain broker-dealers may hire outside consultants or incur additional costs to assist with these tasks. Funds spent on compliance would not be available to spend on other activities that might potentially increase revenue.

SECTION 4: Analyze whether the proposed rule may impose more-than-minor costs on businesses in the industry: RCW 19.85.030 provides that an agency must prepare an SBEIS if the agency proposes rules that would impose more-than-minor costs on businesses in an industry. RCW 19.85.020 defines a "minor cost" as a cost per business that is less than three-tenths of one percent of annual revenue or income, or \$100, whatever is greater; or one percent of annual payroll.

The securities division has determined, based on the results of the survey as described in Section 3, that at least some of the rules may impose more-than-minor costs on broker-dealers because such costs may exceed \$100.

SECTION 5: Determine whether the proposed rule may have a disproportionate impact on small businesses as compared to the 10 percent of businesses that are the largest businesses required to comply with the proposed rule. Also consider, based on input received, whether compliance with the rule will cause businesses to lose sales or revenue: RCW 19.85.040 requires that the securities division determine whether compliance with the proposed rules would have a disproportionate impact on small businesses by comparing the cost of compliance for small business with the costs of compliance for the 10 percent of businesses that are the largest businesses required to comply with the proposed rules.

The securities division categorized each survey response based on whether it came from a small business or whether it represented the 10 percent of businesses that were the largest businesses that responded. Small businesses are defined by RCW 19.85.020(3) as 50 or fewer employees. We likewise determined the largest 10 percent of businesses by the number of employees. We then compared the two categories to each other.

The survey results demonstrated that the increased costs per employee of small businesses were generally greater than the increased costs per employee of the largest 10 percent of businesses.

The following table compares the average cost increase associated with the draft rules for small businesses and the largest 10 percent of businesses required to comply:

Average Cost Increase - Comparison of Small Businesses and Largest 10% of Businesses					
Rule Provision	Professional Services	Equipment	Supplies	Labor	Admin
Application of Chapter: WAC 460-20C-010					
Small Businesses	\$135.98	\$ -	\$ -	\$43.18	\$7.58
Largest 10%	\$0.28	\$ -	\$ -	\$ -	\$ -
Cross-Reference to Other Sections: WAC 460-20C-015					
Small Businesses	\$9.76	\$ -	\$ -	\$9.76	\$ -
Largest 10%	\$ -	\$ -	\$ -	\$ -	\$ -
Definitions: WAC 460-20C-020					
Small Businesses	\$ -	\$ -	\$ -	\$ -	\$ -
Largest 10%	\$ -	\$ -	\$ -	\$ -	\$ -
Filings Made Through CRD: WAC 460-20C-025					
Small Businesses	\$25.50	\$ -	\$ -	\$25.50	\$ -

Average Cost Increase - Comparison of Small Businesses and Largest 10% of Businesses					
Rule Provision	Professional Services	Equipment	Supplies	Labor	Admin
Largest 10%	\$ -	\$ -	\$ -	\$ -	\$ -
Registration Procedure: WAC 460-20C-030					
Small Businesses	\$229.68	\$ -	\$0.74	\$157.44	\$69.86
Largest 10%	\$23.81	\$ -	\$ -	\$ -	\$11.90
Canadian Broker-Dealers and Salespersons: WAC 460-20C-035					
Small Businesses	\$ -	\$ -	\$ -	\$ -	\$ -
Largest 10%	\$ -	\$ -	\$ -	\$ -	\$ -
Examination Requirements: WAC 460-20C-040					
Small Businesses	\$5.56	\$ -	\$0.08	\$4.05	\$1.43
Largest 10%	\$ -	\$ -	\$ -	\$ -	\$ -
Notice of Termination of Pending Applications: WAC 460-20C-045					
Small Businesses	\$ -	\$ -	\$ -	\$ -	\$ -
Largest 10%	\$ -	\$ -	\$ -	\$ -	\$ -
Expiration and Renewal of Registration: WAC 460-20C-050					
Small Businesses	\$ -	\$ -	\$ -	\$ -	\$ -
Largest 10%	\$ -	\$ -	\$ -	\$ -	\$ -
Notice of Changes by Broker-Dealers: WAC 460-20C-060					
Small Businesses	\$11.10	\$ -	\$ -	\$11.11	\$ -
Largest 10%	\$ -	\$ -	\$ -	\$ -	\$ -
Submission of Business Email Address: WAC 460-20C-070					
Small Businesses	\$14.91	\$ -	\$ -	\$10.86	\$ -
Largest 10%	\$4.17	\$ -	\$ -	\$ -	\$4.17
Mass Transfer of Salespersons: WAC 460-20C-080					
Small Businesses	\$2.53	\$ -	\$ -	\$1.68	\$0.84
Largest 10%	\$ -	\$ -	\$ -	\$ -	\$ -
Termination of Broker-Dealer Registration: WAC 460-20C-090					
Small Businesses	\$ -	\$ -	\$ -	\$ -	\$ -
Largest 10%	\$ -	\$ -	\$ -	\$ -	\$ -
Termination of Salesperson Registration: WAC 460-20C-100					
Small Businesses	\$11.11	\$ -	\$ -	\$11.11	\$ -
Largest 10%	\$ -	\$ -	\$ -	\$ -	\$ -
Minimum Net Capital Requirements: WAC 460-20C-110					
Small Businesses	\$ -	\$ -	\$ -	\$ -	\$ -
Largest 10%	\$ -	\$ -	\$ -	\$ -	\$ -
Reserve and Custody Requirements: WAC 460-20C-120					
Small Businesses	\$ -	\$ -	\$ -	\$ -	\$ -
Largest 10%	\$ -	\$ -	\$ -	\$ -	\$ -
Books and Records of Broker-Dealers: WAC 460-20C-130					
Small Businesses	\$ -	\$ -	\$ -	\$ -	\$ -
Largest 10%	\$ -	\$ -	\$ -	\$ -	\$ -
Financial Reporting Requirements: WAC 460-20C-140					
Small Businesses	\$1.63	\$ -	\$ -	\$0.82	\$0.82
Largest 10%	\$ -	\$ -	\$ -	\$ -	\$ -
Supervision of Salespersons and Employees: WAC 460-20C-150					
Small Businesses	\$1.04	\$ -	\$ -	\$ -	\$5.56
Largest 10%	\$ -	\$ -	\$ -	\$ -	\$ -
Fraudulent Practices of Broker-Dealers and Salespersons: WAC 460-20C-160					
Small Businesses	\$ -	\$ -	\$ -	\$ -	\$ -
Largest 10%	\$ -	\$ -	\$ -	\$ -	\$ -
Excessive Trading: WAC 460-20C-170					
Small Businesses	\$1.74	\$ -	\$ -	\$ -	\$ -
Largest 10%	\$ -	\$ -	\$ -	\$ -	\$ -

Average Cost Increase - Comparison of Small Businesses and Largest 10% of Businesses					
Rule Provision	Professional Services	Equipment	Supplies	Labor	Admin
Transmission or Maintenance of Underwriting Payments: WAC 460-20C-180					
Small Businesses	\$ -	\$ -	\$ -	\$ -	\$ -
Largest 10%	\$ -	\$ -	\$ -	\$ -	\$ -
Communications with Public: WAC 460-20C-190					
Small Businesses	\$277.78	\$ -	\$ -	\$ -	\$277.78
Largest 10%	\$ -	\$ -	\$ -	\$ -	\$ -
Deferred Variable Annuities: WAC 460-20C-200					
Small Businesses	\$ -	\$ -	\$ -	\$ -	\$ -
Largest 10%	\$ -	\$ -	\$ -	\$ -	\$ -
Dishonest or Unethical Practices—Broker-Dealers: WAC 460-20C-210					
Small Businesses	\$11.11	\$ -	\$ -	\$11.11	\$ -
Largest 10%	\$ -	\$ -	\$ -	\$ -	\$ -
Dishonest or Unethical Practices—Salespersons: WAC 460-20C-220					
Small Businesses	\$10.81	\$ -	\$ -	\$ -	\$10.81
Largest 10%	\$ -	\$ -	\$ -	\$ -	\$ -

Comparison of lost sales or revenue: The largest 10 percent of businesses indicated in their survey responses that they would not lose any revenue. The small businesses estimated that they would lose an average of \$182.03 in revenue per employee, with two small businesses reporting that they expected to lose revenue because of the rule changes.

Comparison of addition or elimination of jobs: Approximately two percent of survey respondents indicated that the rule changes would cause them to add jobs. This represented one business that was one of the 10 percent of the largest businesses. No respondents indicated that the rule changes would cause them to eliminate jobs. Therefore, with respect to adding or eliminating jobs, there does not appear to be a disproportionate impact on small businesses as compared to the largest 10 percent of businesses that are required to comply.

SECTION 6: If the proposed rule is likely to impose a disproportionate impact on small businesses, identify the steps taken to reduce the costs of the rule on small businesses: In drafting the rule amendments, the securities division attempted to balance the business concerns of registered broker-dealers with the securities division's mission to protect the investing public and to promote confidence in the capital markets.

As a result of feedback received from affected businesses, the securities division made certain revisions to the initial rules draft to reduce the cost of compliance for small businesses. We detail these revisions below. The securities division also outlines additional mitigation steps we intend to take to reduce the burden of compliance. The securities division does not believe that it can reduce costs further and still accomplish the investor protection purpose of the rule making.

Reducing, modifying, or eliminating substantive regulatory requirements: The securities division reconsidered the provision in its draft rule at WAC 460-20C-030 that would require all principals of the broker-dealer to register as salespersons in Washington. We removed this requirement. This will reduce registration and administrative expenses for broker-dealers whose principals are not currently registered as salespersons here.

Simplifying, reducing, or eliminating recordkeeping and reporting requirements: The securities division revised the draft rules to re-

move the requirement for the submission of a business email address for each salesperson registered in Washington. This will reduce reporting requirements and any associated administrative expenses.

Reducing the frequency of inspections: The securities division does not believe that reducing the frequency of inspections or examinations would be in the interest of the investing public. Therefore, we have not made any changes to the draft rules that would reduce the frequency of inspections or examinations.

Delaying compliance timetables: The securities division understands that broker-dealers may require input from outside attorneys or compliance consultants to assist them in understanding and implementing the new rules. The securities division will allow broker-dealers adequate time to adjust to the rule changes through existing processes. Through the exam and deficiency letter process, the securities division will provide reasonable time for broker-dealers to fix any deficiencies related to the new rules that the staff identifies during its routine examinations of broker-dealers.

Reducing or modifying fine schedules for noncompliance: To reduce potential costs for broker-dealers, the securities division revised the draft rule at WAC 460-20C-050 to remove the increase in the delinquency fee to \$200. The delinquency fee that applies to late renewal applications will therefore remain at the current amount of \$100. This will reduce the anticipated expenses associated with the draft rules.

Any other mitigation techniques, including those suggested by small businesses or small business advocates: The securities division will consider any comments received on the CR-102 that address how to reduce costs or suggest any additional mitigation techniques. To facilitate compliance with the new rules, the securities division will consider developing a Frequently Asked Questions (FAQ) publication or other interpretive guidance for distribution to registered broker-dealers. In addition, upon adoption of the rules, the securities division will fulfill reasonable requests received from broker-dealers headquartered in Washington to provide training or technical assistance visits regarding compliance with the new rules.

SECTION 7: Describe how small businesses were involved in the development of the proposed rule: Throughout the rule-making process, the securities division has involved its registered broker-dealers and interested persons. Many of these broker-dealers are small businesses with fewer than 50 employees.

The securities division filed a CR-101 preproposal statement of inquiry with the code reviser's office on April 3, 2023 stating that the securities division was considering amending the rules currently in chapters 460-20B, 460-21B, and 460-22B WAC. On April 18, 2023, the securities division electronically mailed the CR-101 to all broker-dealers registered in Washington to solicit comments. At the same time, the securities division electronically mailed the CR-101 to its securities rule making interested persons list. The securities division did not receive any comments on the CR-101 form.

The securities division subsequently prepared a draft of possible amendments to the rules that would combine the existing chapters into new chapter 460-20C WAC. On December 19, 2023, the securities division posted the draft rules on our website, along with a section-by-section analysis detailing the differences between the draft chapter 460-20C WAC and the current rules in chapters 460-20B, 460-21B, and 460-22B WAC. In addition, the securities division conducted a survey of all broker-dealers registered in Washington to determine the costs associated with the rule amendments. On December 20, 2023, the securities

division emailed a link to the draft and a link to the electronic survey to all broker-dealers registered in Washington. The survey period remained open until February 1, 2024.

Following the distribution of the initial draft and the completion of the survey, the securities division revised the draft rules in response to feedback received from broker-dealers in the survey. The securities division now intends to proceed with the rule making by formally proposing chapter 460-20C WAC in a CR-102 filing with the code reviser. The securities division will distribute the CR-102 to our registered broker-dealers and our securities rule-making interested persons list. Broker-dealers and all interested members of the public will have an opportunity to submit comments on the proposed rule and participate in the rule-making hearing.

SECTION 8: Identify the estimated number of jobs that will be created or lost as the result of compliance with the proposed rule: The results of the survey indicated that no jobs would be eliminated as a result of the proposed rules. One survey respondent indicated that one job would be added as a result of the proposed rules.

SECTION 9: Summarize the results of the analysis, including the determination if costs are disproportionate: As discussed in Section 5 above, the survey indicated that several of the rules may impose disproportionate costs on small businesses as compared to the largest 10 percent of businesses required to comply with the rules. To mitigate this, the securities division revised its draft rules to lower costs as detailed in Section 6.

While the potential rule changes may increase costs to licensees, the securities division believes the increased investor protection outweighs the concerns regarding cost increases. Further, we note that the rules were drafted consistent with requirements under federal law and subject to the restrictions of NSMIA. To the extent that there will be remaining disproportionate costs on small businesses, we note that as demonstrated in Section 3, the survey respondents, including small businesses, indicated that most rules would not cause additional expense.

A copy of the statement may be obtained by contacting Jill Vallely, P.O. Box 41200, Olympia, WA 98504-1200, phone 360-902-8801, fax 360-902-0524, TTY 1-800-833-6384, email jill.vallely@dfi.wa.gov.

May 3, 2024
Charlie Clark
Director

OTS-4968.3

**Chapter 460-20C WAC
BROKER-DEALERS AND SALESPERSONS OF BROKER-DEALERS**

NEW SECTION

WAC 460-20C-010 Application of chapter. The rules in this chapter apply to broker-dealers and salespersons of broker-dealers registered or required to be registered under RCW 21.20.040. The rules apply to broker-dealers to the extent permitted by the National Securities Markets Improvement Act of 1996 (Pub. L. No. 104-290).

NEW SECTION

WAC 460-20C-015 Cross-reference to other sections relating to broker-dealers and salespersons. Chapter 460-23B WAC applies to salespersons of issuers. Chapter 460-21C WAC applies to the provision of broker-dealer services on the premises of financial institutions.

NEW SECTION

WAC 460-20C-020 Definitions. The following definitions apply for the purpose of this chapter and chapters 460-21C and 460-23B WAC:

- (1) "Balance sheet" means a balance sheet prepared in accordance with generally accepted accounting principles in the United States.
- (2) "Branch office" means any location where one or more salespersons of a broker-dealer regularly conducts the business of effecting any transactions in, or inducing or attempting to induce the purchase or sale of any security, or is held out as such, excluding:
 - (a) Any location that is established solely for customer service and/or back office-type function where no sales activities are conducted and that is not held out to the public as a branch office;
 - (b) Any location that is the salesperson's primary residence, provided that:
 - (i) Only one salesperson, or multiple salespersons who reside at that location and are members of the same immediate family, conduct business at the location;
 - (ii) The location is not held out to the public as an office and the salesperson does not meet with customers at the location;
 - (iii) Neither customer funds nor securities are handled at that location;
 - (iv) The salesperson is assigned to a designated branch office, and such designated branch office is reflected on all business cards, stationery, retail communications, and other communications to the public by such salesperson;
 - (v) The salesperson's correspondence and communications with the public are subject to the supervision of the broker-dealer with which the salesperson is associated;
 - (vi) Electronic communications are made through the broker-dealer's electronic system;
 - (vii) All orders are entered through the designated branch office or an electronic system established by the broker-dealer that is reviewable at the branch office;
 - (viii) Written supervisory procedures pertaining to supervision of sales activities conducted at the residence are maintained by the broker-dealer; and

(ix) A list of the residence locations is maintained by the broker-dealer;

(c) Any location, other than a primary residence, that is used for securities business for less than 30 business days in any one calendar year, provided the salesperson and broker-dealer comply with the provisions of (b) (i) through (ix) of this subsection. For the purpose of this subsection, the term "business day" does not include any partial business day provided that the salesperson spends at least 4 hours on such business day at the salesperson's designated branch office during the hours that such office is normally open for business;

(d) Any office of convenience, where salespersons occasionally and exclusively by appointment meet with customers, which is not held out to the public as an office;

(e) Any location that is used primarily to engage in nonsecurities activities and from which the salespersons effect no more than 25 securities transactions in any one calendar year; provided that any retail communication identifying such location also sets forth the address and telephone number of the location from which the salesperson(s) conducting business at the nonbranch locations are directly supervised;

(f) The floor of a registered national securities exchange where a broker-dealer conducts a direct access business with public customers; or

(g) A temporary location established in response to the implementation of a business continuity plan.

Notwithstanding the exclusions provided in this subsection (2), any location that is responsible for supervising the activities of salespersons of the broker-dealer at one or more nonbranch locations of the broker-dealer is considered to be a branch office.

(3) "Central Registration Depository" or "CRD" means the national registration system operated by the Financial Industry Regulatory Authority, Inc., pursuant to a contract with the North American Securities Administrators Association.

(4) "Chief compliance officer" means each person designated as chief compliance officer on Schedule A of Form BD.

(5) "FINRA" means the Financial Industry Regulatory Authority, Inc., the self-regulatory organization for broker-dealers and salespersons of broker-dealers that is registered as a national securities association with the Securities and Exchange Commission under Section 15A of the Securities Exchange Act of 1934, 15 U.S.C. 78o.

(6) "FINRA member" means any broker-dealer that is a member of FINRA. "FINRA member" may also include any broker-dealer registered under the Securities Exchange Act of 1934 that has access to and the ability to make filings through the Central Registration Depository.

(7) "Form BD" means the Uniform Application for Broker-Dealer Registration.

(8) "Form BDW" means the Uniform Request for Broker-Dealer Withdrawal.

(9) "Form BR" means the Uniform Branch Office Registration Form.

(10) "Form U4" means the Uniform Application for Securities Industry Registration or Transfer.

(11) "Form U5" means the Uniform Termination Notice for Securities Industry Registration.

(12) "OTC non-NASDAQ equity securities" means equity securities not traded on a national securities exchange or on NASDAQ. Equity securities quoted on FINRA's OTC Bulletin Board are OTC non-NASDAQ equity securities.

(13) "Principal" means any person associated with a broker-dealer including, but not limited to, sole proprietor, officer, partner, manager of office of supervisory jurisdiction, director, or other person occupying similar status or performing similar functions, who is actively engaged in the management of the broker-dealer's investment banking or securities business, such as supervision, solicitation, conduct of business in securities, or the training of persons associated with a broker-dealer for any of these functions. Such persons include, among other persons, a broker-dealer's chief executive officer and chief financial officer (or equivalent officers), and any other person associated with a broker-dealer who is performing functions or carrying out responsibilities that are required to be performed or carried out by a principal under FINRA rules. The term "actively engaging in the management of the broker-dealer's investment banking or securities business" includes the management of, and the implementation of corporate policies related to, such business, and managerial decision-making authority with respect to the broker-dealer's investment banking or securities business and management level responsibilities for supervising any aspect of such business, such as serving as a voting member of the broker-dealer's executive, management, or operations committees.

(14) "Securities and Exchange Commission" or "SEC" means the United States Securities and Exchange Commission.

(15) "Solicited" describes, but is not limited to, any transaction which involves the following action by a broker-dealer or salesperson:

(a) Making a direct or indirect communication that a customer purchase a security;

(b) Recommending the purchase of a security through market letters, newsletters, e-mail or other electronic communication, or by otherwise circulating information which recommends the purchase;

(c) Volunteering information on the issuer, either to a particular customer or to customers generally;

(d) Engaging in a transaction in a discretionary account or where the delivery of a prospectus or offering circular is required; or

(e) Bringing a specific security to the attention of the customer through any means including, but not limited to, direct telephone conversation, the delivery of promotional material, or the transmission of electronic messages.

NEW SECTION

WAC 460-20C-025 Filings made through the Central Registration Depository. (1) Pursuant to RCW 21.20.050, the director designates the Central Registration Depository (CRD) operated by FINRA to receive and store filings and collect related fees on behalf of the director with respect to broker-dealers that are members of FINRA and their salespersons.

(2) For the purposes of a filing made through CRD, a document is considered filed with the director when all fees are received and the filing is accepted by CRD on behalf of Washington.

(3) When a signature or signatures are required by the particular instructions of any filing to be made through CRD, the applicant or a duly authorized officer of the applicant, as required, must affix their electronic signature to the filing by typing their name in the

appropriate fields and submitting the filing through CRD. Submission of a filing in this manner will constitute irrefutable evidence of legal signature by any individuals whose names are typed on the filings.

NEW SECTION

WAC 460-20C-030 Registration procedure. If you are applying to register as a broker-dealer or salesperson of a broker-dealer under RCW 21.20.040, you must follow the application procedures set forth in this section:

(1) **Broker-dealers.** If you are a broker-dealer applying for registration under RCW 21.20.040, you must follow the application procedures set forth in this subsection:

(a) **FINRA members.** If you are a broker-dealer that is a member of FINRA, you must submit the following through CRD:

(i) A Form BD completed in accordance with the instructions to the form. The Form BD must designate Washington as a state in which you request registration;

(ii) The required fee as set forth in WAC 460-05A-010 (1)(a);

(iii) An application for registration as a salesperson as set forth in subsection (2)(a) of this section for each officer, salesperson, employee, or other person who directly supervises, or will directly supervise, any registered salespersons associated with the broker-dealer in Washington; and

(iv) Such additional information as the director may require to complete an application in accordance with RCW 21.20.050(1).

(b) **Nonmembers of FINRA.** If you are a broker-dealer that is not a member of FINRA, you must submit the following to the director:

(i) A Form BD completed in accordance with the instructions to the form. The Form BD must designate Washington as a state in which you request registration;

(ii) An application for registration as a salesperson as set forth in subsection (2)(a) of this section for each officer, salesperson, employee, or other person who directly supervises, or will directly supervise, any registered salespersons associated with the broker-dealer in Washington; and

(iii) A check made out to "state treasurer" for the required fee as set forth in WAC 460-05A-010 (1)(a); and

(iv) A cover letter stating the following:

(A) The type of registration you seek (general securities or a limited registration);

(B) Why you are not required to register with the Securities and Exchange Commission and FINRA; and

(C) The name and CRD or Social Security number of each designated principal who has taken the examinations required by WAC 460-20C-040;

(v) A balance sheet as of a date not more than 120 days before the date of filing, and a computation of your net capital and your aggregate indebtedness ratio as of the same date as the balance sheet. If your net capital is not sufficient to meet the requirements set forth in WAC 460-20C-110, you may satisfy the net capital requirement with a surety bond;

(vi) A copy of any subordination agreement;

(vii) Proof of passage of qualifying examinations by the designated principals as required by WAC 460-20C-040; and

(viii) Such other information as the director may require to complete an application in accordance with RCW 21.20.050(1).

(c) **Withdrawal of pending application.** You may withdraw a pending application for broker-dealer registration by following the instructions for Form BDW and filing a completed Form BDW through CRD. If you are not a member of FINRA, you may file your Form BDW directly with the director.

(d) **Successor broker-dealer.** If you are a broker-dealer that is succeeding to and continuing the business of a broker-dealer currently registered under RCW 21.20.040, both you and the predecessor broker-dealer must follow Securities and Exchange Commission Rule 15b1-3 (17 C.F.R. 240.15b1-3 as amended effective January 25, 1993) and file Form BD, an amendment to Form BD, or Form BDW, as applicable. The fee for the transfer of a broker-dealer registration to a successor broker-dealer is set forth in RCW 21.20.340 (9)(a) and is payable directly to the director.

(e) **Notification of branch office.**

(i) You must notify the director of each branch office in Washington by submitting Form BR through CRD for FINRA broker-dealers and directly to the director for non-FINRA broker-dealers.

(ii) You must promptly notify the director on Form BR if you engage a new person in charge at a branch office in Washington, acquire a branch office of another broker-dealer in Washington, or relocate a branch office to Washington.

(2) **Salespersons.**

(a) **Salespersons of members of FINRA.** If you are seeking to register under RCW 21.20.040 as a salesperson of a broker-dealer that is a member of FINRA, you must submit the following application materials through CRD:

(i) A completed Form U4 marking Washington as a jurisdiction in which you seek registration; and

(ii) The fee as set forth in WAC 460-05A-010 (1)(c).

(b) **Salespersons of broker-dealers that are not members of FINRA.** If you are seeking to register under RCW 21.20.040 as a salesperson of a broker-dealer that is not a member of FINRA, you must submit the following application materials directly to the director:

(i) A completed Form U4 marking Washington as a jurisdiction in which you seek registration;

(ii) The fee set forth in WAC 460-05A-010 (1)(c); and

(iii) Proof of passage of the examinations required by WAC 460-20C-040.

(c) The director may require the submission of additional information as necessary to complete an application in accordance with RCW 21.20.050(1).

NEW SECTION

WAC 460-20C-035 Canadian broker-dealers and salespersons. (1)

If you are a Canadian broker-dealer that is a resident in Canada and has no office or other physical presence in the United States and is not an office of, branch of, or a natural person associated with a broker-dealer otherwise registered in the United States, you may transact business in Washington without registering as a broker-dealer pursuant to RCW 21.20.040 under the following conditions:

(a) The business you transact is limited to:

(i) Transactions subject to the exemption provided by RCW 21.20.320(8);

(ii) Transactions with or for a Canadian person who is temporarily present in Washington and with whom you had a bona fide customer relationship before the person entered Washington; or

(iii) Transactions with or for a Canadian person in a self-directed tax advantaged retirement plan in Canada of which that person is the holder or contributor; and

(b) You file the following with the director:

(i) A notice of claim of exemption in the form of a cover letter that provides the location of your head office, identifies a contact person, specifies the jurisdictions in Canada in which you are registered as a broker-dealer, and specifies the self-regulatory organization or stock exchange in Canada to which you belong; and

(ii) A consent to service process on Form U2 pursuant to RCW 21.20.330; and

(c) You maintain membership in a self-regulatory organization or stock exchange in Canada; and

(d) You maintain provincial or territorial registration in Canada; and

(e) You disclose to your customers in Washington that you are not subject to the full regulatory requirements of the Securities Act of Washington.

(2) If you are a salesperson representing a Canadian broker-dealer transacting business in Washington pursuant to subsection (1) of this section, you are not required to register pursuant to RCW

21.20.040 provided that you are registered in the appropriate Canadian jurisdiction.

(3) If you are a Canadian broker-dealer, the transactions conducted by you and your salespersons pursuant to subsections (1) and (2) of this section will be deemed not to involve the "offer" or "sale" of a security, as those terms are defined in RCW 21.20.005, for purposes of compliance with RCW 21.20.140. Nothing in this section limits the duty of you and your salespersons to comply with RCW 21.20.010 and the rules promulgated thereunder.

(4) If you have previously filed a notice of claim of exemption pursuant to subsection (1)(b) of this section, you must promptly notify the director if there is any material change in the information on file with the director. This includes, but is not limited to, any change with respect to the broker-dealer's eligibility for the exemption. An annual filing is not otherwise required to maintain the exemption.

NEW SECTION

WAC 460-29C-040 Examination requirements. (1) Broker-dealers.

If you are a broker-dealer registered or required to be registered under RCW 21.20.040, you must have at least one principal who has passed the Series 24 General Securities Principal Exam. If the principal who took and passed the required examination on your behalf ceases to be your principal, you must promptly update Form BD to identify a substitute principal who has passed the same examination.

(2) Salespersons of broker-dealers.

(a) In order to register under RCW 21.20.040 as a salesperson of a broker-dealer, you must, unless covered by (b) or (c) of this sub-

section or otherwise waived by the director, have passed within two years of the date of application:

(i) The Series 63 Uniform Securities Agent State Law Examination or the Series 66 Uniform Combined State Law Examination; and

(ii) All relevant examinations required by FINRA and accepted by Washington.

(b) If you have been registered as a salesperson of a broker-dealer in any state within two years from the date of filing an application for registration, you are not required to retake the examinations in (a) of this subsection to be eligible for registration.

(c) If you have not been registered as a salesperson of a broker-dealer in any state for more than two years but less than five years, and you have elected to participate in the FINRA Maintaining Qualifications Program pursuant to FINRA Rule 1240(c), and your appropriate FINRA qualifying examinations remain valid pursuant to effective participation in the Maintaining Qualifications Program, you are deemed in compliance with the examination requirements set forth in (a)(i) of this subsection as long as you elect to participate in the NASAA Examination Validity Extension Program within two years of the termination of your salesperson registration.

(d) If you have not been registered as a salesperson of a broker-dealer in any state for more than two years but less than five years, and you have elected to participate in the FINRA Maintaining Qualifications Program pursuant to FINRA Rule 1240(c), and your appropriate FINRA qualifying examinations remain valid pursuant to effective participation in the FINRA Maintaining Qualifications Program, you are deemed in compliance with the examination requirements set forth in (a)(ii) of this subsection.

(e) Successful participation in the FINRA Maintaining Qualifications Program does not extend the Series 66 Uniform Combined State Law Examination for purposes of investment adviser representative registration.

NEW SECTION

WAC 460-20C-045 Notice of termination of pending applications.

The director may send notice to an applicant for broker-dealer or salesperson registration with respect to any pending application in which the applicant has taken no action for the nine months immediately prior to the sending of such notice. The notice will advise such applicant that the pending application will be terminated 30 days from the date of sending such notice unless on or before the termination date the applicant responds in writing to the director showing good cause why the application should be continued as a pending application. If the applicant does not request in writing that the application be continued or show good cause why it should be continued, the director may terminate the pending application.

NEW SECTION

WAC 460-20C-050 Expiration and renewal of registration. (1) Expiration date.

(a) **Broker-dealers.**

(i) If you are a broker-dealer registered under RCW 21.20.040, your registration will be effective until December 31st of the year of issuance.

(ii) If you are a member of FINRA and you do not file an application to renew your broker-dealer registration by the deadline to submit renewal applications through CRD for the year, or if you are not a member of FINRA and do not file an application to renew your broker-dealer registration by December 31st, your registration will be considered delinquent and subject to the provisions in subsection (3)(a) of this section. If you do not renew your delinquent registration on or before March 1st of the following year, your registration will be considered to have terminated as of December 31st of the previous year.

(b) **Salespersons.**

(i) If you are registered as a salesperson of a broker-dealer pursuant to RCW 21.20.040, your registration will be effective until December 31st of the year of issuance.

(ii) If you are a salesperson of a broker-dealer that is a member of FINRA and you do not file an application to renew your registration by the deadline to submit renewal applications through CRD for the year, or if you are a salesperson of a broker-dealer that is not a member of FINRA and you do not submit an application to renew your registration by December 31st, your registration will be considered delinquent and subject to the provisions in subsection (3)(b) of this section. If you do not renew your delinquent registration on or before March 1st of the following year, your registration will be considered to have terminated as of December 31st of the previous year.

(2) Renewal procedure.

(a) **Broker-dealers.**

(i) **FINRA members.** If you are a broker-dealer who is a member of FINRA, you may renew your broker-dealer registration in Washington by filing the following through CRD prior to the renewal filing deadline set annually by FINRA:

(A) Any renewal application required by CRD; and

(B) The renewal fee set forth in WAC 460-05A-010 (1)(a); or

(ii) **Nonmembers of FINRA.** If you are a broker-dealer who is not a member of FINRA, you may renew your broker-dealer registration in Washington by filing the following with the director no later than December 1st:

(A) Form BD updated to reflect any material changes;

(B) A balance sheet dated not more than 120 days before the date of filing, and a computation of your net capital and your aggregate indebtedness ratio as of the same date as the balance sheet. If your net capital is not sufficient, you may satisfy the net capital requirement in WAC 460-20C-110 with a surety bond; and

(C) The renewal fee set forth in WAC 460-05A-010 (1)(a).

(b) **Salespersons.**

(i) **Salespersons for members of FINRA.** If you are registered under RCW 21.20.040 as a salesperson of a broker-dealer that is a member of FINRA, you may renew your salesperson registration in Washington by filing the following through CRD prior to the renewal filing deadline set annually by FINRA:

(A) Any renewal application required by CRD; and

(B) The renewal application fee set forth in WAC 460-05A-010

(1)(c); or

(ii) **Other salespersons for broker-dealers.** If you are registered under RCW 21.20.040 as a salesperson of a broker-dealer that is not a

member of FINRA, you may renew your salesperson registration in Washington by submitting the following directly to the director by December 1st:

- (A) An updated Form U4; and
- (B) The renewal application fee set forth in WAC 460-05A-010

(1) (c).

- (3) Delinquent renewal procedure.

(a) **Broker-dealers.** If you are a broker-dealer registered under RCW 21.20.040, and you filed a renewal application that was received by the director after the final date to submit renewal applications for the year as set forth in subsection (2) (a) of this section, but on or before March 1st of the next year, you must pay a delinquency fee of \$100 as set forth in RCW 21.20.340(8) in addition to the renewal fee. The delinquent renewal application and fees must be submitted directly to the director. No renewal applications will be accepted thereafter.

(b) **Salespersons.** If you are currently registered as a salesperson of a broker-dealer and the director receives your renewal application after deadlines set forth in subsection (2) (b) of this section but on or before March 1st of the next year, you must pay a delinquency fee of \$100 as set forth in RCW 21.20.340(8) in addition to the renewal fee. The delinquent renewal application and fees must be submitted directly to the director. No renewal applications will be accepted thereafter.

NEW SECTION

WAC 460-20C-060 Notice of changes by broker-dealers. If you are a broker-dealer registered or required to be registered under RCW 21.20.040, you must comply with the following requirements:

(1) You must promptly amend your Form BD if there is a material change to the information contained in the form, or if the information contained in the form is or becomes inaccurate or incomplete in any material respect. If you are a member of FINRA, you must file amendments to Form BD through CRD. If you are not a member of FINRA, you must submit your amended Form BD directly to the director. A material change includes, but is not necessarily limited to, the following:

- (a) A change in the name, ownership, management, or control of a broker-dealer;
- (b) A change in any of a broker-dealer's partners, directors, officers, or persons occupying a similar status performing similar functions;
- (c) A change in the business address or creation or termination of a branch office;
- (d) A change in the supervisory personnel of a branch office;
- (e) A change in the type of business engaged in by the broker-dealer;
- (f) Insolvency, dissolution, liquidation, or a material change in working capital;
- (g) Noncompliance with minimum net capital requirements;
- (h) Termination of business or discontinuance of activities as a broker-dealer;
- (i) Filing of a criminal charge or civil action against the broker-dealer or any of the broker-dealer's salespersons registered under RCW 21.20.040 which alleges a violation of securities laws;

(j) Commencement of or notice of intent to commence any action by an administrative agency, regulatory agency, self-regulatory organization, or court to consider whether to deny, suspend, or revoke a registration, impose a fine, injunction, cease or desist, or other penalty upon the broker-dealer, and the result of such action, including subsequent measures taken by any agency, organization, or court;

(k) Filing of a civil action against any broker-dealer registered under RCW 21.20.040 alleging a cause of action other than a securities violation which, if proven, would materially affect the ability of the broker-dealer to do business, including any action materially affecting the financial condition of the broker-dealer; and

(l) Any restriction or condition placed on the activities of the broker-dealer by any regulatory agency or self-regulatory organization.

(2) You must promptly amend the Form U4 for any associated salesperson if there is a material change to the information contained in the form, or if the information contained in the form is or becomes inaccurate or incomplete in any material respect. If you are a member of FINRA, you must file amendments to Form U4 through CRD. If you are not a member of FINRA, you must submit the amended Form U4 directly to the director.

(3) You must notify the director of the employment or association of any new salesperson in Washington by submitting a completed Form U4 through CRD (or directly to the director if you are not a member of FINRA) within 21 days after the employment or association.

(4) You must notify the director of the termination of employment of any salesperson in Washington by submitting a completed Form U5 through CRD (or directly to the director if you are not a member of FINRA) within 30 days after the event occurs.

NEW SECTION

WAC 460-20C-080 Mass transfer of salespersons. If you are a broker-dealer registered or required to be registered under RCW 21.20.040 and you intend to mass transfer your salespersons to another broker-dealer, you must comply with the following procedures:

(1) **FINRA members.** If you are a broker-dealer that is a member of FINRA, and you are transferring your salespersons to a broker-dealer that is also a member of FINRA, you must file with the director a roster of all salespersons intending to transfer at least 30 days prior to the effective date of transfer, or such shorter period as the director may permit. Such roster must include the names and CRD numbers of each salesperson as well as an indication as to whether the salesperson has any currently disclosable items to the Disclosure Questions in Section 14 of Form U4. You must submit a transfer fee of \$25 per salesperson with the roster as set forth in RCW 21.20.340 (9) (b). The provisions in this subsection supplement and do not supersede any FINRA rules and policies concerning mass transfer of salespersons.

(2) **Nonmembers of FINRA.** If you are a broker-dealer that is not a member of FINRA, you must file with the director Form U4 for each salesperson you intend to transfer to another broker-dealer at least 30 days prior to the effective date of transfer. You must submit a transfer fee of \$25 per salesperson as set forth in RCW 21.20.340 (9) (b). No salesperson may conduct the business of a salesperson until the transferred registration becomes effective.

NEW SECTION

WAC 460-20C-090 Termination of broker-dealer registration. (1) **Termination procedure.** If you are a broker-dealer registered or required to be registered under RCW 21.20.040, you may terminate your active registration in Washington by following the instructions on Form BDW and filing a completed Form BDW through CRD. If you are not a member of FINRA, you must file Form BDW directly with the director.

(2) **Date of termination.** Your broker-dealer registration will terminate 60 days after filing of Form BDW or within such shorter period of time as the director may determine, unless the registrant has any open customer accounts in Washington or a revocation or suspension proceeding is pending when Form BDW is filed.

(a) If the registrant has any open customer accounts in Washington, the settlement of those accounts is a condition of termination. Additional information may be required by the director and withdrawal is not complete until electronically noticed through CRD.

(b) If a revocation or suspension proceeding is pending, termination becomes effective upon such conditions as the director, by order, may determine. If no proceeding is pending or commenced, and termination automatically becomes effective, the director may nevertheless commence a revocation or suspension proceeding under RCW 21.20.110 (1)(b) within one year after withdrawal becomes effective, and enter a revocation or suspension order as of the last date on which registration was effective.

NEW SECTION

WAC 460-20C-100 Termination of salesperson registration. If you are a salesperson of a broker-dealer registered or required to be registered under RCW 21.20.040 and you or your associated broker-dealer terminate your employment or association, the following provisions apply:

(1) **Notification requirement.** Your associated broker-dealer must notify the director of the termination by submitting a completed Form U5 through CRD if the broker-dealer is a member of FINRA, or directly to the director if the broker-dealer is not a member of FINRA, within 30 days after the termination occurs.

(2) **Date of termination.** Except as provided in subsection (4) of this section, your salesperson registration terminates on the actual date of your termination of employment or association with the broker-dealer.

(3) **Association with new broker-dealer.** If you are transferring your association to another broker-dealer registered under RCW 21.20.040, your new broker-dealer must file Form U4 on your behalf no later than 21 days following your association with the new broker-dealer. In that situation, the effectiveness date of your registration with the new broker-dealer will be the date of association with the new broker-dealer.

(4) **Revocation or suspension proceedings.** If a revocation or suspension proceeding is pending against you at the time your associated broker-dealer files your Form U5, your termination of registration becomes effective upon such conditions as the director, by order, may determine. If no proceeding is pending or commenced at the time you file your Form U5, and your termination automatically becomes effec-

tive, the director may nevertheless commence a revocation or suspension proceeding against you under RCW 21.20.110 (1)(b) within one year after withdrawal becomes effective, and may enter a revocation or suspension order as of the last date on which registration was effective.

NEW SECTION

WAC 460-20C-110 Minimum net capital requirements for broker-dealers. If you are a broker-dealer registered or required to be registered under RCW 21.20.040, you must comply with the following requirements:

(1) You must meet the minimum net capital requirements established in Securities and Exchange Commission Rule 15c3-1 (17 C.F.R. 240.15c3-1, as amended effective October 21, 2019) and the appendices thereto;

(2) **Members of FINRA.** If you are a member of FINRA, you must comply with Securities and Exchange Commission Rule 17a-11 (17 C.F.R. 240.17a-11, as amended effective February 14, 2020). If you are required to provide notice to the Securities and Exchange Commission under Securities and Exchange Commission Rule 17a-11 for failure to comply with the net capital requirements, you must provide the notice and reports required by that rule to the director only upon request; and

(3) **Nonmembers of FINRA.** If you are not a member of FINRA, you must promptly notify the director if you fail to comply with the net capital requirements as set forth in subsection (1) of this section. The thresholds for notification of the director are the same as those set forth in Securities and Exchange Commission Rule 17a-11 (as amended effective February 14, 2020). You must provide such notification directly to the director in the form of a Financial and Operational Combined Uniform Single (FOCUS) Report.

NEW SECTION

WAC 460-20C-120 Reserve and custody requirements. If you are a broker-dealer registered or required to be registered under RCW 21.20.040, you must comply with the customer protection reserves and custody of securities requirements set forth in Securities and Exchange Commission Rule 15c3-3 (17 C.F.R. 240.15c3-3, as amended effective October 21, 2019).

NEW SECTION

WAC 460-20C-130 Books and records of broker-dealers. (1) If you are a broker-dealer registered or required to be registered under RCW 21.20.040, you must make, maintain, and preserve books and records in compliance with the following Securities and Exchange Commission rules:

(a) Securities and Exchange Commission Rule 10b-10 (17 C.F.R. 240.10b-10, as amended effective July 7, 2014);

(b) Securities and Exchange Commission Rule 15c2-11 (17 C.F.R. 240.15c2-11, as amended effective December 28, 2020);

(c) Securities and Exchange Commission Rule 15g-2(c) (17 C.F.R. 240.15g-2(c), as amended effective September 12, 2005);

(d) Securities and Exchange Commission Rule 15g-4(b) (2) (17 C.F.R. 240.15g-4(b) (2), as adopted April 28, 1992);

(e) Securities and Exchange Commission Rule 15g-5(b) (2) (17 C.F.R. 240.15g-5(b) (2), as adopted April 28, 1992);

(f) Securities and Exchange Commission Rule 15g-6(f) (17 C.F.R. 240.15g-6(f), as adopted April 28, 1992);

(g) Securities and Exchange Commission Rule 17a-2(c) (17 C.F.R. 240.17a-2(c), as amended effective April 1, 1997);

(h) Securities and Exchange Commission Rule 17a-3 (17 C.F.R. 240.17a-3, as amended effective April 6, 2020);

(i) Securities and Exchange Commission Rule 17a-4 (17 C.F.R. 240.17a-4, as amended effective January 3, 2023);

(j) Securities and Exchange Commission Rule 17a-8 (17 C.F.R. 240.17a-8, as amended effective March 2, 2011); and

(k) Securities and Exchange Commission Rule 17a-13(b) (5) (17 C.F.R. 240.17a-13(b) (5), as amended effective September 13, 2022).

To the extent that the Securities and Exchange Commission promulgates changes to the above-referenced rules, your compliance with such rules as amended will not subject you to enforcement action by the director for violation of this rule to the extent that the violation results solely from your compliance with the amended rule.

(2) For purposes of the application of the Securities and Exchange Commission rules referenced in subsection (1) of this section, "member" also means "broker-dealer" as defined by RCW 21.20.005(1), "associated person" also means "salesperson" as defined by RCW 21.20.005(15), and "securities regulatory authority" also means the Washington department of financial institutions.

(3) If you are a broker-dealer registered or required to be registered under RCW 21.20.040 and you are a member of a self-regulatory organization, you must maintain all records which the self-regulatory organization requires you to maintain.

(4) The records required to be maintained and preserved pursuant to this section may be immediately produced or reproduced, and maintained and preserved on:

(a) Paper or hard copy form, as those records are kept in their original form;

(b) Micrographic media, including microfilm, microfiche, or any similar medium; or

(c) Electronic storage media, including any digital storage medium or system that meets the terms of this section.

(5) If you are a broker-dealer required to maintain and preserve records pursuant to this section, you must:

(a) Arrange and index the records in a way that permits easy location, access, and retrieval of any particular record;

(b) Provide promptly any of the following that the director may request:

(i) A legible, true, and complete copy of the record in the medium and format in which it is stored;

(ii) A legible, true, and complete printout of the records; and

(iii) Means to access, view, and print the records; and

(c) If the records that the broker-dealer is required to maintain and preserve pursuant to this section are created or maintained on electronic storage media, the broker-dealer must establish and maintain procedures:

(i) To maintain and preserve the records, so as to reasonably safeguard them from loss, alteration, and destruction;

(ii) To limit access to the records to properly authorized personnel and the director; and

(iii) To reasonably ensure that any reproduction of a nonelectronic original record on electronic storage media is complete, true, and legible when retrieved.

(6) If you are a broker-dealer registered or required to be registered under RCW 21.20.040, you must make the records required to be maintained under this section easily accessible for inspection by the director or the director's representatives. In the conduct of an examination authorized by RCW 21.20.100(4), you must honor all requests by the director or the director's representatives to have physical access to all areas of the office which is the subject of the examination. Upon request, you must permit the director or the director's representatives to access, copy, scan, image, and examine all records and electronic data that you are required to retain under this section.

(7) The director may by order, upon written request and for good cause shown, waive any of the requirements of this section.

NEW SECTION

WAC 460-20C-140 Financial reporting requirements. If you are a broker-dealer registered or required to be registered under RCW 21.20.040, you must comply with the following financial reporting requirements:

(1) **FINRA members.**

(a) If you are a broker-dealer that is a member of FINRA, and your "principal business address" or "firm main address" as disclosed on Form BD is located in Washington, you must file annually with the director through the eFOCUS portal the financial statements that you are required to provide to the Securities and Exchange Commission or its designee; and

(b) If you are a broker-dealer that is a member of FINRA, and your "principal business address" or "firm main address" as disclosed on Form BD is not located in Washington you must, upon request, provide the director with any financial statements or financial information that you are required to provide to the Securities and Exchange Commission or its designee.

(2) **Nonmembers of FINRA.** If you are a broker-dealer that is not a member of FINRA, you must comply with the following:

(a) You must file annually with the director financial statements that have been prepared in accordance with generally accepted accounting principles and audited by an independent certified public accountant. You must file these financial statements with the director no later than 120 days after the close of your fiscal year end through the director's eFin electronic filing system or any successor electronic filing system; and

(b) If your "principal business address" or "firm main address" as reported on Form BD is located in Washington, you must file quarterly Financial and Operational Combined Uniform Single (FOCUS) Reports upon request through the director's eFin electronic filing system or any successor electronic filing system.

NEW SECTION**WAC 460-20C-150 Supervision of salespersons and employees. (1)**

If you are a broker-dealer registered or required to be registered under RCW 21.20.040, you must reasonably supervise your salespersons and your employees. Reasonable supervision for the purposes of RCW 21.20.110 (1)(j) includes, but is not limited to, the following:

(a) You must designate a qualified person as supervisor for each salesperson. For the purpose of this section, that person will be referred to as the "designated supervisor" of the salesperson(s) supervised. To be qualified, a designated supervisor must demonstrate competence by passing the examinations required by WAC 460-20C-040. A designated supervisor may only supervise the number of salespersons at any one time that will allow the supervisor to reasonably discharge the duties and obligations under the broker-dealer's established supervisory procedures and systems. The number of salespersons a designated supervisor can reasonably supervise depends upon the nature of the business conducted by the salespersons, technical resources available to the supervisor, additional personnel available to assist the supervisor, and other resources made available to assist the supervisor;

(b) You must comply with the supervision requirements set forth in the conduct rules of FINRA. For purposes of the application of FINRA conduct rules to broker-dealers who are not members of FINRA, "member" means "broker-dealer" as defined by RCW 21.20.005(1) and "associated person" means "salesperson" as defined by RCW 21.20.005(15);

(c) You must implement procedures for the reasonable oversight of your designated supervisors;

(d) You must investigate every complaint submitted to the broker-dealer by a customer. You must designate an employee who will investigate, track, and monitor customer complaints. You must respond to all complaints in a timely manner;

(e) You must establish and maintain written supervisory procedures reasonably designed to assist in detecting violations of, preventing violations of, and achieving compliance with the Securities Act of Washington and the rules adopted thereunder, and other applicable laws, regulations, and rules of self-regulatory organizations;

(f) You must conduct an annual review of the businesses in which you engage. The review must be reasonably designed to assist in detecting violations of, preventing violations of, and achieving compliance with the Securities Act of Washington and the rules adopted thereunder, and other applicable laws, regulations, and rules of self-regulatory organizations; and

(g) Pursuant to RCW 74.34.220, you must provide training to your employees who are salespersons registered under RCW 21.20.040 regarding the financial exploitation of vulnerable adults if such employees have contact with customers and access to account information on a regular basis and as part of their jobs. The training must include recognition of indicators of financial exploitation of a vulnerable adult, the manner in which employees may report suspected financial exploitation to the Washington department of social and health services and law enforcement as permissive reporters, and steps employees may take to prevent suspected financial exploitation of a vulnerable adult as authorized by law or agreements between you and your customers.

(2) The director may require heightened supervision as a condition of the registration of any salesperson who has a history of past

misconduct or industry or regulatory-related incidents that may pose a risk to customers. The director may require the submission of a written heightened supervisory plan developed to address the salesperson's past conduct and minimize the risks posed by the salesperson's ongoing activities.

(a) At a minimum, an effective heightened supervision plan must include the following:

(i) The designation of a principal with the appropriate training and experience to implement and enforce the plan;

(ii) A requirement for appropriate additional training for the salesperson subject to the plan to address the nature of incidents necessitating the plan;

(iii) The written acknowledgment of the heightened supervisory plan by the salesperson subject to the plan and the designated supervisory principal; and

(iv) A requirement that the supervising principal periodically review the heightened supervision plan to assess its effectiveness; and

(b) As appropriate under the facts and circumstances, an effective heightened supervision plan may also provide for the following:

(i) Heightened supervision of the salesperson's business activities including, but not limited to, customer-related activities, employee personal trading accounts, outside business activities, private securities transactions, and restrictions on the sale of certain products;

(ii) Proximity of the supervising principal to the salesperson;

(iii) More frequent contact between the supervising principal and the salesperson;

(iv) More frequent review of the salesperson's communications, particularly with customers; and

(v) Expedient handling of customer complaints related to the salesperson.

NEW SECTION

WAC 460-20C-160 Fraudulent practices of broker-dealers and salespersons. It is an "act, practice, or course of business which operates or would operate as a fraud" as used in RCW 21.20.010(3) for a broker-dealer or salesperson to engage in one or more of the following practices:

(1) Entering into a transaction with a customer in any security at an unreasonable price or at a price not reasonably related to the current market price of the security or receiving an unreasonable commission or profit;

(2) Contradicting or negating the importance of any information contained in a prospectus or other offering materials with intent to deceive or mislead or using any advertising or sales presentation in a deceptive or misleading manner;

(3) In connection with the offer, sale, or purchase of a security, falsely leading a customer to believe that the broker-dealer or salesperson is in possession of material, nonpublic information which would impact on the value of the security;

(4) In connection with the solicitation of a sale or purchase of a security, engaging in a pattern or practice of making contradictory recommendations to different investors with similar investment objec-

tives for some to sell and others to purchase the same security, at or about the same time, when not justified by the particular circumstance of each investor;

(5) Failing to make a bona fide public offering of all the securities allotted to a broker-dealer for distribution, whether acquired as an underwriter, a selling group member, or from a member participating in the distribution as an underwriter or selling group member by, among other things:

(a) Transferring securities to a customer, another broker-dealer, or a fictitious account with the understanding that those securities will be returned to the broker-dealer or its nominees; or

(b) Parking or withholding securities;

(6) Although nothing in this section precludes application of the general antifraud provisions against any person for practices similar in nature to the practices discussed below, the following prohibited activities specifically apply only in connection with the solicitation of a purchase or sale of OTC non-NASDAQ equity securities:

(a) Failing to comply with rules adopted by the Securities and Exchange Commission under authority granted by the Penny Stock Reform Act of 1990 (Pub. L. No. 101-429), including Securities and Exchange Commission Rules 15g-1 through 15g-6, 15g-8, 15g-9, and 15g-100 (17 C.F.R. 240.15g-1 as amended effective December 8, 2020; 17 C.F.R. 240.15g-2 as amended effective September 12, 2005; 17 C.F.R. 240.15g-3 through 17 C.F.R. 240.15g-6 as adopted April 28, 1992; 17 C.F.R. 240.15g-8 as adopted April 28, 1992; 17 C.F.R. 240.15g-9 as amended effective May 22, 2017; and 17 C.F.R. 240.15g-100 as amended effective September 12, 2005) which are hereby incorporated by reference;

(b) Conducting sales contests in a particular security;

(c) After a solicited purchase by a customer, failing or refusing, in connection with a principal transaction, to promptly execute sell orders;

(d) Soliciting a secondary market transaction when there has not been a bona fide distribution in the primary market; and

(e) Engaging in a pattern of compensating a salesperson in different amounts for effecting sales and purchases in the same security;

(7) Effecting any transaction in, or inducing the purchase or sale of any security by means of any manipulative, deceptive, or other fraudulent device or contrivance including, but not limited to, the use of boiler room tactics or use of fictitious or nominee accounts. "Boiler room tactics" include any high-pressure sales tactics that have the effect of creating an artificially short period in which to make a decision or are designed to overcome a customer's reluctance to make an investment. Such tactics include the use of scripts designed to meet the customer's objections, repeated phone calls, phone calls designed to "set up" the customer, threatening tones on the telephone, informing the customer that there is little time to make a decision, and other similar techniques;

(8) Failing to comply with any prospectus delivery requirement promulgated under state or federal law;

(9) Giving or permitting to be given, directly or indirectly, anything of value, including gratuities, in excess of \$100 per individual per year to any person, principal, proprietor, employee, agent, or representative of another person where such payment or gratuity is in relation to the business of the employer of the recipient of the payment or gratuity. For the purpose of this subsection, a gift of any kind is considered a gratuity. This subsection does not apply to contracts of employment with, or compensation for services rendered by

the persons enumerated in this subsection provided that a written agreement between you and the person who is to be employed to perform such services exists prior to the time of employment or before the services are to be rendered that includes the nature of the proposed employment, the amount of the proposed compensation, and the written consent of such person's employer or principal. You must retain a record of all payments or gratuities in any amount, and a copy of any employment agreement and compensation paid as a result thereof;

(10) Making or causing to be made any statement in any examination or other proceeding under the Securities Act of Washington or in any document filed with the director if the statement is, at the time and in light of the circumstances under which it is made, false or misleading in any material respect; and

(11) Advertising or otherwise holding out as providing investment advisory services to others while not registered as an investment adviser in Washington. For the purposes of this subsection, the use of the terms "financial planner," "investment counselor," or similar terms as set forth in WAC 460-24A-040 are deemed to be holding out as providing investment advisory services. This subsection does not apply if you follow the procedures set forth in WAC 460-24A-045.

This section is not intended to be all inclusive, and thus, acts or practices not enumerated herein may also be fraudulent practices.

NEW SECTION

WAC 460-20C-170 Excessive trading. (1) The phrase "employ any device, scheme, or artifice to defraud" as used in RCW 21.20.010(1) includes any act of any broker-dealer or salesperson designed to effect with or for any customer's account with respect to which such broker-dealer or salesperson is vested with any discretionary power, or with respect to which the broker-dealer or salesperson is able by reason of the customer's trust and confidence to influence the volume and frequency of the trades, any transactions of purchase or sale which are excessive in size or frequency in view of the financial resources and character of such customer or account.

(2) For the purposes of subsection (1) of this section, RCW 21.20.035, WAC 460-20C-210(2), and 460-20C-220(6), the director may determine that trades are excessive in size or frequency in view of the financial resources and character of the account based on consideration of the following:

(a) **The cost-to-equity ratio.** The cost-to-equity ratio calculates the rate of return the account has to earn during a given period to cover account costs. The cost-to-equity ratio is calculated by dividing the total commissions and costs for the security purchases in an account in a given period of time by the average net equity of the account during that period; and

(b) **The turnover ratio.** The turnover ratio is calculated by dividing the total dollar amount of securities purchased in a given period by the average net equity of the account during that period.

The above is not intended to be all inclusive, and thus the director may determine whether trades are excessive by other reasonable means.

NEW SECTION

WAC 460-20C-180 Transmission or maintenance of payments received in connection with underwritings. It constitutes a "device, scheme, or artifice to defraud" as used in RCW 21.20.010(1), for any broker-dealer participating in any distribution of securities, other than a firm commitment underwriting, to accept any part of the sale price of any security being distributed unless:

(1) The money or other consideration received is promptly transmitted to the persons entitled thereto; or

(2) If the distribution is being made on an "all-or-none" basis, or on any other basis which contemplates that payment is not to be made to the person on whose behalf the distribution is being made until some further event or contingency occurs:

(a) The money or other consideration received is promptly deposited in a separate bank account, as agent or trustee for the persons who have the beneficial interests therein, until the appropriate event or contingency has occurred, and then the funds are promptly transmitted or returned to the persons entitled thereto; or

(b) All such funds are promptly transmitted to a bank which has agreed in writing to hold all such funds in escrow for the persons who have the beneficial interests therein and to transmit or return such funds directly to the persons entitled thereto when the appropriate event or contingency has occurred.

NEW SECTION

WAC 460-20C-190 Communications with the public. If you are a broker-dealer or salesperson registered or required to be registered under RCW 21.20.040, it is an "act, practice, or course of business" which operates or would operate as fraud within the meaning of RCW 21.20.010 to, directly or indirectly, publish, circulate, or distribute any communications that do not comply with the following content standards:

(1) All your communications must be based on principles of fair dealing and good faith, must be fair and balanced, and must provide a sound basis for evaluating the facts in regard to any particular security or type of security, industry, or service. You may not omit any material fact or qualification if the omission, in light of the context of the material presented, would cause the communications to be misleading.

(2) You may not make any false, exaggerated, unwarranted, promissory, or misleading statement or claim in any communication. You may not publish, circulate, or distribute any communication that you know or have reason to know contains any untrue statement of a material fact or is otherwise false or misleading.

(3) You must ensure that statements in communications are clear and not misleading within the context in which they are made, and that they provide balanced treatment of risks and potential benefits. Communications must be consistent with the risks of fluctuating prices and the uncertainty of dividends, rates of return, and yield inherent to investments.

(4) You must consider the nature of the audience to which the communication will be directed and must provide details and explanations appropriate to the audience.

(5) All your retail communications and correspondence must:

- (a) Prominently disclose the broker-dealer's name, or the name under which the broker-dealer primarily is conducted as disclosed on your Form BD, and may also include a fictional name by which you are commonly recognized or which is required by any state or jurisdiction;
- (b) Reflect any relationship between the broker-dealer and any nonbroker-dealer or individual who is also named; and
- (c) If it includes other names, reflect which products or services are being offered by the broker-dealer.

This subsection (5) does not apply to so-called "blind" advertisements used to recruit personnel.

NEW SECTION

WAC 460-20C-200 Deferred variable annuities. It constitutes a dishonest or unethical business practice for the purposes of RCW 21.20.110 (1)(g) for a broker-dealer or salesperson registered or required to be registered under RCW 21.20.040 to recommend the purchase or exchange of a deferred variable annuity unless the following requirements are met:

(1) The broker-dealer and salesperson must have reasonable basis to believe that the transaction is suitable for the customer; and, in particular:

(a) The broker-dealer and salesperson must have reasonable basis to believe that the customer has been informed, in general terms, of various features of variable annuities, including the following:

- (i) The potential surrender period and surrender charge;
- (ii) The potential tax penalty if customers sell or redeem deferred variable annuities before reaching the age of 59 1/2
- (iii) Mortality and expense fees;
- (iv) Investment advisory fees;
- (v) The potential charges for and features of riders; and
- (vi) The insurance and investment components of deferred variable annuities; and
- (vii) Market risk;

(b) The broker-dealer and salesperson must have reasonable basis to believe the customer would benefit from certain features of deferred variable annuities, such as tax-deferred growth, annuitization, or a death or living benefit; and

(c) The broker-dealer and salesperson must have a reasonable basis to believe that the particular deferred variable annuity as a whole, the underlying subaccounts to which funds are allocated at the time of the purchase or exchange of the deferred variable annuity, and the riders and similar product enhancements, if any, are suitable (and, in the case of an exchange, the transaction as a whole also suitable) for the particular customer based on the information required by subsection (3) of this section;

(2) In the case of an exchange of a deferred variable annuity, the exchange also must be consistent with the suitability determination required by subsection (1) of this section taking into consideration whether:

- (a) The customer would incur a surrender charge, be subject to the commencement of a new surrender period, lose existing benefits (such as death, living, or other contractual benefits), or be subject to increased fees or charges (such as mortality and expense fees, in-

vestment advisory fees, or charges for riders and similar product enhancements);

(b) The customer would benefit from product enhancements and improvements; and

(c) The customer has had another deferred variable annuity exchanged within the preceding 36 months.

The salesperson making the recommendation must document and sign the determinations required by this subsection;

(3) Prior to recommending the purchase or exchange of a deferred variable annuity, the broker-dealer or salesperson must make reasonable efforts to obtain, at a minimum, information concerning the customer's age, annual income, financial situation and needs, investment experience, investment objectives, intended use of the deferred variable annuity, investment time horizon, existing assets (including investment and life insurance holdings), liquidity needs, liquid net worth, risk tolerance, tax status, and such other information used or considered to be reasonable in making recommendations to customers;

(4) Prior to recommending the purchase or exchange of a deferred variable annuity to a retail customer, the broker-dealer or salesperson must make inquiry regarding other reasonably available securities and investment strategies offered by the broker-dealer that could achieve the retail customer's investment objectives;

(5) Promptly after receiving information necessary to prepare a complete and correct application package for a deferred variable annuity, the salesperson who recommends the deferred variable annuity must transmit the complete and correct application package to a principal for review;

(6) The principal must review and approve the transaction. The principal may approve the transaction only if the principal has determined that there is a reasonable basis to believe the transaction would be suitable based on subsections (1) and (2) of this section;

(7) The broker-dealer must have established and maintained written supervisory procedures reasonably designed to achieve the standards set forth in this section. The broker-dealer must (a) implement surveillance procedures to determine if any of its salesperson have rates of effecting deferred variable annuity exchanges that raise for review whether such rates of exchange evidence conduct inconsistent with this section or federal or state securities laws and (b) have policies and procedures reasonably designed to implement corrective measures to address inappropriate exchanges and the conduct of its salespersons who engage in inappropriate exchanges; and

(8) The broker-dealer must have developed and documented specific training policies or programs reasonably designed to ensure that salespersons who effect and principals who review transactions in deferred variable annuities comply with the requirements of this section and that they understand the material features of deferred variable annuities.

NEW SECTION

WAC 460-20C-210 Dishonest or unethical practices—Broker-dealers. If you are a broker-dealer registered or required to be registered under RCW 21.20.040, you must observe high standards of commercial honor and just and equitable principles of trade in conducting

your business. If you engage in acts and practices contrary to such standards, this may constitute grounds for denial, suspension, or revocation of your registration. The phrase "dishonest or unethical practices" as used in RCW 21.20.110 (1)(g) and as applied to broker-dealers includes, but is not limited to, any of the following:

- (1) Engaging in a pattern of unreasonable and unjustifiable delays in the delivery of securities purchased by any of its customers and/or in the payment upon request of free credit balances reflecting completed transactions of any of its customers;
- (2) Inducing trading in a customer's account which is excessive in size or frequency in view of the financial resources and character of the account;
- (3) Recommending to a customer the purchase, sale, or exchange any security without reasonable grounds to believe that such transaction or recommendation is suitable for the customer based upon reasonable inquiry concerning the customer's investment objectives, financial situation and needs, age, other investments, tax status, investment experience, investment time horizon, liquidity needs, risk tolerance, and any other relevant information known by the broker-dealer;
- (4) Making a recommendation of any security transaction or investment strategy involving securities (including account recommendations) to a retail customer if the recommendation does not comply with the obligations set forth in Regulation Best Interest (17 C.F.R. 240.121-1 as amended effective September 10, 2019);
- (5) Executing a transaction on behalf of a customer without authorization to do so;
- (6) Exercising any discretionary power in effecting a transaction for a customer's account without first obtaining written discretionary authority from the customer, unless the discretionary power relates solely to the time and/or price for the execution of orders;
- (7) Executing any transaction in a margin account without securing from the customer a properly executed written margin agreement;
- (8) Failing to segregate customers' free securities or securities held in safekeeping;
- (9) Hypothecating a customer's securities without having a lien thereon unless the broker-dealer secures from the customer a properly executed written consent, except as permitted by rules of the Securities and Exchange Commission;
- (10) Entering into a transaction with or for a customer at a price not reasonably related to the current market price of the security or receiving an unreasonable commission or profit;
- (11) Failing to furnish to a customer purchasing securities in an offering, no later than the date of confirmation of the transaction, a final or preliminary prospectus, and if the latter, failing to furnish a final prospectus within a reasonable period after the effective date of the offering;
- (12) Charging unreasonable and inequitable compensation, fees, concessions, discounts, commissions, or other allowances for services performed, including miscellaneous services such as collection of monies due for principal, dividends or interest, exchange or transfer of securities, appraisals, safekeeping, or custody of securities and other services related to its securities business;
- (13) Offering to buy from or sell to any person any security at a stated price unless such broker-dealer is prepared to purchase or sell, as the case may be, at such price and under such conditions as are stated at the time of such offer to buy or sell;

(14) Representing that a security is being offered to a customer "at the market" or a price relevant to the market price unless such broker-dealer knows or has reasonable grounds to believe that a market for such security exists other than that made, created, or controlled by such broker-dealer, or by any person for whom the broker-dealer is acting or with whom the broker-dealer is associated in such distribution, or any person controlled by, controlling, or under common control with such broker-dealer;

(15) Effecting any transaction in, or inducing the purchase or sale of, any security by means of any manipulative, deceptive, or fraudulent device, practice, plan, program, design, or contrivance, which may include, but is not limited to:

(a) Effecting any transaction in a security which involves no change in the beneficial ownership thereof;

(b) Entering an order or orders for the purchase or sale of any security with the knowledge that an order or orders of substantially the same size, at substantially the same price, for the sale of any such security, has been or will be entered by or for the same or different parties for the purpose of creating a false or misleading appearance of active trading in the security or a false or misleading appearance with respect to the market for the security; provided, however, nothing in this subsection prohibits a broker-dealer from entering bona fide agency cross transactions for its customer;

(c) Effecting, alone or with one or more other persons, a series of transactions in any security creating actual or apparent active trading in such security or raising or depressing the price of such security, for the purpose of inducing the purchase or sale of such security by others;

(d) Effecting any transaction in a security or a related financial instrument when the salesperson causing such transaction to be executed has material, nonpublic market information concerning an imminent block transaction in that security, a related financial instrument, or a security underlying the related financial instrument prior to the time information concerning the block transaction has been made publicly available or has otherwise become stale or obsolete. For the purposes of this subsection, "related financial instrument" means any option, derivative, security-based swap, or other financial instrument overlying a security, the value of which is materially related to, or otherwise acts as a substitute for, such security, as well as any contract that is the functional economic equivalent of a position in such security;

(e) Effecting any transaction in an equity security on the same side of the market for the broker-dealer's own account at a price that would satisfy the customer order, if the broker-dealer has accepted and holds an order for the same equity security from its customer or the customer of another broker-dealer without immediately executing such order, unless the broker-dealer immediately thereafter executes the customer order up to the size and at the same or better price at which it traded for its own account; and

(f) Using aggressive, high-pressure, or deceptive marketing tactics to affect the market price of the security;

(16) Guaranteeing a customer against loss in any securities account of such customer carried by the broker-dealer or in any securities transaction effected by the broker-dealer with or for such customer;

(17) Publishing or circulating, or causing to be published or circulated, any notice, circular, advertisement, newspaper article,

investment service, or communication of any kind which purports to report any transaction as a purchase or sale of any security unless such broker-dealer believes that such transaction was a bona fide purchase or sale of such security; or which purports to quote the bid price or asked price for any security, unless such broker-dealer believes that such quotation represents a bona fide bid for, or offer of, such security;

(18) Using, ratifying, or condoning any communication, advertising, or sales presentation in such a fashion as to be deceptive or misleading. An example of such practice is the distribution of any nonfactual data, material, or presentation based on conjecture, or unfounded or unrealistic claims or assertions in any customer correspondence, social media, electronic communication, brochure, flyer, or display by words, pictures, graphs, or otherwise designed to supplement, detract from, supersede, or defeat the purpose or effect of any prospectus or disclosure; and the distribution of any communications inconsistent with WAC 460-20C-190;

(19) Failing to disclose that the broker-dealer is controlled by, controlling, affiliated with, or under common control with the issuer of any security before entering into any contract with or for a customer for the purchase or sale of security, the existence of such control to such customer, and if such disclosure is not made in writing, it must be supplemented by the giving or sending of written disclosure at or before the completion of the transaction;

(20) Failing to make a bona fide public offering of all of the securities allotted to a broker-dealer for distribution, whether acquired as an underwriter, a selling group member, or from a member participating in the distribution as an underwriter or selling group member by, amongst other things:

(a) Transferring securities to a customer, another broker-dealer, or a fictitious account with the understanding that those securities will be returned to the broker-dealer or its nominees; or

(b) Parking or withholding securities;

(21) Failing or refusing to furnish a customer, upon reasonable request, information to which the customer is entitled, or to respond within 14 calendar days to a formal written request or complaint;

(22) In connection with the solicitation of a sale or purchase of an OTC non-NASDAQ security, failing to promptly provide the most current prospectus or the most recently filed periodic report filed under Section 13 of the Securities Exchange Act of 1934, when requested to do so by a customer;

(23) Marking any order ticket or confirmation as unsolicited when in fact the transaction is solicited;

(24) For any month in which activity has occurred in a customer's account, but in no event less than every three months, failing to provide each customer with a statement of account which with respect to all OTC non-NASDAQ equity securities in the account, contains a value for each such security based on the closing market bid on a date certain, provided that this subsection will apply only if the firm has been a market maker in such security at any time during the month in which the monthly or quarterly statement is issued;

(25) Failing to comply with any applicable provision of the Conduct Rules of FINRA or any applicable fair practice or ethical standard promulgated by the Securities and Exchange Commission, Commodity Futures Trading Commission, Municipal Securities Rulemaking Board, New York Stock Exchange, Chicago Board Options Exchange, Consumer Financial Protection Board, National Futures Association, state securities

regulator, state insurance regulator, state or federal banking regulator, or by a self-regulatory organization approved by the Securities and Exchange Commission;

(26) Any acts or practices enumerated in WAC 460-20C-160 and 460-20C-170;

(27) Using any term or abbreviation thereof in a manner that misleadingly states or implies that a person has special expertise, certification, or training in financial planning including, but not limited to, the misleading use of a senior-specific certification or designation as set forth in WAC 460-25A-020;

(28) Operating a securities business while unable to meet current liabilities, or violating any statutory provision, rule, or order relating to minimum capital or surety bond;

(29) Extending, arranging for, or participating in arranging for credit to a customer in violation of any federal law or regulation including, but not limited to, 15 U.S.C 78k(d) (as amended effective September 23, 1994) or 12 C.F.R. 220.7 (as amended effective April 1, 1998);

(30) Failing to refrain from soliciting prospective customers who have informed the broker-dealer that such person does not want to be solicited, or conducting business by telephone at unreasonable times;

(31) Failing to disclose to a person purchasing securities on the premises of a depository institution that such investment is not insured by the Federal Deposit Insurance Corporation or the National Credit Union Association (as applicable), is not a deposit or other obligation of the depository institution or guaranteed by the depository institution, and is subject to investment risk; or failing to cause a written disclosure statement to be presented to, and signed by such person, acknowledging that such person has received such information;

(32) Altering or creating any document relevant to or on the books and records of any broker-dealer, investment adviser, bank, credit union, insurance company, or commodities futures business with any entry or deletion which is materially false or misleading;

(33) Failing to comply with a suspension or bar order of the Securities and Exchange Commission, FINRA, any other self-regulatory organization, or any other securities regulator;

(34) Establishing or maintaining an account containing fictitious information in order to execute transactions which would otherwise be prohibited;

(35) Engaging in acts or practices that constitute deceptive market-timing in the trading of securities including, but not limited to:

(a) Breaking a trade into smaller trades to avoid detection; or

(b) Using multiple accounts, nominees, agent numbers, or multiple agents or representatives to avoid breakpoints, internal controls, exception reports, or other forms of firm or regulatory supervision;

(36) Engaging in acts or practices that constitute deceptive sales practices in the trading of mutual funds including, but not limited to:

(a) Recommending mutual funds just under breakpoints;

(b) Recommending a share class that does not align with customers' needs; or

(c) Recommending a mutual fund switch that does not align with customers' needs;

(37) Disclosing the identity, investment, or other financial information of any customer or former customer unless required by law to do so, or unless consented to by the customer;

(38) Failing to disclose in any retail communications, correspondence, or other materials used in connection with the promotion or transaction of securities business in Washington, the name of the broker-dealer or the name under which the broker-dealer's business is primarily conducted as disclosed on Form BD. For purposes of this subsection, "other materials" include, but are not limited to, business cards, business stationery, and display signs;

(39) Representing that securities will be listed or that application for listing will be made on a securities exchange or the National Association of Securities Dealers Automated Quotations (NASDAQ) system or other quotation system without reasonable basis in fact for the representation;

(40) Engaging in any act, practice, or course of business which is fraudulent, deceptive, manipulative, or unethical;

(41) Engaging in conduct or any act, indirectly or through or by any other person, which would be unlawful for such person to do directly under the provisions of the Securities Act of Washington, chapter 21.20 RCW, or any rule or regulation thereunder;

(42) Making, in the solicitation of customers, any untrue statement of fact, or omitting to state a material fact necessary in order to make the statement made, in light of the circumstances under which it was made, not misleading;

(43) Failing to pay and fully satisfy any final judgment or arbitration award resulting from an investment-related, customer-initiated arbitration or court proceeding, unless alternative payment arrangements are agreed to between the customer and the broker-dealer, in writing, and the broker-dealer complies with the terms of the alternative payment arrangement;

(44) Attempting to avoid payment of any final judgment or arbitration award resulting from an investment-related, customer-initiated arbitration or court proceeding, unless alternative payment arrangements are agreed to between the customer and the broker-dealer, in writing, and the broker-dealer complies with the terms of the alternative payment arrangement;

(45) Failing to pay and fully satisfy and fine, civil penalty, order of restitution, order of disgorgement, or similar monetary payment obligation imposed upon the broker-dealer by the Securities and Exchange Commission, the securities or other financial services regulator of any state or province, or any self-regulatory organization;

(46) Accessing a customer's account by using the customer's own unique identifying information (such as username and password);

(47) Failing to provide training regarding the financial exploitation of vulnerable adults pursuant to RCW 74.34.220 to employees who are required to be registered as salespersons under RCW 21.20.040 if such employees have contact with customers and access to account information on a regular basis and as part of their jobs;

(48) Failing to establish, maintain, and enforce a business continuity and succession plan that identifies procedures to be followed in the event of an emergency or significant business disruption, including a disruption caused by the loss of principals and other key persons;

(49) Paying, directly or indirectly, any compensation, fees, concessions, discounts, commissions, or other allowances to any person that is not registered as a broker-dealer or salesperson under applicable state or federal securities laws but, by reason of receipt of such payment and the activities related thereto, is required to be so registered under state or federal securities laws;

(50) Allowing an individual who is not registered as a salesperson in Washington to enter trades on behalf of retail customers of the broker-dealer who are located in Washington, unless an exemption from salesperson registration would apply; and

(51) Receiving fees or commissions on customer accounts or holdings if such fees or commissions are made unreasonable because there is no salesperson of the broker-dealer assigned to the account who currently provides the specific services for which the fees or commissions are charged, except as permitted under FINRA Rule 2040(b).

The conduct set forth above is not inclusive. Engaging in other conduct such as forgery, embezzlement, nondisclosure, incomplete disclosure, or misstatement of material facts, or manipulative or deceptive practices will also be grounds for denial, suspension, or revocation of registration.

NEW SECTION

WAC 460-20C-220 Dishonest or unethical practices—Salespersons.

If you are a salesperson registered or required to be registered under RCW 21.20.040, you must observe high standards of commercial honor and just and equitable principles of trade in conducting your business.

The phrase "dishonest or unethical practices" as used in RCW 21.20.110 (1)(g) and as applied to salespersons includes, but is not limited to, any of the following:

(1) Engaging in the practice of lending to or borrowing money or securities from a customer, or acting as a custodian for money, securities, or an executed stock power of a customer;

(2) Effecting securities transactions not recorded on the regular books or records of the broker-dealer which the salesperson represents, unless the transactions are authorized in writing by the broker-dealer prior to execution of the transaction;

(3) Establishing or maintaining an account containing fictitious information in order to execute transactions which would otherwise be prohibited;

(4) Sharing directly or indirectly in profits or losses in the account of any customer without the written authorization of the customer and the broker-dealer which the salesperson represents;

(5) Dividing or otherwise splitting the salesperson's commissions, profits, or other compensation from the purchase or sale of securities with any person not also registered with the same broker-dealer, or with a broker-dealer under direct or indirect common control;

(6) Inducing trading in a customer's account which is excessive in size or frequency in view of the financial resources and character of the account;

(7) Recommending to a customer the purchase, sale, or exchange of any security without reasonable grounds to believe that such transaction or recommendation is suitable for the customer based upon reasonable inquiry concerning the customer's investment objectives, financial situation and needs, age, other investments, tax status, investment experience, investment time horizon, liquidity needs, risk tolerance, and any other relevant information known by the broker-dealer;

(8) Recommending the purchase, sale, or exchange of any security or investment strategy involving a security without reasonable grounds

to believe that the transaction is suitable based on the performance of reasonable diligence to understand the nature of the recommended security or investment strategy and its potential risks and rewards for investors;

(9) Making a recommendation of any security transaction or investment strategy involving securities (including account recommendations) to a retail customer if the recommendation does not comply with Regulation Best Interest (17 C.F.R. 240.121-1 as amended effective September 10, 2019);

(10) Executing a transaction on behalf of a customer without authorization to do so;

(11) Exercising any discretionary power in effecting a transaction for a customer's account without first obtaining written discretionary authority from the customer, unless the discretionary power relates solely to the time and/or price for the execution of orders;

(12) Executing any transaction in a margin account without securing from the customer a properly executed written margin agreement;

(13) Entering into a transaction with or for a customer at a price not reasonably related to the current market price of the security or receiving an unreasonable commission or profit;

(14) Failing to furnish to a customer purchasing securities in an offering, no later than the date of confirmation of the transaction, a final or preliminary prospectus, and if the latter, failing to furnish a final prospectus within a reasonable period after the effective date of the offering;

(15) Representing that a security is being offered to a customer "at the market" or a price relevant to the market price unless such salesperson knows or has reasonable grounds to believe that a market for such security exists other than that made, created, or controlled by the broker-dealer, or by any person for whom the salesperson is acting or with whom the salesperson is associated in such distribution, or any person controlled by, controlling, or under common control with such broker-dealer;

(16) Effecting any transaction in, or inducing the purchase or sale of, any security by means of any manipulative, deceptive, or fraudulent device, practice, plan, program, design, or contrivance, which may include, but is not limited to:

(a) Effecting any transaction in a security which involves no change in the beneficial ownership thereof;

(b) Entering an order or orders for the purchase or sale of any security with the knowledge that an order or orders of substantially the same size, at substantially the same time and substantially the same price, for the sale of any such security, has been or will be entered by or for the same or different parties for the purpose of creating a false or misleading appearance of active trading in the security or a false or misleading appearance with respect to the market for the security;

(c) Effecting, alone or with one or more other persons, a series of transactions in any security creating actual or apparent active trading in such security or raising or depressing the price of such security, for the purpose of inducing the purchase or sale of such security by others;

(d) Effecting any transaction in a security or a related financial instrument when the salesperson causing such transaction to be executed has material, nonpublic market information concerning an imminent block transaction in that security, a related financial instrument, or a security underlying the related financial instrument prior

to the time information concerning the block transaction has been made publicly available or has otherwise become stale or obsolete. For the purposes of this subsection, "related financial instrument" means any option, derivative, security-based swap, or other financial instrument overlying a security, the value of which is materially related to, or otherwise acts as a substitute for, such security, as well as any contract that is the functional economic equivalent of a position in such security; and

(e) Effecting any transaction in an equity security on the same side of the market for the broker-dealer's own account at a price that would satisfy the customer order, if the broker-dealer has accepted and holds an order for the same equity security from its customer or the customer of another broker-dealer without immediately executing such order, unless the broker-dealer immediately thereafter executes the customer order up to the size and at the same or better price at which it traded for its own account;

(17) Using aggressive, high-pressure, or deceptive sales practices or marketing tactics to affect the market price of the security;

(18) Using aggressive, high-pressure, or deceptive sales practices or marketing tactics to make unsuitable recommendations;

(19) Guaranteeing a customer against loss in any securities account for such customer carried by the broker-dealer or in any securities transaction effected by the broker-dealer with or for such customer;

(20) Publishing or circulating, or causing to be published or circulated, any notice, circular, advertisement, newspaper article, investment service, or communication of any kind which purports to report any transaction as a purchase or sale of any security unless such broker-dealer believes that such transaction was a bona fide purchase or sale of such security; or which purports to quote the bid price or asked price for any security, unless such broker-dealer believes that such quotation presents a bona fide bid for, or offer of, such security;

(21) Using, ratifying, or condoning any communication, advertising, or sales presentation in such a fashion as to be deceptive or misleading. An example of such practice is the distribution of any nonfactual data, material, or presentation based on conjecture, or unfounded or unrealistic claims or assertions in any customer correspondence, social media, electronic communication, brochure, flyer, or display by words, pictures, graphs, or otherwise designed to supplement, detract from, supersede, or defeat the purpose or effect of any prospectus or disclosure; or the distribution of any communications inconsistent with WAC 460-20C-190;

(22) In connection with the solicitation of a sale or purchase of an OTC non-NASDAQ security, failing to promptly provide the most current prospectus or the most recently filed periodic report filed under Section 13 of the Securities Exchange Act of 1934, when requested to do so by a customer;

(23) Marking any order ticket or confirmation as unsolicited when in fact the transaction is solicited;

(24) Failing to comply with any applicable provision of the Conduct Rules of FINRA or any applicable fair practice or ethical standard promulgated by the Securities and Exchange Commission, Commodity Futures Trading Commission, Municipal Securities Rulemaking Board, New York Stock Exchange, Chicago Board Options Exchange, Consumer Financial Protection Board, National Futures Association, state securities regulator, state insurance regulator, state or federal banking regula-

tor, or by a self-regulatory organization approved by the Securities and Exchange Commission;

(25) Any act or practice enumerated in WAC 460-20C-160 or 460-20C-170;

(26) Using any term or abbreviation thereof in a manner that misleadingly states or implies that a person has special expertise, certification, or training in financial planning including, but not limited to, the misleading use of a senior-specific certification or designation as set forth in WAC 460-25A-020;

(27) Contradicting or negating the importance of any information contained in a prospectus or any other offering materials with the intent to deceive or mislead or using any advertising or sales presentation in a deceptive or misleading manner;

(28) Extending, arranging for, or participating in arranging for credit to a customer in violation of any federal law or regulation including, but not limited to, 15 U.S.C 78k(d) (as amended effective September 23, 1994) or 12 C.F.R. 220.7 (as amended effective April 1, 1998);

(29) Altering or creating any document relevant to or on the books and records of any broker-dealer, investment adviser, bank, credit union, insurance company, or commodities futures business with any entry or deletion which is materially false or misleading;

(30) Failing to comply with a suspension or bar order of the Securities and Exchange Commission, FINRA, any other self-regulatory organization, or any other securities regulator;

(31) Engaging in acts or practices that constitute deceptive market-timing in the trading of securities including, but not limited to:

(a) Breaking a trade into smaller trades to avoid detection; or

(b) Using multiple accounts, nominees, agent numbers, or multiple agents or representatives to avoid breakpoints, internal controls, exception reports, or other forms of firm or regulatory supervision;

(32) Engaging in acts or practices that constitute deceptive sales practices in the trading of mutual funds including, but not limited to:

(a) Recommending mutual funds just under breakpoints;

(b) Recommending a share class that does not align with customers' needs; or

(c) Recommending a mutual fund switch that does not align with customers' needs;

(33) Disclosing the identity, investment, or other financial information of any customer or former customer unless required by law to do so, or unless consented to by the customer;

(34) Failing to disclose in any retail communications, correspondence, or other materials used in connection with the promotion or transaction of securities business in Washington the name of the salesperson's associated broker-dealer or the name under which the broker-dealer's business is primarily conducted as disclosed on Form BD. For purposes of this subsection, "other materials" include, but are not limited to, business cards, business stationery, and display signs;

(35) Representing that securities will be listed or that application for listing will be made on a securities exchange or the National Association of Securities Dealers Automated Quotations (NASDAQ) system or other quotation system without reasonable basis in fact for the representation;

(36) Engaging in any act, practice, or course of business which is fraudulent, deceptive, manipulative, or unethical;

(37) Engaging in conduct or any act, indirectly or through or by any other person, which would be unlawful for such person to do directly under the provisions of the Securities Act of Washington, chapter 21.20 RCW, or any rule or regulation thereunder;

(38) Making, in the solicitation of customers, any untrue statement of fact, or omitting to state a material fact necessary in order to make the statement made, in light of the circumstances under which it was made, not misleading;

(39) Failing to pay and fully satisfy any final judgment or arbitration award resulting from an investment-related, customer-initiated arbitration or court proceeding, unless alternative payment arrangements are agreed to between the customer and salesperson, in writing, and the salesperson complies with the terms of the alternative payment arrangement;

(40) Attempting to avoid payment of any final judgment or arbitration award resulting from an investment-related, customer-initiated arbitration or court proceeding, unless alternative payment arrangements are agreed to between the customer and the salesperson, in writing, and the salesperson complies with the terms of the alternative payment arrangement;

(41) Failing to pay and fully satisfy and fine, civil penalty, order of restitution, order of disgorgement, or similar monetary payment obligation imposed upon the broker-dealer or salesperson by the Securities and Exchange Commission, the securities or other financial services regulator of any state or province, or any self-regulatory organization; and

(42) Accessing a customer's account by using the customer's own unique identifying information (such as username and password).

The conduct set forth above is not inclusive. Engaging in other conduct such as forgery, embezzlement, nondisclosure, incomplete disclosure, or misstatement of material facts, or manipulative or deceptive practices will also be grounds for denial, suspension, or revocation of registration.

OTS-4965.1

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 460-20B-010	Application.
WAC 460-20B-020	Definitions.
WAC 460-20B-030	Registration procedure.
WAC 460-20B-035	Canadian broker-dealers and salespersons.
WAC 460-20B-040	Examination requirements.
WAC 460-20B-050	Expiration of broker-dealer license, renewal procedure, and delinquency fees.
WAC 460-20B-060	Notice of changes by broker-dealers.

OTS-4966.1REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 460-21B-008	Fraudulent practices of broker-dealers.
WAC 460-21B-010	Churning.
WAC 460-21B-020	Transmission or maintenance of payments received in connection with underwritings.
WAC 460-21B-030	Minimum net capital requirement for broker-dealers.
WAC 460-21B-040	Net capital defined.
WAC 460-21B-050	Books and records of broker-dealers.
WAC 460-21B-060	Dishonest or unethical business practices—Broker-dealers.
WAC 460-21B-070	Supervision of securities salespersons.

OTS-4967.1REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 460-22B-010	Application.
WAC 460-22B-020	Cross-reference to other sections relating to securities salespersons.
WAC 460-22B-030	Registration procedure.
WAC 460-22B-040	Salesperson registration and examination.
WAC 460-22B-050	Expiration of salesperson license, renewal procedure, and delinquency fees.
WAC 460-22B-060	Duty to update application.
WAC 460-22B-090	Dishonest and unethical business practices—Salespersons.

WSR 24-11-027

PROPOSED RULES

MILITARY DEPARTMENT

[Filed May 7, 2024, 12:54 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-16-053.

Title of Rule and Other Identifying Information: State disaster individual assistance.

Hearing Location(s): On July 1, 2024, at 3:30 p.m., at the Columbia Room, Washington State Capitol, 416 Snider Avenue S.E., Olympia, WA 98504; or join the meeting remotely [contact agency for link], Meeting ID 233 713 549 701, Passcode FJmzsa; or dial-in by phone +1 253-372-2181,,875986840# United States, Tacoma, phone conference ID 875 986 840#.

Date of Intended Adoption: July 15, 2024.

Submit Written Comments to: Taylor Dietz, 20 Aviation Drive, email taylor.dietz@mil.wa.gov.

Assistance for Persons with Disabilities: Contact Taylor Dietz, phone 253-302-1338, email taylor.dietz@mil.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose is to establish eligibility, activation, funding, and programmatic criteria for a Washington state disaster individual assistance program (WAIA). The WAIA program is designed to provide supplemental state assistance for disaster survivors. Funding is issued through reimbursements to eligible county and/or tribal governments for all nonspecial programs. Special programs are issued in the form of grants to eligible county and/or tribal governments.

Reasons Supporting Proposal: The purpose of this chapter is to establish eligibility, activation, funding, and programmatic criteria for WAIA to provide general guidelines for the state and local jurisdiction in administering the program. The proposed WAIA program will address the increasing disasters affecting the Pacific Northwest, with their impacts becoming more severe. These impacts leave significant damages to survivors and their properties with limited support or aid, and often with insufficient or no insurance to cover the extensive recovery process and costs. Federal assistance, when approved, is often limited to Federal Emergency Management Agency (FEMA) public assistance for rebuilding public facilities and infrastructure. Historically, FEMA individual assistance approval is rare for the state of Washington, leaving a gap for individual and household recovery. At the state level, disaster assistance programs are available; however, these programs are restricted to a select few eligible applicants, and the services are limited in scope. To fill this gap, Washington state has authorized state individual disaster assistance through RCW 38.52.030(9), but has not, to date, permanently funded such a program

Statutory Authority for Adoption: RCW 38.52.030(9) and 38.52.050.

Statute Being Implemented: RCW 38.52.030(9).

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

Name of Proponent: Washington state military department, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Washington military department, emergency management division, Camp Murray, Washington, 800-562-6108.

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

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state military department is not subject to RCW 34.05.328.

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

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

April 15, 2024

Taylor Dietz

Human Services Program Supervisor

OTS-5404.1

**Chapter 118-11 WAC
STATE DISASTER INDIVIDUAL ASSISTANCE PROGRAM**

NEW SECTION

WAC 118-11-010 Authority. The authority for this chapter is RCW 38.52.030(9), which authorizes the director of the Washington military department, emergency management division, to prepare and administer a state program for emergency assistance to individuals within the state who are victims of a natural, technological, or human-caused disaster.

NEW SECTION

WAC 118-11-020 Purpose and intent. The purpose of this chapter is to establish eligibility, activation, funding, and programmatic criteria for a Washington state disaster individual assistance (IA) program. The state IA program is designed to provide supplemental state assistance for disaster survivors. Assistance to businesses damaged, destroyed, or otherwise closed due to a disaster or for individuals to replace lost wages caused by a disaster are ineligible for the IA program. Funding is issued through reimbursements to eligible county or tribal governments for most aspects of the state IA program. Assistance is provided from the eligible county or tribal government directly to the eligible individuals, with support provided as needed by the Washington military department, emergency management division. The extended sheltering assistance and disaster case management programs are issued in the form of grants to eligible county or tribal governments.

NEW SECTION

WAC 118-11-030 Definitions. The definitions in this section apply throughout this title unless the context clearly requires otherwise.

(1) "Applicant" means an individual applying to the state IA program. An applicant may apply for a disaster survivor on the survivor's behalf.

(2) "Department" means Washington military department, emergency management division.

(3) "Destroyed" means a residence that is a total loss per FEMA PDA guidance.

(4) "Disaster" means an event or set of circumstances which:

(a) Demands immediate action to preserve public health, protect public property, or to provide relief to any stricken community overtaken by such occurrences; or

(b) Reaches such a dimension or degree of destructiveness as to warrant the governor proclaiming a state of emergency pursuant to RCW 43.06.010.

(5) "FEMA" means the Federal Emergency Management Agency, the lead federal agency in responding to and recovering from disasters across the United States.

(6) "Functional" means a residence that is fit for standard use by its occupants for the purposes of performing activities of daily living.

(7) "Habitable" means a residence that is safe, sanitary, functional, and presents no disaster-caused hazards to the occupants.

(8) "Home" or "residence" means the physical location of the damaged primary residence caused by a disaster.

(9) "Home repair assistance" means financial assistance for repairs to make a residence habitable and may include repairs to the structure, utilities, or privately owned access routes.

(10) "Home replacement assistance" means financial assistance to help replace a primary residence when the residence has been destroyed by a disaster. Home replacement assistance is only provided to restore an applicant's living conditions to a safe, functional, and accessible state.

(11) "Household" means all persons who lived in a residence before a disaster.

(12) "Inaccessible" means a residence in which damage to the structure cannot be visually inspected or verified because of disaster-related loss of access.

(13) "Incident period" means the duration of time during which sustained and concentrated disaster impacts occurred.

(14) "Major damage" means a residence with structural damage or other significant damage that requires extensive repairs per FEMA PDA guidance.

(15) "Primary residence" means the residence where the survivor normally lives during the major portion of the calendar year, or the residence that is required because of proximity to employment, including agricultural activities that provide 50 percent or more of the household's income.

(16) "Proof of residency" means any document establishing that a survivor is a resident of a county or tribal nation that has declared a state of emergency. Proof of residency, which must be dated within one year prior to the disaster or within the period of assistance, may include, but is not limited to, the following documents:

(a) Bills (utility, financial documents, other);
(b) Employer documents (pay stubs or similar);
(c) Lease/housing agreement/mortgage statement or rent receipts;
(d) Identification card;
(e) Client record from a social service organization;
(f) School registration;
(g) Federal or state benefit record;
(h) Motor vehicle registration; and
(i) Official legal documents, including subpoenas and other court orders.

(17) "Recipient" means a survivor found eligible to receive state IA program grants.

(18) "Rental assistance" means financial assistance to rent temporary housing accommodations while a survivor is displaced from a primary residence.

(19) "State IA program" means the Washington state individual assistance program, authorized under RCW 38.52.030(9) and administered by the Washington military department, emergency management division (WA EMD).

(20) "Survivor" means a person who has been displaced from their residence or otherwise affected by a declared disaster event. The survivor is the recipient of the state IA program funds when determined eligible through the application process.

(21) "Tribal/tribe/tribal government/nation" means a federally recognized Indian tribe in Washington state.

NEW SECTION

WAC 118-11-040 Funding. Amounts awarded under the state IA program are limited to allocations made available to the Washington military department, emergency management division, for the Washington state disaster individual assistance program each state fiscal year.

NEW SECTION

WAC 118-11-050 Program activation criteria. (1) The state of Washington will activate the state IA program in the event all the following criteria are met:

(a) A county or tribal government declaration or state of emergency has been issued;

(b) The governor has issued an emergency proclamation with language directing, ordering, and authorizing the director of the Washington military department, emergency management division, to initiate the state IA program in the impacted jurisdiction(s);

(c) A joint damage assessment confirms a minimum of 25 primary homes in the area of greatest impact sustained damages categorized as "major" or "destroyed" according to the FEMA damage assessment criteria. This threshold can be met by considering the cumulative impact of multiple counties and tribal governments, if necessary;

(d) A county or tribal government has requested joint damage assessments directly to the state within 14 calendar days after the end of the incident period, as determined by the department; and

(e) A county commissioner, tribal government executive, or authorized designee has requested state IA program activation. The department will start accepting applications after the director of the Washington military department signs the activation request.

(2) Three scenarios are possible to initiate the state IA program in a jurisdiction.

(a) Scenario 1: Washington state has received no federal assistance.

(i) Cumulatively, more than 25 homes have "major" or "destroyed" damage categories across multiple counties or tribal lands;

(ii) Voluntary organizations active in disaster are supporting disaster survivors;

(iii) The state's request for a U.S. Small Business Administration (SBA) disaster declaration has been denied or the state has not met the threshold to apply for SBA assistance; and

(iv) The state IA program is activated to support eligible disaster survivors.

(b) Scenario 2: Washington state has received only SBA assistance and the disaster does not warrant a Presidential Major Disaster Declaration authorizing FEMA's Individuals and Households Program or the state's request for FEMA IA was denied.

(i) At least 25 homes have "major" or "destroyed" damage categories in one county or tribal land;

(ii) Voluntary organizations active in disaster are supporting disaster survivors;

(iii) The state IA program is activated to support eligible disaster survivors through the Household Needs Grant;

(iv) The state's request for an SBA disaster declaration has been approved; and

(v) The state IA program is activated to support eligible disaster survivors. Disaster survivors must first apply to the SBA for a disaster loan except to access the household needs grant and extended sheltering assistance state IA programs.

(c) Scenario 3: Washington state has received both an SBA disaster declaration and a Presidential Major Disaster Declaration authorizing FEMA's Individuals and Households Program.

(i) At least 25 homes have "major" or "destroyed" damage categories in one county or tribal land. In this scenario, the damage profile will likely greatly exceed 25 homes with "major" or "destroyed" damage categories to warrant both FEMA and SBA assistance;

(ii) Voluntary organizations active in disaster are supporting disaster survivors;

(iii) The state's request for a Presidential Major Disaster Declaration authorizing FEMA's Individuals and Households Program has been approved;

(iv) The state's request for an SBA disaster declaration has been approved; and

(v) The state IA program is activated to support eligible disaster survivors and address any remaining disaster-caused unmet needs not covered by federal assistance or any other means.

(3) Multicounty impacted areas are allowable to reach the minimum 25 primary home threshold. The area of greatest impact will be determined by the Washington state emergency management division and derived from National Weather Service reports and county, tribal, or state government official damage assessments or reports.

(4) The incident period is determined by the department and may be adjusted with good cause. The incident start and end date may in-

clude, but is not limited to, National Weather Service warnings, level 3 "go now!" evacuation level notices, and the impacted jurisdiction's community lifeline status, including safety and security, food, hydration, shelter, health and medical, energy, communications, transportation, hazardous materials, and water systems.

NEW SECTION

WAC 118-11-060 Application process. (1) **Applications.** Applications for state IA program funds may be accepted in the following ways:

(a) In person (disaster recovery center, disaster loan outreach center, multiagency resource center, etc.);
(b) By phone (call center/disaster assistance hotline);
(c) Online; or
(d) U.S. mail/paper (then entered by staff into the online system).

(2) **Application reviews.** Two types of application reviews are possible under the state IA program to approve or deny applications: Initial review and advanced review.

(a) Initial review. Occurs upon receipt of the application and represents the standard decision process for most applications. Initial review is performed by a local or tribal government disaster case worker and the county or tribal government designated IA officer.

(b) Advanced review. Intended to support decisions for complex applications or those needing additional review. Advanced review is performed by the state IA branch director and the state coordinating officer.

(3) **Application period.**

(a) The application period deadline is 60 calendar days from the date of the initial public notice.

(b) The department may accept late applications beyond the original application deadline.

(c) The application period for late applications shall be 30 days after the initial deadline. The department reserves the option to further extend the late application period for good cause.

NEW SECTION

WAC 118-11-070 Disaster types eligible for assistance. Disaster types eligible for assistance are identified in the Washington state enhanced hazard mitigation plan.

NEW SECTION

WAC 118-11-080 Types of assistance. (1) The award amounts and maximum awards for each program category are defined annually by the Washington military department and outlined in the department's state IA program administrative plan. Maximum awards for the housing assistance and household needs assistance programs align with FEMA's Individuals and Households Program maximum awards, determined annually by

the federal government. The categories of programs offered under the Washington state disaster individual assistance program include the following:

- (a) Housing assistance;
- (b) Rental assistance;
- (c) Home repair assistance;
- (d) Home replacement assistance.
- (2) **Household needs grant.** Award based on household size and verified damage categories "destroyed" or "major."
- (3) **Household needs assistance.**
 - (a) Medical/dental assistance;
 - (b) Funeral assistance;
 - (c) Childcare assistance;
 - (d) Transportation assistance (repair or replace);
 - (e) Other, based on needs.
- (4) **Special programs.**
 - (a) Extended sheltering assistance (ESA);
 - (b) Disaster case management (DCM).

NEW SECTION

WAC 118-11-090 Survivor and local or tribal government responsibilities. (1) Declared counties or tribal governments must have a signed opt-in grant agreement with the state in place prior to activation. A completed state IA grant agreement between the impacted jurisdiction and the Washington military department with incident-specific information will be finalized at program activation.

(2) County or tribal governments requesting extended sheltering assistance must have a shelter transition plan in place to receive funding for that program.

(3) Survivors receiving continued rental assistance or extended sheltering assistance must provide evidence of continued displacement and progress on a permanent housing plan.

NEW SECTION

WAC 118-11-100 Applicant general eligibility. (1) To be eligible for state IA program assistance, recipients must meet all general eligibility requirements provided in this section in addition to any program-specific requirements.

(2) To apply for the state IA program, the applicant or survivor must:

(a) Be a resident of a county or tribal nation that has declared a state of emergency.

(b) If insured against the peril under, without limitation, a flood, homeowners, vehicle, mobile home, or health insurance policy, show proof of insurance and any claim settlement information related to the disaster-caused needs.

(c) Present evidence of damages that are attributed to the declared disaster including, but not limited to, proof that the primary residence was destroyed, sustained major damage, or is rendered inaccessible. Such proof may include the following without limitation:

- (i) Evidence that essential living areas in the residence have sustained major damage;
 - (ii) Evidence that essential living areas in the residence have been destroyed and pose serious health or safety hazards; or
 - (iii) Evidence that the survivor is displaced due to the home being rendered inaccessible.
- (d) Provide proof of disaster assistance received from any other entity for this event (to avoid duplication of benefits), such as receipt of assistance from the department of social and health services' disaster cash assistance program.
- (e) Have a household income equal to or less than 80 percent of the Housing and Urban Development (HUD) area median household income for the calendar year prior to the disaster, based on the number of persons in the household. HUD's area median income may include the county or nearest metropolitan statistical area (MSA) if it benefits the applicant.
- (f) Apply for SBA assistance, if available. An application for SBA assistance is not required for household needs grant or extended sheltering assistance.
- (i) Applicants who refuse an SBA loan if approved are ineligible for state IA program assistance.
 - (ii) If an SBA loan is approved and accepted by an applicant, an applicant may still be eligible for supplemental assistance provided by the state IA program.
 - (iii) State IA program assistance will only be provided to restore an applicant's living conditions to a safe, functional, and accessible state.

NEW SECTION

WAC 118-11-110 Appeals and reconsiderations. Impacted jurisdictions that have entered into a state IA program grant agreement with the department must allow survivors applying for assistance an opportunity to appeal and allow for reconsideration of application denials as provided in this section.

(1) **Number of appeals.** In cases where the application has been denied by the county or tribal disaster case worker, survivors may appeal determinations twice.

(2) **Deadline to appeal.** All deadlines provided in this subsection may be extended by the county or tribal IA appeal officer or by the department for good cause.

(a) **First appeal:** A survivor must be provided 30 calendar days from the date on the survivor's notification letter to appeal. The survivor's appeal must be postmarked on a physical submission or date-marked on an electronic submission.

(b) **Second appeal:** If the first appeal is denied, the survivor must be provided an additional 30 calendar days from the date on the appeal denial notification letter to submit a second appeal.

(3) **Appeal review process.** The declared county or tribal government must designate a person to serve as the county or tribal IA appeal officer. All deadlines provided in this subsection may be extended by the county or tribal IA appeal officer or by the department for good cause.

(a) **First appeal:** The county or tribal IA appeal officer shall review the appeal and eligibility, make a recommendation, and send the

recommendation to the department IA program staff for review and approval. The department must issue a decision granting or denying the appeal within 30 calendar days from date of receipt from the appeal officer.

(b) Second appeal: The county or tribal government must send the second appeal package to the department IA program staff. Department IA program staff will review the second appeal and send the package with a recommendation to the state coordinating officer for final determination. The department must issue a decision granting or denying the appeal within 30 calendar days from date of receipt from the appeal officer.

(4) **Reconsiderations.**

(a) In cases where a survivor was approved for assistance but needs additional assistance and has not yet reached a maximum award for the program category under review, the survivor may submit a reconsideration request up to the maximum award for that program category if the survivor can provide documentation demonstrating the need for additional assistance.

(b) To process a reconsideration, the local or tribal government disaster case worker reviews the package to determine if the survivor is eligible for additional assistance and works with the survivor to ensure that all necessary documentation is included in the package.

(c) If the survivor meets all general eligibility and program-specific requirements, the case worker then submits the package, confirming all eligibility requirements have been met, to the designated county or tribal IA appeals officer for final determination. If the survivor does not meet all general eligibility and program specific requirements, a determination letter is sent to the survivor by the county or tribal IA appeals officer, detailing which requirements were not met resulting in the ineligibility determination.

WSR 24-11-047

PROPOSED RULES

DEPARTMENT OF ECOLOGY

[Order 22-05—Filed May 10, 2024, 7:58 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-20-039.

Title of Rule and Other Identifying Information: The Washington state department of ecology (ecology) is proposing amendments to chapter 173-201A WAC, Water quality standards for surface waters of the state of Washington. We propose the following revisions in the rule making:

- WAC 173-201A-020 Definitions, adding a definition for a performance-based approach method and adding a definition for local and regional sources of human-caused pollution.
- WAC 173-201A-200 (1)(c), aquatic life temperature criteria, subsection (i), updating the allowable insignificant changes to freshwater temperature criteria when natural conditions are the applicable criteria.
- WAC 173-201A-200 (1)(d), aquatic life dissolved oxygen (D.O.) criteria, subsection (i), updating the allowable insignificant changes to freshwater D.O. criteria when natural conditions are the applicable criteria.
- WAC 173-201A-210 (1)(c), aquatic life temperature criteria, subsection (i), updating the allowable insignificant changes to marine water temperature when natural conditions are the applicable criteria.
- WAC 173-201A-210 (1)(d), aquatic life D.O., subsection (i), updating the allowable insignificant changes to marine water D.O. when natural conditions are the applicable criteria.
- WAC 173-201A-260(1), natural and irreversible human conditions, updating the natural conditions criteria language and describing methods for determining natural conditions criteria values.
- WAC 173-201A-430(2), site-specific criteria, updating how analyses must be conducted.
- WAC 173-201A-470 Performance-based approach, adding this new section to describe and reference the methodology to determine natural conditions criteria values.
- Ecology publication 24-10-017, A Performance-Based Approach for Developing Site-Specific Natural Conditions Criteria for Aquatic Life in Washington, a separate rule document that provides the methodology to determine natural conditions criteria values.
- Minor, nonsubstantive edits to rule language in WAC 173-201A-430(2) to reflect the latest version of referenced documents.

For more information on this rule making, please visit <https://ecology.wa.gov/regulations-permits/laws-rules-rulemaking/rulemaking/wac-173-201a-natural-conditions>.

Hearing Location(s): On June 27, 2024, at 1:30 p.m., webinar. Presentation, question and answer session, followed by the hearing. This is an online meeting that you can attend from any computer using internet access. Join online and see instructions <https://waecy-wa.gov.zoom.us/meeting/register/tZcqd-Gvpj4iEtRh8qyEo6xIR-1kKMKIEIszn>. For audio, call US Toll number 1-253-205-0468 and enter access code 837 0878 5880. Or to receive a free call back, provide your phone number when you join the event; and on July 2, 2024, at 5:30 p.m., webinar.

Presentation, question and answer session, followed by the hearing. This is an online meeting that you can attend from any computer using internet access. Join online and see instructions <https://waecy-wa.gov.zoom.us/meeting/register/tZUud-quqT4pGtSAOQ4bwabHFIMDV2iwNfR2>. For audio, call US Toll number 1-253-205-0468 and enter access code 813 0367 5300. Or to receive a free call back, provide your phone number when you join the event.

Date of Intended Adoption: October 23, 2024.

Submit Written Comments to: Marla Koberstein, send US mail to: Department of Ecology, Water Quality Program, P.O. Box 47600, Olympia, WA 98504-7600; or send parcel delivery services to: department of ecology, water quality program. Submit comments by mail, online, or at the hearing(s), online at <https://wq.ecology.commentinput.com?id=gHacGx2j4E>, by July 12, 2024.

Assistance for Persons with Disabilities: Contact ecology ADA coordinator, phone 360-407-6831, speech disability may call TTY at 877-833-6341, impaired hearing may call Washington relay service at 711, email ecyADAACoordinator@ecy.wa.gov, by June 19, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: We are proposing revisions to natural conditions provisions in our surface water quality standards to provide water quality protection for aquatic life organisms and to establish possible methods for deriving those protective values.

Natural conditions provisions recognize that conditions in some surface waters during some seasons and in some areas naturally do not meet water quality criteria. For example, a naturally low-flowing stream in a natural prairie without any human alteration or human-caused pollution may have seasonally higher temperatures than the limit set to protect fish. These inconsistencies may be due to natural processes or seasonal conditions that prevent a waterbody from meeting the applicable aquatic life criteria. Our proposed revisions refine the natural conditions provisions to protect characteristics inherent and unique to a specific waterbody.

We evaluated the latest scientific data, methods, modeling tools, and approaches to propose updates to the natural conditions provisions necessary for refining aquatic life protection in Washington's surface waters. As part of this process, we considered the Environmental Protection Agency's (EPA) recommended approaches for natural conditions in water quality standards. This includes considering and proposing a performance-based approach, which would adopt into rule a sufficiently detailed process that ensures predictable, repeatable outcomes that could be used to develop criteria that would protect the designated uses for a specific waterbody.

The list below shows existing and new criteria we propose to update in Washington's water quality standards.

Proposed revisions to existing criteria:

- Updates to the natural conditions provision to limit use to aquatic life criteria.
- Updating allowances for human impacts to fresh and marine waters for D.O. and temperature when the natural conditions constitute the water quality criteria.
- Updates to the site-specific criteria process for an allowance for natural conditions to be used as a basis for developing these criteria.

Other proposed changes:

- Adding definitions for the performance-based approach and local and regional sources of human-caused pollution.
- Adding a new section detailing the use of the performance-based approach and applicable aquatic life criteria.
- Adding rule document referenced in the water quality standards that details the methodology of the performance-based approach.

Minor nonsubstantive edits:

- One update to reflect the latest and current revision for a referenced EPA document.

Reasons Supporting Proposal:

A. Reason for Rule Making: We propose these revisions to address EPA's 2021 disapproval of previously approved natural condition provisions in our standards, including for fresh and marine D.O. and temperature human allowances (excluding lakes).

We recognized that it is important Washington has a provision in the water quality standards recognizing that conditions in some surface waters naturally do not always meet water quality criteria throughout the year. We propose these provisions to effectively implement our Clean Water Act programs.

Further, this rule making was identified as a priority in our most recent triennial review, which was submitted to EPA in April 2022.

B. Approach to Rule Making: We have decided to proceed with updating all necessary natural conditions provisions in a single rule making. We have engaged with stakeholders, tribes, and other interested parties as we developed the full scope of procedures for natural conditions provisions. This included development of the general provisions, procedures for determining what conditions are natural to surface waters, and some parameter specific considerations for temperature and D.O.

In this rule making, we considered all the latest scientific data, methods, modeling tools, and natural conditions provision approaches. Further, we evaluated previous natural conditions provision approaches in Washington and other states, as well as previous EPA policies and decisions regarding natural conditions (such as a performance-based approach). We worked with EPA and other federal agencies responsible for reviewing biological impacts of a rule to anticipate whether the proposed rule language will meet Endangered Species Act (ESA) protection requirements.

C. Rule-Making Scope: The scope of this rule making includes the natural conditions provisions and parameter-specific natural condition criteria in all surface water types.

This rule making is specific to the aquatic life criteria and how native aquatic species have acclimated or adapted to their environment, even if that environment does not naturally meet our state's aquatic life criteria. The natural conditions provisions are not related to any of the human health criteria in our state.

We evaluated EPA recommendations during this rule making, including draft, deliberative, staff-level recommendations made specifically for Washington's performance-based approach, and are proposing to adopt natural conditions criteria and criteria value development methodologies based on these EPA recommendations.

Statutory Authority for Adoption: RCW 90.48.035 provides clear and direct authority to ecology to revise the surface water quality standards (SWQS). Additionally, 40 C.F.R. 131.20 requires states and

tribes with Federal Clean Water Act authority to periodically review and update the SWQS.

Statute Being Implemented: Chapter 90.48 RCW, Water pollution control.

Rule is necessary because of federal law, 40 C.F.R. 131.20.

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: For more information, see the technical support document, Ecology Publication 24-10-015, the draft Rule Implementation Plan, Ecology Publication 24-10-016, and the Preliminary Regulatory Analyses, Ecology Publication 24-10-022, available on our rule-making web page.

Name of Proponent: Department of ecology, governmental.

Name of Agency Personnel Responsible for Drafting: Kalman Bugica, Lacey Headquarters, 360-972-4638; Implementation: Melissa Gilder-sleeve, Lacey Headquarters, 360-522-6441; and Enforcement: Vincent McGowan, Lacey Headquarters, 360-407-6405.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Marla Koberstein, Department of Ecology, Water Quality Program, P.O. Box 47600, Olympia, WA 98504-7600, phone 360-628-6376, speech disability may call TTY at 877-833-6341, impaired hearing may call Washington relay service at 711, email marla.koberstein@ecy.wa.gov.

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

Is exempt under RCW 19.85.025(3) as the rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; and rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: We analyzed the compliance costs of the proposed rule amendments in Chapter 3 of the Preliminary Regulatory Analysis (Publication 24-10-022). We conclude that the proposed rule amendments are not likely to result in compliance costs for any businesses. The proposed rule is likely to result only in cost-savings for dischargers, as compared to the baseline. Based on this analysis, ecology is exempt from performing additional analyses under the Regulatory Fairness Act (RFA), under RCW 19.85.025(4), which states that, "This chapter does not apply to the adoption of a rule if an agency is able to demonstrate that the proposed rule does not affect small businesses." Moreover, by not imposing compliance costs, the proposed rule amendments do not meet the RFA applicability standard under RCW 19.85.030 (1)(a).

Scope of exemption for rule proposal:

Is fully exempt.

May 10, 2024
Heather Bartlett

OTS-5282.2

AMENDATORY SECTION (Amending WSR 24-01-088, filed 12/18/23, effective 1/18/24)

WAC 173-201A-020 Definitions. The following definitions are intended to facilitate the use of chapter 173-201A WAC:

"1-DMax" or "1-day maximum temperature" is the highest water temperature reached on any given day. This measure can be obtained using calibrated maximum/minimum thermometers or continuous monitoring probes having sampling intervals of 30 minutes or less.

"7-DADMax" or "7-day average of the daily maximum temperatures" is the arithmetic average of seven consecutive measures of daily maximum temperatures. The 7-DADMax for any individual day is calculated by averaging that day's daily maximum temperature with the daily maximum temperatures of the three days prior and the three days after that date.

"Action value" means a total phosphorus (TP) value established at the upper limit of the trophic states in each ecoregion (see Table 230(1)). Exceedance of an action value indicates that a problem is suspected. A lake-specific study may be needed to confirm if a nutrient problem exists.

"Actions" refers broadly to any human projects or activities.

"Acute conditions" are changes in the physical, chemical, or biologic environment which are expected or demonstrated to result in injury or death to an organism as a result of short-term exposure to the substance or detrimental environmental condition.

"AKART" is an acronym for "all known, available, and reasonable methods of prevention, control, and treatment." AKART shall represent the most current methodology that can be reasonably required for preventing, controlling, or abating the pollutants associated with a discharge. The concept of AKART applies to both point and nonpoint sources of pollution. The term "best management practices," typically applied to nonpoint source pollution controls is considered a subset of the AKART requirement.

"Ambient water quality" refers to the conditions and properties of a surface water of the state as determined by the results of water samples, measurements, or observations.

"Background" means the biological, chemical, and physical conditions of a water body, outside the area of influence of the discharge under consideration. Background sampling locations in an enforcement action would be up-gradient or outside the area of influence of the discharge. If several discharges to any water body exist, and enforcement action is being taken for possible violations to the standards, background sampling would be undertaken immediately up-gradient from each discharge.

"Best management practices (BMP)" means physical, structural, and/or managerial practices approved by the department that, when used singularly or in combination, prevent or reduce pollutant discharges.

"Biological assessment" is an evaluation of the biological condition of a water body using surveys of aquatic community structure and

function and other direct measurements of resident biota in surface waters.

"Bog" means those wetlands that are acidic, peat forming, and whose primary water source is precipitation, with little, if any, out-flow.

"Carcinogen" means any substance or agent that produces or tends to produce cancer in humans. For implementation of this chapter, the term carcinogen will apply to substances on the United States Environmental Protection Agency lists of A (known human) and B (probable human) carcinogens, and any substance which causes a significant increased incidence of benign or malignant tumors in a single, well conducted animal bioassay, consistent with the weight of evidence approach specified in the United States Environmental Protection Agency's Guidelines for Carcinogenic Risk Assessment as set forth in 51 FR 33992 et seq. as presently published or as subsequently amended or republished.

"Chronic conditions" are changes in the physical, chemical, or biologic environment which are expected or demonstrated to result in injury or death to an organism as a result of repeated or constant exposure over an extended period of time to a substance or detrimental environmental condition.

"Combined sewer overflow (CSO) treatment plant" is a facility that provides at-site treatment as provided for in chapter 173-245 WAC. A CSO treatment plant is a specific facility identified in a department-approved CSO reduction plan (long-term control plan) that is designed, operated and controlled by a municipal utility to capture and treat excess combined sanitary sewage and stormwater from a combined sewer system.

"Compliance schedule" or **"schedule of compliance"** is a schedule of remedial measures included in a permit or an order, including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with an effluent limit, other prohibition, or standard.

"Created wetlands" means those wetlands intentionally created from nonwetland sites to produce or replace natural wetland habitat.

"Critical condition" is when the physical, chemical, and biological characteristics of the receiving water environment interact with the effluent to produce the greatest potential adverse impact on aquatic biota and existing or designated water uses. For steady-state discharges to riverine systems the critical condition may be assumed to be equal to the 7Q10 flow event unless determined otherwise by the department.

"Damage to the ecosystem" means any demonstrated or predicted stress to aquatic or terrestrial organisms or communities of organisms which the department reasonably concludes may interfere in the health or survival success or natural structure of such populations. This stress may be due to, but is not limited to, alteration in habitat or changes in water temperature, chemistry, or turbidity, and shall consider the potential build up of discharge constituents or temporal increases in habitat alteration which may create such stress in the long term.

"Department" means the state of Washington department of ecology.

"Designated uses" are those uses specified in this chapter for each water body or segment, regardless of whether or not the uses are currently attained.

"Director" means the director of the state of Washington department of ecology.

"Drainage ditch" means that portion of a designed and constructed conveyance system that serves the purpose of transporting surplus water; this may include natural water courses or channels incorporated in the system design, but does not include the area adjacent to the water course or channel.

"Ecoregions" are defined using EPAs *Ecoregions of the Pacific Northwest* Document No. 600/3-86/033 July 1986 by Omernik and Gallant.

"Enterococci" refers to a subgroup of fecal streptococci that includes *S. faecalis*, *S. faecium*, *S. gallinarum*, and *S. avium*. The enterococci are differentiated from other streptococci by their ability to grow in 6.5% sodium chloride, at pH 9.6, and at 10°C and 45°C.

"E. coli" is a bacterium in the family Enterobacteriaceae named *Escherichia coli* and is a common inhabitant of the intestinal tract of warm-blooded animals, and its presence in water samples is an indication of fecal pollution and the possible presence of enteric pathogens.

"Existing uses" means those uses actually attained in fresh or marine waters on or after November 28, 1975, whether or not they are designated uses. Introduced species that are not native to Washington, and put-and-take fisheries comprised of nonself-replicating introduced native species, do not need to receive full support as an existing use.

"Fecal coliform" means that portion of the coliform group which is present in the intestinal tracts and feces of warm-blooded animals as detected by the product of acid or gas from lactose in a suitable culture medium within 24 hours at 44.5 plus or minus 0.2 degrees Celsius.

"Geometric mean" means either the nth root of a product of n factors, or the antilogarithm of the arithmetic mean of the logarithms of the individual sample values.

"Ground water exchange" means the discharge and recharge of ground water to a surface water. Discharge is inflow from an aquifer, seeps or springs that increases the available supply of surface water. Recharge is outflow downgradient to an aquifer or downstream to surface water for base flow maintenance. Exchange may include ground water discharge in one season followed by recharge later in the year.

"Hardness" means a measure of the calcium and magnesium salts present in water. For purposes of this chapter, hardness is measured in milligrams per liter and expressed as calcium carbonate (CaCO₃).

"Intake credit" is a procedure for establishing effluent limits that takes into account the amount of a pollutant that is present in waters of the state, at the time water is removed from the same body of water by the discharger or other facility supplying the discharger with intake water.

"Intragravel dissolved oxygen" means the concentration of dissolved oxygen in the spaces between sediment particles in a streambed.

"Irrigation ditch" means that portion of a designed and constructed conveyance system that serves the purpose of transporting irrigation water from its supply source to its place of use; this may include natural water courses or channels incorporated in the system design, but does not include the area adjacent to the water course or channel.

"Lakes" shall be distinguished from riverine systems as being water bodies, including reservoirs, with a mean detention time of greater than 15 days.

"Lake-specific study" means a study intended to quantify existing nutrient concentrations, determine existing characteristic uses for lake class waters, and potential lake uses. The study determines how to protect these uses and if any uses are lost or impaired because of nutrients, algae, or aquatic plants. An appropriate study must recommend a criterion for total phosphorus (TP), total nitrogen (TN) in µg/l, or other nutrient that impairs characteristic uses by causing excessive algae blooms or aquatic plant growth.

"Local and regional sources of human-caused pollution" means sources of pollution caused by human actions, and the pollution originates from: (1) Within the boundaries of the state; or (2) Within the boundaries of a U.S. jurisdiction abutting to the state that impacts surface waters of the state.

"Mean detention time" means the time obtained by dividing a reservoir's mean annual minimum total storage by the 30-day 10-year low-flow from the reservoir.

"Migration" or "translocation" means any natural movement of an organism or community of organisms from one locality to another locality.

"Migration for naturally limited waters" is a subcategory of the aquatic life use of salmonid rearing and migration that is limited by the natural physical, chemical, or biological characteristics of the water body.

"Mixing zone" means that portion of a water body adjacent to an effluent outfall where mixing results in the dilution of the effluent with the receiving water. Water quality criteria may be exceeded in a mixing zone as conditioned and provided for in WAC 173-201A-400.

"Natural conditions" or "natural background levels" means surface water quality that was present before any human-caused pollution. When estimating natural conditions in the headwaters of a disturbed watershed it may be necessary to use the less disturbed conditions of a neighboring or similar watershed as a reference condition. (See also WAC 173-201A-260(1).)

"New or expanded actions" mean human actions that occur or are regulated for the first time, or human actions expanded such that they result in an increase in pollution, after July 1, 2003, for the purpose of applying this chapter only.

"Nonpoint source" means pollution that enters any waters of the state from any dispersed land-based or water-based activities including, but not limited to, atmospheric deposition; surface water runoff from agricultural lands, urban areas, or forest lands; subsurface or underground sources; or discharges from boats or marine vessels not otherwise regulated under the National Pollutant Discharge Elimination System program.

"Outstanding resource waters" are high quality waters designated by the state due to their exceptional water quality, ecological or recreational significance, unique habitat, or cold water refuge. Outstanding resource waters are given the highest level of protection under the state antidegradation policy.

"Performance-based approach" means a water quality standard that is a transparent process (i.e., methodology) which is sufficiently detailed and has suitable safeguards that ensures predictable and repeatable outcomes, rather than a specific outcome (i.e., concentration limit for a pollutant) consistent with 40 C.F.R. 131.11 and 40 C.F.R. 131.13.

"Permit" means a document issued pursuant to chapter 90.48 RCW specifying the waste treatment and control requirements and waste discharge conditions.

"pH" means the negative logarithm of the hydrogen ion concentration.

"Pollution" means such contamination, or other alteration of the physical, chemical, or biological properties, of any waters of the state, including change in temperature, taste, color, turbidity, or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive, or other substance into any waters of the state as will or is likely to create a nuisance or render such waters harmful, detrimental, or injurious to the public health, safety, or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish, or other aquatic life.

"Primary contact recreation" means activities where a person would have direct contact with water to the point of complete submergence including, but not limited to, skin diving, swimming, and water skiing.

"Salmonid spawning, rearing, and migration for naturally limited waters" is a subcategory of the aquatic life use of salmonid spawning, rearing, and migration that is limited by the natural physical, chemical, or biological characteristics of the water body.

"Shoreline stabilization" means the anchoring of soil at the water's edge, or in shallow water, by fibrous plant root complexes; this may include long-term accretion of sediment or peat, along with shoreline progradation in such areas.

"Spatial median" is the middle value of multiple ranked measurements taken within the sampling area.

"Stormwater" means that portion of precipitation that does not naturally percolate into the ground or evaporate, but flows via overland flow, interflow, pipes, and other features of a stormwater drainage system into a defined surface water body, or a constructed infiltration facility.

"Stormwater attenuation" means the process by which peak flows from precipitation are reduced and runoff velocities are slowed as a result of passing through a surface water body.

"Surface waters of the state" includes lakes, rivers, ponds, streams, inland waters, saltwaters, wetlands and all other surface waters and water courses within the jurisdiction of the state of Washington.

"Temperature" means water temperature expressed in degrees Celsius ($^{\circ}\text{C}$).

"Treatment wetlands" means those wetlands intentionally constructed on nonwetland sites and managed for the primary purpose of wastewater or stormwater treatment. Treatment wetlands are considered part of a collection and treatment system, and generally are not subject to the criteria of this chapter.

"Trophic state" means a classification of the productivity of a lake ecosystem. Lake productivity depends on the amount of biologically available nutrients in water and sediments and may be based on total phosphorus (TP). Secchi depth and chlorophyll-a measurements may be used to improve the trophic state classification of a lake. Trophic states used in this rule include, from least to most nutrient rich, ultra-oligotrophic, oligotrophic, lower mesotrophic, upper mesotrophic, and eutrophic.

"Turbidity" means the clarity of water expressed as nephelometric turbidity units (NTU) and measured with a calibrated turbidimeter.

"Upwelling" means the natural process along Washington's Pacific Coast where the summer prevailing northerly winds produce a seaward transport of surface water. Cold, deeper more saline waters rich in nutrients and low in dissolved oxygen, rise to replace the surface water. The cold oxygen deficient water enters Puget Sound and other coastal estuaries at depth where it displaces the existing deep water and eventually rises to replace the surface water. Such surface water replacement results in an overall increase in salinity and nutrients accompanied by a depression in dissolved oxygen. Localized upwelling of the deeper water of Puget Sound can occur year-round under influence of tidal currents, winds, and geomorphic features.

"USEPA" means the United States Environmental Protection Agency.

"Variance" is a time-limited designated use and criterion as defined in 40 C.F.R. 131.3, and must be adopted by rule.

"Wetlands" means areas that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from nonwetland areas to mitigate the conversion of wetlands. (Water bodies not included in the definition of wetlands as well as those mentioned in the definition are still waters of the state.)

"Wildlife habitat" means waters of the state used by, or that directly or indirectly provide food support to, fish, other aquatic life, and wildlife for any life history stage or activity.

AMENDATORY SECTION (Amending WSR 22-07-095, filed 3/22/22, effective 4/22/22)

WAC 173-201A-200 Fresh water designated uses and criteria. The following uses are designated for protection in fresh surface waters of the state. Use designations for water bodies are listed in WAC 173-201A-600 and 173-201A-602.

(1) **Aquatic life uses.** Aquatic life uses are designated based on the presence of, or the intent to provide protection for, the key uses identified in (a) of this subsection. It is required that all indigenous fish and nonfish aquatic species be protected in waters of the state in addition to the key species described below.

(a) The categories for aquatic life uses are:

(i) **Char spawning and rearing.** The key identifying characteristics of this use are spawning or early juvenile rearing by native char (bull trout and Dolly Varden), or use by other aquatic species similarly dependent on such cold water. Other common characteristic aquatic life uses for waters in this category include summer foraging and

migration of native char; and spawning, rearing, and migration by other salmonid species.

(ii) **Core summer salmonid habitat.** The key identifying characteristics of this use are summer (June 15 - September 15) salmonid spawning or emergence, or adult holding; use as important summer rearing habitat by one or more salmonids; or foraging by adult and subadult native char. Other common characteristic aquatic life uses for waters in this category include spawning outside of the summer season, rearing, and migration by salmonids.

(iii) **Salmonid spawning, rearing, and migration.** The key identifying characteristic of this use is salmon or trout spawning and emergence that only occurs outside of the summer season (September 16 - June 14). Other common characteristic aquatic life uses for waters in this category include rearing and migration by salmonids.

(iv) **Salmonid rearing and migration only.** The key identifying characteristic of this use is use only for rearing or migration by salmonids (not used for spawning).

(v) **Nonanadromous interior redband trout.** For the protection of waters where the only trout species is a nonanadromous form of self-reproducing interior redband trout (*O. mykiss*), and other associated aquatic life.

(vi) **Indigenous warm water species.** For the protection of waters where the dominant species under natural conditions would be temperature tolerant indigenous nonsalmonid species. Examples include dace, redband shiner, chiselmouth, sucker, and northern pikeminnow.

(b) **General criteria.** General criteria that apply to all aquatic life fresh water uses are described in WAC 173-201A-260 (2)(a) and (b), and are for:

- (i) Toxic, radioactive, and deleterious materials; and
- (ii) Aesthetic values.

(c) **Aquatic life temperature criteria.** Except where noted, water temperature is measured by the 7-day average of the daily maximum temperatures (7-DADMax). Table 200 (1)(c) lists the temperature criteria for each of the aquatic life use categories.

**Table 200 (1)(c)
Aquatic Life Temperature Criteria in Fresh
Water**

Category	Highest 7-DADMax
Char Spawning and Rearing*	12°C (53.6°F)
Core Summer Salmonid Habitat*	16°C (60.8°F)
Salmonid Spawning, Rearing, and Migration*	17.5°C (63.5°F)
Salmonid Rearing and Migration Only	17.5°C (63.5°F)
Nonanadromous Interior Redband Trout	18°C (64.4°F)
Indigenous Warm Water Species	20°C (68°F)

*Note: Some streams have a more stringent temperature criterion that is applied seasonally to further protect salmonid spawning and egg incubation. See (c)(iv) of this subsection.

(i) When a water body's temperature is warmer than the criteria in Table 200 (1)(c) (or within 0.3°C (0.54°F) of the criteria) and that condition is due to natural conditions, then ~~((human actions))~~ local and regional sources of human-caused pollution considered cumu-

lately may not cause the 7-DADMax temperature of that water body to increase more than 0.3°C (0.54°F) above natural conditions.

(ii) When the background condition of the water is cooler than the criteria in Table 200 (1)(c), incremental temperature increases resulting from individual point source activities must not exceed the numeric criteria and must not, at any time, exceed $28/(T+7)$ as measured at the edge of a mixing zone boundary (where "T" represents the background temperature as measured at a point or points unaffected by the discharge and representative of the highest ambient water temperature in the vicinity of the discharge).

(iii) Temperatures are not to exceed the criteria at a probability frequency of more than once every 10 years on average.

(iv) Spawning and incubation protection. The department has identified waterbodies, or portions thereof, which require special protection for spawning and incubation in ecology publication 06-10-038 (also available on ecology's website at www.ecology.wa.gov). This publication indicates where and when the following criteria are to be applied to protect the reproduction of native char, salmon, and trout:

- Maximum 7-DADMax temperatures of 9°C (48.2°F) at the initiation of spawning and at fry emergence for char; and

- Maximum 7-DADMax temperatures of 13°C (55.4°F) at the initiation of spawning for salmon and at fry emergence for salmon and trout.

The two criteria above are protective of incubation as long as human actions do not significantly disrupt the normal patterns of fall cooling and spring warming that provide significantly colder temperatures over the majority of the incubation period.

(v) For lakes, human actions considered cumulatively may not increase the 7-DADMax temperature more than 0.3°C (0.54°F) above natural conditions.

(vi) Temperature measurements should be taken to represent the dominant aquatic habitat of the monitoring site. This typically means samples should:

- (A) Be taken from well mixed portions of rivers and streams; and

- (B) Not be taken from shallow stagnant backwater areas, within isolated thermal refuges, at the surface, or at the water's edge.

(vii) The department will incorporate the following guidelines on preventing acute lethality and barriers to migration of salmonids into determinations of compliance with the narrative requirements for use protection established in this chapter (e.g., WAC 173-201A-310(1), 173-201A-400(4), and 173-201A-410 (1)(c)). The following site-level considerations do not, however, override the temperature criteria established for waters in subsection (1)(c) of this section or WAC 173-201A-600 through 173-201A-602:

- (A) Moderately acclimated (16-20°C, or 60.8-68°F) adult and juvenile salmonids will generally be protected from acute lethality by discrete human actions maintaining the 7-DADMax temperature at or below 22°C (71.6°F) and the 1-day maximum (1-DMax) temperature at or below 23°C (73.4°F).

- (B) Lethality to developing fish embryos can be expected to occur at a 1-DMax temperature greater than 17.5°C (63.5°F).

- (C) To protect aquatic organisms, discharge plume temperatures must be maintained such that fish could not be entrained (based on plume time of travel) for more than two seconds at temperatures above 33°C (91.4°F) to avoid creating areas that will cause near instantaneous lethality.

(D) Barriers to adult salmonid migration are assumed to exist any time the 1-DMax temperature is greater than 22°C (71.6°F) and the adjacent downstream water temperatures are 3°C (5.4°F) or more cooler.

(viii) Nothing in this chapter shall be interpreted to prohibit the establishment of effluent limitations for the control of the thermal component of any discharge in accordance with 33 U.S.C. 1326 (commonly known as section 316 of the Clean Water Act).

(d) **Aquatic life dissolved oxygen (D.O.) criteria.** The D.O. criteria are measured in milligrams per liter (mg/L) or percent oxygen saturation. Table 200 (1)(d) lists the D.O. criteria for each of the aquatic life use categories. Compliance may be demonstrated through either the water column or intragravel criteria in Table 200 (1)(d).

**Table 200 (1)(d)
Aquatic Life Dissolved Oxygen Criteria in
Fresh Water**

Category	Water Column (1-Day Minimum)
Char Spawning and Rearing*	10 mg/L or 90% saturation
Core Summer Salmonid Habitat*	10 mg/L or 95% saturation
Salmonid Spawning, Rearing, and Migration*	10 mg/L or 90% saturation
Salmonid Rearing and Migration Only	6.5 mg/L
Nonanadromous Interior Redband Trout*	10 mg/L or 90% saturation
Indigenous Warm Water Species	6.5 mg/L

* Intragravel D.O. criteria for these aquatic life use categories may be used for compliance purposes. When intragravel D.O. is used for compliance, the intragravel D.O. (1-day minimum) concentration must be 8.0 mg/L or greater, and the D.O. water column (1-day minimum) concentration must be 9.0 mg/L or greater. Intragravel D.O. must be measured as a spatial median within the same habitat area.

(i) When a water body's D.O. is lower than the criteria in Table 200 (1)(d) (or within 0.2 mg/L of the criteria) and that condition is due to natural conditions, then (~~human actions~~) local and regional sources of human-caused pollution considered cumulatively may not cause the D.O. of that water body to decrease more than 10 percent or 0.2 mg/L below natural conditions, whichever decrease is smaller.

(ii) For lakes, human actions considered cumulatively may not decrease the dissolved oxygen concentration more than 0.2 mg/L below natural conditions.

(iii) Concentrations of D.O. are not to fall below the criteria in the table at a probability frequency of more than once every 10 years on average.

(iv) D.O. measurements should be taken to represent the dominant aquatic habitat of the monitoring site. This typically means samples should:

- (A) Be taken from well mixed portions of rivers and streams; and
- (B) Not be taken from shallow stagnant backwater areas, within isolated thermal refuges, at the surface, or at the water's edge.

(e) **Aquatic life turbidity criteria.** Turbidity is measured in "nephelometric turbidity units" or "NTUs." Table 200 (1)(e) lists the maximum turbidity criteria for each of the aquatic life use categories.

Table 200 (1)(e)

Aquatic Life Turbidity Criteria in Fresh Water

Category	NTUs
Char Spawning and Rearing	Turbidity shall not exceed: <ul style="list-style-type: none"> • 5 NTU over background when the background is 50 NTU or less; or • A 10 percent increase in turbidity when the background turbidity is more than 50 NTU.
Core Summer Salmonid Habitat	Same as above.
Salmonid Spawning, Rearing, and Migration Salmonid Rearing and Migration Only	Same as above. Turbidity shall not exceed: <ul style="list-style-type: none"> • 10 NTU over background when the background is 50 NTU or less; or • A 20 percent increase in turbidity when the background turbidity is more than 50 NTU.
Nonanadromous Interior Redband Trout	Turbidity shall not exceed: <ul style="list-style-type: none"> • 5 NTU over background when the background is 50 NTU or less; or • A 10 percent increase in turbidity when the background turbidity is more than 50 NTU.
Indigenous Warm Water Species	Turbidity shall not exceed: <ul style="list-style-type: none"> • 10 NTU over background when the background is 50 NTU or less; or • A 20 percent increase in turbidity when the background turbidity is more than 50 NTU.

The turbidity criteria established under WAC 173-201A-200 (1) (e) shall be modified, without specific written authorization from the department, to allow a temporary area of mixing during and immediately after necessary in-water construction activities that result in the disturbance of in-place sediments. This temporary area of mixing is subject to the constraints of WAC 173-201A-400 (4) and (6) and can occur only after the activity has received all other necessary local and state permits and approvals, and after the implementation of appropriate best management practices to avoid or minimize disturbance of in-place sediments and exceedances of the turbidity criteria. A temporary area of mixing shall be as follows:

(i) For waters up to 10 cfs flow at the time of construction, the point of compliance shall be 100 feet downstream from the activity causing the turbidity exceedance.

(ii) For waters above 10 cfs up to 100 cfs flow at the time of construction, the point of compliance shall be 200 feet downstream of the activity causing the turbidity exceedance.

(iii) For waters above 100 cfs flow at the time of construction, the point of compliance shall be 300 feet downstream of the activity causing the turbidity exceedance.

(iv) For projects working within or along lakes, ponds, wetlands, or other nonflowing waters, the point of compliance shall be at a radius of 150 feet from the activity causing the turbidity exceedance.

(f) **Aquatic life total dissolved gas (TDG) criteria.** TDG is measured in percent saturation. Table 200 (1) (f) lists the maximum TDG criteria for each of the aquatic life use categories.

**Table 200 (1) (f)
Aquatic Life Total Dissolved Gas Criteria
in Fresh Water**

Category	Percent Saturation
Char Spawning and Rearing	Total dissolved gas shall not exceed 110 percent of saturation at any point of sample collection.
Core Summer Salmonid Habitat	Same as above.
Salmonid Spawning, Rearing, and Migration	Same as above.
Salmonid Rearing and Migration Only	Same as above.
Nonanadromous Interior Redband Trout	Same as above.
Indigenous Warm Water Species	Same as above.

(i) The water quality criteria established in this chapter for TDG shall not apply when the stream flow exceeds the seven-day, 10-year frequency flood.

(ii) The TDG criteria may be adjusted to aid fish passage over hydroelectric dams that spill for anadromous juvenile fish as of the 2020 spill season. The elevated TDG levels are intended to allow increased fish passage without causing more harm to fish populations than caused by turbine fish passage. The following special fish passage exemptions for the Snake and Columbia rivers apply when spilling water at dams is necessary to aid fish passage:

(A) TDG must not exceed:

- An average of 115 percent as measured in the forebays of the next downstream dams and must not exceed an average of 120 percent as measured in the tailraces of each dam (these averages are calculated as an average of the 12 highest hourly readings in a calendar day, relative to atmospheric pressure); and

- A maximum TDG saturation level of 125 percent calculated as an average of the two highest hourly TDG measures in a calendar day during spillage for fish passage.

(B) To further aid fish passage during the spring spill season (generally from April through June), spill may be increased up to the following levels as measured at the tailrace fixed site monitoring location:

- A maximum TDG saturation level of 125 percent calculated as an average of the 12 highest hourly TDG measures in a calendar day; and

- A maximum TDG saturation level of 126 percent calculated as an average of any two consecutive hourly TDG measures.

These TDG criteria may be applied in place of (f)(ii)(A) of this subsection during spring spill operations when applied in accordance with the following conditions:

(I) In addition to complying with the requirements of this chapter, the tailrace maximum TDG criteria at hydropower dams shall be applied in accordance with Endangered Species Act consultation documents associated with spill operations on the Snake and Columbia rivers, including operations for fish passage. The Endangered Species Act consultation documents are those by which dams may legally operate during the time that the adjusted criteria in (f)(ii)(B) of this subsection are in use.

(II) Application of the tailrace maximum TDG criteria must be accompanied by a department approved biological monitoring plan designed to measure impacts of fish exposed to increased TDG conditions throughout the spring spill season. Beginning in the year 2021, plans must include monitoring for nonsalmonid fish species and must continue for a minimum of five years, and thereafter as determined by the department.

(III) TDG must be reduced to allowances specified in (f)(ii)(A) of this subsection if the calculated incidence of gas bubble trauma in salmonids (with a minimum sample size of 50 fish required weekly) or nonsalmonids (with a minimum sample size of 50 fish required weekly) exceeds:

- Gas bubble trauma in nonpaired fins of 15 percent; or
- Gas bubble trauma in nonpaired fins of five percent and gas bubbles occlude more than 25 percent of the surface area of the fin.

If gas bubble trauma exceeds these biological thresholds, additional monitoring must demonstrate the incidence of gas bubble trauma below biological thresholds before TDG can be adjusted to allowances specified in this subsection. Gas bubble trauma monitoring data shall be excluded from comparison to biological thresholds when higher than normal river flow contributes to excess spill above the ability to meet (f)(ii)(B) of this subsection. This monitoring data exclusion shall apply for one full calendar day after reduced river flow allows attainment of (f)(ii)(B) of this subsection.

(g) **Aquatic life pH criteria.** Measurement of pH is expressed as the negative logarithm of the hydrogen ion concentration. Table 200 (1)(g) lists the pH levels for each of the aquatic life use categories.

**Table 200 (1)(g)
Aquatic Life pH Criteria in Fresh Water**

Use Category	pH Units
Char Spawning and Rearing	pH shall be within the range of 6.5 to 8.5, with a human-caused variation within the above range of less than 0.2 units.
Core Summer Salmonid Habitat	Same as above.
Salmonid Spawning, Rearing, and Migration	pH shall be within the range of 6.5 to 8.5 with a human-caused variation within the above range of less than 0.5 units.

Use Category	pH Units
Salmonid Rearing and Migration Only	Same as above.
Nonanadromous Interior Redband Trout	Same as above.
Indigenous Warm Water Species	Same as above.

(h) **Aquatic life fine sediment criteria.** The following narrative criteria apply to all existing and designated uses for fresh water:

(i) Water bodies shall not contain excess fine sediment (<2 mm) from human-caused sources that impair designated uses.

(ii) When reference values are used to demonstrate compliance with the fine sediment criteria, measured conditions shall be compared to those from reference sites or regional data that represent least disturbed site conditions of a comparable water body or ecoregion. Reference locations should be comparable in hydrography, geology, ecology, and habitat to that of the water body evaluated.

(2) **Recreational uses.** The recreational use is primary contact recreation.

(a) **General criteria.** General criteria that apply to fresh water recreational uses are described in WAC 173-201A-260 (2) (a) and (b), and are for:

- (i) Toxic, radioactive, and deleterious materials; and
- (ii) Aesthetic values.

(b) **Water contact recreation bacteria criteria.** Table 200 (2) (b) lists the bacteria criteria to protect water contact recreation in fresh waters. These criteria are based on *Escherichia coli* (*E. coli*) and fecal coliform organism levels, and expressed as colony forming units (CFU) or most probable number (MPN). The use of fecal coliform organism levels to determine compliance will expire December 31, 2020.

**Table 200 (2) (b)
Primary Contact Recreation Bacteria Criteria in Fresh Water**

Bacterial Indicator	Criteria
<i>E. coli</i>	<i>E. coli</i> organism levels within an averaging period must not exceed a geometric mean value of 100 CFU or MPN per 100 mL, with not more than 10 percent of all samples (or any single sample when less than 10 sample points exist) obtained within the averaging period exceeding 320 CFU or MPN per 100 mL.
Fecal coliform (expires 12/31/2020)	Fecal coliform organism levels within an averaging period must not exceed a geometric mean value of 100 CFU or MPN per 100 mL, with not more than 10 percent of all samples (or any single sample when less than 10 sample points exist) obtained within an averaging period exceeding 200 CFU or MPN per 100 mL.

(i) A minimum of three samples is required to calculate a geometric mean for comparison to the geometric mean criteria. Sample collec-

tion dates shall be well distributed throughout the averaging period so as not to mask noncompliance periods.

(A) **Effluent bacteria samples:** When averaging effluent bacteria sample values for comparison to the geometric mean criteria, or for determining permit compliance, the averaging period shall be 30 days or less.

(B) **Ambient water quality samples:** When averaging bacteria sample values for comparison to the geometric mean criteria, it is preferable to average by season. The averaging period of bacteria sample data shall be 90 days or less.

(ii) When determining compliance with the bacteria criteria in or around small sensitive areas, such as swimming beaches, it is recommended that multiple samples are taken throughout the area during each visit. Such multiple samples should be arithmetically averaged together (to reduce concerns with low bias when the data is later used in calculating a geometric mean) to reduce sample variability and to create a single representative data point.

(iii) As determined necessary by the department, more stringent bacteria criteria may be established for rivers and streams that cause, or significantly contribute to, the decertification or conditional certification of commercial or recreational shellfish harvest areas, even when the preassigned bacteria criteria for the river or stream are being met.

(iv) Where information suggests that sample results are due primarily to sources other than warm-blooded animals (e.g., wood waste), alternative indicator criteria may be established on a site-specific basis as described in WAC 173-201A-430.

(3) **Water supply uses.** The water supply uses are domestic, agricultural, industrial, and stock watering.

General criteria. General criteria that apply to the water supply uses are described in WAC 173-201A-260 (2) (a) and (b), and are for:

- (a) Toxic, radioactive, and deleterious materials; and
- (b) Aesthetic values.

(4) **Miscellaneous uses.** The miscellaneous fresh water uses are wildlife habitat, harvesting, commerce and navigation, boating, and aesthetics.

General criteria. General criteria that apply to miscellaneous fresh water uses are described in WAC 173-201A-260 (2) (a) and (b), and are for:

- (a) Toxic, radioactive, and deleterious materials; and
- (b) Aesthetic values.

AMENDATORY SECTION (Amending WSR 20-02-091, filed 12/30/19, effective 1/30/20)

WAC 173-201A-210 Marine water designated uses and criteria. The following uses are designated for protection in marine surface waters of the state of Washington. Use designations for specific water bodies are listed in WAC 173-201A-612.

(1) **Aquatic life uses.** Aquatic life uses are designated using the following general categories. It is required that all indigenous fish and nonfish aquatic species be protected in waters of the state.

(a) **The categories for aquatic life uses are:**

(i) **Extraordinary quality.** Water quality of this use class shall markedly and uniformly exceed the requirements for all uses including,

but not limited to, salmonid migration and rearing; other fish migration, rearing, and spawning; clam, oyster, and mussel rearing and spawning; crustaceans and other shellfish (crabs, shrimp, crayfish, scallops, etc.) rearing and spawning.

(ii) **Excellent quality.** Water quality of this use class shall meet or exceed the requirements for all uses including, but not limited to, salmonid migration and rearing; other fish migration, rearing, and spawning; clam, oyster, and mussel rearing and spawning; crustaceans and other shellfish (crabs, shrimp, crayfish, scallops, etc.) rearing and spawning.

(iii) **Good quality.** Water quality of this use class shall meet or exceed the requirements for most uses including, but not limited to, salmonid migration and rearing; other fish migration, rearing, and spawning; clam, oyster, and mussel rearing and spawning; crustaceans and other shellfish (crabs, shrimp, crayfish, scallops, etc.) rearing and spawning.

(iv) **Fair quality.** Water quality of this use class shall meet or exceed the requirements for selected and essential uses including, but not limited to, salmonid and other fish migration.

(b) **General criteria.** General criteria that apply to aquatic life marine water uses are described in WAC 173-201A-260 (2) (a) and (b), and are for:

- (i) Toxic, radioactive, and deleterious materials; and
- (ii) Aesthetic values.

(c) **Aquatic life temperature criteria.** Except where noted, temperature is measured as a 1-day maximum temperature (1-DMax). Table 210 (1)(c) lists the temperature criteria for each of the aquatic life use categories.

Table 210 (1)(c)
Aquatic Life Temperature Criteria in Marine Water

Category	Highest 1-DMax
<i>Extraordinary quality</i>	13°C (55.4°F)
<i>Excellent quality</i>	16°C (60.8°F)
<i>Good quality</i>	19°C (66.2°F)
<i>Fair quality</i>	22°C (71.6°F)

(i) When a water body's temperature is warmer than the criteria in Table 210 (1)(c) (or within 0.3°C (0.54°F) of the criteria) and that condition is due to natural conditions, then ~~((human actions))~~ local and regional sources of human-caused pollution considered cumulatively may not cause the 7-DADMax temperature of that water body to increase more than 0.3°C (0.54°F) above natural conditions.

(ii) When the natural condition of the water is cooler than the criteria in Table 210 (1)(c), incremental temperature increases resulting from individual point source activities must not exceed the numeric criteria and must not, at any time, exceed $12/(T-2)$ as measured at the edge of a mixing zone boundary (where "T" represents the background temperature as measured at a point or points unaffected by the discharge and representative of the highest ambient water temperature in the vicinity of the discharge).

(iii) Temperatures are not to exceed the criteria at a probability frequency of more than once every ~~((ten))~~ 10 years on average.

(iv) Temperature measurements should be taken to represent the dominant aquatic habitat of the monitoring site. This typically means samples should not be taken from shallow stagnant backwater areas,

within isolated thermal refuges, at the surface, or at the water's edge.

(v) The department will incorporate the following guidelines on preventing acute lethality and barriers to migration of salmonids into determinations of compliance with the narrative requirements for use protection established in this chapter (e.g., WAC 173-201A-310(1), 173-201A-400(4), and 173-201A-410 (1)(c)). The following site-level considerations do not, however, override the temperature criteria established for waters in subsection (1)(c) of this subsection or WAC 173-201A-612:

(A) Moderately acclimated (16-20°C, or 60.8-68°F) adult and juvenile salmonids will generally be protected from acute lethality by discrete human actions maintaining the 7-DADMax temperature at or below 22°C (71.6°F) and the 1-DMax temperature at or below 23°C (73.4°F).

(B) Lethality to developing fish embryos can be expected to occur at a 1-DMax temperature greater than 17.5°C (63.5°F).

(C) To protect aquatic organisms, discharge plume temperatures must be maintained such that fish could not be entrained (based on plume time of travel) for more than two seconds at temperatures above 33°C (91.4°F) to avoid creating areas that will cause near instantaneous lethality.

(D) Barriers to adult salmonid migration are assumed to exist any time the 1-DMax temperature is greater than 22°C (71.6°F) and the adjacent downstream water temperatures are 3°C (5.4°F) or more cooler.

(vi) Nothing in this chapter shall be interpreted to prohibit the establishment of effluent limitations for the control of the thermal component of any discharge in accordance with 33 U.S.C. 1326 (commonly known as section 316 of the Clean Water Act).

(d) **Aquatic life dissolved oxygen (D.O.) criteria.** Except where noted, D.O. concentrations are measured as a 1-day minimum in milligrams per liter. Table 210 (1)(d) lists the D.O. criteria for each of the aquatic life use categories.

**Table 210 (1)(d)
Aquatic Life Dissolved Oxygen Criteria in
Marine Water**

Category	Lowest 1-Day Minimum
<i>Extraordinary quality</i>	7.0 mg/L
<i>Excellent quality</i>	6.0 mg/L
<i>Good quality</i>	5.0 mg/L
<i>Fair quality</i>	4.0 mg/L

(i) When a water body's D.O. is lower than the criteria in Table 210 (1)(d) (or within 0.2 mg/L of the criteria) and that condition is due to natural conditions, then (~~human actions~~) local and regional sources of human-caused pollution considered cumulatively may not cause the D.O. of that water body to decrease more than 10 percent or 0.2 mg/L below natural conditions, whichever decrease is smaller.

(ii) Concentrations of D.O. are not to fall below the criteria in the table at a probability frequency of more than once every (~~ten~~) 10 years on average.

(iii) D.O. measurements should be taken to represent the dominant aquatic habitat of the monitoring site. This typically means samples should not be taken from shallow stagnant backwater areas, within isolated thermal refuges, at the surface, or at the water's edge.

(e) **Aquatic life turbidity criteria.** Turbidity is measured in "nephelometric turbidity units" or "NTUs." Table 210 (1)(e) lists the one-day maximum turbidity allowed as a result of human actions for each of the aquatic life use categories.

**Table 210 (1)(e)
Aquatic Life Turbidity Criteria in Marine Water**

Category	NTUs
<i>Extraordinary quality</i>	Turbidity must not exceed: • 5 NTU over background when the background is 50 NTU or less; or • A 10 percent increase in turbidity when the background turbidity is more than 50 NTU.
<i>Excellent quality</i>	Same as above.
<i>Good quality</i>	Turbidity must not exceed: • 10 NTU over background when the background is 50 NTU or less; or • A 20 percent increase in turbidity when the background turbidity is more than 50 NTU.
<i>Fair quality</i>	Same as above.

(i) The turbidity criteria established under WAC 173-201A-210 (1)(e) shall be modified, without specific written authorization from the department, to allow a temporary area of mixing during and immediately after necessary in-water construction activities that result in the disturbance of in-place sediments. This temporary area of mixing is subject to the constraints of WAC 173-201A-400 (4) and (6) and can occur only after the activity has received all other necessary local and state permits and approvals, and after the implementation of appropriate best management practices to avoid or minimize disturbance of in-place sediments and exceedances of the turbidity criteria. For estuaries or marine waters, the point of compliance for a temporary area of mixing shall be at a radius of (~~one hundred fifty~~) 150 feet from the activity causing the turbidity exceedance.

(f) **Aquatic life pH criteria.** Measurement of pH is expressed as the negative logarithm of the hydrogen ion concentration. Table 210 (1)(f) lists the pH levels allowed as a result of human actions for each of the aquatic life use categories.

**Table 210 (1)(f)
Aquatic Life pH Criteria in Marine Water**

Use Category	pH Units
<i>Extraordinary quality</i>	pH must be within the range of 7.0 to 8.5 with a human-caused variation within the above range of less than 0.2 units.
<i>Excellent quality</i>	pH must be within the range of 7.0 to 8.5 with a human-caused variation within the above range of less than 0.5 units.
<i>Good quality</i>	Same as above.

Use Category	pH Units
<i>Fair quality</i>	pH must be within the range of 6.5 to 9.0 with a human-caused variation within the above range of less than 0.5 units.

(2) **Shellfish harvesting.**

(a) General criteria. General criteria that apply to shellfish harvesting uses for marine water are described in WAC 173-201A-260

(2) (a) and (b), and are for:

- (i) Toxic, radioactive, and deleterious materials; and
- (ii) Aesthetic values.

(b) **Shellfish harvesting bacteria criteria.** Fecal coliform organism levels are used to protect shellfish harvesting. Criteria are expressed as colony forming units (CFU) or most probable number (MPN). Fecal coliform must not exceed a geometric mean value of 14 CFU or MPN per 100 mL, and not have more than 10 percent of all samples (or any single sample when less than ~~((ten))~~ 10 sample points exist) obtained for calculating the geometric mean value exceeding 43 CFU or MPN per 100 mL.

(i) Shellfish growing areas approved for unconditional harvest by the state department of health are fully supporting the shellfish harvest goals of this chapter, even when comparison with the criteria contained in this chapter suggest otherwise.

(ii) When averaging bacteria sample data for comparison to the geometric mean criteria, it is preferable to average by season and include five or more data collection events within each period. Averaging of data collected beyond a ~~((thirty))~~ 30-day period, or beyond a specific discharge event under investigation, is not permitted when such averaging would skew the data set so as to mask noncompliance periods. The period of averaging should not exceed ~~((twelve))~~ 12 months, and should have sample collection dates well distributed throughout the reporting period.

(iii) When determining compliance with the bacteria criteria in or around small sensitive areas, it is recommended that multiple samples are taken throughout the area during each visit. Such multiple samples should be arithmetically averaged together (to reduce concerns with low bias when the data is later used in calculating a geometric mean) to reduce sample variability and to create a single representative data point.

(iv) As determined necessary by the department, more stringent bacteria criteria may be established for waters that cause, or significantly contribute to, the decertification or conditional certification of commercial or recreational shellfish harvest areas, even when the preassigned bacteria criteria for the water are being met.

(v) Where information suggests that sample results are due primarily to sources other than warm-blooded animals (e.g., wood waste), alternative indicator criteria may be established on a site-specific basis by the department.

(3) **Recreational uses.** The recreational use is primary contact recreation.

(a) **General criteria.** General criteria that apply to water contact uses for marine water are described in WAC 173-201A-260 (2) (a) and (b), and are for:

- (i) Toxic, radioactive, and deleterious materials; and
- (ii) Aesthetic values.

(b) **Water contact recreation bacteria criteria.** Table 210 (3) (b) lists the bacteria criteria to protect water contact recreation in marine waters. These criteria are based on enterococci and fecal coliform organism levels, and expressed as colony forming units (CFU) or most probable number (MPN). The use of fecal coliform levels to determine compliance will expire December 31, 2020.

**Table 210 (3) (b)
Primary Contact Recreation Bacteria Criteria in Marine Water**

Bacterial Indicator	Criteria
Enterococci	Enterococci organism levels within an averaging period must not exceed a geometric mean value of 30 CFU or MPN per 100 mL, with not more than 10 percent of all samples (or any single sample when less than ((ten)) 10 sample values exist) obtained within the averaging period exceeding 110 CFU or MPN per 100 mL.
Fecal coliform (expires 12/31/2020)	Fecal coliform organism levels within an averaging period must not exceed a geometric mean value of 14 CFU or MPN per 100 mL, with not more than 10 percent of all samples (or any single sample when less than ((ten)) 10 sample points exist) obtained within an averaging period exceeding 43 CFU or MPN per 100 mL.

(i) A minimum of three samples is required to calculate a geometric mean for comparison to the geometric mean criterion. Sample collection dates shall be well distributed throughout the averaging period so as not to mask noncompliance periods.

(A) Effluent bacteria samples: When averaging effluent bacteria sample values for comparison to the geometric mean criteria, or for determining permit compliance, the averaging period shall be (~~(thirty))~~ 30 days or less.

(B) Ambient water quality samples: When averaging ambient bacteria sample values for comparison to the geometric mean criteria, it is preferable to average by season. The averaging period of bacteria sample data shall be (~~(ninety))~~ 90 days or less.

(ii) When determining compliance with the bacteria criteria in or around small sensitive areas, such as swimming beaches, it is recommended that multiple samples are taken throughout the area during each visit. Such multiple samples should be arithmetically averaged together (to reduce concerns with low bias when the data is later used in calculating a geometric mean) to reduce sample variability and to create a single representative data point.

(iii) As determined necessary by the department, more stringent bacteria criteria may be established for waters that cause, or significantly contribute to, the decertification or conditional certification of commercial or recreational shellfish harvest areas, even when the preassigned bacteria criteria for the water are being met.

(iv) Where information suggests that sample results are due primarily to sources other than warm-blooded animals (e.g., wood waste),

alternative indicator criteria may be established on a site-specific basis as described in WAC 173-201A-430.

(4) **Miscellaneous uses.** The miscellaneous marine water uses are wildlife habitat, harvesting, commerce and navigation, boating, and aesthetics.

General criteria. General criteria that apply in miscellaneous marine water uses are described in WAC 173-201A-260 (2)(a) and (b), and are for:

- (a) Toxic, radioactive, and deleterious materials; and
- (b) Aesthetic values.

AMENDATORY SECTION (Amending WSR 11-09-090, filed 4/20/11, effective 5/21/11)

WAC 173-201A-260 Natural conditions and other water quality criteria and applications. (1) **Natural and irreversible human conditions.**

(a) It is recognized that portions of many water bodies cannot meet the assigned aquatic life criteria due to the natural conditions of the water body. When a water body does not meet its assigned aquatic life criteria due to natural climatic or landscape attributes, the natural conditions constitute the water quality criteria.

When natural conditions constitute the aquatic life water quality criteria, criteria values may be established using site-specific criteria (see WAC 173-201A-430), use attainability analysis (see WAC 173-201A-440), or the performance-based approach (see WAC 173-201A-470).

(b) When a water body does not meet its assigned criteria due to human structural changes that cannot be effectively remedied (as determined consistent with the federal regulations at 40 C.F.R. 131.10), then alternative estimates of the attainable water quality conditions, plus any further allowances for human effects specified in this chapter for when natural conditions exceed the criteria, may be used to establish an alternative criteria for the water body (see WAC 173-201A-430 and 173-201A-440).

(2) **Toxics and aesthetics criteria.** The following narrative criteria apply to all existing and designated uses for fresh and marine water:

(a) Toxic, radioactive, or deleterious material concentrations must be below those which have the potential, either singularly or cumulatively, to adversely affect characteristic water uses, cause acute or chronic conditions to the most sensitive biota dependent upon those waters, or adversely affect public health (see WAC 173-201A-240, toxic substances, and 173-201A-250, radioactive substances).

(b) Aesthetic values must not be impaired by the presence of materials or their effects, excluding those of natural origin, which offend the senses of sight, smell, touch, or taste (see WAC 173-201A-230 for guidance on establishing lake nutrient standards to protect aesthetics).

(3) **Procedures for applying water quality criteria.** In applying the appropriate water quality criteria for a water body, the department will use the following procedure:

(a) The department will establish water quality requirements for water bodies, in addition to those specifically listed in this chap-

ter, on a case-specific basis where determined necessary to provide full support for designated and existing uses.

(b) Upstream actions must be conducted in manners that meet downstream water body criteria. Except where and to the extent described otherwise in this chapter, the criteria associated with the most upstream uses designated for a water body are to be applied to headwaters to protect nonfish aquatic species and the designated downstream uses.

(c) Where multiple criteria for the same water quality parameter are assigned to a water body to protect different uses, the most stringent criterion for each parameter is to be applied.

(d) At the boundary between water bodies protected for different uses, the more stringent criteria apply.

(e) In brackish waters of estuaries, where different criteria for the same use occurs for fresh and marine waters, the decision to use the fresh water or the marine water criteria must be selected and applied on the basis of vertically averaged daily maximum salinity, referred to below as "salinity."

(i) The fresh water criteria must be applied at any point where (~~ninety-five~~) 95 percent of the salinity values are less than or equal to one part per thousand, except that the fresh water criteria for bacteria applies when the salinity is less than (~~ten~~) 10 parts per thousand; and

(ii) The marine water criteria must apply at all other locations where the salinity values are greater than one part per thousand, except that the marine criteria for bacteria applies when the salinity is (~~ten~~) 10 parts per thousand or greater.

(f) Numeric criteria established in this chapter are not intended for application to human created waters managed primarily for the removal or containment of pollution. This special provision also includes private farm ponds created from upland sites that did not incorporate natural water bodies.

(i) Waters covered under this provision must be managed so that:

(A) They do not create unreasonable risks to human health or uses of the water; and

(B) Discharges from these systems meet down gradient surface and ground water quality standards.

(ii) This provision does not apply to waterways designed and managed primarily to convey or transport water from one location to another, rather than to remove pollution en route.

(g) When applying the numeric criteria established in this chapter, the department will give consideration to the precision and accuracy of the sampling and analytical methods used, as well as the existing conditions at the time.

(h) The analytical testing methods for these numeric criteria must be in accordance with the "*Guidelines Establishing Test Procedures for the Analysis of Pollutants*" (40 C.F.R. Part 136) or superseding methods published. The department may also approve other methods following consultation with adjacent states and with the approval of the USEPA.

(i) The primary means for protecting water quality in wetlands is through implementing the antidegradation procedures described in Part III of this chapter.

(i) In addition to designated uses, wetlands may have existing beneficial uses that are to be protected that include ground water exchange, shoreline stabilization, and stormwater attenuation.

(ii) Water quality in wetlands is maintained and protected by maintaining the hydrologic conditions, hydrophytic vegetation, and substrate characteristics necessary to support existing and designated uses.

(iii) Wetlands must be delineated using the *Washington State Wetlands Identification and Delineation Manual*, in accordance with WAC 173-22-035.

AMENDATORY SECTION (Amending WSR 03-14-129, filed 7/1/03, effective 8/1/03)

WAC 173-201A-430 Site-specific criteria. (1) Where the attainable condition of existing and designated uses for the water body would be fully protected using an alternative criterion, site-specific criteria may be adopted.

(a) The site-specific criterion must be consistent with the federal regulations on designating and protecting uses (currently 40 C.F.R. 131.10 and 131.11); and

(b) The decision to approve a site-specific criterion must be subject to a public involvement and intergovernmental coordination process.

(2) The site-specific analyses for the development of a new water quality criterion must be conducted in a manner that is scientifically justifiable and consistent with (~~the assumptions and rationale in "Guidelines for Deriving National Water Quality Criteria for the Protection of Aquatic Organisms and their Uses," EPA 1985~~) 40 C.F.R. 131.11; and conducted in accordance with the procedures established in the *"Water Quality Standards Handbook,"* EPA ((1994)) 2023, as revised.

(3) The decision to approve the site-specific criterion must be based on a demonstration that it will protect the existing and attainable uses of the water body.

(4) Site-specific criteria are not in effect until they have been incorporated into this chapter and approved by the USEPA.

NEW SECTION

WAC 173-201A-470 Performance-based approach. Where the natural water quality of a water body constitutes the aquatic life water quality criteria, a performance-based approach may be used to establish criteria that are fully protective of existing and designated aquatic life uses.

(1) Aquatic life water quality criteria must be derived using the procedures referenced in ecology publication 24-10-017, *"A Performance-Based Approach for Developing Site-Specific Natural Conditions Criteria for Aquatic Life in Washington,"* as revised.

(2) Use of the performance-based approach for establishing aquatic life water quality criteria is limited to the following listed water quality constituents:

- (a) Aquatic life temperature criteria in fresh water;
- (b) Aquatic life dissolved oxygen criteria in fresh water;
- (c) Aquatic life pH criteria in fresh water;
- (d) Aquatic life temperature criteria in marine water;
- (e) Aquatic life dissolved oxygen criteria in marine water.

(3) Aquatic life water quality criteria developed using this approach are applicable to the water body upon derivation.

(4) If development of aquatic life criteria using the performance-based approach cannot meet the requirements set forth in these procedures, then alternatives specified in the paragraph following WAC 173-201A-260 (1)(a) may be used.

WSR 24-11-062
PROPOSED RULES
DEPARTMENT OF
RETIREMENT SYSTEMS

[Filed May 13, 2024, 3:27 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-06-076.

Title of Rule and Other Identifying Information: Creating an exclusion from the definition of full-time employment for the purpose of automatic enrollment into the state's deferred compensation plan (DCP) for seasonal workers.

Hearing Location(s): On July 1, 2024, at 2:00 p.m. The hearing will be conducted through Microsoft Teams, <https://www.drs.wa.gov/sitemap/rules/#proposed-rule-hearings>, Meeting ID 258 311 607 040, Passcode baSJCC; or by phone 833-322-1218, Code 501 027 137#.

Date of Intended Adoption: July 8, 2024.

Submit Written Comments to: Bianca Stoner, Department of Retirement Systems (DRS), P.O. Box 48380, Olympia, WA 98504-8380, email drs.rules@drs.wa.gov, by June 26, 2024.

Assistance for Persons with Disabilities: Contact Bianca Stoner, phone 360-664-7291, TTY 711, email drs.rules@drs.wa.gov, by June 26, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Under RCW 41.50.770(3), eligible new state employees are automatically enrolled in DCP unless they waive participation. However, some new employees are in positions that will only last for a limited number of months, so their employment ends before their contributions are deferred. This rule creates an exclusion from the definition of full-time employees so that these employees aren't required to be automatically enrolled.

Statutory Authority for Adoption: RCW 41.50.050 and 41.50.770.

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

Name of Proponent: DRS, governmental.

Name of Agency Personnel Responsible for Implementation: Seth Miller, DRS, P.O. Box 48380, Olympia, WA 98504-8380, 360-664-7304.

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

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 (5)(a)(i) does not apply to this proposed rule and DRS is not voluntarily making it applicable to DRS.

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

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: Rules from DRS only affect members and beneficiaries of the state retirement systems and participating public employers. As a result, the rules do not affect small businesses.

Scope of exemption for rule proposal:

Is fully exempt.

May 13, 2024
Bianca Stoner
Rules Coordinator

OTS-5276.2

AMENDATORY SECTION (Amending WSR 23-18-025, filed 8/25/23, effective 9/25/23)

WAC 415-501-110 Definitions. (1) **Accumulated deferrals.** Compensation deferred under the plan, adjusted by income received, increases or decreases in investment value, fees, and any prior distributions made.

(2) **Automatic enrollment.** A process of enrolling newly hired full-time employees as of January 1, 2017. See WAC 415-501-400 for details.

(3) **Beneficiary.** The person or entity entitled to receive benefits under the plan after the death of a participant.

(4) **Compensation.** All payments made to a participant by the employer as remuneration for services rendered.

(5) **Contributions.** The amount of deferred compensation that you contribute monthly, which can be pretax, taxed, or a combination of both.

(6) **Deferred compensation.** The amount of the participant's compensation that is deferred. Pretax and taxed contributions are both considered deferred compensation. See WAC 415-501-400, 415-501-410, and 415-501-450.

(7) **Deferred compensation program or plan.** A plan that allows employees of the state of Washington and approved political subdivisions of the state of Washington to defer a portion of their compensation according to the provisions of Section 457(b) of the Internal Revenue Code.

(8) **Department.** The department of retirement systems created by RCW 41.50.020 or its designee.

(9) **Eligible employee.** Any person who is employed by and receives any type of compensation from a participating employer for whom services are provided, and who is:

(a) A full-time, part-time, or career seasonal employee of Washington state, a county, a municipality, or other political subdivision of the state, whether or not covered by civil service;

(b) An elected or appointed official of the executive branch of the government, including a full-time member of a board, commission, or committee;

(c) A justice of the supreme court, or a judge of the court of appeals or of a superior or district court; or

(d) A member of the state legislature or of the legislative authority of a county, city, or town.

(10) **Eligible rollover distribution.** A distribution to a participant of any or all funds from an eligible retirement plan unless it is:

(a) One in a series of substantially equal annuity payments;

(b) One in a series of substantially equal installment payments payable over 10 years or more;

(c) Required to meet minimum distribution requirements of the plan; or

(d) Distributed for hardship or unforeseeable emergency from a 457 plan.

(11) **Employer.**

(a) The state of Washington; and

(b) Approved political subdivisions of the state of Washington.

(12) **In-plan conversion.** Allows you to take all or a portion of the funds in your pretax account and convert it to a Roth account.

(13) **Normal retirement age.** An age designated by the participant for purposes of the three-year catch-up provision described in WAC 415-501-430(2). The participant may choose a normal retirement age between:

(a) The earliest age at which an eligible participant has the right to receive retirement benefits without actuarial or similar reduction from his/her retirement plan with the same employer; and

(b) Age 70 1/2.

(14) **Participant.** An eligible employee who:

(a) Is currently deferring compensation under the plan; or

(b) Has previously deferred compensation and has not received a distribution of his/her entire benefit under the plan.

(15) **Participation agreement.** The agreement executed by an eligible employee to enroll in the plan through methods established by the department. Includes the participant's authorization to defer compensation through payroll deductions pursuant to WAC 415-501-410 and 415-501-450.

(16) **Qualified distribution.** A distribution of funds from a designated Roth account that is not subject to further taxation. A qualified distribution may only occur:

(a) After a five-taxable-year period of participation in the Roth account; and

(b) If the distribution is made: (i) On or after attainment of age 59 1/2, (ii) becoming permanently disabled, or (iii) death.

(17) **Roth account.** A form of deferred compensation in which funds are subject to federal income tax at the time of contribution.

(18) **Seasonal employee.** An employee whose position is anticipated to last fewer than five consecutive months.

(19) **You,** as used in this chapter, means a participant as defined in subsection (14) of this section.

AMENDATORY SECTION (Amending WSR 23-18-025, filed 8/25/23, effective 9/25/23)

WAC 415-501-400 What is automatic enrollment? Effective January 1, 2017, state agencies and higher education employers must automatically enroll new full-time employees into the deferred compensation program (DCP). Students who work at a college or university, seasonal employees, and retirees who return to employment are exempt from automatic enrollment but may voluntarily enroll at any time. Local employers, including school districts, may use the automatic enrollment provisions by submitting a resolution to the department.

For state employees and some higher education employees, full-time status is defined in WAC 357-01-174. For employees not covered under WAC 357-01-174, the definition of "full time" is at the employer's discretion.

The default deferral amount is pre-tax with a rate of three percent of your taxable compensation. You may change these at any time (see WAC 415-501-450 for details).

The default investment is the Retirement Strategy Fund that assumes you will retire at age 65. You may change your investments at any time (see WAC 415-501-475 for details).

If you are automatically enrolled in DCP, you will receive a mailed notification of automatic enrollment. If you want to alter your automatic enrollment, here are some actions you can take:

(1) Opt out: To prevent the three percent deferral from being deducted from your paycheck, opt out within 30 days of the date on the automatic enrollment notification. To do so, change the three percent default deduction to zero through your established online account or by contacting the DCP record keeper.

(2) Suspend enrollment and remove your contributions: Following your automatic enrollment, you may withdraw DCP deferrals that have been taken from your paycheck. To do so, change the three percent default deduction to zero and request a permissible withdrawal request form. The completed withdrawal request must be received by the DCP record keeper within 90 days of your first payroll contribution under this section. You will receive a distribution of your contributions, plus or minus earnings. These distributions are not eligible for rollover. If you do not request a permissible withdrawal within 90 days from your first payroll contribution, your contributions will be subject to the provisions for distributions described in WAC 415-501-485.

(3) Change your contribution: Adjust your contributions to a smaller or larger whole percentage or select a specific whole dollar amount. With DCP, you may change your contribution amount at any time. Changing your contribution within the first 90 days of automatic enrollment verifies your participation in the program, making you no longer eligible for permissible withdrawal.

(4) Change your investment selection: Select another DCP investment option. With DCP, you can change your investment options at any time.

(5) Reenroll: If you opt out, you may reenroll in DCP at any time (see WAC 415-501-410).

WSR 24-11-065

PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed May 14, 2024, 10:02 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-06-021.

Title of Rule and Other Identifying Information: WAC 182-508-0200
Civil transition program (CTP)—Overview.

Hearing Location(s): On June 25, 2024, at 10:00 a.m. The health care authority (HCA) holds public hearings virtually without a physical meeting place. To attend the virtual public hearing, you must register in advance https://us02web.zoom.us/webinar/register/WN_71S7AVjqRpmWNBn_6M4B1Q. If the link above opens with an error message, please try using a different browser. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: Not earlier than June 26, 2024.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by June 25, 2024, by 11:59 p.m.

Assistance for Persons with Disabilities: Contact Johanna Larson, phone 360-725-1349, fax 360-586-9727, telecommunication[s] relay service 711, email Johanna.larson@hca.wa.gov, by June 14, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HCA is adopting this new rule to establish eligibility criteria for CTP, which is a state-funded, fee-for-service program that requires the department of social and health services (DSHS) to provide wraparound services and supports in community-based settings, which may include residential supports, to persons who have been found not competent to stand trial due to an intellectual or developmental disability, dementia, or traumatic brain injury. This apple health program is for persons who are not eligible for any other apple health program and will provide state-funded categorically needy coverage. This program implements a portion of RCW 10.77.202, which became effective December 1, 2023. HCA established WAC 182-538B-180 through an emergency rule filed under WSR 23-24-052 and refiled under WSR 24-08-051. The purpose of this rule making is to make that rule permanent and to renumber it as WAC 182-508-0200. DSHS is engaged in rule making on this subject. DSHS filed a preproposal statement of inquiry under WSR 23-24-046 and established emergency rules under WSR 24-05-046.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160, 10.77.202.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Brian Jensen, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-0815; Implementation and Enforcement: Paige Lewis, P.O. Box 42722, Olympia, WA 98504-2722, 360-725-0757.

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

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

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

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: The proposed rule pertains to client program eligibility and does not impose costs on businesses.

Scope of exemption for rule proposal:

Is fully exempt.

May 14, 2024
Wendy Barcus
Rules Coordinator

OTS-5101.3

NEW SECTION

WAC 182-508-0200 Civil transition program (CTP)—Overview. (1)

The civil transition program (CTP) is a state-funded, fee-for-service program that requires the department of social and health services (department) to provide wraparound services and supports in community-based settings, which may include residential supports, to persons who have been found not competent to stand trial due to an intellectual or developmental disability, dementia, or traumatic brain injury. This apple health program is for persons who are not eligible for any other federal or state-funded medical coverage.

(2) **Definitions.** The following definitions and those found in chapter 388-106 WAC apply to this section unless otherwise stated.

"**Participation**" has the same meaning given in WAC 182-513-1100.

"**Room and board**" has the same meaning given in WAC 182-513-1100.

"**Wraparound services**" means coordination of services between the individual and service providers.

(3) **General eligibility.** Effective December 1, 2023, a person is eligible for the CTP when the person:

(a) Has been referred to the home and community services (HCS) division or the developmental disabilities administration (DDA) by the behavioral health administration and found not competent to stand trial due to dementia, traumatic brain injury, or an intellectual or developmental disability as described in WAC 388-106-2005;

(b) Applies for apple health coverage as described in WAC 182-503-0005; and

(c) Is not eligible for other federal or state-funded medical coverage.

(4) HCS long-term services and supports (LTSS) for persons 18 years and older are governed by chapter 388-106 WAC when LTSS services are authorized by the department.

(5) DDA services are governed by chapter 388-825 WAC.

(6) **Client participation.**

(a) A person who is not otherwise eligible for a noninstitutional medical program must have client participation and room and board. Home and community-based services waiver eligibility and cost of care calculations are under:

(i) WAC 182-515-1508 and 182-515-1509 for HCS services; and

(ii) WAC 182-515-1513 and 182-515-1514 for DDA services.

(b) Changes in income or deductions may affect the amount a person pays toward LTSS including room and board in an alternate living facility based on chapter 182-515 WAC.

(7) **Effective dates.**

(a) Eligibility for the CTP begins on the date the person:

(i) Does not meet financial or functional eligibility for LTSS that is covered under another apple health coverage group; or

(ii) Meets the criteria described in WAC 388-106-2000 through 388-106-2040.

(b) Eligibility for the CTP ends the earlier of:

(i) When the person moves out-of-state;

(ii) When the person dies;

(iii) The date the person becomes eligible for federal or state-funded medical coverage;

(iv) Six months after the start date of the first CTP-eligible service; or

(v) When CTP services end.

(c) CTP effective dates are subject to WAC 182-504-0120 and 388-106-2030.

(8) **Administrative hearings.** A person who disagrees with an agency or the agency's designee action under this section may request an administrative hearing under chapter 182-526 WAC.

WSR 24-11-076

WITHDRAWAL OF PROPOSED RULES

DEPARTMENT OF

FISH AND WILDLIFE

(By the Code Reviser's Office)

[Filed May 15, 2024, 10:11 a.m.]

WAC 220-670-010, 220-670-020, 220-670-030, 220-670-040, 220-670-050, 220-670-060, 220-670-070, and 220-670-080, proposed by the department of fish and wildlife in WSR 23-19-072, appearing in issue 23-19 of the Washington State Register, which was distributed on October 4, 2023, is withdrawn by the office of the code reviser under RCW 34.05.335(3), since the proposal was not adopted within the 180-day period allowed by the statute.

Jennifer C. Meas, Editor
Washington State Register

WSR 24-11-080

PROPOSED RULES

GAMBLING COMMISSION

[Filed May 15, 2024, 12:48 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-07-057.

Title of Rule and Other Identifying Information: WAC 230-06-025
Restrictions on firearms as prize.

Hearing Location(s): On July 11, 2024, at 9:30 a.m., at the Liquor and Cannabis Board, 1025 Union Avenue S.E., Olympia, WA 98501. The meeting time and location are tentative. Visit our website at www.wsgc.wa.gov approximately seven days prior to the meeting and select "About Us" and then, "Upcoming commission meetings" to confirm the hearing date, location, start time, and agenda items.

Date of Intended Adoption: July 11, 2024.

Submit Written Comments to: www.wsgc.wa.gov, beginning May 15, 2024, at 8:00 a.m., by July 10, 2024, at 5:00 p.m.

Assistance for Persons with Disabilities: Contact Julie Anderson, phone 360-486-3453, TTY 360-486-3637, email julie.anderson@wsgc.wa.gov, www.wsgc.wa.gov, by July 10, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The gambling commission asked staff to review WAC 230-06-025 Restrictions on firearms as prize, to ensure compliance with all state firearm statutes.

Reasons Supporting Proposal: The changes to WAC 230-06-025 seek to accomplish the following:

- Limit the certificate to be redeemable by a licensed firearm dealer to a Washington state dealer.
- Limit the firearms that are available as prizes to only those firearms that are authorized for sale in Washington state. Amended language would aim to clarify this point.
- Prohibit persons who are not permitted to own firearms in Washington from winning a firearm in a raffle. Additional language to the rule was added to ensure such prohibited individuals are not able to acquire a firearm as a raffle prize.

Statutory Authority for Adoption: RCW 9.46.070.

Statute Being Implemented: RCW 9.46.070.

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

Name of Proponent: Washington state gambling commission, governmental.

Name of Agency Personnel Responsible for Drafting: Adam Amorine, Rules Coordinator, 4565 7th Avenue S.E., Lacey, WA 98503, 360-486-3455; Implementation: Tina Griffin, Director, 4565 7th Avenue S.E., Lacey, WA 98503, 360-486-3546; and Enforcement: Gary Drumheller, Deputy Director, 4565 7th Avenue S.E., Lacey, WA 98503, 509-325-7904.

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

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis is not required per RCW 34.05.328 (5) (b) (v).

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

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify

language of a rule without changing its effect; and rule content is explicitly and specifically dictated by statute.
Scope of exemption for rule proposal:
Is fully exempt.

May 15, 2024

Adam Amorine

Legal Manager and Rules Coordinator

OTS-5441.1

AMENDATORY SECTION (Amending WSR 06-17-132, filed 8/22/06, effective 1/1/08)

WAC 230-06-025 Restrictions on firearms as prizes. Only charitable or nonprofit organizations operating a raffle may award firearms, air guns, or other mechanical devices which are capable of discharging dangerous projectiles, including but not limited to, BB or CO₂ guns, rifles, shotguns, pistols or revolvers, or crossbows as a prize. The firearm must be authorized for sale in Washington state. If the prize awarded is restricted from transfer by state or federal law, the licensee must award the winner a certificate, redeemable by a licensed Washington state firearms dealer, for the prize offered. Alternatively, the winner shall be awarded a prize of equivalent value, such as a gift certificate, if the winner of the raffle is prohibited from owning or possessing firearms by other sections of the Revised Code of Washington (RCW).

WSR 24-11-094

PROPOSED RULES

HEALTH CARE AUTHORITY

(School Employees Benefits Board)

[Admin #2024-01—Filed May 16, 2024, 3:34 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-04-062.

Title of Rule and Other Identifying Information: **The following sections in chapter 182-30 WAC are revised:** WAC 182-30-010 Purpose, 182-30-020 Definitions, 182-30-040 Premium payments and premium refunds, 182-30-050 What are the requirements regarding premium surcharges?, 182-30-060 How do school employees benefits board (SEBB) organizations and contracted vendors correct enrollment errors?, 182-30-070 The employer contribution is set by the health care authority (HCA) and paid to the HCA for all eligible school employees, 182-30-075 Subscriber address requirements, 182-30-080 When must a newly eligible school employee, or a school employee who regains eligibility for the employer contribution, elect school employees benefits board (SEBB) benefits and complete required forms?, 182-30-090 When may a subscriber change health plans?, 182-30-130 What are the requirements for a school employees benefits board (SEBB) organization engaging in local negotiations regarding SEBB benefits eligibility criteria?, and 182-30-140 What is the process for school districts to offer optional benefits?

The following sections in chapter 182-31 WAC are revised: WAC 182-31-010 Purpose, 182-31-020 Definitions, 182-31-060 Who is eligible to participate in the salary reduction plan?, 182-31-100 What options for continuation coverage are available to school employees and their dependents during certain types of leave or when employment ends due to a layoff?, 182-31-150 When may subscribers enroll or remove eligible dependents?, and 182-31-160 National Medical Support Notice (NMSN).

The following sections in chapter 182-32 WAC are revised: WAC 182-32-020 Definitions, 182-32-064 Applicable rules and laws, 182-32-2010 Appealing a decision regarding school employees benefits board (SEBB) eligibility, enrollment, premium payments, premium surcharges, a wellness incentive, or the administration of benefits, 182-32-2030 Appealing a school employees benefits board (SEBB) program decision regarding eligibility, enrollment, premium payments, premium surcharges, and a SEBB wellness incentive, 182-32-2040 How can a subscriber appeal a decision regarding the administration of wellness incentive program requirements?, 182-32-2050 How can a school employee appeal a decision regarding the administration of benefits offered under the salary reduction plan?, 182-32-2070 What should a written request for administrative review and a request for brief adjudicative proceeding contain?, 182-32-2100 How to request a review of an initial order resulting from a brief adjudicative proceeding, 182-32-2130 Judicial review of final order, 182-32-2140 Presiding officer—Designation and authority, 182-32-2150 Reviewing officer or officers—Designation and authority, and 182-32-3175 How to request a review of an initial order by the office of administrative hearings.

The following sections in chapters 182-30, 182-31, and 182-32 WAC are created: WAC 182-30-200 Employer group application process, 182-30-205 May employer groups applying for participation in school employees benefits board (SEBB) insurance coverage include their retirees?, 182-30-210 How will the health care authority (HCA) decide to

approve or deny a group application?, 182-30-215 Employer group participation requirements, 182-31-200 School board members participation requirements, and 182-32-2060 How can an entity or organization appeal a decision of the health care authority to deny an employer group application?

Hearing Location(s): On June 25, 2024, at 10:00 a.m. The health care authority (HCA) holds public hearings virtually without a physical meeting place. To attend the virtual public hearing, you must register in advance https://us02web.zoom.us/webinar/register/WN_71S7AVjqRpmWNbN_6M4B1Q. If the link above opens with an error message, please try using a different browser. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: Not sooner than June 26, 2024.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, beginning May 17, 2024, 8:00 a.m., by June 25, 2024, by 11:59 p.m.

Assistance for Persons with Disabilities: Contact Johanna Larson, phone 360-725-1349, fax 360-586-9727, telecommunication[s] relay service 711, email Johanna.Larson@hca.wa.gov, by June 14, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to amend rules to support the SEBB program:

1. Implement SEBB policy resolutions and statutory changes:

- Created WAC 182-30-200 to establish employer group application process;
- Created WAC 182-30-205 to establish the requirements for an employer group to request inclusion of retired school employees who are covered under its retiree health plan at the time of applying for participation in the SEBB insurance coverage;
- Created WAC 182-30-210 to establish the criteria for approving or denying an employer group application;
- Created WAC 182-30-215 to establish employer group participation requirements;
- Created WAC 182-31-200 to establish school board members' participation requirements;
- Created WAC 182-32-2060 to establish appeals procedures for an entity or organization to file an appeal with the authority if their employer group application is denied;
- Created the definitions of "employer group," "school board member," and "tribal school" in WAC 182-30-020, 182-31-020, and 182-32-020;
- Created the definitions of "employer group rate surcharge," "on-going large claim," and "plan year" "large claims" in WAC 182-30-020;
- Created the definition of "PEBB program" and amended the definition of "waive" to include public employees benefits board's vision in WAC 182-30-020 and 182-31-020;
- Amended the definition of "flexible spending arrangement" in WAC 182-30-020, 182-31-020, and 182-32-020; and amended the definitions of "salary reduction plan" and "special open enrollment" in WAC 182-30-020 and 182-31-020 to implement SB 5700;
- Amended the definition of "SEBB program" to include eligible school board members, amended the definition of "subscriber" to include school board member and employer group; and amended the definition of "school employee" to include employees of employee

organizations representing school employees and employees of a tribal school in WAC 182-30-020, 182-31-020, and 182-32-020;

- Amended WAC 182-30-010 and 182-31-010 to include school board members eligible for SEBB benefits under RCW 41.05.743.

2. Make other technical amendments:

- Amended WAC 182-30-050 to include school board members and their enrollment requirements for submitting attestation and when a premium surcharge will take effect, clarified which subscribers must submit the form to the SEBB program, clarified a subscriber must provide evidence of the event when there is a change in the spouse's or state registered domestic partner's employer-based group medical, and updated subsections;
- Amended WAC 182-30-060 to include a subsection reference, to clarify when new enrollment will begin for a newly eligible school employee as described in WAC 182-31-040, and to clarify when a school employee who regains eligibility will begin enrollment and submit evidence of insurability for supplemental life insurance as described in WAC 182-31-080(3);
- Amended WAC 182-30-070 to include school employees of employer groups and the terms of payment to HCA for employer groups;
- Amended WAC 182-30-075 and 182-30-090 to update the subscriber's references;
- Amended WAC 182-30-080 and 182-32-2050 to update "flexible spending arrangement" references;
- Amended WAC 182-30-130 to update "flexible spending arrangement" reference and a WAC subsection reference;
- Amended WAC 182-30-140 to update a statute reference;
- Amended WAC 182-31-060 to add a new subsection that states school employees of employer groups are not eligible to participate in the state's salary reduction plan;
- Amended WAC 182-31-100 to include a WAC reference;
- Amended WAC 182-31-150 to include when a school board member may remove dependents, to clarify when any other subscriber must submit the required form, and to clarify when a school employee must submit a required form when enrolling a dependent in supplemental dependent life insurance or accidental death and dismemberment insurance;
- Amended WAC 182-31-160 to clarify all other subscribers submit the required forms to the SEBB program and when the changes to health plan coverage or enrollment will begin following the receipt of National Medical Support Notice.

3. Amend rules to improve administration of the SEBB program:

- Amended WAC 182-30-040 to include school board members and added an exception for certain continuation coverage subscriber who is not required to make the first premium payment and applicable premium surcharges to begin the new enrollment;
- Amended the definition of "appellant," "denial," or "denial notice" in WAC 182-32-020 to include employer group;
- Amended WAC 182-32-2010 to include the appeals process for any current or former school employee of an employer group or their dependent;
- Amended WAC 182-32-2030 to include the appeal process regarding certain decisions made by an employer group and updated the request for a brief adjudicative proceeding to include a continuation coverage and school board members, and their dependent;

- Amended WAC 182-32-2040 to update the request for a brief adjudicative proceeding for a continuation coverage enrollee or school board member;
- Amended WAC 182-32-064, 182-32-2070, 182-32-2100, 182-32-2130, 182-32-2140, 182-32-2150, and 182-32-3175 to include employer group.

Reasons Supporting Proposal: See purpose above.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160; SB 5700, SSB 5275.

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

Name of Proponent: Governmental.

Name of Agency Personnel Responsible for Drafting: Stella Ng, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-0883; Implementation: Cade Walker, P.O. Box 42716, Olympia, WA 98504-2716, 360-643-7900; and Enforcement: Jean Bui, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1858.

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

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

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

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. These rules do not apply to small businesses.

May 16, 2024
Wendy Barcus
Rules Coordinator

OTS-5337.6

AMENDATORY SECTION (Amending WSR 19-14-093, filed 7/1/19, effective 8/1/19)

WAC 182-30-010 Purpose. The purpose of this chapter is to establish school employees benefits board (SEBB) program enrollment criteria and procedures for school employees eligible for SEBB benefits under RCW 41.05.740(6) and for school board members eligible for SEBB benefits under RCW 41.05.743.

AMENDATORY SECTION (Amending WSR 22-13-168, filed 6/21/22, effective 1/1/23)

WAC 182-30-020 Definitions. The following definitions apply throughout this chapter unless the context clearly indicates another meaning:

"Accidental death and dismemberment insurance" or "AD&D" means basic accidental death and dismemberment (AD&D) insurance paid for by the SEBB organization, as well as supplemental accidental death and dismemberment insurance offered to and paid for by school employees for themselves and their dependents.

"Annual open enrollment" means an annual event set aside for a period of time by the HCA when subscribers may make changes to their health plan enrollment and salary reduction elections for the following plan year. During the annual open enrollment, subscribers may transfer from one health plan to another, enroll or remove dependents from coverage, enroll in coverage, or waive enrollment (see definition of "waive" in this section). School employees eligible to participate in the salary reduction plan may enroll in or change their election under the dependent care assistance program (DCAP), the (~~medical~~) flexible spending arrangement (FSA), or limited purpose FSA. They may also enroll in or opt out of the premium payment plan.

"Authority" or "HCA" means the Washington state health care authority.

"Benefits administrator" means any person or persons designated by the SEBB organization that trains, communicates, and interacts with school employees as the subject matter expert for eligibility, enrollment, and appeals for SEBB benefits.

"Board" means the school employees benefits board established under provisions of RCW 41.05.740.

"Calendar days" or "days" means all days including Saturdays, Sundays, and all state legal holidays as set forth in RCW 1.16.050.

"Consolidated Omnibus Budget Reconciliation Act" or "COBRA" means continuation coverage as administered under 42 U.S.C. Secs. 300bb-1 through 300bb-8.

"Continuation coverage" means the temporary continuation of SEBB benefits available to enrollees under the Consolidated Omnibus Budget Reconciliation Act (COBRA), 42 U.S.C. Secs. 300bb-1 through 300bb-8, the Uniformed Services Employment and Reemployment Rights Act (USERRA), 38 U.S.C. Secs. 4301 through 4335, or SEBB policies.

"Contracted vendor" means any person, persons, or entity under contract or agreement with the HCA to provide goods or services for the provision or administration of SEBB benefits. The term "contracted vendor" includes subcontractors of the HCA and subcontractors of any person, persons, or entity under contract or agreement with the HCA that provide goods or services for the provision or administration of SEBB benefits.

"Dependent" means a person who meets eligibility requirements in WAC 182-31-140.

"Dependent care assistance program" or "DCAP" means a benefit plan whereby school employees may pay for certain employment related dependent care with pretax dollars as provided in the salary reduction plan under chapter 41.05 RCW pursuant to 26 U.S.C. Sec. 129 or other sections of the Internal Revenue Code.

"Director" means the director of the authority.

"Employer-based group health plan" means group medical, group vision, and group dental related to a current employment relationship.

It does not include medical, vision, or dental coverage available to retired employees, individual market medical or dental coverage, or government-sponsored programs such as medicare or medicaid.

"Employer-based group medical" means group medical related to a current employment relationship. It does not include medical coverage available to retired employees, individual market medical coverage, or government-sponsored programs such as medicare or medicaid.

"Employer contribution" means the funding amount paid to the HCA by a school employees benefits board (SEBB) organization for its eligible school employees as described under WAC 182-31-040 or 182-30-130.

"Employer group" means an employee organization representing school employees and a tribal school as defined in RCW 28A.715.010, obtaining school employee benefits through a contractual agreement with the authority to participate in benefit plans developed by the school employees benefits board as described in WAC 182-30-215.

"Employer group rate surcharge" means the rate surcharge described in RCW 41.05.050(2).

"Enrollee" means a person who meets all eligibility requirements defined in chapter 182-31 WAC or WAC 182-30-130, who is enrolled in SEBB benefits, and for whom applicable premium payments have been made.

"Flexible spending arrangement" or "FSA" means a benefit plan whereby eligible school employees may reduce their salary before taxes to pay for medical expenses not reimbursed by insurance as provided in the salary reduction plan established under chapter 41.05 RCW pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.

"Forms" or "form" means both paper forms and forms completed electronically.

"Health plan" means a plan offering medical, vision, dental, or any combination of these coverages, developed by the board and provided by a contracted vendor or self-insured plans administered by the HCA.

"Insignificant shortfall" means a premium balance owed that is less than or equal to the lesser of \$50 or 10 percent of the premium required by the health plan as described in Treasury Regulation 26 C.F.R. 54.4980B-8.

"Large claim" means a claim of more than \$25,000 in allowed costs for services in a quarter.

"Life insurance" means basic life insurance paid for by the SEBB organization, as well as supplemental life insurance or supplemental dependent life insurance offered to and paid for by school employees for themselves and their dependents.

"Limited purpose flexible spending arrangement" or "limited purpose FSA" means a benefit plan whereby eligible school employees may reduce their salary before taxes to pay for dental and vision expenses not reimbursed by insurance as provided in the salary reduction plan established under chapter 41.05 RCW pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.

"Long-term disability insurance" or "LTD insurance" means employer-paid long-term disability insurance and any employee-paid long-term disability insurance offered by the SEBB program.

~~("Medical flexible spending arrangement" or "medical FSA" means a benefit plan whereby eligible school employees may reduce their salary before taxes to pay for medical expenses not reimbursed by insurance as provided in the salary reduction plan established under chap-~~

ter 41.05 RCW pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.)

"Ongoing large claim" means a claim where the patient is expected to need ongoing case management into the next quarter for which the expected allowed cost is greater than \$25,000 in the quarter.

"PEBB" means the public employees benefits board.

"PEBB program" means the program within the HCA that administers insurance and other benefits for eligible employees (as described in WAC 182-12-114), eligible retired employees (as described in WAC 182-12-171, 182-12-180, and 182-12-211), eligible survivors (as described in WAC 182-12-180, 182-12-250, and 182-12-265), eligible dependents (as described in WAC 182-12-250 and 182-12-260), and others as defined in RCW 41.05.011 or 41.05.080 (1) (a) (ii).

"Plan year" means the time period established by the authority.

"Premium payment plan" means a benefit plan whereby school employees may pay their share of group health plan premiums with pretax dollars as provided in the salary reduction plan under chapter 41.05 RCW pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.

"Premium surcharge" means a payment required from a subscriber, in addition to the subscriber's medical premium contribution, due to an enrollee's tobacco use or an enrolled subscriber's spouse or state registered domestic partner choosing not to enroll in their employer-based group medical when:

- The spouse's or state registered domestic partner's share of the medical premium is less than 95 percent of the additional cost an employee would be required to pay to enroll a spouse or state registered domestic partner in the public employees benefits board (PEBB) Uniform Medical Plan (UMP) Classic; and

- The benefits have an actuarial value of at least 95 percent of the actuarial value of PEBB UMP Classic benefits.

"Salary reduction plan" means a benefit plan whereby school employees may agree to a reduction of salary on a pretax basis to participate in the dependent care assistance program, (~~medical~~) flexible spending arrangement, limited purpose flexible spending arrangement, or premium payment plan offered pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.

"School board member" means the board of directors of a school district as governed by chapter 28A.343 RCW or the board of directors of an educational district as governed by chapter 28A.310 RCW.

"School employee" means (~~(☞)~~) all employees of school districts and charter schools established under chapter 28A.710 RCW; (~~(☞)~~) represented employees of educational service districts; (~~(and ☞)~~) effective January 1, 2024, all employees of educational service districts; and effective January 1, 2024, pursuant to a contractual agreement with the authority, "school employee" may also include (a) employees of employee organizations representing school employees, at the option of each such employee organization; and (b) employees of a tribal school as defined in RCW 28A.715.010, if the governing body of the tribal school seeks and receives the approval of the authority to provide any of its insurance programs by contracts with the authority, as provided in RCW 41.05.021 (1) (f) and (g).

"School employees benefits board organization" or "SEBB organization" means a public school district or educational service district or charter school established under chapter 28A.710 RCW that is required to participate in benefit plans provided by the school employees benefits board.

"School year" means school year as defined in RCW 28A.150.203(11).

"SEBB" means the school employees benefits board.

"SEBB benefits" means one or more insurance coverages or other school employee benefits administered by the SEBB program within the HCA.

"SEBB insurance coverage" means any health plan, life insurance, accidental death and dismemberment insurance, or long-term disability insurance administered as a SEBB benefit.

"SEBB program" means the program within the HCA that administers insurance and other benefits for eligible school employees (as described in WAC 182-31-040 or 182-30-130) ~~((and))~~, eligible dependents (as described in WAC 182-31-140), and eligible school board members (as described in WAC 182-31-200).

"Special open enrollment" means a period of time when subscribers may make changes to their health plan enrollment and salary reduction elections outside of the annual open enrollment period when specific life events occur. During the special open enrollment subscribers may change health plans and enroll or remove dependents from coverage. Additionally, school employees may enroll in or waive enrollment (see definition of "waive" in this section). School employees eligible to participate in the salary reduction plan may enroll in or revoke their election under the DCAP, ~~((medical))~~ FSA, limited purpose FSA, or the premium payment plan and make a new election. For special open enrollment events related to specific SEBB benefits, see WAC 182-30-090, 182-30-100, 182-31-080, and 182-31-150.

"State registered domestic partner" has the same meaning as defined in RCW 26.60.020(1) and substantially equivalent legal unions from other jurisdictions as defined in RCW 26.60.090.

"Subscriber" means the school employee ~~((or))~~, continuation coverage enrollee, or school board member who has been determined eligible by the SEBB program ~~((or))~~, SEBB organization, or employer group, is enrolled in SEBB benefits, and is the individual to whom the SEBB program and contracted vendors will issue all notices, information, requests, and premium bills on behalf of an enrollee.

"Supplemental coverage" means any life insurance or accidental death and dismemberment (AD&D) insurance coverage purchased by the school employee in addition to the coverage provided by the school employees benefits board (SEBB) organization.

"Tobacco products" means any product made with or derived from tobacco that is intended for human consumption, including any component, part, or accessory of a tobacco product. This includes, but is not limited to, cigars, cigarettes, pipe tobacco, chewing tobacco, snuff, and other tobacco products. It does not include e-cigarettes or United States Food and Drug Administration (FDA) approved quit aids.

"Tobacco use" means any use of tobacco products within the past two months. Tobacco use, however, does not include the religious or ceremonial use of tobacco.

"Tribal school" has the same meaning as defined in RCW 28A.715.010.

"Waive" means an eligible school employee affirmatively declining enrollment in SEBB medical because the school employee is enrolled in other employer-based group medical, a TRICARE plan, or medicare as allowed under WAC 182-31-080. A school employee may waive enrollment in SEBB medical to enroll in PEBB medical only if they are enrolled in PEBB dental and PEBB vision. A school employee who waives enrollment

in SEBB medical to enroll in PEBB medical also waives enrollment in SEBB dental and SEBB vision.

"Week" means a seven-day period starting on Sunday and ending on Saturday.

AMENDATORY SECTION (Amending WSR 22-13-168, filed 6/21/22, effective 1/1/23)

WAC 182-30-040 Premium payments and premium refunds. School employees benefits board (SEBB) insurance coverage premiums and applicable premium surcharges for all subscribers are due as described in this section, except when a SEBB organization is correcting its enrollment error as described in WAC 182-30-060 (4) or (5).

(1) **Premium payments.** SEBB insurance coverage premiums and applicable premium surcharges for all subscribers become due the first of the month in which SEBB insurance coverage is effective.

Premiums and applicable premium surcharges are due from the subscriber for the entire month of SEBB insurance coverage and will not be prorated during any month.

(a) For subscribers not eligible for the employer contribution that are electing to enroll in continuation coverage as described in WAC 182-31-090, 182-31-100, 182-31-120, or 182-31-130, or electing to enroll as a school board member as described in WAC 182-31-200, the first premium payment and applicable premium surcharges are due to the health care authority (HCA) or the contracted vendor no later than 45 days after the election period ends as described within the Washington Administrative Code applicable to the subscriber. Premiums and applicable premium surcharges associated with continuing SEBB medical must be made to the HCA as well as premiums associated with continuing SEBB dental or vision insurance coverage. Premiums associated with life insurance coverage and accidental death and dismemberment (AD&D) coverage must be made to the contracted vendor. Following the first premium payment, premiums and applicable premium surcharges must be paid as premiums become due.

Exception: A subscriber enrolled in continuation coverage as defined in WAC 182-30-020 who is electing to enroll in another type of continuation coverage is not required to make the first premium payment and applicable premium surcharges to begin the new enrollment.

(b) For school employees who are eligible for the employer contribution, premiums and applicable premium surcharges are due to the SEBB organization or contracted vendor. If a school employee elects supplemental coverage or employee-paid long-term disability (LTD) insurance, or is enrolled in employee-paid LTD insurance, as described in WAC 182-30-080 (1) (a) or (3) (a) or is enrolled in employee-paid LTD insurance as described in WAC 182-30-080 (1) (b) the school employee is responsible for payment of premiums from the month the supplemental coverage or employee-paid LTD insurance begins.

Exception: A school employee who is on a leave of absence and maintains eligibility for the employer contribution, will have their premiums waived for their employee-paid LTD insurance for the first 90 days. For this purpose, "leave of absence" is defined as a paid or unpaid temporary or indefinite administrative leave, involuntary leave, sick leave, or insurance continued under the federal Family and Medical Leave Act, or paid family and medical leave program as described in WAC 182-31-110.

(c) Unpaid or underpaid premiums or applicable premium surcharges for all subscribers must be paid, and are due from the SEBB organization, subscriber, or a subscriber's legal representative to the HCA or the contracted vendor. For subscribers not eligible for the employer contribution, monthly premiums or applicable premium surcharges that remain unpaid for 30 days will be considered delinquent. A subscriber

is allowed a grace period of 30 days from the date the monthly premiums or applicable premium surcharges become delinquent to pay the unpaid premium balance or applicable premium surcharges. If a subscriber, who is not eligible for the employer contribution, has monthly premiums or applicable premium surcharges remain unpaid for 60 days from the original due date, the subscriber's SEBB insurance coverage will be terminated retroactive to the last day of the month for which the monthly premiums and any applicable premium surcharges were paid. If it is determined by the HCA that payment of the unpaid balance in a lump sum would be considered a hardship, the HCA may develop a reasonable payment plan up to 12 months in duration with the subscriber or the subscriber's legal representative upon request.

(d) Monthly premiums or applicable premium surcharges due from a subscriber who is not eligible for the employer contribution will be considered unpaid if one of the following occurs:

(i) No payment of premiums or applicable premium surcharges are received by the HCA or the contracted vendor and the monthly premiums or applicable premium surcharges remain unpaid for 30 days; or

(ii) Premium payments or applicable premium surcharges received by the HCA or the contracted vendor are underpaid by an amount greater than an insignificant shortfall and the monthly premiums or applicable premium surcharges remain underpaid for 30 days past the date the monthly premiums or applicable premium surcharges were due.

(2) **Premium refunds.** SEBB insurance coverage premiums and applicable premium surcharges will be refunded using the following methods:

(a) When a subscriber submits an enrollment change affecting subscriber or dependent eligibility, HCA may allow up to three months of accounting adjustments. HCA will refund to the individual or the SEBB organization any excess premiums and applicable premium surcharges paid during the 60-day adjustment period, except as indicated in WAC 182-31-120.

(b) If a SEBB subscriber, dependent, or beneficiary submits a written appeal as described in WAC 182-32-2010, and provides clear and convincing evidence of extraordinary circumstances, such that the subscriber could not timely submit the necessary information to accomplish an allowable enrollment change within 60 days after the event that created a change of premiums, the SEBB director, the SEBB director's designee, or the SEBB appeals unit may:

(i) Approve a refund of premiums and applicable premium surcharges that does not exceed 12 months of premiums; and

(ii) Approve the enrollment change that was originally requested and which forms the basis for the refund.

(c) If a federal government entity determines that an enrollee is retroactively enrolled in coverage (for example, medicare) the subscriber or beneficiary may be eligible for a refund of premiums and applicable premium surcharges paid during the time they were enrolled under the federal program if approved by the SEBB director or the SEBB director's designee.

(d) HCA errors will be corrected by returning all excess premiums and applicable premium surcharges paid by the SEBB organization, subscriber, or beneficiary.

(e) SEBB organization errors will be corrected by returning all excess premiums and applicable premium surcharges paid by the school employee or beneficiary as described in WAC 182-30-060 (4) and (5).

AMENDATORY SECTION (Amending WSR 20-16-067, filed 7/28/20, effective 8/28/20)

WAC 182-30-050 What are the requirements regarding premium surcharges? (1) A subscriber's account will incur a premium surcharge in addition to the subscriber's monthly medical premium, when any enrollee, (~~(thirteen)~~) 13 years and older, engages in tobacco use.

(a) A subscriber must attest to whether any enrollee, (~~(thirteen)~~) 13 years and older, enrolled in their school employees benefits board (SEBB) medical engages in tobacco use. The subscriber must attest as described in (a)(i) through (~~(v)~~) (vi) of this subsection:

(i) A school employee who is newly eligible or regains eligibility for the employer contribution toward SEBB benefits must complete the required form to enroll in SEBB medical as described in WAC 182-30-080 (1) or (3). The school employee must include their attestation on that form. The school employee must submit the form to their SEBB organization. If the school employee's attestation results in a premium surcharge, it will take effect the same date as SEBB medical begins;

(ii) If there is a change in the tobacco use status of any enrollee, (~~(thirteen)~~) 13 years and older on the subscriber's SEBB medical, the subscriber must update their attestation on the required form. A school employee must submit the form to their SEBB organization. (~~(A)~~) Any other subscriber (~~(on continuation coverage)~~) must submit their (~~(updated)~~) form to the SEBB program. The attestation change will apply as follows:

- A change that results in a premium surcharge will begin the first day of the month following the status change. If that day is the first of the month, the change to the surcharge begins on that day.

- A change that results in removing the premium surcharge will begin the first day of the month following receipt of the attestation. If that day is the first of the month, the change to the surcharge begins on that day.

(iii) If a subscriber submits the required form to enroll a dependent, (~~(thirteen)~~) 13 years and older, in SEBB medical as described in WAC 182-31-150, the subscriber must attest for their dependent on the required form. A school employee must submit the form to their SEBB organization. (~~(A)~~) Any other subscriber (~~(on continuation coverage)~~) must submit their form to the SEBB program. A change that results in a premium surcharge will take effect the same date as SEBB medical begins;

(iv) An enrollee, (~~(thirteen)~~) 13 years and older, who elects to continue medical coverage as described in WAC 182-31-090, must provide an attestation on the required form if they have not previously attested as described in (a) of this subsection. The enrollee must submit their form to the SEBB program. An attestation that results in a premium surcharge will take effect the same date as SEBB medical begins; (~~(e)~~)

(v) A school board member who enrolls in SEBB medical as described in WAC 182-30-200, must provide an attestation on the required form. The school board member must submit their form to the SEBB program. An attestation that results in a premium surcharge will take effect the same date as SEBB medical begins; or

(vi) A school employee who previously waived SEBB medical must complete the required form to enroll in SEBB medical as described in WAC 182-31-080(3). The school employee must submit their attestation on that form. A school employee must submit the form to their SEBB or-

ganization. An attestation that results in a premium surcharge will take effect the same date as SEBB medical begins.

Note: A school employee who waives SEBB medical as described in WAC 182-31-080 is not required to provide an attestation and no premium surcharge will be applied to their account as long as the school employee remains in waived status.

(b) A subscriber's account will incur a premium surcharge when a subscriber fails to attest to the tobacco use status of all enrollees as described in (a) of this subsection.

(c) The SEBB program will provide reasonable alternatives for enrollees who use tobacco products. A subscriber can avoid the tobacco use premium surcharge if the subscriber attests on the required form that all enrollees who use tobacco products enrolled in or accessed one of the applicable reasonable alternatives offered below:

(i) An enrollee who is (~~eighteen~~) 18 years and older and uses tobacco products is currently enrolled in the free tobacco cessation program through their SEBB medical.

(ii) An enrollee who is (~~thirteen~~) 13 through (~~seventeen~~) 17 years old and uses tobacco products accessed the information and resources aimed at teens on the Washington state department of health's website at <https://teen.smokefree.gov>.

(iii) A subscriber may contact the SEBB program to accommodate a physician's recommendation that addresses an enrollee's use of tobacco products or for information on how to avoid the tobacco use premium surcharge.

(2) A subscriber will incur a premium surcharge, in addition to the subscriber's monthly medical premium, if an enrolled spouse or state registered domestic partner has chosen not to enroll in another employer-based group medical where the spouse's or state registered domestic partner's share of the medical premium is less than (~~ninety-five~~) 95 percent of the additional cost a school employee would be required to pay to enroll a spouse or state registered domestic partner in the public employees benefits board (PEBB) Uniform Medical Plan (UMP) Classic and the benefits have an actuarial value of at least (~~ninety-five~~) 95 percent of the actuarial value of the PEBB UMP Classic's benefits.

(a) A subscriber who enrolled a spouse or state registered domestic partner under their SEBB medical may only attest during the following times:

(i) When a subscriber becomes eligible to enroll a spouse or state registered domestic partner in SEBB medical as described in WAC 182-31-150. The subscriber must complete the required form to enroll their spouse or state registered domestic partner, and include their attestation on that form. The school employee must submit the form to their SEBB organization. (~~(A)~~) Any other subscriber (~~(on continuation coverage)~~) must submit the form to the SEBB program. If the subscriber's attestation results in a premium surcharge it will take effect the same date as SEBB medical begins.

(ii) During the annual open enrollment. A subscriber must attest if during the month prior to the annual open enrollment the subscriber was:

- Incurring the surcharge;
- Not incurring the surcharge because the spouse's or state registered domestic partner's share of the medical premium through their employer-based group medical was more than (~~ninety-five~~) 95 percent of the additional cost a school employee would be required to pay to enroll a spouse or state registered domestic partner in the PEBB UMP Classic; or

- Not incurring the surcharge because the actuarial value of benefits provided through the spouse's or state registered domestic partner's employer-based group medical was less than (~~ninety-five~~) 95 percent of the actuarial value of the PEBB UMP Classic's benefits.

A subscriber must update their attestation on the required form. A school employee must submit the form to their SEBB organization. ((A)) Any other subscriber (~~(on continuation coverage)~~) must submit the form to the SEBB program. The subscriber's attestation or any correction to a subscriber's attestation must be received no later than December 31st of the year in which the annual open enrollment occurs. If the subscriber's attestation results in a premium surcharge, being added or removed, the change to the surcharge will take effect January 1st of the following year.

(iii) When there is a change in the spouse's or state registered domestic partner's employer-based group medical. A subscriber must provide evidence of the event and update their attestation on the required form. A school employee must submit the form to their SEBB organization no later than (~~sixty~~) 60 days after the spouse's or state registered domestic partner's employer-based group medical status changes. ((A)) Any other subscriber (~~(on continuation coverage)~~) must submit the form to the SEBB program no later than (~~sixty~~) 60 days after the spouse's or state registered domestic partner's employer-based group medical status changes.

- A change that results in a premium surcharge will begin the first day of the month following the status change. If that day is the first day of the month, the change to the premium surcharge begins on that day.

- A change that results in removing the premium surcharge will begin the first day of the month following receipt of the attestation. If that day is the first day of the month, the change to the premium surcharge begins on that day.

Exceptions:

- (1) A school employee who waives SEBB medical as described in WAC 182-31-080 is not required to provide an attestation and no premium surcharge will be applied to their account as long as the employee remains in waived status.
- (2) A school employee who covers their spouse or state registered domestic partner who has waived their own SEBB medical must attest as described in this subsection, but will not incur a premium surcharge if the school employee provides an attestation that their spouse or state registered domestic partner is eligible for SEBB medical.
- (3) A subscriber who covers their spouse or state registered domestic partner who elected not to enroll in a TRICARE plan must attest as described in this subsection, but will not incur a premium surcharge if the subscriber provides an attestation that their spouse or state registered domestic partner is eligible for a TRICARE plan.

(b) A premium surcharge will be applied to a subscriber who does not attest as described in (a) of this subsection.

AMENDATORY SECTION (Amending WSR 23-14-021, filed 6/23/23, effective 1/1/24)

WAC 182-30-060 How do school employees benefits board (SEBB) organizations and contracted vendors correct enrollment errors? (1) A school employees benefits board (SEBB) organization or contracted vendor that makes one or more of the following enrollment errors must correct the error as described in subsections (2) through (5) of this section.

(a) Failure to timely notify a school employee of their eligibility for SEBB benefits and the employer contribution as described in WAC 182-31-030;

(b) Failure to enroll a school employee or their dependents in SEBB benefits as elected by the school employee, if the election was timely;

(c) Failure to enroll a school employee and their dependents in SEBB benefits as described in WAC 182-30-080 (1) (b) or (3) (c);

(d) Failure to accurately reflect a school employee's premium surcharge attestation on the school employee's account;

(e) Enrolling a school employee or their dependents in SEBB insurance coverage when they are not eligible as described in WAC 182-31-040 or 182-31-140 and it is clear there was no fraud or intentional misrepresentation by the school employee involved; or

(f) Providing incorrect information, via a benefits administrator or contracted vendor, regarding SEBB benefits to the school employee that they relied upon.

(2) The SEBB organization or the applicable contracted vendor must enroll the school employee and the school employee's dependents, as elected, or terminate enrollment in SEBB benefits as described in subsection (3) of this section, reconcile premium payments and applicable premium surcharges as described in subsection (4) of this section, and provide recourse as described in subsection (5) of this section.

(3) Enrollment or termination.

(a) SEBB medical, vision, and dental enrollment is effective the first day of the month following the date the enrollment error is identified, unless the authority determines additional recourse is warranted, as described in subsection (5) of this section;

Exception: When a school employee who is called to active duty in the uniformed services under Uniformed Services Employment and Reemployment Rights Act (USERRA) loses eligibility for the employer contribution toward SEBB benefits, they regain eligibility for the employer contribution toward SEBB benefits the day they return from active duty. Employer-paid SEBB benefits will begin the first day of the month in which they return from active duty.

(b) Basic life, supplemental life, basic accidental death and dismemberment (AD&D), supplemental AD&D, employer-paid long-term disability (LTD) insurance, and employee-paid LTD insurance (~~((unless the school employee declines the employee-paid LTD insurance as described in WAC 182-30-080(1))~~) enrollment is retroactive to the first day of the month following the day the school employee became newly eligible, or the first day of the month following the date the school employee regained eligibility, as described in WAC 182-30-080;

Exception: When a school employee who is called to active duty in the uniformed services under USERRA loses eligibility for the employer contribution toward SEBB benefits, they regain eligibility for the employer contribution toward SEBB benefits the day they return from active duty. Employer-paid SEBB benefits will begin the first day of the month in which they return from active duty.

~~(c) Supplemental life, supplemental AD&D, and employee-paid LTD insurance enrollment is retroactive to the first day of the month following the day the school employee became newly eligible if the school employee elects to enroll in this coverage (or if previously elected, the first of the month following the signature date on the school employee's application for this coverage). If a SEBB organization enrollment error occurred when the school employee regained eligibility for the employer contribution following a period of leave as described in WAC 182-30-080(3):~~

~~(i) Supplemental life and supplemental AD&D is enrolled the first day of the month following the date the school employee regained eligibility, at the same level of coverage the school employee continued during the period of leave, without evidence of insurability.~~

~~(ii) If the school employee was eligible to continue supplemental life insurance and supplemental AD&D insurance during the period of leave but did not, the school employee must provide evidence of insurability and receive approval from the contracted vendor.~~

~~(iii) School employees may not continue employee-paid LTD insurance while on leave without pay as described in WAC 182-31-100. Employee-paid LTD insurance is reinstated the first day of the month~~

~~following the date the school employee regains eligibility, to the level of coverage the school employee was enrolled in prior to the period of leave, without evidence of insurability.~~

~~(d)) will begin for a newly eligible school employee as described in WAC 182-31-040, and for a school employee who regains eligibility as described in WAC 182-30-080(3). A school employee who regains eligibility may need to submit evidence of insurability for supplemental life insurance as required in WAC 182-30-080(3);~~

~~(c) If the school employee is eligible and elects (or elected) to enroll in the ((~~medical~~)) flexible spending arrangement (FSA), limited purpose FSA, or dependent care assistance program (DCAP), enrollment is limited to 60 days prior to the date enrollment is processed, but not earlier than the current plan year. If a school employee was not enrolled in a ((~~medical~~)) FSA, limited purpose FSA, or DCAP as elected, the school employee may either participate at the amount originally elected with a corresponding increase in contributions for the balance of the plan year, or participate at a reduced amount for the plan year by maintaining the per-pay period contribution in effect;~~

~~((e)) (d) If the school employee or their dependent was not eligible but still enrolled as described in subsection (1)(e) of this section, the employee's or their dependent's SEBB benefits will be terminated prospectively effective as of the last day of the month.~~

(4) Premium payments.

(a) The SEBB organization must remit to the authority the employer contribution and the school employee contribution for health plan premiums, applicable premium surcharges, basic life, basic AD&D, and employer-paid LTD insurance starting the date SEBB benefits begin as described in subsections (3) and (5)(a)(i) of this section. If a SEBB organization failed to notify a newly eligible school employee of their eligibility for SEBB benefits, the SEBB organization may only collect the school employee contribution for health plan premiums and applicable premium surcharges for coverage for the months after the school employee was notified.

(b) When a SEBB organization fails to correctly enroll the amount of employee-paid LTD insurance elected by the school employee, premiums will be corrected as follows:

(i) When additional premiums are due to the authority, the school employee is responsible for premiums for the most recent 24 months of coverage. The SEBB organization is responsible for additional months of premiums; and

(ii) When a premium refund is due to the school employee, the LTD insurance contracted vendor is responsible for premium refunds for the most recent 24 months of coverage. The SEBB organization is responsible for additional months of premium refunds after the 24 months of coverage and the overall refunding process to the school employee.

(c) When a SEBB organization mistakenly enrolls a school employee or their dependents as described in subsection (1)(e) of this section, premiums and any applicable premium surcharges will be refunded by the SEBB organization to the school employee without rescinding the insurance coverage.

(5) Recourse.

(a) A school employee who establishes eligibility ((for SEBB)) will have benefits begin((s on the first day of the month following the date eligibility is established or the first day of work for school employees who start on or before the first day of school)) as described in WAC 182-31-040. A school employee who regains eligibility for the employer contribution toward SEBB benefits will have benefits

begin as described in WAC 182-30-080(3). Dependent eligibility is described in WAC 182-31-140, and dependent enrollment is described in WAC 182-31-150. When retroactive correction of an enrollment error is limited as described in subsection (3)(b)(~~(7)~~) and (c)(~~(7) and (d)~~) of this section, the SEBB organization must work with the school employee, and receive approval from the authority, to implement retroactive SEBB benefits within the following parameters:

- (i) Retroactive enrollment in a SEBB insurance coverage;
 - (ii) Reimbursement of claims paid;
 - (iii) Reimbursement of amounts paid by the school employee or dependent for medical, vision, and dental premiums;
 - (iv) Reimbursement of amounts paid by the school employee for the premium surcharges;
 - (v) Other legal remedy received or offered; or
 - (vi) Other recourse, upon approval by the authority.
- (b) Recourse must not contradict a specific provision of federal law or statute and does not apply to requests for noncovered services or in the case of an individual who is not eligible for SEBB benefits.

AMENDATORY SECTION (Amending WSR 21-13-115, filed 6/21/21, effective 1/1/22)

WAC 182-30-070 The employer contribution is set by the health care authority (HCA) and paid to the HCA for all eligible school employees. School employees benefits board (SEBB) organizations must pay the employer contributions to the health care authority (HCA) for SEBB insurance coverage for all eligible school employees and their enrolled dependents.

(1) Employer contributions are set by the HCA, and are subject to the approval of the governor for availability of funds as specifically appropriated by the legislature for that purpose. The employer contribution for school employees eligible under RCW 41.05.740 (6)(e) are set by the HCA.

(2) Employer contributions must include an amount determined by the HCA to pay administrative costs to administer SEBB benefits for school employees.

(3) Each school employee of a SEBB organization on leave under the federal Family and Medical Leave Act (FMLA) or the paid family medical leave program is eligible for the employer contribution as described in WAC 182-31-110.

(4) School employees of employer groups eligible under the criteria stipulated under the contract with the HCA are eligible for the employer contribution.

(5) The entire employer contribution is due and payable to HCA even if enrollment is waived as described in WAC 182-31-080, except for school employees eligible under WAC 182-30-130.

(6) The terms of payment to HCA for employer groups shall be stipulated under contract with HCA.

AMENDATORY SECTION (Amending WSR 20-16-067, filed 7/28/20, effective 8/28/20)

WAC 182-30-075 Subscriber address requirements. (1) All school employees must provide their school employees benefits board (SEBB) organization with their correct address and update their address if it changes. ((A)) Any other subscriber ((~~on continuation coverage~~)) must provide the SEBB program with their correct address and updates to their address if it changes.

(2) In the event of an appeal, the appellant must update their address as required in WAC 182-32-055.

AMENDATORY SECTION (Amending WSR 22-13-170, filed 6/22/22, effective 1/1/23)

WAC 182-30-080 When must a newly eligible school employee, or a school employee who regains eligibility for the employer contribution, elect school employees benefits board (SEBB) benefits and complete required forms? A school employee who is newly eligible or who regains eligibility for the employer contribution toward school employees benefits board (SEBB) benefits enrolls as described in this section.

(1) When a school employee is newly eligible for SEBB benefits:

(a) A school employee must complete the required forms indicating their enrollment elections, including an election to waive enrollment provided the school employee is eligible to waive as described in WAC 182-31-080. The required forms must be returned to the school employee's SEBB organization or contracted vendor. Their SEBB organization or contracted vendor must receive the forms no later than 31 days after the school employee becomes eligible for SEBB benefits under WAC 182-31-040.

(i) The school employee may enroll in supplemental life insurance up to the guaranteed issue coverage amount without evidence of insurability if the required forms are returned to the school employee's SEBB organization or contracted vendor as required. A school employee may apply for enrollment in supplemental life insurance over the guaranteed issue coverage amount at any time during the calendar year by submitting the required form to the contracted vendor for approval. For a school employee who requests a change in their supplemental life insurance after the election period described in this subsection, the change begins the first day of the month following the date the contracted vendor approves the request. A school employee may enroll in supplemental accidental death and dismemberment (AD&D) insurance at anytime without evidence of insurability by submitting the required form to the contracted vendor.

(ii) School employees are enrolled in employee-paid long-term disability (LTD) insurance automatically. A school employee may elect to reduce their employee-paid LTD insurance or decline their employee-paid LTD insurance by returning the form to their SEBB organization. A school employee may apply for a change in their employee-paid LTD insurance at any time during the calendar year by submitting the required form to their SEBB organization or the contracted vendor. For a school employee who requests a change in their employee-paid LTD insurance after the election period described in this subsection, the change begins the first day of the month following the date the SEBB organization receives the required form requesting to reduce or de-

cline the employee-paid LTD insurance, or the day of the month the contracted vendor approves the required form to increase the employee-paid LTD insurance.

(iii) If the school employee is eligible to participate in the salary reduction plan (see WAC 182-31-060), the school employee will automatically enroll in the premium payment plan upon enrollment in SEBB medical allowing medical premiums to be taken on a pretax basis. To opt out of the premium payment plan, a new school employee must complete the required form and return it to their SEBB organization. The form must be received by their SEBB organization no later than 31 days after the employee becomes eligible for SEBB benefits.

(iv) If a school employee is eligible to participate in the salary reduction plan (see WAC 182-31-060), the school employee may enroll in the state's (~~medical~~) flexible spending arrangement (FSA), limited purpose FSA, dependent care assistance program (DCAP), or both an FSA and DCAP, except as limited by subsection (4) of this section. To enroll in these SEBB benefits, the school employee must return the required form to their SEBB organization. The form must be received by the SEBB organization no later than 31 days after the school employee becomes eligible for SEBB benefits.

(b) If a newly eligible school employee's SEBB organization, or the authority's contracted vendor in the case of life insurance and AD&D, does not receive the school employee's required forms indicating medical, dental, vision, life insurance, AD&D insurance, and LTD insurance elections, and the school employee's tobacco use status attestation within 31 days of the school employee becoming eligible, their enrollment will be as follows for those elections not received within 31 days:

- (i) A medical plan determined by the health care authority (HCA);
- (ii) A dental plan determined by the HCA;
- (iii) A vision plan determined by the HCA;
- (iv) Basic life insurance;
- (v) Basic AD&D insurance;
- (vi) Employer-paid LTD insurance and employee-paid LTD insurance;
- (vii) Dependents will not be enrolled; and
- (viii) A tobacco use premium surcharge will be incurred as described in WAC 182-30-050 (1)(b).

(2) The employer contribution toward SEBB benefits ends according to WAC 182-31-050. When a school employee's employment ends, participation in the salary reduction plan ends.

(3) When a school employee regains eligibility for the employer contribution toward SEBB benefits, including following a period of leave as described in WAC 182-31-100(1) or 182-31-040 (4)(d), SEBB medical, dental, and vision begin the first day of the month following the school employee's return to work if the SEBB organization anticipates the school employee is eligible for the employer contribution.

Note: When a school employee who is called to active duty in the uniformed services under Uniformed Services Employment and Reemployment Rights Act (USERRA) loses eligibility for the employer contribution toward SEBB benefits, they regain eligibility for the employer contribution toward SEBB benefits the day they return from active duty. Employer-paid SEBB benefits will begin the first day of the month in which they return from active duty.

(a) A school employee must complete the required forms indicating their enrollment elections, including an election to waive enrollment if the school employee chooses to waive enrollment as described in WAC 182-31-080. The required forms must be returned to the school employee's SEBB organization except as described in (d) of this subsection. Forms must be received by the SEBB organization, life insurance contracted vendor, or AD&D contracted vendor, if required, no later than

31 days after the school employee regains eligibility except as described in (a) (i) and (b) of this subsection:

(i) A school employee who self-paid for supplemental life insurance or supplemental AD&D coverage after losing eligibility will maintain that level of coverage upon return;

(ii) A school employee who was eligible to continue supplemental life insurance but discontinued that supplemental coverage must submit evidence of insurability to the contracted vendor if they choose to reenroll when they regain eligibility for the employer contribution.

(b) A school employee does not have to return a form indicating employee-paid LTD insurance elections. Their employee-paid LTD insurance will be automatically reinstated effective the first day of the month following the date they regain eligibility for the employer contribution toward SEBB benefits.

(c) If a school employee's SEBB organization, or contracted vendor accepting forms directly, does not receive the required forms within 31 days of the school employee regaining eligibility, the school employee's enrollment for those elections not received will be as described in subsection (1) (b) (i) through (viii) of this section, except as described in (a) (i) and (b) of this subsection.

(d) If a school employee is eligible to participate in the salary reduction plan (see WAC 182-31-060), the school employee may enroll in the ((medical)) FSA, limited purpose FSA, DCAP, or both an FSA and DCAP, except as limited by subsection (4) of this section. To enroll in these SEBB benefits, the school employee must return the required form to the contracted vendor or their SEBB organization. The contracted vendor or school employee's SEBB organization must receive the form no later than 31 days after the school employee becomes eligible for SEBB benefits.

(4) If a school employee who is eligible to participate in the salary reduction plan (see WAC 182-31-060) is hired into a new position that is anticipated to be eligible for SEBB benefits in the same year, the school employee may not resume participation in a DCAP, a ((medical)) FSA, or a limited purpose FSA until the beginning of the next plan year, unless the time between employments is 30 days or less and within the current plan year. The school employee must notify the new SEBB organization of the transfer by providing the new SEBB organization the required form no later than 31 days after the school employee's first day of work with the new SEBB organization.

(5) A school employee will have uninterrupted coverage when moving from one SEBB organization to another within the same month or a consecutive month if they are eligible for the employer contribution towards SEBB benefits in the position they are leaving and are anticipated to be eligible for the employer contribution in the new position. SEBB benefits elections also remain the same when a school employee has a break in employment that does not interrupt their employer contribution toward SEBB benefits.

(6) A school employee returning to the same SEBB organization who is anticipated to work at least 630 hours in the coming school year, and who was receiving the employer contribution in August of the prior school year, will receive uninterrupted coverage from one school year to the next.

AMENDATORY SECTION (Amending WSR 23-14-020, filed 6/23/23, effective 1/1/24)

WAC 182-30-090 When may a subscriber change health plans? A subscriber may change health plans at the following times:

(1) **During the annual open enrollment:** A subscriber may change health plans during the school employees benefits board (SEBB) annual open enrollment period. The subscriber must submit the required enrollment forms to change their health plan. A school employee submits the enrollment forms to their SEBB organization. ((A)) Any other subscriber ((~~on continuation coverage~~)) submits the enrollment forms to the SEBB program. The required enrollment forms must be received no later than the last day of the annual open enrollment. Enrollment in the new health plan will begin January 1st of the following year.

(2) **During a special open enrollment:** A subscriber may revoke their health plan election and make a new election outside of the annual open enrollment if a special open enrollment event occurs. A special open enrollment event must be an event other than a school employee gaining initial eligibility for SEBB benefits as described in WAC 182-31-040 or regaining eligibility for SEBB benefits as described in WAC 182-30-080. The change in enrollment must be allowable under Internal Revenue Code (IRC) and Treasury regulations, and correspond to and be consistent with the event that creates the special open enrollment for the subscriber, the subscriber's dependent, or both.

A subscriber may not change their health plan during a special open enrollment if their state registered domestic partner or state registered domestic partner's child is not a tax dependent. A subscriber may change their health plan as described in subsection (1) of this section.

To make a health plan change, a subscriber must submit the required enrollment forms. The forms must be received no later than 60 days after the event occurs. A school employee submits the enrollment forms to their SEBB organization. ((A)) Any other subscriber ((~~on continuation coverage~~)) submits the enrollment forms to the SEBB program. In addition to the required forms, a subscriber must provide evidence of the event that created the special open enrollment. New health plan coverage will begin the first day of the month following the later of the event date or the date the form is received. If that day is the first of the month, the change in enrollment begins on that day. If the special open enrollment is due to the birth, adoption, or assumption of legal obligation for total or partial support in anticipation of adoption of a child, health plan coverage will begin the month in which the birth, adoption, or assumption of legal obligation for total or partial support in anticipation of adoption occurs. If the special open enrollment is due to the enrollment of an extended dependent or a dependent with a disability, the change in health plan coverage will begin the first day of the month following the later of the event date or the eligibility certification. Any one of the following events may create a special open enrollment:

(a) Subscriber acquires a new dependent due to:

(i) Marriage or registering a state registered domestic partnership;

(ii) Birth, adoption, or when the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption; or

(iii) A child becoming eligible as an extended dependent through legal custody or legal guardianship.

(b) Subscriber or a subscriber's dependent loses other coverage under a group health plan or through health insurance coverage, as defined by the Health Insurance Portability and Accountability Act (HIPAA);

(c) Subscriber has a change in employment status that affects the subscriber's eligibility for the employer contribution toward their employer-based group health plan;

(d) Subscriber has a change in employment location that affects medical plan availability. If the subscriber changes employment locations and the subscriber's current medical plan is no longer available, the subscriber must select a new medical plan as described in WAC 182-30-085(3). If the subscriber has one or more new medical plans available, the subscriber may select to enroll in a newly available plan.

(e) The subscriber's dependent has a change in their own employment status that affects their eligibility or their dependent's eligibility for the employer contribution under their employer-based group health plan;

Note: As used in (e) of this subsection "employer contribution" means contributions made by the dependent's current or former employer toward health coverage as described in Treasury Regulation 26 C.F.R. 54.9801-6.

(f) Subscriber or a subscriber's dependent has a change in residence that affects health plan availability.

(i) If the subscriber has a change in residence and the subscriber's current medical plan is no longer available, the subscriber must select a new medical plan, as described in WAC 182-30-085(3).

(ii) If the subscriber or the subscriber's dependent has a change in residence and the subscriber's current dental plan does not have available providers within 50 miles of the subscriber or the subscriber's dependent's new residence, the subscriber may select a new dental plan.

(g) A court order requires the subscriber or any other individual to provide insurance coverage for an eligible dependent of the subscriber (a former spouse or former state registered domestic partner is not an eligible dependent);

(h) Subscriber or a subscriber's dependent enrolls in coverage under medicaid or a state children's health insurance program (CHIP), or the subscriber or a subscriber's dependent loses eligibility for coverage under medicaid or CHIP;

(i) Subscriber or a subscriber's dependent becomes eligible for state premium assistance subsidy for SEBB health plan coverage from medicaid or CHIP;

(j) Subscriber or a subscriber's dependent enrolls in coverage under medicare, or the subscriber or a subscriber's dependent loses eligibility for coverage under medicare. If the subscriber's current medical plan becomes unavailable due to the subscriber's or a subscriber's dependent's enrollment in medicare, the subscriber must select a new medical plan as described in WAC 182-30-085(2);

(k) Subscriber or a subscriber's dependent's current medical plan becomes unavailable because the subscriber or enrolled dependent is no longer eligible for a health savings account (HSA). The authority may require evidence that the subscriber or subscriber's dependent is no longer eligible for an HSA;

(l) Subscriber or a subscriber's dependent experiences a disruption of care for active and ongoing treatment that could function as a reduction in benefits for the subscriber or the subscriber's dependent. The subscriber may not change their health plan election if the subscriber's or dependent's physician stops participation with the

subscriber's health plan unless the SEBB program determines that a continuity of care issue exists. The SEBB program will consider but not limit its consideration to the following:

- (i) Active cancer treatment such as chemotherapy or radiation therapy;
 - (ii) Treatment following a recent organ transplant;
 - (iii) A scheduled surgery;
 - (iv) Recent major surgery still within the postoperative period;
- or
- (v) Treatment for a high-risk pregnancy.

(m) The SEBB program determines that there has been a substantial decrease in the providers available under a SEBB medical plan.

(3) If the school employee is having premiums taken from payroll on a pretax basis, a medical plan change will not be approved if it would conflict with provisions of the salary reduction plan authorized under RCW 41.05.300.

AMENDATORY SECTION (Amending WSR 22-13-168, filed 6/21/22, effective 1/1/23)

WAC 182-30-130 What are the requirements for a school employees benefits board (SEBB) organization engaging in local negotiations regarding SEBB benefits eligibility criteria? This section describes the terms and conditions for a school employees benefits board (SEBB) organization that is engaging in local negotiations regarding eligibility for school employees as described in RCW 41.05.740 (6) (e).

(1) A SEBB organization must provide a current ratified collective bargaining agreement (CBA) and information on all eligible school employees under the CBA to the health care authority (HCA) by the start of the school year.

(2) A SEBB organization must offer all of, and only, the following SEBB benefits to employees and their dependents:

- (a) Medical (includes the wellness incentive);
- (b) Dental;
- (c) Vision;
- (d) Basic life;
- (e) Basic accidental death and dismemberment (AD&D) insurance.

(3) A SEBB organization must provide an employer contribution as described below:

(a) The subscriber-only employer medical contribution (EMC) amount for school employees eligible under RCW 41.05.740 (6) (d) multiplied by the premium tier ratio associated with the enrollment tier selected by the school employee;

(b) One hundred percent of the cost for the school employee dental plan multiplied by the enrollment tier selected by the school employee;

(c) One hundred percent of the cost for the school employee vision plan multiplied by the enrollment tier selected by the school employee;

(d) One hundred percent of the cost for basic life and accidental death and dismemberment (AD&D) insurance;

(e) One hundred percent of the cost of the administrative fee charged by the HCA; and

(f) One hundred percent of the monthly K-12 remittance for deposit in the retired school employees' subsidy account.

(4) A SEBB organization providing SEBB benefits as described in this section may do so by group as described in (a) through (d) of this subsection:

- (a) The entire SEBB organization;
- (b) ((A)) An entire collective bargaining unit;
- (c) A group containing all nonrepresented school employees; or
- (d) A combination of (b) and (c) of this subsection.

(5) A SEBB organization must establish a threshold of anticipated work hours no less than 180 hours but less than the minimum hours to meet SEBB eligibility under WAC 182-31-040 within a school year.

(6) All of the rules in chapters 182-30, 182-31, and 182-32 WAC apply, except for all rules governing SEBB benefits that are not available to school employees whose eligibility is established under this section. The following benefits are not available to school employees whose eligibility is established under this section:

- (a) Long-term disability (LTD);
- (b) ((Medical)) Flexible spending arrangement (FSA) or limited purpose FSA;
- (c) Dependent care assistance program (DCAP);
- (d) Supplemental life insurance; and
- (e) Supplemental accidental death and dismemberment insurance.

(7) If a school employee waives medical under this section, there is no requirement to send the employer contribution to the HCA as required in WAC 182-30-070((+4)) (5).

(8) Eligibility determinations must align with the SEBB program's status as a governmental plan under Section 3(32) of the Employee Retirement Income Security Act of 1974 (ERISA) as amended. This means the SEBB organization may only consider school employees whose services are substantially all in the performance of essential governmental functions, but not in the performance of commercial activities, whether or not those activities qualify as essential governmental functions to be eligible.

(9) A SEBB organization providing SEBB benefits to a group of school employees under this section must notify the SEBB program each time the CBA is renegotiated.

AMENDATORY SECTION (Amending WSR 21-13-117, filed 6/21/21, effective 1/1/22)

WAC 182-30-140 What is the process for school districts to offer optional benefits?

(1) School districts may offer optional benefits that do not compete with any form of the basic or optional benefits offered in the school employees' benefits board (SEBB) program either under the SEBB's authority in RCW 41.05.740 or offered under the health care authority's (HCA) authority in the salary reduction plan authorized in RCW 41.05.300 and 41.05.310. Optional benefits must be paid for by the school employee without an employer contribution, except for when a school employee participates in voluntary employees' beneficiary association accounts (VEBA), which may have an employer contribution as described in RCW 28A.400.210(3). Optional benefits may include:

- (a) Emergency transportation;
- (b) Identity protection;
- (c) Legal aid;
- (d) Long-term care insurance;

- (e) Noncommercial personal automobile insurance;
 - (f) Personal homeowner's or renter's insurance;
 - (g) Pet insurance;
 - (h) Specified disease or illness-triggered fixed payment insurance, hospital confinement fixed payment insurance, or other fixed payment insurance offered as an independent, noncoordinated benefit regulated by the office of the insurance commissioner;
 - (i) Travel insurance; and
 - (j) VEBA.
- (2) Any school districts providing optional benefits must:
- (a) Report optional benefits on the form designed and communicated by the HCA; and
 - (b) Submit the form so it is received by December 1st of each year for the following calendar year as required in RCW 28A.400.280 (2) (b).
- (3) The HCA, in consultation with the SEBB will review the optional benefits offered by school districts as described in (~~section 3, chapter 231, Laws of 2020 (HB 2458-)~~) RCW 41.05.745(2).

NEW SECTION

WAC 182-30-200 Employer group application process. This section applies to employer groups as defined in WAC 182-30-020. An employer group may apply to obtain school employees benefits board (SEBB) insurance coverage through a contract with the health care authority (HCA).

(1) Employer groups with less than 500 school employees must apply at least 60 days before the requested coverage effective date. Employer groups with 500 or more school employees but with less than 5,000 school employees must apply at least 90 days before the requested effective date.

Employer groups with 5,000 or more school employees must apply at least 120 days before the requested coverage effective date.

To apply, employer groups must submit the documents and information described in subsection (2) of this section to the SEBB program as follows:

(a) Tribal schools are required to provide the documents and information described in subsection (2) (a) through (f) of this section; and

(b) All employee organizations representing school employees, regardless of the number of school employees, will have their application approved or denied through the evaluation criteria described in WAC 182-30-210 and are required to provide the documents and information described in subsection (2) (a) through (d), (f), and (g) of this section.

(2) Documents and information required with application:

(a) A letter of application that includes the information described in (a) (i) through (iv) of this subsection:

(i) A reference to the group's authorizing statute;

(ii) A description of the organizational structure of the group and a description of the employee bargaining unit or group of nonrepresented employees for which the group is applying;

(iii) Tax identification number; and

(iv) A statement of whether the group is applying to obtain only medical or all available SEBB insurance coverages.

(b) A resolution from the group's governing body authorizing the purchase of SEBB insurance coverage.

(c) A signed governmental function attestation document that attests to the fact that employees for whom the group is applying are governmental employees whose services are substantially all in the performance of essential governmental functions.

(d) A member level census file for all of the school employees for whom the group is applying. The file must be provided in the format required by the authority and contain the following demographic data, by member, with each member classified as school employee, spouse or state registered domestic partner, or child:

(i) Employee ID (any identifier which uniquely identifies the school employee; for dependents the school employee's unique identifier must be used);

(ii) Age;

(iii) Birth sex;

(iv) First three digits of the member's zip code based on residence;

(v) Indicator of whether the school employee is active or retired, if the group is requesting to include retirees; and

(vi) Indicator of whether the member is enrolled in coverage.

(e) Historical claims and cost information that include the following:

(i) Large claims history for 24 months by quarter that excludes the most recent three months;

(ii) Ongoing large claims management report for the most recent quarter provided in the large claims history;

(iii) Summary of historical plan costs; and

(iv) The director or the director's designee may make an exception to the claims and cost information requirements based on the size of the group, except that the current health plan does not have a case management program, then the primary diagnosis code designated by the authority must be reported for each large claimant. If the code indicates a condition which is expected to continue into the next quarter, the claim is counted as an ongoing large claim. If historical claims and cost information as described in (e) (i) through (iii) of this subsection are unavailable, the director or the director's designee may make an exception to allow all of the following alternative requirements:

- A letter from their carrier indicating they will not or cannot provide claims data.

- Provide information about the health plan most school employees are enrolled in by completing the actuarial calculator authorized by the SEBB program.

- Current premiums for the health plan.

(f) If the application is for a subset of the group's school employees (e.g., bargaining unit), the group must provide a member level census file of all school employees eligible under their current health plan who are not included on the member level census file in (d) of this subsection. This includes retired school employees participating under the group's current health plan. The file must include the same demographic data by member.

(g) Employer groups described in subsection (1) (b) of this section must submit to an actuarial evaluation of the group provided by an actuary designated by the SEBB program. The group must pay for the cost of the evaluation. This cost is nonrefundable. A group that is approved will not have to pay for an additional actuarial evaluation

if it applies to add another bargaining unit within two years of the evaluation. Employer groups of this size must provide the following:

- (i) Large claims history for 24 months, by quarter that excludes the most recent three months;
- (ii) Ongoing large claims management report for the most recent quarter provided in the large claims history;
- (iii) Executive summary of benefits;
- (iv) Summary of benefits and certificate of coverage; and
- (v) Summary of historical plan costs.

Exception: If the current health plan does not have a case management program, then the primary diagnosis code designated by the authority must be reported for each large claimant. If the code indicates a condition which is expected to continue into the next quarter, the claim is counted as an ongoing large claim.

(3) The authority may automatically deny a group application if the group fails to provide the required information and documents described in this section.

NEW SECTION

WAC 182-30-205 May employer groups applying for participation in school employees benefits board (SEBB) insurance coverage include their retirees? An employer group that applies for participation in school employees benefits board (SEBB) insurance coverage under WAC 182-30-200 will have a one-time opportunity to request inclusion of retired school employees who are covered under its retiree health plan at the time of application. The retirees included will be enrolled in public employees benefits board (PEBB) retiree insurance coverage.

(1) The authority will use the following criteria to approve or deny a request to include retirees:

- (a) The employer group retiree health plan must have existed at least three years before the date of the employer group application;
- (b) Eligibility for coverage under the employer groups' retiree health plan must have required immediate enrollment in retiree health plan coverage upon termination of school employee coverage; and
- (c) The retirees must have maintained continuous enrollment in the employer group retiree health plan.

(2) If the employer group's application is for a subset of their school employees (e.g., bargaining unit) only retirees previously within the bargaining unit may be included in the transfer.

(3) Retirees and dependents included in the transfer unit are subject to the enrollment and eligibility rules outlined in chapters 182-08, 182-12, and 182-16 WAC.

(4) School employees eligible for retirement subsequent to the employer group transferring to SEBB health plan coverage must meet retiree eligibility as outlined in chapter 182-12 WAC.

(5) To protect the integrity of the risk pool, if total employer group retiree enrollment exceeds 10 percent of the total PEBB retiree population, the PEBB program may:

- (a) Stop approving inclusion of retirees with employer group transfers; or
- (b) Adopt a new rating methodology reflective of the cost of covering employer group retirees.

NEW SECTION

WAC 182-30-210 How will the health care authority (HCA) decide to approve or deny a group application? This section applies to employee organizations representing school employees regardless of the number of school employees. Group applications for participation in school employees benefits board (SEBB) insurance coverage provided through the SEBB program are approved or denied by the health care authority (HCA) based upon the information and documents submitted by the group and the employer group evaluation (EGE) criteria described in this rule.

(1) Groups are evaluated as a single unit. To support this requirement the group must provide a census file, as described in WAC 182-30-200 (2)(d), and additional information as described in WAC 182-30-200 (2)(g) for all school employees eligible to participate under the group's current health plan. If the group's application is for both school employees and retirees, the census file data and additional information for retired employees participating under the group's current health plan must also be included.

(a) If the group's application is only for participation of its school employees, the SEBB enrollment data used to evaluate the group will be SEBB organization school employee data.

(b) If a group's application is for participation of both its school employees and retirees, the SEBB enrollment data used to evaluate the group will include data from the public employees benefits board (PEBB) nonmedicare risk pool limited to state retiree enrollment data and state agency employee data.

(2) A group must pass the EGE criteria or the actuarial evaluation required in subsection (3) of this section as a single unit before the application can be approved. For purposes of this section, a single unit includes all school employees eligible under the group's current health plan. If the application is only for a bargaining unit, then the bargaining unit must be evaluated using the EGE criteria in addition to all eligible school employees of the group as a single unit. If the group passes the EGE criteria as a single unit, but an individual bargaining unit does not, the group may only participate if all eligible employees of the entity participate.

(3) The authority will use the following criteria to evaluate the group.

(a) The member level census file demographic data must indicate a relative underwriting factor that is equal to or better than the relative underwriting factor as determined by the authority for the like population within the SEBB and nonmedicare PEBB risk pool as described in subsection (1) of this section;

(b) One of the following two conditions must be met:

(i) The frequency of large claims must be less than or equal to the SEBB historical benchmark frequency for the SEBB like population within the SEBB and nonmedicare PEBB population as described in subsection (1) of this section;

(ii) The ongoing large claims management report must demonstrate that the frequency of ongoing large claims is less than or equal to the recurring benchmark frequency for the SEBB like population within the SEBB and nonmedicare PEBB population as described in subsection (1) of this section.

(c) Provide an executive summary of benefits;

(d) Provide a summary of benefits and certificate of coverage;

(e) Provide a summary of historical plan costs; and

(f) The evaluation of criteria in (c), (d), and (e) of this subsection must indicate that the historical cost of benefits for the group is equal to or less than the historical cost of the PEBB like population within the nonmedicare population as described in subsection (1) of this section for a comparable plan design.

(4) An approved group application is valid for 365 calendar days after the date the application is approved by the authority. If a group applies to add additional bargaining units after the 365 calendar day period has ended, the group must be reevaluated.

(5) An entity whose group application is denied may appeal the authority's decision to the SEBB appeals unit through the process described in WAC 182-32-2060.

(6) An entity whose group application is approved may purchase insurance for its employees under the participation requirements described in WAC 182-30-215.

NEW SECTION

WAC 182-30-215 Employer group participation requirements. This section applies to an employer group as defined in WAC 182-30-020 that is approved to purchase insurance for its employees through a contract with the health care authority (HCA).

(1) Prior to enrollment in school employees benefits board (SEBB) insurance coverage the employer group must:

(a) Remit to the authority the required start-up fee in the amount publicized by the SEBB program;

(b) Sign a contract with the authority;

(c) Determine employee and dependent eligibility and terms of enrollment for SEBB insurance coverage by the criteria outlined in this chapter and chapter 182-31 WAC unless otherwise approved by the authority in the employer group's contract with the authority;

(d) Determine eligibility in order to ensure the SEBB program's continued status as a governmental plan under Section 3(32) of the Employee Retirement Income Security Act of 1974 (ERISA) as amended. This means the employer group may only consider employees whose services are substantially all in the performance of essential governmental functions, but not in the performance of commercial activities, whether or not those activities qualify as essential governmental functions to be eligible; and

(e) Ensure SEBB insurance coverage is the only employer-sponsored coverage available to groups of employees eligible for SEBB insurance coverage under the contract.

(2) Pay premiums under its contract with the authority. The premium rate structure for employer groups will be a tiered rate based on health plan election and family enrollment. Employer groups must collect an amount equal to the premium surcharges applied to an employee's account by the authority from their employees and include the funds in their payment to the authority.

(3) If an employer group wants to make subsequent changes to the contract, the changes must be submitted to the authority for approval.

(4) The employer group must maintain participation in SEBB insurance coverage for at least one full year. An employer group may only end participation at the end of a plan year unless the authority approves a mid-year termination. To end participation, an employer group must provide written notice to the SEBB program at least 60 days be-

fore the requested termination date. If an employer group terminates participation in SEBB insurance coverage, they must:

(a) Notify all their school employees and dependents who are enrolled in SEBB insurance coverage 45 days prior to the employer group's date of termination; and

(b) Retirees enrolled in PEBB retiree insurance coverage must be notified 45 days prior to the employer group's date of termination.

(5) Upon approval to purchase insurance through a contract with the authority, the employer group must provide a list of school employees and dependents that are enrolled in Consolidated Omnibus Budget Reconciliation Act (COBRA) coverage and the remaining number of months available to them based on their qualifying event. These school employees and dependents may enroll in a SEBB health plan as COBRA subscribers for the remainder of the months available to them based on their qualifying event.

(6) Enrollees in SEBB insurance coverage under one of the continuation of coverage provisions allowed under chapter 182-31 WAC or retirees included in the transfer unit as allowed under WAC 182-30-205 cease to be eligible as of the last day of the contract and may not continue enrollment beyond the end of the month in which the contract is terminated.

Exception: If an employer group ends participation, retired and disabled school employees who are enrolled in public employees benefits board (PEBB) retiree insurance coverage cease to be eligible under WAC 182-12-171, but may continue health plan enrollment as described in WAC 182-12-232.

(7) Employer groups that enter into a contractual agreement with the authority on or after May 4, 2023, and whose contractual agreement is subsequently terminated, shall make a one-time payment to the authority for each of the employer group's retired or disabled employees who continue their participation in insurance plans and contracts under WAC 182-12-232.

(a) For each of the employer group's retired or disabled employees who will be continuing their participation, the authority shall determine the one-time payment by:

(i) Calculating the difference in cost between the rate charged to retired or disabled employees as described in RCW 41.05.080(2); and

(ii) The actuarially determined value of the medical benefits for retired and disabled employees who are not eligible for parts A and B of medicare; and

(iii) Multiplying that difference by the number of months until the retired or disabled employee would become eligible for medicare.

(b) Employer groups shall not be entitled to any refund of the amount paid to the authority as described in this subsection.

(8) Employer groups eligible for SEBB benefits are subject to the terms and conditions set forth by the HCA. Employer groups are subject to the same rules as SEBB organizations in chapters 182-30, 182-31, and 182-32 WAC, except for rules governing SEBB benefits that are not available to school employees of an employer group.

(9) School employees of an employer group are subject to the same rules as school employees of a SEBB organization in chapters 182-30, 182-31, and 182-32 WAC, except for rules governing SEBB benefits that are not available to school employees of an employer group.

OTS-5356.2

AMENDATORY SECTION (Amending WSR 19-14-093, filed 7/1/19, effective 8/1/19)

WAC 182-31-010 Purpose. The purpose of this chapter is to establish school employees benefits board (SEBB) eligibility criteria for and the effective date of enrollment in SEBB approved benefits. The rules within this chapter are applicable for school employees eligible for SEBB benefits under RCW 41.05.740(6) and for school board members eligible for SEBB benefits under RCW 41.05.743.

AMENDATORY SECTION (Amending WSR 22-13-168, filed 6/21/22, effective 1/1/23)

WAC 182-31-020 Definitions. The following definitions apply throughout this chapter unless the context clearly indicates another meaning:

"Accidental death and dismemberment insurance" or "AD&D" means basic accidental death and dismemberment (AD&D) insurance paid for by the SEBB organization, as well as supplemental accidental death and dismemberment insurance offered to and paid for by school employees for themselves and their dependents.

"Annual open enrollment" means an annual event set aside for a period of time by the HCA when subscribers may make changes to their health plan enrollment and salary reduction elections for the following plan year. During the annual open enrollment, subscribers may transfer from one health plan to another, enroll or remove dependents from coverage, enroll in coverage, or waive enrollment (see definition of "waive" in this section). School employees eligible to participate in the salary reduction plan may enroll in or change their election under the dependent care assistance program (DCAP), the (~~medical~~) flexible spending arrangement (FSA), or limited purpose FSA. They may also enroll in or opt out of the premium payment plan.

"Authority" or "HCA" means the Washington state health care authority.

"Board" means the school employees benefits board established under provisions of RCW 41.05.740.

"Calendar days" or "days" means all days including Saturdays, Sundays, and all state legal holidays as set forth in RCW 1.16.050.

"Consolidated Omnibus Budget Reconciliation Act" or "COBRA" means continuation coverage as administered under 42 U.S.C. Secs. 300bb-1 through 300bb-8.

"Continuation coverage" means the temporary continuation of SEBB benefits available to enrollees under the Consolidated Omnibus Budget Reconciliation Act (COBRA), 42 U.S.C. Secs. 300bb-1 through 300bb-8, the Uniformed Services Employment and Reemployment Rights Act (USERRA), 38 U.S.C. Secs. 4301 through 4335, or SEBB policies.

"Contracted vendor" means any person, persons, or entity under contract or agreement with the HCA to provide goods or services for the provision or administration of SEBB benefits. The term "contracted vendor" includes subcontractors of the HCA and subcontractors of any person, persons, or entity under contract or agreement with the HCA that provide goods or services for the provision or administration of SEBB benefits.

"Dependent" means a person who meets eligibility requirements in WAC 182-31-140.

"Dependent care assistance program" or "DCAP" means a benefit plan whereby school employees may pay for certain employment related dependent care with pretax dollars as provided in the salary reduction plan under chapter 41.05 RCW pursuant to 26 U.S.C. Sec. 129 or other sections of the Internal Revenue Code.

"Director" means the director of the authority.

"Documents" means papers, letters, writings, electronic mail, electronic files, or other printed or written items.

"Effective date of enrollment" means the first date when an enrollee is entitled to receive covered benefits.

"Employer-based group health plan" means group medical, group vision, and group dental related to a current employment relationship. It does not include medical, vision, or dental coverage available to retired employees, individual market medical or dental coverage, or government-sponsored programs such as medicare or medicaid.

"Employer-based group medical" means group medical related to a current employment relationship. It does not include medical coverage available to retired employees, individual market medical coverage, or government-sponsored programs such as medicare or medicaid.

"Employer contribution" means the funding amount paid to the HCA by a school employees benefits board (SEBB) organization for its eligible school employees as described under WAC 182-30-130 and 182-31-040.

"Employer group" means an employee organization representing school employees and a tribal school as defined in RCW 28A.715.010, obtaining school employee benefits through a contractual agreement with the authority to participate in benefit plans developed by the school employees benefits board as described in WAC 182-30-215.

"Enrollee" means a person who meets all eligibility requirements defined in chapter 182-31 WAC or WAC 182-30-130, who is enrolled in school employees benefits board (SEBB) benefits, and for whom applicable premium payments have been made.

"Flexible spending arrangement" or "FSA" means a benefit plan whereby eligible school employees may reduce their salary before taxes to pay for medical expenses not reimbursed by insurance as provided in the salary reduction plan established under chapter 41.05 RCW pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.

"Forms" or "form" means both paper forms and forms completed electronically.

"Health plan" means a plan offering medical, vision, dental, or any combination of these coverages, developed by the board and provided by a contracted vendor or self-insured plans administered by the HCA.

"Layoff," for purposes of this chapter, means a change in employment status due to a SEBB organization's lack of funds or a SEBB organization's organizational change.

"Life insurance" means basic life insurance paid for by the SEBB organization, as well as supplemental life insurance or supplemental dependent life insurance offered to and paid for by school employees for themselves and their dependents.

"Limited purpose flexible spending arrangement" or "limited purpose FSA" means a benefit plan whereby eligible school employees may reduce their salary before taxes to pay for dental and vision expenses not reimbursed by insurance as provided in the salary reduction plan established under chapter 41.05 RCW pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.

"Long-term disability insurance" or "LTD insurance" means employer-paid long-term disability insurance and employee-paid long-term disability insurance offered by the SEBB program.

~~("Medical flexible spending arrangement" or "medical FSA" means a benefit plan whereby eligible school employees may reduce their salary before taxes to pay for medical expenses not reimbursed by insurance as provided in the salary reduction plan established under chapter 41.05 RCW pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.)~~

"PEBB" means the public employees benefits board.

"PEBB program" means the program within the HCA that administers insurance and other benefits for eligible employees (as described in WAC 182-12-114), eligible retired employees (as described in WAC 182-12-171, 182-12-180, and 182-12-211), eligible survivors (as described in WAC 182-12-180, 182-12-250, and 182-12-265), eligible dependents (as described in WAC 182-12-250 and 182-12-260) and others as defined in RCW 41.05.011 and 41.05.080 (1) (a) (ii).

"Plan year" means the time period established by the authority.

"Premium payment plan" means a benefit plan whereby school employees may pay their share of group health plan premiums with pretax dollars as provided in the salary reduction plan under chapter 41.05 RCW pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.

"Premium surcharge" means a payment required from a subscriber, in addition to the subscriber's medical premium contribution, due to an enrollee's tobacco use or an enrolled subscriber's spouse or state registered domestic partner choosing not to enroll in their employer-based group medical when:

- The spouse's or state registered domestic partner's share of the medical premium is less than 95 percent of the additional cost an employee would be required to pay to enroll a spouse or state registered domestic partner in the public employees benefits board (PEBB) Uniform Medical Plan (UMP) Classic; and

- The benefits have an actuarial value of at least 95 percent of the actuarial value of PEBB UMP Classic benefits.

"Salary reduction plan" means a benefit plan whereby school employees may agree to a reduction of salary on a pretax basis to participate in the dependent care assistance program, ~~((medical))~~ flexible spending arrangement, limited purpose flexible spending arrangement, or premium payment plan offered pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.

"School board member" means the board of directors of a school district as governed by chapter 28A.343 RCW or the board of directors of an educational service district as governed by chapter 28A.310 RCW.

"School employee" means ~~((☛))~~ all employees of school districts and charter schools established under chapter 28A.710 RCW; ~~((☛))~~ represented employees of educational service districts; ~~((and☛))~~ effective January 1, 2024, all employees of educational service districts; and effective January 1, 2024, pursuant to a contractual agreement with the authority, "school employee" may also include (a) employees of employee organizations representing school employees, at the option of each such employee organization; and (b) employees of a tribal school as defined in RCW 28A.715.010, if the governing body of the tribal school seeks and receives the approval of the authority to provide any of its insurance programs by contracts with the authority, as provided in RCW 41.05.021 (1) (f) and (g).

"School employees benefits board organization" or "SEBB organization" means a public school district or educational service district or charter school established under chapter 28A.710 RCW that is required to participate in benefit plans provided by the school employees benefits board.

"School year" means school year as defined in RCW 28A.150.203(11).

"SEBB" means the school employees benefits board.

"SEBB benefits" means one or more insurance coverages or other school employee benefits administered by the SEBB program within the HCA.

"SEBB insurance coverage" means any health plan, life insurance, accidental death and dismemberment insurance, or long-term disability insurance administered as a SEBB benefit.

"SEBB program" means the program within the HCA that administers insurance and other benefits for eligible school employees (as described in WAC 182-31-040 or 182-30-130) ~~((and))~~, eligible dependents (as described in WAC 182-31-140), and eligible school board members (as described in WAC 182-31-200).

"Special open enrollment" means a period of time when subscribers may make changes to their health plan enrollment and salary reduction elections outside of the annual open enrollment period when specific life events occur. During the special open enrollment subscribers may change health plans and enroll or remove dependents from coverage. Additionally, school employees may enroll in or waive enrollment (see definition of "waive" in this section). School employees eligible to participate in the salary reduction plan may enroll in or revoke their election under the DCAP, ~~((medical))~~ FSA, limited purpose FSA, or the premium payment plan and make a new election. For special open enrollment events related to specific SEBB benefits, see WAC 182-30-090, 182-30-100, 182-31-080, and 182-31-150.

"State registered domestic partner" has the same meaning as defined in RCW 26.60.020(1) and substantially equivalent legal unions from other jurisdictions as defined in RCW 26.60.090.

"Subscriber" means the school employee ~~((or))~~, continuation coverage enrollee, or school board member who has been determined eligible by the SEBB program ~~((or))~~, SEBB organization((s)), or employer group, is enrolled in SEBB benefits, and is the individual to whom the SEBB program and contracted vendors will issue all notices, information, requests, and premium bills on behalf of an enrollee.

"Supplemental coverage" means any life insurance or accidental death and dismemberment (AD&D) insurance coverage purchased by the school employee in addition to the coverage provided by the school employees benefits board (SEBB) organization.

"Tobacco products" means any product made with or derived from tobacco that is intended for human consumption, including any component, part, or accessory of a tobacco product. This includes, but is not limited to, cigars, cigarettes, pipe tobacco, chewing tobacco, snuff, and other tobacco products. It does not include e-cigarettes or United States Food and Drug Administration (FDA) approved quit aids.

"Tobacco use" means any use of tobacco products within the past two months. Tobacco use, however, does not include the religious or ceremonial use of tobacco.

"Tribal school" has the same meaning as defined in RCW 28A.715.010.

"Waive" means an eligible school employee affirmatively declining enrollment in SEBB medical because the school employee is enrolled in

other employer-based group medical, a TRICARE plan, or medicare as allowed under WAC 182-31-080. A school employee may waive enrollment in SEBB medical to enroll in PEBB medical only if they are enrolled in PEBB dental and PEBB vision. A school employee who waives enrollment in SEBB medical to enroll in PEBB medical also waives enrollment in SEBB dental and SEBB vision.

"Week" means a seven-day period starting on Sunday and ending on Saturday.

AMENDATORY SECTION (Amending WSR 22-13-168, filed 6/21/22, effective 1/1/23)

WAC 182-31-060 Who is eligible to participate in the salary reduction plan? (1) School employees eligible for the employer contribution toward school employees benefits board (SEBB) benefits are eligible to participate in the premium payment plan under the state's salary reduction plan. School employees eligible for SEBB benefits as described in WAC 182-31-040 may also elect to participate in the (~~medical~~) FSA, limited purpose FSA, or DCAP programs provided they elect participation within the time frames described in WAC 182-30-100.

(2) School employees of employer groups, as defined in WAC 182-31-020, are not eligible to participate in the state's salary reduction plan.

AMENDATORY SECTION (Amending WSR 20-16-067, filed 7/28/20, effective 8/28/20)

WAC 182-31-100 What options for continuation coverage are available to school employees and their dependents during certain types of leave or when employment ends due to a layoff? School employees who have established eligibility for school employees benefits board (SEBB) benefits as described in WAC 182-31-040 may continue coverage for themselves and their dependents during certain types of leave or when their employment ends due to a layoff.

(1) School employees who are no longer eligible for the employer contribution toward SEBB benefits due to an event described in (b) (i) through (v) of this subsection may continue coverage by self-paying the premium and applicable premium surcharges set by the health care authority (HCA) from the date eligibility for the employer contribution is lost:

(a) School employees may continue any combination of medical, dental, or vision, and may also continue life insurance and accidental death and dismemberment (AD&D) insurance. If life insurance or AD&D insurance is elected, both basic life and basic AD&D insurance must be continued. School employees who continue basic life insurance and basic AD&D insurance may also continue supplemental life and AD&D insurance;

(b) School employees in the following circumstances who lose their eligibility for the employer contribution toward SEBB benefits qualify to continue coverage under this subsection:

(i) School employees who are on authorized leave without pay;

(ii) School employees who are receiving time-loss benefits under workers' compensation;

(iii) School employees who are called to active duty in the uniformed services as defined under USERRA;

(iv) School employees whose employment ends due to a layoff as defined in WAC 182-31-020; and

(v) School employees who are applying for disability retirement.

(c) The school employee's elections must be received by the SEBB program no later than (~~sixty~~) 60 days from the date the school employee's SEBB health plan coverage ended or from the postmark date on the election notice sent by the SEBB program, whichever is later;

(d) School employees may self-pay for a maximum of (~~twenty-nine~~) 29 months. The school employee's first premium payment and applicable premium surcharges are due no later than (~~forty-five~~) 45 days after the election period ends as described in (c) of this subsection, except as described in WAC 182-30-040 (1)(a).

Premiums and applicable premium surcharges associated with continuing SEBB medical, must be made to the HCA as well as premiums associated with continuing SEBB dental and vision insurance coverage. Premiums associated with continuing life insurance coverage or AD&D insurance coverage must be made to the contracted vendor. Following the school employee's first premium payment, the school employee must pay the premium amounts for SEBB insurance coverage and applicable premium surcharges as premiums become due; and

(e) If the school employee's monthly premium or applicable premium surcharges remain unpaid for (~~sixty~~) 60 days from the original due date, the school employee's SEBB insurance coverage will be terminated retroactive to the last day of the month for which the monthly premium and applicable premium surcharges were paid as described in WAC 182-30-040 (1)(c).

(2) The number of months that school employees self-pay the premium while eligible as described in subsection (1) of this section will count toward the total months of continuation coverage allowed under the federal Consolidated Omnibus Budget Reconciliation Act (COBRA). School employees who are no longer eligible for continuation coverage as described in subsection (1) of this section but who have not used the maximum number of months allowed under COBRA coverage may continue medical, dental, vision, or any combination of them for the remaining difference in months by self-paying the premium and applicable premium surcharges as described in WAC 182-31-090.

AMENDATORY SECTION (Amending WSR 22-13-168, filed 6/21/22, effective 1/1/23)

WAC 182-31-150 When may subscribers enroll or remove eligible dependents? (1) **Enrolling dependents in school employees benefits board (SEBB) health plan coverage, supplemental dependent life insurance, and accidental death and dismemberment (AD&D) insurance.** A dependent must be enrolled in the same health plan coverage as the subscriber, and the subscriber must be enrolled in health plan coverage to enroll their dependent in health plan coverage. A dependent with more than one source of eligibility for enrollment in the public employees benefits board (PEBB) and SEBB programs is limited to a single enrollment in medical, dental, and vision plans in either the PEBB or SEBB program. Subscribers must satisfy the enrollment requirements as

described in subsection (4) of this section and may enroll eligible dependents at the following times:

(a) **When the subscriber becomes eligible** and enrolls in SEBB benefits. If eligibility is verified the dependent's effective date will be as follows:

(i) SEBB health plan coverage will be the same as the subscriber's effective date;

(ii) Supplemental dependent life insurance or AD&D insurance, if elected, will be effective the first day of the month following the date the contracted vendor receives the required form or approves the enrollment. A newly born child must be at least 14 days old before supplemental dependent life insurance or AD&D insurance coverage is effective.

(b) **During the annual open enrollment.** SEBB health plan coverage begins January 1st of the following year;

(c) **During special open enrollment.** Subscribers may enroll dependents during a special open enrollment as described in subsection (3) of this section;

(d) **When a National Medical Support Notice (NMSN)** requires a subscriber to cover a dependent child in health plan coverage as described in WAC 182-31-160; or

(e) **Any time during the calendar year for supplemental dependent life insurance or AD&D insurance** by submitting the required form to the contracted vendor for approval. Evidence of insurability may be required for supplemental dependent life insurance but will not be required for supplemental AD&D insurance. Supplemental dependent life insurance or AD&D insurance will be effective the first day of the month following the date the contracted vendor receives the required form or approves the enrollment. A newly born child must be at least 14 days old before supplemental dependent life insurance or AD&D insurance coverage is effective.

(2) **Removing dependents from SEBB health plan coverage or supplemental dependent life insurance or AD&D insurance.**

(a) **A dependent's eligibility for enrollment in SEBB health plan coverage or supplemental dependent life insurance or AD&D insurance ends the last day of the month the dependent** meets the eligibility criteria as described in WAC 182-31-140. Subscribers must provide notice when a dependent is no longer eligible due to divorce, annulment, dissolution, or qualifying event of dependent ceasing to be eligible as a dependent child as described in WAC 182-31-140(3). For supplemental dependent life insurance or AD&D insurance, subscribers must notify the contracted vendor on the required form, in writing, or by telephone when a dependent is no longer eligible. Contact information for the contracted vendor may be found at hca.wa.gov/sebb-employee-contact-plan. For SEBB health plan coverage, the notice must be received within 60 days of the last day of the month the dependent loses eligibility. School employees must notify their SEBB organization when a dependent is no longer eligible for SEBB health plan coverage, except as required under WAC 182-31-140 (3)(f)(ii). All other subscribers must notify the SEBB program. Consequences for not submitting notice within the required 60 days include, but are not limited to:

(i) The dependent may lose eligibility to continue SEBB medical, dental, or vision under one of the continuation coverage options described in WAC 182-31-130;

(ii) The subscriber may be billed for claims paid by the health plan for services that were rendered after the dependent lost eligibility as described in WAC 182-31-130;

(iii) The subscriber may not be able to recover subscriber-paid insurance premiums for dependents that lost their eligibility; and

(iv) The subscriber may be responsible for premiums paid by the state for the dependent's health plan coverage after the dependent lost eligibility.

(b) School employees have the opportunity to remove eligible dependents:

(i) During the annual open enrollment. The dependent will be removed from SEBB health plan coverage the last day of December;

(ii) During a special open enrollment as described in subsections (3) and (4)(f) of this section;

(iii) When a NMSN requires a spouse, former spouse, or other individual to provide health plan coverage for a dependent who is already enrolled in SEBB coverage, and that health plan coverage is in fact provided as described in WAC 182-31-160(2); or

(iv) Any time during the calendar year from supplemental dependent life insurance or AD&D insurance by submitting a request to the contracted vendor on the required form, in writing, or by telephone. Contact information for the contracted vendor may be found at hca.wa.gov/sebb-employee-contact-plan.

(c) Enrollees with SEBB continuation coverage as described in WAC 182-31-090 and 182-31-100, or a school board member as described in WAC 182-31-200 may remove dependents from their SEBB health plan coverage outside of the annual open enrollment or a special open enrollment by providing written notice to the SEBB program. The dependent will be removed from the subscriber's SEBB health plan coverage prospectively. SEBB health plan coverage will end on the last day of the month in which the written notice is received by the SEBB program or on the last day of the month specified in the subscriber's written notice, whichever is later. If the written notice is received on the first day of the month, SEBB health plan coverage will end on the last day of the previous month. SEBB continuation coverage enrollees may remove dependents from supplemental dependent life insurance or AD&D insurance any time during the calendar year by submitting a request to the contracted vendor on the required form, in writing, or by telephone. Contact information for the contracted vendor may be found at hca.wa.gov/sebb-employee-contact-plan.

(3) Special open enrollment.

(a) Subscribers may enroll or remove their eligible dependents outside of the annual open enrollment if a special open enrollment event occurs. The change in enrollment must be allowable under the Internal Revenue Code and Treasury regulations, and correspond to and be consistent with the event that creates the special open enrollment for the subscriber, the subscriber's dependents, or both.

(i) SEBB health plan coverage will begin the first of the month following the later of the event date or the date the required form is received. If that day is the first of the month, the change in enrollment begins on that day.

(ii) SEBB health plan coverage for an extended dependent or a dependent with a disability will begin the first day of the month following the later of the event date or eligibility certification.

(iii) The dependent will be removed from the subscriber's SEBB health plan coverage the last day of the month following the later of the event date or the date the required form and proof of the event is received. If that day is the first of the month, the change in enrollment will be made the last day of the previous month.

(iv) If the special open enrollment is due to the birth or adoption of a child, or when the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption of a child, SEBB health plan coverage will begin or end as follows:

- For the newly born child, SEBB health plan coverage will begin the date of birth;
- For a newly adopted child, SEBB health plan coverage will begin on the date of placement or the date a legal obligation is assumed in anticipation of adoption, whichever is earlier;
- For a spouse or state registered domestic partner of a subscriber, SEBB health plan coverage will begin the first day of the month in which the event occurs. The spouse or state registered domestic partner will be removed from SEBB health plan coverage the last day of the month in which the event occurred.

(v) Supplemental dependent life insurance or AD&D insurance will begin the first day of the month following the date the contracted vendor receives the required form or approves the enrollment. A newly born child must be at least 14 days old before supplemental dependent life insurance or AD&D insurance coverage is effective.

(b) The events described in this subsection (3)(b)(i) of this section create a special open enrollment to enroll eligible dependents in supplemental dependent life insurance or AD&D insurance. Any one of the following events may create a special open enrollment to enroll or remove eligible dependents from SEBB health plan coverage:

- (i) Subscriber acquires a new dependent due to:
 - Marriage or registering a state registered domestic partnership;
 - Birth, adoption, or when a subscriber has assumed a legal obligation for total or partial support in anticipation of adoption; or
 - A child becoming eligible as an extended dependent through legal custody or legal guardianship.

(ii) Subscriber or a subscriber's dependent loses other coverage under a group health plan or through health insurance coverage, as defined by the Health Insurance Portability and Accountability Act (HIPAA);

(iii) Subscriber has a change in employment status that affects the subscriber's eligibility for their employer contribution toward their employer-based group health plan;

(iv) The subscriber's dependent has a change in their own employment status that affects their eligibility or their dependent's eligibility for the employer contribution under their employer-based group health plan;

Note: As used in (iv) of this subsection "employer contribution" means contributions made by the dependent's current or former employer toward health coverage as described in Treasury Regulation 54.9801-6.

(v) Subscriber or a subscriber's dependent has a change in enrollment under an employer-based group health plan during its annual open enrollment that does not align with the SEBB program's annual open enrollment;

(vi) Subscriber's dependent has a change in residence from outside of the United States to within the United States, or from within the United States to outside of the United States and that change in residence results in the dependent losing their health insurance;

(vii) A court order requires the subscriber or any other individual to provide insurance coverage for an eligible dependent of the subscriber (a former spouse or former state registered domestic partner is not an eligible dependent);

(viii) Subscriber or a subscriber's dependent enrolls in coverage under medicaid or a state children's health insurance program (CHIP), or the subscriber or a subscriber's dependent loses eligibility for coverage under medicaid or CHIP;

(ix) Subscriber or a subscriber's dependent becomes eligible for state premium assistance subsidy for SEBB health plan coverage from medicaid or CHIP;

(x) Subscriber's dependent enrolls in medicare, or loses eligibility for medicare.

(4) Enrollment requirements. A subscriber must submit the required forms within the time frames described in this subsection. For SEBB health plan coverage, a school employee must submit the required forms to their SEBB organization, ((a)) any other subscriber (~~on con-~~~~tinuation coverage~~) must submit the required forms to the SEBB program. In addition to the required forms indicating dependent enrollment, the subscriber must provide the required documents as evidence of the dependent's eligibility; or as evidence of the event that created the special open enrollment. All required forms and documents must be received within the required time frames. A school employee enrolling a dependent in supplemental dependent life insurance or AD&D insurance must submit the required form to the contracted vendor for approval within the required time frames.

Note: When enrolling a state registered domestic partner or a state registered domestic partner's child, a subscriber must certify that the state registered domestic partner or state registered domestic partner's child is a tax dependent on the required form; otherwise, the SEBB program will assume the state registered domestic partner or state registered domestic partner's child is not a tax dependent.

(a) If a subscriber wants to enroll their eligible dependents in SEBB health plan coverage (~~or supplemental dependent life insurance or AD&D insurance~~) when the subscriber becomes eligible to enroll in SEBB benefits, the subscriber must include the dependent's enrollment information on the required forms and submit them within the required time frame as described in WAC 182-30-060 ((and)), 182-30-080, or 182-31-200. If a school employee enrolls a dependent in supplemental dependent life insurance or AD&D insurance, the required form must be submitted within the required time frame described in WAC 182-30-080.

(b) If a subscriber wants to enroll eligible dependents in SEBB health plan coverage during the SEBB annual open enrollment period, the required forms must be received no later than the last day of the annual open enrollment.

(c) If a subscriber wants to enroll newly eligible dependents, the required forms must be received no later than 60 days after the dependent becomes eligible. A school employee enrolling a dependent in supplemental dependent life insurance or AD&D insurance must submit the required form to the contracted vendor for approval. A school employee may enroll a dependent in supplemental dependent life insurance up to the guaranteed issue coverage amount without evidence of insurability if the required form is submitted to the contracted vendor as required. Evidence of insurability will be required for supplemental dependent life insurance over the guaranteed issue coverage amount. Evidence of insurability is not required for supplemental AD&D insurance.

(d) If a subscriber wants to enroll a newborn or child whom the subscriber has adopted or has assumed a legal obligation for total or partial support in anticipation of adoption in SEBB health plan coverage, the subscriber should notify the SEBB program by submitting the required forms as soon as possible to ensure timely payment of claims. If adding the child increases the premium, the required forms must be received no later than 60 days after the date of the birth, adoption,

or the date the legal obligation is assumed for total or partial support in anticipation of adoption. A school employee enrolling a dependent in supplemental dependent life insurance or AD&D insurance must submit the required form to the contracted vendor for approval no later than 60 days after the date of the birth, adoption, or the date the legal obligation is assumed for total or partial support in anticipation of adoption. A newly born child must be at least 14 days old before supplemental dependent life insurance or AD&D insurance coverage can become effective.

(e) If the subscriber wants to enroll a child age 26 or older as a child with a disability in SEBB health plan coverage, the required forms must be received no later than 60 days after the child reaches age 26 or within the relevant time frame described in (a), (b), and (f) of this subsection. To recertify an enrolled child with a disability, the required forms must be received by the SEBB program or the contracted vendor by the child's scheduled SEBB health plan coverage termination date.

(f) If the subscriber wants to change a dependent's enrollment status in SEBB health plan coverage during a special open enrollment, the required forms must be received no later than 60 days after the event that creates the special open enrollment.

(g) A school employee may enroll a dependent in supplemental dependent life insurance or AD&D insurance at any time during the calendar year by submitting the required form to the contracted vendor for approval. Evidence of insurability may be required for supplemental dependent life insurance but will not be required for supplemental AD&D insurance.

AMENDATORY SECTION (Amending WSR 21-13-115, filed 6/21/21, effective 1/1/22)

WAC 182-31-160 National Medical Support Notice (NMSN). (1) When a National Medical Support Notice (NMSN) requires a subscriber to provide health plan coverage for a dependent child the following provisions apply:

(a) The subscriber may enroll their dependent child and request changes to their health plan coverage as described under (c) of this subsection. School employees submit the required forms to their school employees benefits board (SEBB) organization. All other subscribers (~~(on continuation coverage)~~) submit the required forms to the SEBB program;

(b) If the subscriber fails to request enrollment or health plan coverage changes as directed by the NMSN, the SEBB organization or the SEBB program may make enrollment or health plan coverage changes according to (c) of this subsection upon request of:

- (i) The child's other parent; or
- (ii) Child support enforcement program.

(c) Changes to health plan coverage or enrollment are allowed as directed by the NMSN:

(i) The dependent will be enrolled under the subscriber's health plan coverage as directed by the NMSN;

(ii) A school employee who has waived SEBB medical as described in WAC 182-31-080 will be enrolled in medical as directed by the NMSN, in order to enroll the dependent;

(iii) The subscriber's selected health plan will be changed if directed by the NMSN;

(iv) If the dependent is already enrolled under another SEBB subscriber, the dependent will be removed from the other health plan coverage and enrolled as directed by the NMSN;

(v) If the dependent is enrolled in both public employees benefits board medical and SEBB medical as a dependent as described in WAC 182-31-070 (6)(f) and there is a NMSN in place, enrollment will be in accordance with the NMSN; or

(vi) If the subscriber is eligible for and elects Consolidated Omnibus Budget Reconciliation Act (COBRA) or other continuation coverage, the NMSN will be enforced and the dependent must be covered in accordance with the NMSN.

(d) Changes to health plan coverage or enrollment as described in (c)(i) through (iii) of this subsection will begin the first day of the month following receipt by the SEBB organization or the SEBB program of the NMSN. If the NMSN is received (~~by the SEBB organization~~) on the first day of the month, the change to health plan coverage or enrollment begins on that day. A dependent will be removed from the subscriber's health plan coverage as described in (c)(iv) of this subsection the last day of the month the NMSN is received. If that day is the first of the month, the change in enrollment will be made the last day of the previous month.

(2) When a NMSN requires a spouse, former spouse, or other individual to provide health plan coverage for a dependent who is already enrolled in SEBB coverage, and that health plan coverage is in fact provided, the dependent may be removed from the subscriber's SEBB health plan coverage prospectively.

NEW SECTION

WAC 182-31-200 School board members participation requirements.

This section applies to school board members as defined in WAC 182-31-020. A school board member may enroll in health plans offered by the school employees benefits board (SEBB) by self-paying the premium and applicable premium surcharges set by the health care authority (HCA). A school board member must enroll in SEBB medical, SEBB dental, and SEBB vision.

(1) Newly elected school board members must submit their required forms to the SEBB program, and they must be received no later than 60 days from the beginning of their elected or appointed term. The first premium payment and applicable premium surcharges must be received no later than 45 days after the 60-day election period ends. The school board member's SEBB health plan coverage will begin the first day of the month following the day the SEBB program receives the required forms.

(2) If the school board member elects to enroll a dependent in SEBB health plan coverage, the dependent will be enrolled in the same SEBB medical, SEBB dental, and SEBB vision plans as the school board member.

(3) A school board member may participate in SEBB health plan coverage for the duration of their elected term as a school board member as long as:

(a) Premiums and applicable premium surcharges continue to be paid as described in WAC 182-30-040; and

(b) May renew their participation at the start of each subsequent term as a school board member. If a school board member is reelected for a new term consecutive from their previous term, the school board member will not be required to make new elections.

(4) If a school board member is terminated due to no longer paying the premium and applicable premium surcharges as described in WAC 182-30-040 (1)(c) or requests to voluntarily terminate their enrollment in SEBB health plan coverage prior to the end of their elected term, they are no longer eligible under this section to participate in SEBB health plan coverage for the remainder of their elected term. Those who request to voluntarily terminate their SEBB health plan coverage must do so in writing. SEBB health plan coverage will end on the last day of the month in which the SEBB program receives the termination request or on the last day of the month specified in the school board member's termination request, whichever is later. If the termination request is received on the first day of the month, SEBB health plan coverage will end on the last day of the previous month.

OTS-5358.2

AMENDATORY SECTION (Amending WSR 22-13-168, filed 6/21/22, effective 1/1/23)

WAC 182-32-020 Definitions. The following definitions apply throughout this chapter unless the context clearly indicates another meaning:

"Accidental death and dismemberment insurance" or "AD&D" means basic accidental death and dismemberment (AD&D) insurance paid for by the SEBB organization, as well as supplemental accidental death and dismemberment insurance offered to and paid for by school employees for themselves and their dependents.

"Appellant" means a person who requests a brief adjudicative proceeding with the SEBB appeals unit about the action of the SEBB organization, employer group, the HCA, or its contracted vendor.

"Authority" or "HCA" means the Washington state health care authority.

"Board" means the school employees benefits board established under provisions of RCW 41.05.740.

"Brief adjudicative proceeding" means the process described in RCW 34.05.482 through 34.05.494 and in WAC 182-32-2000 through 182-32-2160.

"Business days" means all days except Saturdays, Sundays, and all state legal holidays as set forth in RCW 1.16.050.

"Calendar days" or "days" means all days including Saturdays, Sundays, and all state legal holidays as set forth in RCW 1.16.050.

"Continuance" means a change in the date or time of when a brief adjudicative proceeding or formal administrative hearing will occur.

"Contracted vendor" means any person, persons, or entity under contract or agreement with the HCA to provide goods or services for the provision or administration of SEBB benefits. The term "contracted vendor" includes subcontractors of the HCA and subcontractors of any person, persons, or entity under contract or agreement with the HCA

that provide goods or services for the provision or administration of SEBB benefits.

"Denial" or "denial notice" means an action by, or communication from, a school employees benefits board (SEBB) organization, employer group, contracted vendor, or the SEBB program that aggrieves a subscriber, a dependent, or an applicant, with regard to SEBB benefits including, but not limited to, actions or communications expressly designated as a "denial," "denial notice," or "cancellation notice."

"Dependent" means a person who meets eligibility requirements in WAC 182-31-140.

"Dependent care assistance program" or "DCAP" means a benefit plan whereby school employees may pay for certain employment related dependent care with pretax dollars as provided in the salary reduction plan under chapter 41.05 RCW pursuant to 26 U.S.C. Sec. 129 or other sections of the Internal Revenue Code.

"Director" means the director of the authority.

"Dispositive motion" is a motion made to a presiding officer, reviewing officer, or hearing officer to decide a claim or case in favor of the moving party without further proceedings.

"Documents" means papers, letters, writings, electronic mail, electronic files, or other printed or written items.

"Employer-based group medical" means group medical related to a current employment relationship. It does not include medical coverage available to retired employees, individual market medical coverage or government-sponsored programs such as medicare or medicaid.

"Employer group" means an employee organization representing school employees and a tribal school as defined in RCW 28A.715.010, obtaining school employee benefits through a contractual agreement with the authority to participate in benefit plans developed by the school employees benefits board as described in WAC 182-30-215.

"Enrollee" means a person who meets all eligibility requirements defined in chapter 182-31 WAC or WAC 182-30-130, who is enrolled in SEBB benefits, and for whom applicable premium payments have been made.

"File" or "filing" means the act of delivering documents to the office of the presiding officer, reviewing officer, or hearing officer. A document is considered filed when it is received by the authority or its designee. A document may be filed by one or more of the following:

- Personal delivery to the authority at Cherry Street Plaza, 626 8th Avenue S.E., Olympia, Washington 98501;
- First class, registered, or certified mail to the authority to the following mailing address:

Health Care Authority
Attn: SEBB Appeals Unit
P.O. Box 45504
Olympia, WA 98504-5504;

- Fax: 360-763-4709; or
- Submission online through the designated submission portal.

The identified methods are the exclusive methods for a document to be filed, and submission of documents by any other fashion to the authority shall not constitute filing unless agreed to in advance by the authority.

"Final order" means an order that is the final health care authority decision.

"Flexible spending arrangement" or "FSA" means a benefit plan whereby eligible school employees may reduce their salary before taxes to pay for medical expenses not reimbursed by insurance as provided in the salary reduction plan established under chapter 41.05 RCW pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.

"Formal administrative hearing" means a proceeding before a hearing officer that gives an appellant an opportunity for an evidentiary hearing as described in RCW 34.05.413 through 34.05.476 and WAC 182-32-3000 through 182-32-3200.

"HCA hearing representative" means a person who is authorized to represent the SEBB program in a formal administrative hearing. The person may be an assistant attorney general or authorized HCA employee.

"Health plan" means a plan offering medical, vision, dental, or any combination of these coverages, developed by the board and provided by a contracted vendor or self-insured plans administered by the HCA.

"Hearing officer" means an impartial decision maker who presides at a formal administrative hearing, and is:

- A director-designated HCA employee; or
- When the director has designated the office of administrative hearings (OAH) as a hearing body, an administrative law judge employed by the OAH.

"Life insurance" means any basic life insurance paid for by the SEBB organization, as well as supplemental life insurance or supplemental dependent life insurance offered to and paid for by school employees for themselves and their dependents.

"Limited purpose flexible spending arrangement" or "limited purpose FSA" means a benefit plan whereby eligible school employees may reduce their salary before taxes to pay for dental and vision expenses not reimbursed by insurance as provided in the salary reduction plan established under chapter 41.05 RCW pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.

"Long-term disability insurance" or "LTD insurance" means employer-paid long-term disability insurance and employee-paid long-term disability insurance offered by the SEBB program.

~~(("Medical flexible spending arrangement" or "medical FSA" means a benefit plan whereby eligible school employees may reduce their salary before taxes to pay for medical expenses not reimbursed by insurance as provided in the salary reduction plan established under chapter 41.05 RCW pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.))~~

"PEBB" means the public employees benefits board.

"Prehearing conference" means a proceeding scheduled and conducted by a hearing officer to address issues in preparation for a formal administrative hearing.

"Premium payment plan" means a benefit plan whereby school employees may pay their share of group health plan premiums with pretax dollars as provided in the salary reduction plan under chapter 41.05 RCW pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.

"Premium surcharge" means a payment required from a subscriber, in addition to the subscriber's medical premium contribution, due to an enrollee's tobacco use or an enrolled subscriber's spouse or state registered domestic partner choosing not to enroll in their employer-based group medical when:

- The spouse's or state registered domestic partner's share of the medical premiums is less than 95 percent of the additional cost an employee would be required to pay to enroll a spouse or state registered domestic partner in the public employees benefits board (PEBB) Uniform Medical Plan (UMP) Classic; and

- The benefits have an actuarial value of at least 95 percent of the actuarial value of PEBB UMP Classic benefits.

"Presiding officer" means an impartial decision maker who conducts a brief adjudicative proceeding and is a director-designated HCA employee.

"Reviewing officer or officers" means one or more delegates from the director that consider appeals relating to the administration of SEBB benefits by the SEBB program.

"Salary reduction plan" means a benefit plan whereby school employees may agree to a reduction of salary on a pretax basis to participate in the dependent care assistance program, (~~medical~~) flexible spending arrangement, limited purpose flexible spending arrangement, or premium payment plan offered pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.

"School board member" means the board of directors of a school district as governed by chapter 28A.343 RCW or the board of directors of an educational service district as governed by chapter 28A.310 RCW.

"School employee" means (~~(:→)~~) all employees of school districts and charter schools established under chapter 28A.710 RCW; (~~(→)~~) represented employees of educational service districts; (~~and~~) effective January 1, 2024, all employees of educational service districts; and effective January 1, 2024, pursuant to a contractual agreement with the authority, "school employee" may also include (a) employees of employee organizations representing school employees, at the option of each such employee organization; and (b) employees of a tribal school as defined in RCW 28A.715.010, if the governing body of the tribal school seeks and receives the approval of the authority to provide any of its insurance programs by contracts with the authority, as provided in RCW 41.05.021 (1) (f) and (g).

"School employees benefits board organization" or "SEBB organization" means a public school district or educational service district or charter school established under chapter 28A.710 RCW that is required to participate in benefit plans provided by the school employees benefit board.

"SEBB" means the school employees benefits board.

"SEBB benefits" means one or more insurance coverages or other employee benefits administered by the SEBB program within the HCA.

"SEBB insurance coverage" means any health plan, life insurance, accidental death and dismemberment insurance, or long-term disability insurance administered as a SEBB benefit.

"SEBB program" means the program within the HCA that administers insurance and other benefits for eligible school employees (as described in WAC 182-31-040 or 182-30-130), (~~and~~) eligible dependents (as described in WAC 182-31-140), and eligible school board members (as described in WAC 182-31-200).

"State registered domestic partner," has the same meaning as defined in RCW 26.60.020(1) and substantially equivalent legal unions from other jurisdictions as defined in RCW 26.60.090.

"Subscriber" means the school employee (~~(⇆)~~) continuation coverage enrollee, or school board member who has been determined eligible by the SEBB program (~~(⇆)~~) SEBB organization(~~(s)~~), or employer group, is enrolled in SEBB benefits, and is the individual to whom the

SEBB program and contracted vendors will issue all notices, information, requests, and premium bills on behalf of an enrollee.

"Tobacco products" means any product made with or derived from tobacco that is intended for human consumption, including any component, part, or accessory of a tobacco product. This includes, but is not limited to, cigars, cigarettes, pipe tobacco, chewing tobacco, snuff, and other tobacco products. It does not include e-cigarettes or United States Food and Drug Administration (FDA) approved quit aids.

"Tobacco use" means any use of tobacco products within the past two months. Tobacco use, however, does not include the religious or ceremonial use of tobacco.

"Tribal school" has the same meaning as defined in RCW 28A.715.010.

AMENDATORY SECTION (Amending WSR 22-13-168, filed 6/21/22, effective 1/1/23)

WAC 182-32-064 Applicable rules and laws. (1) A school employees benefits board (SEBB) organization or employer group must apply SEBB program rules adopted in the Washington Administrative Code (WAC) and follow instructions from the authority.

(2) A presiding officer, reviewing officer or officers, or hearing officer must first apply the applicable SEBB program rules adopted in the WAC. If no SEBB program rule applies, the presiding officer, reviewing officer or officers, or hearing officer must decide the issue according to the best legal authority and reasoning available, including federal and Washington state constitutions, statutes, regulations, significant decisions indexed as described in WAC 182-32-130, and court decisions.

AMENDATORY SECTION (Amending WSR 21-13-117, filed 6/21/21, effective 1/1/22)

WAC 182-32-2010 Appealing a decision regarding school employees benefits board (SEBB) eligibility, enrollment, premium payments, premium surcharges, a wellness incentive, or the administration of benefits. (1) Any current or former school employee of a school employees benefits board (SEBB) organization or their dependent aggrieved by a decision made by the SEBB organization with regard to SEBB eligibility, enrollment, or premium surcharges may appeal that decision to the SEBB organization by the process described in WAC 182-32-2020.

Note: Eligibility decisions address whether a subscriber or a subscriber's dependent is entitled to SEBB benefits, as described in SEBB rules and policies. Enrollment decisions address the application for SEBB benefits as described in SEBB rules and policies including, but not limited to, the submission of proper documentation and meeting enrollment deadlines.

(2) Any current or former school employee of an employer group or their dependent who is aggrieved by a decision made by the employer group with regard to SEBB eligibility, enrollment, or premium surcharges may appeal that decision to the employer group through the process established by the employer group.

Exception: Any current or former school employee of an employer group aggrieved by a decision regarding life insurance, long-term disability (LTD) insurance, eligibility to participate in the SEBB wellness incentive program, or eligibility to receive a SEBB wellness incentive may appeal that decision to the SEBB appeals unit by the process described in WAC 182-32-2030.

(3) Any subscriber or dependent aggrieved by a decision made by the SEBB program with regard to SEBB eligibility, enrollment, premium payments, premium surcharges, eligibility to participate in the SEBB wellness incentive program, or eligibility to receive the SEBB wellness incentive, may appeal that decision to the SEBB appeals unit by the process described in WAC 182-32-2030.

~~((3))~~ (4) Any enrollee aggrieved by a decision regarding the administration of SEBB medical, dental, and vision, life insurance, accidental death and dismemberment (AD&D) insurance, or long-term disability insurance, may appeal that decision by following the appeal provisions of those plans, with the exception of:

(a) Enrollment decisions;

(b) Premium payment decisions other than life insurance or AD&D insurance premium payment decisions; and

(c) Eligibility decisions.

~~((4))~~ (5) Any SEBB enrollee aggrieved by a decision regarding the administration of SEBB property and casualty insurance may appeal that decision by following the appeal provisions of those plans.

~~((5))~~ (6) Any school employee aggrieved by a decision regarding the administration of a benefit offered under the salary reduction plan may appeal that decision by the process described in WAC 182-32-2050.

~~((6))~~ (7) Any subscriber aggrieved by a decision made by the SEBB wellness incentive program contracted vendor regarding the completion of the SEBB wellness incentive program requirements, or a request for a reasonable alternative to a wellness incentive program requirement, may appeal that decision by the process described in WAC 182-32-2040.

AMENDATORY SECTION (Amending WSR 20-16-067, filed 7/28/20, effective 8/28/20)

WAC 182-32-2030 Appealing a school employees benefits board (SEBB) program decision regarding eligibility, enrollment, premium payments, premium surcharges, ~~((and))~~ a SEBB wellness incentive, or certain decisions made by an employer group. (1) A decision made by the school employees benefits board (SEBB) program regarding eligibility, enrollment, premium payments, premium surcharges, or a SEBB wellness incentive may be appealed by submitting a request to the SEBB appeals unit for a brief adjudicative proceeding to be conducted by the authority.

(2) A decision made by an employer group regarding life insurance, LTD insurance, eligibility to participate in the SEBB wellness incentive program, or eligibility to receive a SEBB wellness incentive, may be appealed by submitting a request to the SEBB appeals unit for a brief adjudicative proceeding to be conducted by the authority.

(3) The contents of the request for a brief adjudicative proceeding are to be provided as described in WAC 182-32-2070.

~~((3))~~ (4) The request for a brief adjudicative proceeding from a current or former school employee or school employee's dependent must be received by the SEBB appeals unit no later than ~~((thirty))~~ 30 days after the date of the denial notice.

~~((4))~~ (5) The request for a brief adjudicative proceeding from a ~~((self-pay))~~ continuation coverage enrollee, school board member, or their dependent ~~((of self-pay enrollee))~~ must be received by the SEBB

appeals unit no later than (~~sixty~~) 60 days after the date of the denial notice.

(~~(5)~~) (6) The SEBB appeals unit must notify the appellant in writing when the request for a brief adjudicative proceeding has been received.

(~~(6)~~) (7) The brief adjudicative proceeding will be conducted by a presiding officer designated by the director.

(~~(7)~~) (8) Failing to timely request a brief adjudicative proceeding will result in the prior SEBB program decision becoming the authority's final order without further action.

AMENDATORY SECTION (Amending WSR 20-16-067, filed 7/28/20, effective 8/28/20)

WAC 182-32-2040 How can a subscriber appeal a decision regarding the administration of wellness incentive program requirements? (1)

Any subscriber aggrieved by a decision regarding the completion of the wellness incentive program requirements, or request for a reasonable alternative to a wellness incentive program requirement, may appeal that decision to the school employees benefits board (SEBB) wellness incentive program contracted vendor.

(2) Any subscriber who disagrees with a decision in response to an appeal filed with the SEBB wellness incentive program contracted vendor may appeal the decision by submitting a request for a brief adjudicative proceeding to the SEBB appeals unit.

(a) The request for a brief adjudicative proceeding from a current or former school employee must be received by the SEBB appeals unit no later than (~~thirty~~) 30 days after the date of the denial notice. The contents of the request for a brief adjudicative proceeding are to be provided as described in WAC 182-32-2070.

(b) The request for a brief adjudicative proceeding from a (~~self-pay subscriber~~) continuation coverage enrollee or school board member must be received by the SEBB appeals unit no later than (~~sixty~~) 60 days after the date of the denial notice. The contents of the request for a brief adjudicative proceeding are to be provided as described in WAC 182-32-2070.

(3) The SEBB appeals unit must notify the appellant in writing when the request for a brief adjudicative proceeding has been received.

(4) The brief adjudicative proceeding will be conducted by a presiding officer designated by the director.

(5) If a subscriber fails to timely request a brief adjudicative proceeding, the decision of the SEBB wellness incentive program contracted vendor becomes the authority's final order without further action.

AMENDATORY SECTION (Amending WSR 22-13-168, filed 6/21/22, effective 1/1/23)

WAC 182-32-2050 How can a school employee appeal a decision regarding the administration of benefits offered under the salary reduction plan? (1) Any school employee who disagrees with a decision that denies eligibility for, or enrollment in, a benefit offered under the

salary reduction plan may appeal that decision by submitting a written request for administrative review to their school employees benefits board (SEBB) organization. The SEBB organization must receive the written request for administrative review no later than 30 days after the date of the decision resulting in denial. The contents of the written request for administrative review are to be provided as described in WAC 182-32-2070.

(a) Upon receiving the written request for administrative review, the SEBB organization must perform a complete review of the denial by one or more staff who did not take part in the decision resulting in the denial.

(b) The SEBB organization must render a written decision within 30 days of receiving the written request for administrative review. The written decision must be sent to the school employee who submitted the written request for review and must include a description of appeal rights. The SEBB organization must also send a copy of the SEBB organization's written decision to the SEBB organization's administrator (or designee) and to the SEBB appeals unit. If the SEBB organization fails to render a written decision within 30 days of receiving the written request for administrative review, the request for administrative review may be considered denied as of the 31st day and the original underlying SEBB organization decision may be appealed to the SEBB appeals unit by following the process in this section.

(2) Any school employee who disagrees with the SEBB organization's decision in response to a written request for administrative review, as described in this section, may request a brief adjudicative proceeding to be conducted by the authority by submitting a written request to the SEBB appeals unit.

(a) The SEBB appeals unit must receive the request for a brief adjudicative proceeding no later than 30 days after the date of the SEBB organization's written decision on the request for administrative review. If a SEBB organization fails to render a written decision within 30 days of receiving a written request for administrative review, the SEBB appeals unit must receive the request for a brief adjudicative proceeding no later than 30 days after the date the request for administrative review was deemed denied. The contents of the request for a brief adjudicative proceeding are to be provided as described in WAC 182-32-2070.

(i) The SEBB appeals unit must notify the appellant in writing when the request for a brief adjudicative proceeding has been received.

(ii) Once the SEBB appeals unit receives a request for a brief adjudicative proceeding, the SEBB appeals unit will send a request for documentation and information to the applicable SEBB organization. The SEBB organization will then have two business days to respond to the request and provide the documentation and information requested. The SEBB organization will also send a copy of the documentation and information to the school employee.

(iii) The brief adjudicative proceeding will be conducted by a presiding officer designated by the director.

(b) If a school employee fails to timely request a brief adjudicative proceeding, the SEBB organization's prior written decision becomes the authority's final order without further action.

(3) Any school employee aggrieved by a decision regarding a claim for benefits under the (~~medical~~) flexible spending arrangement or limited purpose flexible spending arrangement (FSA) or dependent care assistance program (DCAP) offered under the salary reduction plan may

appeal that decision to the authority's contracted vendor by following the appeal process of that contracted vendor.

(a) Any school employee who disagrees with a decision in response to an appeal filed with the contracted vendor that administers the (~~medical~~) FSA, limited purpose FSA, and DCAP under the salary reduction plan may request a brief adjudicative proceeding by submitting a written request to the SEBB appeals unit. The SEBB appeals unit must receive the request for a brief adjudicative proceeding no later than 30 days after the date of the contracted vendor's appeal decision. The contents of the request for a brief adjudicative proceeding are to be provided as described in WAC 182-32-2070.

(i) The SEBB appeals unit must notify the appellant in writing when the request for a brief adjudicative proceeding has been received.

(ii) The brief adjudicative proceeding will be conducted by a presiding officer designated by the director.

(b) If a school employee fails to timely request a brief adjudicative proceeding, the contracted vendor's prior written decision becomes the authority's final order without further action.

(4) Any school employee aggrieved by a decision regarding the administration of the premium payment plan offered under the salary reduction plan may request a brief adjudicative proceeding to be conducted by the authority by submitting a written request to the SEBB appeals unit for a brief adjudicative proceeding.

(a) The SEBB appeals unit must receive the request for a brief adjudicative proceeding no later than 30 days after the date of the denial notice by the SEBB program. The contents of the request for a brief adjudicative proceeding are to be provided as described in WAC 182-16-2070.

(i) The SEBB appeals unit must notify the appellant in writing when the notice of appeal has been received.

(ii) The brief adjudicative proceeding will be conducted by a presiding officer designated by the director.

(b) If a school employee fails to timely request a brief adjudicative proceeding, the SEBB program's prior written decision becomes the authority's final order without further action.

NEW SECTION

WAC 182-32-2060 How can an entity or organization appeal a decision of the health care authority to deny an employer group application? (1) An entity or organization whose employer group application to participate in school employees benefits board (SEBB) insurance coverage is denied by the authority may appeal the decision by submitting a request for a brief adjudicative proceeding to the SEBB appeals unit.

(2) The SEBB appeals unit must receive the request for a brief adjudicative proceeding no later than 30 days after the date of the denial notice. The contents of the request for a brief adjudicative proceeding are to be provided as described in WAC 182-32-2070.

(3) The SEBB appeals unit must notify the appellant in writing when the request for a brief adjudicative proceeding has been received.

(4) The brief adjudicative proceeding will be conducted by a presiding officer designated by the director.

(5) Failing to timely request a brief adjudicative proceeding will result in the prior SEBB program decision becoming the authority's final order without further action.

AMENDATORY SECTION (Amending WSR 19-01-055, filed 12/14/18, effective 1/14/19)

WAC 182-32-2070 What should a written request for administrative review and a request for brief adjudicative proceeding contain? A written request for administrative review of the school employees benefits board (SEBB) organization's or employer group's decision and a request for brief adjudicative proceeding should contain:

(1) The name and mailing address of the party requesting an administrative review or the brief adjudicative proceeding;

(2) The name and mailing address of the appealing party's representative, if any;

(3) Documentation, or reference to documentation, of decisions previously rendered through the appeal process, if any;

(4) A statement identifying the specific portion of the decision being appealed and clarifying what is believed to be unlawful or in error;

(5) A statement of facts in support of the appealing party's position;

(6) Any information or documentation that the appealing party would like considered;

(7) The type of relief sought; and

(8) The signature of the appealing party or the appealing party's representative.

AMENDATORY SECTION (Amending WSR 22-13-168, filed 6/21/22, effective 1/1/23)

WAC 182-32-2100 How to request a review of an initial order resulting from a brief adjudicative proceeding. (1) Both the appellant and the authority may request review of an initial order. An appellant who has received an initial order upholding a school employees benefits board (SEBB) organization decision, employer group decision, SEBB program decision, or a decision made by a SEBB program contracted vendor, may request review of the initial order by the authority. The appellant may request review of the initial order by filing a written request or making an oral request with the SEBB appeals unit within 21 days after service of the initial order. The written or oral request for review of the initial order must be made by using the contact information included in the initial order. If the appellant fails to request review of the initial order within 21 days, the initial order becomes the authority's final order without further action.

(2) Upon timely request by the appellant, a review of an initial order will be performed by one or more reviewing officers designated by the director of the authority.

(3) If the appellant has not requested review, the authority may review an order resulting from a brief adjudicative proceeding on its own, and without notice to the parties, but it may not take action on review less favorable to any party than the initial order without giv-

ing that party notice and an opportunity to explain that party's view of the matter.

AMENDATORY SECTION (Amending WSR 19-14-093, filed 7/1/19, effective 8/1/19)

WAC 182-32-2130 Judicial review of final order. (1) Judicial review is the process of appealing a final order to a court.

(2) The appellant may appeal a final order by filing a written petition for judicial review that meets the requirements of RCW 34.05.510 through 34.05.598. Neither the school employees benefits board (SEBB) program nor a SEBB organization or employer group may request judicial review.

AMENDATORY SECTION (Amending WSR 20-16-067, filed 7/28/20, effective 8/28/20)

WAC 182-32-2140 Presiding officer—Designation and authority.

The designation of a presiding officer must be consistent with the requirements of RCW 34.05.485 and the presiding officer must not have personally participated in the decision made by the school employees benefits board (SEBB) organization, employer group, or SEBB program.

(1) The presiding officer will decide the issue based on the information provided by the parties during the presiding officer's review of the appeal.

(2) A presiding officer is limited to those powers granted by the state constitution, statutes, rules, or applicable case law.

(3) A presiding officer may not decide that a rule is invalid or unenforceable.

(4) In addition to the record, the presiding officer may employ the authority's expertise as a basis for the decision.

AMENDATORY SECTION (Amending WSR 22-13-168, filed 6/21/22, effective 1/1/23)

WAC 182-32-2150 Reviewing officer or officers—Designation and authority. (1) The designation of a reviewing officer or officers must be consistent with the requirements of RCW 34.05.491 and the reviewing officer or officers must not have personally participated in the decision made by the school employees benefits board (SEBB) organization, employer group, or SEBB program.

(2) The reviewing officer or officers must review the initial order and the record to determine if the initial order was correctly decided and make any inquiries necessary to ascertain whether the proceeding must be converted to a formal administrative hearing.

(3) The reviewing officer or officers will issue a final order that will either:

(a) Affirm the initial order in whole or in part; or

(b) Reverse the initial order in whole or in part; or

(c) Remand to the presiding officer in whole or in part.

(4) A reviewing officer or officers are limited to those powers granted by the state constitution, statutes, rules, or applicable case law.

(5) A reviewing officer or officers may not decide that a rule is invalid or unenforceable.

(6) In addition to the record, the reviewing officer or officers may employ the authority's expertise as a basis for the decision.

AMENDATORY SECTION (Amending WSR 22-13-168, filed 6/21/22, effective 1/1/23)

WAC 182-32-3175 How to request a review of an initial order by the office of administrative hearings. (1) Both the appellant and the authority may request review of an initial order. An appellant who has received an initial order upholding a school employees benefits board (SEBB) organization or employer group decision, a SEBB program decision, or a decision made by a SEBB program contracted vendor, may request review of the initial order by filing a written request or making an oral request with the SEBB appeals unit within 20 days after service of the initial order. The written or oral request for review of the initial order must be made by using the contact information included in the initial order. If such review is requested, the hearing officer or their designee from the authority, shall issue a final order in accordance with WAC 182-32-3030. If the appellant fails to request review of the initial order within 20 days, the initial order becomes the authority's final order without further action.

(2) Upon timely request by the appellant, a review of an initial order will be performed by one or more reviewing officers designated by the director of the authority.

(3) If the appellant has not requested review of the initial order, the authority may review an initial order issued by the office of administrative hearings on its own, and without notice to the parties, but it may not take action on review less favorable to any party than the initial order without giving that party notice and an opportunity to explain that party's view of the matter.

WSR 24-11-095

PROPOSED RULES

HEALTH CARE AUTHORITY

(School Employees Benefits Board)

[Admin #2024-02.01—Filed May 16, 2024, 3:49 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-04-064.

Title of Rule and Other Identifying Information: WAC 182-31-070
Is dual enrollment in school employees benefits board (SEBB) and public employees benefits board (PEBB) prohibited?

Hearing Location(s): On June 25, 2024, at 10:00 a.m. The health care authority (HCA) holds public hearings virtually without a physical meeting place. To attend the virtual public hearing, you must register in advance https://us02web.zoom.us/webinar/register/WN_71S7AVjqRpmWNbN_6M4B1Q. If the link above opens with an error message, please try using a different browser. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: Not sooner than June 26, 2024.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, beginning May 17, 2024, 8:00 a.m., by June 25, 2024, by 11:59 p.m.

Assistance for Persons with Disabilities: Contact Johanna Larson, phone 360-725-1349, fax 360-586-9727, telecommunication[s] relay service 711, email Johanna.Larson@hca.wa.gov, by June 14, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to amend WAC 182-31-070 to support the SEBB program.

Implemented the following SEBB policy resolutions related to dual enrollment prohibitions between SEBB and PEBB programs' procedures:

- SEBB 2024-01 amending Resolution SEBB 2021-02: School employees may waive enrollment in medical.
- SEBB 2024-02 amending Resolution SEBB 2021-03: SEBB benefit enrollment requirements when PEBB benefits are waived.
- SEBB 2024-03 amending Resolution SEBB 2021-05: Resolving dual enrollment involving dual subscriber eligibility.
- SEBB 2024-04 amending Resolution 2021-07: Resolving dual enrollment involving a member with multiple medical enrollments as a dependent.
- SEBB 2024-05 amending Resolution 2021-08: SEBB benefit automatic enrollments when PEBB benefits are auto-disenrolled.

Reasons Supporting Proposal: See purpose above.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160; Resolutions SEBB 2024-01, 2024-02, 2024-03, 2024-04, and 2024-05.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Stella Ng, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-0883; Implementation: Cade Walker, P.O. Box 42716, Olympia, WA 98504-2716, 360-643-7900; and Enforcement: Jean Bui, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1858.

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

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

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

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. These rules do not apply to small businesses.

May 16, 2024
Wendy Barcus
Rules Coordinator

OTS-5357.3

AMENDATORY SECTION (Amending WSR 22-13-168, filed 6/21/22, effective 1/1/23)

WAC 182-31-070 Is dual enrollment in school employees benefits board (SEBB) and public employees benefits board (PEBB) prohibited?

School employees benefits board (SEBB) medical, dental, and vision coverage is limited to a single enrollment per individual as described in subsections (1) through (5) of this section. Effective January 1, 2022, individuals are limited to a single enrollment in medical, dental, and vision plans in either the SEBB program or public employees benefits board (PEBB) program as described in subsection (6) of this section.

(1) An individual who has more than one source of eligibility for enrollment in SEBB medical, SEBB dental, and SEBB vision coverage (called "dual eligibility") is limited to one enrollment.

(2) An eligible school employee may waive SEBB medical and enroll as a dependent under the SEBB medical plan of their spouse, state registered domestic partner, or parent as described in WAC 182-31-080.

(3) A dependent enrolled in SEBB medical, SEBB dental, or SEBB vision who becomes eligible for SEBB benefits as a school employee must elect to enroll in SEBB benefits as described in WAC 182-31-080(1). This includes making an election to enroll in or waive enrollment in SEBB medical as described in WAC 182-31-080 (1)(a).

(a) If the school employee does not waive enrollment in SEBB medical, the school employee is not eligible to remain enrolled in their spouse's, state registered domestic partner's, or parent's SEBB medical as a dependent. If the school employee's spouse, state registered domestic partner, or parent does not take action to remove the school employee (who is enrolled as a dependent) from their subscriber account, the SEBB program will automatically disenroll the school employee's enrollment as a dependent the last day of the month before the school employee's enrollment in SEBB benefits begins as described in WAC 182-31-040.

Exception: An enrolled dependent who becomes newly eligible, at the start of the school year, for SEBB benefits as a school employee could be dual-enrolled in SEBB medical, dental, and vision for one month. This exception is only allowed for the first month the dependent is enrolled as a school employee.

(b) If the school employee elects to waive their enrollment in SEBB medical, the school employee will remain enrolled in SEBB medical under their spouse's, state registered domestic partner's, or parent's SEBB medical as a dependent.

(4) A child who is eligible for SEBB medical, SEBB dental, and SEBB vision under two subscribers may be enrolled under both subscribers but is limited to a single enrollment in SEBB medical, a single enrollment in SEBB dental, and a single enrollment in SEBB vision.

(5) When a school employee is eligible for the employer contribution toward SEBB benefits due to employment in more than one SEBB organization the following provisions apply:

(a) When a school employee is eligible for the employer contribution during a school year under WAC 182-31-040 and 182-30-130 the SEBB organization that has determined the school employee eligible under WAC 182-31-040 must make the employer contribution;

(b) If the school employee is eligible for the employer contribution under WAC 182-31-040 at two different SEBB organizations, the school employee must choose to enroll under only one SEBB organization;

(c) If the school employee is eligible for the employer contribution under WAC 182-30-130 at two different SEBB organizations, the school employee must choose to enroll under only one SEBB organization;

(d) If the school employee loses eligibility under one SEBB organization, they must notify their other SEBB organization no later than 60 days from the date of loss of the first SEBB benefits in order to transfer coverage;

(e) The school employee's elections remain the same when a school employee transfers their enrollment under one SEBB organization to another SEBB organization without a break in SEBB benefits for one month or more, as described in (d) of this subsection.

(6) An individual who has more than one source of eligibility for enrollment in the SEBB and PEBB programs is limited to a single enrollment in medical, dental, and vision plans in either the SEBB or PEBB program. A school employee must elect to enroll in SEBB benefits as described in WAC 182-30-080, waive enrollment as described in WAC 182-31-080, or remove eligible dependents as described in WAC 182-31-150. If the school employee takes no action to resolve the dual enrollment, the SEBB program or the PEBB program will automatically enroll or automatically disenroll the individual as described in (c) through (g) of this subsection.

(a) An eligible school employee may waive enrollment in SEBB medical to enroll in PEBB medical only if they are enrolled in PEBB dental and PEBB vision as described in WAC 182-31-080. A school employee who waives enrollment in SEBB medical to enroll in PEBB medical also waives enrollment in SEBB dental and SEBB vision.

(b) An employee in the PEBB program who waives PEBB medical ~~((and))~~, PEBB dental, and PEBB vision for SEBB medical must be enrolled in SEBB dental and SEBB vision. If the employee is not already enrolled in SEBB dental and SEBB vision, the SEBB program will automatically enroll the employee in the associated subscriber's SEBB dental and SEBB vision.

(c) If the school employee is enrolled only in SEBB dental and SEBB vision, and is also enrolled in PEBB medical, and no action is taken to resolve their dual enrollment, the school employee will remain in PEBB medical. The SEBB program will automatically disenroll the school employee from SEBB dental and SEBB vision in which they are

enrolled. If the school employee is not already enrolled in PEBB dental and PEBB vision, the PEBB program will automatically enroll them in PEBB dental and PEBB vision as described in WAC 182-12-123 (6) ~~((h))~~ (g). The school employee's enrollment in SEBB program life insurance, accidental death and dismemberment (AD&D) insurance, and long-term disability (LTD) insurance will remain.

(d) If the school employee is enrolled in SEBB medical and is also an employee in the PEBB program enrolled in PEBB medical, and the school employee has been enrolled in PEBB medical longer than they have been enrolled in SEBB medical, and no action is taken by the school employee to resolve their dual enrollment, they will remain in PEBB medical. The SEBB program will automatically disenroll the school employee from SEBB medical, SEBB dental, and SEBB vision. The school employee's enrollment in SEBB program life insurance, AD&D insurance, and LTD insurance will remain. If the school employee is not enrolled in medical under either the PEBB or SEBB program but is enrolled ~~((only))~~ in PEBB dental, PEBB vision, SEBB dental, and SEBB vision, the school employee will remain in ~~((SEBB dental and SEBB vision))~~ PEBB benefits. The ~~((PEBB))~~ SEBB program will automatically disenroll the school employee from ~~((PEBB))~~ SEBB dental and SEBB vision.

(e) If the school employee's dependent is enrolled in any SEBB medical, SEBB dental, or SEBB vision plan, and the dependent is also an employee in the PEBB program and enrolled in PEBB medical, and no action is taken by either the school employee or the dependent to resolve the dependent's dual enrollment, the school employee's dependent will remain in PEBB medical. The SEBB program will automatically disenroll the school employee's dependent from SEBB medical, SEBB dental, and SEBB vision in which they are enrolled.

(f) If the school employee's dependent is enrolled in both SEBB medical and PEBB medical as a dependent and has been enrolled in PEBB medical longer than they have been enrolled in SEBB medical, and no action is taken to resolve the dual enrollment, the school employee's dependent will remain in PEBB medical. The SEBB program will automatically disenroll the school employee's dependent from SEBB medical, SEBB dental, and SEBB vision if they are enrolled. If the school employee's dependent who is eligible as a dependent in both the SEBB and PEBB programs is not enrolled in any medical but is enrolled ~~((only in PEBB dental and SEBB vision (with or without SEBB dental)))~~ in both a PEBB and SEBB dental plan, PEBB and SEBB vision plan, or any combination of these coverages as a dependent, the dependent will remain in ~~((SEBB vision and if enrolled, SEBB dental))~~ PEBB benefits. The ~~((PEBB))~~ SEBB program will automatically disenroll the dependent from ~~((PEBB dental))~~ SEBB benefits.

Exception: If there is a National Medical Support Notice (NMSN) or a court order in place, enrollment will be in accordance with the NMSN or order.

(g) If the school employee's dependent, who is also an employee in the PEBB program ~~((who the PEBB program))~~, was automatically disenrolled from PEBB dental and PEBB vision, the SEBB program will automatically enroll the school employee's dependent in SEBB dental and SEBB vision ~~((The SEBB program will also automatically enroll the school employee's dependent in SEBB dental))~~, if they are not already enrolled.

(h) If the school employee who is eligible for the employer contribution toward SEBB benefits was enrolled as a dependent in PEBB medical ~~((and))~~, PEBB dental, and PEBB vision and is removed by the PEBB subscriber, the school employee will be required to return from waived enrollment as described in WAC 182-31-080 (3) (b).

(i) If the SEBB program automatically disenrolls an individual from SEBB medical, SEBB dental, or SEBB vision to resolve their dual enrollment as described in (d), (e), or (f) of this subsection, but later determines that the school employee did take action to resolve their dual enrollment within the required timelines, the SEBB program will reinstate coverage retroactive to the first of the month in which the individual was disenrolled.

WSR 24-11-097

PROPOSED RULES

HEALTH CARE AUTHORITY

(School Employees Benefits Board)

[Admin #2024-02.02—Filed May 16, 2024, 3:55 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-04-064.

Title of Rule and Other Identifying Information: WAC 182-31-080

When may a school employee waive enrollment in school employees benefits board (SEBB) medical and when may they enroll in SEBB medical after having waived enrollment?

Hearing Location(s): On June 25, 2024, at 10:00 a.m. The health care authority (HCA) holds public hearings virtually without a physical meeting place. To attend the virtual public hearing, you must register in advance https://us02web.zoom.us/webinar/register/WN_71S7AVjqRpmWNbN_6M4B1Q. If the link above opens with an error message, please try using a different browser. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: Not sooner than June 25, 2024.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, beginning May 17, 2024, 8:00 a.m., by June 25, 2024, by 11:59 p.m.

Assistance for Persons with Disabilities: Contact Johanna Larson, phone 360-725-1349, fax 360-586-9727, telecommunication[s] relay service 711, email Johanna.Larson@hca.wa.gov, by June 14, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to amend WAC 182-31-080 to support the SEBB Program:

1. Implement SEBB Policy Resolution:

- Implemented Resolution SEBB 2024-01 amending Resolution SEBB 2021-02: School employees may waive enrollment in medical.

2. Make Other Technical Amendments:f

- Clarified a school employee may not waive enrollment in SEBB medical if they are enrolled in public employees benefits board re-tiree insurance coverage;
- Added the types of SEBB insurance coverages a school employee will enroll in when a SEBB organization or employer group participates.

Reasons Supporting Proposal: See purpose above.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160; Resolution SEBB 2024-01.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Stella Ng, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-0883; Implementation: Cade Walker, P.O. Box 42716, Olympia, WA 98504-2716, 360-643-7900; and Enforcement: Jean Bui, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1858.

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

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

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

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. These rules do not apply to small businesses.

May 16, 2024

Wendy Barcus

Rules Coordinator

OTS-5401.1

AMENDATORY SECTION (Amending WSR 23-14-018, filed 6/23/23, effective 1/1/24)

WAC 182-31-080 When may a school employee waive enrollment in school employees benefits board (SEBB) medical and when may they enroll in SEBB medical after having waived enrollment? A school employee may waive enrollment in school employees benefits board (SEBB) medical if they are enrolled in other employer-based group medical, a TRICARE plan, or medicare as described in subsection (1)(a) through (c) of this section. They may not waive enrollment in SEBB medical if they are enrolled in PEBB retiree insurance coverage. A school employee who waives enrollment in SEBB medical must enroll in SEBB dental, SEBB vision, basic life insurance, basic accidental death and dismemberment (AD&D) insurance, and employer-paid long-term disability (LTD) insurance (unless the employer group does not participate in these SEBB insurance coverages). For a SEBB organization or employer group that participates in LTD insurance, a school employee will also be enrolled in employee-paid LTD insurance automatically unless the school employee declines their employee-paid LTD insurance as described in WAC 182-30-080.

Exception: A school employee may waive their enrollment in SEBB medical to enroll in public employees benefits board (PEBB) medical only if they are enrolled in PEBB dental and PEBB vision. A school employee who waives enrollment in SEBB medical to enroll in PEBB medical also waives enrollment in SEBB dental and SEBB vision.

(1) To waive enrollment in SEBB medical, the school employee must submit the required form to their SEBB organization at one of the following times:

(a) **When the school employee becomes eligible:** A school employee may waive SEBB medical when they become eligible for SEBB benefits. The school employee must indicate their election to waive enrollment in SEBB medical on the required form and submit the form to their SEBB organization. The SEBB organization must receive the form no later than 31 days after the date the school employee becomes eligible for SEBB benefits (see WAC 182-30-080). SEBB medical will be waived as of the date the school employee becomes eligible for SEBB benefits.

(b) **During the annual open enrollment:** A school employee may waive SEBB medical during the annual open enrollment. The required form must be received by the school employee's SEBB organization before the end of the annual open enrollment. SEBB medical will be waived beginning January 1st of the following year.

(c) **During a special open enrollment:** A school employee may waive SEBB medical during a special open enrollment only if they are enrolled in other employer-based group medical, a TRICARE plan, or medicare as described in subsection (4) of this section. A special open enrollment event must be an event other than a school employee gaining initial eligibility or regaining eligibility for SEBB benefits.

The school employee must submit the required form to their SEBB organization. The SEBB organization must receive the form no later than 60 days after the event that creates the special open enrollment. In addition to the required form, the school employee must provide evidence of the event that creates the special open enrollment to their SEBB organization.

SEBB medical will be waived the last day of the month following the later of the event date or the date the required form is received. If that day is the first of the month, SEBB medical will be waived the last day of the previous month. If the special open enrollment is due to the birth, adoption, or assumption of legal obligation for total or partial support in anticipation of adoption of a child, SEBB medical will be waived the last day of the previous month.

(2) If a school employee waives SEBB medical, the school employee may not enroll dependents in SEBB medical.

(3) Once SEBB medical is waived, the school employee is only allowed to enroll in SEBB medical at the following times:

(a) During the annual open enrollment. The required form must be received by the school employee's SEBB organization before the end of the annual open enrollment. SEBB medical will begin January 1st of the following year.

(b) During a special open enrollment. A special open enrollment allows a school employee to revoke their election and make a new election outside of the annual open enrollment. A special open enrollment may be created when one of the events described in subsection (4) of this section occurs.

The school employee must submit the required form to their SEBB organization. The SEBB organization must receive the form no later than 60 days after the event that creates the special open enrollment. In addition to the required form, the school employee must provide evidence of the event that creates the special open enrollment to the SEBB organization.

SEBB medical will begin the first day of the month following the later of the event date or the date the required form is received. If that day is the first of the month, coverage is effective on that day. If the special open enrollment is due to the birth, adoption, or assumption of legal obligation for total or partial support in anticipation of adoption of a child, SEBB medical for the school employee will begin on the first day of the month in which the event occurs. SEBB medical for the newly born child, newly adopted child, spouse, or state-registered domestic partner will begin as described in WAC 182-31-150 (3) (a) (iv).

If a school employee who is eligible for the employer contribution toward SEBB benefits was enrolled as a dependent in PEBB medical ((and)), PEBB dental, and PEBB vision and is removed by the PEBB subscriber, the health care authority will notify the school employee of

their removal from the PEBB subscriber's account and that they have experienced a special enrollment event. The school employee will be required to return from waived enrollment and elect SEBB medical, SEBB dental, and SEBB vision. If the school employee's SEBB organization does not receive the school employee's required forms indicating their medical, dental, and vision elections within 60 days of the school employee losing PEBB medical (~~and~~), PEBB dental, and PEBB vision, they will be defaulted into employee-only SEBB medical, SEBB dental, and SEBB vision as described in WAC 182-30-080 (1)(b)(i) through (iii).

(4) **Special open enrollment:** Any one of the events in (a) through (k) of this subsection may create a special open enrollment that allows the school employee to enroll in SEBB medical after having waived enrollment. The change in enrollment must be allowable under the Internal Revenue Code (IRC) and Treasury regulations, and correspond to and be consistent with the event that creates the special open enrollment for the school employee, the school employee's dependent, or both.

(a) School employee acquires a new dependent due to:

- (i) Marriage or registering a state registered domestic partnership;
- (ii) Birth, adoption, or when the school employee has assumed a legal obligation for total or partial support in anticipation of adoption; or
- (iii) A child becoming eligible as an extended dependent through legal custody or legal guardianship.

(b) School employee or a school employee's dependent loses other coverage under a group health plan or through health insurance coverage, as defined by the Health Insurance Portability and Accountability Act (HIPAA);

(c) School employee has a change in employment status that affects the school employee's eligibility for their employer contribution toward their employer-based group medical;

(d) The school employee's dependent has a change in their own employment status that affects their eligibility or their dependent's eligibility for the employer contribution under their employer-based group medical;

Note: As used in (d) of this subsection "employer contribution" means contributions made by the dependent's current or former employer toward health coverage as described in Treasury Regulation 26 C.F.R. 54.9801-6.

(e) School employee or a school employee's dependent has a change in enrollment under an employer-based group medical plan during its annual open enrollment that does not align with the SEBB program's annual open enrollment;

(f) School employee's dependent has a change in residence from outside of the United States to within the United States, or from within the United States to outside of the United States and that change in residence results in the dependent losing their health insurance;

(g) A court order requires the school employee or any other individual to provide a health plan for an eligible dependent of the school employee (a former spouse or former state registered domestic partner is not an eligible dependent);

(h) School employee or a school employee's dependent enrolls in coverage under medicaid or a state children's health insurance program (CHIP), or the school employee or a school employee's dependent loses eligibility for coverage under medicaid or CHIP;

Note: A school employee may only return from having waived SEBB medical for the events described in (h) of this subsection. A school employee may not waive their SEBB medical for the events described in (h) of this subsection.

(i) School employee or a school employee's dependent becomes eligible for state premium assistance subsidy for SEBB health plan coverage from medicaid or CHIP;

(j) School employee or a school employee's dependent becomes eligible and enrolls in a TRICARE plan, or loses eligibility for a TRICARE plan;

(k) School employee becomes eligible and enrolls in medicare, or loses eligibility for medicare.

WSR 24-11-098

PROPOSED RULES

HEALTH CARE AUTHORITY

(School Employees Benefits Board)

[Admin #2024-02.03—Filed May 16, 2024, 4:04 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-04-064.

Title of Rule and Other Identifying Information: WAC 182-31-090
When is an enrollee eligible to continue school employees benefits board (SEBB) benefits under Consolidated Omnibus Budget Reconciliation Act (COBRA)?

Hearing Location(s): On June 25, 2024, at 10:00 a.m. The health care authority (HCA) holds public hearings virtually without a physical meeting place. To attend the virtual public hearing, you must register in advance https://us02web.zoom.us/webinar/register/WN_71S7AVjqRpmWNbN_6M4B1Q. If the link above opens with an error message, please try using a different browser. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: Not sooner than June 26, 2024.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, beginning May 17, 2024, 8:00 a.m., by June 25, 2024, by 11:59 p.m.

Assistance for Persons with Disabilities: Contact Johanna Larson, phone 360-725-1349, fax 360-586-9727, telecommunication[s] relay service 711, email Johanna.Larson@hca.wa.gov, by June 14, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to amend WAC 182-31-090 to support the SEBB program:

1. Implement SEBB policy resolution: Implemented Resolution SEBB 2024-06 continuation coverage when a term of board member of a school district ends.

2. Implement legislation: Updated flexible spending arrangement (FSA) references to implement SB 5700; and added WAC references that include school board members to implement SSB 5275.

3. Make other technical amendments: Clarified an enrollee's COBRA coverage will terminate when their medicare coverage begins.

Reasons Supporting Proposal: See purpose statement.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160; Resolution SEBB 2024-06.

Statute Being Implemented: RCW 41.05.021, 41.05.160; SB 5700, SSB 5275.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Stella Ng, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-0883; Implementation: Cade Walker, P.O. Box 42716, Olympia, WA 98504-2716, 360-643-7900; and Enforcement: Jean Bui, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-0858.

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

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

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

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. These rules do not apply to small businesses.

May 16, 2024
Wendy Barcus
Rules Coordinator

OTS-5402.1

AMENDATORY SECTION (Amending WSR 22-13-168, filed 6/21/22, effective 1/1/23)

WAC 182-31-090 When is an enrollee eligible to continue school employees benefits board (SEBB) benefits under Consolidated Omnibus Budget Reconciliation Act (COBRA)? (1) A school employee or a school employee's dependent who loses eligibility for the employer contribution toward school employees benefits board (SEBB) benefits and who qualifies for continuation coverage under the federal Consolidated Omnibus Budget Reconciliation Act (COBRA) may continue coverage for all or any combination of SEBB medical, dental, or vision.

(2) A school employee or a school employee's dependent who loses eligibility for continuation coverage described in WAC 182-31-100 or 182-31-120 but who has not used the maximum number of months allowed under COBRA may continue any combination of SEBB medical, dental, or vision for the remaining difference in months.

(3) A school board member and their dependents who are enrolled in SEBB medical, dental, and vision who lose eligibility when the school board member leaves office or their term ends may continue enrollment in SEBB medical, dental, or vision coverage for the maximum number of months allowed under COBRA.

(4) An enrollee may continue SEBB medical, dental, or vision under COBRA by self-paying the premium and applicable premium surcharges set by the health care authority (HCA):

(a) The election must be received by the SEBB program no later than 60 days from the date the enrollee's SEBB health plan coverage ended or from the postmark date on the election notice sent by the SEBB program, whichever is later;

(b) The first premium payment under COBRA coverage and applicable premium surcharges are due to the HCA no later than 45 days after the election period ends as described in (a) of this subsection, except as described in WAC 182-30-040 (1)(a). Following the enrollee's first premium payment, premiums and applicable premium surcharges must be paid as described in WAC 182-30-040 (1)(c);

(c) COBRA continuation coverage enrollees who voluntarily terminate their COBRA coverage will not be eligible to reenroll in COBRA coverage unless they regain eligibility as described in WAC 182-31-040 or 182-31-200. Those who request to terminate their COBRA coverage

must do so in writing. COBRA coverage will end on the last day of the month in which the SEBB program receives the termination request or on the last day of the month specified in the COBRA enrollee's termination request, whichever is later. If the termination request is received on the first day of the month, COBRA coverage will end on the last day of the previous month;

(d) A school employee enrolled in a (~~medical~~) flexible spending arrangement (FSA) or limited purpose FSA and the school employee's dependents will have an opportunity to continue making contributions to their (~~medical~~) FSA or limited purpose FSA by electing COBRA if on the date of the qualifying event, as described under 42 U.S.C. Sec. 300bb-3, the school employee's (~~medical~~) FSA or limited purpose FSA has a greater amount in remaining benefits than remaining contribution payments for the current year. The election must be received by the contracted vendor no later than 60 days from the date the SEBB health plan coverage ended or from the postmark date on the election notice sent by the contracted vendor, whichever is later. The first premium payment under COBRA coverage is due to the contracted vendor no later than 45 days after the election period ends as described above.

(~~(4)~~) (5) A subscriber's state registered domestic partner and the state registered domestic partner's children may continue SEBB medical, dental, or vision on the same terms and conditions as spouses and other eligible dependents under COBRA as described under RCW 26.60.015.

(~~(5)~~) (6) Medical, dental, and vision coverage under COBRA begin on the first day of the month following the day the COBRA enrollee loses eligibility for SEBB health plan coverage as described in WAC 182-31-050, 182-31-100, 182-31-120, (~~(or)~~) 182-31-140, or 182-31-200.

(~~(6)~~) (7) An enrollee's COBRA coverage will terminate (~~at the end of~~) the last day of the month (~~(when they become eligible for medicare due to turning age 65 or older, or when enrolled in medicare due to a disability)~~) prior to the month their medicare coverage begins.

WSR 24-11-099

PROPOSED RULES

HEALTH CARE AUTHORITY

(School Employees Benefits Board)

[Admin #2024-02.04—Filed May 16, 2024, 4:09 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-04-064.

Title of Rule and Other Identifying Information: WAC 182-31-130

What options for continuation coverage are available to dependents who cease to meet the eligibility criteria as described in WAC 182-31-140 or 182-30-130?

Hearing Location(s): On June 25, 2024, at 10:00 a.m. The health care authority (HCA) holds public hearings virtually without a physical meeting place. To attend the virtual public hearing, you must register in advance https://us02web.zoom.us/webinar/register/WN_71S7AVjqRpmWNbN_6M4B1Q. If the link above opens with an error message, please try using a different browser. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: Not sooner than June 26, 2024.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, beginning May 17, 2024, 8:00 a.m., by June 25, 2024, by 11:59 p.m.

Assistance for Persons with Disabilities: Contact Johanna Larson, phone 360-725-1349, fax 360-586-9727, telecommunication[s] relay service 711, email Johanna.Larson@hca.wa.gov, by June 14, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to amend WAC 182-31-130 to support the school employees benefits board (SEBB) program:

1. Implement SEBB policy resolution: Implemented Resolution SEBB 2024-07 continuation coverage when a dependent of a school board member loses eligibility.

2. Make other technical amendments: Added a WAC reference when the dependent's first premium payment and applicable premium surcharges' exception applies.

Reasons Supporting Proposal: See purpose statement.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160; Resolution SEBB 2024-07.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Stella Ng, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-0883; Implementation: Cade Walker, P.O. Box 42716, Olympia, WA 98504-2716, 360-643-7900; and Enforcement: Jean Bui, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-0858.

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

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

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

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. These rules do not apply to small businesses.

May 16, 2024
Wendy Barcus
Rules Coordinator

OTS-5403.1

AMENDATORY SECTION (Amending WSR 20-16-067, filed 7/28/20, effective 8/28/20)

WAC 182-31-130 What options for continuation coverage are available to dependents who cease to meet the eligibility criteria as described in WAC 182-31-140 or 182-30-130? If eligible, dependents may continue health plan enrollment under one of the continuation coverage options in subsection (1) or (2) of this section by self-paying the premiums and applicable premium surcharges set by the health care authority (HCA), with no contribution from the school employees benefits board (SEBB) organization, following their loss of eligibility under the subscriber's health plan coverage. The dependent's first premium payment and applicable premium surcharges are due no later than (~~forty-five~~) 45 days after the dependent's election period ends as described in WAC 182-31-090 or 182-12-265, whichever applies, except as described in WAC 182-08-180 (1)(a). Premiums and applicable premium surcharges associated with continuing SEBB medical, must be made to the HCA as well as premiums associated with continuing SEBB dental or SEBB vision insurance coverage. Following the dependent's first premium payment, the dependent must pay premium and applicable premium surcharges as they become due. If the monthly premium or applicable premium surcharges remain unpaid for (~~sixty~~) 60 days from the original due date, SEBB insurance coverage will be terminated retroactive to the last day of the month for which the monthly premium and applicable premium surcharges were paid as described in WAC 182-30-040 (1)(c). The SEBB program must receive the required forms as outlined in the SEBB initial notice of COBRA and continuation coverage rights. Options for continuing health plan enrollment are based on the reason that eligibility was lost.

(1) Dependents who lose eligibility due to the death of a school employee may be eligible to continue health plan enrollment as described in WAC 182-12-265; or

(2) Dependents who lose eligibility because they no longer meet the eligibility criteria as described in WAC 182-31-140 are eligible to continue SEBB medical, dental, or vision under provisions of the federal Consolidated Omnibus Budget Reconciliation Act (COBRA). See WAC 182-31-090 for more information on COBRA.

(3) A subscriber's state registered domestic partner and the state registered domestic partner's children may continue SEBB medical, dental, or vision on the same terms and conditions as spouses and

other eligible dependents under COBRA as described under RCW 26.60.015.

(4) A dependent of a school board member who is enrolled in medical, dental, and vision who loses eligibility because they are not an eligible dependent under the SEBB program may enroll in medical, dental, or vision for a maximum of 36 months on a self-pay basis.

(5) No continuation coverage will be offered unless the SEBB program is notified through hand delivery or United States Postal Service mail of the qualifying event as outlined in the SEBB initial notice of COBRA and continuation coverage rights.

WSR 24-11-100

PROPOSED RULES

HEALTH CARE AUTHORITY

(School Employees Benefits Board)

[Admin #2024-02.05—Filed May 16, 2024, 4:14 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-04-064.

Title of Rule and Other Identifying Information: WAC 182-30-100

When may a school employee enroll, or revoke an election and make a new election under the premium payment plan, medical flexible spending arrangement (FSA), limited purpose FSA, or dependent care assistance program (DCAP)?

Hearing Location(s): On June 25, 2024, at 10:00 a.m. The health care authority (HCA) holds public hearings virtually without a physical meeting place. To attend the virtual public hearing, you must register in advance https://us02web.zoom.us/webinar/register/WN_71S7AVjqRpmWNbN_6M4B1Q. If the link above opens with an error message, please try using a different browser. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: Not sooner than June 26, 2024.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, beginning May 17, 2024, 8:00 a.m., by June 25, 2024, by 11:59 p.m.

Assistance for Persons with Disabilities: Contact Johanna Larson, phone 360-725-1349, fax 360-586-9727, telecommunication[s] relay service 711, email Johanna.Larson@hca.wa.gov, by June 14, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to amend WAC 182-30-130 to support the school employees benefits board (SEBB) program:

1. Implement SEBB policy resolution: Implemented Resolution SEBB 2023-04 When a subscriber has a change in residence or employment location that affects medical plan availability.

2. Make other technical amendments: Updated flexible spending arrangement references; and amended special open enrollment events by including when a school employee has a change in residence, a change in employment location, and when the SEBB program determines that there has been a substantial decrease in the providers available under the SEBB medical plan.

Reasons Supporting Proposal: See purpose statement.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160; Resolution SEBB 2023-04.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Stella Ng, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-0883; Implementation: Cade Walker, P.O. Box 42716, Olympia, WA 98504-2716, 360-643-7900; and Enforcement: Jean Bui, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-0858.

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

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

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

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. These rules do not apply to small businesses.

May 16, 2024

Wendy Barcus

Rules Coordinator

OTS-5430.1

AMENDATORY SECTION (Amending WSR 23-14-018, filed 6/23/23, effective 1/1/24)

WAC 182-30-100 When may a school employee enroll, or revoke an election and make a new election under the premium payment plan, ~~((medical))~~ flexible spending arrangement (FSA), limited purpose FSA, or dependent care assistance program (DCAP)? A school employee who is eligible to participate in the salary reduction plan as described in WAC 182-31-060 may enroll, or revoke their election and make a new election under the premium payment plan, ~~((medical))~~ flexible spending arrangement (FSA), limited purpose FSA, or dependent care assistance program (DCAP) at the following times:

(1) When newly eligible under WAC 182-31-040 and enrolling as described in WAC 182-30-080(1).

(2) **During annual open enrollment:** An eligible school employee may elect to enroll in or opt out of participation under the premium payment plan during the annual open enrollment by submitting the required form to their school employees benefits board (SEBB) organization. An eligible school employee may elect to enroll or reenroll in the ~~((medical))~~ FSA, limited purpose FSA, DCAP, or both an FSA and DCAP during the annual open enrollment by submitting the required forms to their SEBB organization or applicable contracted vendor as instructed. All required forms must be received no later than the last day of the annual open enrollment. The enrollment or new election becomes effective January 1st of the following year.

(a) School employees cannot enroll in a ~~((medical))~~ FSA and a limited purpose FSA in the same year.

(b) School employees enrolled in a high deductible health plan (HDHP) with a health savings account (HSA) cannot also enroll in a ~~((medical))~~ FSA in the same plan year. School employees who elect enrollment in the HDHP with a HSA and a ~~((medical))~~ FSA will only be enrolled in a HDHP with a HSA.

(c) If a school employee enrolls in a HDHP with a HSA during annual open enrollment and has a carryover amount from a ~~((medical))~~

FSA, the school employee will be enrolled in a limited purpose FSA and the carryover amount will be deposited into the limited FSA.

(d) School employees who are not enrolled in a HDHP with a HSA and elect both a ~~((medical))~~ FSA and a limited purpose FSA will be enrolled in the ~~((medical))~~ FSA.

(3) **During a special open enrollment:** A school employee who is eligible to participate in the salary reduction plan may enroll or revoke their election and make a new election under the premium payment plan, ~~((medical))~~ FSA, limited purpose FSA, or DCAP outside of the annual open enrollment if a special open enrollment event occurs. The enrollment or change in election must be allowable under Internal Revenue Code (IRC) and Treasury regulations, and correspond to and be consistent with the event that creates the special open enrollment. To make a change or enroll, the school employee must submit the required form to their SEBB organization. The SEBB organization must receive the required form and evidence of the event that created the special open enrollment no later than 60 days after the event occurs.

For purposes of this section, an eligible dependent includes any person who qualifies as a dependent of the school employee for tax purposes under IRC 26 U.S.C. Sec. 152 without regard to the income limitations of that section. It does not include a state registered domestic partner unless the state registered domestic partner otherwise qualifies as a dependent for tax purposes under IRC 26 U.S.C. Sec. 152.

(a) **Premium payment plan.** A school employee may enroll or revoke their election and elect to opt out of the premium payment plan when any of the following special open enrollment events occur, if the requested change corresponds to and is consistent with the event. The enrollment or election to opt out will be effective the first day of the month following the later of the event date or the date the required form is received. If that day is the first of the month, the enrollment or change in election begins on that day. If the special open enrollment is due to the birth, adoption, or assumption of legal obligation for total or partial support in anticipation of adoption of a child, the enrollment or change in election will begin the first of the month in which the event occurs.

(i) School employee acquires a new dependent due to:

- Marriage;
- Registering a state registered domestic partnership when the dependent is a tax dependent of the school employee;
- Birth, adoption, or when the school employee has assumed a legal obligation for total or partial support in anticipation of adoption; or
- A child becoming eligible as an extended dependent through legal custody or legal guardianship.

(ii) School employee's dependent no longer meets SEBB eligibility criteria because:

- School employee has a change in marital status;
- School employee's domestic partnership with a state registered domestic partner who is a tax dependent is dissolved or terminated;
- An eligible dependent child turns age 26 or otherwise does not meet dependent child eligibility criteria;
- An eligible dependent ceases to be eligible as an extended dependent or as a dependent with a disability; or
- An eligible dependent dies.

(iii) School employee or a school employee's dependent loses other coverage under a group health plan or through health insurance cov-

erage, as defined by Health Insurance Portability and Accountability Act (HIPAA);

(iv) School employee has a change in employment status that affects the school employee's eligibility for their employer contribution toward their employer-based group health plan;

(v) The school employee's dependent has a change in their own employment status that affects their eligibility or their dependent's eligibility for the employer contribution toward their employer-based group health plan;

Exception: As used in (a)(v) of this subsection, "employer contribution" means contributions made by the dependent's current or former employer toward health coverage as described in Treasury Regulation 26 C.F.R. 54.9801-6.

(vi) School employee or a school employee's dependent has a change in enrollment under an employer-based group health plan during its annual open enrollment that does not align with the SEBB annual open enrollment;

(vii) School employee or a school employee's dependent has a change in residence that affects health plan availability. If the school employee has a change in residence and the school employee's current medical plan is no longer available, the school employee must select a new medical plan as described in WAC 182-30-085(3);

(viii) School employee's dependent has a change in residence from outside of the United States to within the United States, or from within the United States to outside of the United States, and that change in residence resulted in the dependent losing their health insurance;

(ix) A court order requires the school employee or any other individual to provide insurance coverage for an eligible dependent of the school employee (a former spouse or former state registered domestic partner is not an eligible dependent);

(x) School employee or a school employee's dependent enrolls in coverage under medicaid or a state children's health insurance program (CHIP), or the school employee or a school employee's dependent loses eligibility for coverage under medicaid or CHIP;

(xi) School employee or a school employee's dependent becomes eligible for state premium assistance subsidy for SEBB health plan coverage from medicaid or CHIP;

(xii) School employee or a school employee's dependent enrolls in coverage under medicare or the school employee or a school employee's dependent loses eligibility for coverage under medicare;

(xiii) School employee or a school employee's dependent's current medical plan becomes unavailable because the school employee or enrolled dependent is no longer eligible for a HSA. The HCA may require evidence that the school employee or a school employee's dependent is no longer eligible for a HSA;

(xiv) School employee or a school employee's dependent experiences a disruption of care for active and ongoing treatment, that could function as a reduction in benefits for the school employee or a school employee's dependent. The school employee may not change their health plan election if the school employee's or dependent's physician stops participation with the school employee's health plan unless the SEBB program determines that a continuity of care issue exists. The SEBB program will consider but not limit its consideration to the following:

- Active cancer treatment such as chemotherapy or radiation therapy;
- Treatment following a recent organ transplant;
- A scheduled surgery;

- Recent major surgery still within the postoperative period; or
- Treatment for a high-risk pregnancy.

(xv) School employee or school employee's dependent becomes eligible and enrolls in a TRICARE plan, or loses eligibility for a TRICARE plan.

~~(xvi) ((Subscriber has a change in employment from a SEBB organization to a public school district that results in the subscriber having different medical plans available, and the subscriber changes their election. The subscriber may change their election if the change in employment causes:~~

~~• The subscriber's current medical plan to no longer be available, in this case the subscriber may select from any available medical plan; or~~

~~• The subscriber has one or more new medical plans available, in this case the subscriber may select to enroll in a newly available plan.~~

~~• As used in this subsection the term "public school district" shall be interpreted to not include charter schools and educational service districts.) School employee has a change in employment location that affects medical plan availability.~~

If the school employee changes employment locations and their current medical plan is no longer available, the school employee must select a new medical plan as described in WAC 182-30-085(3).

If the school employee has one or more new medical plans available, the school employee may select to enroll in a newly available plan.

(xvii) The SEBB program determines that there has been a substantial decrease in the providers available under a SEBB medical plan.

If the school employee is having premiums taken from payroll on a pretax basis, a medical plan change will not be approved if it would conflict with provisions of the salary reduction plan authorized under RCW 41.05.300.

(b) ~~((Medical))~~ **FSA and limited purpose FSA.** A school employee may enroll or revoke their election and make a new election under the ~~((medical))~~ FSA or limited purpose FSA when any one of the following special open enrollment events occur, if the requested change corresponds to and is consistent with the event. The enrollment or new election will be effective the first day of the month following the later of the event date or the date the required form and evidence of the event that created the special open enrollment is received by the SEBB organization. If that day is the first of the month, the enrollment or change in election begins on that day. If the special open enrollment is due to the birth, adoption, or assumption of legal obligation for total or partial support in anticipation of adoption of a child, the enrollment or change in election will begin the first of the month in which the event occurs.

(i) School employee acquires a new dependent due to:

- Marriage;
- Registering a state registered domestic partnership when the dependent is a tax dependent of the school employee;
- Birth, adoption, or when the school employee has assumed a legal obligation for total or partial support in anticipation of adoption; or
- A child becoming eligible as an extended dependent through legal custody or legal guardianship.

(ii) School employee's dependent no longer meets SEBB eligibility criteria because:

- School employee has a change in marital status;
- School employee's domestic partnership with a state registered domestic partner who qualifies as a tax dependent is dissolved or terminated;
- An eligible dependent child turns age 26 or otherwise does not meet dependent child eligibility criteria;
- An eligible dependent ceases to be eligible as an extended dependent or as a dependent with a disability; or
- An eligible dependent dies.

(iii) School employee or a school employee's dependent loses other coverage under a group health plan or through health insurance coverage, as defined by HIPAA;

(iv) School employee or a school employee's dependent has a change in employment status that affects the school employee's or a dependent's eligibility for the (~~medical~~) FSA or limited purpose FSA;

(v) A court order requires the school employee or any other individual to provide insurance coverage for an eligible dependent of the school employee (a former spouse or former state registered domestic partner is not an eligible dependent);

(vi) School employee or a school employee's dependent enrolls in coverage under medicaid or CHIP, or the school employee or a school employee's dependent loses eligibility for coverage under medicaid or CHIP;

(vii) School employee or a school employee's dependent enrolls in coverage under medicare.

(c) **DCAP.** A school employee may enroll or revoke their election and make a new election under the DCAP when any one of the following special open enrollment events occur, if the requested change corresponds to and is consistent with the event. The enrollment or new election will be effective the first day of the month following the later of the event date or the date the required form and evidence of the event that created the special open enrollment is received by the SEBB organization. If that day is the first of the month, the enrollment or change in election begins on that day. If the special open enrollment is due to the birth, adoption, or assumption of legal obligation for total or partial support in anticipation of adoption of a child, the enrollment or change in election will begin the first of the month in which the event occurs.

(i) School employee acquires a new dependent due to:

- Marriage;
- Registering a state registered domestic partnership if the state registered domestic partner qualifies as a tax dependent of the school employee;
- Birth, adoption, or when the school employee has assumed a legal obligation for total or partial support in anticipation of adoption; or
- A child becoming eligible as an extended dependent through legal custody or legal guardianship.

(ii) School employee or a school employee's dependent has a change in employment status that affects the school employee's or a dependent's eligibility for DCAP;

(iii) School employee or school employee's dependent has a change in enrollment under an employer-based DCAP during its annual open enrollment that does not align with the SEBB annual open enrollment;

(iv) School employee changes dependent care provider; the change to the DCAP election amount can reflect the cost of the new provider;

(v) School employee or school employee's spouse experiences a change in the number of qualifying individuals as defined in IRC 26 U.S.C. Sec. 21 (b) (1);

(vi) School employee's dependent care provider imposes a change in the cost of dependent care; school employee may make a change in the DCAP election amount to reflect the new cost if the dependent care provider is not a qualifying relative of the school employee as defined in IRC 26 U.S.C. Sec. 152.

WSR 24-11-101
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Developmental Disabilities Administration)
[Filed May 17, 2024, 9:14 a.m.]

Supplemental Notice to WSR 23-20-108.

Preproposal statement of inquiry was filed as WSR 23-14-038.

Title of Rule and Other Identifying Information: The developmental disabilities administration (DDA) is proposing to amend WAC 388-825-335 Is a background check required of a long-term care worker employed by a home care agency licensed by the department of health?, 388-825-600 What definitions apply to WAC 388-825-600 through 388-825-690 of this chapter?, 388-825-610 Who must have a background check and a background check renewal?, 388-825-615 What type of background check is required?, and 388-825-620 How often must a background check be renewed?

Hearing Location(s): On June 25, 2024, at 10:00 a.m., virtually via Microsoft Teams or call in. See the department of social and health services (DSHS) website at <https://www.dshs.wa.gov/sesa/rpau/proposed-rules-and-public-hearings> for the most current information.

Date of Intended Adoption: Not earlier than June 26, 2024.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by June 25, 2024, at 5:00 p.m.

Assistance for Persons with Disabilities: Contact Shelley Tencza, rules consultant, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service, email shelley.tencza@dshs.wa.gov, by June 11, 2024, at 5:00 p.m.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: DDA is amending these rules primarily to comply with federal background check requirements; align rules with recent amendments to state law passed under SB 5252; and clarify when an employee at a residential habilitation center (RHC) is required to complete a background check or background check renewal. Instead of requiring a renewal for a job class change, DDA will require an RHC employee to complete a renewal when there is a change in job class series. After the public hearing on the proposed amendments under WSR 23-20-108, the department determined additional changes were needed and is filing this supplemental CR-102, opening an additional public comment period, and holding a second hearing.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 71A.12.030.

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

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

Name of Agency Personnel Responsible for Drafting: Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, 360-790-4732; Implementation and Enforcement: Heather Lum, P.O. Box 45310, Olympia, WA 98504-5310, 360-407-1526.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, phone 360-790-4732, fax 360-407-0955, TTY 1-800-833-6388, email chantelle.diaz@dshs.wa.gov.

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

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

Explanation of exemptions: These amendments impose no costs, regardless of whether or not a business meets the definition of a small business, because DDA pays for the cost of all provider background checks.

Scope of exemption for rule proposal:

Is fully exempt.

May 16, 2024
Katherine I. Vasquez
Rules Coordinator

SHS-4986.5

AMENDATORY SECTION (Amending WSR 14-14-029, filed 6/24/14, effective 7/25/14)

WAC 388-825-335 Is a background check required of a long-term care worker employed by a home care agency licensed by the department of health? (1) In order to be a long-term care worker employed by a home care agency, a person must:

(a) Complete the required DSHS form online authorizing a background check~~((-))~~;

(b) Disclose any disqualifying criminal convictions and pending charges as listed in chapter 388-113 WAC, and also disclose civil adjudication proceedings and negative actions as those terms are defined in WAC ~~((388-71-0512))~~ 388-113-0030~~((-))~~;

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

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

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

(a) Is disqualified based on a disqualifying criminal conviction or a pending charge for a disqualifying crime ~~((as listed in))~~ under WAC 388-113-0020, civil adjudication proceeding~~((-))~~ or negative action ~~((as defined in))~~ under WAC ~~((388-71-0512 and listed in WAC 388-71-0540))~~ 388-113-0030; or

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

(3) For ~~((those providers))~~ an applicant or service provider listed in RCW 43.43.837(1), ~~((a second national fingerprint-based background check is required if they have lived out of the state of Washington since the first national fingerprint-based background check was~~

completed)) a national fingerprint-based background check is required if the person lived out of the state of Washington in the past 36 months or is a new hire.

(4) The department may require a long-term care worker to have a Washington state name and date of birth background check (~~(or a Washington state and national fingerprint-based background check, or both, at any time.)~~) if information is disclosed or found regarding a new:

- (a) Pending charge;
- (b) Conviction; or
- (c) Negative action.

AMENDATORY SECTION (Amending WSR 23-07-130, filed 3/22/23, effective 4/22/23)

WAC 388-825-600 What definitions apply to WAC 388-825-600 through 388-825-690 of this chapter? The following definitions apply to WAC 388-825-600 through 388-825-690 of this chapter:

"Agency" means any agency of the state or any private agency providing services to individuals with developmental disabilities.

"Background check central unit (BCCU)" means a division within the department that processes background checks for department-authorized providers and department programs.

"Certification" means a process used by the department to determine if an applicant or service provider complies with chapter 388-101 WAC and is eligible to provide certified community residential services and supports to clients.

"Client" means a person who has a developmental disability as defined in RCW 71A.10.020(6) and has been determined eligible to receive services by DDA under chapter 388-823 WAC.

"Community residential service businesses" has the same meaning as under RCW 74.39A.009.

"DDA" means the developmental disabilities administration within the department of social and health services (DSHS).

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

"Disqualified" means that the results of a person's background check exclude the person from a position that will or may involve unsupervised access to DDA clients.

"Individual provider" has the same meaning as defined in RCW 74.39A.240.

"Job class" means a level of work.

"Job class series" means a grouping of job functions having similar purpose and knowledge requirements but different levels of difficulty and responsibility. Where there is a professional structure that includes a job family and a job level, different job levels within one job family constitutes a class series (WAC 357-01-080).

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

"Personal information" means any individually identifiable information that could be used to identify or contact a person and includes protected health information and financial information.

"Provider" means an individual or agency who meets the provider qualifications and is contracted with a county or DSHS to provide services to a DDA client.

"Qualified" means a person can be hired into a position that includes unsupervised access to DDA clients because the results of the person's background check are not disqualifying.

"Temporary restraining order" means a restraining order or order of protection that expired without a hearing, was dismissed following an initial hearing, or was dismissed by stipulation of the parties in lieu of an initial hearing.

"Unsupervised," under RCW 43.43.830, means not in the presence of:

(1) Another employee or volunteer from the same business or organization as the applicant who has not been disqualified by the background check.

(2) Any relative or guardian of a DDA client to whom the applicant has access during the course of his or her employment or involvement with the business or organization.

AMENDATORY SECTION (Amending WSR 23-07-130, filed 3/22/23, effective 4/22/23)

WAC 388-825-610 Who must have a background check and a background check renewal? (1) DDA requires background checks under WAC 388-825-615 and background check renewals under WAC 388-825-320 for all contracted providers, agency employees, owner-operators, administrators, subcontractors, and volunteers who may have:

(a) Unsupervised access to a DDA client; or

(b) Access to a DDA client's personal information.

(2) For community residential service businesses, any person who provides instruction and support services (ISS), including volunteers, must have a background check and background check renewal and follow background check requirements under this chapter.

(3) All residential habilitation center employees and volunteers must have a background check. If a residential habilitation center employee changes job class series, the employee must have a background check renewal as required by RCW 43.43.837.

AMENDATORY SECTION (Amending WSR 23-07-130, filed 3/22/23, effective 4/22/23)

WAC 388-825-615 What type of background check is required? (1) (~~(Beginning January 7, 2012, long)~~) Long-term care workers and providers (~~(, including parents and individual providers,)~~) undergoing a background check for initial hire or initial contract (~~(,)~~) must be screened through a Washington state name and date of birth check and a national fingerprint-based background check as required by RCW 43.43.837.

(~~(2) Beginning January 1, 2016, a newly hired long-term care worker employed by a community residential service business must be screened through a Washington state name and date of birth check and a national fingerprint-based background check.~~)

(~~(a)~~) (2) For a renewal, a person who has continuously resided in Washington state for the past (~~(three consecutive years)~~) 36 months must be screened through a Washington state name and date of birth check.

~~((b))~~ (3) For a renewal, a person who has resided outside of Washington state in the past ~~((three years))~~ 36 months must be screened through a Washington state name and date of birth check and a national fingerprint-based background check as required by RCW 43.43.837.

~~((3))~~ (4) For adult family homes, refer to chapter 388-76 WAC. For assisted living facilities, refer to chapter 388-78A WAC.

~~((4))~~ (5) Beginning July ~~((1))~~ 23, 2023, a residential habilitation center (RHC) applicant undergoing a background check for initial hire must be screened through a Washington state name and date of birth check and a national fingerprint-based background check. An RHC employee must complete a background check renewal, which includes a fingerprint check, when applying for a change in job class series or transferring from one RHC to another, as required by RCW 43.43.837.

~~((5))~~ (6) All background checks must be completed through the online background check system.

AMENDATORY SECTION (Amending WSR 23-07-130, filed 3/22/23, effective 4/22/23)

WAC 388-825-620 How often must a background check be renewed?

(1) DDA requires a background check at least every ~~((three years))~~ 36 months, or more frequently if required by program rule.

(2) A background check renewal will be conducted as follows:

(a) ~~((Individuals who have))~~ A person who has continuously resided in Washington state for the past ~~((three consecutive years will))~~ 36 months must be screened through a state name and date of birth background check.

(b) ~~((Individuals who have))~~ A person who has lived outside of Washington state within the past ~~((three years will))~~ 36 months must be screened through a state name and date of birth check and a national fingerprint-based background check as required by RCW 43.43.837.

(c) ~~((Individuals who live))~~ A person who lives outside of Washington state and ~~((provide))~~ provides DDA services in Washington state ~~((will))~~ must be screened through a Washington state name and date of birth check and a national fingerprint-based background check.

(3) The department may require a long-term care worker or residential habilitation center employee to have a renewed Washington state name and date of birth background check if information is disclosed or found regarding a new:

- (a) Pending charge;
- (b) Conviction; or
- (c) Negative action.

WSR 24-11-105

PROPOSED RULES

DEPARTMENT OF HEALTH

[Filed May 17, 2024, 1:52 p.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: Reference for sources of radionuclide emissions, adopting national standards in WAC 246-247-035. The department of health (department) is proposing an amendment to the federal rule publication date to conform to United States Environmental Protection Agency (EPA) requirements.

Hearing Location(s): On June 25, 2024, at 3:30 p.m., at the Department of Health, Town Center 2, Rooms 166 and 167, 111 Israel Road S.E., Tumwater, WA, 98501; or virtual. To register in advance for this webinar https://us02web.zoom.us/webinar/register/WN_Y7PwTGwaS8if4hl56ib_zA. After registering, you will receive a confirmation email containing information about joining the webinar. Individuals may attend either virtually or in person.

Date of Intended Adoption: July 2, 2024.

Submit Written Comments to: Department of Health, C/O Nina Helpling, P.O. Box 47820, Olympia, WA 98504-7820, email radruleupdates@doh.wa.gov, <https://fortress.wa.gov/doh/policyreview>, by June 25, 2024.

Assistance for Persons with Disabilities: Contact Nina Helpling, phone 360-236-3065, TTY 711, email nina.helpling@doh.wa.gov, by June 11, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule updates the publication date of federal rules adopted by reference under 40 C.F.R. Part 61 from 2023 to the most recently adopted 2024 version in WAC 246-247-035. The proposed amendment makes no changes to any requirements previously adopted, but it is a requirement that the department adopts the annual updated publication date into state rule to receive full delegation of the Radionuclide Air Emissions Program from EPA.

Reasons Supporting Proposal: The intent of RCW 70A.388.040 is to safely regulate the possession and use of radioactive material within the state of Washington. The intent of RCW 70A.388.050(5) is to reduce redundant licensing requirements. The rule meets the intent of the statutes by adopting requirements as stringent as the federal requirements in order for the department to have full delegation authority from EPA.

Statutory Authority for Adoption: RCW 70A.388.040 and 70A.388.050(5).

Statute Being Implemented: RCW 70A.388.040 and 70A.388.050(5).

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting: Nina Helpling, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-3065; Implementation and Enforcement: Crystal Mathey, 309 Bradley Boulevard, Suite 201, Richland, WA 99352, 509-578-0843.

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

A cost-benefit analysis is not required under RCW 34.05.328. The department did not complete a cost-benefit analysis under RCW 34.05.328. RCW 34.05.328 (5)(b)(iii) exempts rules that adopt or in-

corporate by reference without material change federal statutes or regulations, Washington state law, the rules of other Washington state agencies, or national consensus codes that generally establish industry standards.

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

Is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Citation of the specific federal statute or regulation and description of the consequences to the state if the rule is not adopted: EPA publishes a new version of 40 C.F.R. Part 61 - National Emissions Standards for Hazardous Air Pollutants (NESHAP) each year regardless if changes were made to the regulations. This rule proposal is necessary to update the EPA referenced publication date of 40 C.F.R. Part 61 from 2023 to 2024 in WAC 246-247-035 to remain consistent between federal and state rules and as a primary condition for delegation of the NESHAP authority from EPA to the department. If Washington does not adopt the proposed changes, the department would not receive full delegation as required by EPA.

Is exempt under RCW 19.85.025(3) as the rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule.

Explanation of exemptions: The department is exempt from requirements of the Regulatory Fairness Act because the proposed rule only incorporates by reference the most recent version of the federal standards necessary for the department to maintain full delegation as required by EPA.

Scope of exemption for rule proposal:

Is fully exempt.

May 14, 2024
Kristen Peterson, JD
Chief of Policy
for Umair A. Shah, MD, MPH
Secretary

OTS-5391.1

AMENDATORY SECTION (Amending WSR 23-21-055, filed 10/11/23, effective 11/11/23)

WAC 246-247-035 National standards adopted by reference for sources of radionuclide emissions. (1) In addition to other requirements of this chapter, the following federal standards, as in effect

on July 1, ((2023)) 2024, are adopted by reference except as provided in subsection (2) of this section.

(a) For federal facilities:

(i) 40 C.F.R. Part 61, Subpart A - General Provisions.

(ii) 40 C.F.R. Part 61, Subpart H - National Emission Standards for Emissions of Radionuclides Other Than Radon From Department of Energy Facilities.

(iii) 40 C.F.R. Part 61, Subpart I - National Emission Standards for Radionuclide Emissions From Federal Facilities Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H.

(iv) 40 C.F.R. Part 61, Subpart Q - National Emission Standards for Radon Emissions From Department of Energy Facilities.

(b) For nonfederal facilities:

(i) 40 C.F.R. Part 61, Subpart A - General Provisions.

(ii) 40 C.F.R. Part 61, Subpart B - National Emission Standards for Radon Emissions From Underground Uranium Mines.

(iii) 40 C.F.R. Part 61, Subpart K - National Emission Standards for Radionuclide Emissions From Elemental Phosphorus Plants.

(iv) 40 C.F.R. Part 61, Subpart R - National Emission Standards for Radon from Phosphogypsum Stacks.

(v) 40 C.F.R. Part 61, Subpart T - National Emission Standards for Radon Emissions From the Disposal of Uranium Mill Tailings.

(vi) 40 C.F.R. Part 61, Subpart W - National Emission Standards for Radon Emissions From Operating Mill Tailings.

(2) References to "Administrator" or "EPA" in 40 C.F.R. Part 61 include the department of health except in any section of 40 C.F.R. Part 61 for which a federal rule or delegation indicates that the authority will not be delegated to the state.

WSR 24-11-106

PROPOSED RULES

DEPARTMENT OF HEALTH

[Filed May 17, 2024, 1:56 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-11-003.

Title of Rule and Other Identifying Information: Drinking water state revolving fund (DWSRF) loan program, chapter 246-296 WAC. The department of health (department) is proposing rule amendments to incorporate the federal requirements of the Bipartisan Infrastructure Law (BIL), P.L. 117-58 - Bipartisan Infrastructure Investment and Jobs Act. The proposed rules redefine the definition of a disadvantaged community and change the state revolving fund priority point system for project rating and ranking proportionate with need.

Hearing Location(s): On June 25, 2024, at 1:00 p.m., at the Department of Health, Town Center 2, Rooms 166 and 167, 111 Israel Road S.E., Tumwater, WA, 98501; or virtual. Register in advance for this webinar https://us02web.zoom.us/webinar/register/WN_QVlqwFK5SmuFLe6RrJPIxQ. After registering, you will receive a confirmation email containing information about joining the webinar. Individuals may attend either virtually or in person.

Date of Intended Adoption: July 31, 2024.

Submit Written Comments to: Nina Helpling, P.O. Box 47820, Olympia, WA 98504-7820, email drinkingwaterrule@doh.wa.gov, <https://fortress.wa.gov/doh/policyreview>, by June 25, 2024.

Assistance for Persons with Disabilities: Contact Nina Helpling, phone 360-236-3065, TTY 711, email nina.helpling@doh.wa.gov, by June 11, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposal is to amend chapter 246-296 WAC to conform to federal requirements stipulated in BIL. Specifically, the proposed are intended to allow more projects to qualify for disadvantaged community benefits. The proposed rules revise the definition of a disadvantaged community and furthermore, revise the state revolving fund priority point system for project rating and ranking proportionate with need.

Under WAC 246-296-020, the department is proposing amendments to the definition of disadvantaged community to remove strict qualifying calculation criteria and include a variety of indicators including population served, social vulnerability, environmental health disparities, and economic hardships. Additionally, public water systems that are owned and operated by a federally recognized tribe are automatically considered a disadvantaged community.

Under WAC 246-296-050, the department is proposing amendments that will allow the department to forgive a portion or all of the loan amount to both disadvantaged and nondisadvantaged communities.

Under WAC 246-296-100, the department is proposing to remove the requirement for a water system to include an updated water system plan or small water system management program when applying for a loan that identifies lead service lines or lead service line replacement.

Under WAC 246-296-130, the department is proposing to update or remove obsolete requirements for the priority rating and ranking of new DWSRF loan applications.

Reasons Supporting Proposal: BIL dedicated billions nationwide in funding to the DWSRF for lead service line identification and replacement and general supplemental funding. Forty-nine percent of this

funding must be provided as forgivable loans to qualifying disadvantaged communities. BIL also requires that states provide loan subsidization, up to 100 percent principal forgiveness, to qualifying disadvantaged and nondisadvantaged communities. In order to award funding in accordance with BIL requirements, the Environmental Protection Agency (EPA) recommended that each state evaluate and revise their definition of a disadvantaged community and furthermore, revise the state revolving fund priority point system for project rating and ranking commensurate with need. These proposed amendments will allow more projects to qualify for disadvantaged community benefits in conformance with EPA's direction to states to implement BIL requirements.

Statutory Authority for Adoption: RCW 70A.125.160, Federal Safe Drinking Water Act.

Statute Being Implemented: RCW 70A.125.160, Federal Safe Drinking Water Act.

Rule is necessary because of federal law, P.L. 117-58 - Bipartisan Infrastructure Investment and Jobs Act.

Name of Proponent: Washington state department of health, governmental.

Name of Agency Personnel Responsible for Drafting: Nina Helpling, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-3065; Implementation and Enforcement: Christopher Pettit, 111 Israel Road S.E., Tumwater, WA 98501, 564-233-1408.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Nina Helpling, phone 360-236-3065, TTY 711, email nina.helpling@doh.wa.gov.

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

Is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Citation of the specific federal statute or regulation and description of the consequences to the state if the rule is not adopted: BIL, P.L. 117-58 - Bipartisan Infrastructure Investment and Jobs Act. BIL requires 49 percent of all funding be allocated to disadvantaged communities and that all funding to disadvantaged communities for lead service line replacement be offered as grants and forgivable loans. BIL also requires that 25 percent of funds provided for emerging contaminants be provided as forgivable loans to disadvantaged communities and those communities service fewer than 25,000 people. If the department did not make the proposed amendments, then the department would be out of compliance with BIL and water systems would not qualify for additional DWSRF allocations, weakening the infrastructure of public water systems in the state of Washington.

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; and rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Explanation of exemptions: WAC 246-296-130 (1)(d) and (2) are exempt under RCW 34.05.310 (4)(b) because it is additional internal criteria used by the department to make a determination.

The following portions of the proposed rule are considered clarifying and are exempt under RCW 34.05.310 (4) (d): WAC 246-296-020 and 246-296-050 (1) (b) and (2) (b).

Scope of exemption for rule proposal:

Is partially exempt.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. There are no probable costs associated with the proposed rule. The proposed changes to the rule are to conform with the stipulation of BIL and will add additional funding sources to the DWSRF loan program for water systems to apply for. The DWSRF loan program is a voluntary program for water systems to apply for needed water system loans at low or no principal interest with the possibility of partial or full loan forgiveness. The proposed changes to the rule only allow for more loan possibilities for water systems.

The following sections of the proposed rule are not exempt from analysis and do not impose costs.

WAC 246-296-050 (1) (a), (2) (a) and (c): The proposed changes allow the department to consider loans for up to full principal loan forgiveness for water systems that serve both disadvantaged and nondisadvantaged communities per BIL specifications. To access certain additional funding made available through BIL, the department must offer up to full principal loan forgiveness to not only water systems that serve disadvantaged communities, but nondisadvantaged communities as well. There are no probable costs associated with the proposed changes. The proposed rule will allow for additional applicants to apply for DWRSF loans.

WAC 246-296-100(2): The proposed changes exclude the requirement for a water system plan (WSP) or a small water systems management program (SWSMP) when a water system applies for an LSL identification or an LSL replacement loan. A WSP or SWSMP is only required for a loan on a project that is for capital improvements on water system owned equipment. Since the LSL identification and LSL replacement requires the identification and replacement of not only water company-owned infrastructure, like service mains and fittings, but also customer-owned service lines that run from the meter or connection to a customer's building, then LSL loans would not be considered a capital improvement and should not require a WSP or SWSMP. There are no probable costs associated with the proposed changes. The proposed rule reduces barriers and potential costs up to \$100,000 for applicants applying for DWSRF loans because they will no longer need to have a water system plan or small water system management program to qualify.

May 16, 2024
Kristen Peterson, JD
Chief of Policy
for Umair A. Shah, MD, MPH
Secretary

OTS-5304.2

AMENDATORY SECTION (Amending WSR 22-07-025, filed 3/9/22, effective 4/9/22)

WAC 246-296-020 Definitions, abbreviations, and acronyms. The definitions, abbreviations, and acronyms in this section apply throughout this chapter unless the context clearly indicates otherwise.

~~((1))~~ ~~("Affordability" means a community's ability, on a per household basis, to pay for rate increases that result from a DWSRF loan project.~~

~~((2))~~ **"Application"** means the DWSRF loan request form provided by the department.

~~((3))~~ **(2) "Application package"** means the DWSRF loan application form(s), requirements, terms of assistance, and related information created by the department.

~~((4))~~ **(3) "Borrower"** means the person that has legal and financial responsibility for the DWSRF loan.

~~((5))~~ **(4) "Capitalization grant"** means an award by EPA of funds to a state for the DWSRF and other purposes as authorized in Section 1452 of the SDWA.

~~((6))~~ **(5) "Construction completion report"** means a form provided by the department and completed for each specific construction project to document:

(a) Project construction in accordance with chapter 246-290 WAC and general standards of engineering practice;

(b) Physical capacity changes;

(c) Satisfactory test results; and

(d) The completed form is stamped with an engineer's seal, and signed and dated by a professional engineer.

~~((7))~~ **(6) "Default"** means failure to meet a financial obligation such as a DWSRF loan payment.

~~((8))~~ **(7) "Department"** means the Washington state department of health.

~~((9))~~ **(8) "Disadvantaged community"** means ~~((the))~~ a qualifying service area of a ((proposed)) project serving residential connections within a public water system ((where the project will result in:

~~((a) Water rates that are more than one and one-half percent of the MHI of the service area; or~~

~~((b) Restructuring, when one or more public water systems are having financial difficulties))~~ that is disproportionately impacted by economic, health, and environmental burdens. Potential qualifying areas will be assessed by indicators established in state guidance including population served, social vulnerability, environmental health disparities, and economic hardship. A service area of a project serving residential connections within a public water system owned and operated by a federally recognized tribe is considered a disadvantaged community.

~~((10))~~ **(9) "DWSRF (drinking water state revolving fund)"** means the program that meets the requirements of RCW 70A.125.160 to administer federal funds and other funds deposited in a dedicated account used to finance public water system infrastructure improvements and drinking water program activities.

~~((11))~~ **(10) "DWSRF loan"** means an agreement between the department and the borrower in which the DWSRF provides funds for eligible assistance and the borrower agrees to repay the principal sum, applicable interest, and DWSRF loan fee to the DWSRF.

~~((12))~~ (11) "**DWSRF loan fee**" means a nonrefundable fee that is charged on all DWSRF loans, including DWSRF loans for which all or part of the principal is forgiven.

~~((13))~~ (12) "**Ecology**" means the Washington state department of ecology.

~~((14))~~ (13) "**Eligible public water system**" means a Group A community public water system, either privately or publicly owned, or a nonprofit Group A noncommunity public water system.

~~((15))~~ (14) "**Emergency**" means an event such as a natural disaster or other unforeseen or unavoidable circumstances that causes damage or disrupts normal public water system operations and requires immediate action to protect public health and safety. A failure to maintain, replace, reconstruct, upgrade, or make necessary infrastructure improvements does not constitute an emergency.

~~((16))~~ (15) "**EPA**" means the United States Environmental Protection Agency.

~~((17))~~ (16) "**Green project**" means a public water system infrastructure improvement project that includes water efficiency, energy efficiency, or environmental innovations as follows:

(a) Water efficiency projects use improved technologies and practices to deliver equal or better service with less water, including preventing water loss and reducing customer demand to protect water resources;

(b) Energy efficiency projects use improved technologies and practices to reduce energy consumption or produce cleaner energy for use in water treatment;

(c) Environmentally innovative projects use new or innovative approaches to manage water resources in a more environmentally sustainable way. Projects that are considered environmentally innovative include those that:

(i) Prevent or remove pollution;

(ii) Help a community adapt to climate change through water resource protection programs; or

(iii) Result in other proven, sustainable environmental benefits.

~~((18))~~ (17) "**Group A public water system**" is defined and referenced under WAC 246-290-020.

~~((19))~~ (18) "**Group B public water system**" means a public water system that is not a Group A public water system and is defined and referenced under WAC 246-291-005.

~~((20))~~ (19) "**Individual water supply system**" means any water system that is not subject to chapter 246-290 or 246-291 WAC; and provides water to either one single-family residence, or to a system with four or fewer connections, all of which serve residences on the same farm.

~~((21))~~ (20) "**IUP (intended use plan)**" means the federally required document prepared each year by the department identifying the intended uses of the DWSRF funds and describing how those uses support the DWSRF goals.

~~((22))~~ (21) "**Loan closeout**" means a loan agreement is complete when the loan is repaid in full.

~~((23) "**MHI (median household income)**" means the midpoint or the average of two midpoints in the range of household incomes in the project's service area. The median divides the list of households in a service area into two parts; half of the households exceed the median, and half of the households are below the median.~~

~~(24))~~ (22) "**Multiple benefit**" means projects that address more than one type of health risk.

~~((25))~~ (23) "**Municipality**" means a city, town, special purpose district, or municipal corporation established according to the applicable laws of this state.

~~((26))~~ (24) "**NEPA**" means the National Environmental Policy Act of 1969, 42 United States Code 4321 et seq., PL-91-190.

~~((27))~~ (25) "**Nonprofit organization**" means an entity that has a federal tax exempt status identification number.

~~((28))~~ (26) "**Owner**" means any agency, subdivision of the state, municipal corporation, firm, company, mutual or cooperative association, institution, partnership, person, or any other entity that holds as property a public water system.

~~((29))~~ (27) "**Person**" means any individual, corporation, company, association, society, firm, partnership, joint stock company, or any governmental agency, or the authorized agents of these entities.

~~((30))~~ (28) "**Principal forgiveness**" means that a reduction of a percentage of the total loan amount is not required to be paid back by the borrower. Principal forgiveness is applied when the project is complete.

~~((31))~~ (29) "**Project report**" means a department-approved document the borrower or borrower's agency develops under WAC 246-290-110.

~~((32))~~ (30) "**Public water system**" is defined and referenced under WAC 246-290-020.

~~((33))~~ (31) "**Receivership**" means the voluntary or involuntary transfer of ownership and operation of a public water system according to chapter 7.60 RCW and RCW 43.70.195.

~~((34))~~ (32) "**Regional benefit**" means project improvements that affect more than one public water system.

~~((35))~~ (33) "**Restructuring**" means changing public water system ownership including, but not limited to:

- (a) Consolidation of two or more existing public water systems into a single public water system;
- (b) Transfer of ownership; or
- (c) Receivership.

~~((36))~~ (34) "**SDWA (Safe Drinking Water Act)**" means Public Law 93-523, including all amendments.

~~((37))~~ (35) "**SEPA**" means the State Environmental Policy Act under chapter 43.21C RCW.

~~((38))~~ (36) "**Set-aside**" means the use of a portion of DWSRF funds allotted to the state for a range of specific SDWA-related activities under Section 1452 of the SDWA, to fund new programs, and for other drinking water program activities.

~~((39))~~ (37) "**SERP (state environmental review process)**" means the NEPA-like environmental review process adopted by Washington state to comply with the requirements of 40 C.F.R. 35.3140. SERP combines the SEPA review with additional elements to comply with federal requirements.

~~((40))~~ (38) "**Surface water**" means a body of water open to the atmosphere and subject to surface runoff.

~~((41))~~ (39) "**Sustainable**" means able to continue a benefit into the future as a result of appropriate public water system design, processes, operations, governance, and maintenance.

~~((42))~~ (40) "**SWSMP (small water system management program)**" means a document for a small nonexpanding Group A public water system developed and approved under WAC 246-290-105.

~~((43))~~ (41) "**System capacity**" means a public water system's operational, technical, managerial, and financial capability to achieve

and maintain ongoing compliance with all relevant local, state, and federal plans and regulations.

~~((44))~~ (42) **"Transfer of ownership"** means to change legal ownership of a public water system from one person to another.

~~((45))~~ (43) **"Water right"** means a legal authorization, such as a permit, claim, or other authorization, on record with or accepted by the department of ecology, authorizing the beneficial use of water in accordance with all applicable state laws.

~~((46))~~ (44) **"WFI (water facilities inventory)"** means a department form summarizing a public water system's characteristics.

~~((47))~~ (45) **"WSP (water system plan)"** means a document that a Group A community public water system submits to the department as required under WAC 246-290-100. The plan addresses a public water system's capacity to comply with relevant local, state, and federal plans and regulations, describes the public water system's present and future needs, and establishes eligibility for funding under this chapter.

AMENDATORY SECTION (Amending WSR 16-14-086, filed 7/5/16, effective 8/5/16)

WAC 246-296-050 DWSRF loan terms. (1) The department may approve a DWSRF loan for a project that will not serve a disadvantaged community:

(a) That partially or fully forgives the principal amount of the loan; or

(b) At an interest rate at or below market interest rates for a maximum of ~~((twenty))~~ 20 years from project completion.

(2) The department may approve a DWSRF loan for a project ~~((s))~~ that will serve a disadvantaged ~~((communities))~~ community:

(a) That partially or fully forgives the principal amount of the loan; or

(b) At an interest rate set at or below market interest rates for up to ~~((thirty))~~ 30 years, as long as the DWSRF loan does not exceed the useful life of the project ~~((+~~

~~((b))~~ That qualifies for principal forgiveness for up to fifty percent of the principal DWSRF loan amount; or

~~((c))~~ That qualifies for principal forgiveness for up to seventy-five percent of the principal DWSRF loan amount for an emergency loan).

(3) A project is considered complete when the department approves the construction completion report.

(4) The borrower shall begin repaying the principal and interest no later than one year after the project is complete.

(5) The department shall:

(a) Set terms that secure repayment of the debt and maintain a financially sound DWSRF program in perpetuity; and

(b) Publish specific rates and contract terms in the annual application package.

AMENDATORY SECTION (Amending WSR 12-01-077, filed 12/19/11, effective 2/1/12)

- WAC 246-296-100 DWSRF loan eligibility and application requirements.** To be eligible for a DWSRF loan, an applicant shall:
- (1) Document that the public water system has the system capacity to stay in compliance with applicable federal, state, and local drinking water requirements, unless:
 - (a) The funding will bring the public water system into compliance; and
 - (b) The owner of the public water system agrees to reasonable and appropriate changes to stay in compliance.
 - (2) ~~((Before))~~ Except when applying for a DWSRF loan((7)) that addresses lead service line identification or lead service line replacements, that applicant shall have a current department-approved WSP or SWSMP that:
 - (a) Includes the proposed project; and
 - (b) Addresses any difficulties with system capacity;
 - (3) Comply with federal, state, and local drinking water requirements or a variance under WAC 246-290-060, unless the DWSRF loan will fund projects that result in public water system compliance;
 - (4) Comply with any department or EPA orders;
 - (5) Install a source meter on each source if meters are not already installed;
 - (6) Install service meters on all service connections if meters are not already installed within the project area, unless:
 - (a) The project is for a transient noncommunity public water system;
 - (b) The project is for a mobile home park with a source or master meter;
 - (c) The project is for an apartment building or complex with a source or master meter; or
 - (d) The department determines that installing meters is:
 - (i) Prohibitive for the DWSRF project as a whole; and
 - (ii) Waiving the meter requirement is necessary to award a DWSRF loan for a project to resolve high priority public health problems.
 - (7) Have no outstanding fees or penalties owed to the department.
 - (8) Provide documentation that the project has sufficient water rights as determined by ecology.
 - (9) Comply with the requirements of WAC 246-296-120(1).

AMENDATORY SECTION (Amending WSR 16-14-086, filed 7/5/16, effective 8/5/16)

- WAC 246-296-130 Project priority rating and ranking criteria.** The department shall, at a minimum, consider the following to assign points, and rate and rank proposed projects:
- (1) Criteria for risk categories and points based on:
 - (a) Type and significance of public health problems the project will resolve;
 - (b) If the project is needed to bring the public water system into compliance with federal, state, and local drinking water requirements; and
 - (c) Current compliance status (~~(; and~~

~~(d) Affordability on a per household basis, determined by comparing the community's average water rate to the MHI in the community's service area, for a community public water system).~~

(2) Additional points based on the type of project being proposed(~~(r)~~) if the project:

(a) Is ready to proceed to construction;

(b) Completes projects previously funded by DWSRF grants or loans;

(c) Is to consolidate or restructure ((a)) multiple public water systems;

~~((b))~~ (d) Creates a sustainable regional public health benefit;

~~((c) Has multiple benefits that are sustainable;~~

~~(d) Is consistent with the Growth Management Act;~~

~~(e) Is financially sustainable;~~ (e) Is a water main replacement project that coincides with other infrastructure projects;

(f) Qualifies as a green project; or

(g) Serves a disadvantaged community(~~(r) or~~

~~(h) Results in service meters on existing services not currently metered).~~

WSR 24-11-107
PROPOSED RULES
TRANSPORTATION COMMISSION
[Filed May 17, 2024, 3:13 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-08-007.

Title of Rule and Other Identifying Information: For purposes of adjusting toll rates on the SR 520 Bridge, this rule will amend WAC 468-270-071.

Hearing Location(s): On July 10, 2024, at 9:00 - 10:30 a.m., virtually via Zoom https://us02web.zoom.us/webinar/register/WN_EOU71TG7T1y69IUY_Vs3nA.

Date of Intended Adoption: July 10, 2024.

Submit Written Comments to: Washington State Transportation Commission, P.O. Box 47308, Olympia, WA 98504-7308, email transc@wsdot.wa.gov, fax 360-705-6802, beginning May 15, 2024, by June 30, 2024.

Assistance for Persons with Disabilities: Contact Doreen Maasjo, phone 360-705-7070, fax 360-705-6802, TTY 711 connect to 360-705-7070, email transc@wstc.wa.gov, by June 30, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule is to adjust toll rates on the SR 520 Bridge to generate the necessary revenue to meet financial obligations. The anticipated effects of this proposal, which are expected to take effect on August 15, 2024, are: Tolls will increase by an average of 10 percent for the entire week, rounded to the nearest nickel. This will range from a decrease of \$0.10 to an increase of \$0.70, depending on the time of day/day of week, and there will be fewer rate variations throughout the week, resulting in six different prices instead of the existing eight.

Reasons Supporting Proposal: Tolls on the SR 520 Bridge are required in law under RCW 47.56.870(3) to be set on a variable schedule to maintain travel time, speed, and reliability on the corridor. In addition, RCW 47.56.850 requires that toll rates be set such that they are sufficient to meet the facility's operating and maintenance costs, as well as to meet financial obligations such as debt service costs for bonds issued. In December, the office of the state treasurer determined that the current toll rates on the SR 520 Bridge will not be sufficient to meet financial obligations beginning July 2025. This proposal will ensure tolls generate the required revenues on the SR 520 Bridge.

Statutory Authority for Adoption: RCW 47.56.030, 47.56.795, 47.56.850, and 47.56.870.

Statute Being Implemented: RCW 47.56.830, 47.56.795, and 47.56.870.

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

Name of Proponent: Washington state transportation commission, governmental.

Name of Agency Personnel Responsible for Drafting: Carl See, Washington State Transportation Commission, 2404 Chandler Court S.W., Olympia, WA 98504, 360-705-7070; Implementation and Enforcement: Ed Barry, Washington State Department of Transportation, 2901 Third Avenue, Suite 500, Seattle, WA 98121, 206-464-1217.

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

A cost-benefit analysis is not required under RCW 34.05.328. Pursuant to RCW 34.05.328 (5) (b) (vi), a cost-benefit analysis is not required, as this is setting or adjusting fees or rates pursuant to legislative requirements in RCW 47.56.850.

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

Is exempt under RCW 19.85.025(3) as the rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

Scope of exemption for rule proposal:

Is fully exempt.

May 17, 2024
 Reema Griffith
 Executive Director

OTS-5445.2

AMENDATORY SECTION (Amending WSR 22-07-078, filed 3/22/22, effective 4/22/22)

WAC 468-270-071 What are the toll rates on the SR 520 Bridge?

Tables 2 through 6 show the applicable toll rates by vehicle axles, day and time of travel, and method of payment.

(~~TABLE 2a, Effective July 1, 2017~~
~~SR 520 BRIDGE~~
~~TWO-AXLE VEHICLE TOLL RATES~~)

Mondays through Fridays	Good To Go!TM Pass¹	Pay By Mail¹	Good To Go!TM Pay By Plate²
Midnight to 5 a.m.	\$1.25	\$3.25	\$1.50
5 a.m. to 6 a.m.	\$2.00	\$4.00	\$2.25
6 a.m. to 7 a.m.	\$3.40	\$5.40	\$3.65
7 a.m. to 9 a.m.	\$4.30	\$6.30	\$4.55
9 a.m. to 10 a.m.	\$3.40	\$5.40	\$3.65
10 a.m. to 2 p.m.	\$2.70	\$4.70	\$2.95
2 p.m. to 3 p.m.	\$3.40	\$5.40	\$3.65
3 p.m. to 6 p.m.	\$4.30	\$6.30	\$4.55
6 p.m. to 7 p.m.	\$3.40	\$5.40	\$3.65
7 p.m. to 9 p.m.	\$2.70	\$4.70	\$2.95
9 p.m. to 11 p.m.	\$2.00	\$4.00	\$2.25
11 p.m. to 11:59 p.m.	\$1.25	\$3.25	\$1.50
Saturdays and Sundays³	Good To Go!TM Pass¹	Pay By Mail¹	Good To Go!TM Pay By Plate²
Midnight to 5 a.m.	\$1.25	\$3.25	\$1.50
5 a.m. to 8 a.m.	\$1.40	\$3.40	\$1.65
8 a.m. to 11 a.m.	\$2.05	\$4.05	\$2.30
11 a.m. to 6 p.m.	\$2.65	\$4.65	\$2.90

Saturdays and Sundays ³	Good To Go! TM Pass ¹	Pay By Mail ¹	Good To Go! TM Pay By Plate ²
6 p.m. to 9 p.m.	\$2.05	\$4.05	\$2.30
9 p.m. to 11 p.m.	\$1.40	\$3.40	\$1.65
11 p.m. to 11:59 p.m.	\$1.25	\$3.25	\$1.50

Notes: ¹The rate for electronic tolls has been rounded to the nearest five cents, as needed.
²For this type of payment method, the customer is charged the Good to Go!TM Pass toll rate plus a \$0.25 fee as provided in WAC 468-270-300.
³The weekend rates will be assessed on the days on which holidays are observed: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

TABLE 2b, Effective July 1, 2023
SR 520 BRIDGE
TWO-AXLE VEHICLE TOLL RATES

Mondays through Fridays	Good To Go! TM Pass ¹	Pay By Mail ¹	Good To Go! TM Pay By Plate ²
Midnight to 5 a.m.	\$1.25	\$3.25	\$1.50
5 a.m. to 6 a.m.	\$2.50	\$4.50	\$2.75
6 a.m. to 7 a.m.	\$3.80	\$5.80	\$4.05
7 a.m. to 10 a.m.	\$4.50	\$6.50	\$4.75
10 a.m. to 11 a.m.	\$3.80	\$5.80	\$4.05
11 a.m. to 2 p.m.	\$3.25	\$5.25	\$3.50
2 p.m. to 3 p.m.	\$3.80	\$5.80	\$4.05
3 p.m. to 7 p.m.	\$4.50	\$6.50	\$4.75
7 p.m. to 8 p.m.	\$3.80	\$5.80	\$4.05
8 p.m. to 9 p.m.	\$3.25	\$5.25	\$3.50
9 p.m. to 11 p.m.	\$2.50	\$4.50	\$2.75
11 p.m. to 11:59 p.m.	\$1.25	\$3.25	\$1.50

Saturdays and Sundays ³	Good To Go! TM Pass ¹	Pay By Mail ¹	Good To Go! TM Pay By Plate ²
Midnight to 5 a.m.	\$1.25	\$3.25	\$1.50
5 a.m. to 8 a.m.	\$1.60	\$3.60	\$1.85
8 a.m. to 11 a.m.	\$2.35	\$4.35	\$2.60
11 a.m. to 6 p.m.	\$3.05	\$5.05	\$3.30
6 p.m. to 9 p.m.	\$2.35	\$4.35	\$2.60
9 p.m. to 11 p.m.	\$1.60	\$3.60	\$1.85
11 p.m. to 11:59 p.m.	\$1.25	\$3.25	\$1.50

Notes: ¹The rate for electronic tolls has been rounded to the nearest five cents, as needed.
²For this type of payment method, the customer is charged the Good to Go!TM Pass toll rate plus a \$0.25 fee as provided in WAC 468-270-300.
³The weekend rates will be assessed on the days on which holidays are observed: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

TABLE 3a, Effective July 1, 2017
SR 520 BRIDGE
THREE-AXLE VEHICLE TOLL RATES

Mondays through Fridays	Good To Go! TM Pass ¹	Pay By Mail ¹	Good To Go! TM Pay By Plate ²
Midnight to 5 a.m.	\$1.90	\$4.90	\$2.15
5 a.m. to 6 a.m.	\$3.00	\$6.00	\$3.25
6 a.m. to 7 a.m.	\$5.10	\$8.10	\$5.35
7 a.m. to 9 a.m.	\$6.45	\$9.45	\$6.70

Mondays through Fridays	Good To Go!TM Pass¹	Pay By Mail¹	Good To Go!TM Pay By Plate²
9 a.m. to 10 a.m.	\$5.10	\$8.10	\$5.35
10 a.m. to 2 p.m.	\$4.05	\$7.05	\$4.30
2 p.m. to 3 p.m.	\$5.10	\$8.10	\$5.35
3 p.m. to 6 p.m.	\$6.45	\$9.45	\$6.70
6 p.m. to 7 p.m.	\$5.10	\$8.10	\$5.35
7 p.m. to 9 p.m.	\$4.05	\$7.05	\$4.30
9 p.m. to 11 p.m.	\$3.00	\$6.00	\$3.25
11 p.m. to 11:59 p.m.	\$1.90	\$4.90	\$2.15

Saturdays and Sundays³	Good To Go!TM Pass¹	Pay By Mail¹	Good To Go!TM Pay By Plate²
Midnight to 5 a.m.	\$1.90	\$4.90	\$2.15
5 a.m. to 8 a.m.	\$2.10	\$5.10	\$2.35
8 a.m. to 11 a.m.	\$3.10	\$6.10	\$3.35
11 a.m. to 6 p.m.	\$4.00	\$7.00	\$4.25
6 p.m. to 9 p.m.	\$3.10	\$6.10	\$3.35
9 p.m. to 11 p.m.	\$2.10	\$5.10	\$2.35
11 p.m. to 11:59 p.m.	\$1.90	\$4.90	\$2.15

Notes: ¹The rate for electronic tolls has been rounded to the nearest five cents, as needed.
²For this type of payment method, the customer is charged the Good to Go!TM Pass toll rate plus a \$0.25 fee as provided in WAC 468-270-300.
³The weekend rates will be assessed on the days on which holidays are observed: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

TABLE 3b, Effective July 1, 2023
SR-520 BRIDGE
THREE-AXLE VEHICLE TOLL RATES

Mondays through Fridays	Good To Go!TM Pass¹	Pay By Mail¹	Good To Go!TM Pay By Plate²
Midnight to 5 a.m.	\$1.90	\$4.90	\$2.15
5 a.m. to 6 a.m.	\$3.75	\$6.75	\$4.00
6 a.m. to 7 a.m.	\$5.70	\$8.70	\$5.95
7 a.m. to 10 a.m.	\$6.75	\$9.75	\$7.00
10 a.m. to 11 a.m.	\$5.70	\$8.70	\$5.95
11 a.m. to 2 p.m.	\$4.90	\$7.90	\$5.15
2 p.m. to 3 p.m.	\$5.70	\$8.70	\$5.95
3 p.m. to 7 p.m.	\$6.75	\$9.75	\$7.00
7 p.m. to 8 p.m.	\$5.70	\$8.70	\$5.95
8 p.m. to 9 p.m.	\$4.90	\$7.90	\$5.15
9 p.m. to 11 p.m.	\$3.75	\$6.75	\$4.00
11 p.m. to 11:59 p.m.	\$1.90	\$4.90	\$2.15

Saturdays and Sundays³	Good To Go!TM Pass¹	Pay By Mail¹	Good To Go!TM Pay By Plate²
Midnight to 5 a.m.	\$1.90	\$4.90	\$2.15
5 a.m. to 8 a.m.	\$2.40	\$5.40	\$2.65
8 a.m. to 11 a.m.	\$3.55	\$6.55	\$3.80
11 a.m. to 6 p.m.	\$4.60	\$7.60	\$4.85
6 p.m. to 9 p.m.	\$3.55	\$6.55	\$3.80

Saturdays and Sundays³	Good To Go!TM Pass¹	Pay By Mail¹	Good To Go!TM Pay By Plate²
9 p.m. to 11 p.m.	\$2.40	\$5.40	\$2.65
11 p.m. to 11:59 p.m.	\$1.90	\$4.90	\$2.15

Notes: ¹The rate for electronic tolls has been rounded to the nearest five cents, as needed.
²For this type of payment method, the customer is charged the Good to Go!TM Pass toll rate plus a \$0.25 fee as provided in WAC 468-270-300.
³The weekend rates will be assessed on the days on which holidays are observed: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

TABLE 4a, Effective July 1, 2017
SR 520 BRIDGE
FOUR-AXLE VEHICLE TOLL RATES

Mondays through Fridays	Good To Go!TM Pass¹	Pay By Mail¹	Good To Go!TM Pay By Plate²
Midnight to 5 a.m.	\$2.50	\$6.50	\$2.75
5 a.m. to 6 a.m.	\$4.00	\$8.00	\$4.25
6 a.m. to 7 a.m.	\$6.80	\$10.80	\$7.05
7 a.m. to 9 a.m.	\$8.60	\$12.60	\$8.85
9 a.m. to 10 a.m.	\$6.80	\$10.80	\$7.05
10 a.m. to 2 p.m.	\$5.40	\$9.40	\$5.65
2 p.m. to 3 p.m.	\$6.80	\$10.80	\$7.05
3 p.m. to 6 p.m.	\$8.60	\$12.60	\$8.85
6 p.m. to 7 p.m.	\$6.80	\$10.80	\$7.05
7 p.m. to 9 p.m.	\$5.40	\$9.40	\$5.65
9 p.m. to 11 p.m.	\$4.00	\$8.00	\$4.25
11 p.m. to 11:59 p.m.	\$2.50	\$6.50	\$2.75

Saturdays and Sundays³	Good To Go!TM Pass¹	Pay By Mail¹	Good To Go!TM Pay By Plate²
Midnight to 5 a.m.	\$2.50	\$6.50	\$2.75
5 a.m. to 8 a.m.	\$2.80	\$6.80	\$3.05
8 a.m. to 11 a.m.	\$4.10	\$8.10	\$4.35
11 a.m. to 6 p.m.	\$5.30	\$9.30	\$5.55
6 p.m. to 9 p.m.	\$4.10	\$8.10	\$4.35
9 p.m. to 11 p.m.	\$2.80	\$6.80	\$3.05
11 p.m. to 11:59 p.m.	\$2.50	\$6.50	\$2.75

Notes: ¹The rate for electronic tolls has been rounded to the nearest five cents, as needed.
²For this type of payment method, the customer is charged the Good to Go!TM Pass toll rate plus a \$0.25 fee as provided in WAC 468-270-300.
³The weekend rates will be assessed on the days on which holidays are observed: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

TABLE 4b, Effective July 1, 2023
SR 520 BRIDGE
FOUR-AXLE VEHICLE TOLL RATES

Mondays through Fridays	Good To Go!TM Pass¹	Pay By Mail¹	Good To Go!TM Pay By Plate²
Midnight to 5 a.m.	\$2.50	\$6.50	\$2.75
5 a.m. to 6 a.m.	\$5.00	\$9.00	\$5.25
6 a.m. to 7 a.m.	\$7.60	\$11.60	\$7.85
7 a.m. to 10 a.m.	\$9.00	\$13.00	\$9.25
10 a.m. to 11 a.m.	\$7.60	\$11.60	\$7.85

Mondays through Fridays	Good To Go!TM Pass¹	Pay By Mail¹	Good To Go!TM Pay By Plate²
11 a.m. to 2 p.m.	\$6.50	\$10.50	\$6.75
2 p.m. to 3 p.m.	\$7.60	\$11.60	\$7.85
3 p.m. to 7 p.m.	\$9.00	\$13.00	\$9.25
7 p.m. to 8 p.m.	\$7.60	\$11.60	\$7.85
8 p.m. to 9 p.m.	\$6.50	\$10.50	\$6.75
9 p.m. to 11 p.m.	\$5.00	\$9.00	\$5.25
11 p.m. to 11:59 p.m.	\$2.50	\$6.50	\$2.75

Saturdays and Sundays³	Good To Go!TM Pass¹	Pay By Mail¹	Good To Go!TM Pay By Plate²
Midnight to 5 a.m.	\$2.50	\$6.50	\$2.75
5 a.m. to 8 a.m.	\$3.20	\$7.20	\$3.45
8 a.m. to 11 a.m.	\$4.70	\$8.70	\$4.95
11 a.m. to 6 p.m.	\$6.10	\$10.10	\$6.35
6 p.m. to 9 p.m.	\$4.70	\$8.70	\$4.95
9 p.m. to 11 p.m.	\$3.20	\$7.20	\$3.45
11 p.m. to 11:59 p.m.	\$2.50	\$6.50	\$2.75

Notes: ¹The rate for electronic tolls has been rounded to the nearest five cents, as needed.
²For this type of payment method, the customer is charged the Good to Go!TM Pass toll rate plus a \$0.25 fee as provided in WAC 468-270-300.
³The weekend rates will be assessed on the days on which holidays are observed: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

TABLE 5a, Effective July 1, 2017
SR-520 BRIDGE
FIVE-AXLE VEHICLE TOLL RATES

Mondays through Fridays	Good To Go!TM Pass¹	Pay By Mail¹	Good To Go!TM Pay By Plate²
Midnight to 5 a.m.	\$3.15	\$8.15	\$3.40
5 a.m. to 6 a.m.	\$5.00	\$10.00	\$5.25
6 a.m. to 7 a.m.	\$8.50	\$13.50	\$8.75
7 a.m. to 9 a.m.	\$10.75	\$15.75	\$11.00
9 a.m. to 10 a.m.	\$8.50	\$13.50	\$8.75
10 a.m. to 2 p.m.	\$6.75	\$11.75	\$7.00
2 p.m. to 3 p.m.	\$8.50	\$13.50	\$8.75
3 p.m. to 6 p.m.	\$10.75	\$15.75	\$11.00
6 p.m. to 7 p.m.	\$8.50	\$13.50	\$8.75
7 p.m. to 9 p.m.	\$6.75	\$11.75	\$7.00
9 p.m. to 11 p.m.	\$5.00	\$10.00	\$5.25
11 p.m. to 11:59 p.m.	\$3.15	\$8.15	\$3.40

Saturdays and Sundays³	Good To Go!TM Pass¹	Pay By Mail¹	Good To Go!TM Pay By Plate²
Midnight to 5 a.m.	\$3.15	\$8.15	\$3.40
5 a.m. to 8 a.m.	\$3.50	\$8.50	\$3.75
8 a.m. to 11 a.m.	\$5.15	\$10.15	\$5.40
11 a.m. to 6 p.m.	\$6.65	\$11.65	\$6.90
6 p.m. to 9 p.m.	\$5.15	\$10.15	\$5.40
9 p.m. to 11 p.m.	\$3.50	\$8.50	\$3.75

Saturdays and Sundays ³	Good To Go! TM Pass ¹	Pay By Mail ¹	Good To Go! TM Pay By Plate ²
11 p.m. to 11:59 p.m.	\$3.15	\$8.15	\$3.40

Notes: ¹The rate for electronic tolls has been rounded to the nearest five cents, as needed.
²For this type of payment method, the customer is charged the Good to Go!TM Pass toll rate plus a \$0.25 fee as provided in WAC 468-270-300.
³The weekend rates will be assessed on the days on which holidays are observed: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

TABLE 5b, Effective July 1, 2023
SR 520 BRIDGE
FIVE-AXLE VEHICLE TOLL RATES

Mondays through Fridays	Good To Go! TM Pass ¹	Pay By Mail ¹	Good To Go! TM Pay By Plate ²
Midnight to 5 a.m.	\$3.15	\$8.15	\$3.40
5 a.m. to 6 a.m.	\$6.25	\$11.25	\$6.50
6 a.m. to 7 a.m.	\$9.50	\$14.50	\$9.75
7 a.m. to 10 a.m.	\$11.25	\$16.25	\$11.50
10 a.m. to 11 a.m.	\$9.50	\$14.50	\$9.75
11 a.m. to 2 p.m.	\$8.15	\$13.15	\$8.40
2 p.m. to 3 p.m.	\$9.50	\$14.50	\$9.75
3 p.m. to 7 p.m.	\$11.25	\$16.25	\$11.50
7 p.m. to 8 p.m.	\$9.50	\$14.50	\$9.75
8 p.m. to 9 p.m.	\$8.15	\$13.15	\$8.40
9 p.m. to 11 p.m.	\$6.25	\$11.25	\$6.50
11 p.m. to 11:59 p.m.	\$3.15	\$8.15	\$3.40

Saturdays and Sundays ³	Good To Go! TM Pass ¹	Pay By Mail ¹	Good To Go! TM Pay By Plate ²
Midnight to 5 a.m.	\$3.15	\$8.15	\$3.40
5 a.m. to 8 a.m.	\$4.00	\$9.00	\$4.25
8 a.m. to 11 a.m.	\$5.90	\$10.90	\$6.15
11 a.m. to 6 p.m.	\$7.65	\$12.65	\$7.90
6 p.m. to 9 p.m.	\$5.90	\$10.90	\$6.15
9 p.m. to 11 p.m.	\$4.00	\$9.00	\$4.25
11 p.m. to 11:59 p.m.	\$3.15	\$8.15	\$3.40

Notes: ¹The rate for electronic tolls has been rounded to the nearest five cents, as needed.
²For this type of payment method, the customer is charged the Good to Go!TM Pass toll rate plus a \$0.25 fee as provided in WAC 468-270-300.
³The weekend rates will be assessed on the days on which holidays are observed: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

TABLE 6a, Effective July 1, 2017
SR 520 BRIDGE
SIX-AXLE OR MORE VEHICLE TOLL RATES

Mondays through Fridays	Good To Go! TM Pass ¹	Pay By Mail ¹	Good To Go! TM Pay By Plate ²
Midnight to 5 a.m.	\$3.75	\$9.75	\$4.00
5 a.m. to 6 a.m.	\$6.00	\$12.00	\$6.25
6 a.m. to 7 a.m.	\$10.20	\$16.20	\$10.45
7 a.m. to 9 a.m.	\$12.90	\$18.90	\$13.15
9 a.m. to 10 a.m.	\$10.20	\$16.20	\$10.45
10 a.m. to 2 p.m.	\$8.10	\$14.10	\$8.35

Mondays through Fridays	Good To Go!TM Pass¹	Pay By Mail¹	Good To Go!TM Pay By Plate²
2 p.m. to 3 p.m.	\$10.20	\$16.20	\$10.45
3 p.m. to 6 p.m.	\$12.90	\$18.90	\$13.15
6 p.m. to 7 p.m.	\$10.20	\$16.20	\$10.45
7 p.m. to 9 p.m.	\$8.10	\$14.10	\$8.35
9 p.m. to 11 p.m.	\$6.00	\$12.00	\$6.25
11 p.m. to 11:59 p.m.	\$3.75	\$9.75	\$4.00

Saturdays and Sundays³	Good To Go!TM Pass¹	Pay By Mail¹	Good To Go!TM Pay By Plate²
Midnight to 5 a.m.	\$3.75	\$9.75	\$4.00
5 a.m. to 8 a.m.	\$4.20	\$10.20	\$4.45
8 a.m. to 11 a.m.	\$6.15	\$12.15	\$6.40
11 a.m. to 6 p.m.	\$7.95	\$13.95	\$8.20
6 p.m. to 9 p.m.	\$6.15	\$12.15	\$6.40
9 p.m. to 11 p.m.	\$4.20	\$10.20	\$4.45
11 p.m. to 11:59 p.m.	\$3.75	\$9.75	\$4.00

Notes: ¹The rate for electronic tolls has been rounded to the nearest five cents, as needed.
²For this type of payment method, the customer is charged the Good to Go!TM Pass toll rate plus a \$0.25 fee as provided in WAC 468-270-300.
³The weekend rates will be assessed on the days on which holidays are observed: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

TABLE 6b, Effective July 1, 2023
SR 520 BRIDGE
SIX-AXLE OR MORE VEHICLE TOLL RATES

Mondays through Fridays	Good To Go!TM Pass¹	Pay By Mail¹	Good To Go!TM Pay By Plate²
Midnight to 5 a.m.	\$3.75	\$9.75	\$4.00
5 a.m. to 6 a.m.	\$7.50	\$13.50	\$7.75
6 a.m. to 7 a.m.	\$11.40	\$17.40	\$11.65
7 a.m. to 10 a.m.	\$13.50	\$19.50	\$13.75
10 a.m. to 11 a.m.	\$11.40	\$17.40	\$11.65
11 a.m. to 2 p.m.	\$9.75	\$15.75	\$10.00
2 p.m. to 3 p.m.	\$11.40	\$17.40	\$11.65
3 p.m. to 7 p.m.	\$13.50	\$19.50	\$13.75
7 p.m. to 8 p.m.	\$11.40	\$17.40	\$11.65
8 p.m. to 9 p.m.	\$9.75	\$15.75	\$10.00
9 p.m. to 11 p.m.	\$7.50	\$13.50	\$7.75
11 p.m. to 11:59 p.m.	\$3.75	\$9.75	\$4.00

Saturdays and Sundays³	Good To Go!TM Pass¹	Pay By Mail¹	Good To Go!TM Pay By Plate²
Midnight to 5 a.m.	\$3.75	\$9.75	\$4.00
5 a.m. to 8 a.m.	\$4.80	\$10.80	\$5.05
8 a.m. to 11 a.m.	\$7.05	\$13.05	\$7.30
11 a.m. to 6 p.m.	\$9.15	\$15.15	\$9.40
6 p.m. to 9 p.m.	\$7.05	\$13.05	\$7.30
9 p.m. to 11 p.m.	\$4.80	\$10.80	\$5.05
11 p.m. to 11:59 p.m.	\$3.75	\$9.75	\$4.00

Notes:

- ¹The rate for electronic tolls has been rounded to the nearest five cents, as needed.
- ²For this type of payment method, the customer is charged the Good to Go!™ Pass toll rate plus a \$0.25 fee as provided in WAC 468-270-300.
- ³The weekend rates will be assessed on the days on which holidays are observed: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.)

TABLE 2, Effective August 15, 2024

SR 520 BRIDGE

TWO-AXLE VEHICLE TOLL RATES

Mondays through Fridays	Good To Go!™ Pass¹	Pay By Mail¹	Good To Go!™ PayBy Plate²
<u>Midnight to 5 a.m.</u>	<u>\$1.35</u>	<u>\$3.35</u>	<u>\$1.60</u>
<u>5 a.m. to 6 a.m.</u>	<u>\$2.75</u>	<u>\$4.75</u>	<u>\$3.00</u>
<u>6 a.m. to 7 a.m.</u>	<u>\$3.95</u>	<u>\$5.95</u>	<u>\$4.20</u>
<u>7 a.m. to 10 a.m.</u>	<u>\$4.90</u>	<u>\$6.90</u>	<u>\$5.15</u>
<u>10 a.m. to 3 p.m.</u>	<u>\$3.95</u>	<u>\$5.95</u>	<u>\$4.20</u>
<u>3 p.m. to 7 p.m.</u>	<u>\$4.90</u>	<u>\$6.90</u>	<u>\$5.15</u>
<u>7 p.m. to 9 p.m.</u>	<u>\$3.95</u>	<u>\$5.95</u>	<u>\$4.20</u>
<u>9 p.m. to 11 p.m.</u>	<u>\$2.75</u>	<u>\$4.75</u>	<u>\$3.00</u>
<u>11 p.m. to midnight</u>	<u>\$1.35</u>	<u>\$3.35</u>	<u>\$1.60</u>
Saturdays and Sundays³	Good To Go!™ Pass¹	Pay By Mail¹	Good To Go!™ PayBy Plate²
<u>Midnight to 5 a.m.</u>	<u>\$1.35</u>	<u>\$3.35</u>	<u>\$1.60</u>
<u>5 a.m. to 8 a.m.</u>	<u>\$1.70</u>	<u>\$3.70</u>	<u>\$1.95</u>
<u>8 a.m. to 9 p.m.</u>	<u>\$2.95</u>	<u>\$4.95</u>	<u>\$3.20</u>
<u>9 p.m. to 11 p.m.</u>	<u>\$1.70</u>	<u>\$3.70</u>	<u>\$1.95</u>
<u>11 p.m. to midnight</u>	<u>\$1.35</u>	<u>\$3.35</u>	<u>\$1.60</u>

Notes:

- ¹The rate for electronic tolls has been rounded to the nearest five cents, as needed.
- ²For this type of payment method, the customer is charged the Good to Go!™ Pass toll rate plus a \$0.25 fee as provided in WAC 468-270-300.
- ³The weekend rates will be assessed on the weekdays on which holidays are observed: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

TABLE 3, Effective August 15, 2024

SR 520 BRIDGE

THREE-AXLE VEHICLE TOLL RATES

Mondays through Fridays	Good To Go!™ Pass¹	Pay By Mail¹	Good To Go!™ Pay By Plate²
<u>Midnight to 5 a.m.</u>	<u>\$2.05</u>	<u>\$5.05</u>	<u>\$2.30</u>
<u>5 a.m. to 6 a.m.</u>	<u>\$4.15</u>	<u>\$7.15</u>	<u>\$4.40</u>
<u>6 a.m. to 7 a.m.</u>	<u>\$5.95</u>	<u>\$8.95</u>	<u>\$6.20</u>
<u>7 a.m. to 10 a.m.</u>	<u>\$7.35</u>	<u>\$10.35</u>	<u>\$7.60</u>
<u>10 a.m. to 3 p.m.</u>	<u>\$5.95</u>	<u>\$8.95</u>	<u>\$6.20</u>
<u>3 p.m. to 7 p.m.</u>	<u>\$7.35</u>	<u>\$10.35</u>	<u>\$7.60</u>
<u>7 p.m. to 9 p.m.</u>	<u>\$5.95</u>	<u>\$8.95</u>	<u>\$6.20</u>
<u>9 p.m. to 11 p.m.</u>	<u>\$4.15</u>	<u>\$7.15</u>	<u>\$4.40</u>
<u>11 p.m. to midnight</u>	<u>\$2.05</u>	<u>\$5.05</u>	<u>\$2.30</u>
Saturdays and Sundays³	Good To Go!™ Pass¹	Pay By Mail¹	Good To Go!™ Pay By Plate²
<u>Midnight to 5 a.m.</u>	<u>\$2.05</u>	<u>\$5.05</u>	<u>\$2.30</u>
<u>5 a.m. to 8 a.m.</u>	<u>\$2.55</u>	<u>\$5.55</u>	<u>\$2.80</u>
<u>8 a.m. to 9 p.m.</u>	<u>\$4.45</u>	<u>\$7.45</u>	<u>\$4.70</u>

<u>Saturdays and Sundays³</u>	<u>Good To Go!TM Pass¹</u>	<u>Pay By Mail¹</u>	<u>Good To Go!TM Pay By Plate²</u>
<u>9 p.m. to 11 p.m.</u>	<u>\$2.55</u>	<u>\$5.55</u>	<u>\$2.80</u>
<u>11 p.m. to midnight</u>	<u>\$2.05</u>	<u>\$5.05</u>	<u>\$2.30</u>

Notes: ¹The rate for electronic tolls has been rounded to the nearest five cents, as needed.
²For this type of payment method, the customer is charged the Good to Go!TM Pass toll rate plus a \$0.25 fee as provided in WAC 468-270-300.
³The weekend rates will be assessed on the weekdays on which holidays are observed: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

TABLE 4, Effective August 15, 2024
SR 520 BRIDGE
FOUR-AXLE VEHICLE TOLL RATES

<u>Mondays through Fridays</u>	<u>Good To Go!TM Pass¹</u>	<u>Pay By Mail¹</u>	<u>Good To Go!TM Pay By Plate²</u>
<u>Midnight to 5 a.m.</u>	<u>\$2.70</u>	<u>\$6.70</u>	<u>\$2.95</u>
<u>5 a.m. to 6 a.m.</u>	<u>\$5.50</u>	<u>\$9.50</u>	<u>\$5.75</u>
<u>6 a.m. to 7 a.m.</u>	<u>\$7.90</u>	<u>\$11.90</u>	<u>\$8.15</u>
<u>7 a.m. to 10 a.m.</u>	<u>\$9.80</u>	<u>\$13.80</u>	<u>\$10.05</u>
<u>10 a.m. to 3 p.m.</u>	<u>\$7.90</u>	<u>\$11.90</u>	<u>\$8.15</u>
<u>3 p.m. to 7 p.m.</u>	<u>\$9.80</u>	<u>\$13.80</u>	<u>\$10.05</u>
<u>7 p.m. to 9 p.m.</u>	<u>\$7.90</u>	<u>\$11.90</u>	<u>\$8.15</u>
<u>9 p.m. to 11 p.m.</u>	<u>\$5.50</u>	<u>\$9.50</u>	<u>\$5.75</u>
<u>11 p.m. to midnight</u>	<u>\$2.70</u>	<u>\$6.70</u>	<u>\$2.95</u>

<u>Saturdays and Sundays³</u>	<u>Good To Go!TM Pass¹</u>	<u>Pay By Mail¹</u>	<u>Good To Go!TM Pay By Plate²</u>
<u>Midnight to 5 a.m.</u>	<u>\$2.70</u>	<u>\$6.70</u>	<u>\$2.95</u>
<u>5 a.m. to 8 a.m.</u>	<u>\$3.40</u>	<u>\$7.40</u>	<u>\$3.65</u>
<u>8 a.m. to 9 p.m.</u>	<u>\$5.90</u>	<u>\$9.90</u>	<u>\$6.15</u>
<u>9 p.m. to 11 p.m.</u>	<u>\$3.40</u>	<u>\$7.40</u>	<u>\$3.65</u>
<u>11 p.m. to midnight</u>	<u>\$2.70</u>	<u>\$6.70</u>	<u>\$2.95</u>

Notes: ¹The rate for electronic tolls has been rounded to the nearest five cents, as needed.
²For this type of payment method, the customer is charged the Good to Go!TM Pass toll rate plus a \$0.25 fee as provided in WAC 468-270-300.
³The weekend rates will be assessed on the weekdays on which holidays are observed: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

TABLE 5, Effective August 15, 2024
SR 520 BRIDGE
FIVE-AXLE VEHICLE TOLL RATES

<u>Mondays through Fridays</u>	<u>Good To Go!TM Pass¹</u>	<u>Pay By Mail¹</u>	<u>Good To Go!TM Pay By Plate²</u>
<u>Midnight to 5 a.m.</u>	<u>\$3.40</u>	<u>\$8.40</u>	<u>\$3.65</u>
<u>5 a.m. to 6 a.m.</u>	<u>\$6.90</u>	<u>\$11.90</u>	<u>\$7.15</u>
<u>6 a.m. to 7 a.m.</u>	<u>\$9.90</u>	<u>\$14.90</u>	<u>\$10.15</u>
<u>7 a.m. to 10 a.m.</u>	<u>\$12.25</u>	<u>\$17.25</u>	<u>\$12.50</u>
<u>10 a.m. to 3 p.m.</u>	<u>\$9.90</u>	<u>\$14.90</u>	<u>\$10.15</u>
<u>3 p.m. to 7 p.m.</u>	<u>\$12.25</u>	<u>\$17.25</u>	<u>\$12.50</u>
<u>7 p.m. to 9 p.m.</u>	<u>\$9.90</u>	<u>\$14.90</u>	<u>\$10.15</u>
<u>9 p.m. to 11 p.m.</u>	<u>\$6.90</u>	<u>\$11.90</u>	<u>\$7.15</u>
<u>11 p.m. to midnight</u>	<u>\$3.40</u>	<u>\$8.40</u>	<u>\$3.65</u>

<u>Saturdays and Sundays³</u>	<u>Good To Go!TM Pass¹</u>	<u>Pay By Mail¹</u>	<u>Good To Go!TM Pay By Plate²</u>
Midnight to 5 a.m.	\$3.40	\$8.40	\$3.65
5 a.m. to 8 a.m.	\$4.25	\$9.25	\$4.50
8 a.m. to 9 p.m.	\$7.40	\$12.40	\$7.65
9 p.m. to 11 p.m.	\$4.25	\$9.25	\$4.50
11 p.m. to midnight	\$3.40	\$8.40	\$3.65

Notes: ¹The rate for electronic tolls has been rounded to the nearest five cents, as needed.
²For this type of payment method, the customer is charged the Good to Go!TM Pass toll rate plus a \$0.25 fee as provided in WAC 468-270-300.
³The weekend rates will be assessed on the weekdays on which holidays are observed: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

TABLE 6, Effective August 15, 2024
SR 520 BRIDGE
SIX-AXLE OR MORE VEHICLE TOLL RATES

<u>Mondays through Fridays</u>	<u>Good To Go!TM Pass¹</u>	<u>Pay By Mail¹</u>	<u>Good To Go!TM Pay By Plate²</u>
Midnight to 5 a.m.	\$4.05	\$10.05	\$4.30
5 a.m. to 6 a.m.	\$8.25	\$14.25	\$8.50
6 a.m. to 7 a.m.	\$11.85	\$17.85	\$12.10
7 a.m. to 10 a.m.	\$14.70	\$20.70	\$14.95
10 a.m. to 3 p.m.	\$11.85	\$17.85	\$12.10
3 p.m. to 7 p.m.	\$14.70	\$20.70	\$14.95
7 p.m. to 9 p.m.	\$11.85	\$17.85	\$12.10
9 p.m. to 11 p.m.	\$8.25	\$14.25	\$8.50
11 p.m. to midnight	\$4.05	\$10.05	\$4.30

<u>Saturdays and Sundays³</u>	<u>Good To Go!TM Pass¹</u>	<u>Pay By Mail¹</u>	<u>Good To Go!TM Pay By Plate²</u>
Midnight to 5 a.m.	\$4.05	\$10.05	\$4.30
5 a.m. to 8 a.m.	\$5.10	\$11.10	\$5.35
8 a.m. to 9 p.m.	\$8.85	\$14.85	\$9.10
9 p.m. to 11 p.m.	\$5.10	\$11.10	\$5.35
11 p.m. to midnight	\$4.05	\$10.05	\$4.30

Notes: ¹The rate for electronic tolls has been rounded to the nearest five cents, as needed.
²For this type of payment method, the customer is charged the Good to Go!TM Pass toll rate plus a \$0.25 fee as provided in WAC 468-270-300.
³The weekend rates will be assessed on the weekdays on which holidays are observed: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

WSR 24-11-112
PROPOSED RULES
HORSE RACING COMMISSION
[Filed May 20, 2024, 10:32 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-07-026.

Title of Rule and Other Identifying Information: WAC 260-49-070
Distribution of source market fees.

Hearing Location(s): On June 28, 2024, at 9:30 a.m., via Zoom teleconference. Link will be available at www.whrc.wa.gov prior to the meeting.

Date of Intended Adoption: June 28, 2024.

Submit Written Comments to: Amanda Benton, 6326 Martin Way, Suite 209, email Amanda.benton@whrc.wa.gov, fax 360-459-6461, beginning May 21, 2024, at 8:00 a.m., by June 14, 2024, at 4:00 p.m.

Assistance for Persons with Disabilities: Contact Melanie Bowdish, phone 360-459-6462, fax 360-459-6461, email melanie.bowdish@whrc.wa.gov, by June 14, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The Washington horse racing commission (WHRC) may need to adjust the source market fee distribution to reflect a change in duties performed by WHRC employees because a voluntary agreement with the Horseracing Industry [Integrity and] Safety Authority (HISA) and/or the Horseracing Industry [Integrity and] Welfare Unit (HIWU) was signed.

Reasons Supporting Proposal: WHRC signed a voluntary agreement with HISA/HIWU for 2024 and some duties that were historically carried out by employees of WHRC, but not in 2023, will again be performed by employees of WHRC and we will need to collect fees to cover the cost of performing those duties.

Statutory Authority for Adoption: RCW 67.16.020.

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Amanda Benton, 6326 Martin Way, Suite 209, Olympia, WA 98516, 360-459-6462.

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

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

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. Not business related.

May 20, 2023 [2024]
Amanda Benton
Executive Secretary

OTS-5419.1

AMENDATORY SECTION (Amending WSR 23-12-024, filed 5/26/23, effective 7/1/23)

WAC 260-49-070 Distribution of source market fee. (1) A source market fee shall be paid monthly, unless otherwise directed by the commission, for the source market fee area on all accounts that have Washington as the principal residence address.

(2) The authorized advance deposit wagering service provider shall, at least monthly, unless otherwise directed by the commission, distribute the total source market fee as follows:

(a) One hundred percent of the total source market fee directly to the class 1 racing association.

(b) The class 1 racing association shall submit monthly (~~(2.5)~~) 12.5 percent of the total source market fee to the commission of which 2.5 percent to be deposited into the Washington bred owners' bonus fund and (~~zero~~) 10 percent to be deposited into the commission's operating account.

(c) The class 1 racing association shall distribute (~~two and one-half~~) 2.5 percent of the total source market fee to the Washington bred breeder award account as provided in RCW 67.16.175.

(d) The class 1 racing association and the recognized horsemen's organization shall negotiate a separate agreement for contributions to the purse account from the source market fee and submit the agreement for review and approval by the commission. The class 1 racing association shall distribute the horsemen's share of the source market fee in accordance with the horseman's agreement.

(3) The commission shall annually review the distribution of the source market fee. Any changes to the distribution shall be adopted by rule.

WSR 24-11-118

PROPOSED RULES

DEPARTMENT OF HEALTH

[Filed May 21, 2024, 7:21 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-22-096.

Title of Rule and Other Identifying Information: Hospital fees updates to acute care and psychiatric hospital facility fees. The department of health (department) is proposing amendments to WAC 246-320-199 and 246-322-990 to update fees for acute care hospitals licensed under chapter 246-320 WAC and private psychiatric hospitals licensed under chapter 246-322 WAC. The department is also proposing changes to clarify and standardize language.

Hearing Location(s): On June 25, 2024, at 4:30 p.m., at the Department of Health, Town Center 2, 111 Israel Road S.E., Room 166 and 167, Tumwater, WA 98501; or virtual. Register in advance for this webinar https://us02web.zoom.us/webinar/register/WN_yJZUMgmQRXiqpquw7kV57Q. After registering, you will receive a confirmation email containing information about joining the webinar. Individuals may attend virtually or in person. Comments may also be submitted in writing.

Date of Intended Adoption: July 2, 2024.

Submit Written Comments to: Heather Cantrell, P.O. Box 47850, Olympia, WA 98504-7850, email <https://fortress.wa.gov/doh/policyreview>, by June 25, 2024.

Assistance for Persons with Disabilities: Contact Heather Cantrell, phone 360-236-4637, TTY 711, email HSQAfeerules@doh.wa.gov, by June 18, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing updates to rules regarding acute care and private psychiatric hospital fees to address funding needs. An update is needed to adequately fund the hospital inspection, investigation, and licensing programs to protect patients. RCW 43.70.250 requires that fees must cover regulatory program expenses which necessitates the program(s) to be self-funding and changes to rules are the only way to make fee adjustments. Critical access hospitals will have a reduced fee to align with the department's commitment to equity. Psychiatric hospitals will have a reduction in their fee after the initial fee update that will help balance the current shortfalls and long-term needs.

Reasons Supporting Proposal: RCW 43.70.250 requires that fees must cover regulatory program expenses which necessitates the program(s) to be self-funding and changes to rules are the only way to make fee adjustments. The proposed fees will address the backlog costs and the reserve amounts needed. The department will continue to monitor the finances and propose fee adjustments as needed.

Statutory Authority for Adoption: RCW 43.70.110 and 43.70.250.

Statute Being Implemented: RCW 43.70.110 and 43.70.250.

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting: Heather Cantrell, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4637; Implementation and Enforcement: Julie Tomaro, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-2937.

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

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 (5)(b)(vi) exempts rules that set or adjust fees or rates pursuant to legislative standards.

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

Is exempt under RCW 19.85.025(3) as the rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: The proposed rule adjusts fees and therefore is exempt under RCW 34.05.310 (4)(f). This proposed rule also only applies to licensed acute care and private psychiatric hospitals. These do not meet the definition of "small business" in RCW 19.85.020.

Scope of exemption for rule proposal:

Is fully exempt.

May 21, 2024
 Todd Mountin, PMP
 Chief of Policy
 for Umair A. Shah, MD, MPH
 Secretary

OTS-5414.2

AMENDATORY SECTION (Amending WSR 19-16-049, filed 7/30/19, effective 10/1/19)

WAC 246-320-199 Fees. This section establishes the initial licensure and annual fees for hospitals licensed under chapter 70.41 RCW. The license must be renewed every three years.

(1) Applicants and licensees shall submit to the department:

(a) An initial license fee (~~(of two hundred twenty dollars)~~) for each bed space within the authorized bed capacity for the hospital;

(b) An annual fee (~~(of two hundred twenty dollars)~~) for each bed space within the authorized bed capacity of the hospital by November 30th of the year.

(2) As used in this section, a bed space:

(a) Includes all bed spaces in rooms complying with physical plant and movable equipment requirements of this chapter for (~~(twenty-four)~~) 24-hour assigned patient care;

(b) Includes level 2 and 3 bassinet spaces;

(c) Includes bed spaces assigned for less than (~~(twenty-four)~~) 24-hour patient use as part of the licensed bed capacity when:

(i) Physical plant requirements of this chapter are met without movable equipment; and

(ii) The hospital currently possesses the required movable equipment and certifies this fact to the department.

(d) Excludes all normal infant bassinets;

(e) Excludes beds banked as authorized by certificate of need under chapter 70.38 RCW.

(3) A licensee shall submit to the department a late fee (~~((in the amount of one hundred dollars per day))~~) whenever the annual ~~((use))~~ fee is not paid by November 30th. The total late fee will not exceed ~~((twelve hundred dollars))~~ \$1,200.

(4) An applicant may request a refund for initial licensure as follows:

(a) Two-thirds of the initial fee paid after the department has received an application and not conducted an on-site survey or provided technical assistance; or

(b) One-third of the initial fee paid after the department has received an application and conducted either an on-site survey or provided technical assistance but not issued a license.

(5) The following fees will be charged:

<u>Fee Type</u>	<u>Acute Care - Critical Access Fee</u>	<u>Acute Care Fee</u>
<u>Initial Licensure Fee per bed</u>	<u>\$380.00</u>	<u>\$505.00</u>
<u>Renewal Licensure Fee per bed</u>	<u>\$380.00</u>	<u>\$505.00</u>
<u>Late Fee per day</u>	<u>\$100.00</u>	<u>\$100.00</u>

OTS-5415.2

AMENDATORY SECTION (Amending WSR 21-11-107, filed 5/19/21, effective 7/1/21)

WAC 246-322-990 Private psychiatric hospital fees. This section establishes the initial licensure and annual renewal fees for private psychiatric hospitals licensed under chapter 71.12 RCW.

(1) Applicants and licensees shall:

(a) Submit to the department an initial licensure fee (~~((of four hundred ninety-five dollars))~~) for each bed space within the licensed bed capacity of the hospital;

(b) Submit to the department an annual renewal fee (~~((of four hundred ninety-five dollars))~~) for each bed space within the licensed bed capacity of the hospital to the department;

(c) Include all bed spaces and rooms complying with physical plant and movable equipment requirements of this chapter for ~~((twenty-four))~~ 24-hour assigned patient rooms;

(d) Include bed spaces assigned for less than ~~((twenty-four))~~ 24-hour patient use as part of the licensed bed capacity when:

(i) Physical plant requirements of this chapter are met without movable equipment; and

(ii) The private psychiatric hospital currently possesses the required movable equipment and certifies this fact to the department.

(e) Limit licensed bed spaces as required under chapter 70.38 RCW;

(f) Submit applications for bed additions to the department for review and approval under chapter 70.38 RCW subsequent to department establishment of the private psychiatric hospital's licensed bed capacity;

(g) Set up (~~twenty-four~~) 24-hour assigned patient beds only within the licensed bed capacity approved by the department.

(2) Refunds. The department shall refund fees paid by the applicant for initial licensure if:

(a) The department has received the application but has not conducted an on-site survey or provided technical assistance, the department will refund two-thirds of the fees paid, less a (~~fifty-dollar~~) refund processing fee.

(b) The department has received the application and has conducted an on-site survey or provided technical assistance, the department will refund one-third of the fees paid, less a (~~fifty-dollar~~) refund processing fee.

(c) The department will not refund fees if:

(i) The department has performed more than one on-site visit for any purpose;

(ii) One year has elapsed since an initial licensure application is received by the department, and the department has not issued the license because the applicant has failed to complete the requirements for licensure; or

(iii) The amount to be refunded as calculated by (a) or (b) of this subsection is (~~ten-dollars~~) \$10 or less.

(3) Between November 1, 2024, and October 31, 2025, the following fees will apply:

Fee Type	Fee
<u>Initial Licensure Fee per bed</u>	<u>\$1,700.00</u>
<u>Renewal Licensure Fee per bed</u>	<u>\$1,700.00</u>
<u>Refund Processing Fee</u>	<u>\$50.00</u>

(4) On and after November 1, 2025, the following fees apply:

Fee Type	Fee
<u>Initial Licensure Fee per bed</u>	<u>\$1,450.00</u>
<u>Renewal Licensure Fee per bed</u>	<u>\$1,450.00</u>
<u>Refund Processing Fee</u>	<u>\$50.00</u>

WSR 24-11-119
PROPOSED RULES
DEPARTMENT OF HEALTH
[Filed May 21, 2024, 7:26 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-22-092.

Title of Rule and Other Identifying Information: Prescription monitoring program (PMP); clarifying terms and information about prescription history for the PMP. The department of health (department) is proposing updates to WAC 246-470-010, 246-470-030, and 246-470-050. Specifically, the department is proposing to add definitions of "dispense," "delivery," and "ultimate user," and amend a few areas to keep language consistent around the terms "deliver" and "dispense." The department is also proposing to clarify prescribers' ability to request their prescribing history.

Hearing Location(s): On June 25, 2024, at 2:15 p.m., at the Department of Health, Town Center 2, Room 166 and 167, 111 Israel Road S.E., Tumwater, WA 98501; or virtual. Register in advance for this webinar https://us02web.zoom.us/webinar/register/WN_ZbYtmIjgRze6NVJwwsP_fQ. After registering, you will receive a confirmation email containing information about joining the webinar. Individuals may attend in person or virtually.

Date of Intended Adoption: August 2, 2024.

Submit Written Comments to: Jennifer Kang, P.O. Box 47852, Olympia, WA 98504-7852, email <https://fortress.wa.gov/doh/policyreview/>, fax 360-236-2901, by June 25, 2024.

Assistance for Persons with Disabilities: Contact Jennifer Kang, phone 360-688-6644, email Jennifer.Kang@doh.wa.gov, by June 18, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to clarify terms and add in the definitions of "delivery," "dispense," and "ultimate user" after receiving several questions and comments from various interested parties around definitions of "dispense" and "distributed" during a state auditor's office audit of the PMP, as well as in various other routine operational situations. The department is proposing solutions to those questions and concerns through the rule-making process. The department is also proposing to clarify that prescribers can request the history of prescriptions they have written. Clarifying and defining some phrases found in rule is necessary to cut down on confusion regarding requirements of dispensers and prescribers.

Reasons Supporting Proposal: Clarifying and defining some phrases found in rule is necessary to cut down on confusion about what the rules mean for dispensers and prescribers. The clarification will help the PMP capture more accurate information on which prescriptions are actually picked up and handed off to a patient and not just prepared or readied by the dispenser at a pharmacy and not picked up. This would provide more accurate information to providers on what medications patients have likely actually been using versus what they were prescribed.

Statutory Authority for Adoption: RCW 70.225.025.

Statute Being Implemented: Chapter 70.225 RCW.

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Jennifer Kang, 111 Israel Road S.E., Tumwater, WA 98501, 360-688-6644.

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

A cost-benefit analysis is not required under RCW 34.05.328. This rule is exempt from analysis according to RCW 34.05.328 (5)(b)(iv) because it clarifies language of a rule without changing its effect.

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

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Explanation of exemptions: The proposed rule clarifies the language of the rule without changing its effect.

Scope of exemption for rule proposal:

Is fully exempt.

May 21, 2024
 Todd Mountin, PMP
 Chief of Policy
 for Umair A. Shah, MD, MPH
 Secretary

OTS-5231.3

AMENDATORY SECTION (Amending WSR 18-17-048, filed 8/8/18, effective 9/8/18)

WAC 246-470-010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly indicates otherwise:

(1) "Authentication" means information, electronic device, or certificate provided by the department or their designee to a data requestor to electronically access prescription monitoring information. The authentication may include, but is not limited to, a user name, password, or an identification electronic device or certificate.

(2) "Controlled substance" has the same meaning provided in RCW 69.50.101.

(3) "Delivery" means the actual or constructive transfer from one person to another of a schedule II, III, IV, or V controlled substance or other drug identified by the pharmacy quality assurance commission in WAC 246-470-020 whether or not there is an agency relationship.

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

~~((4))~~ (5) "Dispense," "dispensing," and "dispensed" means:

(a) The interpretation of a prescription for a schedule II, III, IV, or V controlled substance or other drug identified by the pharmacy quality assurance commission in WAC 246-470-020;

(b) Pursuant to that prescription, the proper selection, measuring, compounding, labeling, or packaging necessary to prepare that prescription for delivery; and

(c) The drug has left the possession of the dispenser because it has been delivered to the ultimate user, or the drug has been provided to a common or contract carrier for delivery to the ultimate user.

(6) "Dispenser" means a practitioner or pharmacy that delivers to the ultimate user a schedule II, III, IV, or V controlled substance or other drugs identified by the pharmacy quality assurance commission in WAC 246-470-020, but does not include:

(a) A practitioner or other authorized person who only administers, as defined in RCW 69.41.010, a controlled substance or other drugs identified by the pharmacy quality assurance commission in WAC 246-470-020;

(b) A licensed wholesale distributor or manufacturer, as defined in chapter 18.64 RCW, of a controlled substance or other drugs identified by the pharmacy quality assurance commission in WAC 246-470-020; or

(c) A veterinarian licensed under chapter 18.92 RCW. Data submission requirements for veterinarians are included in WAC 246-470-035.

~~((5))~~ (7) "Indirect patient identifiers" means data that may include: Hospital or provider identifiers; a five-digit zip code, county, state, and country of residence; dates that include month and year; age in years; and race and ethnicity; but does not include the patient's first name; middle name; last name; Social Security number; control or medical record number; zip code plus four digits; dates that include day, month, and year; or admission and discharge date in combination.

~~((6))~~ (8) "Local health officer" means the legally qualified physician who has been appointed as the health officer for a county or district health department, consistent with RCW 70.05.010(2).

~~((7))~~ (9) "Qualifying medical test site" means a medical test site licensed by the department under chapter 70.42 RCW, and certified as a drug testing laboratory by the United States department of health and human services, substance abuse and mental health services administration.

~~((8))~~ (10) "Patient" means the person or animal who is the ultimate user of a drug for whom a prescription is issued or for whom a drug is dispensed.

~~((9))~~ (11) "Patient address" means the current geographic location of the patient's residence. If the patient address is in care of another person or entity, the address of that person or entity is the "patient address" of record. When alternate addresses are possible, they must be recorded in the following order of preference:

(a) The geographical location of the residence, as would be identified when a telephone is used to place a 9-1-1 call; or

(b) An address as listed by the United States Postal Service; or

(c) The common name of the residence and town.

~~((10))~~ (12) "Pharmacist" means a person licensed to engage in the practice of pharmacy.

~~((11))~~ (13) "Prescriber" means a licensed health care professional with authority to prescribe controlled substances or legend drugs.

~~((12))~~ (14) "Prescription monitoring information" means information submitted to and maintained by the prescription monitoring program.

~~((13))~~ (15) "Program" means the prescription monitoring program established under chapter 70.225 RCW.

~~((14))~~ (16) "Ultimate user" means an individual who lawfully possesses a schedule II, III, IV, or V controlled substance or other

drug identified by the pharmacy quality assurance commission in WAC 246-470-020 for the individual's own use or for the use of a member of the individual's household or for administering to an animal owned by the individual or by a member of the individual's household.

(17) "Valid photographic identification" means:

(a) A driver's license or instruction permit issued by any United States state or province of Canada. If the patient's driver's license has expired, the patient must also show a valid temporary driver's license with the expired card.

(b) A state identification card issued by any United States state or province of Canada.

(c) An official passport issued by any nation.

(d) A United States armed forces identification card issued to active duty, reserve, and retired personnel and the personnel's dependents.

(e) A merchant marine identification card issued by the United States Coast Guard.

(f) A state liquor control identification card. An official age identification card issued by the liquor control authority of any United States state or Canadian province.

(g) An enrollment card issued by the governing authority of a federally recognized Indian tribe located in Washington, if the enrollment card incorporates security features comparable to those implemented by the department of licensing for Washington drivers' licenses and are recognized by the liquor control board.

AMENDATORY SECTION (Amending WSR 21-11-088, filed 5/18/21, effective 6/18/21)

WAC 246-470-030 Data submission requirements for dispensers.

(1) A dispenser shall provide to the department the dispensing information required by RCW 70.225.020 and this section for all scheduled II, III, IV, and V controlled substances and for drugs identified by the pharmacy quality assurance commission under WAC 246-470-020. Only drugs dispensed for more than one day use must be reported.

(2) Dispenser identification number. A dispenser shall acquire and maintain an identification number issued to dispensing pharmacies by the National Council for Prescription Drug Programs or a prescriber identifier issued to authorized prescribers of controlled substances by the Drug Enforcement Administration, United States Department of Justice.

(3) Submitting data. A dispenser shall submit data to the department electronically, as soon as readily available, but no later than one business day from the date of dispensing a drug, and in the format required by the department. When the dispenser has not dispensed any drugs during a business day which require reporting, then within seven days the dispenser shall report that no drugs requiring reporting were dispensed. The notification shall be in a format established by the department.

(a) A dispenser shall submit (~~for each dispensing~~) the following information (~~and~~) for each drug dispensed as well as any additional information required by the department:

(i) Patient identifier. A patient identifier is the unique identifier assigned to a particular patient by the dispenser;

- (ii) Name of the patient for whom the prescription is ordered including first name, middle initial, last name, and generational suffixes, if any;
 - (iii) Patient date of birth;
 - (iv) Patient address;
 - (v) Patient gender and species code;
 - (vi) Drug dispensed;
 - (vii) Date of dispensing;
 - (viii) Quantity and days supply dispensed;
 - (ix) Refill and partial fill information;
 - (x) Prescriber identifiers including the National Provider Identifier and the Drug Enforcement Administration number including any suffix used;
 - (xi) Prescription issued date;
 - (xii) Dispenser identifiers including the Drug Enforcement Administration number and the National Provider Identifier;
 - (xiii) Prescription fill date and number;
 - (xiv) Source of payment indicated by one of the following:
 - (A) Private pay (cash, change, credit card, check);
 - (B) Medicaid;
 - (C) Medicare;
 - (D) Commercial insurance;
 - (E) Military installations and veterans affairs;
 - (F) Workers compensation;
 - (G) Indian nations;
 - (H) Other;
 - (xv) When practicable, the name of the person picking up or dropping off the prescription as verified by valid photographic identification; and
 - (xvi) The prescriber's and dispenser's business phone numbers.
- (b) A nonresident, licensed pharmacy that (~~delivers~~) dispenses controlled substances, as defined in RCW 18.64.360, is required to submit only the transactions for patients with a Washington state zip code.
- (c) Data submission requirements do not apply to:
- (i) The department of corrections or pharmacies operated by a county for the purpose of providing medications to offenders in state or county correctional institutions who are receiving pharmaceutical services from a state or county correctional institution's pharmacy. A state or county correctional institution's pharmacy must submit data to the program related to each offender's current prescriptions for controlled substances upon the offender's release from a state or county correctional institution.
 - (ii) Medications provided to patients receiving inpatient services provided at hospitals licensed under chapter 70.41 RCW or patients of such hospitals receiving services at the clinics, day surgery areas, or other settings within the hospital's license where the medications are administered in single doses; or medications provided to patients receiving outpatient services provided at ambulatory surgical facilities licensed under chapter 70.230 RCW.

AMENDATORY SECTION (Amending WSR 18-17-048, filed 8/8/18, effective 9/8/18)

WAC 246-470-050 Local health officer, pharmacist, prescriber or other health care practitioner and medical test site access to information from the program. (1) Access.

(a) The local health officer or a licensed health care practitioner authorized by the local health officer may obtain prescription monitoring information for the purposes of patient follow-up and care coordination following a controlled substance overdose event.

(b) A pharmacist, prescriber, or licensed health care practitioner authorized by a prescriber or pharmacist may obtain prescription monitoring information relating to their patients, for the purpose of providing medical or pharmaceutical care or for the purpose of reviewing the history of prescriptions they wrote.

(c) A qualifying medical test site may have access to prescription monitoring information for the purpose of providing assistance to a prescriber or dispenser for determining medications an identified patient, in the care of the prescriber or dispenser, is taking.

(2) Registration for access.

(a) A local health officer, pharmacist, prescriber, or licensed health care practitioner authorized by a local health officer, prescriber or pharmacist shall register by using the registration process established by the department in order to receive an authentication to access the electronic system.

(b) Staff of a qualifying medical test site, meeting requirements of (a) of this subsection may register for access by using the registration process established by the department.

(3) Verification by the department. The department shall verify the authentication and identity of the local health officer, pharmacist, prescriber, licensed health care practitioner authorized by a local health officer, prescriber or pharmacist, or staff of a qualifying medical test site before allowing access to any prescription monitoring information. The qualifying medical testing laboratory's registered substance abuse and mental health services administration responsible person must designate and report to the program those staff who may access the prescription monitoring information.

(4) Procedure for accessing prescription information.

(a) A local health officer, pharmacist, prescriber, licensed health care practitioner authorized by a local health officer, prescriber or pharmacist, or staff of a qualifying medical test site center may access information from the program electronically, using the authentication issued by the department or the department's designee.

(b) A local health officer, pharmacist, prescriber, or licensed health care practitioner authorized by a local health officer, prescriber or pharmacist may alternately submit a written request via mail or facsimile transmission in a manner and format established by the department.

(5) Reporting lost or stolen authentication. If the authentication issued by the department is lost, missing, or the security of the authentication is compromised, the local health officer, pharmacist, prescriber, licensed health care practitioner authorized by a local health officer, prescriber or pharmacist, or staff of a qualifying medical test site shall notify the department's designee by telephone and in writing as soon as reasonably possible.

(6) All requests for, uses of, and disclosures of prescription monitoring information by authorized persons must be consistent with the mandate as outlined in RCW 70.225.040 and this chapter.

WSR 24-11-133
PROPOSED RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD
[Filed May 21, 2024, 11:33 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-05-014 and 24-04-065.

Title of Rule and Other Identifying Information: WAC 181-79A-223, 181-79A-231, and 181-79A-244, multistate nursing compact licenses.

Hearing Location(s): On July 18, 2024, at 8 a.m., virtual Zoom meeting. A link to listen to the meeting virtually will be available several weeks prior to the meeting. More information regarding this can be found on our website <https://www.pesb.wa.gov/about-us/board-meetings/>.

Date of Intended Adoption: July 18, 2024.

Submit Written Comments to: Professional Educator Standards Board (PESB), P.O. Box 47236, 600 Washington Street S.E., Olympia, WA 98504-7236, email pesb@k12.wa.us, by 8 a.m., Monday, July 15, 2024.

Assistance for Persons with Disabilities: Contact PESB, phone 360-725-6275, email pesb.k12.wa.us, by Thursday, July 4, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Clarify rules that multistate compact licenses are valid for educational staff associates certification for school nurses, school occupational therapists, and school physical therapists.

Reasons Supporting Proposal: Multistate licenses from these professions are currently being recognized as a result of the state entering into compact agreements.

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

Statute Being Implemented: Chapter 28A.410 RCW.

Rule is necessitated by federal law, 50 U.S.C. 4025a.

Name of Proponent: PESB, governmental.

Name of Agency Personnel Responsible for Drafting: Michael Nguyen, P.O. Box 47236, 600 Washington Street S.E., Olympia, WA 98504-7236, 360-489-4471; Implementation: Jeffrey Youde, P.O. Box 47236, 600 Washington Street S.E., Olympia, WA 98504-7236, 360-870-0143; and Enforcement: Erica Hernandez-Scott, P.O. Box 47236, 600 Washington Street S.E., Olympia, WA 98504-7236, 360-890-2443.

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

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

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

Is exempt under RCW 19.85.025(3) as the rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

Scope of exemption for rule proposal:

Is fully exempt.

May 21, 2024
Michael Nguyen
Rules Coordinator

OTS-5173.2

AMENDATORY SECTION (Amending WSR 21-15-085, filed 7/16/21, effective 8/16/21)

WAC 181-79A-223 Academic and experience requirements for certification—School nurse, school occupational therapist, school physical therapist, school speech-language pathologist or audiologist, school social worker, school behavior analyst, and school orientation and mobility specialist. Candidates for school nurse, school occupational therapist, school physical therapist and school speech-language pathologist or audiologist, school social worker, school behavior analyst, and school orientation and mobility specialist certification shall apply directly to the professional certification office. Such candidates shall complete the following requirements, in addition to those set forth in WAC 181-79A-150, except for a state-approved educator preparation program.

(1) **Degree.** Candidates who hold a master's degree or higher are not required to obtain a role-specific master's degree if the candidate provides satisfactory evidence to the superintendent of public instruction that they have completed all course work requirements relevant to the role-specific master's degree.

(2) **Professional transitions to public schools.** Candidates for the initial certificate for the roles under this section must complete the professional transitions to public schools coursework under WAC 181-79A-224.

(3) **Experience.** Candidates for the professional certificate for the roles under this section must complete two years full-time equivalency (FTE) in the role in Washington with a school district, state-approved private school, state tribal compact school, state authorized charter school, or state agency that provides educational services for students.

(4) **School nurse.**

(a) **Initial.**

(i) The candidate shall hold a valid (~~department of health~~) license as a registered nurse (RN) (~~in Washington state~~) under chapter 18.79 or 18.80 RCW.

(ii) The candidate shall hold a baccalaureate degree or higher in nursing from a program accredited by the National League for Nursing Accrediting Commission or the Commission on Collegiate Nursing Education.

(b) **Professional.**

(i) The candidate shall have completed the requirements for the initial certificate as a school nurse and have completed (~~one hundred fifty~~) 150 continuing education credit hours related to education, nursing, or other health sciences since the first issuance of the initial certificate.

(ii) The candidate shall hold a valid (~~department of health~~) license as a registered nurse (RN) (~~in Washington state~~) under chapter 18.79 or 18.80 RCW.

(iii) The candidate shall have completed suicide prevention training under RCW 28A.410.226, 43.70.442, and as described in WAC 181-79A-244.

(5) **School occupational therapist.**

(a) **Initial.**

(i) The candidate shall hold a valid (~~(department of health)~~) license as an occupational therapist (~~(in Washington state)~~) under chapter 18.59 RCW.

(ii) The candidate shall hold a baccalaureate degree or higher from an American Occupational Therapy Association approved program in occupational therapy.

(b) **Professional.**

(i) The candidate shall have completed the requirements for the initial certificate as a school occupational therapist and have completed (~~(one hundred fifty)~~) 150 continuing education credit hours related to occupational therapy, other health sciences, or education since the first issuance of the initial certificate.

(ii) The candidate shall hold a valid (~~(department of health)~~) license as an occupational therapist (~~(in Washington state)~~) under chapter 18.59 RCW.

(6) **School physical therapist.**

(a) **Initial.**

(i) The candidate shall hold a valid (~~(department of health)~~) license as a physical therapist (~~(in Washington state)~~) under chapter 18.74 RCW.

(ii) The candidate shall hold a baccalaureate degree or higher from an American Physical Therapy Association accredited program in physical therapy.

(b) **Professional.** The candidate shall have completed the requirements for the initial certificate as a school physical therapist and have completed (~~(one hundred fifty)~~) 150 continuing education credit hours related to physical therapy, other health sciences, or education since the first issuance of the initial certificate.

(7) **School speech-language pathologist or audiologist.**

(a) **Initial.** The candidate shall have completed all course work (except special project or thesis) for a master's degree or higher from a college or university program accredited by the American Speech and Hearing Association (ASHA). If the degree program requires a written comprehensive exam relevant to the role, the candidate must successfully complete it. If the degree program does not require a written comprehensive exam relevant to the role, the candidate may present verification from ASHA of a passing score on a national exam in speech pathology or audiology, or a passing score on an exam approved by the professional educator standards board.

(b) **Professional.**

(i) The candidate shall hold a master's degree or higher.

(ii) The candidate shall have completed the requirements for the initial certificate as a speech language pathologist or audiologist and have completed (~~(one hundred fifty)~~) 150 continuing education credit hours related to speech language pathology, audiology, other health sciences, or education since the first issuance of the initial certificate.

(8) **School social worker.**

(a) **Initial.** The candidate shall hold a masters degree or higher in social work or social welfare from an accredited institution of higher learning.

(b) **Professional.**

(i) The candidate shall have completed the requirements for the initial certificate as a school social worker and have completed (~~(one hundred fifty)~~) 150 continuing education credit hours related to the role of the school social worker or education since the first issuance of the initial certificate.

(ii) The candidate shall have completed suicide prevention training under RCW 28A.410.226, 43.70.442, and as described in WAC 181-79A-244.

(9) **Behavior analyst.**

(a) **Initial.**

(i) Candidates must hold a valid board certified behavior analyst (BCBA) certificate from the behavior analyst certification board (BACB), or other national certificate as approved by the professional educator standards board.

(ii) Candidates must hold a master's degree or higher in any area.

(iii) Candidates must have achieved a passing score on the board certified behavior analyst (BCBA) exam from the behavior analyst certification board (BACB), or other assessment as approved by the professional educator standards board.

(b) **Professional.**

(i) Candidates must hold a valid board certified behavior analyst (BCBA) certificate from the behavior analyst certification board (BACB), or other national certificate as approved by the professional educator standards board.

(ii) The candidate shall have completed the requirements for the initial certificate as a behavior analyst and have completed (~~one hundred fifty~~) 150 continuing education credit hours related to the role of the school behavior analyst or education since the first issuance of the initial certificate.

(10) **Orientation and mobility specialist.**

(a) **Initial.**

(i) Candidates must hold a valid certified orientation and mobility specialist (COMS) certificate from the academy for certification of vision rehabilitation and education professionals (ACVREP), valid national orientation and mobility certification (NOMC) from the national blindness professional certification board (NBPCB), or other valid national certificate as approved by the professional educator standards board.

(ii) Candidates must hold a baccalaureate degree or higher in any area.

(b) **Professional.**

(i) Candidates must hold a valid certified orientation and mobility specialist (COMS) certificate from the academy for certification of vision rehabilitation and education professionals (ACVREP), valid national orientation and mobility certification (NOMC) from the national blindness professional certification board (NBPCB), or other valid national certificate as approved by the professional educator standards board.

(ii) The candidate shall have completed the requirements for the initial certificate as an orientation and mobility specialist and have completed (~~one hundred fifty~~) 150 continuing education credit hours related to the role or to education since the first issuance of the initial certificate.

AMENDATORY SECTION (Amending WSR 22-08-101, filed 4/5/22, effective 5/6/22)

WAC 181-79A-244 Certificate renewal requirements. Certificate renewal requirements include the following:

(1) **Equity-based school practices.** Applications for renewal dated July 1, 2023, and beyond, for the certificate types and roles as indicated in (a) and (b) of this subsection, must demonstrate completion of professional learning focused on equity based school practices aligned with the cultural competency, diversity, equity, and inclusion (CCDEI) standards under WAC 181-85-204.

(a) Completion of at least 15 continuing education credit hours of professional learning in equity-based school practices is required for renewal of residency, professional, initial, and continuing teacher and CTE teacher certificates.

(b) Completion of at least 10 continuing education credit hours of professional learning in equity-based school practices is required for renewal of residency, professional, initial, and continuing principal, program administrator, superintendent, and CTE director certificates.

(c) Individuals holding at least one valid, expiration dated administrator certificate under (b) of this subsection are only required to meet the equity-based school practices requirement for administrators when renewing or reinstating a teacher certificate under (a) of this subsection.

(d) Holders of a valid National Board Certificate issued by the National Board for Professional Teaching Standards (NBPTS) meet the equity-based school practices requirement by maintaining a valid National Board Certificate.

(e) A professional growth plan with at least one goal aligned to the standards in this subsection meets the equity-based school practices requirement.

(2) **National Professional Standards for Education Leaders.** Applications for renewal dated July 1, 2023, and beyond, for holders of residency, professional, initial, and continuing certificates in the role of principal, program administrator, superintendent and CTE director, must demonstrate completion of 10 continuing education credit hours of professional learning focused on the National Policy Board for Educational Administration (NPBEA) Professional Standards for Educational Leaders (PSEL). A professional growth plan with at least one goal aligned to the PSEL standards meets the certificate renewal requirement in this subsection.

(3) **Providers for professional learning in equity-based school practices and National Professional Standards for Education Leaders.** Professional learning under subsections (1) and (2) of this section must be provided by one or more of the following organizations. These organizations may only provide the professional learning for as long as they maintain status as a Washington state approved in-service education agency under chapter 181-85 WAC.

(a) Association of Washington school principals;

(b) Office of the superintendent of public instruction;

(c) Professional educator standards board-approved administrator or teacher preparation program providers;

(d) Washington education association;

(e) Washington state educational service districts; or

(f) Washington state school districts, tribal compact schools, approved charter schools, Washington school for the deaf, Washington school for the blind.

(4) **Government-to-government relationships with federally recognized tribes.**

(a) Applications for renewal dated July 1, 2023, and beyond, for holders of residency, professional, initial, and continuing certifi-

cates in the role of principal, program administrator, superintendent and CTE director, must demonstrate completion of five continuing education credit hours of professional learning focused on government-to-government relationships with federally recognized tribes.

(b) Professional learning related to government-to-government relationships with federally recognized tribes must be provided by one or more subject matter experts approved by the governor's office on Indian affairs in collaboration with the tribal leaders congress on education and the office of native education in the office of the superintendent of public instruction.

(c) Completion of a professional growth plan (PGP) may not be used to meet the requirement for professional learning in government-to-government relationships.

(5) **Science, technology, engineering, math (STEM) integration.** Applications for certificate renewal must demonstrate completion of at least 15 continuing education credit hours, or at least one goal from an annual professional growth plan, emphasizing the integration of science, technology, engineering, and/or mathematics instruction under RCW 28A.410.2212.

(a) This renewal requirement applies to teachers in the following areas: Elementary education; early childhood education; middle level mathematics and science; secondary mathematics; secondary science; the designated sciences; and career and technical education. Specific endorsements in these endorsement areas are as published by the professional educator standards board.

(b) Holders of a valid National Board Certificate issued by the National Board for Professional Teaching Standards (NBPTS) meet this requirement by maintaining a valid National Board Certificate.

(6) **Suicide prevention training requirement.** Renewal of certificates, and issuance of professional certificates, for school counselors, school psychologists, school nurses, and school social workers requires completion of suicide prevention training under RCW 28A.410.226, 43.70.442, and as described in this section.

Approved trainings meeting this suicide prevention training requirement will be as published by the professional educator standards board. The training program must be at least three hours in length. The professional educator standards board will consider these training programs as continuing education credit hours.

(7) **Washington state department of health licenses.**

(a) Holding a valid (~~department of health~~) license as a physical therapist (~~in Washington state~~) under chapter 18.74 RCW is a requirement for renewal of school physical therapist educational staff associate (ESA) certificate.

(b) Holding a valid (~~department of health~~) license as an occupational therapist (~~in Washington state~~) under chapter 18.59 RCW is required for renewal of school occupational therapist ESA certificates.

(c) Holding a valid (~~department of health~~) license as a registered nurse (RN) (~~in Washington state~~) under chapter 18.79 or 18.80 RCW is a requirement for renewal of school nurse ESA certificates.

(8) **National certificates related to educational staff associate roles.**

(a) Holding a valid Board Certified Behavior Analyst (BCBA) certificate from the Behavior Analyst Certification Board (BACB), or other national certificate as approved by the professional educator standards board, is a requirement for renewal of School Behavior Analyst ESA certificates.

(b) Holding a valid Certified Orientation and Mobility Specialist (COMS) Certificate from Academy for Certification of Vision Rehabilitation and Education Professionals (ACVREP), or, a valid National Orientation and Mobility Certification (NOMC) from the National Blindness Professional Certification Board (NBPCB), is a requirement for renewal of school Orientation and Mobility Specialist ESA Certificates.

(9) **Continuing education role requirements.** Except as otherwise required in Title 181 WAC, continuing education for the following roles must relate to the described areas.

(a) CTE teacher. Continuing education credit hours for renewal of CTE teacher certificates must relate to career and technical education methods, including those described in RCW 28A.700.010 and WAC 181-77A-165, or to the subject matter certified to teach.

(b) CTE director. Continuing education credit hours for renewal of CTE director certificates must relate to career and technical education, or supervisory or managerial subjects.

(c) School counselor. Continuing education credit hours for renewal must relate to:

(i) American School Counseling Association (ASCA) Professional Standards and Competencies; or

(ii) School Counselor Standards published by the National Board for Professional Teaching Standards (NBPTS).

(d) School psychologist. Continuing education credit hours for renewal certificates must relate to the National Association of School Psychologists (NASP) Professional Practices.

OTS-5223.1

AMENDATORY SECTION (Amending WSR 22-20-090, filed 10/4/22, effective 11/4/22)

WAC 181-79A-231 Limited certificates. All applicants for limited certificates must meet the age, good moral character, and personal fitness requirements of WAC 181-79A-150 (1) and (2).

Nothing within chapter 181-79A WAC authorizes practice by an educational staff associate which is otherwise prohibited or restricted by any other law, including licensure statutes and rules and regulations adopted by the appropriate licensure board or agency.

(1) **Conditional certificate.**

(a) **Intent.** The intent of the conditional certificate is to assist school districts, approved private schools, and educational service districts in meeting the state's educational goals by giving them flexibility in hiring decisions based on shortages or the opportunity to secure the services of unusually talented individuals.

(b) **Roles.**

(i) Teacher roles. The conditional certificate may be issued to teachers in all endorsement areas. Specific minimum requirements defined in this section apply to the following:

(A) Special education teachers;

(B) Nonimmigrant exchange teachers;

(C) Traffic safety education teachers.

(ii) Educational staff associate roles. The conditional certificate may be issued in the following education staff associate roles:

- (A) School counselor;
- (B) School nurse;
- (C) School psychologist;
- (D) School social worker;
- (E) School speech language pathologist or audiologist;
- (F) School behavior analyst;
- (G) School orientation and mobility specialist.

(iii) Administrator role. The conditional certificate may be issued in the following administrator role: Principal.

(c) **Request requirements.**

(i) When requesting the conditional certificate, the district, the educational service district, or the approved private school will verify that one or more of the following criteria have been met:

(A) The individual has extensive experience, unusual distinction, or exceptional talent in the subject matter to be taught or in the certificate role; or

(B) No person with regular certification in the area is available; or

(C) The individual holds a bachelor's degree or higher from an accredited college or university; or

(D) The individual is enrolled in an educator preparation program specific to the certificate role for which they are applying; or

(E) The individual will serve as a nonimmigrant exchange teacher and meets the specific minimum requirements defined in this section; or

(F) The individual will serve as a traffic safety education teacher and meets the specific minimum requirements defined in this section; or

(G) Circumstances warrant.

(ii) When requesting the conditional certificate, the district, the educational service district, or the approved private school will verify that all of the following criteria have been met:

(A) The district, educational service district, or approved private school has determined that the individual is competent for the assignment; and

(B) After specific inclusion on the agenda and a formal vote, the school board or educational service district board has authorized the conditional certificate; and

(C) The individual is being certificated for a specific assignment and responsibility in a specified activity/field; and

(D) The individual will be delegated primary responsibility for planning, conducting, and evaluating instructional activities; and

(E) The individual will not be serving in a paraeducator role; and

(F) The individual will be oriented and prepared for the assignment. In addition, prior to service, the individual will be apprised of any legal liability, the responsibilities of a professional educator, the lines of authority, and the duration of the assignment; and

(G) The individual will be assigned a mentor within 20 working days from the commencement of the assignment; and

(H) A written plan of support will be developed within 20 working days from the commencement of the assignment.

(d) **Minimum requirements.**

(i) Individuals must complete 50 continuing education credit hours after the issuance of the certificate, and prior to the reissuance of the certificate. Holders of conditional certificates in the

role of nonimmigrant exchange teacher are not required to complete 50 continuing education credit hours.

(ii) Special education teacher. The applicant for a conditional teaching certificate in special education shall hold a bachelor's degree or higher from an accredited college or university.

The issuance of a conditional certificate to a special education teacher is contingent upon the individual being enrolled in a state-approved teacher preparation program resulting in a teacher certificate endorsed in special education.

An individual with full certification and endorsed in special education shall be assigned as a mentor to the special education teacher serving on a conditional certificate for the duration of the conditional certificate.

(iii) Traffic safety education teacher. The applicant qualifies to instruct in the traffic safety program under WAC 392-153-021. Written plans of support and mentors are not required for holders of conditional certificates in the role of traffic safety education teacher.

(iv) Nonimmigrant exchange. A conditional certificate in the role of teacher may be issued to an individual admitted to the United States for the purpose of serving as an exchange teacher.

The individual must be eligible to serve as a teacher in the elementary or secondary schools in their country of nationality or last residence.

(v) School counselor. The applicant must hold a bachelor's degree or higher from an accredited college or university, and be enrolled in a state-approved preparation program for the role, in accordance with Washington requirements for certification.

(vi) School nurse. The applicant possesses a (~~(state of Washington)~~) valid license (~~(for)~~) as a registered nurse (RN) under chapter 18.79 or 18.80 RCW. Applicants who meet the requirements for the initial school nurse certificate will not be issued a conditional school nurse certificate.

(vii) School psychologist. The applicant must hold a bachelor's degree or higher from an accredited college or university, and be enrolled in a state-approved preparation program for school psychologists, in accordance with Washington requirements for certification.

In addition, the candidate shall have completed all course work for the required master's degree, and shall be participating in the required internship.

(viii) School social worker. The applicant must hold a bachelor's degree or higher from an accredited college or university. The applicant must be enrolled in a master's degree program in social work or social welfare.

(ix) School speech language pathologist or audiologist. The applicant has completed a bachelor's degree or higher from an accredited college or university.

(x) School behavior analyst. Applicants must meet one or more of the following:

(A) Hold a valid Washington state department of health license as an assistant behavior analyst. The district, educational service district, or approved private school must provide a supervisor who meets the department of health requirements for a supervisor of assistant behavior analysts; or

(B) Hold a valid board certified assistant behavior analyst (BCABA) certificate from the behavior analyst certification board (BACB). The district, educational service district, or approved private school must provide a supervisor who meets the behavior analyst

certification board (BACB) requirements for a supervisor of board certified assistant behavior analyst (BCABA); or

(C) Hold a bachelor's degree, and, must be enrolled in or have completed the course work requirements for the board certified behavior analyst (BCBA) certificate from the behavior analyst certification board (BACB), as verified by the institution providing the behavior analysis course work.

(xi) School orientation and mobility specialist.

(A) Applicants must have completed all requirements for an approved national certificate with the exception of the internship and the assessment, as verified by the institution providing the course-work for the national certificate. The approved national certificates are the certified orientation and mobility specialist (COMS) certificate from the academy for certification of vision rehabilitation and education professionals (ACVREP), and the national orientation and mobility certification (NOMC) from the national blindness professional certification board (NBPCB).

(B) The school employer must ensure the candidate has access to a mentor who meets the requirements for an intern supervisor set by the academy for certification of vision rehabilitation and education professionals (ACVREP) or the national blindness professional certification board (NBPCB).

(xii) Principal. The applicant holds a bachelor's degree from an accredited college or university.

The candidate for conditional certification as a principal shall be enrolled in a program resulting in the issuance of a residency principal certificate, in accordance with Washington requirements for certification.

(e) **Validity.** The conditional certificate is valid for two years or less, and is only valid for the activity or role specified on the certificate.

The reissuance of the special education conditional certificate will have a validity period of three years or less.

(f) **Reissuance.**

(i) The conditional certificate may be reissued upon request by the employing local school district, approved private school, or educational service district, provided all conditions for the first issuance of the certificate are met.

(ii) The requesting school district, approved private school, or educational service district will verify that the 50 continuing education credit hours earned as a requirement for reissuance of the certificate are designed to support the individual's professional growth, and enhance the individual's knowledge or skills to better assist students in meeting state learning goals.

(iii) Nonimmigrant exchange. The conditional certificate in the role of teacher may be reissued while the individual is being sponsored by a school district in an exchange and visiting teacher program.

(iv) Special education teacher. Conditional certificates in special education may only be reissued once. The reissuance of the special education conditional certificate will have a validity period of three years or less. The special education conditional certificate may only be reissued upon verification by the preparation program provider that the individual is completing satisfactory progress in a state-approved teacher certificate program leading to a special education endorsement.

(v) School speech language pathologist or audiologist. Conditional certificates as a school speech language pathologist or audiologist may be reissued twice.

The conditional certification as a school speech language pathologist or audiologist may be reissued if the candidate is enrolled in a master's degree program resulting in issuance of an initial ESA certificate in accordance with Washington requirements for certification.

The school speech language pathologist or audiologist conditional certificate may be reissued a second time upon verification by the degree provider that the individual is completing satisfactory progress in a master's degree program resulting in issuance of an initial school speech language pathologist or audiologist certificate in accordance with Washington requirements for certification.

(vi) Conditional certificates as a school behavior analyst may be reissued twice.

(vii) Conditional certificates as a school orientation and mobility specialist may be reissued once.

(2) **Transitional certificate.**

(a) **Intent.** The transitional certificate provides flexibility for school districts in employing an individual according to this chapter.

(i) Individuals whose continuing certificate has lapsed or expired.

(ii) Individuals whose certificate has lapsed or expired by June 30, 2022, under WAC 181-79A-240.

(b) **Roles.** The transitional certificate may be issued in roles of teacher, education staff associate, and administrator for continuing certificates or other certificates subject to renewal under WAC 181-79A-240.

(c) **Request requirements.**

(i) The transitional certificate is issued upon request by a school district, approved private school, or educational service district for an individual whose continuing certificate has lapsed or expired according to this chapter.

(ii) The transitional certificate is issued upon request by a school district, approved private school, or educational service district for an individual whose certificate has expired according to this chapter.

(A) Districts may request a transitional certificate for all certificates other than continuing certificates under this section through December 31, 2023.

(B) Educators under this section must apply for the transitional certificate through the office of the superintendent of public instruction no later than June 30, 2024.

(iii) School districts, approved private schools, and educational service districts are strongly encouraged to develop with the holder of a transitional certificate a plan of support for the holder to complete the necessary certificate renewal requirements under this chapter.

(d) **Minimum requirements.**

(i) The holder of the transitional certificate must complete the requirements for certificate renewal within two years of the date the holder was issued the transitional certificate.

(ii) No individual whose certificate has been suspended, revoked, or surrendered shall be eligible to be employed under this section.

(e) **Validity.** The transitional certificate is valid until two years from the date the holder was issued the certificate. The transi-

tional certificate expiration date shall not be calculated under professional educator standards board policy WAC 181-79A-117.

(f) **Reissuance.** The transitional certificate is not renewable and may not be reissued.

(3) **Emergency substitute certificate.**

(a) **Intent.** The intent of the emergency substitute certificate is to assist school districts, approved private schools, and educational service districts with flexibility in meeting educator workforce needs.

(b) **Roles.**

(i) The emergency substitute certificate may be issued in the role of teacher.

(ii) To ensure that related services personnel deliver special education services in their respective discipline or profession, the emergency substitute certificate may not be issued for individuals to serve in an educational staff associate role in accordance with 34 C.F.R. Part 300.156 (b) (2) (ii).

(iii) Holders of the emergency substitute certificate may serve in the local school district, approved private school, or educational service district which requested the certificate.

(iv) Holders of the emergency substitute certificate may serve as substitutes if the local school district, approved private school, or educational service district has exhausted or reasonably anticipates it will exhaust its list of qualified substitutes under WAC 181-79A-232.

(c) **Request requirements.**

(i) The emergency substitute certificate is issued upon request by a school district, approved private school, or educational service district.

(ii) If the local school district, approved private school, or educational service district has exhausted or reasonably anticipates it will exhaust its list of qualified substitutes who are willing to serve as substitutes, emergency substitute certificates may be issued to persons not fully qualified as substitutes under WAC 181-79A-232.

(d) **Validity.** Emergency substitute certificates shall be valid for two years or less.

(e) **Reissuance.** The emergency substitute certificate may be reissued upon request by the employing local school district, approved private school, or educational service district.

(4) **Intern substitute certificate.**

(a) **Intent.** The intent of the intern substitute certificate is to provide the intern the opportunity to serve as a substitute when the cooperating teacher is absent. This provides the intern with experience while allowing for consistency in instruction for the students.

(b) **Roles.** The intern substitute certificate may be issued to student teachers or intern teachers.

(c) **Request requirements.**

(i) School districts, educational service districts, and approved private schools may request intern substitute teacher certificates for individuals enrolled in student teaching and internships to serve as substitute teachers in the absence of the cooperating teacher.

(ii) The supervising preparation program provider must approve the candidate for the intern substitute teacher certificate.

(d) **Minimum requirements.** The holder of the intern substitute certificate may be called at the discretion of the school district, education service district, or approved private school to serve as a

substitute teacher only in the classroom(s) to which the individual is assigned as a student teacher or intern.

(e) **Validity.** The intern substitute teacher certificate is valid for one year or less.

(f) **Reissuance.** The intern substitute certificate may be reissued upon request by the local school district, approved private school, or educational service district, and approved by the educator preparation program provider.

WSR 24-11-134

PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed May 21, 2024, 12:01 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-08-056.

Title of Rule and Other Identifying Information: WAC 182-545-200
Outpatient rehabilitation (occupational therapy, physical therapy, and
speech therapy).

Hearing Location(s): On June 25, 2024, at 10:00 a.m. The health
care authority (HCA) holds public hearings virtually without a physi-
cal meeting place. To attend the virtual public hearing, you must reg-
ister in advance [https://us02web.zoom.us/webinar/register/
WN_71S7AVjqRpmWNBn_6M4B1Q](https://us02web.zoom.us/webinar/register/WN_71S7AVjqRpmWNBn_6M4B1Q). If the link above opens with an error mes-
sage, please try using a different browser. After registering, you
will receive a confirmation email containing information about joining
the public hearing.

Date of Intended Adoption: No sooner than June 26, 2024.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box
42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727,
beginning May 22, 2024, 8:00 a.m., by June 25, 2024, 11:59 p.m.

Assistance for Persons with Disabilities: Contact Johanna Larson,
phone 360-725-1349, fax 360-586-9727, telecommunication[s] relay serv-
ice 711, email Johanna.larson@hca.wa.gov, by June 14, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including
Any Changes in Existing Rules: In response to SB 5228, section 2,
chapter 113, Laws of 2023, HCA is amending WAC 182-545-200 to state
that HCA pays for outpatient rehabilitation services provided to eli-
gible clients when provided by licensed or certified behavioral health
agencies as part of a mental health or substance use disorder treat-
ment program. HCA is also amending this rule to add separate limits
for clients needing occupational therapy to treat behavioral health
conditions.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160; and
SB 5228, section 2, chapter 113, Laws of 2023.

Statute Being Implemented: RCW 41.05.021, 41.05.160; and SB 5228,
section 2, chapter 113, Laws of 2023.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Jason Crabbe,
P.O. Box 42716, Olympia, WA 98504-2716, 360-725-9563; Implementation
and Enforcement: Dani Crawford, P.O. Box 45502, Olympia, WA
98504-5502, 360-725-0983.

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

A cost-benefit analysis is not required under RCW 34.05.328. RCW
34.05.328 does not apply to HCA rules unless requested by the joint
administrative rules review committee or applied voluntarily.

Scope of exemption for rule proposal:

Is not exempt.

The proposed rule does not impose more-than-minor costs on busi-
nesses. Following is a summary of the agency's analysis showing how
costs were calculated. WAC 182-545-200 does not impose any regulatory
obligations. Clinics are not mandated to offer occupational therapy

for behavioral health; it is at their discretion. This rule enables these services to be treated similarly to those for physical health issues. Moreover, there are no additional reporting or compliance obligations specified in the updated rules.

May 22, 2024
Wendy Barcus
Rules Coordinator

OTS-5359.1

AMENDATORY SECTION (Amending WSR 18-09-052, filed 4/13/18, effective 5/14/18)

WAC 182-545-200 Outpatient rehabilitation (occupational therapy, physical therapy, and speech therapy). (1) The following health professionals may enroll with the medicaid agency, as defined in WAC 182-500-0010, to provide outpatient rehabilitation (which includes occupational therapy, physical therapy, and speech therapy) within their scope of practice to eligible clients:

- (a) A psychiatrist;
- (b) A licensed occupational therapist;
- (c) A licensed occupational therapy assistant (OTA) supervised by a licensed occupational therapist;
- (d) A licensed physical therapist;
- (e) A physical therapist assistant supervised by a licensed physical therapist;
- (f) A licensed speech-language pathologist; and
- (g) A licensed optometrist to provide vision occupational therapy only.

(2) Clients covered by one of the Washington apple health programs listed in the table in WAC 182-501-0060 or receiving home health care services as described in chapter 182-551 WAC (subchapter II) are eligible to receive outpatient rehabilitation as described in this chapter.

(3) Clients enrolled in an agency-contracted managed care organization (MCO) must arrange for outpatient rehabilitation directly through their agency-contracted MCO.

(4) The agency pays for outpatient rehabilitation when the services are:

- (a) Covered;
- (b) Medically necessary;
- (c) Within the scope of the eligible person's medical care program;
- (d) Ordered by:
 - (i) A physician, physician assistant (PA), or an advanced registered nurse practitioner (ARNP); or
 - (ii) An optometrist, if the ordered services are for occupational therapy only.
- (e) Within currently accepted standards of evidence-based medical practice;

- (f) Authorized, as required within this chapter, under chapters 182-501 and 182-502 WAC and the agency's published billing instructions;
- (g) Begun within (~~(thirty)~~) 30 calendar days of the date ordered;
- (h) Provided by one of the health professionals listed in subsection (l) of this section;
- (i) Billed according to this chapter, chapters 182-501 and 182-502 WAC, and the agency's published billing instructions; and
- (j) Provided as part of an outpatient treatment program:
- (i) In an office or outpatient hospital setting;
- (ii) In the home, by a home health agency as described in chapter 182-551 WAC;
- (iii) In a neurodevelopmental center, as described in WAC 182-545-900; (~~(or)~~)
- (iv) For children with disabilities, age two or younger, in natural environments including the home and community setting in which children without disabilities participate, to the maximum extent appropriate to the needs of the child; or
- (v) When provided by licensed and certified behavioral health agencies as part of a mental health or substance use disorder treatment program.
- (5) For eligible clients age (~~(twenty)~~) 20 and younger, the agency covers unlimited outpatient rehabilitation.
- (6) For clients age (~~(twenty-one)~~) 21 and older, the agency covers a limited outpatient rehabilitation benefit.
- (7) Outpatient rehabilitation services for clients age (~~(twenty-one)~~) 21 and older must:
- (a) Restore, improve, or maintain the person's level of function that has been lost due to (~~(medically)~~) a clinically documented (~~(injury or illness)~~) condition; and
- (b) Include an ongoing management plan for the client or the client's caregiver to support timely discharge and continued progress.
- (8) For eligible clients age (~~(twenty-one)~~) 21 and older, the agency limits coverage of outpatient rehabilitation as follows:
- (a) Occupational therapy, per person, per year:
- (i) Without authorization:
- (A) For clients needing occupational therapy to treat physical conditions:
- (I) One occupational therapy evaluation;
- (~~(B)~~) (II) One occupational therapy reevaluation at time of discharge; and
- (~~(C)~~) (III) Twenty-four units of occupational therapy, which is approximately six hours; and
- (B) For clients needing occupational therapy to treat behavioral health conditions:
- (I) One occupational therapy evaluation;
- (II) One occupational therapy reevaluation at time of discharge;
- and
- (III) Twenty-four units of occupational therapy, which is approximately six hours.
- (ii) With expedited prior authorization, up to (~~(twenty-four)~~) 24 additional units of occupational therapy to treat either the client's physical or behavioral health conditions may be available to continue treatment initiated under the original (~~(twenty-four)~~) 24 units when the criteria below is met:
- (A) To continue treatment of the original qualifying condition;
- and

(B) The client's diagnosis is any of the following:

(I) Acute, open, or chronic nonhealing wounds;

(II) Behavioral health conditions;

~~((III))~~ (III) Brain injury, which occurred within the past ~~((twenty-four))~~ 24 months, with residual cognitive or functional deficits;

~~((IV))~~ (IV) Burns - Second or third degree only;

~~((V))~~ (V) Cerebral vascular accident, which occurred within the past ~~((twenty-four))~~ 24 months, with residual cognitive or functional deficits;

~~((VI))~~ (VI) Lymphedema;

~~((VII))~~ (VII) Major joint surgery - Partial or total replacement only;

~~((VIII))~~ (VIII) Muscular-skeletal disorders such as complex fractures that required surgical intervention, or surgery involving the spine or extremities (e.g., arm, hand, shoulder, leg, foot, knee, or hip);

~~((IX))~~ (IX) Neuromuscular disorders that are affecting function (e.g., amyotrophic lateral sclerosis (ALS), active infective polyneuritis (Guillain-Barre));

~~((X))~~ (X) Reflex sympathetic dystrophy;

~~((XI))~~ (XI) Swallowing deficits due to injury or surgery to the face, head, or neck;

~~((XII))~~ (XII) Spinal cord injury that occurred within the past ~~((twenty-four))~~ 24 months, resulting in paraplegia or quadriplegia; or

~~((XIII))~~ (XIII) As part of a botulinum toxin injection protocol when botulinum toxin has been prior authorized by the agency.

(b) Physical therapy, per person, per year:

(i) Without authorization:

(A) One physical therapy evaluation;

(B) One physical therapy reevaluation at time of discharge; and

(C) Twenty-four units of physical therapy, which is approximately six hours.

(ii) With expedited prior authorization, up to ~~((twenty-four))~~ 24 additional units of physical therapy may be available to continue treatment initiated under the original ~~((twenty-four))~~ 24 units when the criteria below is met:

(A) To continue treatment of the original qualifying condition; and

(B) The person's diagnosis is any of the following:

(I) Acute, open, or chronic nonhealing wounds;

~~((II))~~ (II) Brain injury, which occurred within the past ~~((twenty-four))~~ 24 months, with residual functional deficits;

~~((III))~~ (III) Burns - Second or third degree only;

~~((IV))~~ (IV) Cerebral vascular accident, which occurred within the past ~~((twenty-four))~~ 24 months, with residual functional deficits;

~~((V))~~ (V) Lymphedema;

~~((VI))~~ (VI) Major joint surgery - Partial or total replacement only;

~~((VII))~~ (VII) Muscular-skeletal disorders such as complex fractures that required surgical intervention, or surgery involving the spine or extremities (e.g., arm, hand, shoulder, leg, foot, knee, or hip);

~~((VIII))~~ (VIII) Neuromuscular disorders that are affecting function (e.g., amyotrophic lateral sclerosis (ALS), active infective polyneuritis (Guillain-Barre));

~~((IX))~~ (IX) Reflex sympathetic dystrophy;

~~((X))~~ (X) Spinal cord injury, which occurred within the past ~~((twenty-four))~~ 24 months, resulting in paraplegia or quadriplegia; or

- (XI) As part of a botulinum toxin injection protocol when botulinum toxin has been prior authorized by the agency.
- (c) Speech therapy, per person, per year:
- (i) Without authorization:
- (A) One speech language pathology evaluation;
- (B) One speech language pathology reevaluation at the time of discharge; and
- (C) Six units of speech therapy, which is approximately six hours.
- (ii) With expedited prior authorization, up to six additional units of speech therapy may be available to continue treatment initiated under the original six units when the criteria below is met:
- (A) To continue treatment of the original qualifying condition; and
- (B) The person's diagnosis is any of the following:
- (I) Brain injury, which occurred within the past (~~twenty-four~~) 24 months, with residual cognitive or functional deficits;
- (II) Burns of internal organs such as nasal oral mucosa or upper airway;
- (III) Burns of the face, head, and neck - Second or third degree only;
- (IV) Cerebral vascular accident, which occurred within the past (~~twenty-four~~) 24 months, with residual functional deficits;
- (V) Muscular-skeletal disorders such as complex fractures that require surgical intervention or surgery involving the vault, base of the skull, face, cervical column, larynx, or trachea;
- (VI) Neuromuscular disorders that are affecting function (e.g., amyotrophic lateral sclerosis (ALS), active infection polyneuritis (Guillain-Barre));
- (VII) Speech deficit due to injury or surgery to the face, head, or neck;
- (VIII) Speech deficit that requires a speech generating device;
- (IX) Swallowing deficit due to injury or surgery to the face, head, or neck; or
- (X) As part of a botulinum toxin injection protocol when botulinum toxin has been prior authorized by the agency.
- (d) Durable medical equipment (DME) needs assessments, two per person, per year.
- (e) Orthotics management and training of upper or lower extremities, or both, two program units, per person, per day.
- (f) Orthotic or prosthetic use, two program units, per person, per year.
- (g) Muscle testing, one procedure, per person, per day. Muscle testing procedures cannot be billed in combination with each other. These procedures can be billed alone or with other physical and occupational therapy procedures.
- (h) Wheelchair needs assessment, one per person, per year.
- (9) For the purposes of this chapter:
- (a) Each (~~fifteen~~) 15 minutes of timed procedure code equals one unit; and
- (b) Each nontimed procedure code equals one unit, regardless of how long the procedure takes.
- (10) For expedited prior authorization (EPA):
- (a) A provider must establish that:
- (i) The person's condition meets the clinically appropriate EPA criteria outlined in this section; and

(ii) The services are expected to result in a reasonable improvement in the person's condition and achieve the person's therapeutic individual goal within (~~sixty~~) 60 calendar days of initial treatment;

(b) The appropriate EPA number must be used when the provider bills the agency;

(c) Upon request, a provider must provide documentation to the agency showing how the person's condition met the criteria for EPA; and

(d) A provider may request expedited prior authorization once per year, per person, per each therapy type.

(11) If the client does not meet the EPA clinical criteria in this section, the agency uses the process in WAC 182-501-0165 to consider prior authorization requests and approves services that are medically necessary.

(12) The agency evaluates limitation extension (LE) requests regarding scope, amount, duration, and frequency of covered health care services under WAC 182-501-0169. Providers may submit LE requests for additional units when:

(a) The criteria for an expedited prior authorization does not apply;

(b) The number of available units under the EPA have been used and services are requested beyond the limits; or

(c) A new qualifying condition arises after the initial six visits are used.

(13) Duplicate services for outpatient rehabilitation are not allowed for the same person when both providers are performing the same or similar procedure(s).

(14) The agency does not pay separately for outpatient rehabilitation that are included as part of the reimbursement for other treatment programs. This includes, but is not limited to, hospital inpatient and nursing facility services.

(15) The agency does not reimburse a health care professional for outpatient rehabilitation performed in an outpatient hospital setting when the health care professional is not employed by the hospital. The hospital must bill the agency for the services.

WSR 24-11-136
PROPOSED RULES
SECRETARY OF STATE
[Filed May 21, 2024, 12:53 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-20-004.

Title of Rule and Other Identifying Information: Automatic voter registration acknowledgment notice packages, future voter disclosure timeline, voter registration form.

Hearing Location(s): On June 25, 2024, at 10:00 a.m., at the Washington Secretary of State, Washington State Library, 6880 Capitol Boulevard S.E., Tumwater, WA 98501. When attending the hearing in person, walk into the front lobby of the Washington state library. You will be escorted to the conference room at 9:55 a.m. to be present when the hearing begins at 10:00 a.m. If you arrive after that time, there will be a staff member available in the lobby to escort you to the conference room.

Date of Intended Adoption: June 26, 2024.

Submit Written Comments to: Dave Piersma, P.O. Box 40229, Olympia, WA 98504, email dave.piersma@sos.wa.gov, fax 360-664-4619, beginning May 22, 2024, 5:00 p.m., by June 24, 2024, 5:00 p.m.

Assistance for Persons with Disabilities: Contact Dave Piersma, phone 360-902-4172, fax 360-664-4619, email dave.piersma@sos.wa.gov, by June 24, 2024, 5:00 p.m.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to create the processes to enact the opt-out automatic voter registration system established in E2SSB 5112 (2023) in a manner that ensures consistency in counties throughout the state, provide clarification on disclosure timelines related to primary-only voters in SB 5153 (2023), and create a new voter registration application form in accordance with E2SSB 5112 (2023).

Reasons Supporting Proposal: E2SSB 5112 (2023) expanded voter registration participation options for voters and amended the requirements for the prescribed voter registration application form. The consent decree entered in *Washington State Alliance for Retired Americans v. Hobbs, et al.*, W.D.WA. Case No. 3-23-CV-06014-TMC created a required change in the voter registration form's oath. New rules are required to enumerate the procedures to enact the requirements. SB 5153 (2023) updated RCW to state that records pertaining to primary-only voters become publicly available when they are eligible to vote in the next primary, presidential primary, or election, but did not clarify a specific timeline. The proposed rule creates a uniform disclosure timeline for use across the state.

Statutory Authority for Adoption: RCW 29A.04.611.

Statute Being Implemented: RCW 29A.08.030, 29A.08.110, 29A.08.210, 29A.08.359, 29A.08.725.

Rule is necessary because of federal court decision, *Washington State Alliance for Retired Americans v. Hobbs, et al.*, W.D.WA. Case No. 3-23-CV-06014-TMC.

Name of Proponent: Office of the secretary of state, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Stuart Holmes, Olympia, 360-902-4151.

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

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

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

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

Scope of exemption for rule proposal:

Is fully exempt.

May 22, 2024
Amanda Doyle
Chief of Staff

OTS-5434.1

AMENDATORY SECTION (Amending WSR 24-03-053, filed 1/10/24, effective 2/10/24)

WAC 434-232-040 Information pertaining to primary-only voters, when disclosable. (1) Pursuant to RCW 29A.08.720, personally identifiable information from the voter registration record is exempt from public inspection and copying until the voter is 18 years of age, or until 90 days prior to the next presidential primary, primary, or election the ((person)) voter is eligible to participate in ((the next presidential primary, primary, or election)).

(2) Pursuant to RCW 29A.40.130, ballot issuance and return information for a primary-only voter, excluding the date of birth, gender, and address, is subject to public disclosure at the time of ballot issuance by the county auditor for a presidential primary or primary that the voter is eligible to participate in.

(3) Pursuant to RCW 29A.08.170, a person who signs up to register to vote must remain as a "future voter" as defined by RCW 29A.04.070 until such time as they will be eligible to vote in the next election. The voter registration information is exempt from public inspection and copying until they are 18 years of age or until 90 days prior to the next presidential primary, primary, or election the ((person)) future voter is eligible to participate in ((the next presidential primary, primary, or election)).

OTS-5435.1

AMENDATORY SECTION (Amending WSR 24-07-018, filed 3/8/24, effective 5/4/24)

WAC 434-250-120 Verification of the signature and return date.

(1) A ballot shall be counted if:

(a) The voter has not already cast a ballot that has been accepted in the election;

(b) The voter signed the ballot declaration with a valid signature, as determined by WAC 434-261-051 through 434-261-053, or the voter has provided identification at a voting center; and

(c) The envelope is returned in one of the following methods:

(i) The envelope is postmarked not later than the day of the election and received not later than close of business the day before certification of the election. A postmark is any official mark, imprint, or application that verifies when a ballot entered the U.S. postal system. The mailing date of a ballot sent through a commercial mailing service, such as FedEx or UPS, may be considered a postmark. The postmark on the envelope is the official date of mailing. If there are multiple postmarks, the earliest postmark is the date of mailing. A hand cancellation by an agent of the U.S. Postal Service is a postmark.

If the postmark is illegible or missing, the date of the voter's signature is the date of mailing as per RCW 29A.40.110. If the postmark is illegible or missing and the voter did not include a date with their signature, county auditors may use available U.S. Postal Service tools to verify the date of mailing;

(ii) The ballot is deposited in a ballot drop box no later than 8:00 p.m. on election day; or

(iii) For service and overseas voters, the ballot is received by fax or email no later than 8:00 p.m. on election day. Only service and overseas voters can submit ballots by fax or email.

(2) Postage that includes a date, such as meter postage or a dated stamp, does not qualify as a postmark. If an envelope lacks a postmark or if the postmark is unreadable, the date to which the voter has attested on the ballot declaration determines the validity of the ballot, per RCW 29A.40.110. If a ballot is from a service or overseas voter, the date to which the voter has attested on the ballot declaration determines the validity of the ballot, per RCW (~~29A.40.100~~) 29A.40.110.

(3) Consistent with WAC 434-250-080, the voter's current ballot and signed declaration shall be accepted for initial processing; ballots previously or subsequently received for the same voter are not counted nor rejected by the county canvassing board. Such ballots are invalid and categorized as informational only.

(a) If the first ballot received is identical to the voter's current ballot because the voter submitted a replacement ballot, the replacement ballot shall be referred to signature verification for initial processing.

(b) If the first ballot received is suspended because of a voter registration update, the suspended ballot shall be held by the county of current registration. The county of registration may choose to manually check the suspended ballot for signature issues and send a signature update form, while allowing time for the current ballot to be received and accepted.

(4) A ballot may not be rejected merely because the ballot envelope is not dated, unless the date is necessary to validate the timeliness of the ballot. The signature on a ballot declaration may not be rejected merely because the name in the signature is a variation of the name on the voter registration record.

(5) Only service and overseas voters are eligible to return a ballot by fax or email. For ballots returned by fax or email from service or overseas voters, the county auditor must apply procedures to protect the secrecy of the ballot.

(a) If returned by email, the county auditor must print the email and attachments; the printed email and signed declaration page must be processed and retained like other ballot declarations, and the printed ballot must be processed and retained like other ballots. The electronic versions of the email, ballot declaration, and ballot are exempt from public disclosure in order to maintain secrecy of the ballot. Voted service and overseas ballots returned by email may be returned with multiple attachments or in multiple emails.

(b) Service and overseas ballots returned by fax or email with a missing or mismatched signature are processed as established in RCW 29A.60.165 and WAC 434-261-050.

(6) For faxed or emailed ballots received from voters who are not service or overseas voters the county auditor must:

(a) Contact the voter immediately if a faxed or emailed ballot is received to notify the voter that they must return their ballot by mail or ballot drop box.

(b) Count only the ballot received by mail or ballot drop box if the voter returns both a faxed or emailed ballot and a ballot by mail or ballot drop box.

(c) Send the faxed or emailed ballot to the canvassing board for rejection if the voter did not return a ballot by mail or ballot drop box.

(7) The signature verification process shall be open to the public, subject to reasonable procedures adopted and promulgated by the canvassing board to ensure that order is maintained and to safeguard the integrity of the process.

OTS-5442.1

AMENDATORY SECTION (Amending WSR 20-13-043, filed 6/10/20, effective 7/11/20)

WAC 434-324-005 Definitions. As used in this chapter:

(1) "Accepted" means the voter's ballot has been signature verified and is ready for initial processing.

(2) "Active status" means a designation assigned to voters with complete voter registration records signifying that the voter is eligible to vote.

(3) "Applicant" means a person who has applied, or is applying, to become a registered voter in the state of Washington.

(4) "Auditor" or "county auditor" means the county auditor in a noncharter county or the officer in a charter county, irrespective of title, having the overall responsibility to maintain voter registration to conduct state and local elections.

(5) "Automatic voter registration" means the process in which applicants for government services are automatically registered to vote upon completing a transaction that requires proof of United States citizenship.

(6) "Conditional registration" means an in-person voter registration application submitted when the (~~voter registration~~) election management system is unable to process applications. Conditionally registered voters are issued a current ballot for their precinct whenever possible; they are not issued a provisional ballot.

~~((6))~~ (7) "Current ballot" means the ballot which matches the precinct, precinct portion or split in which the voter is currently registered to vote. This is the most recently issued ballot type or style.

~~((7))~~ (8) "Electronic registration" means the electronic submission of voter registration applications.

~~((8))~~ (9) "Extraction," as used in this chapter, means the creation of an electronic list of specific information from the entire official statewide voter registration database.

~~((9))~~ (10) "Future voter" means a participant in the future voter program established under RCW 29A.08.170.

(11) "New county" means a county in Washington state that a registered voter is moving to from another county within Washington state.

~~((10) "Previous county" means a county in Washington state that a registered voter lived in prior to moving to a new county.~~

~~((11))~~ (12) "Pending status" means a voter registration record is not yet complete, and the applicant is not yet a registered voter or the registration is a potential felon, potential duplicate match, prospective registration applicant, or a future voter.

~~((12))~~ (13) "Previous county" means a county in Washington state that a registered voter lived in prior to moving to a new county.

(14) "Prospective registration applicant" means a pending automatic voter registration applicant who has not yet declined to register and has not yet reached the deadline to be updated to active status.

(15) "Qualified tribal identification" means tribal identification from an issuer of tribal identification that has agreed to make digitized signature information available for the purpose of voter registration.

~~((13))~~ (16) "Received" means the voter's ballot has been returned to the county and entered into the election management system, but not yet accepted.

~~((14))~~ (17) "Registered voter" means any elector who has completed the statutory registration procedures established by Title 29A RCW.

~~((15))~~ (18) "Registration number" means a unique identifier assigned to each registered voter, pursuant to RCW 29A.08.125.

~~((16))~~ (19) "Reissued ballot" means a new ballot issued to a voter due to an address update within the state that changes the voter's ballot type or style. A reissued ballot becomes the current ballot and all other ballots are suspended.

~~((17))~~ (20) "Replacement ballot" means a ballot that is the same type or style as the most recently issued. The request for a replacement ballot does not update the voter's current ballot type or style.

~~((18))~~ (21) "Secretary" means secretary of state or any other person authorized by the secretary of state to act on the secretary's behalf.

~~((19))~~ (22) "Suspended ballot" means any ballot that is not the current ballot. The suspended ballot may be accepted when the current ballot is not received or accepted.

OTS-5448.1

AMENDATORY SECTION (Amending WSR 21-21-001, filed 10/6/21, effective 11/6/21)

WAC 434-324-026 Voter registration form.

Fold and seal, or use an envelope

Instructions

Use this form to register to vote or update your current registration.

Print all information clearly using black or blue pen. Your signature will be used to verify your ballot. Mail this completed form to your county elections office (address on back).

Deadline This registration will be in effect for the next election if received by the elections office no later than eight days before election day.

Voting You will receive your ballot in the mail. Contact your county elections office for accessible voting options.

Future Voters If you are at least 16 years old, use this form to sign up. You'll be automatically registered to vote when you qualify.

Public Information Your registration name, address, gender, and date of birth will be public information when you become eligible to vote.

Notice You must be a United States citizen in order to register to vote. You may register to vote if you are at least sixteen years old. You may vote if you will be at least eighteen years old by the next general election, or are at least eighteen years old for special elections.

Knowingly providing false information about yourself or your qualifications for voter registration is a class C felony punishable by imprisonment for up to five years, a fine of up to \$10,000, or both.

Public Benefits Offices If you received this form from a public benefits office, where you received the form will remain confidential.

Registering or declining to register will not affect the assistance provided to you by that agency.

If you believe someone interfered with your right to register, or your right to privacy in deciding whether to register, you may file a complaint with the Washington State Elections Division.

Contact Information If you would like help with this form, contact the Washington State Elections Division.

- web www.votewa.gov
call 1 (800) 448-4881
email elections@sos.wa.gov
mail PO Box 40229 Olympia, WA 98504-0229

For official use:

1/2022

Washington State Voter Registration Form

Register online at www.votewa.gov.

1 Personal Information

Form fields for personal information: last, first, middle, suffix; date of birth (mm/dd/yyyy), gender; residential address in Washington state, apt #; city, ZIP; mailing address, if different; city, state and ZIP; phone number (optional), email address (optional).

2 Qualifications

If you answer no, do not complete this form.
I am a citizen of the United States of America.
I am at least sixteen years old and will not vote in a special or general election until I turn eighteen.

3 Military / Overseas Status

I am currently serving in the military.
I live outside the United States.

4 Identification - Washington Driver License, Permit, or ID

Form fields for identification: grid of boxes for license/ID number; Social Security number (xxx-xx-xxxx).

5 Change of Name or Address

Form fields for change of name or address: previous last name, first, middle; previous residential address, city, state and ZIP.

6 Declaration

I declare that the facts on this voter registration form are true. I am a citizen of the United States, I will have lived at this address in Washington for at least thirty days immediately before the next election at which I vote, and I am at least sixteen years old. I am not disqualified from voting due to a court order, and I am not currently serving a sentence of total confinement under the jurisdiction of the department of corrections for a Washington felony conviction, and I am not currently incarcerated for a federal or out-of-state felony conviction.

Sign here and date here fields.

Fold and seal, or use an envelope

Instructions

Use this form to register to vote or update your current registration.

Print all information clearly using a black or blue pen. Your signature will be used to verify your ballot. Mail this completed form to your county elections office (address on back).

Deadline

This registration will be in effect for the next election if received by the elections office at least eight days before election day. If it is within seven days of an election, register in person at a voting center. Locations are listed at www.sos.wa.gov/elections/auditors

Notice

You must be a United States citizen in order to register to vote.

If you knowingly provide false information on this voter registration form or knowingly make a false declaration about your qualifications for voter registration you will have committed a class C felony that is punishable by imprisonment for up to five years, a fine of up to ten thousand dollars, or both.

Future Voters

If you are at least 16 years old, use this form to sign up as a Future Voter. You'll be automatically registered to vote when you qualify. You may vote if you will be at least 18 years old by the next general election, or are at least 18 years old for special elections.

Public Information

Your registration name, address, gender, and year of birth will be public information when you become eligible to vote.

Voting

You will receive your ballot in the mail. Contact your county elections office for accessible voting options.

Public Benefits Offices

If you received this form from a public benefits office, where you received the form will remain confidential. Registering or declining to register will not affect the assistance provided to you by that agency.

If you believe someone interfered with your right to register, or your right to privacy in deciding whether to register, you may file a complaint with the Washington State Elections Division.

Contact Information

If you would like help with this form, contact the Washington State Elections Division.

- web www.sos.wa.gov/elections
call 1 (800) 448-4881
email elections@sos.wa.gov
mail PO Box 40229 Olympia, WA 98504-0229

fold in half

Washington State Voter Registration Form

Register online at www.VoteWA.gov.

1 Personal Information

last name first middle suffix (Sr., Jr., etc.)
date of birth (mm/dd/yyyy) gender (optional)
residential address in Washington state (cannot be a PO Box or PMB) apt/unit #
city ZIP
mailing address, if different from above apt/unit #
city state and ZIP
phone number (optional) email address (optional)

2 Citizenship

I am a citizen of the United States.
yes no If you answered no, do not complete this form.

3 Military or Overseas Status

I am actively serving in the military.
Includes National Guard or Reserves, and spouses or dependents away from home due to service.
yes no
I currently live outside the country.
yes no

4 Identification - Washington Driver License, Permit, or ID; or SSN

Grid for driver license, permit, ID, or SSN information.

5 Previous Name or Address

This information will be used to update your registration, if applicable.
previous last name first middle
previous residential address city state and ZIP

6 Declaration and Signature

I declare that the facts on this voter registration form are true. I am a citizen of the United States, I am a Washington state resident, and I am at least sixteen years old. I am not disqualified from voting due to a court order, and I am not currently serving a sentence of total confinement under the jurisdiction of the department of corrections for a Washington felony conviction, and I am not currently incarcerated for a federal or out-of-state felony conviction.

For official use:

sign here date here

7/2024

OTS-5443.1

NEW SECTION

WAC 434-324-104 Automatic voter registration acknowledgment notice packages. (1) Upon receipt of a complete automatic voter registration application, the county auditor must send the automatic voter registration applicant an acknowledgment notice package as defined in RCW 29A.08.030 within five business days. The voter registration transaction can include initial registration, name change, residential address change, mailing address change, or reactivation of an inactive voter registration. The notice package must be sent by nonforwardable, address correction requested mail, and include:

(a) A postage prepaid, preaddressed return automatic voter registration opt-out form as prescribed by the office of the secretary of state or in substantially the same format;

(b) An acknowledgment notice as defined in RCW 29A.08.030 and WAC 434-324-085; and

(c) Other information deemed necessary by the secretary.

(2) If the automatic voter registration application does not contain the minimum information required in RCW 29A.08.010, the county auditor shall mail a verification notice and automatic voter registration opt-out form simultaneously to the prospective registration applicant, following procedure as set forth in RCW 29A.08.110 and WAC 434-324-103.

(3) The county auditor shall mail an automatic voter registration acknowledgment notice package to a primary-only voter, as defined in WAC 434-232-010, no earlier than 90 days before the primary that they are eligible to participate in.

(4) The county auditor shall not mail an automatic voter registration acknowledgment notice package to a participant in the future voter program established under RCW 29A.08.170 until the participant becomes a registered voter.

(5) In addition to mailing the automatic voter registration acknowledgment package, the county auditor may provide notification to the registration applicant by:

(a) Telephone, leaving a voicemail if the automatic voter registration applicant does not answer and voicemail is available (if the automatic voter registration applicant has provided a phone number);

(b) Text message (if the automatic voter registration applicant has opted into text message notifications); or

(c) Email, enclosing a copy of the automatic voter registration acknowledgment notice package (if the automatic voter registration applicant has provided an email address).

(6) If the automatic voter registration information provided by the government agency where the voter applied to government services is for a currently registered voter and does not contain a change to the voter's name or address(es), the county auditor may choose whether to send the voter an automatic voter registration acknowledgment notice package.

(7) Prior to removal from the statewide voter registration database of a new voter registration record upon receipt of the automatic voter registration opt-out form, the county auditor must ensure that the signature on the automatic voter registration opt-out form matches the signature in the voter registration record by utilizing criteria outlined in WAC 434-261-052.

(a) If the signature on the automatic voter registration opt-out form matches the signature on the voter registration record, the registration is removed from the statewide voter registration database,

and the prospective registration applicant is deemed to have never registered to vote.

(b) If the signature on the automatic voter registration opt-out form does not match the signature on the voter registration record, the county auditor must attempt to contact the prospective registration applicant consistent with subsection (5) of this section. To be deemed as never having registered to vote, the prospective registration applicant must either:

(i) Appear in person and sign an automatic voter registration opt-out form no later than close of business 15 days following the date the package was mailed by the county auditor; or

(ii) Sign an automatic voter registration opt-out form and return it to the county auditor no later than close of business 15 days following the date the package was mailed by the county auditor.

(8) Upon receipt of an automatic voter registration opt-out form from a currently registered voter, the county auditor must ensure that the signature on the form matches the signature in the voter registration record by utilizing criteria outlined in WAC 434-261-052.

(a) If the signature on the automatic voter registration opt-out form matches the signature on the voter registration record, the automatic voter registration application changes are nullified, and the voter registration record will revert to the data in the record prior to the application being processed.

(b) If the signature on the automatic voter registration opt-out form does not match the signature on the voter registration record, the county auditor must attempt to contact the voter consistent with subsection (5) of this section. To nullify the voter registration record changes, the voter must either:

(i) Appear in person and sign an automatic voter registration opt-out form no later than close of business 15 days following the date the package was mailed by the county auditor; or

(ii) Sign an automatic voter registration opt-out form and return it to the county auditor no later than close of business 15 days following the date the package was mailed by the county auditor.

(9) The date of registration is the date an election official receives the information to register the person to vote. If an automatic voter registration application is received in the eight days prior to election day, the date of registration is the day after the election, and the county auditor must mail the automatic voter registration acknowledgment package within five business days following election day.

(10) The county auditor must keep a record of the voter opt-out forms sent and received. The record must contain the date on which the notice package was mailed, the date on which the voter was contacted in other means if applicable, as well as the date on which the voter subsequently submitted an automatic voter registration opt-out form to cancel the pending automatic voter registration record.

WSR 24-11-137
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Aging and Long-Term Support Administration)
[Filed May 21, 2024, 1:25 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-24-046.

Title of Rule and Other Identifying Information: The department of social and health services (DSHS) is proposing new rules to implement provisions of E2SSB 5440, (chapter 453, Laws of 2023) by adding new sections in chapter 388-106 WAC. The new sections include: WAC 388-106-2000 What definitions apply to the civil transitions program?, 388-106-2005 Who is eligible to apply to receive services under the civil transitions program?, 388-106-2010 What services may I receive under the civil transitions program if I am not functionally or financially eligible for long-term services and supports?, 388-106-2015 What services may I receive under the civil transitions program if I am functionally and financially eligible for long-term services and supports?, 388-106-2020 What conditional services may I receive under the civil transitions program?, 388-106-2025 Who can provide long term services and supports when I am eligible for the civil transitions program conditional services?, 388-106-2030 Where can I receive civil transitions program conditional services?, 388-106-2035 When will the department authorize my civil transitions program conditional services?, 388-106-2040 When will my civil transitions program conditional services end?, 388-106-2045 Do I have a right to an administrative hearing on civil transitions program conditional services?, and 388-106-2050 Can an exception to the rule (ETR) be granted for civil transitions program conditional services?

Hearing Location(s): On June 25, 2024, at 10:00 a.m., virtually via Microsoft Teams or call in. See the DSHS website at <https://www.dshs.wa.gov/sesa/rpau/proposed-rules-and-public-hearings> for the most current information.

Date of Intended Adoption: Not earlier than June 26, 2024.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, beginning noon on May 22, 2024, by 5:00 p.m. on June 25, 2024.

Assistance for Persons with Disabilities: Contact DSHS rules consultant, phone 360-664-6036, fax 360-664-6185, 711 relay service, email shelley.tencza@dshs.wa.gov, by 5:00 p.m. on June 11, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: DSHS is proposing new rules to implement provisions of E2SSB 5440 (chapter 453, Laws of 2023). DSHS is adding new sections in chapter 388-106 WAC to support the new civil transitions program created because of E2SSB 5440. These sections include WAC 388-106-2000 to 388-106-2050. The proposed rules describe eligibility for the civil transitions program, and the package of services provided for individuals who are referred by the behavioral health administration who have been found incompetent to stand trial due to dementia, traumatic brain injury, or intellectual or developmental disability and not functionally or financially eligible for long-term services and supports. The rules will describe services and duration.

Reasons Supporting Proposal: See purpose statement.

Statutory Authority for Adoption: RCW 10.77.202, 74.08.090, and 74.09.520.

Statute Being Implemented: RCW 74.09.520; chapter 453, Laws of 2023.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Phyllis Moffatte-Clark, P.O. Box 45600, Olympia, WA 98504, 360-764-0481; Enforcement: Lateisha De Lay, P.O. Box 45600, Olympia, WA 98504, 206-503-4432.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Phyllis Moffatte-Clark, P.O. Box 45600, Olympia, WA 98504, phone 360-764-0481, email Phyllis.Moffatte-Clark@dshs.wa.gov.

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

Is exempt under RCW 34.05.328 (5) (b) (vii).

Explanation of exemptions: These rules are exempt as allowed under RCW 34.05.328 (5) (b) (vii) which states in part, "[t]his section does not apply to ... rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents.["

Scope of exemption for rule proposal:

Is fully exempt.

May 16, 2024
Katherine I. Vasquez
Rules Coordinator

SHS-5009.6

NEW SECTION

WAC 388-106-2000 What definitions apply to the civil transitions program? "Aging and long-term support administration (AL TSA)" is an administration within the department of social and health services that promotes choice, independence, and safety through innovative services and partnerships with tribes, advocates, providers, and caregivers to support seniors, and people with disabilities so they can live with good health, independence, dignity, and control over decisions that affect their lives.

"Behavioral health administration (BHA)" is an administration within the department of social and health services that supports sustainable recovery, independence, and wellness. This is done by funding and supporting effective prevention and intervention services for youth and family, and treatment and recovery support for youth and adults with addiction and mental health conditions (also known as behavioral health). BHA operates three state psychiatric hospitals and the office of forensic mental health services that deliver high quality services to adults and children with complex needs.

"Civil transitions program" is a program implemented according to Engrossed Second Substitute Senate Bill 5440 to provide support services to individuals recently subject to criminal charges and found incompetent to stand trial due to an intellectual or developmental disability, traumatic brain injury, or dementia.

"Competency evaluation" is an assessment of the ability of a defendant to understand and rationally participate in a court process under the United States criminal justice system.

"Conditional services" is a term that describes the services available under the civil transitions program for an individual who does not meet functional eligibility criteria under medicaid personal care level of care under WAC 388-106-0210 or nursing facility level of care under WAC 388-106-0355 or is not financially eligible for Washington apple health, or is not functionally or financially eligible.

"Dementia" is a general term for loss of memory, language, problem-solving, and other thinking abilities that are severe enough to interfere with daily life. The term "dementia" is no longer used to refer to the etiological subgroups for which it is standard, but it is instead included under the newly titled term significant neurocognitive disease. For consistency, the term "dementia" is still used in the DSM-5 and can be applied in situations where patients and doctors are familiar with it. The phrase neurocognitive disorder is commonly used, while dementia is the standard word for illnesses such as the degenerative dementias that typically impact older persons (DSM-5-TR).

Neurocognitive disorder is characterized by the progressive and persistent deterioration of cognitive function. Cognitive deficits are sufficient to interfere with independence, do not occur exclusively in the context of a delirium, and are not attributable to another mental disorder (e.g. major depressive disorder, schizophrenia).

Specific major neurocognitive diagnosis, primary diagnosis:

- (a) Major neurocognitive disorder due to Alzheimer's disease;
- (b) Major frontotemporal neurocognitive disorder (Pick's);
- (c) Major neurocognitive disorder with Lewy bodies;
- (d) Major vascular neurocognitive disorder (Vascular);
- (e) Major neurocognitive disorder due to traumatic brain injury;
- (f) Substance or medication-induced major neurocognitive disorder (alcohol-related);
- (g) Major neurocognitive disorder due to HIV infection;
- (h) Major neurocognitive disorder due to Prion disease;
- (i) Major neurocognitive disorder due to Parkinson's disease;
- (j) Major neurocognitive disorder due to Huntington's disease.

"Not Competent" means a legal determination has been made by a court that a defendant is unable to stand trial based on being diagnosed with a mental disease or defect which prevents them from understanding court proceedings or being able to rationally assist in their own defense per chapter 10.77 RCW.

"Not Restorable" means a court has found that a person lacks the capacity to have competency restored via inpatient or outpatient treatment.

"Office of forensic mental health services (OFMHS)" is a division of the department of social and health services' behavioral health administration that oversees the state's adult forensic mental health system.

"Washington apple health" means the public health insurance programs for eligible Washington residents defined in WAC 182-500-0120. Washington apple health or apple health is the name used in Washington

state for medicaid, the children's health insurance program (CHIP), and state-only funded health care programs.

NEW SECTION

WAC 388-106-2005 Who is eligible to apply to receive services under the civil transitions program? You are eligible to apply for services under the civil transitions program if you:

- (1) Are referred to AL TSA from the BHA starting December 1, 2023;
- (2) Have been determined by a court as not competent to stand trial due to a diagnosis of dementia, a traumatic brain injury, or an intellectual or developmental disability, and your competency is not restorable;
- (3) Complete an assessment of your functional eligibility using the comprehensive assessment reporting evaluation (CARE) tool under WAC 388-106-0050 to determine if you are functionally eligible for:
 - (a) Nursing facility level of care under WAC 388-106-0355; or
 - (b) Medicaid personal care level of care under WAC 388-106-0210;and
- (4) File an application for Washington apple health so the department can determine if you are financially eligible for medicaid-funded long-term services and supports. The application process is described in WAC 182-503-0005.

NEW SECTION

WAC 388-106-2010 What services may I receive under the civil transitions program if I am not functionally and financially eligible for long-term services and supports? (1) If you meet the criteria in WAC 388-106-2005 but are not functionally eligible for medicaid personal care level of care under WAC 388-106-0210 or nursing facility level of care under WAC 388-106-0355, or you are not financially eligible for Washington apple health, you may receive conditional services, subject to available funds, under the civil transitions program.

(2) If you meet the criteria in WAC 388-106-2005 but have yet to complete a CARE assessment and are, or at risk of becoming a "homeless person" as defined in RCW 43.185C.010, you may receive supportive housing services under the civil transitions program, as funding allows.

(3) Conditional services are described in WAC 388-106-2020.

NEW SECTION

WAC 388-106-2015 What services may I receive under the civil transitions program if I am functionally and financially eligible for long-term services and supports? If you are referred to AL TSA for services under the civil transitions program and you are both functionally eligible for long-term services and supports under chapter 388-106 WAC and financially eligible for medicaid-funded long-term services and supports, you are eligible for any service offered by AL TSA based on your assessment and identified in your plan of care.

Financial eligibility criteria for long-term services and supports is determined under chapters 182-513 and 182-515 WAC.

NEW SECTION

WAC 388-106-2020 What conditional services may I receive under the civil transitions program? The legislature has appropriated specific funding for the civil transitions program for the provision of conditional services. If you meet the criteria in WAC 388-106-2005 you are eligible for conditional services as described below, subject to available funding.

(1) If you do not meet medicaid personal care level of care under WAC 388-106-0210 or nursing facility level of care under WAC 388-106-0355, and you are not financially eligible for Washington apple health, you can receive the following conditional services:

- (a) Community transition or sustainability services; and
- (b) Supportive housing as defined in WAC 388-106-1705.

(2) If you are determined functionally eligible for medicaid personal care level of care under WAC 388-106-0210, but you are not financially eligible for Washington apple health, you may receive the following conditional services if they are included in your plan of care:

- (a) Personal care services as defined in WAC 388-106-0010;
- (b) Community transition or sustainability services; and
- (c) Supportive housing as defined in WAC 388-106-1705.

(3) If you are determined functionally eligible for nursing facility level of care under WAC 388-106-0355 but you are not financially eligible for Washington apple health, you may receive the following conditional services if they are included in your plan of care:

- (a) Personal care services as defined in WAC 388-106-0010;
 - (b) Nurse delegation as defined in WAC 388-106-0270;
 - (c) Personal emergency response system (PERS) as defined in WAC 388-106-0270;
 - (d) Assistive technology as defined in WAC 388-106-0270;
 - (e) Supportive housing as defined in WAC 388-106-1705;
 - (f) Community transition services as defined in WAC 388-106-0270;
- and
- (g) Community transition or sustainability services.

NEW SECTION

WAC 388-106-2025 Who can provide long-term services and supports when I am eligible for the civil transitions program conditional services? The following types of providers can provide conditional services under the civil transitions program:

(1) Individual providers (IPs) who provide services to clients in their own home as defined in WAC 388-106-0040 and 388-106-0010.

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

(3) Providers who are contracted with the department to provide goods and services.

(4) Durable medical equipment vendors that have a core provider agreement with the health care authority.

(5) Supportive housing providers as defined in WAC 388-106-1715 or 182-559-200.

NEW SECTION

WAC 388-106-2030 Where can I receive civil transitions program conditional services? You can receive conditional services under the civil transitions program:

(1) In your own home as defined in WAC 388-106-0030, or an interim setting while you secure permanent housing; and

(2) While you are out of your home accessing the community or working while:

(a) within the state of Washington; or

(b) in a recognized out of state bordering city as defined in WAC 182-501-0175.

NEW SECTION

WAC 388-106-2035 When will the department authorize my civil transitions program conditional services? Within available funds, the department will authorize conditional services under the civil transitions program when you have:

(1) Completed an assessment of your functional eligibility using the comprehensive assessment reporting evaluation (CARE) tool under WAC 388-106-0050;

(2) Applied for Washington apple health;

(3) Been found eligible for conditional services under WAC 388-106-2010 and 388-106-2020;

(4) Given consent for services and approved your care plan; and

(5) Chosen a DSHS qualified provider per WAC 388-71-0510.

NEW SECTION

WAC 388-106-2040 When will my civil transitions program conditional services end? (1) If, at the time of your initial assessment you were found ineligible for medicaid-funded long-term services and supports, your civil transitions program conditional services, except supportive housing, will end the earlier of:

(a) The date you are found both functionally and financially eligible for medicaid-funded long-term services and supports;

(b) Six months from the start date of your services; or

(c) When the department has exhausted available funds.

(2) For conditional supportive housing services, your eligibility will be reviewed in six-month increments based upon available funding, up to a maximum of 24 months.

NEW SECTION

WAC 388-106-2045 Do I have a right to an administrative hearing on civil transitions program conditional services? You have a right to an administrative hearing if you disagree with a decision made by the department about your eligibility for services under the civil transitions program. The department will notify you in writing of the right to contest a decision and provide you with information on how to request a hearing.

NEW SECTION

WAC 388-106-2050 Can an exception to rule (ETR) be granted for civil transitions program conditional services? If you receive conditional services under the civil transitions program, an exception to rule under WAC 388-440-0001 will not be granted.

**WSR 24-11-139
PROPOSED RULES****EMPLOYMENT SECURITY DEPARTMENT**

[Filed May 21, 2024, 2:11 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-12-017.

Title of Rule and Other Identifying Information: WAC 192-150-145 Change in working conditions by RCW 50.20.050 (2)(b)(v) through (x), and new WAC 192-150-065 Leaving work due to inaccessible care for a child or vulnerable adult.

Hearing Location(s): On July 11, 2024, at 9:00 a.m., via Zoom <https://esd-wa-gov.zoom.us/j/89915962264?pwd=UWdNbElIV3JFUnVpVWdpeEp3bU01Zz09>, Meeting ID 899 1596 2264, Pass-code 151558; or call in +13052241968,,89915962264#,,,,*151558# US, +13092053325,,89915962264#,,,,*151558# US.

Date of Intended Adoption: July 18, 2024.

Submit Written Comments to: Stephanie Frazee, P.O. Box 9046, Olympia, WA 98507-9046, email rules@esd.wa.gov, fax 844-652-7096, by July 11, 2024.

Assistance for Persons with Disabilities: Contact Teresa Eckstein, phone 360-507-9890, fax 360-586-4600, relay 711, email Teresa.eckstein@esd.wa.gov, by July 11, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule making is necessary to incorporate into the employment security department's (department) rules the changes made by HB [ESHB] 1106 (2023), which amended RCW 50.20.050 and expanded the good cause reasons for voluntarily quitting employment, including adding good cause quit due to inaccessible care of a child or vulnerable adult in the claimant's care and due to an employer changing the claimant's shift, under certain circumstances. This rule making will add the new good cause reason to quit of inaccessible care for a child or vulnerable adult into the department's rules and will add a definition for "split shift."

Reasons Supporting Proposal: This rule making is necessary to incorporate into the department's rules the changes made by HB [ESHB] 1106 (2023), which expanded the good cause reasons for voluntarily quitting employment set forth in RCW 50.20.050. This rule making will add the new good cause reason to quit employment due to inaccessible care of a child or vulnerable adult to the department's rules and will define the term "split shift," which will add clarity to the circumstances under which a claimant has good cause to quit due to a change in schedule.

Statutory Authority for Adoption: RCW 50.12.010, 50.12.040, 50.20.050.

Statute Being Implemented: RCW 50.20.050.

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

Name of Proponent: Employment security department, governmental.

Name of Agency Personnel Responsible for Drafting: Stephanie Frazee, Olympia, Washington, 425-465-0313; Implementation and Enforcement: JR Richards, Olympia, Washington, 360-463-1079.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Stephanie Frazee, P.O. Box 9046, Olympia, WA 98507-9046, phone 425-465-0313, fax

844-652-7096, relay 771 [711], email rules@esd.wa.gov, <https://esd.wa.gov/newsroom/rulemaking/leave-of-absence>.

Scope of exemption for rule proposal:

Is not exempt.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. This rule making incorporates a statutory provision into the department's rules and adds a clarifying definition, neither of which imposes costs on businesses.

May 21, 2024

Joy Adams

Employment System Policy and Integrity Director

OTS-5297.1

NEW SECTION

WAC 192-150-066 Leaving work due to inaccessible care for a child or a vulnerable adult. For separations occurring on or after July 7, 2024, and before July 8, 2029:

(1) **General rule.** To establish good cause for leaving work voluntarily because the care for a child or vulnerable adult in your care is inaccessible, you must demonstrate that:

(a) You left work primarily because of such caregiving inaccessibility;

(b) The caregiving inaccessibility made it necessary for you to leave work;

(c) You terminated your employment status and are not entitled to be reinstated to the same position or a comparable similar position; and

(d) You made reasonable efforts to preserve your employment prior to leaving work, including:

(i) Requesting changes in working conditions; changes to your work schedule that would accommodate the caregiving inaccessibility; or a leave of absence, notifying your employer of the reason(s) for the leave of absence before the date you begin the leave of absence; and

(ii) Asking to be reemployed when you are able to return to work. (You are not required to request reemployment after the job separation has occurred to establish good cause.)

(2) **Exception.** You may be excused from pursuing reasonable alternatives prior to leaving work as required by subsection (1)(d) of this section if you can show that doing so would have been a futile act.

OTS-5298.1

AMENDATORY SECTION (Amending WSR 10-11-046, filed 5/12/10, effective 6/12/10)

WAC 192-150-145 Change in working conditions covered by RCW

50.20.050 (2) (b) (v) through (x) and (xiv). (1) If you quit work due to a change in working conditions that meets the requirements of RCW 50.20.050 (2) (b) (v) through (x) or (xiv), the department will not deny benefits solely on the basis that you continued working for a brief period of time following the change. However, you must demonstrate to the department that the change in working conditions was the motivating factor for quitting work.

(2) "Brief period of time" means the amount of time a reasonably prudent person would have continued working after the change in circumstances.

(3) "Split shift" means a work schedule in which paid and working time periods are interrupted by nonpaid and nonworking time periods established by the employer, with the time period between shifts being longer than a bona fide rest or meal period and within the same work day.

WSR 24-11-140
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed May 21, 2024, 2:27 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-07-005.

Title of Rule and Other Identifying Information: The department of social and health services (DSHS) is proposing amendments to WAC 388-412-0040 Can I get my benefits replaced?

Hearing Location(s): On June 25, 2024, at 10:00 a.m., virtually via Microsoft Teams or call in. See the DSHS website at <https://www.dshs.wa.gov/sesa/rpau/proposed-rules-and-public-hearings> for the most current information.

Date of Intended Adoption: Not earlier than June 26, 2024.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, beginning noon on May 22, 2024, by June 25, 2024, at 5:00 p.m.

Assistance for Persons with Disabilities: Contact Shelley Tencza, rules consultant, phone 360-664-6036, fax 360-664-6185, 711 relay service, email shelley.tencza@dshs.wa.gov, by June 11, 2024, at 5:00 p.m.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Effective July 1, 2024, these amendments support funding provided in the operating budget (ESSB 5950, chapter 376, Laws of 2024) to replace cash benefits stolen by skimming, cloning, or other fraudulent methods up to two times each federal fiscal year. In addition, the amendments update WAC language to align with federal rules requiring a signed statement from a household member prior to replacing food purchased with food assistance benefits that were destroyed in a household disaster or misfortune.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 43.20A.550, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, and 74.08.090.

Statute Being Implemented: Operating budget (ESSB 5950, chapter 376, Laws of 2024).

Rule is necessitated by federal law, part of this change aligns with 7 C.F.R. 274.6 (a)(4).

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Alexis Miller, P.O. Box 45470, Olympia, WA 98504-5470, 253-579-3144.

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

A cost-benefit analysis is not required under RCW 34.05.328. These rules are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in part, "this section does not apply to rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents.["]

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

Is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute

or regulations. Citation of the specific federal statute or regulation and description of the consequences to the state if the rule is not adopted: Part of this change aligns with 7 C.F.R. 274.6 (a)(4).

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.

Is exempt under RCW 34.05.328 (5)(b)(vii).

Explanation of exemptions: These amendments do not impact small businesses. They only impact DSHS customers.

Scope of exemption for rule proposal:

Is fully exempt.

May 17, 2024
Katherine I. Vasquez
Rules Coordinator

SHS-5030.1

AMENDATORY SECTION (Amending WSR 23-23-129, filed 11/17/23, effective 12/18/23)

WAC 388-412-0040 Can I get my benefits replaced? Under certain conditions, we may replace your benefits.

(1) You may get either your EBT cash_or food assistance, or both replaced if:

(a) We make a mistake that causes you to lose benefits;

(b) The EBT card mailed to you is stolen from the mail, you never had the ability to use the benefits, and you lost benefits;

(c) You left a drug or alcohol treatment facility on or before the 15th of the month and the facility does not have enough food assistance benefits in their EBT account for one-half of the allotment that they owe you;

(d) Your EBT benefits that were recently deposited into an inactive EBT account were canceled by mistake; or

(e) The food that your household purchased with food assistance benefits was destroyed in a household disaster or misfortune((-)); and

(i) ~~((For us to replace your benefits, you must report))~~ You reported the loss to the department within 10 days from the date of the loss((-)); and

(ii) You submitted a signed statement attesting to the household's loss within 10 days from the date the loss was reported.

(iii) We replace the amount of your loss up to a one-month benefit amount.

~~((iii))~~ (iv) There is no limit to the number of replacements for food destroyed in a household misfortune.

(f) Your food benefits were stolen, despite your EBT card being in your possession, via card skimming, cloning, or other similar fraudulent method between October 1, 2022, and September 30, 2024; and

(i) The head of household of your assistance unit submitted a completed and signed claim within 30 days of discovering the loss; and

(ii) You have not already received two food replacements in the current federal fiscal year.

(iii) We replace the amount of your loss or the amount of twice your food assistance allotment that was issued immediately prior to the date of the theft, whichever is less.

(iv) Retroactive claims for food assistance stolen between October 1, 2022, and August 22, 2023, must be reported no later than October 22, 2023.

(v) Replacement of benefits stolen via card skimming, cloning, or other similar method is contingent upon federal approval.

(g) Your cash benefits were stolen, despite your EBT card being in your possession, via card skimming, cloning, or other similar fraudulent method on or after July 1, 2024; and

(i) The head of household of your assistance unit submitted a completed and signed claim within 30 days of discovering the loss; and

(ii) You have not already received two cash replacements in the current federal fiscal year; and

(iii) You received cash benefits through one of these programs: temporary assistance for needy families (TANF), state family assistance (SFA), pregnant women assistance (PWA), refugee cash assistance (RCA), or aged, blind, or disabled (ABD) cash assistance.

(iv) We replace the amount of your loss or the amount of twice your cash assistance allotment that was issued immediately prior to the date of the theft, whichever is less.

(v) Replacement of cash benefits stolen via card skimming, cloning, or other similar method will end on September 30, 2024, or on the date that the federal government ends the requirement that food benefits must be replaced, whichever is later.

(vi) Replacement of cash benefits stolen via card skimming, cloning, or other similar method will end if state funds appropriated for this purpose are exhausted.

(2) We will not replace your benefits if:

(a) We decided that your request is fraudulent or skimming is not validated;

(b) Your EBT card was lost, stolen, or misplaced except for (1)(b) of this section;

(c) You are pending an administrative hearing decision regarding a denial of replacement benefits. You have the right to an administrative hearing if your request for replacement benefits is denied; or

(d) You received disaster supplemental nutrition assistance program (D-SNAP) benefits for the same month you requested a replacement for food assistance.

(3) It is your responsibility to keep track of your household's EBT card.

(a) If you have multiple EBT cards replaced, we may suspect you to be trafficking benefits as described under WAC 388-412-0046 (2)(d).

(b) If we suspect trafficking, we will refer your case for investigation by the office of fraud and accountability. Persons trafficking in food assistance benefits may be subject to fines, disqualification from food assistance, and legal action including criminal prosecution.

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

WSR 24-11-141

PROPOSED RULES

FORENSIC INVESTIGATIONS COUNCIL

[Filed May 21, 2024, 3:15 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-03-080.

Title of Rule and Other Identifying Information: Concerning funding assistance to local jurisdictions for the investigation of multiple deaths and for forensic anthropology services and other testing to identify human remains; chapter 218-10 WAC.

Hearing Location(s): On June 28, 2024, at 10:00 a.m., at the Forensic Investigations Council, WSP Crime Lab, 2203 Airport Way South (Building A), Seattle, WA 98134; call 206-262-6020 or 360-918-3135 to be let in. The meeting is also accessible telephonically by calling 253-205-0468.

Date of Intended Adoption: July 26, 2024.

Submit Written Comments to: Mark Nichols, 223 East 4th Street, #11, Port Angeles, WA 98362, email mark.nichols@clallamcountywa.gov, by June 21, 2024.

Assistance for Persons with Disabilities: Contact Mark Nichols, phone 360-417-2301, email mark.nichols@clallamcountywa.gov, by June 21, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The rule is being adopted in order to update and clarify funding assistance rules for multiple death investigations.

Reasons Supporting Proposal: Updated clarification is needed for the scope and procedures used to authorize funding to local jurisdictions investigating incidents of multiple deaths or seeking forensic anthropology services or other testing.

Statutory Authority for Adoption: RCW 43.103.090(1).

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

Name of Proponent: Forensic investigations council, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Mark Nichols, 223 East 4th Street, #11, Port Angeles, WA, 360-417-2301.

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

A cost-benefit analysis is not required under RCW 34.05.328. The forensic investigations council is not required to prepare a cost-benefit analysis under RCW 34.05.328 (5)(b)(ii).

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

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

May 21, 2024
Mark Nichols
Chair

OTS-5447.1

RULES RELATING TO THE AUTHORIZATION OF FUNDING ASSISTANCE TO LOCAL JURISDICTIONS FOR THE INVESTIGATION OF MULTIPLE DEATHS AND FOR FORENSIC ANTHROPOLOGY AND OTHER TESTING TO IDENTIFY HUMAN REMAINS

AMENDATORY SECTION (Amending WSR 03-22-012, filed 10/24/03, effective 12/1/03)

WAC 218-10-005 Authority. This chapter is adopted pursuant to chapter 142, Washington Laws of 1999, relating to the authority of the forensic investigations council to prescribe rules governing the disbursement of funds to local jurisdictions to assist them in the investigation of multiple deaths involving unanticipated, extraordinary, and catastrophic events, or involving multiple jurisdictions and to secure forensic anthropology services and other testing designed to aid in the identification of human remains upon a showing of financial need.

AMENDATORY SECTION (Amending WSR 03-22-012, filed 10/24/03, effective 12/1/03)

WAC 218-10-015 Definitions. (1) "**Death investigation budget**" shall mean the local jurisdiction's appropriation into the coroner or medical examiner budgets for the determination of cause and manner of death.

(2) "**Forensic anthropology services**" shall mean services to local jurisdictions in an applied area of physical anthropology utilizing the science, methodology, and technology of physical/biological anthropology and related fields to help address medicolegal issues, such as personal identification and circumstances surrounding death.

(3) "**Local jurisdiction**" shall mean a city, town, or county of the state of Washington.

~~((3))~~ (4) "**Multiple deaths involving multiple local jurisdictions**" shall mean that the deaths occurred in two or more geographically distinct local jurisdictions.

~~((4))~~ (5) "**Other testing**" includes, but is not limited to, forensic odontology, forensic genealogy, and other forms of testing that in the judgment of the council may aid in the identification of human remains.

(6) "**Unanticipated**" shall mean an event having a disproportionate fiscal impact, relative to the local jurisdiction's death investigation budget and which cannot be reasonably foreseen in the normal budget process.

AMENDATORY SECTION (Amending WSR 03-22-012, filed 10/24/03, effective 12/1/03)

WAC 218-10-020 Eligibility standards. (1) Only the following investigations, forensic anthropology services, and other testing are eligible for funding assistance:

(a) Investigations of multiple deaths involving unanticipated, extraordinary, and catastrophic events; ~~((e))~~

(b) Investigations of multiple deaths involving multiple local jurisdictions; and

(c) Forensic anthropology services and other testing designed to aid in the identification of human remains.

(2) Funding assistance shall be limited to supplementations of the death investigation budget of a local jurisdiction.

(3) Funding assistance shall not be used to supplant moneys reasonably available from other state or federal sources.

AMENDATORY SECTION (Amending WSR 03-22-012, filed 10/24/03, effective 12/1/03)

WAC 218-10-025 Application process. (1) To qualify for consideration and eligibility for assistance from the state death investigations account, the legislative authority of the local jurisdiction shall:

~~((1))~~ (a) Submit to the forensic investigations council an application on a form approved by the council; ~~((and~~

~~(2))~~ (b) Provide a written statement to the council that includes the following:

(i) The scope and nature of the emergency that requires additional funding;

(ii) The amount of jurisdiction funds available for the investigation;

(iii) The estimated need of supplemental funding from FIC;

(iv) A description of the private, federal, state, or local government resources the jurisdiction has applied to for funding and the amount they anticipate receiving from each source;

(v) Any other information that demonstrates the jurisdiction has a financial need;

(vi) Provide any additional information requested by the forensic investigations council, in order to evaluate the request for assistance.

(2) The request will be promptly reviewed, and the council shall deny, grant, or grant in part the request in writing subject to the availability of FIC funding for the current biennium.

AMENDATORY SECTION (Amending WSR 03-22-012, filed 10/24/03, effective 12/1/03)

WAC 218-10-030 Effective date. ~~((1) This rule shall take effect on December 1, 2003.~~

~~(2))~~ Funding assistance shall be available only for death investigations that commenced after August 1, 2003. Funding assistance shall be available for forensic anthropology services and other test-

ing designed to aid in the identification of human remains regardless of the age of a case.

WSR 24-11-146

PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed May 22, 2024, 6:49 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-08-065.

Title of Rule and Other Identifying Information: WAC 182-550-1500 Covered and noncovered revenue codes categories and subcategories for outpatient hospital services.

Hearing Location(s): On June 25, 2024, at 10:00 a.m. The health care authority (HCA) holds public hearings virtually without a physical meeting place. To attend the virtual public hearing, you must register in advance https://us02web.zoom.us/webinar/register/WN_71S7AVjqRpmWNBn_6M4B1Q. If the link above opens with an error message, please try using a different browser. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: June 26, 2024.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, beginning May 23, 2024, 8:00 a.m., by June 25, 2024, by 11:59 p.m.

Assistance for Persons with Disabilities: Contact Johanna Larson, phone 360-725-1349, fax 360-586-9727, telecommunication[s] relay service 711, email Johanna.Larson@hca.wa.gov, by June 7, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HCA is amending WAC 182-550-1500 to allow for the payment of outpatient services in the following revenue code categories: "Partial hospitalization—Less intensive," "Partial hospitalization—Intensive," and "Intensive outpatient services—Psychiatric.["]

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: SB 5736, section 1 (1) (a) (ix); RCW 41.05.021, 41.05.160.

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

Name of Proponent: Health care authority, governmental.

Name of Agency Personnel Responsible for Drafting: Valerie Freudenstein, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1344; Implementation and Enforcement: Jennifer Wipprecht, P.O. Box 45502, Olympia, WA 98504-5502, 360-725-1532.

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

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

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

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. Rule affects outpatient hospitals and does not impose more-than-minor costs on small businesses.

May 22, 2024
Wendy Barcus
Rules Coordinator

OTS-5394.1

AMENDATORY SECTION (Amending WSR 15-18-065, filed 8/27/15, effective 9/27/15)

WAC 182-550-1500 Covered and noncovered revenue code categories and subcategories for outpatient hospital services. (1) The medicaid agency pays for an outpatient hospital covered service in the following revenue code categories and subcategories when the hospital provider accurately bills:

(a) "Pharmacy," only subcategories "general classification," "generic drugs," "nongeneric drugs," "drugs incident to other diagnostic services," "drugs incident to radiology," "nonprescription," and "IV solutions";

(b) "IV therapy," only subcategories "general classification," "infusion pump," "IV therapy/pharmacy services," "IV therapy/drug/supply delivery," and "IV therapy/supplies";

(c) "Medical/surgical supplies and devices," only subcategories "general classification," "nonsterile supply," "sterile supply," "pacemaker," "intraocular lens," and "other implant," and "other supplies/devices";

(d) "Oncology," only subcategory "general classification";

(e) "Durable medical equipment (other than renal)," only subcategory "general classification";

(f) "Laboratory," only subcategories "general classification," "chemistry," "immunology," "renal patient (home)," "nonroutine dialysis," "hematology," "bacteriology and microbiology," and "urology";

(g) "Laboratory pathology," only subcategories "general classification," "cytology," "histology," and "biopsy";

(h) "Radiology - Diagnostic," only subcategories "general classification," "angiocardiography," "arthrography," "arteriography," and "chest X-ray";

(i) "Radiology - Therapeutic and/or chemotherapy administration," only subcategories "general classification," "chemotherapy - injected," "chemotherapy - oral," "radiation therapy," and "chemotherapy - IV";

(j) "Nuclear medicine," only subcategories "general classification," "diagnostic," and "therapeutic," "diagnostic radiopharmaceuticals," and "therapeutic radiopharmaceuticals";

(k) "CT scan," only subcategories "general classification," "head scan," and "body scan";

(l) "Operating room services," only subcategories "general classification" and "minor surgery";

(m) "Anesthesia," only subcategories "general classification," "anesthesia incident to radiology," and "anesthesia incident to other diagnostic services";

- (n) "Administration, processing and storage for blood and blood components," only subcategories "general classification" and "administration";
- (o) "Other imaging," only subcategories "general classification," "diagnostic mammography," "ultrasound," "screening mammography," and "positron emission tomography";
- (p) "Respiratory services," only subcategories "general classification," "inhalation services," and "hyperbaric oxygen therapy";
- (q) "Physical therapy," only subcategories "general classification," "visit charge," "hourly charge," "group rate," and "evaluation or reevaluation";
- (r) "Occupational therapy," only subcategories "general classification," "visit charge," "hourly charge," "group rate," and "evaluation or reevaluation";
- (s) "Speech therapy - Language pathology," only subcategories "general classification," "visit charge," "hourly charge," "group rate," and "evaluation or reevaluation";
- (t) "Emergency room," only subcategories "general classification" and "urgent care";
- (u) "Pulmonary function," only subcategory "general classification";
- (v) "Audiology," only subcategories "general classification," "diagnostic," and "treatment";
- (w) "Cardiology," only subcategories "general classification," "cardiac cath lab," "stress test," and "echocardiology";
- (x) "Ambulatory surgical care," only subcategory "general classification";
- (y) "Magnetic resonance technology (MRT)," only subcategories "general classification," "MRI - Brain (including brainstem)," "MRI - Spinal cord (including spine)," "MRI-other," "MRA - Head and neck," "MRA - Lower extremities" and "MRA-other";
- (z) "Medical/surgical supplies - Extension," only subcategories "supplies incident to radiology," "supplies incident to other diagnostic services," and "surgical dressings";
- (aa) "Pharmacy - Extension," only subcategories "single source drug," "multiple source drug," "restrictive prescription," "erythropoietin (EPO) less than ten thousand units," "erythropoietin (EPO) ten thousand or more units," "drugs requiring detailed coding," and "self-administrable drugs";
- (bb) "Cast room," only subcategory "general classification";
- (cc) "Recovery room," only subcategory "general classification";
- (dd) "Labor room/delivery," only subcategories "general classification," "labor," "delivery," and "birthing center";
- (ee) "EKG/ECG (Electrocardiogram)," only subcategories "general classification," "holter monitor," and "telemetry";
- (ff) "EEG (Electroencephalogram)," only subcategory "general classification";
- (gg) "Gastro-intestinal services," only subcategory "general classification";
- (hh) "Specialty room - Treatment/observation room," only subcategories "treatment room," and "observation room";
- (ii) "Telemedicine," only subcategory "other telemedicine";
- (jj) "Extra-corporeal shock wave therapy (formerly lithotripsy)," subcategory "general classification";
- (kk) "Acquisition of body components," only subcategories "general classification," "living donor," and "cadaver donor";

- (ll) "Hemodialysis - Outpatient or home," only subcategory "general classification";
- (mm) "Peritoneal dialysis - Outpatient or home," only subcategory "general classification";
- (nn) "Continuous ambulatory peritoneal dialysis (CAPD) - Outpatient or home," only subcategory "general classification";
- (oo) "Continuous cycling peritoneal dialysis (CCPD) - Outpatient or home," only subcategory "general classification";
- (pp) "Miscellaneous dialysis," only subcategories "general classification," and "ultra filtration";
- (qq) "Behavioral health treatments/services," only subcategory "electroshock treatment"; ((and))
- (rr) "Behavioral health treatment/services," subcategories "intensive outpatient services - psychiatric";
- (ss) "Behavioral health treatment/services," subcategories "partial hospitalization - less intensive," "partial hospitalization - intensive"; and
- (tt) "Other diagnostic services," only subcategories "general classification," "peripheral vascular lab," "electromyogram," "pap smear," and "pregnancy test."
- (2) The agency pays for an outpatient hospital covered service in the following revenue code subcategories only when the outpatient hospital provider is approved by the agency to provide the specific service:
- (a) "Clinic," subcategories "general classification," "dental clinic," and "other clinic"; and
- (b) "Other therapeutic services," subcategories, "general classification," "education/training," "cardiac rehabilitation," and "other therapeutic service."
- (3) The agency does not pay for outpatient hospital services in the following revenue code categories and subcategories:
- (a) "All-inclusive rate";
- (b) "Room & board - Private (one bed)";
- (c) "Room & board - Semi-private (two beds)";
- (d) "Room & board - Semi-private (three and four beds)";
- (e) "Room & board - Deluxe private";
- (f) "Room & board - Ward";
- (g) "Room & board - Other";
- (h) "Nursery";
- (i) "Leave of absence";
- (j) "Subacute care";
- (k) "Intensive care unit";
- (l) "Coronary care unit";
- (m) "Special charges";
- (n) "Incremental nursing charge rate";
- (o) "All-inclusive ancillary";
- (p) "Pharmacy," subcategories "take home drugs," "experimental drugs," and "other pharmacy";
- (q) "IV therapy," subcategory "other IV therapy";
- (r) "Medical/surgical supplies and devices," subcategories "take home supplies," "prosthetic/orthotic devices," and "oxygen - take home";
- (s) "Oncology," subcategory "other oncology";
- (t) "Durable medical equipment (other than renal)," subcategories "rental," "purchase of new DME," "purchase of used DME," "supplies/drugs for DME effectiveness (home health agency only)," and "other equipment";

- (u) "Laboratory," subcategory "other laboratory";
- (v) "Laboratory pathology," subcategory "other laboratory pathological";
- (w) "Radiology - Diagnostic," subcategory "other radiology - diagnostic";
- (x) "Radiology - Therapeutic and/or chemotherapy administration," subcategory "other radiology - therapeutic";
- (y) "Nuclear medicine," subcategory "other nuclear medicine";
- (z) "CT scan," subcategory "other CT scan";
- (aa) "Operating room services," subcategories "organ transplant - other than kidney," "kidney transplant," and "other operating room services";
- (bb) "Anesthesia," subcategories "acupuncture" and "other anesthesia";
- (cc) "Blood and blood components";
- (dd) "Administration, processing and storage for blood and blood component," subcategory "other processing and storage";
- (ee) "Other imaging," subcategory "other imaging service";
- (ff) "Respiratory services," subcategory "other respiratory services";
- (gg) "Physical therapy services," subcategory "other physical therapy";
- (hh) "Occupational therapy services," subcategory "other occupational therapy";
- (ii) "Speech therapy - Language pathology," subcategory "other speech-language pathology";
- (jj) "Emergency room," subcategories "EMTALA emergency medical screening services," "ER beyond EMTALA screening" and "other emergency room";
- (kk) "Pulmonary function," subcategory "other pulmonary function";
- (ll) "Audiology," subcategory "other audiology";
- (mm) "Cardiology," subcategory "other cardiology";
- (nn) "Ambulatory surgical care," subcategory "other ambulatory surgical care";
- (oo) "Outpatient services";
- (pp) "Clinic," subcategories "chronic pain center," "psychiatric clinic," "OB-GYN clinic," "pediatric clinic," "urgent care clinic," and "family practice clinic";
- (qq) "Free-standing clinic";
- (rr) "Osteopathic services";
- (ss) "Ambulance";
- (tt) "Home health (HH) - Skilled nursing";
- (uu) "Home health (HH) - Medical social services";
- (vv) "Home health (HH) - Aide";
- (ww) "Home health (HH) - Other visits";
- (xx) "Home health (HH) - Units of service";
- (yy) "Home health (HH) - Oxygen";
- (zz) "Magnetic resonance technology (MRT)," subcategory "other MRT";
- (aaa) "Medical/surgical supplies - Extension," only subcategory "FDA investigational devices";
- (bbb) "Home IV therapy services";
- (ccc) "Hospice services";
- (ddd) "Respite care";
- (eee) "Outpatient special residence charges";
- (fff) "Trauma response";

(ggg) "Cast room," subcategory "other cast room";

(hhh) "Recovery room," subcategory "other recovery room";

(iii) "Labor room/delivery," subcategories "circumcision" and "other labor room/delivery";

(jjj) "EKG/ECG (Electrocardiogram)," subcategory "other EKG/ECG";

(kkk) "EEG (Electroencephalogram)," subcategory "other EEG";

(lll) "Gastro-intestinal services," subcategory "other gastro-intestinal";

(mmm) "Speciality room - Treatment/observation room," subcategories "general classification" and "other speciality rooms";

(nnn) "Preventive care services";

(ooo) "Telemedicine," subcategory "general classification";

(ppp) "Extra-corporal shock wave therapy (formerly lithotripsy)," subcategory "other ESWT";

(qqq) "Inpatient renal dialysis";

(rrr) "Acquisition of body components," subcategories "unknown donor," "unsuccessful organ search - donor bank charges," and "other donor";

(sss) "Hemodialysis - Outpatient or home," subcategories "hemodialysis/composite or other rate," "home supplies," "home equipment," "maintenance one hundred percent (home)," "support services (home)," and "other outpatient hemodialysis (home)";

(ttt) "Peritoneal dialysis - Outpatient or home," subcategories "peritoneal/composite or other rate," "home supplies," "home equipment," "maintenance one hundred percent (home)," "support services (home)," and "other outpatient peritoneal dialysis (home)";

(uuu) "Continuous ambulatory peritoneal dialysis (CAPD) - Outpatient or home," subcategories "CAPD/composite or other rate," "home supplies," "home equipment," "maintenance one hundred percent (home)," "support services (home)," and "other outpatient CAPD (home)";

(vvv) "Continuous cycling peritoneal dialysis (CCPD) - Outpatient or home," subcategories "CCPD/composite or other rate," "home supplies," "home equipment," "maintenance one hundred percent (home)," "support services (home)," and "other outpatient CCPD (home)";

(www) "Miscellaneous dialysis," subcategories "home dialysis aid visit" and "other miscellaneous dialysis";

(xxx) "Behavioral health treatments/services," subcategories "general classification," "milieu therapy," "play therapy," "activity therapy," (~~"intensive outpatient services - psychiatric,"~~) "intensive outpatient services - (~~chemical dependency~~) substance use disorder (SUD)," and "community behavioral health program (day treatment)";

(yyy) "Behavioral health treatment/services (extension)";

(zzz) "Other diagnostic services," subcategories "allergy test" and "other diagnostic services";

(aaaa) "Medical rehabilitation day program";

(bbbb) "Other therapeutic services - extension," subcategories "recreational therapy," "drug rehabilitation," "alcohol rehabilitation," "complex medical equipment - routine," "complex medical equipment - ancillary," "athletic training," and "kinesiotherapy";

(cccc) "Professional fees";

(dddd) "Patient convenience items"; and

(eeee) Revenue code categories and subcategories that are not identified in this section.

WSR 24-11-154

PROPOSED RULES

WASHINGTON STATE UNIVERSITY

[Filed May 22, 2024, 10:07 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-08-081.

Title of Rule and Other Identifying Information: Campus parking and traffic regulations for Washington State University (WSU) Vancouver, chapter 504-19 WAC.

Hearing Location(s): On June 25, 2024, at 4:00 p.m., Zoom meeting. Join from wsu.zoom.us/ or the Zoom app, Meeting ID 959 3913 9538, Passcode 495609, phone 1-253-215-8782. For help connecting to a WSU Zoom meeting see <https://tinyurl.com/2kbrhrjt>. No in-person hearing locations are being scheduled for this hearing.

Date of Intended Adoption: June 26, 2024.

Submit Written Comments to: Deborah Bartlett, Rules Coordinator, P.O. Box 641225, Pullman, WA 99164-1225, email prf.forms@wsu.edu, beginning June 5, 2024, by June 25, 2024, 5:00 p.m.

Assistance for Persons with Disabilities: Contact Joy B. Faerber, phone 509-335-2005, email prf.forms@wsu.edu, by June 20, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The university is updating WSU Vancouver campus parking and traffic regulations including the addition of virtual parking permits.

Statutory Authority for Adoption: RCW 28B.30.150.

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

Name of Proponent: WSU, public.

Name of Agency Personnel Responsible for Drafting and Enforcement: Jeannette Hurt, Director of Public Safety and Parking Services, Classroom (VCLS) 120, WSU Vancouver, Vancouver, WA 98686-9600, 360-546-9004; Implementation: Emile Netzhammer, Chancellor, Dengerink Admin Bldg (VDEN) 230, WSU Vancouver, Vancouver, WA 98686-9600, 360-546-9589.

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

A cost-benefit analysis is not required under RCW 34.05.328. WSU does not consider this rule to be a significant legislative rule and is not making significant amendments to a policy or regulatory program.

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

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rule content is explicitly and specifically dictated by statute; and rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: The amendments to WSU Vancouver parking regulations only apply to students, employees, and visitors at the

WSU Vancouver campus, and do not affect business or commerce in any way.

Scope of exemption for rule proposal:
Is fully exempt.

May 22, 2024
Deborah L. Bartlett, Director
Procedures, Records, and Forms and
University Rules Coordinator

OTS-5372.1

AMENDATORY SECTION (Amending WSR 08-08-049, filed 3/27/08, effective 7/1/08)

WAC 504-19-010 Authorization. Pursuant to the authority granted by RCW 28B.30.125, 28B.30.150, 28B.10.560, and chapter 34.05 RCW, the board of regents of the university, or the university president or designee, as applicable, adopts this chapter to govern parking and traffic at Washington State University Vancouver, hereinafter referred to as WSUV.

AMENDATORY SECTION (Amending WSR 08-08-049, filed 3/27/08, effective 7/1/08)

WAC 504-19-020 Purposes of regulations. (1) The purposes of these regulations are to:

- (a) Expedite university business and provide maximum safety, order, and access;
- (b) Regulate parking, with priority given to:
 - (i) Services of the university;
 - (ii) ~~((Persons))~~ Individuals who require the use of vehicles in connection with their on-campus work; and
 - (iii) Staff and students who require the use of private vehicles because of a disability or other approved reason; and
- (c) Provide and maintain suitable campus parking and ~~((traffic facilities))~~ transportation systems.

(2) The vice chancellor or designee whose responsibilities include supervision of ~~((the parking department))~~ parking services shall have the authority to designate particular locations as parking, temporary parking, restricted parking, or prohibited parking, as well as the authority to designate permanent and temporary areas as being closed to vehicular traffic.

AMENDATORY SECTION (Amending WSR 96-15-050, filed 7/15/96, effective 8/15/96)

WAC 504-19-080 Severability. If any provision of this chapter, chapter 504-19 WAC, or its application to any ~~((person))~~ individual or

circumstance is held invalid, the remainder of the chapter or its application to other ~~((persons))~~ individuals or circumstances is unaffected.

AMENDATORY SECTION (Amending WSR 18-22-065, filed 11/1/18, effective 12/2/18)

WAC 504-19-100 Definitions. The definitions in this section are applicable within the context of this chapter.

(1) Access-control/gate card. A plastic card that provides access to a location, building, or parking area, and/or activates a gate or similar device controlling access to certain parking areas.

(2) Campus. Describes all property owned, leased, ~~((and/))~~ or controlled by WSUV which is or may hereafter be dedicated mainly to the educational, research, housing, recreational, parking, or other activities of WSUV.

~~((2))~~ (3) Day. Unless otherwise specified, the term "day" refers to a calendar day.

~~((3))~~ (4) Disability zone. A parking zone designated for exclusive use by ~~((persons))~~ individuals with disability and identified with a sign bearing the associated international symbol.

~~((4))~~ (5) Electric-assisted bicycle. As defined under RCW 46.04.169.

(6) Fire zone. An area needed for emergency access to buildings, fire hydrants, or fire equipment. Such areas include, but are not limited to, areas with adjacent curbs or rails painted red.

~~((5))~~ (7) Illegal use of permit. A parking violation in which a parking ticket is issued under the following circumstances:

(a) Use of a parking permit or indicator on a vehicle other than the specified vehicle identified by a license number on the permit.

(b) Use of a counterfeit parking permit or indicator.

(c) Use of a parking permit or indicator obtained under false pretenses.

~~((e))~~ (d) Use of a modified parking permit or indicator.

~~((d))~~ (e) Use and/or retention of a parking permit or indicator by ~~((person(s)))~~ individual(s) ineligible, or no longer eligible, for such permit as described and authorized in this chapter.

~~((6))~~ (8) Impound. To take and hold a vehicle in legal custody, either by use of a ~~((wheel lock and/or))~~ vehicle immobilization device or towing.

~~((7))~~ (9) Indicator. A vinyl, plastic, or paper instrument displayed adjacent to a parking permit which defines the parking areas available to a permit holder.

~~((8))~~ (10) Loading zone. A loading dock or an area signed "loading zone" adjacent to a facility or in a parking area. Such an area is intended for loading and unloading bulky or voluminous material. Loading zones are restricted at all times unless signed otherwise.

~~((9))~~ ~~Moped. Any two-wheeled or three-wheeled motor vehicle with an engine displacement of 50cc or less.~~

~~(10) Motorcycle. Any two-wheeled or three-wheeled motor vehicle with an engine displacement greater than 50cc.~~

~~(11) Motor vehicle. All motor-driven conveyances except wheelchairs.)~~ (11) Moped. As defined under RCW 46.04.304.

(12) Motorcycle. As defined under RCW 46.04.330.

(13) Motorized foot scooter. As defined under RCW 46.04.336.

~~(14)~~ (14) Motor vehicle. As defined under RCW 46.04.320. Also referred to as "vehicle" in this chapter.

~~((12))~~ (15) No parking zone. Any area not specifically marked and/or signed for parking. Such areas include, but are not limited to, areas with adjacent curbs or rails painted yellow or red.

~~((13))~~ (16) Officer. Any parking or police official employed by the university who is designated by the parking administrator or police department head to issue parking tickets, to place or remove ~~(wheel locks)~~ vehicle immobilization devices, or to cause vehicles to be towed under this chapter.

~~((14))~~ (17) Owner. The person registered with any state as the present owner of a vehicle in the most current registration record available to the university, the owner's expressed representative, or any transferee not designated in such records, provided that the parking administrator or police department head has received actual written notice of the transfer.

~~((15))~~ (18) Park/parking. This refers to the placement or standing of a vehicle, with or without a driver in attendance, and with or without the engine running.

~~((16))~~ (19) Parking administrator. The manager in charge of ~~(the parking department)~~ parking services or designee.

~~((17))~~ (20) Parking appeals committee. Any ~~(person or persons)~~ individual(s) appointed to consider parking violations and the application of fees, fines, and sanctions. Said ~~(person or persons)~~ individuals are appointed by the vice chancellor whose responsibilities include supervision of ~~(the parking department)~~ parking services or designee.

~~((18) Parking department.~~ The university department which is charged with the responsibility of managing, operating, planning, and maintaining parking facilities and enforcing the parking regulations for the WSUV campus.

~~(19))~~ (21) Parking meter. A single fixed device that typically requires payment and limits the amount of time a vehicle can park in a single space. Also referred to as "meter" in this chapter. A parking meter is not a parking payment device.

~~((20))~~ (22) Parking payment device. A machine that requires payment and vends a parking permit and/or a paid receipt. Parking payment devices may be located in various places on campus. A parking payment device is not a parking meter.

~~((21))~~ (23) Parking permit. A vinyl, plastic, paper, or other instrument sanctioned by ~~(the parking department)~~ parking services that is displayed from a vehicle and authorizes parking in specified areas. Some parking permits may be purchased online and may be virtual in nature, as defined in subsection (44) of this section; and identified by other means, such as by license plate. Also referred to as "permit" in this chapter.

~~((22))~~ (24) Parking services. The university department which is charged with the responsibility of managing, operating, planning, and maintaining parking facilities and enforcing the parking regulations for the WSUV campus.

(25) Parking ticket. The first notice of a parking violation which is usually placed in a visible location on a motor vehicle.

~~((23))~~ (26) Pay parking facility. A location where parking is provided and payment is made on-site via a parking payment device, cashier, or other means other than a parking meter.

~~((24))~~ (27) Pedestrian mall. A space that is designed primarily for pedestrian use, but with limited authorized use of motor vehicle and other motorized and nonmotorized conveyances.

~~((25) Persons)~~ (28) Individuals with disability. For the purposes of this chapter, individuals with disabilities shall refer to ~~((a person or persons))~~ an individual or individuals with a disability or disabilities who qualify for a state-issued individual with disabilities parking identification and permit.

~~((26))~~ (29) Service vehicle. A vehicle used to provide a service for WSUV or a tenant or contractor of WSUV (e.g., a university-owned vehicle or a privately owned vehicle with a valid service vehicle authorization displayed).

~~((27))~~ (30) Service zone. Parking spaces or area designated for the use of service vehicles, other government-owned vehicles, and vehicles displaying a service indicator or commercial permit. Authorized vehicles may park in these zones on an occasional basis for a maximum of ~~((fifteen))~~ 15 minutes, except for vehicles that display a service indicator issued for an extended time. Service zones are restricted at all times unless signed otherwise.

~~((28))~~ (31) Staff. For the purposes of these regulations, "staff" includes all nonstudent employees of the university, and the nonstudent employees of other entities located on or regularly doing business on campus. Teaching assistants, research assistants, and other students employed by the university or other entities located on or regularly doing business on campus are not "staff." They are considered as students for the purpose of these rules.

~~((29))~~ (32) Standing. "Standing" is the stopping of a vehicle with the driver remaining in it.

~~((30))~~ (33) Storage of a vehicle. Impounded vehicles are held in storage until released. During such time they are subject to storage fees.

~~((31))~~ (34) Student. The term "student" includes all ~~((persons))~~ individuals who are not staff, who are taking courses at the university, enrolled full-time or part-time, pursuing undergraduate, graduate, professional studies, or auditing one or more classes.

~~((32))~~ (35) Summer session. The summer session includes all summer sessions beginning on the first day of the earliest session and ending on the last day of the latest session.

~~((33))~~ (36) University. Refers to Washington State University Vancouver.

~~((34))~~ (37) University holiday. A day regarded by the university as an official university holiday.

~~((35))~~ (38) Unpaid. A full or partial outstanding balance due. This definition includes parking tickets which are pending appeal.

~~((36))~~ (39) Vacation. A period of time when classes or final exams are not in session. Except for holidays that fall within this period, the business offices of WSUV typically are open during this time.

~~((37) Visitors. Persons who are not staff or students and who only visit the campus on an occasional basis.~~

~~(38) Wheel lock)~~ (40) Vehicle immobilization device. A device used to temporarily immobilize a motor vehicle. ~~((Wheel-locked))~~ Immobilized vehicles are considered to be impounded in place and subject to storage fees. A vehicle immobilization device may also be referred to as a wheel lock device.

~~((39) Wheel lock-eligible)~~ (41) Vehicle immobilization-eligible list. The current list of ~~((wheel-lock-eligible))~~ vehicle immobiliza-

tion-eligible vehicles as maintained by ~~((the parking department))~~ parking services. A vehicle remains on the ~~((wheel-lock-eligible))~~ vehicle immobilization-eligible list until all fines and fees related to parking tickets are paid in full or otherwise resolved to include the payment of fines and fees related to parking tickets not yet eligible for late fees.

~~((40) Wheel lock-eligible))~~ (42) Vehicle immobilization-eligible vehicle. Any vehicle on which three or more parking tickets more than ~~((thirty))~~ 30 days old are unpaid and which parking tickets were issued during the time the vehicle was registered to or otherwise held by the owner. The vehicle remains ~~((wheel-lock-eligible))~~ vehicle immobilization-eligible until all fines and fees related to parking tickets are paid in full or otherwise resolved to include the payment of fines and fees related to parking tickets not yet eligible for late fees.

~~((41))~~ (43) Vehicle storage. Vehicle storage means the parking or leaving of any vehicle for a period of more than 24 consecutive hours.

(44) Virtual permit. A virtual permit is authorization given at the time of vehicle registration with parking services, allowing the registered vehicle to park in a designated lot, zone, or space. The virtual permit is associated to the vehicle license plate number and is used to identify the parking authorization.

(45) Visitors. Individuals who are not staff or students and who only visit the campus on an occasional basis.

(46) WSUV. Refers to Washington State University Vancouver.

AMENDATORY SECTION (Amending WSR 08-08-049, filed 3/27/08, effective 7/1/08)

WAC 504-19-200 Enforcement authority. WSUV public safety and ~~((the parking department))~~ parking services are charged with the impartial enforcement of these regulations. Officers of these departments have authority to issue parking tickets, to impound vehicles, and to control access to areas.

AMENDATORY SECTION (Amending WSR 08-08-049, filed 3/27/08, effective 7/1/08)

WAC 504-19-210 Times of enforcement. Parking regulations are subject to enforcement at all times.

(1) Parking permit areas. All parking permit areas are limited to authorized permit holders during specific hours. These hours are posted in each parking area at the entrance to parking areas or along roadways where parking is marked.

(2) Restricted spaces. These spaces are restricted for their designated purpose at all times unless signed otherwise:

- (a) Disability zones.
- (b) Load/unload.
- (c) Service.
- (d) Reserved.
- (e) Reserved (bagged) parking meters.
- (f) Pedestrian mall.

(g) Areas which are specially signed or physically set apart by barricades, traffic cones, tape, or other traffic devices.

(3) Parking metered spaces. Parking meters are in effect during the times posted on each meter. During these times the meter must be paid the posted amount. Additional time cannot be purchased beyond the meter's posted maximum time limit (e.g., a ~~((thirty))~~ 30-minute meter will allow a maximum of ~~((thirty))~~ 30 minutes to be purchased at one time). A motor vehicle which is parked at an expired meter is considered in violation initially, and after each period equal to the maximum time posted for the meter. In such case, a parking ticket may be issued for each violation. For example, a vehicle parked at a meter with a two-hour maximum time limit for six hours and five minutes of CONTINUOUS unpaid parking at the same meter would be eligible for up to three parking tickets.

(4) Pay parking facilities. Some parking areas provide parking on an hourly basis. Hours of operation and a schedule of fees are posted at the facility entrance and at the point of payment. Parking tickets are issued to vehicles that are parked over the duration of time that was paid for and for nonpayment. Parking areas with parking meters are not considered pay parking facilities.

AMENDATORY SECTION (Amending WSR 12-11-024, filed 5/8/12, effective 6/8/12)

WAC 504-19-250 Motorcycles and mopeds. (1) The general traffic regulations applicable to motor vehicles apply to motorcycles and mopeds. Motorcycles or mopeds may not be driven on sidewalks or in pedestrian mall areas. Owners of motorcycles and mopeds are responsible for all violations issued.

(2) ~~The university classifies mopeds and motorcycles ((by engine displacement (also referred to as engine size). This definition applies only to university property and does not replace or supersede))~~ in accordance with the definitions established by the state of Washington for licensing purposes. See RCW 46.04.304 and 46.04.330.

(3) ~~((Motorcycles and mopeds:))~~ Motorcycles and mopeds may park only in spaces which are marked by signs or the letter "M" painted on the parking surface. Motorcycles and mopeds parking in such designated areas must display a valid WSUV motorcycle permit during posted times. During all other times, these spaces are restricted to use by motorcycles and mopeds only. To park a motorcycle or moped in nonmotorcycle parking spaces, a full-price vehicle permit must be displayed in an approved motorcycle permit holder. Approved motorcycle permit holders may be signed out from parking services at the time of permit purchase. Issued permit holders must be returned to parking services within two weeks of the permit's expiration date or an administrative service fee is charged to the permit user's account.

AMENDATORY SECTION (Amending WSR 08-08-049, filed 3/27/08, effective 7/1/08)

WAC 504-19-300 Financial responsibility for parking tickets.

(1) Each registered parking permit holder shall be financially responsible for parking tickets on vehicles:

- (a) Registered with ~~((the parking department))~~ parking services; and/or
- (b) Displaying the registered parking permit holder's permit.
- (2) Owners of vehicles are held ultimately financially responsible for parking tickets issued to their vehicles.

AMENDATORY SECTION (Amending WSR 18-22-065, filed 11/1/18, effective 12/2/18)

WAC 504-19-350 Use of areas for emergency, maintenance, events, or construction. (1) WSUV reserves the right to close any campus parking area at any time it is deemed necessary for maintenance, safety, events, construction, ~~((or))~~ emergencies, or to meet special needs. Parking services provides notice to users when possible.

(2) ~~((The))~~ WSUV public safety or parking ~~((department))~~ services may authorize the towing of vehicles parked in areas that are designated to be used for emergencies, special needs, maintenance, events, or construction. Towing is at the owner's expense.

(3) Public safety and maintenance personnel performing official duties may deviate from these regulations as required to conduct emergency procedures.

AMENDATORY SECTION (Amending WSR 18-22-065, filed 11/1/18, effective 12/2/18)

WAC 504-19-370 Vehicle storage. The storage of vehicles, including motorcycles and mopeds, is prohibited on campus unless otherwise authorized by ~~((the parking department))~~ parking services.

AMENDATORY SECTION (Amending WSR 08-08-049, filed 3/27/08, effective 7/1/08)

WAC 504-19-450 Replacement parking permits and indicators. (1) Sold or traded vehicles. Failure to advise ~~((the parking department))~~ parking services of a sale or trade for registration purposes may result in continued responsibility to the permit holder for parking tickets received on that vehicle.

The permit holder has responsibility for removing parking permits prior to selling or trading a vehicle. The identifiable remnants of the original permit must be presented to ~~((the parking department))~~ parking services to receive a free replacement. ~~((Persons))~~ Individuals failing to comply with this requirement shall pay the cost of a new permit.

(2) Lost/stolen permits. Permit holders are responsible for the security of their permits. The theft or loss of a parking permit should be reported to ~~((the parking department))~~ parking services immediately upon discovery. A lost or stolen permit may be replaced upon payment to ~~((the parking department))~~ parking services of the cost of replacing the permit, according to a schedule adopted by ~~((the parking department))~~ parking services. Lost or stolen permits must be returned

to ((the parking department)) parking services immediately if recovered.

(3) Windshield replacements. When a permit-bearing windshield is replaced, the permit replacement fee is waived if proof of windshield replacement is presented.

AMENDATORY SECTION (Amending WSR 08-08-049, filed 3/27/08, effective 7/1/08)

WAC 504-19-510 Parking permits—General. ((The parking department)) Parking services issues parking permits for designated areas of the campus. Any vehicle parked on the campus, other than a pay area or metered space, must clearly display a valid WSUV parking permit in accordance with this chapter during the posted hours and in locations when and where permits are required. University staff and students may not use any other permit in lieu of a valid university parking permit.

AMENDATORY SECTION (Amending WSR 18-22-065, filed 11/1/18, effective 12/2/18)

WAC 504-19-520 Parking permits—Form and display. All parking permits must be displayed in the approved position on the vehicle with permit numbers and relevant dates visible. Vehicles with permits which are not displayed in accordance with the provisions of this section are subject to parking tickets for the violation of improperly displaying a permit, or for the violation of no parking permit if a valid permit cannot be verified from the exterior of the vehicle.

(1) Autos and trucks:

(a) Daily permits must be displayed as instructed on the permit.

(b) Annual and semester permits must be displayed on the left side (driver's side) of the windshield. Permits must be mounted completely by means of their own design. No additional substances may be used to adhere the permit to the windshield unless approved by ((the parking department)) parking services.

(2) Motorcycles and mopeds ((÷)). Motorcycle and moped permits must be mounted completely by means of their own adhesive and prominently displayed on the left rear side of the vehicle or on top of the rear tail light.

(3) Virtual permits. Certain parking permissions do not require that a permit be displayed. In those instances, the virtual permit is associated with the vehicle license plate registered.

(a) Vehicles must be parked so that the license plate is visible from the driving aisle.

(b) No covers may be placed over the license plate that would inhibit the reflectivity of the plate.

(c) The alphanumeric characters of the license plate must be visible and unobstructed by license plate frames and/or other accessories.

(d) Individuals with virtual permits must ensure their current vehicle is registered and associated with their virtual permit through parking services.

(e) Multiple registered vehicles may be associated on the same virtual permit. In this case, no more than one registered motor vehicle using the virtual permit may be parked on campus at a time.

AMENDATORY SECTION (Amending WSR 08-08-049, filed 3/27/08, effective 7/1/08)

WAC 504-19-540 Zone parking permits—Availability and use. The management and assignment of parking zones is designed to provide a parking space to permit holders. However, uncontrolled access to parking areas and unexpected parking demand make it impossible to guarantee a parking space in the permit holder's assigned zone. Staff and students are generally assigned to specific parking areas referred to as zones. Parking zones are color-coded with respect to their price and numbered with respect to the specific parking zone assignment of each permit holder. Permit holders may park in their assigned zone as reflected by the combination of color and number on their permit and corresponding sign, or they may park in other zones as described below.

(1) Orange permits. Orange permit holders may park in (~~(their numerically assigned)~~) any orange zone, or in any green, red, or gray zone.

(2) Green permits. Green permit holders may park in (~~(their numerically assigned)~~) any green zone, or in any red or gray zone.

(3) Red permits. Red permit holders may park in (~~(their numerically assigned)~~) any red zone, or in any gray zone.

(4) Gray permits. Gray permit holders may park in any gray zone.

AMENDATORY SECTION (Amending WSR 18-22-065, filed 11/1/18, effective 12/2/18)

WAC 504-19-560 Other parking permits—Availability and use. (1) Visitor permits. Visitor permits may be used only by bona fide visitors as defined by this chapter. Use by any other person constitutes illegal use of a parking permit. Visitor permits are valid in any zone and parking spaces signed for visitors only. Visitor permits are not valid at meters or restricted spaces.

(2) Permits honored by reciprocal agreement. Permits from other universities, including other WSU campuses, may be used only if detailed in and allowed by a fully executed reciprocal agreement with WSU Vancouver.

(3) Golden cougar permits. Golden cougar permits are special permits that are issued to retired staff in recognition of their service without additional cost. They are issued on an annual basis and are valid in any zone that is designated and approved by (~~(the parking department)~~) parking services. Staff who are employed by the university or other entities located on campus after formal retirement are not eligible to use a golden cougar permit in lieu of a regular paid zone permit.

(~~(3)~~) (4) President's associates decals. President's associates decals are issued to eligible members of the Washington State University foundation. Use of these decals for parking shall be in accord-

ance with a separate agreement between WSU and the WSU foundation. However, WSU faculty, staff, and students may not use a president's associates decal or any other parking benefit instrument in lieu of a paid zone permit.

~~((4) Conference)~~ (5) Event/conference permits. ~~((Conference))~~ Event/conference permits are available to visitors who participate in events or conferences held on the WSUV campus. They are available on a daily basis only. ~~((Conference))~~ Event/conference permits are valid as marked on the issued permit.

~~((5))~~ (6) Motorcycle permits. Motorcycle permits are valid within boundaries of areas specifically posted ~~((and/))~~ or marked for motorcycle permits.

~~((6))~~ (7) Construction permits. A construction permit is issued to personnel who are working on a construction site on campus. Construction permits are assigned to a specific parking area.

~~((7))~~ (8) Carpool. Upon application to WSUV parking services, a bona fide carpool as defined by the campus policies and procedures is given preference in the assignment of parking zones, and issued a permit that facilitates the carpool. Carpool permits shared by more than one registered vehicle, virtual or otherwise, may not park more than one vehicle associated with the permit on campus at the same time. Obtaining or using a carpool permit under false pretenses constitutes the illegal use of a permit.

~~((8))~~ (9) Commercial permits. Commercial permits are issued to vendors, suppliers, and service representatives of outside companies performing a service for the university. Commercial permits are valid in zones and areas indicated on the permit.

~~((9))~~ (10) Departmental permits. Departmental parking permits are available for use by department employees who need to use their personal vehicles for university business. Departmental permits are available in different forms and are valid at parking meters, service zones, orange, green, red, and gray permit zones, and pay parking facilities. Departmental permits are not valid in reserved spaces. The use of departmental permits for anything other than official departmental business is prohibited by the State Ethics Act.

AMENDATORY SECTION (Amending WSR 12-11-024, filed 5/8/12, effective 6/8/12)

WAC 504-19-580 Special virtual designation, indicator decals, and hangers. Special virtual designation, indicator decals, or hangers may be issued to staff and student permit holders who have otherwise valid parking permits in the following cases:

(1) A "service virtual designation, indicator decal, or hanger" is valid typically for a maximum of ~~((thirty))~~ 30 minutes in a marked service zone. A "mall service" virtual designation or indicator is valid typically for a maximum of ~~((thirty))~~ 30-minute parking in the pedestrian mall. If the virtual designation or indicator is needed for longer than ~~((thirty))~~ 30 minutes, the issued permit is subject to the current daily rate for parking on the WSUV campus unless a parking permit valid for that time period is already present in the vehicle.

(2) Reserved parking virtual designation, indicator decals, and hangers which are valid in parking spaces that are signed for the corresponding permit and designation or indicator.

AMENDATORY SECTION (Amending WSR 18-22-065, filed 11/1/18, effective 12/2/18)

WAC 504-19-600 Parking for individuals with disabilities. (1)

The provisions of this chapter cover disability parking and the payment of fees and fines associated with parking for individuals with disabilities.

(2) For the purpose of this chapter, individuals with disabilities shall refer to individuals with disabilities who qualify for a state-issued individual with disabilities parking identification and permit as provided in chapter 308-96B WAC. Use of disability accommodation parking at WSUV also requires payment for parking in the form of a WSUV parking permit or receipt of payment.

(3) The university uses the state individual with disabilities parking permit system to determine eligibility for disability parking.

(4) Unless otherwise authorized, parking in spaces designated for individuals with disabilities requires a state-issued disability parking placard or license plate and a WSUV parking permit or proof of payment to park on campus. University semester and annual parking permits for individuals with disabilities are available at the gray zone rate. Daily and temporary parking permits are available at the regular rates.

(5) ((Persons)) Individuals with a state-issued disability parking placard or license plate and a WSUV parking permit or proof of payment may park in parking spaces designated for individuals with disabilities and any other, nonrestricted permit space within a parking permit zone.

(6) ((Persons)) Individuals with a state-issued disability parking placard or license plate and a WSUV parking permit or proof of payment may not park in restricted spaces with the exception of individuals with disabilities parking spaces.

(7) Unless otherwise posted, any university parking permit to include a state-issued disability parking placard or license plate is not valid in lieu of payment of regular posted fees in pay parking lots and facilities.

(8) A state-issued individuals with disabilities license plate, placard, or permit is valid in parking zones during times when a university permit is not required.

(9) The university intends to retain control of access to the pedestrian malls on campus. For that reason a state-issued disability parking placard or license plate and a WSUV parking permit or proof of payment is required as authorization to use a pedestrian mall to access marked individuals with disabilities parking spaces within the confines of a pedestrian mall.

AMENDATORY SECTION (Amending WSR 18-22-065, filed 11/1/18, effective 12/2/18)

WAC 504-19-650 Parking fees and fines. (1) Schedules for parking fees, parking administrative fees, late payment fees, parking fines and sanctions, parking meter rates, prorate and refund schedules, and the effective date thereof are submitted to the president or ((his/her)) designee and to the board of regents for approval by motion, provided however, that increases in fees and fines do not exceed limits established by the board of regents. Increases in fees and

fines that do not exceed limits established by the board of regents are not submitted to the board of regents so long as the board of regents has delegated authority to the president or ((his)) designee to approve all such fees and fines. The schedules described above for all parking fees and fines are thereafter posted in the public area of ((the parking department)) parking services office and posted on ((the parking department's)) parking service's website.

(2) Before purchasing a permit, the balance of any fees and fines owed to ((the parking department)) parking services must be paid in full.

(3) Payments. Parking fees and fines may be paid at ((the parking department)) parking services by cash, check, approved payment card, or money order, and online through the WSUV parking services payment portal website. A payroll deduction plan is available for eligible university employees and eligible graduate students.

(4) The annual fee for any shorter period relative to all permits shall be prorated according to the published schedule.

(5) The proper fee must be paid for all vehicles parked in parking meter spaces unless otherwise authorized.

(6) Staff members whose work schedules qualify them for nighttime differential pay may purchase a permit for one-half the regular fee. Verification is required.

(7) Refunds. Annual permits being relinquished may be returned to ((the parking department)) parking services for a pro rata refund (if any is available) in accordance with university policy. Identifiable remnants of the permit must be returned. In the case of annual virtual permits, the permit purchaser must notify parking services in person or in writing that they want to relinquish the permit permissions for a pro rata refund (if any is available) in accordance with university policy. The balance of any fees and fines owed ((the parking department)) parking services is deducted from any refund due. Refunds for temporary permits are not granted. Refunds for pretax payroll deductions cannot be granted pursuant to federal tax laws.

(8) ((The parking department)) Parking services makes a wide array of options available in advance to university departments for use by their visitors, guests, and employees for the purpose of conducting departmental business. However, when necessary, university departments that can establish in writing that a parking ticket issued by ((the parking department)) parking services was received as a result of parking any vehicle for the purpose of conducting official state business, or while conducting official business with the university or an entity located at the university are assessed a parking fee assessment (PFA) in lieu of the parking fine. Such requests for PFAs are signed by a department fiscal custodian. A PFA consists of the maximum daily parking fee plus an additional administrative fee for failing to purchase and provide the necessary parking permit or fee in advance or at the time of parking. University departments are encouraged to avoid additional administrative fees associated with PFAs by purchasing and storing prepaid parking permits and by making them available as the department deems necessary. Nothing in this rule allows a university employee to receive, or attempt to receive, any benefit associated with ((his or her)) their personal expenses in violation of the State Ethics Act. All questionable employee conduct regarding the application of this section is reported to, and investigated by, the university internal auditor. This section applies only to parking tickets issued pursuant to this chapter.

AMENDATORY SECTION (Amending WSR 08-08-049, filed 3/27/08, effective 7/1/08)

WAC 504-19-810 Violations, fines, and sanctions. (1) Violations and fines. Parking violations are processed by the university. Fines must be paid at (~~the parking department~~) parking services or at other authorized locations. Schedules for parking violations, fines, and sanctions are posted in the public area of the parking services office and on (~~the parking department's~~) parking service's website.

(2) Reduction of fines.

(a) Fines for violations of overtime/nonpayment at meter and overtime in time zone paid within (~~twenty-four~~) 24 hours of issuance are reduced by one-half. Eligible violations received on Friday or Saturday can be paid on the following Monday to satisfy the (~~twenty-four~~) 24-hour requirement. Mailed payment must be postmarked within (~~twenty-four~~) 24 hours to receive the one-half reduction.

(b) Visitors. The first violation of notices for "no parking permit" and "no parking permit for this area" issued to a visitor is considered a warning notice upon presentation to (~~the parking department~~) parking services.

(c) If a permit holder of record neglects to display (~~his or her~~) their permit and receives a notice of violation for "no parking permit," a reduced fine is assessed when possession of a valid parking permit for the location is verified by (~~the parking department~~) parking services within (~~twenty-four~~) 24 hours.

(d) Internal policies regarding disposition of parking tickets may be established on approval of the vice chancellor or designee whose responsibilities include supervision of (~~the parking department~~) parking services under the advisement of the university's internal auditor.

(3) Inoperable vehicles. It is the owner's responsibility to immediately contact (~~the parking department~~) parking services in the event that the owner's vehicle becomes inoperable when the vehicle is present on campus.

(4) Payment of parking fines(~~(-)~~):

(a) All parking fines are due upon issuance of a parking ticket. Thirty days after date of issuance of a parking ticket, a late fee shall be added to all unpaid parking fines. For example, a parking ticket issued on May 1st would be assessed a late fee on May 31st. Failure to pay the fine and fee assessed for any violation results in referral to the university controller's office for collection. The controller (or designee) may, if other collection efforts fail, withhold the amount of the outstanding fines and fees from deposits or other funds held for any student (~~in order~~) to secure payment.

When collection efforts are unsuccessful, the controller (or designee) may notify the registrar to refrain from issuing student transcripts or to withhold permission to reenroll for a subsequent term until outstanding fines and fees are paid. The procedures discussed above are not exclusive, however, and failure by anyone to pay fines and fees may also lead to towing or use of the (~~wheel lock~~) vehicle immobilization device described in these regulations. Nor are the procedures discussed above a precondition to towing or use of (~~the wheel lock~~) vehicle immobilization.

(b) Account balances not paid to the university voluntarily may be forwarded to an external collections agency and are subject to additional collection fees of up to 50 percent, attorney's fees, and court costs when necessary.

(5) Failure to pay fines. Failure to pay a fine or comply with other penalties assessed pursuant to these regulations, and exhausting or failing to exercise appeals provided for in these regulations, may result in the inability to renew a vehicle license through the state pursuant to RCW 46.16.216.

AMENDATORY SECTION (Amending WSR 08-08-049, filed 3/27/08, effective 7/1/08)

WAC 504-19-860 Appeal ((s)) procedure. The parking ticket represents a determination that a parking violation has been committed and the determination is final unless otherwise provided for or appealed as provided in this chapter.

(1) Purpose. The parking appeals process serves the following functions:

(a) To hear parking ticket appeals;

(b) To hear appeals of (~~wheel lock eligibility~~) vehicle immobilization-eligible determinations; and

(c) To hear appeals of impoundments.

(2) Procedure. Any (~~person~~) individual who has received a parking ticket may appeal the alleged parking violation. Appeal of (~~wheel lock eligibility~~) vehicle immobilization-eligible determinations and impoundments are described in WAC 504-19-865 and 504-19-870.

(3) Written parking ticket appeals. The appeal must be in writing and received at (~~the parking department~~) parking services within (~~ten~~) 10 calendar days of issuance of the parking ticket. Forms for this purpose are available from (~~the parking department~~) parking services. The parking appeals committee makes an initial decision regarding the appeal within (~~twenty~~) 20 calendar days during the academic year and (~~thirty~~) 30 calendar days during the summer months after receipt of the appeal. The committee provides a brief statement of the reason for its decision to the appellant within (~~ten~~) 10 calendar days of the decision.

(4) Review hearing of initial decision. If the appellant is dissatisfied with the initial decision, (~~he or she~~) they may request a hearing before a hearing officer or the parking appeals committee. Such a request must be made within (~~ten~~) 10 calendar days of the date of the initial parking appeals committee decision. If no such request is received, the initial decision shall be final. During the hearing the appellant and representatives of (~~the parking department~~) parking services may present and cross-examine witnesses. The hearing officer or appeals committee shall render a decision in writing and provide the appellant with the decision within (~~ten~~) 10 calendar days after the hearing.

(5) Appeal to district court. RCW 28B.10.560 provides that (~~a person~~) an individual who is not satisfied with the final decision of the university may appeal to district court. The application for appeal to district court shall be in writing and must be filed at (~~the parking department~~) parking services within (~~ten~~) 10 calendar days after the date of the review hearing. (~~The parking department~~) Parking services forwards the documents relating to the appeal to the district court.

AMENDATORY SECTION (Amending WSR 18-22-065, filed 11/1/18, effective 12/2/18)

WAC 504-19-865 General. (1) Pursuant to the provisions of this chapter, an officer shall cause a vehicle to be (~~wheel-locked~~) immobilized, or towed, or both, if:

(a) The vehicle is on the (~~wheel lock-eligible~~) vehicle immobilization-eligible list; or

(b) The vehicle displays a lost, stolen, or counterfeit parking permit.

(2) Any vehicle may be towed away at owner's/operator's expense if the vehicle:

(a) Has been immobilized by (~~wheel-lock~~) a vehicle immobilization device for more than (~~twenty-four~~) 24 hours; or

(b) Is illegally parked in a marked tow-away zone; or

(c) Is a hazard or obstruction to vehicular or pedestrian traffic (including, but not limited to, vehicles parked at curbs or rails painted yellow or red or in crosswalks); or

(d) Cannot be immobilized with a (~~wheel-lock~~) vehicle immobilization device; or

(e) Is illegally parked in a disability space; or

(f) Is parked in an area designated to be used for emergencies, maintenance, events, or construction; or

(g) Is otherwise illegally parked on the executive authority of (~~the parking department~~) parking services or the university police department.

(3) The driver and/or owner of a towed vehicle shall pay towing and storage expenses.

(4) Any vehicle immobilized by use of (~~the wheel lock~~) a vehicle immobilization device in excess of (~~twenty-four~~) 24 hours is assessed a storage fee for each calendar day or portion thereof, beyond the first (~~twenty-four~~) 24 hours of being immobilized.

(5) The university assumes no responsibility in the event of damages resulting from towing, use of wheel lock devices, storage, or attempts to move a vehicle with a (~~wheel-lock~~) vehicle immobilization device installed.

(6) No vehicle impounded by towing or (~~wheel-lock~~) vehicle immobilization devices shall be released until the following fines are paid in cash or with an approved payment card:

(a) All unpaid parking ticket fines and late fees against said vehicle and any other vehicle registered to the owner;

(b) A (~~wheel-lock~~) vehicle immobilization fee; and

(c) All towing and storage fees.

(7) (~~A person~~) An individual wishing to challenge the validity of any fines or fees imposed under this chapter may appeal such fines or fees as provided in WAC 504-19-860. However, (~~in order~~) to secure release of the vehicle, such (~~person~~) individual must pay the amount of such fines or fees as a bond which shall be refunded to the extent the appeal is successful.

(8) An accumulation of six unpaid violations during any (~~twelve~~) 12-month period, exclusive of overtime at parking meter violations, and overtime in time zone violations, subjects the violator to revocation or denial of parking privileges. Vehicles without permits which accumulate the above number of violations may be prohibited from parking on university property.

AMENDATORY SECTION (Amending WSR 08-08-049, filed 3/27/08, effective 7/1/08)

WAC 504-19-870 (~~(Wheel lock-eligible)~~) Vehicle immobilization-eligible list. (1) The parking administrator shall be responsible for creating and maintaining the (~~(wheel lock-eligible)~~) vehicle immobilization-eligible list. See definition of "~~(wheel lock-eligible)~~) vehicle immobilization-eligible vehicle."

(2) A (~~(wheel lock-eligible)~~) vehicle immobilization-eligible vehicle shall be placed on the (~~(wheel lock-eligible)~~) vehicle immobilization-eligible list after notice has been issued as provided in subsection (3) of this section and an appeal of the (~~(wheel lock-eligibility)~~) vehicle immobilization-eligible determination, if requested, under subsection (4) of this section.

(3) At least (~~(ten)~~) 10 days prior to placing a vehicle on the (~~(wheel lock-eligible)~~) vehicle immobilization-eligible list, the parking administrator shall mail a notice to the owner. The parking administrator mails the notice to the address stated on the most current registration records available to the university from a state, or any more current address of which the parking administrator or chief of police has actual written notice. The notice is sent by first class United States mail, postage prepaid. The notice shall set forth:

(a) The make and license plate number of the alleged (~~(wheel lock-eligible)~~) vehicle immobilization-eligible vehicle.

(b) A specified date on which the (~~(wheel lock-eligible)~~) vehicle immobilization-eligible vehicle is subject to placement on the (~~(wheel lock-eligible)~~) vehicle immobilization-eligible list.

(c) A list of the three or more alleged unpaid parking tickets, including the parking ticket number, date, time, place of the violation, and the nature of the violation. This list shall include all unpaid parking tickets issued to a particular vehicle to include the payment of fines and fees related to parking tickets not yet eligible for late fees.

(d) That the owner may avoid the placement of the vehicle on the (~~(wheel lock-eligible)~~) vehicle immobilization-eligible list by making payment in full of fines and late fees on all unpaid parking tickets to include the payment of fines and fees related to parking tickets not yet eligible for late fees by the specified date on which the vehicle is subject to placement on the (~~(wheel lock-eligible)~~) vehicle immobilization-eligible list.

(e) The name, mailing address (and street address if different), and telephone number of (~~(the parking department office)~~) parking services that may be contacted to appeal the (~~(wheel lock-eligibility)~~) vehicle immobilization-eligible determination. Such an appeal only considers whether an individual vehicle was properly placed on the (~~(wheel lock-eligible)~~) vehicle immobilization-eligible list and not the merits of an individual parking ticket, which may be addressed pursuant to a separate appeals process described in WAC 504-19-860.

(f) That the vehicle is subject to (~~(wheel lock)~~) vehicle immobilization, towing, or both once it is placed on the (~~(wheel lock-eligible)~~) vehicle immobilization-eligible list.

(g) That all late fees, (~~(wheel lock)~~) vehicle immobilization fees, towing, and storage fees shall be payable in full to obtain the release of a vehicle (~~(wheel locked)~~) immobilized or towed pursuant to this chapter in addition to payment of any and all unpaid parking tickets on this vehicle or other vehicles owned by the registered own-

er to include the payment of fines and fees related to parking tickets not yet eligible for late fees.

(4) If a request for an appeal of a (~~wheel lock-eligibility~~) vehicle immobilization-eligible determination is received by the parking administrator before the specified date in the notice for placement of the vehicle on the (~~wheel lock-eligibility~~) vehicle immobilization-eligible list, then the parking administrator shall afford the owner an opportunity to appeal the (~~wheel lock-eligibility~~) vehicle immobilization-eligible determination prior to the placing of a vehicle on the (~~wheel lock-eligible~~) vehicle immobilization-eligible list. Although the parking administrator shall not have the authority to adjudicate the merits of any parking ticket, (~~she or he~~) they shall, however, receive evidence and other input from the owner appealing the (~~wheel lock-eligibility~~) vehicle immobilization-eligible determination that the notice given under subsection (3) of this section was erroneous or based on erroneous information.

(5) If an owner timely participates in the appeal as scheduled by the parking administrator, (~~he or she~~) they shall furnish the owner written notice of (~~his or her~~) their decision prior to placing the vehicle on the (~~wheel lock-eligible~~) vehicle immobilization-eligible list.

(6) After the specified date provided in the notice issued under subsection (3) of this section, the parking administrator shall review the records to ensure that the alleged unpaid parking tickets have not been paid or otherwise resolved, and that no information has been received indicating that the notice was erroneous.

(7) Once a vehicle has been placed on the (~~wheel lock-eligible~~) vehicle immobilization-eligible list, it shall not be removed from the list unless and until:

(a) The fines and fees on all unpaid parking tickets issued during the time it has been registered to or otherwise held by the owner are paid or otherwise resolved to include the payment of fines and fees related to parking tickets not yet eligible for late fees;

(b) The parking administrator receives reliable information that title to the vehicle has been transferred; or

(c) The parking administrator determines that the placement of the vehicle on the (~~wheel lock-eligible~~) vehicle immobilization-eligible list was erroneous.

(8) If a vehicle is not properly registered in any state or no registration information is available to the university and the vehicle is (~~wheel lock-eligible~~) vehicle immobilization-eligible, then notice shall be provided by posting on the vehicle a conspicuous notice, which shall set forth:

(a) A description of the alleged (~~wheel lock-eligible~~) vehicle immobilization-eligible vehicle;

(b) A specified date on which the (~~wheel lock-eligible~~) vehicle immobilization-eligible vehicle is subject to placement on the (~~wheel lock-eligible~~) vehicle immobilization-eligible list;

(c) That the owner may avoid placement of the vehicle on the (~~wheel lock-eligible~~) vehicle immobilization-eligible list by making payment in full of fines and late fees on all unpaid parking tickets to include the payment of fines and fees related to parking tickets not yet eligible for late fees by the specified date certain on which the vehicle is subject to placement on the (~~wheel lock-eligible~~) vehicle immobilization-eligible list; and

(d) That the vehicle is subject to ~~((wheel-lock))~~ vehicle immobilization, towing or both once it is placed on the ~~((wheel-lock-eligible))~~ vehicle immobilization-eligible list.

(9) An officer shall attempt to ~~((wheel-lock))~~ immobilize any vehicle which appears on the ~~((wheel-lock-eligible))~~ vehicle immobilization-eligible list when parked, lawfully or unlawfully, on campus.

(10) The parking administrator or the ~~((chief-of))~~ senior police administrator shall ensure that officers are on duty to remove ~~((wheel-locks))~~ vehicle immobilization devices from vehicles Monday through Friday between 8:00 a.m. and 5:00 p.m., except during recognized holidays.

AMENDATORY SECTION (Amending WSR 08-08-049, filed 3/27/08, effective 7/1/08)

WAC 504-19-880 Fees, fines, and release of an impounded vehicle.

The owner of an impounded vehicle may not secure the release of the stored vehicle until payment in full of fines and fees has been made on all unpaid parking tickets to include the payment of fines and fees related to parking tickets not yet eligible for late fees relating to the vehicle which were issued while the vehicle was owned by the ~~((person))~~ individual who owned the vehicle at the time it is ~~((wheel-locked))~~ immobilized or towed hereunder, and the owner has paid in full the ~~((wheel-lock))~~ vehicle immobilization fee, unpaid parking tickets, late fees, storage fees, and towing fees for any and all other vehicles owned by the registered owner.

AMENDATORY SECTION (Amending WSR 08-08-049, filed 3/27/08, effective 7/1/08)

WAC 504-19-885 Theft, damage, or removal of a ~~((wheel-lock))~~ vehicle immobilization device. The following conduct of any ~~((person))~~ individual shall be reported to parking services and university police:

(1) Causing physical damage to a ~~((wheel-lock))~~ vehicle immobilization device;

(2) Removing, or attempting to remove, a ~~((wheel-lock))~~ vehicle immobilization device; or

(3) Taking or stealing a ~~((wheel-lock))~~ vehicle immobilization device.

AMENDATORY SECTION (Amending WSR 18-22-065, filed 11/1/18, effective 12/2/18)

WAC 504-19-930 Bicycles, skateboards, scooters, and roller blades/skates.

(1) The riding and use of bicycles, skateboards, scooters, and roller blades/skates is prohibited from all building plazas, interior building spaces, stairways, steps, ledges, benches, planting areas, any other fixtures, and in any other posted area.

(2) Bicycles, skateboards, scooters, and roller blades/skates may be ridden and used on sidewalks when a bike path is not provided. Op-

erators must move at a safe speed and yield to pedestrians at all times. Reckless or negligent operation of bicycles, skateboards, scooters, and roller blades/skates on any part of campus is prohibited.

(3) Electric-assisted bicycles must be used in human propulsion only mode on pedestrian malls and sidewalks.

(4) Motorized foot scooters must be used in a human propulsion only mode on sidewalks.

(5) Bicyclists must obey all traffic rules of the road when operating a bicycle in roadways.

(6) Bicycles may be secured only at bicycle racks and facilities designed for such purpose.

(7) Bicycles that are not secured at university-provided bicycle racks or bicycle storage facilities may be impounded at the owner's expense.

(8) Abandoned and inoperable bicycles. Internal policies regarding abandoned and inoperable bicycles, including the impoundment of bicycles at the WSUV campus, may be established upon approval by the vice chancellor or designee whose responsibilities include supervision of (~~the parking department~~) parking services.

WSR 24-11-155

PROPOSED RULES

DEPARTMENT OF HEALTH

[Filed May 22, 2024, 10:08 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-17-070.

Title of Rule and Other Identifying Information: Creating licensing requirements for organ transport services and vehicles. The department of health (department) is proposing a new rule in response to legislative requirements under SHB 1271 (chapter 290, Laws of 2023) to establish the minimum standards for organ transport vehicles and equipment in WAC 246-976-360.

Hearing Location(s): On June 25, 2024, at 9:00 a.m., at the Washington State Department of Health, 111 Israel Road S.E., Town Center 2, Room 166, Tumwater, WA 98501; or Zoom link. Register in advance for this webinar https://us02web.zoom.us/webinar/register/WN_OnEZLx9lS8ulQb8iRa4F-A. After registering, you will receive a confirmation email containing information about joining the webinar. You may attend virtually or in person. You may also submit comments in writing.

Date of Intended Adoption: July 2, 2024.

Submit Written Comments to: Jason Norris, P.O. Box 47853, Olympia, WA 98504-7853, email <https://fortress.wa.gov/doh/policyreview/>, fax 360-236-2380, by June 25, 2024.

Assistance for Persons with Disabilities: Contact Jill Hayes, phone 360-236-2838, fax 360-236-2380, TTY 800-833-6388 or 711, email jill.hayes@doh.wa.gov, by June 18, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: SHB 1271, Organ transport vehicles and services, directs the department to issue a license to organ transport services that meet minimum licensing standards. The department must create rules establishing minimum licensing standards for organ transport vehicles and equipment. This proposed new rule establishes minimum requirements for vehicle and equipment standards, as well as establishes the licensing process to obtain an organ transport license. The law and the proposed rules will allow licensed organ transport vehicles to use lights and sirens, high occupancy vehicle (HOV) lanes, and signal preemptive devices to transport time critical organs and tissues within Washington state without compromising public health and safety.

Reasons Supporting Proposal: SHB 1271 directs the department to issue a license to organ transport services that meet the licensing standards established in the law and the minimum standards established by the department. The proposed rules establish minimum standards for the issuance, suspension, and revocation of organ transport vehicles and service licenses to implement SHB 1271.

Statutory Authority for Adoption: SHB 1271 (chapter 290, Laws of 2023); RCW 43.70.040 and 18.73.081.

Statute Being Implemented: SHB 1271 (chapter 290, Laws of 2023); RCW 43.70.040 and 18.73.290.

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Jason Norris, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-2851.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Jason Norris, P.O. Box 47853, Olympia, WA 98504-7853, phone 360-236-2851, fax 360-236-2830, TTY 800-833-6388 or 711, email jason.norris@doh.wa.gov.

Scope of exemption for rule proposal from Regulatory Fairness Act requirements:

Is not exempt.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated.

Brief description of the proposed rule including the current situation/rule, followed by the history of the issue and why the proposed rule is needed. A description of the probable compliance requirements and the kinds of professional services that a small business is likely to need in order to comply with the proposed rule.

As directed by SHB 1271 (chapter 290, Laws of 2023), Organ transport vehicles, the department must establish minimum standards for organ transport vehicles and equipment. Additionally, the legislation requires the department to issue a license to organ transport vehicles and organ transport services.

This is a new rule, and there are no other states in the United States or any current federal laws around organ transport vehicles or organ transport services. By establishing this rule, the department will satisfy the requirements of SHB 1271. The department will be able to enforce minimum standards through the effect of rule.

It is anticipated that the rule making will ensure regulations and standards are clear, concise, and reflect current standards and best practices for organ transport vehicles and services for the benefit and safety of the public.

The probable compliance requirements for a small business to comply with the proposed rule would include the additional requirements of adding a fire extinguisher to the vehicle and requiring the organ transport vehicle to have the ability to secure the equipment, organs, and tissue donors in the vehicle to prevent items from sliding, rolling, and any vertical movement.

Identification and summary of which businesses are required to comply with the proposed rule using the North American Industry Classification System (NAICS).

SBEIS Table 1. Summary of Businesses Required to comply to the Proposed Rule

NAICS Code (4, 5, or 6 digit)	NAICS Business Description	Number of Businesses in Washington State	Minor Cost Threshold
621991	Blood and Organ Banks	7	\$27,571.15
621999	All Other Miscellaneous Ambulatory Health Care Services	60	\$5,446.13

Analysis of probable costs of businesses in the industry to comply to the proposed rule and includes the cost of equipment, supplies, labor, professional services, and administrative costs. The analysis considers if compliance with the proposed rule will cause businesses in the industry to lose sales or revenue.

New WAC 246-976-360 Organ Transport Service and Vehicle License.

Description: This new rule describes how to obtain a license for an organ transport service and an organ transport vehicle. For organ transport **services and vehicles**, the proposed new rule:

- Directs the applicant to comply with the requirements in statute and submit an application for licensure. Proposed rule language directing the applicant to comply with requirements in statute is exempt under RCW 34.05.328 (5)(b)(iii) as it incorporates by reference without material change Washington state statutes. The application process outlined in the proposed rule is not considered a significant legislative rule, by definition in RCW 34.05.328 (5)(c)(i), this is considered a "procedural rule" and therefore a cost/benefit analysis is not required.
- Outlines the vehicle and driver equipment standards that an applicant must meet in order to obtain an organ transport vehicle license. These include:
 - o Standards for vehicle safety features such as tires, lighting, wipers, battery, brakes, and measures to secure items.
 - o Requirements for equipment such as seat belts, mirrors, fire extinguisher, and smooth surfaces.

These requirements are incorporated by reference to RCW 18.73.290. These requirements are exempt from analysis under RCW 34.05.328 (5)(c)(i).

Cost(s): For both current vehicles providing organ transport services and new vehicles seeking to operate this service, the proposed rule establishes minimum vehicle standards that the industry understands are necessary to provide safe vehicles. The department anticipates there may be costs for vehicles that are either not in compliance with these vehicle standards or need repair in which to continue to meet vehicle standards. The department was unable to quantify these costs due to variability but believes that vehicles currently providing service already adhere to basic vehicle safety features, such as tires, lighting, wipers, battery, brakes, etc. These vehicle standards are common for basic vehicle safety.

To allow for safe organ transport, the department anticipates that some vehicles may need to be retrofitted to adhere to the proposed rule. These include measures to secure items and fire extinguishers. SBEIS Table 2 below outlines the range of estimated additional costs to adhere to the proposed rule. The department produced the estimates with the following assumptions:

- There is not a set type of vehicle required for transportation. Vehicle types could widely range in make and model.
- The type of equipment necessary will depend on the type of services provided.
- The proposed rules do not require a specific way to secure the items as long as they are secure. This could range from securing the item in a seat using a seatbelt or using a ratchet strap to hold a container down, to installing gurney mount hardware.
- The proposed rule requires all service vehicles be required to have a fire extinguisher.

The department does not anticipate compliance with the proposed rule will cause businesses in the industry to lose sales or revenue.

Summary of all Cost(s):**SBEIS Table 2. Summary of Section 3 Probable Cost(s)**

WAC Section and Title	Probable Cost(s)	Description
New WAC 246-976-360 Organ transport service and vehicle license	One-time equipment cost range: \$0 to \$3,112	Securing equipment, gurney mount hardware.
	Initial cost range: \$50 - \$100	Fire extinguisher
Total	Up to \$3212	

The department does not anticipate that the proposed rule may impose more-than-minor costs for businesses in the industry. The costs of the proposed rule, \$3,212 are less than the minor cost threshold \$5,446.13 (as calculated above).

Summary of how the costs were calculated: The costs of the proposed rules were calculated by reaching out to a subject matter expert in fleet maintenance to determine the additional equipment that is being required from the current standards of the current services that are providing organ transport services. Those items were a fire extinguisher and securing devices for equipment and gurneys.

A copy of the detailed cost calculations may be obtained by contacting Jason Norris, P.O. Box 47853, Olympia, WA 98504-7853, phone 360-236-2851, fax 360-236-2830, TTY 800-833-6388 or 711, email jason.norris@doh.wa.gov.

May 22, 2024
 Todd Mountin, PMP
 Deputy Chief of Policy
 for Umair A. Shah, MD, MPH
 Secretary

OTS-5376.3

NEW SECTION

WAC 246-976-360 Organ transport service and vehicle license.

(1) The secretary licenses organ transport services and vehicles. To become licensed an applicant shall:

- (a) Comply with RCW 18.73.290;
- (b) Submit a completed application on forms provided by the department; and
- (c) Meet the minimum organ transport vehicle standards in subsection (2) of this section.

(2) A licensed organ transport vehicle must meet the following standards:

- (a) Essential equipment for driver and passenger safety and comfort must be in good working order;
- (b) A paper copy of current state organ transport vehicle license must be made immediately available upon request;
- (c) Tires must be in good condition;
- (d) Electrical system. All regular and special electrical equipment must be functional at all times:
 - (i) Interior lighting in the driver compartment must be designed and located so that no glare is reflected from surrounding areas to the driver's eyes or line of vision from the instrument panel, switch panel, or other areas which may require illumination while the vehicle is in motion;

- (ii) Exterior lights must be fully operational;
 - (iii) Emergency warning lights must be provided in accordance with RCW 46.37.190, as administered by the state patrol; and
 - (iv) Emergency audible warning signals may be used in accordance with RCW 46.37.380;
 - (e) Windshield wipers and washers must be dual, electric, multi-speed, and functional at all times;
 - (f) Battery system. The battery must be capable of sustaining all systems. It must be located in a ventilated area sealed off from the vehicle interior, and completely accessible for checking and removal;
 - (g) Vehicle brakes, heating and cooling units, and window glass, must be functional at all times;
 - (h) Equipment, organs, and tissue donors must be secured in the vehicle to prevent items from sliding, rolling, and vertical movement;
 - (i) Functioning seat belts that comply with Federal Motor Vehicle Safety Standards 207, 208, 209, and 210. Restraints must be provided in all seat positions in the vehicle;
 - (j) Mirrors on the left side and right side of the vehicle. The location of mounting must provide maximum rear vision from the driver's seated position;
 - (k) One 5-B:C fire extinguisher must be secured in a manner that prevents sliding, rolling, and vertical movement; and
 - (l) Exterior surfaces must be smooth, with appurtenances kept to a minimum.
- (3) Drivers of organ transport vehicles must comply with RCW 18.73.290.
- (4) Licenses for organ transport services and vehicles must be renewed every two years. To renew a license, an applicant shall submit an application to the department at least 30 days prior to expiration.

WSR 24-11-157
PROPOSED RULES
NORTHWEST CLEAN
AIR AGENCY

[Filed May 22, 2024, 10:40 a.m.]

Original Notice.

Proposal is exempt under RCW 70A.15.2040(1).

Title of Rule and Other Identifying Information: Regulation of the Northwest Clean Air Agency (NWCAA).

Hearing Location(s): On July 25, 2024, at 10 a.m., at the NWCAA Office, 1600 South 2nd Street, Mount Vernon, WA; or via video and teleconference <https://us06web.zoom.us/j/2183891719?pwd=QjYxZzJjeGhZVGNSaHpmUTczVlRidz09&omn=87173063449>, Meeting ID 218 389 1719, Passcode 2E6SP4, Phone 253-215-8782.

Date of Intended Adoption: August 8, 2024.

Submit Written Comments to: Mark Buford, 1600 South 2nd Street, Mount Vernon, WA 98273, email info@nwcleanairwa.gov, fax 360-428-1620, by July 25, 2024 at 11 a.m.

Assistance for Persons with Disabilities: Contact Tanya Asmundson, phone 360-428-1617, fax 360-428-1620, email info@nwcleanairwa.gov, by July 18, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Update the RCW citations for the Washington State Clean Air Act in the NWCAA Regulation to reflect the RCW renumbering by the state legislature under Washington state SHB 2246. No language was changed in the Clear [Clean] Air Act or the NWCAA Regulations as a part of this rule change. (NWCAA Sections 100, 103, 120, 121, 131, 132, 133, 200, 300, 305, 309, 320, 322, 324, 350, 502, 504, and 506).

Reasons Supporting Proposal: See list above.

Statutory Authority for Adoption: Chapter 70A.15 RCW.

Statute Being Implemented: RCW 70A.15.2040(1) and chapter 42.56 RCW.

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

Name of Proponent: NWCAA, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Mark Buford, 1600 South 2nd Street, Mount Vernon, WA, 360-428-1617.

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

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable under RCW 70A.15.2040.

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

Is exempt under RCW 70A.15.2040.

Explanation of exemptions: Not applicable under RCW 70A.15.2040.

Scope of exemption for rule proposal:

Is fully exempt.

May 14, 2024
Mark Buford
Executive Director

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 24-13 issue of the Register.