

**WSR 21-04-037**  
**PERMANENT RULES**  
**DEPARTMENT OF**

**SOCIAL AND HEALTH SERVICES**

(Behavioral Health Administration)

[Filed January 26, 2021, 3:47 p.m., effective March 1, 2021]

Effective Date of Rule: March 1, 2021.

Purpose: The department is amending the rules listed below to eliminate shared benefit as a status and as a basis to reduce a client's monthly benefit for in-home personal care, and to require a written agreement for a family or household individual provider to be assessed as a source of informal support. These rule changes eliminate adjustments to base hours, add-on hours, or any other in-home personal care services benefit that a client would otherwise receive because the paid provider shares in the benefit of an instrumental activity of daily living (IADL) provided to the client by the provider, and on the basis that two or more clients in a multi-client household benefit from the same IADL task(s) being performed. Any current rule that uses the phrase "shared benefit" or a similar phrase is being amended to remove the phrase and the definition of "informal support" is being amended.

This rule change is being effectuated as part of a settlement agreement with SEIU 775. SEIU 775 challenged department of social and health services rules that adjusted client benefits for shared benefits and informal supports under the Administrative Procedure Act. The department believes that assessing for shared benefit and informal support on an individualized basis is lawful, but such litigation is costly, and subjects the department to ongoing risks should the rules be held invalid by a court.

Additionally, assessment for shared benefit is often confusing for assessors and may result in inconsistent implementation state-wide. While adjudicative hearings are available to ensure that shared benefits are not assessed incorrectly to the detriment of clients, such hearings impose costs on the department and clients.

Citation of Rules Affected by this Order: Amending WAC 388-106-0010, 388-106-0130, 388-106-0055, 388-71-0515, and 388-71-0516.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Adopted under notice filed as WSR 20-23-069 on November 16, 2020.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 5, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 5, Repealed 0.

Date Adopted: January 26, 2021.

Katherine I. Vasquez  
Rules Coordinator

SHS-4842.2

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

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

- (1) Take direction from the client, who is the IP's employer, or when appropriate, from the client's legal representative;
- (2) Understand the client's plan of care that has been signed by the client or legal representative, which may be translated or interpreted, as necessary, and as requested by the client;
- (3) Provide the services as outlined on the client's plan of care, as described in WAC 388-106-0010, according to the client's direction, supervision, and prioritization of tasks within the number of hours authorized;
- (4) Accommodate the client's individual preferences and unique needs in providing care;
- (5) Contact the client, client's representative and case manager when there are changes that affect the personal care and other tasks listed on the plan of care;
- (6) Observe and consult with the client or client's representative, regarding change(s) in health, take appropriate action, and respond to emergencies;
- (7) Notify the case manager immediately when the client enters a hospital, or moves to another setting;
- (8) Notify the case manager immediately in the event of the client's death;
- (9) Notify the department or AAA immediately when unable to staff/serve the client;
- (10) Notify the department/AAA when the individual provider will no longer provide services. The individual provider must:
  - (a) Give at least two weeks' notice, and
  - (b) Notify the client or the client's representative in writing:
 

and

    - (c) Notify the client's case manager.
- (11) Complete and keep accurate time sheets of authorized/paid hours that are accessible to the social worker/case manager; under WAC 388-106-0130, the department does not pay for (~~shared benefit(s) or~~) informal support provided to the client by anyone, including the IP; and
- (12) Comply with all applicable laws, regulations, and the individual provider contract.

[Statutory Authority: RCW 74.08.090, 74.09.520. WSR 13-02-023, § 388-71-0515, filed 12/20/12, effective 1/20/13. Statutory Authority: RCW 74.08.090, 74.09.520, 2009 c 571, and Washington state 2009-11 budget, section 206(17). WSR 10-06-112, § 388-71-0515, filed 3/3/10, effective 4/3/10. Statutory Authority: RCW 74.08.090, 74.09.520. WSR 05-11-082, § 388-71-0515, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.08.090, 74.09.520, and 74.39A.090. WSR 02-21-098, § 388-71-0515, filed 10/21/02, effective 11/21/02. Statutory Authority: RCW 74.08.090, 74.09.520, 43.20A.050, 43.43.842, 74.39A.090, 43.20A.710, 74.39.050, 43.43.830, 74.39.095. WSR 01-11-019, § 388-71-0515, filed 5/4/01, effective 6/4/01. Statutory Authority: RCW

74.08.090, 74.09.520, 43.20A.050, 43.43.842, 74.39A.090, 43.20A.710, 74.39.050, 43.43.830. WSR 00-03-043, § 388-71-0515, filed 1/13/00, effective 2/13/00.]

**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.

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

**WAC 388-71-0516 What are the responsibilities of home care agency when providing care to a client?** In providing care to a client, a home care agency must:

- (1) Ensure that the assigned home care agency long-term care worker(s) understands the client's plan of care that is signed by the client or legal representative, and which may be translated or interpreted, as necessary for the client;
- (2) Provide tasks from services outlined in a client's plan of care, as described in WAC 388-106-0010;
- (3) Accommodate the client's individual preferences and unique needs in providing care;
- (4) Contact the client, client's representative and case manager when there are changes observed by the assigned home care agency long-term care worker that affect the personal care and other tasks listed on the plan of care;
- (5) Ensure that the assigned home care agency long-term care worker(s) observes the client for and consults with the client or representative, regarding change(s) in health, takes appropriate action, and responds to emergencies;
- (6) Notify the case manager immediately when the client enters a hospital, or moves to another setting;
- (7) Notify the case manager immediately in the event of the client's death;
- (8) Notify the department or AAA immediately when unable to staff/serve the client;
- (9) Notify the department or AAA when the home care agency will no longer provide services and the home care agency must:
  - (a) Give at least two weeks' notice; and
  - (b) Notify the client or the client's representative in writing;
 and
  - (c) Notify the case manager.
- (10) Comply with time keeping requirements, and keep accurate time sheets of authorized/paid hours that are accessible to the appropriate department or designee staff; under WAC 388-106-0130, the department does not pay for (~~shared benefit(s) or~~) voluntary informal support that may be provided to the client by anyone, including providers; and
- (11) Comply with all applicable laws and regulations.

[Statutory Authority: RCW 74.08.090, 74.09.520. WSR 13-02-023, § 388-71-0516, filed 12/20/12, effective 1/20/13.]

AMENDATORY SECTION (Amending WSR 18-16-004, filed 7/19/18, effective 8/19/18)

**WAC 388-106-0010 What definitions apply to this chapter? "Ability to make self understood"** means how you made yourself understood to those closest to you in the last seven days before the assessment; expressed or communicated requests, needs, opinions, urgent problems and social conversations, whether in speech, writing, sign language, symbols, or a combination of these including use of an alternative communication method:

~~((a))~~ (1) Understood: You expressed ideas clearly;

~~((b))~~ (2) Usually understood: You had difficulty finding the right words or finishing thoughts, resulting in delayed responses, or you required some prompting to make self understood;

~~((c))~~ (3) Sometimes understood: You had limited ability, but were able to express concrete requests regarding at least basic needs (e.g. food, drink, sleep, toilet);

~~((d))~~ (4) Rarely/never understood: At best, understanding was limited to caregiver's interpretation of client specific sounds or body language (e.g. indicated presence of pain or need to toilet);

~~((e))~~ (5) Child under three: Proficiency is not expected of a child under three and a child under three would require assistance with communication with or without a functional disability. Refer to the developmental milestones table in WAC 388-106-0130.

**"Activities of daily living (ADL)"** means the following:

~~((a))~~ (1) Bathing: How you took a full-body bath/shower, sponge bath, and transferred in/out of tub/shower.

~~((b))~~ (2) Bed mobility: How you moved to and from a lying position turned side to side, and positioned your body while in bed, in a recliner, or other type of furniture you slept in.

~~((c))~~ (3) Dressing: How you put on, fastened, and took off all items of clothing, including donning/removing prosthesis, splints, either braces or orthotics, or both.

~~((d))~~ (4) Eating: How you ate and drank, regardless of skill. Eating includes any method of receiving nutrition, e.g., by mouth, tube or through a vein. Eating does not include any set up help you received, e.g. bringing food to you or cutting it up in smaller pieces.

~~((e))~~ (5) Locomotion in room and immediate living environment: How you moved between locations in your room and immediate living environment. If you are in a wheelchair, locomotion includes how self-sufficient you were once in your wheelchair.

~~((f))~~ (6) Locomotion outside room: How you moved to and returned from your immediate living environment, outdoors, and more distant areas. If you are living in a contracted assisted living, enhanced services facility, adult residential care, enhanced adult residential care, enhanced adult residential care-specialized dementia care facility or nursing facility (NF), this includes areas set aside for dining, activities, etc. If you are living in your own home or in an adult family home, locomotion outside immediate living environment including outdoors, includes how you moved to and returned from a patio or porch, backyard, to the mailbox, to see the next-door neighbor, or when accessing your community.

~~((g))~~ (7) Walk in room, hallway and rest of immediate living environment: How you walked between locations in your room and immediate living environment.

~~((h))~~ (8) Medication management: Describes the amount of assistance, if any, required to receive prescription medications, over the counter medications, or herbal supplements.

~~((i))~~ (9) Toilet use: How you eliminated or toileted, used a commode, bedpan, or urinal, transferred on/off toilet, cleansed, changed pads, managed ostomy or catheter, and adjusted clothes. Toilet use does not include emptying a bedpan, commode, ostomy or catheter bag. This type of set up assistance is considered under the definition of support provided.

~~((j))~~ (10) Transfer: How you moved between surfaces, e.g., to/from bed, chair, wheelchair, standing position. Transfer does not include how you moved to/from the bath, toilet, or got in/out of a vehicle.

~~((k))~~ (11) Personal hygiene: How you maintain personal hygiene tasks, such as combing hair, brushing teeth, shaving, applying makeup, washing/drying face, hands (including nail care), and perineum, including menses care. Personal hygiene does not include hygiene in baths and showers.

**"Age appropriate"** proficiency in the identified task is not expected of a child that age and a child that age would require assistance with the task with or without a functional disability. Refer to the developmental milestones table in WAC 388-106-0130 for the specific ages.

**"Aged person"** means a person sixty-five years of age or older.

**"Agency provider"** means a licensed home care agency or a licensed home health agency having a contract to provide long-term care personal care services to you in your own home.

**"Alternative benefit plan"** means the scope of services described in WAC 182-501-0060 available to persons eligible to receive health care coverage under the Washington apple health modified adjusted gross income (MAGI)-based adult coverage described in WAC 182-505-0250.

**"Application"** means a written request for medical assistance or long-term care services submitted to the department by the applicant, the applicant's authorized representative, or, if the applicant is incompetent or incapacitated, someone acting responsibly for the applicant. The applicant must submit the request on a form prescribed by the department.

**"Assessment details"** means a printed record of information that the department entered into the CARE assessment describing the assistance you may need.

**"Assessment or reassessment"** means an inventory and evaluation of strengths and limitations based on an in-person interview in your own home or another location that is convenient to you, using the department's comprehensive assessment reporting evaluation (CARE) tool.

**"Assistance available"** means the amount of assistance that will be available for a task if status is coded:

~~((a))~~ Partially met due to availability of other informal support ~~(; or~~

~~(b) Shared benefit~~). The department determines the amount of the assistance available using one of four categories:

~~((i))~~ (1) Less than one-fourth of the time;

~~((ii))~~ (2) One-fourth to one-half of the time;

~~((iii))~~ (3) Over one-half of the time to three-fourths of the time; or

~~((iv))~~ (4) Over three-fourths but not all of the time.

**"Assistance with body care"** means you received or need assistance with:

- ((a)) (1) Application of ointment or lotions;
- ((b)) (2) Trimming of toenails;
- ((c)) (3) Dry bandage changes; or
- ((d)) (4) Passive range of motion treatment.

**"Authorization"** means an official approval of a departmental action, for example, a determination of client eligibility for service or payment for a client's long-term care services.

**"Blind person"** means a person determined blind as described under WAC 182-500-0015 by the division of disability determination services of the medical assistance administration.

**"Body care"** means how you perform with passive range of motion, applications of dressings and ointments or lotions to the body, and pedicure to trim toenails and apply lotion to feet. In adult family homes, enhanced services facilities, contracted assisted living, enhanced adult residential care, and enhanced adult residential care-specialized dementia care facilities, dressing changes using clean technique and topical ointments must be performed by a licensed nurse or through nurse delegation in accordance with chapter 246-840 WAC. Body care excludes:

- ((a)) (1) Foot care if you are diabetic or have poor circulation; or
- ((b)) (2) Changing bandages or dressings when sterile procedures are required.

**"Categorically needy"** means the status of a person who is eligible for medical care under Title XIX of the Social Security Act. See WAC 182-512-0010 and chapter 182-513 WAC.

**"Child"** means an individual less than eighteen years of age.

**"Health action plan"** means an individual plan, which identifies health-related problems, interventions and goals.

**"Client"** means an applicant for service or a person currently receiving services from the department.

**"Current"** means a behavior occurred within seven days of the CARE assessment date, including the day of the assessment. Behaviors that the department designates as current must include information about:

- ((a)) (1) Whether the behavior is easily altered or not easily altered; and
- ((b)) (2) The frequency of the behavior.

**"Decision making"** means your ability (verbally or nonverbally) to make, and actual performance in making, everyday decisions about tasks of activities of daily living in the last seven days before the assessment. The department codes your ability to make decisions as one of the following:

- ((a)) (1) Independent: Decisions about your daily routine were consistent and organized; reflecting your lifestyle, choices, culture, and values.
- ((b)) (2) Difficulty in new situations: You had an organized daily routine, were able to make decisions in familiar situations, but experienced some difficulty in decision making when faced with new tasks or situations.
- ((c)) (3) Poor decisions; unaware of consequences: Your decisions were poor and you required reminders, cues and supervision in planning, organizing and correcting daily routines. You attempted to make decisions, although poorly.
- ((d)) (4) No or few decisions: Decision making was severely impaired; you never/rarely made decisions.

((e)) (5) Child under twelve: Proficiency in decision making is not expected of a child under twelve and a child under twelve would require assistance with decision making with or without a functional disability. Refer to the developmental milestones table in WAC 388-106-0130.

**"Department"** means the state department of social and health services, aging and long-term support administration, developmental disabilities administration, or its designee.

**"Designee"** means area agency on aging.

**"Developmental milestones table"** is a chart showing the age range for which proficiency in the identified task is not expected of a child and assistance with the task would be required whether or not the child has a functional disability.

**"Difficulty"** means how difficult it is or would be for you to perform an instrumental activity of daily living (IADL). This is assessed as:

((a)) (1) No difficulty in performing the IADL;

((b)) (2) Some difficulty in performing the IADL (e.g., you need some help, are very slow, or fatigue easily); or

((e)) (3) Great difficulty in performing the IADL (e.g., little or no involvement in the IADL is possible).

**"Disability"** is described under WAC 182-500-0025.

**"Disabling condition"** means you have a medical condition which prevents you from self performance of personal care tasks without assistance.

**"Estate recovery"** means the department's process of recouping the cost of medicaid and long-term care benefit payments from the estate of the deceased client. See chapter 182-527 WAC.

**"Home health agency"** means a licensed:

((a)) (1) Agency or organization certified under medicare to provide comprehensive health care on a part-time or intermittent basis to a patient in the patient's place of residence and reimbursed through the use of the client's medical identification card; or

((b)) (2) Home health agency, certified or not certified under medicare, contracted and authorized to provide:

((i)) (a) Private duty nursing; or

((ii)) (b) Skilled nursing services under an approved medicaid waiver program.

**"Income"** means income as defined under WAC 182-509-0001.

**"Individual provider"** under RCW 74.39A.240 means a person contracted with the department to provide personal care or respite services.

**"Informal support"** means:

((a)) (1) Assistance that will be provided with the client's agreement as expressed in the assessment process without home and community based services funding. The person providing the informal support must be age 18 or older. Sources of informal support include but are not limited to: family members, friends, housemates/roommates, neighbors, school, childcare, after school activities, church, and community programs.

(2) The department will not consider an individual provider to be a source of informal support unless:

(a) The individual provider is also a family member or a household member who had a relationship with the client that existed before the individual provider entered into a contract with the department; and

(b) The individual provider signs a written agreement that states:

(i) The individual provider understands that the provision of unpaid informal support is voluntary;

(ii) The individual provider understands that if they decline to provide unpaid informal support that the client's benefit could increase and that the client could choose to assign those increased hours to the individual provider;

(iii) If there is a collective bargaining representative that represents the individual provider for the purposes of collective bargaining, the individual provider is informed as to the collective bargaining representative's opinion, if any, about whether the individual provider should agree to provide unpaid informal supports;

(iv) The individual provider understands that the individual provider may stop providing unpaid informal support at any time by informing the case manager that the individual provider wishes to stop providing unpaid informal support; and

(v) The individual provider understands that if the individual provider is a family member or had a household relationship with the client prior to becoming the client's individual provider that they may provide unpaid care to a client above and beyond the individual provider authorization regardless of whether they are providing informal support.

~~((b))~~ (3) Adult day health is coded in the assessment as a source of informal support, regardless of funding source;

~~((e))~~ (4) Informal support does not include ~~((shared benefit or))~~ age appropriate functioning.

**"Institution"** means medical facilities, nursing facilities, and institutions for the intellectually disabled. It does not include correctional institutions. See medical institutions in WAC 182-500-0050.

**"Instrumental activities of daily living (IADL)"** means routine activities performed around the home or in the community in thirty days prior to the assessment and includes the following:

~~((a))~~ (1) Meal preparation: How meals were prepared (e.g., planning meals, cooking, assembling ingredients, setting out food, utensils, and cleaning up after meals). NOTE: The department will not authorize this IADL to only plan meals or clean up after meals. You must need assistance with other tasks of meal preparation.

~~((b))~~ (2) Ordinary housework: How ordinary work around the house was performed (e.g., doing dishes, dusting, making bed, cleaning the bathroom, tidying up, laundry).

~~((e))~~ (3) Essential shopping: How shopping was completed to meet your health and nutritional needs (e.g., selecting items). Shopping is limited to brief, occasional trips in the local area to shop for food, medical necessities and household items required specifically for your health, maintenance or well-being. This includes shopping with or for you.

~~((d))~~ (4) Wood supply: How wood or pellets were supplied (e.g., splitting, stacking, or carrying wood or pellets) when you use wood, pellets, or a combination of both, as the only source of fuel for heating and/or cooking.

~~((e))~~ (5) Travel to medical services: How you traveled by vehicle to a physician's office or clinic in the local area to obtain medical diagnosis or treatment. This travel includes driving vehicle yourself or traveling as a passenger in a car, bus, or taxi.



~~((f))~~ (6) Managing finances: How bills were paid, checkbook is balanced, household expenses are managed. The department cannot pay for any assistance with managing finances.

~~((g))~~ (7) Telephone use: How telephone calls were made or received on your behalf (with assistive devices such as large numbers on telephone, amplification as needed).

**"Long-term care services"** means the services administered directly or through contract by the department and identified in WAC 388-106-0015.

**"MAGI"** means modified adjusted gross income. It is a methodology used to determine eligibility for Washington apple health (medicaid), and is defined in WAC 182-500-0070.

**"Medicaid"** is defined under WAC 182-500-0070.

**"Medically necessary"** is defined under WAC 182-500-0070.

**"Medically needy (MN)"** means the status of a person who is eligible for a federally matched medical program under Title XIX of the Social Security Act, who, but for income above the categorically needy level, would be eligible as categorically needy. Effective January 1, 1996, an AFDC-related adult is not eligible for MN.

**"New Freedom consumer directed services (NFCDS)"** means a mix of services and supports to meet needs identified in your assessment and identified in a New Freedom spending plan, within the limits of the individual budget, that provide you with flexibility to plan, select, and direct the purchase of goods and services to meet identified needs. Participants have a meaningful leadership role in:

~~((a))~~ (1) The design, delivery and evaluation of services and supports;

~~((b))~~ (2) Exercising control of decisions and resources, and making their own decisions about health and well-being;

~~((c))~~ (3) Determining how to meet their own needs;

~~((d))~~ (4) Determining how and by whom these needs should be met; and

~~((e))~~ (5) Monitoring the quality of services received.

**"New Freedom consumer directed services (NFCDS) participant"** means a participant who is an applicant for or currently receiving services under the NFCDS waiver.

**"New Freedom spending plan (NFSP)"** means the plan developed by you, as a New Freedom participant, within the limits of an individual budget, that details your choices to purchase specific NFCDS and provides required federal medicaid documentation.

**"Own home"** means your present or intended place of residence:

~~((a))~~ (1) In a building that you rent and the rental is not contingent upon the purchase of personal care services as defined in this section;

~~((b))~~ (2) In a building that you own;

~~((c))~~ (3) In a relative's established residence; or

~~((d))~~ (4) In the home of another where rent is not charged and residence is not contingent upon the purchase of personal care services as defined in this section.

**"Past"** means the behavior occurred from eight days to five years of the assessment date. For behaviors indicated as past, the department determines whether the behavior is addressed with current interventions or whether no interventions are in place.

**"Personal aide"** is defined in RCW 74.39.007.

**"Personal care services"** means physical or verbal assistance with activities of daily living (ADL) and instrumental activities of daily

living (IADL) due to your functional limitations. Assistance is evaluated with the use of assistive devices.

**"Physician"** is defined under WAC 182-500-0085.

**"Plan of care"** means assessment details and service summary generated by CARE.

**"Provider or provider of service"** means an institution, agency, or person:

((a)) (1) Having a signed department contract to provide long-term care client services; and

((b)) (2) Qualified and eligible to receive department payment.

**"Reasonable cost"** means a cost for a service or item that is consistent with the market standards for comparable services or items.

**"Representative"** means a person who you have chosen, or has been appointed by a court, whose primary duty is to act on your behalf to direct your service budget to meet your identified health, safety, and welfare needs.

**"Residential facility"** means a licensed adult family home under department contract; a licensed enhanced services facility under department contract; or licensed assisted living facility under department contract to provide assisted living, adult residential care or enhanced adult residential care.

**"Self-performance for ADLs"** means what you actually did in the last seven days before your assessment, not what you might be capable of doing. Self-performance for ADLs is based on your level of performance that occurred three or more times in the seven-day period. Scoring of self-performance for ADLs does not include physical assistance that occurred less than three times in the seven day look back period, or set-up help. Your self performance level is scored as:

((a)) (1) Independent, if you received no help or oversight, or if you needed help or oversight only once or twice;

((b)) (2) Supervision, if you received oversight (monitoring or standby), encouragement, or cueing three or more times;

((c)) (3) Limited assistance, if you were highly involved in the ADL and received assistance that involved physical, nonweight bearing contact between you and your caregiver, or guided maneuvering of limbs on three or more occasions.

((d)) (4) Extensive assistance, if you performed part of the ADL, but on three or more occasions, you needed weight bearing support or you received full performance of a subtask of the ADL, but not all, of the ADL.

((e)) (5) Total dependence, if you received full caregiver performance every time the ADL and all subtasks are completed during the entire seven-day period from others. Total dependence means complete nonparticipation by you in all aspects of the ADL; or

((f)) (6) ADL did not occur, if you or others did not perform an ADL over the last seven days before your assessment. The ADL may not have occurred because:

((i)) (a) You were not able (e.g., walking, if paralyzed);

((ii)) (b) No provider was available to assist; or

((iii)) (c) You declined assistance with the task.

**"Self-administration of medication"** means your ability to manage your prescribed and over the counter medications. Your level of ability is coded for the highest level of need and scored as:

((a)) (1) Independent, if you remember to take medications as prescribed and manage your medications without assistance.

((b)) (2) Assistance required, if you need assistance from a nonlicensed provider to facilitate your self-administration of a pre-

scribed, over the counter, or herbal medication, as defined in chapter 246-888 WAC. Assistance required includes reminding or coaching you, handing you the medication container, opening the container, using an enabler to assist you in getting the medication into your mouth, alteration of a medication for self-administration, and placing the medication in your hand. This does not include assistance with intravenous or injectable medications. You must be aware that you are taking medications.

~~((e))~~ (3) Self-directed medication assistance/administration, if you are an adult with a functional disability who is capable of and who chooses to self-direct your medication assistance/administration as prescribed by your medical professional.

~~((d))~~ (4) Must be administered, if you must have prescription or over the counter medications placed in your mouth or applied or instilled to your skin or mucus membrane. Administration must either be performed by a licensed professional or delegated by a registered nurse to a qualified caregiver (per chapter 246-840 WAC). Administration may also be performed by a family member or unpaid caregiver in in-home settings or in residential settings if facility licensing regulations allow. Intravenous or injectable medications may never be delegated except for insulin injections.

**"Self-performance for bathing"** means what you actually did in the last seven days before your assessment, not what you might be capable of doing or how well you performed the ADL of bathing. Self-performance for bathing is based on your level of performance that occurred on at least one or more occasions in the seven-day period. Scoring of self-performance for bathing does not include physical assistance that did not occur in the seven day look back period, or set-up help. Your self performance level is scored as:

~~((a))~~ (1) Independent, if you received no help or oversight to complete the ADL of bathing.

~~((b))~~ (2) Supervision, if in order to bathe you received oversight (monitoring or standby), encouragement, or cueing.

~~((e))~~ (3) Physical help transfer only, if in order to bathe you had help to transfer only.

~~((d))~~ (4) Physical help, if in order to bathe you had hands on assistance with bathing, but you did not receive full caregiver performance of the ADL of bathing.

~~((e))~~ (5) Total dependence, if in order to bathe you received full caregiver performance of the ADL of bathing every time. Total dependence means complete physical nonparticipation by you in all aspects of bathing; or the ADL:

~~((f))~~ (6) Did not occur, if you or others did not perform the ADL of bathing over the last seven days before your assessment. The ADL of bathing may not have occurred because:

~~((i))~~ (a) You were not able (e.g., you may be paralyzed);

~~((ii))~~ (b) No provider was available to assist; or

~~((iii))~~ (c) You declined because you chose not to perform the ADL.

**"Self-performance for IADLs"** means what you actually did in the last thirty days before the assessment, not what you might be capable of doing or how well you performed the ADL. Scoring is based on the level of performance that occurred at least one time in the thirty-day period. Your self performance is scored as:

~~((a))~~ (1) Independent, if you received no help, set-up help, or supervision;

~~((b))~~ (2) Assistance, if you received any help with the task, including cueing or monitoring in the last thirty days;

~~((e))~~ (3) Total assistance, if you are a child and needed the ADL fully performed by others and you are functioning outside of typical developmental milestones; or

~~((d))~~ (4) ADL did not occur, if you or others did not perform the ADL in the last thirty days before the assessment.

**"Service summary"** is CARE information which includes: Contacts (e.g. emergency contact), services the client is eligible for, number of hours or residential rates, personal care tasks, the list of formal and informal providers and what tasks they will provide, a provider schedule, identified referrals/information, and dates and agreement to the outlined services.

~~("Shared benefit" means:~~

~~(a) A client and their paid caregiver both share in the benefit of an IADL task being performed; or~~

~~(b) Two or more clients in a multi-client household benefit from the same IADL task(s) being performed.)~~

**"SSI-related"** is defined under WAC 182-512-0050.

**"Status"** means the level of assistance:

~~((a))~~ (1) That will be provided by informal supports; or

~~((b) That will be provided by a care provider who may share in the benefit of an IADL task being performed for a client or for two or more clients in a multi-client household; or~~

~~(e))~~ (2) That will be provided to a child primarily due to his or her age.

(3) The department determines the status of each ADL or IADL and codes the status as follows:

(a) Met, which means the ADL or IADL will be fully provided by an informal support;

(b) Unmet, which means an informal support will not be available to provide assistance with the identified ADL or IADL;

(c) Partially met, which means an informal support will be available to provide some assistance, but not all, with the identified ADL or IADL;

~~(d) ((Shared benefit, which means:~~

~~(i) A client and their paid caregiver will both share in the benefit of an IADL task being performed; or~~

~~(ii) Two or more clients in a multi-client household will benefit from the same IADL task(s) being performed.~~

~~(e))~~ Age appropriate or child under (age), means proficiency in the identified task is not expected of a child that age and a child that age would require assistance with the task with or without a functional disability. The department presumes children have a responsible adult(s) in their life to provide assistance with personal care tasks. Refer to the developmental milestones table in WAC 388-106-0130; or

~~((f))~~ (e) Client declines, which means you will not want assistance with the task.

**"Supplemental security income (SSI)"** means the federal program as described under WAC 182-500-0100.

**"Support provided"** means the highest level of support provided (to you) by others in the last seven days before the assessment, even if that level of support occurred only once. The department determines support provided as follows:

~~((a))~~ (1) No set-up or physical help provided by others;

((b)) (2) Set-up help only provided, which is the type of help characterized by providing you with articles, devices, or preparation necessary for greater independence in performance of the ADL. (For example, set-up help includes but is not limited to giving or holding out an item or cutting up prepared food);

((e)) (3) One-person physical assist provided;

((d)) (4) Two- or more person physical assist provided; or

((e)) (5) ADL did not occur during entire seven-day period.

"Task" means a component of an activity of daily living. Several tasks may be associated to a single activity of daily living.

"You/your" means the client.

[Statutory Authority: RCW 74.08.090, WSR 18-16-004, § 388-106-0010, filed 7/19/18, effective 8/19/18. Statutory Authority: RCW 74.08.090 and 74.09.520, WSR 15-20-054, § 388-106-0010, filed 9/30/15, effective 10/31/15; WSR 14-13-060, § 388-106-0010, filed 6/12/14, effective 7/13/14; WSR 14-04-097, § 388-106-0010, filed 2/4/14, effective 3/7/14; WSR 11-22-043, § 388-106-0010, filed 10/27/11, effective 11/27/11; WSR 10-08-074, § 388-106-0010, filed 4/6/10, effective 5/7/10. Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.030. WSR 06-16-035, § 388-106-0010, filed 7/25/06, effective 8/25/06. Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.010 and 74.39A.020. WSR 06-05-022, § 388-106-0010, filed 2/6/06, effective 3/9/06. Statutory Authority: RCW 74.08.090, 74.09.520, WSR 05-11-082, § 388-106-0010, filed 5/17/05, effective 6/17/05.]

**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.

AMENDATORY SECTION (Amending WSR 16-04-020, filed 1/22/16, effective 2/22/16)

**WAC 388-106-0055 What is the purpose of an assessment?** The purpose of an assessment is to:

- (1) Determine eligibility for long-term care programs;
- (2) Identify your strengths, limitations, goals, and preferences;
- (3) Evaluate your living situation and environment;
- (4) Evaluate your physical health, functional, and cognitive abilities;
- (5) Determine availability of informal supports(~~(, shared benefits,)~~) and other nondepartment paid resources;
- (6) Determine need for intervention;
- (7) Determine need for case management activities;
- (8) Determine your classification group that will set your payment rate for residential care or number of hours of in-home care;
- (9) Determine need for referrals; and
- (10) Develop a plan of care, as defined in WAC 388-106-0010.
- (11) In the case of New Freedom consumer directed services, the purpose of an assessment is to determine functional eligibility and for the participant to develop the New Freedom spending plan, as defined in WAC 388-106-0010.

[Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.400 and 42 C.F.R. § 441.500-590. WSR 16-04-020, § 388-106-0055, filed 1/22/16, effective 2/22/16. Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.030. WSR 06-16-035, § 388-106-0055, filed 7/25/06, effective

8/25/06. Statutory Authority: RCW 74.08.090, 74.09.520. WSR 05-11-082, § 388-106-0055, filed 5/17/05, effective 6/17/05.]

AMENDATORY SECTION (Amending WSR 15-20-054, filed 9/30/15, effective 10/31/15)

**WAC 388-106-0130 How does the department determine the number of hours I may receive for in-home care?** (1) The department assigns a base number of hours to each classification group as described in WAC 388-106-0125.

(2) The department will adjust base hours to account for informal supports (~~(, shared benefit,)~~) and age appropriate functioning (as those terms are defined in WAC 388-106-0010), and other paid services that meet some of an individual's need for personal care services:

(a) The CARE tool determines the adjustment for informal supports (~~(, shared benefit,)~~) and age appropriate functioning. A numeric value is assigned to the status and/or assistance available coding for ADLs and IADLs based on the table below. The base hours assigned to each classification group are adjusted by the numeric value in subsection (b) below.

<b>Meds</b>	<b>Status</b>	<b>Assistance Available</b>	<b>Numeric Value</b>	
Medication Management  The rules to the right apply for all Self Performance codes except independent which is not counted as a qualifying ADL	Unmet	N/A	1	
	Met	N/A	0	
	Decline	N/A	0	
	Age appropriate functioning	N/A	0	
	Partially met	<1/4 time		.9
		1/4 to 1/2 time		.7
		1/2 to 3/4 time		.5
>3/4 time			.3	
<b>Unscheduled ADLs</b>	<b>Status</b>	<b>Assistance Available</b>	<b>Value</b>	
Bed mobility, transfer, walk in room, eating, toilet use  The rules to the right apply for all Self Performance codes except: Did not occur/client not able and Did not occur/no provider = 1; Did not occur/client declined and independent are not counted as qualifying ADLs	Unmet	N/A	1	
	Met	N/A	0	
	Decline	N/A	0	
	Age appropriate functioning	N/A	0	
	Partially met	<1/4 time		.9
		1/4 to 1/2 time		.7
		1/2 to 3/4 time		.5
>3/4 time			.3	

Scheduled ADLs	Status	Assistance Available	Value
Dressing, personal hygiene, bathing  The rules to the right apply for all Self Performance codes except: Did not occur/client not able and Did not occur/no provider = 1; Did not occur/client declined and independent which are not counted as qualifying ADLs	Unmet	N/A	1
	Met	N/A	0
	Decline	N/A	0
	Age appropriate functioning	N/A	0
	Partially met	<1/4 time	.75
		1/4 to 1/2 time	.55
		1/2 to 3/4 time	.35
>3/4 time		.15	

IADLs	Status	Assistance Available	Value
Meal preparation, Ordinary housework, Essential shopping  The rules to the right apply for all Self Performance codes except independent is not counted as a qualifying IADL	Unmet	N/A	1
	Met	N/A	0
	Decline	N/A	0
	Child under (age) (see subsection (7))	N/A	0
	Partially met (( <del>or Shared benefit</del> ))	<1/4 time	.3
		1/4 to 1/2 time	.2
		1/2 to 3/4 time	.1
		>3/4 time	.05

IADLs	Status	Assistance Available	Value
Travel to medical  The rules to the right apply for all Self Performance codes except independent which is not counted as a qualifying IADL	Unmet	N/A	1
	Met	N/A	0
	Decline	N/A	0
	Child under (age) (see subsection (7))	N/A	0
	Partially met	<1/4 time	.9
		1/4 to 1/2 time	.7
		1/2 to 3/4 time	.5
		>3/4 time	.3

Key: > means greater than; < means less than

(b) To determine the amount adjusted for informal support (~~(~~shared benefit and/or~~)~~ or age appropriate functioning, the numeric values are totaled and divided by the number of qualifying ADLs and IADLs needs. The result is value A. Value A is then subtracted from one. This is value B. Value B is divided by three. This is value C. Value A and Value C are summed. This is value D. Value D is multiplied by the "base hours" assigned to your classification group and the result is the number of adjusted in-home hours. Values are rounded to the nearest hundredths (e.g., .862 is rounded to .86).

(3) Effective July 1, 2012, after adjustments are made to your base hours, as described in subsection (2), the department may add on hours based on off-site laundry, living more than forty-five minutes from essential services, and wood supply, as follows:

Condition	Status	Assistance Available	Add On Hours	
Offsite laundry facilities, which means the client does not have facilities in own home and the caregiver is not available to perform any other personal or household tasks while laundry is done. The status used for the rules to the right is for housekeeping.	Unmet	N/A	8	
	Met	N/A	0	
	Declines	N/A	0	
	Child under (age) (see subsection (7))	N/A	0	
	Partially met (( <del>or Shared benefit</del> )):	<1/4 time		8
		between 1/4 to 1/2 time		6
		between 1/2 to 3/4 time		4
>3/4 time			2	
Client is >45 minutes from essential services (which means he/she lives more than 45 minutes one-way from a full-service market). The status used for the rules to the right is essential shopping.	Unmet	N/A	5	
	Met	N/A	0	
	Declines	N/A	0	
	Child under (age) (see subsection (7))	N/A	0	
	Partially met (( <del>or Shared benefit</del> ))	<1/4 time		5
		between 1/4 to 1/2 time		4
		between 1/2 to 3/4 time		3
>3/4 time			2	
Wood supply used as sole source of heat.	Unmet	N/A	8	
	Met	N/A	0	
	Declines	N/A	0	
	Child under (age) (see subsection (7))	N/A	0	
	Partially met (( <del>or Shared benefit</del> ))	<1/4 time		8
		between 1/4 to 1/2 time		6
		between 1/2 to 3/4 time		4
>3/4 time			2	

(4) In the case of New Freedom consumer directed services (NFCDS), the department determines the monthly budget available as described in WAC 388-106-1445.

(5) The result of adjustments under subsections (2) and (3) is the maximum number of hours that can be used to develop your plan of care. The department must take into account cost effectiveness, client health and safety, and program limits in determining how hours can be used to address your identified needs. In the case of New Freedom consumer directed services (NFCDS), a New Freedom spending plan (NFSP) is developed in place of a plan of care.

(6) If you are eligible, your hours may be used to authorize the following services:

(a) Personal care services from a home care agency provider and/or an individual provider.

(b) Home delivered meals (i.e. a half hour from the available hours for each meal authorized) per WAC 388-106-0805.

(c) Adult day care (i.e. a half hour from the available hours for each hour of day care authorized) per WAC 388-106-0805.

(d) A home health aide (i.e., one hour from the available hours for each hour of home health aide authorized) per WAC 388-106-0300.

(e) A private duty nurse (PDN) if you are eligible per WAC 388-106-1010 or 182-551-3000 (i.e. one hour from the available hours for each hour of PDN authorized).

(f) The purchase of New Freedom consumer directed services (NFCDS).

(7) If you are a child applying for personal care services:



(a) The department presumes that children have legally responsible parents or other responsible adults who provide informal support for the child's ADLs, IADLs and other needs. The department will not provide services or supports that are within the range of activities that a legally responsible parent or other responsible adult would ordinarily perform on behalf of a child of the same age who does not have a disability or chronic illness.

(b) The department will complete a CARE assessment and use the developmental milestones tables below when assessing your ability to perform personal care tasks.

(c) Your status will be coded as age appropriate for ADLs when your self performance is at a level expected for persons in your assessed age range, as indicated by the developmental milestones table in subpart (e), unless the circumstances in subpart (d) below apply.

(d) The department will code status as other than age appropriate for an ADL, despite your self performance falling within the developmental age range for the ADL on the developmental milestones table in subpart (e) below, if the department determines during your assessment that your level of functioning is related to your disability and not primarily due to your age and the frequency and/or the duration of assistance required for a personal care task is not typical for a person of your age.

(e)

<b>Developmental Milestones for Activities of Daily Living (ADLs)</b>		
<b>ADL</b>	<b>Self-Performance</b>	<b>Developmental Age Range</b>
Medication Management	Independent Self-Directed Assistance Required	Child under 18 years of age
	Must Be Administered	Child under 12 years of age
Locomotion in Room	Independent Supervision Limited Extensive	Child under 4 years of age
	Total	Child under 13 months of age
Locomotion Outside Room	Independent Supervision	Child under 6 years of age
	Limited Extensive	Child under 4 years of age
	Total	Child under 25 months of age
Walk in Room	Independent Supervision Limited Extensive	Child under 4 years of age
	Total	Child under 19 months of age
Bed Mobility	Independent Supervision Limited	Child under 37 months of age
	Extensive	Child under 25 months of age
	Total	Child under 19 months of age
Transfers	Independent Supervision Limited Extensive	Child under 3 years of age
	Total	Child under 19 months of age
Toilet Use	Independent Supervision Limited Extensive	Child under 7 years of age
	Total	Child under 37 months of age

Developmental Milestones for Activities of Daily Living (ADLs)		
ADL	Self-Performance	Developmental Age Range
Eating	Independent Supervision Limited Extensive	Child under 3 years of age
	Total	Child under 13 months of age
Bathing	Independent Supervision	Child under 12 years of age
	Physical help/ Transfer only	Child under 5 years of age
	Physical help/part of bathing	Child under 6 years of age
	Total	Child under 37 months of age
Dressing	Independent Supervision	Child under 12 years of age
	Limited	Child under 8 years of age
	Extensive	Child under 7 years of age
	Total	Child under 25 months of age
Personal Hygiene	Independent Supervision	Child under 12 years of age
	Limited Extensive	Child under 7 years of age
	Total	Child under 37 months of age

(f) For IADLs, the department presumes that children typically have legally responsible parents or other responsible adults to assist with IADLs. Status will be coded as "child under (age)" the age indicated by the developmental milestones table for IADLs in subpart (h) unless the circumstances in subpart (g) below apply. (For example, a sixteen year old child coded as supervision in self-performance for telephone would be coded "child under eighteen.")

(g) If the department determines during your assessment that the frequency and/or the duration of assistance required is not typical for a person of your age due to your disability or your level of functioning, the department will code status as other than described in subpart (h) for an IADL.

(h)

Developmental Milestones for Instrumental Activities of Daily Living			
IADL	Self-Performance	Developmental Age Range	
Finances Telephone Wood Supply	Independent Supervision Limited Extensive Total	Child under 18	
	Transportation	Independent Supervision Limited Extensive	Child under 18
		Total	Child under 16
		Essential Shopping Housework Meal Prep	Independent Supervision Limited Extensive
Total	Child under 12		

(i) The department presumes that children have legally responsible parents or other responsible adults who provide support for com-

prehension, decision-making, memory and continence issues. These items will be coded as indicated by the additional developmental milestones table in subpart (k) unless the circumstances in subpart (j) below apply.

(j) If the department determines during your assessment that due to your disability, the support you are provided for comprehension, decision making, memory and continence issues is substantially greater than is typical for a person of your age, the department will code status as other than described in subpart (k) below.

(k)

Additional Developmental Milestones coding within CARE			
Name of CARE panel	Question in CARE Panel	Developmental Milestone coding selection	Developmental Age Range
Speech/Hearing: Comprehension	"By others client is"	Child under 3	Child under 3
Psych Social: MMSE	"Can MMSE be administered?"	= No	Child under 18
Psych Social: Memory/ Short Term	"Recent memory"	Child under 12	Child under 12
Psych Social: Memory/ Long Term	"Long Term memory"	Child under 12	Child under 12
Psych Social: Depression	"Interview"	Unable to obtain	Child under 12
Psych Social: Decision Making	"Rate how client makes decision"	Child under 12	Child under 12
Bladder/Bowel:	"Bladder/Bowel Control" is which of the following:		
	Continent Usually Continent Occasionally Incontinent	Age appropriate	Child under 12
	Frequently Incontinent	Age appropriate	Child under 9
	Incontinent all or most of the time	Age appropriate	Child under 6
Bladder/Bowel:	"Appliance and programs"	Potty Training	Child under 4

(8) If you are a child applying for personal care services and your status for ADLs and IADLs is not coded per the developmental age range indicated on the milestones tables under subsection (7), the department will assess for any informal supports (~~(or shared benefit)~~) available to assist you with each ADL and IADL. The department will presume that children have legally responsible parents or other responsible adults who provide informal support to them.

(a) The department will code status for an ADL or IADL as met if your assessment shows that your need for assistance with a personal care task is fully met by informal supports.

(b) Informal supports for school-age children include supports actually available through a school district, regardless of whether you take advantage of those available supports.

(c) When you are living with your legally responsible parent(s), the department will presume that you have informal supports available to assist you with your ADL and IADLs over three-fourths but not all the time. Legally responsible parents include natural parents, step parents, and adoptive parents. Generally, a legally responsible parent will not be considered unavailable to meet your personal care needs simply due to other obligations such as work or additional children because such obligations do not decrease the parent's legal responsibility to care for you regardless of your disabilities. However, the department will consider factors that cannot reasonably be avoided and which prevent a legally responsible parent from providing for your

personal care needs when determining the amount of informal support available to you. You may rebut the department's presumption by providing specific information during your assessment to indicate why you do not have informal supports available at least three-fourths of time to assist you with a particular ADL or IADL.

[Statutory Authority: RCW 74.08.090 and 74.09.520. WSR 15-20-054, § 388-106-0130, filed 9/30/15, effective 10/31/15; WSR 14-04-097, § 388-106-0130, filed 2/4/14, effective 3/7/14. Statutory Authority: RCW 74.08.090, 74.09.520, and 2010 c 37. WSR 11-11-024, § 388-106-0130, filed 5/10/11, effective 6/10/11. Statutory Authority: RCW 74.08.090, 74.09.520. WSR 08-23-011, § 388-106-0130, filed 11/6/08, effective 12/7/08; WSR 08-03-111, § 388-106-0130, filed 1/22/08, effective 2/22/08. Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.030. WSR 06-16-035, § 388-106-0130, filed 7/25/06, effective 8/25/06. Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.010 and 74.39A.020. WSR 06-05-022, § 388-106-0130, filed 2/6/06, effective 3/9/06. Statutory Authority: RCW 74.08.090, 74.09.520. WSR 05-11-082, § 388-106-0130, filed 5/17/05, effective 6/17/05.]

**WSR 21-05-012**  
**PERMANENT RULES**  
**COUNTY ROAD**  
**ADMINISTRATION BOARD**

[Filed February 5, 2021, 8:40 a.m., effective March 8, 2021]

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

Purpose: The amendment to WAC 136-500-080 defines a county's pay-back terms of the emergency loan program.

Citation of Rules Affected by this Order: Amending WAC 136-500-080.

Statutory Authority for Adoption: Chapter 36.78 RCW.

Adopted under notice filed as WSR 20-23-041 on November 12, 2020.

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

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

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

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

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

Date Adopted: January 28, 2021.

John Koster  
Executive Director

**OTS-2746.1**

AMENDATORY SECTION (Amending WSR 20-04-076, filed 2/4/20, effective 3/6/20)

**WAC 136-500-080 Payback terms.** Any loan funded through this program shall have a term not to exceed twenty-four months. The county will be invoiced six months from the date of contract execution and quarterly thereafter until the end of the contract term. If a county desires a longer payback term, the county's legislative authority may request a revised payback term at the next regularly scheduled board meeting.

Simple interest on the amount of the loan shall be the monthly rate of return for the LGIP not to exceed three percent.

If a county pays the county road administration board the principle amount of the loan within six months of the date of contract execution, no interest will be charged and the contract will be closed. Should a county not pay the loan in full within six months of the date of contract execution, interest will be calculated from the date of contract execution to the date of final payment. A county may pay off any loan received through this program before the end of the term to reduce the amount of interest owed.

[Statutory Authority: Chapter 36.78 RCW. WSR 20-04-076, § 136-500-080, filed 2/4/20, effective 3/6/20.]

## WSR 21-05-015

## PERMANENT RULES

## STATE BOARD OF EDUCATION

[Filed February 5, 2021, 4:53 p.m., effective March 8, 2021]

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

Purpose: The state board of education (SBE) is responding to emergent COVID-19 issues in the education system with clarifications on counting modalities of instruction other than in-person instruction as instructional hours during the 2020-21 school year. SBE proposes changes to chapter 180-16 WAC to align rule to current policy or practice, improve readability of the rule, or make other changes identified during the review of the WAC chapter.

The following rules are applicable to the 2020-21 school year.

- Local education agencies shall submit a copy of the reopening schools plan to SBE and superintendent of public instruction (OSPI) two weeks before school begins and no later than September 15, 2020.
- "Instructional hours" as defined in RCW 28A.150.205 are not limited to in-person educational services. Local education agencies may count instructional hours towards the minimum district-wide annual average those hours students are provided the opportunity to engage in educational activity planned by and under the supervision of school district staff that are delivered through learning modalities that include but are not limited to distance learning, hybrid classrooms, rotating schedules, or other methods that allow for delivery of basic education services during the COVID-19 epidemic.
- The allowance to count instructional hours through modalities other than in-person instruction does not preclude local education agencies from applicable funding allocation requirements as required by the legislature or OSPI;
- Days in which instructional hours are offered to all students under this allowance shall count as school days for the purpose of meeting the minimum one hundred eighty-day school year requirement;
- Local education agencies must implement a system to track student engagement, consistent with OSPI attendance rules, in instructional activities delivered through remote learning modalities; and
- The state board of education will revisit this rule no later than its regularly scheduled July 2021 board meeting.

Reasons supporting proposal: RCW 28A.150.220(7) states that SBE shall adopt rules to implement and ensure compliance with program requirements of basic education. Due to the dynamic nature of the COVID-19 epidemic, local education agencies need to be responsive to state and local public health measures such as social distancing, school closures, limiting capacity of buildings, and other suggested ways of limiting community spread of COVID-19. To ensure that basic education can be delivered during the emergency state and local public health response to COVID-19, SBE intended to clarify that districts can count modalities of delivering instruction other than in-person delivery as instructional hours for the 2020-21 school year.

Citation of Rules Affected by this Order: Amending WAC 180-16-195 and 180-16-200.

Statutory Authority for Adoption: RCW 28A.150.220(7).

Adopted under notice filed as WSR 20-23-058 on November 13, 2020.

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

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

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

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

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

Date Adopted: February 5, 2021.

Randy Spaulding  
Executive Director

## OTS-2462.2

AMENDATORY SECTION (Amending WSR 18-24-090, filed 12/3/18, effective 1/3/19)

**WAC 180-16-195 Annual reporting and review process.** (1) **Annual school district reports.** A review of each school district's kindergarten through twelfth grade program shall be conducted annually for the purpose of determining compliance or noncompliance with basic education program approval requirements. On or before September 15th of each school year, each school district superintendent shall complete and return the program assurance form distributed by the state board of education. The form shall be designed to elicit data necessary to make a determination of a school district's compliance or noncompliance with basic education program approval requirements. For the 2020-21 school year, local education agencies shall submit a copy of the reopening schools plan to the state board of education and superintendent of public instruction two weeks before school begins and no later than September 15, 2020. The form shall be submitted electronically and signed by:

- (a) The school board president or chairperson, and
- (b) The superintendent of the school district.

(2) **State board staff review.**

(a) State board of education staff shall review each school district's program assurance form, may conduct on-site visits of selected school districts, as needed and subject to funding support, and shall prepare recommendations and reports for presentation to the state board of education: Provided, that, if a school district's initial program assurance form does not establish compliance with the basic education program approval requirements, the district shall be provided the opportunity to explain the deficiency or deficiencies.

(b) School districts may use the personnel and services of the educational service district to assist the district and schools in the



district that are out of compliance with basic education program approval requirements.

**(3) Annual certification of compliance or noncompliance—Withholding of funds for noncompliance.**

(a) At the November meeting of the state board of education, or at such other meeting as the board shall designate, the board shall certify by motion each school district as being in compliance or non-compliance with the basic education program approval requirements.

(b) A certification of compliance shall be effective for the then current school year subject to any subsequent ad hoc review and determination of noncompliance as may be deemed necessary by the state board of education or advisable by the superintendent of public instruction. In addition, a certification of compliance shall be effective tentatively for the succeeding school year until such time as the state board takes its annual action certifying compliance or noncompliance with the program approval requirements.

(c) A certification of noncompliance shall be effective until program compliance is assured by the school district to the satisfaction of state board of education staff, subject to review by the state board.

(d) Upon the certification of noncompliance of a school district, state board of education staff shall notify the superintendent of public instruction and the school district of a certification of noncompliance immediately after the board meeting at which certification occurred.

(e) A withholding of basic education allocation funding from a school district shall not occur for noncompliance if the school district has remediated the noncompliance situation within sixty school business days from the time the district receives notice of the non-compliance from the state board of education. The state board of education may extend the sixty days timeline only if the district demonstrates by clear and convincing evidence to the satisfaction of the state board of education that sixty days is not reasonable to make the necessary corrections. For the purposes of this section, a school business day shall mean any calendar day, exclusive of Saturdays, Sundays, and any federal and school holidays upon which the office of the superintendent of the school district is open to the public for the conduct of business. A school business day shall be concluded or terminated upon the closure of said office for the calendar day.

(f) At the discretion of the state board of education, after notification by the state board of education to a school district regarding an existing noncompliance, may recommend withholding of funds or may enter into a compliance agreement with the school district that shall include, but not be limited to, the following criteria:

(i) A deadline for school district remediation of the noncompliance(s).

(ii) A listing of all the noncompliance areas and the necessary terms that must be satisfied in each area in order for the school district to gain compliance status. This listing also shall specify additional deadlines for the accomplishment of the stated terms if different from the final deadline as specified in subsection (1) of this section.

(iii) A closing statement specifying that a school district's failure to remediate a noncompliance by the determined deadline may result, at the state board of education's or its designee's discretion, in the recommendation to the superintendent of public instruc-

tion of withholding of the district's basic education allocation funding by the superintendent of public instruction.

(iv) The date and the signatures of the superintendent of the school district, the chair of the district's board of directors, and the chair of the state board of education, or his/her designee, to the agreement. A copy of the completed compliance agreement shall be sent to the chairperson of the school district's board of directors and the school district superintendent.

(g) In the event a school district fails to sign a compliance agreement within five school business days from the date of issuance or does not satisfy all of the terms of the signed compliance agreement within the designated amount of time, the state board of education may recommend to the superintendent of public instruction withholding state funds for the basic education allocation until program compliance is assured.

(h) Any school district may appeal to the state board of education the decision of noncompliance by the state board of education. Such appeal shall be limited to the interpretation and application of these rules by the state board of education. Such appeal shall not stay the withholding of any state funds pursuant to this section or completion of the compliance agreement.

(4) The provisions of subsection (3)(g) of this section shall not apply if the noncompliance is related to the district's fiscal condition and results in the implementation of a financial plan under RCW 28A.505.140(3).

[Statutory Authority: RCW 28A.150.220 and 28A.150.250. WSR 18-24-090, § 180-16-195, filed 12/3/18, effective 1/3/19. Statutory Authority: RCW 28A.150.220, 28A.150.250, and 28A.150.260. WSR 11-17-044, § 180-16-195, filed 8/11/11, effective 9/11/11. Statutory Authority: RCW 28A.150.220(4), 28A.305.140, 28A.305.130(6). WSR 02-18-056, § 180-16-195, filed 8/28/02, effective 9/28/02. Statutory Authority: RCW 28A.150.250, 28A.150.260 and 28A.15.220 [28A.150.220]. WSR 99-10-091, § 180-16-195, filed 5/4/99, effective 6/4/99. Statutory Authority: RCW 28A.58.754(6). WSR 84-11-043 (Order 2-84), § 180-16-195, filed 5/17/84. Statutory Authority: RCW 28A.04.120. WSR 83-13-002 (Order 3-83), § 180-16-195, filed 6/2/83. Statutory Authority: RCW 28A.01.010, 28A.04.120, 28A.41.130, 28A.41.140, 28A.58.754, 28A.58.758, and 1979 ex.s. c 250. WSR 79-10-033 (Order 10-79), § 180-16-195, filed 9/12/79. Statutory Authority: RCW 28A.41.130 and 28A.58.754. WSR 78-06-097 (Order 3-78), § 180-16-195, filed 6/5/78.]

AMENDATORY SECTION (Amending WSR 14-19-032, filed 9/8/14, effective 10/9/14)

**WAC 180-16-200 Total instructional hour requirement.** (1) Kindergarten total instructional hour requirement - Four hundred fifty hours annual minimum, increased to an annual minimum one thousand instructional hours according to an implementation schedule under RCW 28A.150.315.

(2) Grades 1-12 total instructional hour requirement - District-wide annual average of one thousand hours, increased beginning in the 2015-16 school year to:

(a) At least a district-wide average of one thousand eighty instructional hours for students enrolled in grades nine through twelve

and a district-wide annual average of one thousand instructional hours in grades one through eight; or

(b) A district-wide annual average of one thousand twenty-seven instructional hours in grades one through twelve.

(3) For nonhigh school districts, a district-wide annual average of one thousand instructional hours in such grades as are offered by the district.

(4) For the 2020-21 school year, "instructional hours" as defined in RCW 28A.150.205 are not limited to in-person educational services. Local education agencies may count as instructional hours towards the minimum district-wide annual average those hours students are provided the opportunity to engage in educational activity planned by and under the direction of school district staff that are delivered through learning modalities which may include, but are not limited to, distance learning, hybrid classrooms, rotating schedules, or other methods that allow for delivery of basic education services during the COVID-19 epidemic. The following are applicable to the 2020-21 school year:

(a) Nothing in this section supersedes applicable statutory or office of superintendent of public instruction funding allocation requirements;

(b) Days in which instructional hours are offered shall count as school days for the purpose of meeting the minimum one hundred eighty-day school year requirement;

(c) Local education agencies must implement a system consistent with OSPI attendance rules; and

(d) The state board of education will revisit this rule no later than its regularly scheduled July 2021 board meeting.

[Statutory Authority: 2014 c 217 and RCW 28A.230.090. WSR 14-19-032, § 180-16-200, filed 9/8/14, effective 10/9/14. Statutory Authority: Chapter 28A.630 RCW. WSR 01-24-092, § 180-16-200, filed 12/4/01, effective 1/4/02. Statutory Authority: Chapter 28A.630 RCW and 1995 c 208. WSR 95-20-086, § 180-16-200, filed 10/4/95, effective 11/4/95. Statutory Authority: RCW 28A.410.010. WSR 94-03-104 (Order 5-94), § 180-16-200, filed 1/19/94, effective 2/19/94. Statutory Authority: RCW 28A.150.220, 28A.320.200, 28A.150.260 and 1992 c 141. WSR 92-17-053, § 180-16-200, filed 8/17/92, effective 9/17/92. Statutory Authority: RCW 28A.150.220 and [28A.150.]260. WSR 92-05-047, § 180-16-200, filed 2/13/92, effective 3/15/92. Statutory Authority: RCW 28A.04.127 and 28A.41.140. WSR 86-21-020 (Order 15-86), § 180-16-200, filed 10/7/86. Statutory Authority: RCW 28A.58.754(6). WSR 84-11-043 (Order 2-84), § 180-16-200, filed 5/17/84. Statutory Authority: RCW 28A.01.010, 28A.04.120, 28A.41.130, 28A.41.140, 28A.58.754, 28A.58.758, and 1979 ex.s. c 250. WSR 79-10-033 (Order 10-79), § 180-16-200, filed 9/12/79. Statutory Authority: RCW 28A.41.130 and 28A.58.754. WSR 78-06-097 (Order 3-78), § 180-16-200, filed 6/5/78.]

## WSR 21-05-017

## PERMANENT RULES

## STATE BOARD OF EDUCATION

[Filed February 5, 2021, 5:19 p.m., effective March 8, 2021]

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

Purpose: The state board of education (SBE) is reviewing chapter 180-19 WAC, Charter schools, to make changes as necessary to align rule to current policy or practice, correct references to law, improve readability of the rule, align rule to SBE's recommendations in the annual charter school report, or make other changes identified during the review.

Changes consist of the following:

- Streamline the authorizer application process by removing the requirement for a notice of intent and making other changes in the application requirements.
- Revise the authorizer fee structure to a performance based model that takes into consideration enrollment, district needs, and performance indicators.
- Change to reporting dates to align with revisions in the law adopted last session.
- Other alignment of rule to current policy or practice, including a correction in the email address and giving SBE discretion regarding the need for an interview with the district prior to approval.

Citation of Rules Affected by this Order: Repealing WAC 180-19-020; and amending WAC 180-19-030, 180-19-040, 180-19-060, 180-19-080, and 180-19-210.

Statutory Authority for Adoption: RCW 28A.710.090, 28A.710.130, 28A.710.140, and 28A.710.1501; chapter 28A.710 RCW.

Adopted under notice filed as WSR 20-23-081 on November 17, 2020.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 5, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 5, Repealed 1.

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

Date Adopted: February 5, 2021.

Randy Spaulding  
Executive Director

OTS-2723.2

AMENDATORY SECTION (Amending WSR 17-20-070, filed 10/2/17, effective 11/2/17)

**WAC 180-19-030 Submission of authorizer application.** (1) The state board of education shall develop and make available on its web-site, no later than May 15th of each year, an "authorizer application" that must be used by school districts seeking to be approved as a charter school authorizer. The application may include such attachments as deemed required by the board to support and complete the application.

(2) A school district seeking approval to be a charter school authorizer must submit an "authorizer application" to the state board of education by October 15th of the year prior to the year the district seeks approval as an authorizer. The district's completed application must be submitted (~~(via electronic mail to sbe@k12.wa.us)~~) according to instructions posted by the (~~(date specified in this section)~~) board with the application. The board shall post on its website each application received from a school district.

(3) A school district must provide sufficient and detailed information regarding all of the following in the authorizer application submitted to the board:

(a) **The district's strategic vision for chartering.** The district must state the purposes that it expects to fulfill in being an authorizer of charter schools, with reference to the findings and interests set forth in RCW 28A.710.005, as well as any district-specific purposes that are a priority for the district; ~~the ((characteristics of the school or schools it is most interested in authorizing, while maintaining a commitment to considering all charter applicants based on the merits of their proposals and the likelihood of success; the))~~ educational goals it wishes to achieve; how it will give priority to serving at-risk students, as defined in RCW 28A.710.010(2), or students from low-performing schools; and how it will respect the autonomy and ensure the accountability of the charter schools it oversees.

(b) **A plan to support the vision presented,** including explanations and evidence of the applicant's budget and personnel capacity and commitment to execute the responsibilities of quality charter authorizing. "Budget and personnel capacity" means the district's capability of providing sufficient oversight, monitoring, and assistance to ensure that the charter schools it authorizes will meet all fiscal, academic and operational requirements under chapter 28A.710 RCW and comply with all applicable state and federal laws. A district's evidence of budget and personnel capacity shall consist, at a minimum, of a detailed description of the following:

(i) Staff resources to be devoted to charter authorizing and oversight under chapter 28A.710 RCW, in full-time equivalent employees, at a level sufficient to fulfill its authorizing responsibilities in accordance with the *NACSA Principles and Standards* and the provisions of chapter 28A.710 RCW; and

(ii) ~~((Job titles, job descriptions, and brief bios and resumes of district personnel with anticipated authorizing responsibilities under RCW 28A.710.030, demonstrating the district's access to expertise in all areas essential to charter school oversight including, but not limited to: School leadership; curriculum, instruction and assessment; special education, English language learners and other diverse learning needs; performance management and law, finance and facilities, through staff and any contractual relationships or partnerships with other public entities; and~~

(iii)) An estimate, supported by verifiable data, of the financial needs of the authorizer and a projection, to the extent feasible, of sufficient financial resources, supported by the authorizer oversight fee under RCW 28A.710.110 and any other resources, to carry out its authorizing responsibilities in accordance with the *NACSA Principles and Standards* and the provisions of chapter 28A.710 RCW.

(c) **A draft or preliminary outline of the request for proposal** that the district would, if approved as an authorizer, issue to solicit charter school applications. The draft or preliminary outline of the request for proposal(s) shall meet all of the requirements set forth in RCW 28A.710.130 (1)(b) and demonstrate that the district will implement a comprehensive charter application process that follows fair procedures and rigorous criteria, and an evaluation and oversight process based on a performance framework meeting the requirements of RCW 28A.710.170.

(d) **A draft of the performance framework** that the district would, if approved as an authorizer, use to guide the execution of a charter contract and for ongoing oversight and performance evaluation of charter schools. The draft of the performance framework shall, at a minimum, meet the requirements of RCW 28A.710.170(2) including descriptions of each indicator, measure and metric enumerated therein, and shall provide that student academic proficiency, student academic growth, achievement gaps in both proficiency and growth, graduation rates, and postsecondary readiness are measured and reported in conformance with the achievement index developed by the state board of education under RCW 28A.657.110.

(e) **A draft of the district's proposed renewal, revocation, and nonrenewal processes**, consistent with RCW 28A.710.190 and 28A.710.200. The draft provided must, at a minimum, provide for the implementation of transparent and rigorous processes that:

(i) Establish clear standards for renewal, nonrenewal, and revocation of charters it may authorize under RCW 28A.710.100;

(ii) Set reasonable and effective timelines for actions that may be taken under RCW 28A.710.190 and 28A.710.200;

(iii) Describe how academic, financial and operational performance data will be used in making decisions under RCW 28A.710.190 and 28A.710.200;

(iv) Outline a plan to take appropriate corrective actions, or exercise sanctions short of revocation, in response to identified deficiencies in charter school performance or legal compliance, in accordance with the charter contract and the provisions of RCW 28A.710.180.

(4) A district must sign a statement of assurances submitted with its application, which shall be included as an attachment to the authorizing contract executed between the approved district and the state board of education, stating that it seeks to serve as an authorizer in fulfillment of the expectations, spirit, and intent of chapter 28A.710 RCW, and that if approved as an authorizer it will:

(a) Seek opportunities for authorizer professional development, and assure that personnel with significant responsibilities for authorizing and oversight of charter schools will participate in any authorizer training provided or required by the state;

(b) Provide public accountability and transparency in all matters concerning charter authorizing practices, decisions, and expenditures;

(c) Ensure that any charter school it oversees shall have a fully independent governing board and exercise autonomy in all matters, to

the extent authorized by chapter 28A.710 RCW, in such areas as budgeting, personnel and instructional programming and design;

(d) Ensure that any contract it may execute with the charter school board of an approved charter school under RCW 28A.710.160 provides that the school will provide educational services to students with disabilities, students who are limited-English proficient, and any other special populations of students as required by state and federal laws;

(e) Include in any charter contract it may execute with the charter school board of an approved charter school, in accordance with RCW 28A-710-040 (2)(b), that the charter school must provide a program of basic education that at a minimum meets the requirements of RCW 28A.150.200 and 28A.150.220, and meets the goals in RCW 28A.150.210, including instruction in the essential learning requirements and participation in the statewide student assessment system as developed under RCW 28A.655.070.

[Statutory Authority: RCW 28A.710.090, 28A.710.130, 28A.710.140, and 28A.710.150. WSR 17-20-070, § 180-19-030, filed 10/2/17, effective 11/2/17; WSR 14-19-107, § 180-19-030, filed 9/16/14, effective 10/17/14. Statutory Authority: RCW 28A.710.090. WSR 13-07-065, § 180-19-030, filed 3/19/13, effective 4/19/13.]

AMENDATORY SECTION (Amending WSR 17-20-070, filed 10/2/17, effective 11/2/17)

**WAC 180-19-040 Evaluation and approval or denial of authorizer applications.** (1) The board shall evaluate an application submitted by a school district seeking to be an authorizer and issue a decision approving or denying the application by February 1st of each year.

(2) In evaluating each application, the board will rate each part of the application as set forth in WAC 180-19-030 (3)(a) through (e) as well-developed, partially developed, or undeveloped, based on criteria for evaluation included in the authorizer application developed and made publicly available pursuant to WAC 180-19-030(1).

(a) "Well-developed" shall mean that the application response meets the expectations established by the board and the *NACSA Principles and Standards* in material respects and warrants approval subject to execution of an authorizing contract with the board.

(b) "Partially developed" shall mean that the application response contains some aspects of a well-developed practice, is limited in its execution, or otherwise falls short of satisfying the expectations established by the board and the *NACSA Principles and Standards*.

(c) "Undeveloped" shall mean that the application response is wholly inadequate in that the applicant district has not considered or anticipated the well-developed practice at all, or proposes to carry out its authorizing duties in a way that is not recognizably connected to the expectations established by the board and the *NACSA Principles and Standards*.

(3) In its evaluation the board will consider whether the district's proposed policies and practices are consistent with the *NACSA Principles and Standards* as required by RCW 28A.710.100(3), in at least the following areas:

(a) Organizational capacity: Commit human and financial resources necessary to conduct authorizing duties effectively and efficiently;

(b) Solicitation and evaluation of charter applications: Implement a comprehensive application process that includes clear application questions and rigorous criteria, and grants charters only to applicants who demonstrate strong capacity to establish and operate a charter school;

(c) Performance contracting: Execute contracts with charter schools that articulate the rights and responsibilities of each party regarding school autonomy, funding, administration and oversight, outcomes, measures for evaluating success or failure, performance consequences, and other material terms;

(d) Ongoing charter school oversight and evaluation: Conduct contract oversight that competently evaluates performance and monitors compliance, ensures schools' legally entitled autonomy, protects student rights, informs intervention, revocation and renewal decisions, and provides annual reports as required by chapter 28A.710 RCW; and

(e) Charter renewal and revocation processes: Design and implement a transparent and rigorous process that uses comprehensive academic, financial and operational performance data to make merit-based renewal decisions, and revokes charters when necessary to protect student and public interests.

(4) The board shall develop and post on its public website rubrics for determination of the extent to which each criterion for evaluation has been met.

(5) The board may utilize the services of external reviewers with expertise in educational, organizational or financial matters in evaluating applications.

(6) Prior to approving any application, the board (~~shall~~) may require an (~~in-person~~) interview with district leadership for the purpose of reviewing and evaluating the application. The (~~in-person~~) interview (~~will~~) may be used to supplement or clarify information provided by the district in the written application. The information received in the (~~in-person~~) interview (~~shall~~) may be considered in formulating the overall ratings of the application under subsection (2) of this section.

(7) For an application to be approved, the board must find it to be well developed in each part of the application as set forth in WAC 180-19-030(3). A determination that an application does not meet standards of quality authorizing in any part shall constitute grounds for disapproval. If the state board disapproves an application, it shall state in writing the reasons for the disapproval, with specific reference to the criteria included in the authorizer application.

(8) The board shall post on its public website the applications of all school districts approved as authorizers. A school district approved as an authorizer shall post its application on a public website.

[Statutory Authority: RCW 28A.710.090, 28A.710.130, 28A.710.140, and 28A.710.150. WSR 17-20-070, § 180-19-040, filed 10/2/17, effective 11/2/17; WSR 14-19-107, § 180-19-040, filed 9/16/14, effective 10/17/14. Statutory Authority: RCW 28A.710.090. WSR 13-07-065, § 180-19-040, filed 3/19/13, effective 4/19/13.]



AMENDATORY SECTION (Amending WSR 13-12-055, filed 6/1/13, effective 7/2/13)

**WAC 180-19-060 Authorizer oversight fee.** (1) The statewide formula for the authorizer oversight fee transmitted to an authorizer by the superintendent of public instruction, as provided for in RCW 28A.710.110, shall be calculated ~~((at))~~ as a rate not to exceed four percent of ~~((the))~~ state operating funding allocated under RCW 28A.710.220 ~~((, with the fee decreasing to three percent of the state operating funding after an authorizer has authorized ten charter schools.~~

~~((2) The board shall periodically review)).~~ The rate shall be determined annually by the state board of education in consultation with the authorizer. The determination of the rate shall take into consideration the performance of schools under the authorizer's oversight including, but not limited to, enrollment, financial stability, performance challenges, and other situations as identified by the authorizer or the board. Rates must be determined and reported to authorizers and the office of the superintendent of public instruction by May 15th for the subsequent school year.

(2) Authorizers shall report on the adequacy and efficiency of the authorizer oversight fee ((for the purpose of determining)) in the annual report submitted to the board by each authorizer as set forth in RCW 28A.710.100(4). The board shall consider this information to determine whether the formula should be adjusted in order to ensure fulfilling the purposes of chapter 28A.710 RCW. ((In conducting the review, the board shall utilize the information on authorizers' operating costs and expenses included in the annual report submitted to the board by each authorizer as set forth in RCW 28A.710.100(4).))

[Statutory Authority: Chapter 28A.710 RCW. WSR 13-12-055, § 180-19-060, filed 6/1/13, effective 7/2/13.]

AMENDATORY SECTION (Amending WSR 17-20-070, filed 10/2/17, effective 11/2/17)

**WAC 180-19-080 Charter school applications—Submission, approval, or denial.** (1) An applicant, as defined in RCW 28A.710.010, seeking approval must:

(a) Submit a nonbinding notice of intent to be approved as a proposed charter school by May 1st of the year in which approval is sought. An applicant may not submit a charter school application in a calendar year unless it has filed timely notice of intent as provided herein; and

(b) Submit an application for a proposed charter school to an authorizer by no later than June 1st of the year in which the applicant seeks approval.

(2) An authorizer receiving an application for a proposed charter school must either approve or deny the proposal by no later than September 1st of the year in which the application is received.

(3) The authorizer must provide the state board of education with a written report of the approval or denial of an applicant's proposal for a charter school within ten days of such action. The notice must comply with the requirements set forth in RCW 28A.710.150(2). The re-

port shall be sent to the board via electronic mail to  
(~~sbe@k12.wa.us~~) sbe@k12.wa.us.

[Statutory Authority: RCW 28A.710.090, 28A.710.130, 28A.710.140, and 28A.710.150. WSR 17-20-070, § 180-19-080, filed 10/2/17, effective 11/2/17; WSR 14-19-107, § 180-19-080, filed 9/16/14, effective 10/17/14. Statutory Authority: Chapter 28A.710 RCW. WSR 13-12-055, § 180-19-080, filed 6/1/13, effective 7/2/13.]

AMENDATORY SECTION (Amending WSR 17-20-070, filed 10/2/17, effective 11/2/17)

**WAC 180-19-210 Annual report by authorizer.** (1) Each authorizer must, no later than (~~November 1st~~) January 21st of each year starting in (~~(2014)~~) 2021, submit an annual report to the state board of education meeting the requirements of RCW 28A.710.100(4). The board shall develop and post on its website by September 1st of each year a standard form which must be used, and instructions which must be followed by each authorizer in making its report. The completed report must be sent via electronic mail to sbe@k12.wa.us and shall be posted on the board's website.

(2) The report must include:

(a) The date of authorizer approval by the board;

(b) The names and job titles of district personnel having principal authorizing responsibilities with contact information for each;

(c) The names and job titles of any employees or contractors to whom the district has delegated responsibilities under RCW 28A.710.100, with contact information for each;

(d) An executive summary including, but not limited to, an overview of authorizing activity during the prior year and the status and performance of the charter schools authorized;

(e) The authorizer's strategic vision for chartering, as submitted to the state board under WAC 180-19-030 (3)(a), and its assessment of progress toward achieving that vision;

(f) The status of the authorizer's charter school portfolio, identifying all charter schools in each of the following categories:

(i) Approved but not yet open, including for each, the targeted student population and the community the school hopes to serve; the location or geographic area proposed for the school; the projected enrollment; the grades to be operated each year of the term of the charter contract; the names of and contact information for the charter school board, and the planned date for opening;

(ii) Operating, including for each, location; grades operated; enrollment in total and by grade; and for each student subgroup as defined in RCW 28A.300.042 in totals and as percentages of enrollment;

(iii) Charter renewed with date of renewal;

(iv) Charter transferred to another authorizer during the prior year, with date of transfer;

(v) Charter revoked during the prior year with date of and reasons for revocation;

(vi) Voluntarily closed;

(vii) Never opened, with no planned date for opening.

(g) The academic performance of each operating charter school overseen by the authorizer, based on the authorizer's performance framework, including:

(i) Student achievement on each of the required indicators of academic performance in RCW 28A.710.170 (2)(a) through (f), as applicable by grade, in absolute values and in comparison to the annual performance targets set by the charter school under RCW 28A.710.170(3). Student academic proficiency, student academic growth, achievement gaps, graduation rates and postsecondary readiness must be included as reported in the achievement index developed by the state board of education under RCW 28A.657.110.

(ii) Student achievement on each additional indicator of academic performance the authorizer has chosen to include in its performance framework to augment external evaluations of performance, in absolute values and in comparison to the annual performance targets set by the authorizer under RCW 28A.710.170.

(iii) Student achievement on each indicator must be disaggregated by major student subgroups including gender, race and ethnicity, poverty status, special education status, English language learner status, and highly capable status as required of performance frameworks in RCW 28A.710.170.

(h) The financial performance of each operating charter school overseen by the authorizer, based on the indicators and measures of financial performance and sustainability in the authorizer's performance framework, in absolute values and in comparison to the annual performance targets set by the authorizer under RCW 28A.710.170;

(i) The organizational performance of the charter school board of each operating charter school overseen by the authorizer, based on the indicators and measures of organizational performance in the authorizer's performance framework, including compliance with all applicable laws, rules and terms of the charter contract;

(j) The authorizer's assessment of the adequacy of the authorizer oversight fee, operating costs and expenses for the prior year for fulfilling the responsibilities of an authorizer as enumerated in RCW 28A.710.100(1) and provided under the terms of each charter contract, detailed in annual financial statements that conform with generally accepted accounting principles and applicable reporting and accounting requirements of the office of the superintendent of public instruction;

(k) The contracted, fee-based services purchased from the authorizer by the charter schools under its jurisdiction under RCW 28A.710.110, including a brief description of each service purchased, an itemized accounting of the revenue received from the schools for the services, and the actual costs of these services to the authorizer.

[Statutory Authority: RCW 28A.710.090, 28A.710.130, 28A.710.140, and 28A.710.150. WSR 17-20-070, § 180-19-210, filed 10/2/17, effective 11/2/17. Statutory Authority: RCW 28A.710.100. WSR 14-02-060, § 180-19-210, filed 12/26/13, effective 1/26/14.]

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 180-19-020	Notice of intent to submit an authorizer application.
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## WSR 21-05-019

## PERMANENT RULES

## DEPARTMENT OF AGRICULTURE

[Filed February 8, 2021, 8:52 a.m., effective March 11, 2021]

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

Purpose: This rule-making order amends chapter 16-752 WAC, Noxious weed seed and plant quarantine, by adding the following species as regulated articles in WAC 16-752-610:

- Italian arum (*Arum italicum*);
- Ravenna grass (*Tripidium ravennae*);
- Spurge laurel (*Daphne laureola*);
- Myrtle spurge (*Euphorbia myrsinites*);
- Annual bugloss (*Lycopsis arvensis*);
- Yellow flag iris (*Iris pseudacorus*);
- Hoary alyssum (*Berteroa incana*);
- Small-flowered jewelweed (*Impatiens parviflora*);
- South American spongeplant (*Limnobiium laevigatum*);
- American spongeplant (*Limnobiium spongia*);
- Tree-of-heaven (*Ailanthus altissima*); and
- Poison hemlock (*Conium maculatum*).

The department is also updating the accepted scientific names of several plants that are currently quarantined.

Citation of Rules Affected by this Order: Amending WAC 16-752-610.

Statutory Authority for Adoption: RCW 17.10.074, 17.24.011, and 17.24.041.

Adopted under notice filed as WSR 21-01-206 on December 23, 2020.

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

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 1, Repealed 0.

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

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

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

Date Adopted: February 8, 2021.

Derek I. Sandison  
Director

## OTS-2799.2

AMENDATORY SECTION (Amending WSR 16-14-003, filed 6/23/16, effective 7/24/16)

**WAC 16-752-610 Regulated articles.** All plants, plant parts, and seeds in packets, blends, and "wildflower mixes" of the following lis-

ted species are designated as regulated articles under the terms of this noxious weed seed and plant quarantine. This list is comprised of the most recent and accepted scientific and common names of the quarantine plant species. Regulated status also applies to all synonyms of these botanical names and interspecies hybrids if both parents are regulated species:

<b>Scientific Name</b>	<b>Common Names</b>
<i>Abutilon theophrasti</i>	velvetleaf
<i>Ailanthus altissima</i>	<u>tree-of-heaven</u>
<i>Alliaria petiolata</i>	garlic mustard
<i>Amorpha fruticosa</i>	indigobush, lead plant
<i>Anchusa officinalis</i>	common bugloss, alkanet, anchusa
<i>Anthriscus sylvestris</i>	wild chervil
<i>Arum italicum</i>	<u>Italian arum</u>
<i>Arundo donax</i> (except variegated cultivars)	giant reed
<i>Bassia scoparia</i> (syn. <i>Kochia scoparia</i> )	<u>kochia, summer-cyprus,</u> <u>burning-bush, fireball, Mexican</u> <u>fireweed</u>
<i>Berteroa incana</i>	<u>hoary alyssum</u>
<i>Brachypodium</i> <i>sylvaticum</i>	false brome
<i>Buddleia davidii</i> (except accepted sterile cultivars)	butterfly bush
<i>Butomus umbellatus</i>	flowering rush
<i>Cabomba</i> <i>caroliniana</i>	fanwort
<i>Carduus acanthoides</i>	plumeless thistle
<i>Carduus nutans</i>	musk thistle, nodding thistle
<i>Carduus</i> <i>pycnocephalus</i>	Italian thistle
<i>Carduus tenuiflorus</i>	slenderflower thistle
<i>Centaurea calcitrapa</i>	purple starthistle
<i>Centaurea diffusa</i>	diffuse knapweed
<i>Centaurea jacea</i>	brown knapweed, rayed knapweed, brown centaury horse-knobs, hardheads
<del>((<i>Centaurea jacea</i> x <i>nigra</i></del>	<del>meadow knapweed</del>
<i>Centaurea stoebe</i>	<del>spotted knapweed</del> )
<i>Centaurea</i> <i>macrocephala</i>	bighead knapweed
<i>Centaurea nigra</i>	black knapweed
<i>Centaurea nigrescens</i>	Vochin knapweed
<i>Centaurea stoebe</i>	<u>spotted knapweed</u>
<i>Centaurea x</i> <i>gerstlaueri</i> (syn. <i>Centaurea jacea</i> x <i>nigra</i> )	<u>meadow knapweed</u>
<del>((<i>Chaenorhinum</i>)</del> <i>Chaenorhinum minus</i>	dwarf snapdragon

Scientific Name	Common Names
<i>Clematis orientalis</i>	oriental clematis
<u><i>Conium maculatum</i></u>	<u>poison hemlock</u>
<i>Crassula helmsii</i>	Australian swamp stonecrop
<i>Crupina vulgaris</i>	common crupina
<i>Cyperus rotundus</i>	purple nutsedge
<i>Cytisus scoparius</i>	Scotch broom
<u><i>Daphne laureola</i></u>	<u>spurge laurel</u>
<i>Daucus carota</i>	wild carrot, Queen Anne's lace
<i>Echium vulgare</i>	blueweed, blue thistle, blue devil, viper's bugloss, snake flower
<i>Egeria densa</i>	Brazilian elodea
<i>Epilobium hirsutum</i>	hairy willow herb
(( <i>Euphorbia esula</i>	leafy spurge))
<u><i>Euphorbia myrsinites</i></u>	<u>myrtle spurge</u>
<i>Euphorbia oblongata</i>	eggleaf spurge
<u><i>Euphorbia virgate</i></u> ( <i>syn. Euphorbia esula</i> )	<u>leafy spurge</u>
<u><i>Fallopia japonica</i></u>	<u>Japanese knotweed</u>
<u><i>Fallopia sachalinensis</i></u>	<u>giant knotweed</u>
<u><i>Fallopia x bohemica</i></u>	<u>Bohemian knotweed</u>
<i>Ficaria verna</i>	lesser celandine
<i>Galega officinalis</i>	goatsrue
<i>Genista monspessulana</i>	French broom
<i>Geranium lucidum</i>	shiny geranium
<i>Glossostigma diandrum</i>	mud mat
<i>Glyceria maxima</i>	reed sweetgrass, tall manna grass
<i>Gymnocoronis spilanthoides</i>	Senegal tea plant
<i>Helianthus ciliaris</i>	Texas blueweed
<i>Heracleum mantegazzianum</i>	giant hogweed, giant cow parsnip
<i>Hibiscus trionum</i>	Venice mallow, flower-of-an-hour, bladder ketmia, modesty, shoo-fly
<i>Hieracium spp.</i> All nonnative species and hybrids	nonnative hawkweeds
<i>Hydrilla verticillata</i>	hydrilla
<i>Hydrocharis morsus-ranae</i>	European frog-bit
<i>Impatiens glandulifera</i>	policeman's helmet
<u><i>Impatiens parviflora</i></u>	<u>small-flowered jewelweed</u>
<u><i>Iris pseudacorus</i></u>	<u>yellow flag iris</u>
<i>Isatis tinctoria</i>	dyers' woad

Scientific Name	Common Names
<i>((Kochia scoparia</i>	koehia, summer-cyprus, burning-bush, fireball, Mexican fireweed))
<i>Jacobaea vulgaris</i> (syn. <i>Senecio</i> <i>jacobaea</i> )	<u>tansy ragwort</u>
<i>Lagarosiphon major</i>	African elodea
<i>Lamiastrum</i> <i>galeobdolon</i>	yellow archangel
<i>Lepidium latifolium</i>	perennial pepperweed
<i>Leucanthemum</i> <i>vulgare</i>	oxeye daisy, white daisy, whiteweed, field daisy, marguerite, poorland flower
<i>Limnobium</i> <i>laevigatum</i>	<u>South American spongeplant</u>
<i>Limnobium spongia</i>	<u>American spongeplant</u>
<i>Linaria dalmatica</i> <i>spp. dalmatica</i>	Dalmatian toadflax
<i>Ludwigia hexapetala</i>	water primrose
<i>Ludwigia peploides</i>	floating primrose-willow
<i>Lycopsis arvensis</i>	<u>annual bugloss</u>
<i>Lysimachia vulgaris</i>	garden loosestrife
<i>Lythrum salicaria</i>	purple loosestrife
<i>Lythrum virgatum</i>	wand loosestrife
<i>Marsilea mutica</i>	Australian water clover
<i>Mirabilis nyctaginea</i>	wild four o'clock, umbrella-wort
<i>Murdannia keisak</i>	marsh dew flower, Asian spiderwort
<i>Myriophyllum</i> <i>aquaticum</i>	parrotfeather
<i>Myriophyllum</i> <i>heterophyllum</i>	variable-leaf milfoil
<i>Myriophyllum</i> <i>spicatum</i>	Eurasian watermilfoil
<i>Najas minor</i>	slender-leaved naiad, brittle naiad
<i>Nymphoides peltata</i>	yellow floating heart
<i>Onopordum</i> <i>acanthium</i>	Scotch thistle
<i>((Polygonum</i> <i>euspidatum</i>	Japanese knotweed
<i>Polygonum</i> <i>polystachyum</i>	Himalayan knotweed
<i>Polygonum</i> <i>sachalinense</i>	giant knotweed
<i>Polygonum x</i> <i>bohemicum</i>	Bohemian knotweed, Japanese and giant knotweed hybrid))
<i>Persicaria wallichii</i> (syn. <i>Polygonum</i> <i>polystachyum</i> )	<u>Himalayan knotweed</u>
<i>Proboscidea</i> <i>louisianica</i>	unicorn-plant
<i>Pueraria montana</i> <i>var. lobata</i>	kudzu



Scientific Name	Common Names
<i>Sagittaria graminea</i>	grass-leaved arrowhead
<i>Sagittaria platyphylla</i>	delta arrowhead
<i>Salvia aethiopsis</i>	Mediterranean sage
<i>Salvia pratensis</i>	meadow clary
<i>Salvia sclarea</i>	clary sage
<i>Schoenoplectus mucronatus</i>	ricefield bulrush
(( <i>Senecio jacobaea</i>	tansy ragwort))
<i>Silybum marianum</i>	milk thistle
<i>Solanum elaeagnifolium</i>	silverleaf nightshade
<i>Solanum rostratum</i>	buffaloburr
<i>Soliva sessilis</i>	lawnweed
<i>Sorghum halepense</i>	johnsongrass
<i>Spartina alterniflora</i>	smooth cordgrass
<i>Spartina anglica</i>	common cordgrass
<i>Spartina densiflora</i>	dense-flowered cordgrass
<i>Spartina patens</i>	salt meadow cordgrass
<i>Spartium junceum</i>	Spanish broom
<i>Stratiotes aloides</i>	water soldier
<i>Tamarix ramosissima</i>	saltcedar
<i>Thymelaea passerina</i>	spurge flax
<i>Torilis arvensis</i>	hedgearsley
<i>Trapa natans</i>	water chestnut, bull nut
<i>Trapa bicornus</i>	water caltrap, devil's pod, bat nut
<u><i>Tripidium ravennae</i></u>	<u>Ravenna grass</u>
<i>Ulex europaeus</i>	gorse, furze
<i>Utricularia inflata</i>	swollen bladderwort
<i>Zygophyllum fabago</i>	Syrian bean-caper

[Statutory Authority: RCW 17.10.074, 17.24.011, 17.24.041, and chapter 34.05 RCW. WSR 16-14-003, § 16-752-610, filed 6/23/16, effective 7/24/16; WSR 14-07-040, § 16-752-610, filed 3/12/14, effective 4/12/14. Statutory Authority: Chapters 17.10, 17.24, and 34.05 RCW. WSR 09-19-006, § 16-752-610, filed 9/3/09, effective 10/4/09; WSR 04-19-004, § 16-752-610, filed 9/2/04, effective 10/3/04. Statutory Authority: Chapters 17.24, 17.10, 15.13 RCW. WSR 02-12-030, § 16-752-610, filed 5/29/02, effective 6/29/02. Statutory Authority: Chapters 17.24, 17.10 RCW. WSR 00-24-021, § 16-752-610, filed 11/28/00, effective 12/29/00; WSR 98-13-008, § 16-752-610, filed 6/4/98, effective 7/5/98. Statutory Authority: Chapters 17.10 and 17.24 RCW. WSR 92-07-025, § 16-752-610, filed 3/10/92, effective 4/10/92.]

## WSR 21-05-020

## PERMANENT RULES

## BUILDING CODE COUNCIL

[Filed February 8, 2021, 10:23 a.m., effective March 11, 2021]

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

Purpose: Moving into permanent rule making the expedited rule filed under WSR 20-21-097 for chapter 51-52 WAC, the amendment and adoption of the 2018 International Mechanical Code.

Citation of Rules Affected by this Order: Amending 2.

Statutory Authority for Adoption: RCW 19.27.035.

Other Authority: RCW 19.27.074.

Adopted under notice filed as WSR 20-21-097 on October 20, 2020.

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

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

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

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

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

Date Adopted: December 23, 2020.

Diane Glenn, Chair  
State Building Code Council

**OTS-2666.1**

AMENDATORY SECTION (Amending WSR 20-03-041, filed 1/8/20, effective 7/1/20)

**WAC 51-52-0403 Section 403—Mechanical ventilation.**

**403.1 Ventilation system.** Mechanical ventilation shall be provided by a method of supply air and return or *exhaust air*. The amount of supply air shall be approximately equal to the amount of return and *exhaust air*. The system shall not be prohibited from producing negative or positive pressure. The system to convey ventilation air shall be designed and installed in accordance with Chapter 6.

**403.2 Outdoor air required.** The minimum *outdoor airflow rate* shall be determined in accordance with Section 403.3.

## EXCEPTIONS:

1. Where the registered design professional demonstrates that an engineered ventilation system design will prevent the maximum concentration of contaminants from exceeding that obtainable by the rate of *outdoor air* ventilation determined in accordance with Section 403.3, the minimum required rate of *outdoor air* shall be reduced in accordance with such engineered system design.
2. Alternate systems designed in accordance with ASHRAE Standard 62.1 Section 6.2, Ventilation Rate Procedure, shall be permitted.

**403.2.1 Recirculation of air.** The air required by Section 403.3 shall not be recirculated. Air in excess of that required by Section 403.3 shall not be prohibited from being recirculated as a component of supply air to building spaces, except that:

1. Ventilation air shall not be recirculated from one dwelling to another or to dissimilar occupancies.

2. Supply air to a swimming pool and associated deck areas shall not be recirculated unless such air is dehumidified to maintain the relative humidity of the area at 60 percent or less. Air from this area shall not be recirculated to other spaces where 10 percent or more of the resulting supply airstream consists of air recirculated from these spaces.

3. Where mechanical exhaust is required by Note b in Table 403.3.1.1, recirculation of air from such spaces shall be prohibited. All air supplied to such spaces shall be exhausted, including any air in excess of that required by Table 403.3.1.1.

4. Where mechanical exhaust is required by Note g in Table 403.3.1.1, mechanical exhaust is required and recirculation from such spaces is prohibited where more than 10 percent of the resulting supply airstream consists of air recirculated from these spaces. Return air from such spaces shall only be permitted to be recirculated when returned to an energy recovery ventilation system complying with Section 514. Recirculation of air that is contained completely within such spaces shall not be prohibited.

**403.3 Outdoor air and local exhaust airflow rates.** Group R occupancies shall be provided with outdoor air and local exhaust in accordance with Section 403.4. All other buildings intended to be occupied shall be provided with outdoor air and local exhaust in accordance with Section 403.3.1.

**403.3.1.1 Outdoor airflow rate.** Ventilation systems shall be designed to have the capacity to supply the minimum outdoor airflow rate determined in accordance with this section. In each occupiable space, the ventilation system shall be designed to deliver the required rate of outdoor airflow to the breathing zone. Outdoor air shall be supplied directly to each occupiable space from an air handling unit through a fully ducted path or ducted to within 12 inches of the return air opening of a fan-powered terminal unit used to transfer the outdoor air to the occupiable space. The occupant load utilized for design of the ventilation system shall not be less than the number determined from the estimated maximum occupant load rate indicated in Table 403.3.1.1. Ventilation rates for occupancies not represented in Table 403.3.1.1 shall be those for a listed occupancy classification that is most similar in terms of occupant density, activities and building construction; or shall be determined by an approved engineering analysis. The ventilation system, including transfer fan-powered terminal units shall be designed to supply the required rate of ventilation air continuously during the period the building is occupied, except as otherwise stated in other provisions of the code.

With the exception of smoking lounges, the ventilation rates in Table 403.3.1.1 are based on the absence of smoking in occupiable spaces. Where smoking is anticipated in a space other than a smoking lounge, the ventilation system serving the space shall be designed to provide ventilation over and above that required by Table 403.3.1.1 in accordance with accepted engineering practice.

EXCEPTION: Where occupancy density is known and documented in the plans, the outside air rate may be based on the design occupant density. Under no circumstance shall the occupancies used result in outside air less than one-half that resulting from application of Table 403.3.1.1 estimated maximum occupancy rates.

### Table 403.3.1.1

#### REQUIRED OUTDOOR VENTILATION AIR

Occupancy Classification	Occupant Density #/1000 ft <sup>2a</sup>	People Outdoor Airflow Rate in Breathing Zone $R_p$ cfm/Person	Area Outdoor Airflow Rate in Breathing Zone $R_a$ cfm/ft <sup>2a</sup>	Exhaust Airflow Rate cfm/ft <sup>2a</sup>
<b>Offices</b>				
Conference rooms	50	5	0.06	—
Kitchenettes <sup>k</sup>	25	5	0.06	0.30
Office spaces	5	5	0.06	—
Reception areas	30	5	0.06	—
Telephone/data entry	60	5	0.06	—
Main entry lobbies	10	5	0.06	—
<b>Private dwellings, single and multiple</b>				
Garages, common for multiple units <sup>b</sup>	—	—	—	0.75 See Table 403.4.7
Living areas <sup>c</sup>	—	See Table 403.4.2	—	—
Toilet rooms, bathrooms and laundry areas <sup>g, i</sup>	—	—	—	See Table 403.4.7
<b>Public spaces</b>				
Corridors serving other than Group R occupancies	—	—	0.06	—
Corridors serving Group R dwelling or sleeping units with whole house exhaust system	—	—	0.12	—
Corridors serving Group R dwelling or sleeping units with other than whole house exhaust system	—	—	0.06	—
Courtrooms	70	5	0.06	—
Elevator car	—	—	—	1
Elevator lobbies in parking garage	—	—	1.0	—
Legislative chambers	50	5	0.06	—
Libraries	10	5	0.12	—
Museums (children's)	40	7.5	0.12	—
Museums/galleries	40	7.5	0.06	—
Places of religious worship	120	5	0.06	—
Shower room (per showerhead) <sup>g</sup>	—	—	—	50/20 <sup>f</sup>
Smoking lounges <sup>b</sup>	70	60	—	—
Toilet rooms—Public <sup>g</sup>	—	—	—	50/70 <sup>e</sup>
<b>Sports and amusement</b>				
Disco/dance floors	100	20	0.06	—
Bowling alleys (seating areas)	40	10	0.12	—
Game arcades	20	7.5	0.18	—
Ice arenas, without combustion engines <sup>j</sup>	—	—	0.30	0.5
Gym, stadium, arena (play area) <sup>j</sup>	—	—	0.30	—
Spectator areas	150	7.5	0.06	—
Swimming pools (pool and deck area)	—	—	0.48	—
Health club/aerobics room	40	20	0.06	—
Health club/weight room	10	20	0.06	—
<b>Storage</b>				
Janitor closets, trash rooms, recycling rooms	—	—	—	1.0
Repair garages, enclosed parking garage <sup>b, d</sup>	—	—	—	0.75
Storage rooms, chemical	—	—	—	1.5
Warehouses	—	—	0.06	—
<b>Workrooms</b>				
Bank vaults/safe deposit	5	5	0.06	—
Darkrooms	—	—	—	1.0
Copy, printing rooms	4	5	0.06	0.5

Occupancy Classification	Occupant Density #/1000 ft <sup>2a</sup>	People Outdoor Airflow Rate in Breathing Zone $R_p$ cfm/Person	Area Outdoor Airflow Rate in Breathing Zone $R_a$ cfm/ft <sup>2a</sup>	Exhaust Airflow Rate cfm/ft <sup>2a</sup>
Freezer and refrigerated spaces (<50°F)	0	10	0	0
Meat processing <sup>c</sup>	10	15	—	—
Pharmacy (prep. area)	10	5	0.18	—
Photo studios	10	5	0.12	—
Computer (without printing)	4	5	0.06	—

For SI: 1 cubic foot per minute = 0.0004719 m<sup>3</sup>/s, 1 ton = 908 kg, 1 cubic foot per minutes per square foot = 0.00508 m<sup>3</sup>/(s·m<sup>2</sup>), °C = [(°F) -32]/1.8, 1 square foot = 0.0929 m<sup>2</sup>.

- a. Based upon *net occupiable floor area*.
- b. Mechanical exhaust required and the recirculation of air from such spaces is prohibited. Recirculation of air that is contained completely within such spaces shall not be prohibited (see Section 403.2.1, Item 3).
- c. Spaces unheated or maintained below 50°F are not covered by these requirements unless the occupancy is continuous.
- d. Ventilation systems in enclosed parking garages shall comply with Section 404.
- e. Rates are per water closet or urinal. The higher rate shall be provided where the exhaust system is designed to operate intermittently. The lower rate shall be permitted only where the exhaust system is designed to operate continuously while occupied.
- f. Rates are per room unless otherwise indicated. The higher rate shall be provided where the exhaust system is designed to operate intermittently. The lower rate shall be permitted only where the exhaust system is designed to operate continuously while occupied.
- g. Mechanical exhaust is required and recirculation from such spaces is prohibited except that recirculation shall be permitted where the resulting supply airstream consists of not more than 10 percent air recirculated from these spaces. Return air from such spaces only be permitted to be recirculated when returned to an energy recovery ventilation system complying with Section 514. Recirculation of air that is contained completely within such spaces shall not be prohibited (see Section 403.2.1, Items 2 and 4).
- h. For nail salons, each manicure and pedicure station shall be provided with a *source capture system* capable of exhausting not less than 50 cfm per station. Exhaust inlets shall be located in accordance with Section 502.20. Where one or more required source capture systems operate continuously during occupancy, the exhaust rate from such systems shall be permitted to be applied to the exhaust flow rate required by Table 403.3.1.1 for the nail salon.
- i. A laundry area within a kitchen or bathroom is not required to have local exhaust. For the laundry area to qualify as being within the kitchen, the laundry room door must open directly into the kitchen and not into an adjacent corridor. Where there are doors that separate the laundry area from the kitchen or bathroom the door shall be louvered.
- j. When combustion equipment is intended to be used on the playing surface, additional dilution ventilation and/or source control shall be provided.
- k. Kitchenettes require exhaust when they contain a domestic cooking appliance range or oven that is installed in accordance with Table 507.2.1. Kitchenettes that only contain a microwave cooking appliance are not required to have exhaust. A kitchenette may not contain commercial cooking appliances that require Type I or Type II exhaust as these occupancies are required to be exhausted to the kitchen category in Table 403.3.1.1.

**403.3.1.1.2.3 Multiple zone recirculating systems.** For ventilation systems wherein one or more air handlers supply a mixture of outdoor air and recirculated air to more than one ventilation zone, the outdoor air intake flow ( $V_{ot}$ ) shall be determined in accordance with Sections 403.3.1.1.2.3.1 through 403.3.1.1.2.3.4.

**403.3.1.1.2.3.1 Uncorrected outdoor air intake.** The uncorrected outdoor air intake flow ( $V_{ot}$ ) shall be determined in accordance with Equation 4-5.

$$V_{ou} = D \sum_{all\ zones} (R_p \times P_z) + \sum_{all\ zones} (R_a \times A_z) \quad \text{(Equation 4-5)}$$

**403.3.1.1.2.3.1.1 Occupant diversity.** The occupant diversity ratio (D) shall be determined in accordance with Equation 4-6 to account for variations in population within the ventilation zones served by the system.

$$D = P_s / \sum_{all\ zones} P_z \quad \text{(Equation 4-6)}$$

where:

$P_s$  = System population: The total population in the area served by the system.

EXCEPTION: Alternative methods to account for occupant diversity shall be permitted, provided the resulting  $V_{ou}$  value is no less than that determined using Equation 4-5.

**403.3.1.1.2.3.1.2 Design system population.** Design system population ( $P_s$ ) shall equal the largest (peak) number of people expected to occupy all ventilation zones served by the ventilation system during use.

Note: Design system population is always equal to or less than the sum of design zone population for all zones in the area served by

the system because all zones may or may not be simultaneously occupied at design population.

**403.3.1.1.2.3.2 System ventilation efficiency.** The system ventilation efficiency ( $E_v$ ) shall be determined in accordance with Section 403.3.1.1.2.3.3 for the Simplified Procedure or Appendix A of ASHRAE 62.1 for the Alternative Procedure.

Note: These procedures also establish zone minimum primary air-flow rates for VAV systems.

**403.3.1.1.2.3.3 Simplified procedure.**

**403.3.1.1.2.3.3.1 System ventilation efficiency.** System ventilation efficiency ( $E_v$ ) shall be determined in accordance with Equation 4-6a or 4-6b.

$$E_v = 0.88 \times D + 0.22 \text{ for } D < 0.60 \text{ (Equation 4-6a)}$$

$$E_v = 0.75 \text{ for } D \geq 0.60 \text{ (Equation 4-6b)}$$

**403.3.1.1.2.3.3.2 Zone minimum primary airflow.** For each zone, the minimum primary airflow ( $V_{pz-min}$ ) shall be determined in accordance with Equation 4-7.

$$V_{pz-min} = V_{Oz} \times 1.5 \text{ (Equation 4-7)}$$

**403.3.1.1.2.3.4 Outdoor air intake.** The design outdoor air intake flow ( $V_{ot}$ ) shall be determined in accordance with Equation 4-8.

$$V_{ot} = V_{Ou}/E_v \text{ (Equation 4-8)}$$

**403.3.2 Group R-2, R-3 and R-4 occupancies.** This section is not adopted. See Section 403.4.

**403.3.2.1 Outdoor air for dwelling units.** This section is not adopted.

**403.3.2.2 Outdoor air for other spaces.** This section is not adopted.

**403.3.2.3 Local exhaust.** This section is not adopted.

**403.4 Group R whole house mechanical ventilation system.** Each dwelling unit or sleeping unit shall be equipped with a whole house mechanical ventilation system that complies with Sections 403.4.1 through 403.4.6. Each dwelling unit or sleeping unit shall be equipped with local exhaust complying with Section 403.4.7. All occupied spaces, including public corridors, other than the Group R dwelling units and/or sleeping units, that support these Group R occupancies shall meet the ventilation requirement of natural ventilation requirements of Section 402 or the mechanical ventilation requirements of Sections 403.1 through 403.3.

**403.4.1 System design.** The whole house ventilation system shall consist of one or more supply fans, one or more exhaust fans, or an ERV/HRV with integral fans; and the associated ducts and controls. Local exhaust fans shall be permitted to serve as part of the whole house ventilation system when provided with the proper controls in accordance with Section 403.4.5. The systems shall be designed and installed to supply and exhaust the minimum outdoor airflow rates per Section 403.4.2 as corrected by the balanced and/or distributed whole house ventilation system coefficients in accordance with Section 403.4.3 where applicable.

**Table 403.4.2**

WHOLE HOUSE MECHANICAL VENTILATION AIRFLOW RATE

(CONTINUOUSLY OPERATING SYSTEMS)

Floor Area (ft <sup>2</sup> )	Bedrooms <sup>1</sup>				
	1	2	3	4	>5
<500	30	30	35	45	50
500 - 1000	30	35	40	50	55
1001 - 1500	30	40	45	55	60
1501 - 2000	35	45	50	60	65
2001 - 2500	40	50	55	65	70
2501 - 3000	45	55	60	70	75
3001 - 3500	50	60	65	75	80
3501 - 4000	55	65	70	80	85
4001 - 4500	60	70	75	85	90
4501 - 5000	65	75	80	90	95

<sup>1</sup> Minimum airflow (Q<sub>r</sub>) is set at not less than 30 cfm for each dwelling units.

**403.4.2 Whole house mechanical ventilation rates.** The sleeping unit whole house mechanical ventilation minimum outdoor airflow rate shall be determined in accordance with the breathing zone ventilation rates minimum outdoor airflow rate shall be determined in accordance with the breathing zone ventilation rates requirements of Section 403.3.1.1.1.2 using Equation 4-2. The dwelling unit whole house mechanical ventilation minimum outdoor airflow rate shall be determined in accordance with Equation 4-10 or Table 403.4.2.

$$Q_r = 0.01 * A_{\text{floor}} + 7.5 * (N_{\text{br}} + 1) \quad \text{(Equation 4-10)}$$

where:

Q<sub>r</sub> = Ventilation airflow rate, cubic feet per minute (cfm) but not less than 30 cfm for each dwelling unit.

A<sub>floor</sub> = Conditioned floor area, square feet (ft<sup>2</sup>)

N<sub>br</sub> = Number of bedrooms, not less than one.

**Table 403.4.3**  
SYSTEM COEFFICIENT (C<sub>system</sub>)

System Type	Distributed	Not Distributed
Balanced	1.0	1.25
Not Balanced	1.25	1.5

**403.4.3 Ventilation quality adjustment.** The minimum whole house ventilation rate from Section 403.4.2 shall be adjusted by the system coefficient in Table 403.4.3 based on the system type not meeting the definition of a balanced whole house ventilation system and/or not meeting the definition of a distributed whole house ventilation system.

$$Q_v = Q_r * C_{\text{system}} \quad \text{(Equation 4-11)}$$

where:

Q<sub>v</sub> = Quality-adjusted ventilation airflow rate in cubic feet per minute (cfm)

Q<sub>r</sub> = Ventilation airflow rate, cubic feet per minute (cfm) from Equation 4-10 or Table 403.4.1

C<sub>system</sub> = System coefficient from Table 403.4.3

**403.4.4 Whole house ventilation residential occupancies.** Residential dwelling and sleeping unit whole house ventilation systems shall meet the requirements of Sections 403.4.4.1 or 403.4.4.2 depending on the occupancy of the residential unit.

**403.4.4.1 Whole house ventilation in Group R-2 occupancies.** Residential dwelling and sleeping units in Group R-2 occupancies system shall include supply and exhaust fans and be a balanced whole house ventilation system in accordance with Section 403.4.6.3. The system shall include a heat or energy recovery ventilator with a sensible heat recovery effectiveness as prescribed in Section C403.3.6 of the *Washington State Energy Code*. The whole house ventilation system shall operate continuously at the minimum ventilation rate determined in accordance with Section 403.4. The whole house supply fan shall provide ducted outdoor ventilation air to each habitable space within the residential unit.

**403.4.4.2 Whole house ventilation for other than Group R-2 occupancies.** Residential dwelling and sleeping units in other than Group R-2 occupancies, including I-1 condition 2 occupancies, shall have a whole house mechanical ventilation system with supply and exhaust fans in accordance with Section 403.4.6.1, 403.4.6.2, 403.4.6.3, or 403.4.6.4. The whole house ventilation system shall operate continuously at the minimum ventilation rate determined in accordance with Section 403.4.2 unless configured with intermittent off controls in accordance with Section 403.4.6.5. The whole house supply fan shall provide ducted outdoor ventilation air to each habitable space within the residential unit.

**403.4.5 Whole house ventilation controls.**

1. The whole house ventilation system shall be controlled with manual switches, timers or other means that provide for automatic operation of the ventilation system that are readily accessible by the occupant;

2. Whole house mechanical ventilation system shall be provided with controls that enable manual override off of the system by the occupant during periods of poor outdoor air quality. Controls shall include permanent text or a symbol indicating their function. Recommended control permanent labeling to include text similar to the following: "Leave on unless outdoor air quality is very poor." Manual controls shall be provided with ready access for the occupant.

EXCEPTION: Central whole house mechanical systems with supply air and/or exhaust that serve more than one dwelling or sleep units are not required to have manual override off controls accessible to the occupant.

3. Whole house ventilation systems shall be configured to operating continuously except where intermittent off controls are provided in accordance with Section 403.4.6.5 and allowed by Section 403.4.4.2.

**403.4.6 Whole house ventilation system component requirements.** Whole house ventilation supply and exhaust fans specified in this section shall have a minimum efficacy as prescribed in the *Washington State Energy Code*. The fans shall be rated for sound at a maximum of 1.0 sone at design airflow and static pressure conditions. Design and installation of the system or equipment shall be carried out in accordance with manufacturer's installation instructions.

**EXCEPTIONS:**

1. Central supply or exhaust fans serving multiple residential units do not need to comply with the maximum fan sone requirements.
2. Interior joining spaces provided with a 30 cfm transfer fan or a 25 square foot permanent opening do not require supply ventilation air directly to the space. Transfer fans shall meet the sone rating above and have whole house ventilation controls in accordance with Section 403.4.5.



**403.4.6.1 Exhaust fans.** Exhaust fans required shall be ducted directly to the outside in accordance with Section 501.3. Exhaust air outlets shall be designed to limit the pressure difference to the outside to limiting the outlet free area maximum velocity to 500 feet per minute and equipped with backdraft dampers or motorized dampers in accordance with *Washington State Energy Code*. Exhaust fans shall be tested and rated in accordance with HVI 915, HVI 916, and HVI 920. Exhaust fans required in this section may be used to provide local ventilation. Exhaust fans that are designed for intermittent exhaust airflow rates higher than the continuous exhaust airflow rates in Table ((403.4.3)) 403.4.2 shall be provided with occupancy sensors or humidity sensors to automatically override the fan to the high speed airflow rate. The exhaust fans shall be tested and the testing results shall be submitted and posted in accordance with Section 403.4.6.7.

EXCEPTION: Central exhaust fans serving multiple residential units do not need to comply with the HVI testing requirements.

**403.4.6.2 Supply fans.** Supply fans used in meeting the requirements of this section shall supply outdoor air from intake openings in accordance with Sections 401.4 and 401.5. Intake air openings shall be designed to limit the pressure difference to the outside to limiting the inlet free area maximum velocity to 500 feet per minute and when designed for intermittent off operation shall be equipped with motorized dampers in accordance with the *Washington State Energy Code*. Supply fans shall be tested and rated in accordance with HVI 915, HVI 916, and HVI 920. Where outdoor air is provided to each habitable dwelling unit or sleeping unit by supply fan systems the outdoor air shall be filtered. The filter shall be provided with access for regular maintenance and replacement. The filter shall have a Minimum Efficiency Rating Value (MERV) of at least 8.

EXCEPTION: Central supply fans serving multiple residential units do not need to comply with the HVI testing requirements.

**403.4.6.3 Balanced whole house ventilation system.** A balanced whole house ventilation system shall include both supply and exhaust fans. The supply and exhaust fans shall have airflow that is within 10 percent of each other. The tested and balanced total mechanical exhaust airflow rate is within 10 percent or 5 cfm, whichever is greater, of the total mechanical supply airflow rate. The flow rate test results shall be submitted and posted in accordance with Section ((403.4.6.6)) 403.4.6.7. The exhaust fan shall meet the requirements of Section ((403.4.6.2)) 403.4.6.1. The supply fan shall meet the requirements of Section ((403.4.6.3)) 403.4.6.2. For R-2 dwelling and sleeping units, the system is required to have balanced whole house ventilation but is not required to have distributed whole house ventilation where the not distributed system coefficient from Table ((403.4.2)) 403.4.3 is utilized to correct the whole house mechanical ventilation rate. The system shall be design and balanced to meet the pressure equalization requirements of Section 501.4. Intermittent dryer exhaust, intermittent range hood exhaust, and intermittent toilet room exhaust airflow rates above the residential dwelling or sleeping unit minimum ventilation rate are exempt from the balanced airflow calculation.

**403.4.6.4 Furnace integrated supply.** Systems using space condition heating and/or cooling air handler fans for outdoor air supply air distribution are not permitted.

EXCEPTION: Air handler fans shall be permitted that have multi-speed or variable speed supply airflow control capability with a low speed operation not greater than 25 percent of the rated supply air flow capacity during ventilation only operation. Outdoor air intake openings must meet the provisions of Sections 401.4 and 401.5 and must include a motorized damper that is activated by the whole house ventilation system controller. Intake air openings shall be designed to limit the pressure difference to the outside to limiting the inlet free area maximum velocity to 500 ft per min. The motorized damper must be controlled to maintain the outdoor airflow intake airflow within 10 percent of the whole house mechanical exhaust airflow rate. The supply air handler shall provide supply air to each habitable space in the residential unit. The whole house ventilation system shall include exhaust fans in accordance with Section ((403.4.6.2)) 403.4.6.1 to meet the pressure equalization requirements of Section 501.4. The flow rate for the outdoor air intake must be tested and verified at the minimum ventilation fan speed and the maximum heating or cooling fan speed. The results of the test shall be submitted and posted in accordance with Section ((403.4.6.6)) 403.4.6.7.

**403.4.6.5 Intermittent off operation.** Whole house mechanical ventilation systems shall be provided with advanced controls that are configured to operate the system with intermittent off operation and shall operate for a least two hours in each four-hour segment. The whole house ventilation airflow rate determined in accordance with Section 403.4.2 as corrected by Section 403.4.3 shall be multiplied by the factor determined in accordance with Table 403.4.6.5.

**Table 403.4.6.5**  
**INTERMITTENT WHOLE HOUSE MECHANICAL VENTILATION RATE**  
**FACTORS<sup>a, b</sup>**

Run-time Percentage in Each 4-hour Segment	50%	66%	75%	100%
Factor <sup>a</sup>	2	1.5	1.3	1.0

<sup>a</sup> For ventilation system run-time values between those given, the factors are permitted to be determined by interpolation.

<sup>b</sup> Extrapolation beyond the table is prohibited.

**403.4.6.6 Testing.** Whole house mechanical ventilation systems shall be tested, balanced and verified to provide a flow rate not less than the minimum required by Sections 403.4.2 and 403.4.3. Testing shall be performed according to the ventilation equipment manufacturer's instructions, or by using a flow hood, flow grid, or other airflow measuring device at the mechanical ventilation fan's inlet terminals, outlet terminals or grilles or in the connected ventilation ducts. Where required by the building official, testing shall be conducted by an approved third party. A written report of the results of the test shall be signed by the party conducting the test and provided to the building official and shall be posted in the residential unit in accordance with Section 403.4.6.7.

**403.4.6.7 Certificate.** A permanent certificate shall be completed by the mechanical contractor, test and balance contractor or other approved party and posted on a wall in the space where the furnace is located, a utility room, or an *approved* location inside the building. When located on an electrical panel, the certificate shall not cover or obstruct the visibility of the circuit directory label, service disconnect label, or other required labels. The certificate shall list the flow rate determined from the delivered airflow of the whole house mechanical ventilation system as installed and the type of mechanical whole house ventilation system used to comply with Section 403.4.3.

**403.4.7 Local exhaust.** Bathrooms, toilet rooms and kitchens shall include a local exhaust system. Such local exhaust systems shall have the capacity to exhaust the minimum airflow rate in accordance with Table 403.4.7 and Table 403.3.1.1, including notes. Fans required by this section shall be provided with controls that enable manual over-

ride or automatic occupancy sensor, humidity sensor or pollutant sensor controls. An "on/off" switch shall meet this requirement for manual controls. Manual fan controls shall be provided with ready access in the room served by the fan.

**Table 403.4.7**  
MINIMUM EXHAUST RATES

Area to be exhausted	Exhaust Rate	
	Intermittent	Continuous
Kitchens	100 cfm	30 cfm
Bathrooms - Toilet rooms	50 cfm	20 cfm

**403.4.7.1 Whole house exhaust controls.** If the local exhaust fan is included in a whole house ventilation system in accordance with Section 403.4.6, the exhaust fan shall be controlled to operate as specified in Section 403.4.5.

**403.4.7.2 Local exhaust fans.** Exhaust fans shall meet the following criteria.

1. Exhaust fans shall be tested and rated in accordance with HVI 915, HVI 916, and HVI 920.

EXCEPTION: Where a range hood or down draft exhaust fan is used for local exhaust for a kitchen, the device is not required to be rated per these standards.

2. Fan airflow rating and duct system shall be designed and installed to deliver at least the exhaust airflow required by Table ((403.4.4)) 403.4.7. The airflows required refer to the delivered airflow of the system as installed and tested using a flow hood, flow grid, or other airflow measurement device. Local exhaust systems shall be tested, balanced and verified to provide a flow rate not less than the minimum required by this section.

3. Design and installation of the system or equipment shall be carried out in accordance with manufacturers' installation instructions.

4. Fan airflow rating and duct system shall be designed and installed to deliver at least the exhaust airflow required by Table 403.4.3.

EXCEPTIONS: 1. An exhaust airflow rating at a pressure of 0.25 in. w.g. may be used, provided the duct sizing meets the prescriptive requirements of Table 403.4.7.2.  
2. Where a range hood or down draft exhaust fan is used to satisfy the local ventilation requirements for kitchens, the range hood or down draft exhaust shall not be less than 100 cfm at 0.10 in. w.g.

**Table 403.4.7.2**  
PRESCRIPTIVE EXHAUST DUCT SIZING

Fan Tested cfm at 0.25 inches w.g.	Minimum Flex Diameter	Maximum Length in Feet	Minimum Smooth Diameter	Maximum Length in Feet	Maximum Elbows <sup>a</sup>
50	4 inches	25	4 inches	70	3
50	5 inches	90	5 inches	100	3
50	6 inches	No Limit	6 inches	No Limit	3
80	4 inches <sup>b</sup>	NA	4 inches	20	3
80	5 inches	15	5 inches	100	3
80	6 inches	90	6 inches	No Limit	3
100	5 inches <sup>b</sup>	NA	5 inches	50	3
100	6 inches	45	6 inches	No Limit	3
125	6 inches	15	6 inches	No Limit	3
125	7 inches	70	7 inches	No Limit	3

a. For each additional elbow, subtract 10 feet from length.

- b. Flex ducts of this diameter are not permitted with fans of this size.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-03-041, § 51-52-0403, filed 1/8/20, effective 7/1/20; WSR 17-10-075, § 51-52-0403, filed 5/3/17, effective 6/3/17; WSR 16-01-148, § 51-52-0403, filed 12/21/15, effective 7/1/16. Statutory Authority: RCW 19.27.031, 19.27.074 and chapters 19.27 and 34.05 RCW. WSR 13-04-053, § 51-52-0403, filed 2/1/13, effective 7/1/13. Statutory Authority: RCW 19.27.031, 19.27.035, 19.27.074, and chapters 19.27 and 34.05 RCW. WSR 12-07-020, § 51-52-0403, filed 3/12/12, effective 4/12/12. Statutory Authority: RCW 19.27.190, 19.27.074, 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 10-03-099, § 51-52-0403, filed 1/20/10, effective 7/1/10. Statutory Authority: RCW 19.27.190, 19.27.020, and chapters 19.27 and 34.05 RCW. WSR 07-01-092, § 51-52-0403, filed 12/19/06, effective 7/1/07. Statutory Authority: RCW 19.27.020, 19.27.031, 19.27.074 and chapters 19.27 and 34.05 RCW. WSR 05-01-015, § 51-52-0403, filed 12/2/04, effective 7/1/05.]

**Reviser's note:** The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency.

**Reviser's note:** The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 20-03-041, filed 1/8/20, effective 7/1/20)

**WAC 51-52-1200 Chapter 12—Hydronic piping.**

**1209.5 Thermal barrier required.** Radiant floor heating and snow melt systems shall be provided with a thermal barrier in accordance with Sections 1209.5.1 (~~(through 1209.5.4)~~) and 1209.5.2. Concrete slab-on-grade, asphalt and paver-system type pavements shall have a minimum of R-10 insulation installed under the area to be snow melted, or R-5 insulation shall be installed under and at the slab edges of the area to be snow melted. The insulation shall be located underneath the snow and ice melt hydronic piping or cable and along all edges of the pavement where the snow and ice melt system is installed in accordance with the snow and ice melt manufacturer's instructions.

**1209.5.1 Slab-on-grade installation.** Radiant piping utilized in slab-on-grade applications shall be provided with insulating materials installed beneath the piping as required by the *Washington State Energy Code*.

**1210.7.6 Expansion tanks.** Shutoff valves shall be installed at connections to expansion tanks. A method of draining the expansion tank downstream of the shutoff valve shall be provided.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-03-041, § 51-52-1200, filed 1/8/20, effective 7/1/20; WSR 16-01-148, § 51-52-1200, filed 12/21/15, effective 7/1/16.]

AMENDATORY SECTION (Amending WSR 20-03-041, filed 1/8/20, effective 7/1/20)

**WAC 51-52-1500 Chapter 15—Referenced standards.** The following referenced standards are added to Chapter 15.

**ANSI**

UL 60335-2-40

**ASHRAE**

(~~15-2019~~) 34-2019 Safety standards for refrigeration systems and designation and classification of refrigerants.

**62.2-2016** Ventilation and Acceptable Indoor Air Quality in Low-Rise Residential Buildings. . . . . 403.4.11

**HVI address:**

Home Ventilating Institute  
1740 Dell Range Blvd., Suite H, PMB 450  
Cheyenne, WY 82009

**HVI 915-2015** Procedure for Loudness Testing of Residential Fan Products. . . . . 403.4.6.1, 403.4.6.2, 403.4.7.2

**HVI 916-2015** Air Flow Test Procedure. 403.4.6.1, 403.4.6.2, 403.4.7.2

**HVI 920-2015** Product Performance Certification Procedure Including Verification and Challenge. . . . . 403.4.6.1, 403.4.6.2, 403.4.7.2

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-03-041, § 51-52-1500, filed 1/8/20, effective 7/1/20; WSR 16-01-148, § 51-52-1500, filed 12/21/15, effective 7/1/16. Statutory Authority: RCW 19.27.031, 19.27.074 and chapters 19.27 and 34.05 RCW. WSR 13-04-053, § 51-52-1500, filed 2/1/13, effective 7/1/13. Statutory Authority: RCW 19.27.190, 19.27.074, 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 10-03-099, § 51-52-1500, filed 1/20/10, effective 7/1/10.]

## WSR 21-05-039

## PERMANENT RULES

## DEPARTMENT OF LICENSING

[Filed February 11, 2021, 12:14 p.m., effective March 14, 2021]

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

Purpose: Rule changes are necessary to update chapter 308-30 WAC to incorporate changes required by SB 5641 to establish rules for remote notarization being performed by licensed Washington notaries. SB 5641 is effective October 1, 2020, as passed by the 2019 legislature to allow licensed Washington notaries to perform remote notarizations.

Citation of Rules Affected by this Order: New WAC 308-30-290 Authorized remote notarial acts, 308-30-300 Standards for technology identity proofing, 308-30-310 Standards for communication technology, 308-30-320 Certificate of notarial act for remote notarial acts and 308-30-330 Retention of audio-visual recordings and repositories; and amending WAC 308-30-020 Definitions, 308-30-030 Application process for notary public commission, 308-30-040 Approval or denial of application, 308-30-050 Term of commission, 308-30-150 Completion of electronic notarial certificate, 308-30-200 Format of journals of notarial acts, 308-30-220 Fees for notarial acts, and 308-30-270 Termination or suspension of commission or endorsement.

Statutory Authority for Adoption: RCW 42.45.250.

Adopted under notice filed as WSR 21-02-067 on January 5, 2021.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 5, Amended 8, Repealed 0.

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

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

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

Number of Sections Adopted using Negotiated Rule Making: New 5, Amended 8, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: February 11, 2021.

Damon Monroe  
Rules Coordinator

## OTS-2172.2

AMENDATORY SECTION (Amending WSR 18-12-028, filed 5/29/18, effective 7/1/18)

**WAC 308-30-020 Definitions.** Words and terms used in these rules have the same meaning as in the Revised Uniform Law on Notarial Acts, RCW 42.45.010.

"Appear personally" means:

(a) Being in the same physical location as another individual and close enough to see, hear, communicate with, and exchange tangible identification credentials with that individual; or

(b) For remote notarial acts, being in a different physical location from another individual but able to see, hear, and communicate with that individual by means of communication technology.

"Commission" is equivalent to the term "license" as defined in RCW 18.235.010(6).

"Department" means the Washington state department of licensing.

"Director" means the director of the department of licensing or the director's designee.

"Electronic journal" means a chronological record of notarizations maintained by a notary public in an electronic format in compliance with these rules.

"Electronic notarial acts" means notarizations or notarial acts with respect to electronic records.

"Electronic notarial certificate" means the part of, or attachment to, an electronic record that is completed by the notary public, contains the information required under RCW 42.45.130 and the notary's official stamp, bears that notary's electronic signature, and states the facts attested to by the notary in a notarization performed on an electronic record.

"Enroll" and "enrollment" mean a process for registering a notary public with a technology provider to access and use a tamper-evident technology in order to perform electronic notarial acts.

"Principal" means:

(a) An individual whose electronic signature is notarized; or

(b) An individual, other than a witness required for an electronic notarial act, taking an oath or affirmation from the notary public.

"Remote notarial act" means a notarization that is performed using audio-video technology that meets the requirements in WAC 308-30-310 that allows for direct interaction between the notary and the individuals that are remotely located.

"Sole control" means at all times being in the direct physical custody of the notary public or safeguarded by the notary with a password or other secure means of authentication.

"Tamper-evident technology" means a set of applications, programs, hardware, software, or other technologies designed to enable a notary public to perform electronic notarial acts and to display evidence of any changes made to an electronic record.

"Technology provider" means an individual or entity that offers the services of a tamper-evident technology for electronic notarial acts.

"Venue" means the state and county where the notary public is physically located while performing a notarial act.

[Statutory Authority: RCW 42.45.250. WSR 18-12-028, § 308-30-020, filed 5/29/18, effective 7/1/18. Statutory Authority: RCW 42.44.190. WSR 06-20-061, § 308-30-020, filed 9/29/06, effective 11/1/06; WSR 93-05-009, § 308-30-020, filed 2/5/93, effective 3/8/93. Statutory Authority: 1985 c 156 §§ 5 and 20. WSR 85-24-025 (Order PL 571), § 308-30-020, filed 11/26/85, effective 1/1/86.]

AMENDATORY SECTION (Amending WSR 18-12-028, filed 5/29/18, effective 7/1/18)

**WAC 308-30-030 Application process for notary public commission.**

(1) To apply for a notary public commission, an applicant who meets

the requirements of RCW 42.45.200(2) shall submit an application on forms provided by the department. The application shall include:

(a) Evidence of a ten thousand dollar surety bond, signed by the notary public, that conforms to RCW 42.45.200(4);

(b) Payment of the prescribed fee; and

(c) A signed and notarized oath of office.

(2) As part of a notary public commission application, an applicant shall provide both their legal name and their commission name. The applicant's commission name must contain their surname, and at least the initials of the applicant's first and middle name.

(3) To apply for an electronic records notary public endorsement, an applicant who meets the requirements of RCW 42.45.200(7) shall submit an electronic records notary public application on forms provided by the department and pay the prescribed fee.

(4) An applicant may only apply for an electronic records notary public endorsement if:

(a) They currently hold an active notary public commission; or

(b) They are applying for a notary public commission and an electronic records notary public endorsement simultaneously.

(5) An individual applying for an electronic records notary public endorsement must inform the department within thirty days of applying of the tamper-evident technology provider that they have enrolled with before they perform their first electronic notarial act.

(6) To apply for a remote notary endorsement, an electronic records notary public shall submit a remote notary endorsement application on forms provided by the department.

(7) An applicant may only apply for a remote notary endorsement if:

(a) They currently hold an active notary public commission with an electronic records notary public endorsement;

(b) They currently hold an active notary public commission, and are applying for an electronic records notary public endorsement and a remote notary endorsement simultaneously; or

(c) They are applying for a notary public commission, an electronic records notary public endorsement, and a remote notarial acts endorsement simultaneously.

(8) A notary public shall reapply with the department for each commission term before performing notarial acts.

((+7)) (9) A notary public may elect not to apply for an electronic records notary public endorsement or a remote notary endorsement.

[Statutory Authority: RCW 42.45.250. WSR 18-12-028, § 308-30-030, filed 5/29/18, effective 7/1/18. Statutory Authority: RCW 42.44.190. WSR 93-05-009, § 308-30-030, filed 2/5/93, effective 3/8/93. Statutory Authority: 1985 c 156 §§ 5 and 20. WSR 85-24-025 (Order PL 571), § 308-30-030, filed 11/26/85, effective 1/1/86.]

AMENDATORY SECTION (Amending WSR 18-12-028, filed 5/29/18, effective 7/1/18)

**WAC 308-30-040 Approval or denial of application.** (1) Upon ~~((the))~~ an applicant's fulfillment of the requirements for a notary public commission ~~((or))~~ and/or an electronic records notary public endorsement, and/or a remote notary endorsement, the department shall



approve the application and issue the notary public commission ((~~or~~)) and/or any appropriate endorsements.

(2) If the department receives an incomplete or invalid application, the department shall hold the application for thirty calendar days to allow the applicant to cure any defects. After the thirty day period, the application shall be canceled and any application fees forfeited.

(3) An applicant may not perform any notarial acts on a tangible or electronic record before receiving a notary public commission and the appropriate endorsement from the department.

(4) ~~((A notary public may not perform any electronic notarial acts before receiving an electronic records notary public endorsement from the department.~~

~~(5))~~ The department may deny a commission or endorsement application if the applicant fails to comply with these rules or does not meet the requirements for licensure.

[Statutory Authority: RCW 42.45.250. WSR 18-12-028, § 308-30-040, filed 5/29/18, effective 7/1/18. Statutory Authority: RCW 42.44.190. WSR 93-05-009, § 308-30-040, filed 2/5/93, effective 3/8/93. Statutory Authority: 1985 c 156 §§ 5 and 20. WSR 85-24-025 (Order PL 571), § 308-30-040, filed 11/26/85, effective 1/1/86.]

AMENDATORY SECTION (Amending WSR 18-12-028, filed 5/29/18, effective 7/1/18)

**WAC 308-30-050 Term of commission.** (1) The term of a notary public commission shall expire on the expiration date of the notary public's surety bond, no more than four years after their commission date.

(2) Unless terminated pursuant to WAC 308-30-270, an electronic records notary public endorsement ~~((is))~~ and the remote notary endorsement are valid from the date the endorsement is issued by the department, and continues as long as the notary public's current commission remains valid.

[Statutory Authority: RCW 42.45.250. WSR 18-12-028, § 308-30-050, filed 5/29/18, effective 7/1/18. Statutory Authority: RCW 42.44.190. WSR 93-05-009, § 308-30-050, filed 2/5/93, effective 3/8/93. Statutory Authority: 1985 c 156 §§ 5 and 20. WSR 85-24-025 (Order PL 571), § 308-30-050, filed 11/26/85, effective 1/1/86.]

AMENDATORY SECTION (Amending WSR 18-12-028, filed 5/29/18, effective 7/1/18)

**WAC 308-30-150 Completion of electronic notarial certificate.**

(1) For every electronic notarial act and remote notarial act, a notary public shall complete an electronic notarial certificate that complies with the requirements of these rules, RCW 42.45.130 and 42.45.140.

(2) An electronic notarial certificate shall be completed at the time of notarization and in the ~~((physical))~~ presence of the principal.

[Statutory Authority: RCW 42.45.250. WSR 18-12-028, § 308-30-150, filed 5/29/18, effective 7/1/18. Statutory Authority: RCW 42.44.190. WSR 93-05-009, § 308-30-150, filed 2/5/93, effective 3/8/93.]

AMENDATORY SECTION (Amending WSR 18-12-028, filed 5/29/18, effective 7/1/18)

**WAC 308-30-200 Format of journals of notarial acts.** (1) A tangible notarial journal shall:

- (a) Be a permanent, bound book with numbered pages; and
- (b) Have the capacity to record for each notarial act:
  - (i) The information required by RCW 42.45.180(4);
  - (ii) A description of the notary public's method of identifying the principal; and
  - (iii) The principal's signature, or the signature of an authorized party in compliance with RCW 42.45.070, or a notation in the notary journal that the notarial act was performed via remote notarization.

(2) If a notary public keeps an electronic journal pursuant to RCW 42.45.180(3), the electronic journal shall:

- (a) Be maintained only in addition to the tangible journal;
- (b) Have the capacity to record the information required for a tangible notarial journal;
- (c) Enable access by a password or other secure means of authentication;
- (d) Be tamper-evident;
- (e) Create a duplicate record of the journal as a backup; and
- (f) Be capable of providing tangible or electronic copies of any entry made in the journal.

(3) A notary public's journal is the exclusive property of the notary public, and shall not be surrendered to an employer upon demand or termination, whether the employer paid for the journal or the notary's bond or application fees.

(4) A notary performing remote notarization must maintain a tangible notary journal as required in RCW 42.45.180 and WAC 308-30-190, this section, and WAC 308-30-210. Notaries performing remote notarization are not required to collect and maintain the signatures of the signers when those notarizations were performed remotely. Notaries must note in their tangible notary log that a notarization was performed remotely.

[Statutory Authority: RCW 42.45.250. WSR 18-12-028, § 308-30-200, filed 5/29/18, effective 7/1/18.]

AMENDATORY SECTION (Amending WSR 18-12-028, filed 5/29/18, effective 7/1/18)

**WAC 308-30-220 Fees for notarial acts.** (1) The maximum fees a notary may charge for notarial acts are:

Notarial Act	Fee
Witnessing or attesting a signature	\$10.00

Notarial Act	Fee
Taking an acknowledgment or a verification upon oath or affirmation	\$10.00
Certifying or attesting a copy	\$10.00
Administering an oath or affirmation	\$10.00
Certifying that an event has occurred or an act has been performed	\$10.00

(2) A notary public need not charge for notarial acts.

(3) A notary public may not charge fees for receiving or noting a protest of a negotiable instrument.

(4) A notary public may additionally charge the actual costs of copying any instrument or record.

(5) A notary public may charge a travel fee when traveling to perform a notarial act if:

(a) The notary public and the individual requesting the notarial act agree upon the travel fee in advance of the travel; and

(b) The notary public explains to the individual requesting the notarial act that the travel fee is in addition to the notarial fee in subsection (1) of this section and is not required by law.

(6) Notwithstanding the maximum fees set forth in subsection (1) of this section and the prohibition set forth in subsection (3) of this section, a notary public may charge a maximum fee of twenty-five dollars to perform a remote notarial act.

[Statutory Authority: RCW 42.45.250. WSR 18-12-028, § 308-30-220, filed 5/29/18, effective 7/1/18.]

AMENDATORY SECTION (Amending WSR 18-12-028, filed 5/29/18, effective 7/1/18)

**WAC 308-30-270 Termination or suspension of commission or endorsement.** (1) The department may take action against the commission and/or endorsement of a notary public who fails to comply with these rules as provided in RCW 42.45.210, 42.45.270, and chapter 18.235 RCW. Any restriction, suspension, or revocation of a notary public's commission will automatically have the same effect on any endorsement the notary public holds.

(2) A notary public may terminate their notary public commission and/or electronic records endorsement or remote notary endorsement by notifying the department of this intent in writing and disposing of all or any part of a tamper-evident technology in the notary's control whose purpose was to perform electronic notarizations.

(3) A notary public may terminate the electronic records notary public endorsement or the remote notary endorsement and maintain the underlying notary public commission.

(4) A notary public whose commission is terminated or expired, either by the notary or the department, shall disable their official stamp by destroying, defacing, damaging, or securing the device against use. The notary shall maintain their notarial journals for ten years as required by RCW 42.45.180 and WAC 308-30-210.

[Statutory Authority: RCW 42.45.250. WSR 18-12-028, § 308-30-270, filed 5/29/18, effective 7/1/18.]

NEW SECTION

**WAC 308-30-290 Authorized remote notarial acts.** (1) A notary public who has received both an electronic records notary public endorsement and a remote notarial acts endorsement from the department may perform the following remote notarial acts:

- (a) Taking an acknowledgment;
- (b) Taking a verification on oath or affirmation;
- (c) Witnessing or attesting a signature;
- (d) Certifying or attesting a copy;
- (e) Certifying that an event has occurred or an act has been performed; and
- (f) Noting a protest of a negotiable instrument, if the notary public is:
  - (i) Acting under the authority of an attorney who is licensed to practice law in this state or another state; or
  - (ii) Acting under the authority of a financial institution regulated by this state, another state, or the federal government.

(2) In performing remote notarial acts, a notary public shall comply with all requirements for electronic notarial acts under this chapter.

[]

NEW SECTION

**WAC 308-30-300 Standards for identity proofing.** (1) In performing remote notarial acts, if a notary public does not have satisfactory evidence of the identity of a remotely located individual under subsection (4) of this section, the notary public must reasonably verify the individual's identity through two different types of identity proofing consisting of a credential analysis procedure and a dynamic knowledge-based authentication assessment as provided in subsections (2) and (3) of this section.

(2) Credential analysis must use public or private data sources to confirm the validity of the identification credential presented by a remotely located individual and shall, at a minimum:

- (a) Use automated software processes to aid the notary public in verifying the identity of each remotely located individual;
- (b) Require the identification credential to pass an authenticity test, consistent with sound commercial practices, that uses appropriate technologies to confirm the integrity of visual, physical, or cryptographic security features and to confirm that the identification credential is not fraudulent or inappropriately modified;
- (c) Use information held or published by the issuing source or an authoritative source, as available and consistent with sound commercial practices, to confirm the validity of personal details and identification credential details; and
- (d) Enable the notary public visually to compare for consistency the information and photograph on the identification credential and the remotely located individual as viewed by the notary public in real time through communication technology.

(3) A dynamic knowledge-based authentication assessment is successful if it meets the following requirements:

(a) The remotely located individual must answer a quiz consisting of a minimum of five questions related to the individual's personal history or identity formulated from public or private data sources;

(b) Each question must have a minimum of five possible answer choices;

(c) At least eighty percent of the questions must be answered correctly;

(d) All questions must be answered within two minutes;

(e) If the remotely located individual fails the first attempt, the individual may retake the quiz one time within twenty-four hours;

(f) During a retake of the quiz, a minimum of forty percent of the prior questions must be replaced;

(g) If the remotely located individual fails the second attempt, the individual is not allowed to retry with the same online notary public within twenty-four hours of the second failed attempt; and

(h) The notary public must not be able to see or record the questions or answers.

(4) A notary public has satisfactory evidence of the identity of a remotely located individual if:

(a) The notary public has personal knowledge of the identity of the individual; or

(b) The individual is identified by oath or affirmation of a credible witness in accordance with the following requirements:

(i) To be a credible witness, the witness must have personal knowledge of the remotely located individual;

(ii) The notary public must have personal knowledge of the credible witness or verify the identity of the credible witness by two different types of identity proofing in accordance with subsections (1), (2), and (3) of this section; and

(iii) A credible witness may be outside the physical presence of the notary public or remotely located individual if the notary public, credible witness, and remotely located individual can communicate by using communication technology.

[]

#### NEW SECTION

**WAC 308-30-310 Standards for communication technology.** (1) Communication technology for remote notarial acts must provide for synchronous audio-visual feeds of sufficient audio clarity and video resolution to enable the notary public and remotely located individual to see and speak with each other. The process must provide a means for the notary public reasonably to confirm that an electronic record before the notary public is the same record in which the remotely located individual made a statement or on which the remotely located individual executed a signature.

(2) Communication technology must provide reasonable security measures to prevent unauthorized access to:

(a) The live transmission of the audio-visual feeds;

(b) The methods used to perform identify verification; and

(c) The electronic record that is the subject of the remote notarial act.

(3) If a remotely located individual must exit the workflow, the individual must restart the identify verification process required under WAC 308-30-300 from the beginning.

[]

NEW SECTION

**WAC 308-30-320 Certificate of notarial act for remote notarial acts.**

(1) A form of notarial certificate for a remote notarial act satisfies the requirement of RCW 42.45.280(4) and 42.45.130 (1)(g) if it is in the form provided by applicable law and contains a statement substantially as follows: "This notarial act involved the use of communication technology."

(2) A short form of acknowledgment prescribed in RCW 42.45.140 satisfies the requirement of RCW 42.45.280(4) and 42.45.130 (1)(g) if it is in substantially one of the following forms for the purposes indicated:

(a) For an acknowledgment in an individual capacity:

State of Washington  
County of .....

This record was acknowledged before me by means of communication technology on (date) by (name(s) of individuals).

.....  
(Signature of notary public)

Notary Public

(Electronic official stamp)

(My commission expires: .... )

(b) For an acknowledgment in a representative capacity:

State of Washington  
County of .....

This record was acknowledged before me by means of communication technology on (date) by (name(s) of individuals) as (type of authority, such as officer or trustee) of (name of party on behalf of whom the instrument was executed).

.....  
(Signature of notary public)

Notary Public

(Electronic official stamp)

(My commission expires: .... )

(c) For verification on oath or affirmation:

State of Washington  
County of .....

Signed and sworn to (or affirmed) before me by means of communication technology on (date) by (name(s) of individuals making statement).

.....  
(Signature of notary public)

Notary Public

(Electronic official stamp)

(My commission expires: . . . . )

(d) For witnessing or attesting a signature:

State of Washington  
County of .....

Signed or attested before me by means of communication technology on (date) by (name(s) of individuals).

.....  
(Signature of notary public)

Notary Public

(Electronic official stamp)

(My commission expires: . . . . )

[]

NEW SECTION

**WAC 308-30-330 Retention of audio-visual recordings and repositories.** (1) A notary public must retain any audio-visual recording created under RCW 42.45.280 (3) (c) in a computer or other electronic storage device that protects the recording against unauthorized access by password or other secure means of authentication. The recording must be created in an industry-standard audio-visual file format and must not include images of any electronic record that was the subject of the remote notarial act.

(2) An audio-visual recording must be retained for at least ten years after the recording is made.

(3) A notary public must take reasonable steps to ensure that a backup of the audio-visual recording exists and is secure from unauthorized use.

(4) The fact that the notary public's employer, contractor, or repository keeps or stores any audio-visual recordings shall not relieve the notary of the duties required by these rules.

(5) The personal representative or guardian of a notary public shall follow RCW 42.45.280(6) related to the disposition of the notary public's audio-visual recordings upon the death or adjudication of incompetency of the notary public.

(6) The notary public, or the notary's personal representative or guardian, shall provide access instructions to the department for any audio-visual recordings maintained or stored by the notary, upon commission resignation, revocation, or expiration without renewal, or upon the death of adjudication of incompetency of the notary.

(7) A notary public, or the notary's personal representative or guardian, may by written contract engage a third party to act as a repository to provide the storage required by this section. A third party under contract under this section shall be deemed a repository under RCW 42.45.280(6).

(8) Any contract under subsection (7) of this section must:

(a) Enable the notary public, or the notary's personal representative or guardian, to comply with the retention requirements of this section even if the contract is terminated; or

(b) Provide that the information will be transferred to the notary public, or to the notary's personal representative or guardian, if the contract is terminated.

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## WSR 21-05-043

## PERMANENT RULES

## HEALTH CARE AUTHORITY

[Filed February 11, 2021, 3:45 p.m., effective March 14, 2021]

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

Purpose: The agency is amending this rule to revise the signature requirement for pharmacy products dispensed and delivered directly to a medicaid client or their provider's office. The proposed rule requires either the client or the provider to sign for delivered products. The new signature requirement ensures proof of delivery for prescriptions sent to a provider's office, which decreases the potential for medicaid fraud and duplicate billing.

Citation of Rules Affected by this Order: Amending WAC 182-530-5000.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 21-02-072 on January 5, 2021.

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

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

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

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

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

Date Adopted: February 11, 2021.

Wendy Barcus  
Rules Coordinator

**OTS-2176.2**

AMENDATORY SECTION (Amending WSR 16-01-046, filed 12/9/15, effective 1/9/16)

**WAC 182-530-5000 Billing requirements—Pharmacy claim payment.**

(1) When billing the medicaid agency for pharmacy services, providers must:

(a) Use the appropriate agency claim form or electronic billing specifications;

(b) Include the actual eleven-digit national drug code (NDC) number of the product dispensed from a rebate eligible manufacturer;

(c) Bill the agency using metric decimal quantities which is the National Council for Prescription Drug Programs (NCPDP) billing unit standard;

(d) Meet the general provider documentation and record retention requirements in WAC 182-502-0020; and

(e) Maintain proof of delivery receipts.

(i) When a provider delivers an item directly to the client or the client's authorized representative, the provider must be able to furnish proof of delivery, including ~~((signature,))~~ the signature of either the client or the provider, the client's name, and a detailed description of the item or items delivered.

(ii) When a provider mails an item to the client, the provider must be able to furnish proof of delivery including a mail log.

(iii) When a provider uses a delivery or shipping service to deliver items, the provider must be able to furnish proof of delivery and it must:

(A) Include the delivery service tracking slip with the client's name or a reference to the client's package or packages; the delivery service package identification number; and the delivery address.

(B) Include the supplier's shipping invoice, with the client's name; the shipping service package identification number; and a detailed description.

(iv) Make proof of delivery receipts available to the agency upon request.

(2) When billing drugs under the expedited authorization process, providers must insert the authorization number, which includes the corresponding criteria code or codes in the appropriate data field on the drug claim.

(3) Pharmacy services for clients on restriction under WAC 182-501-0135 must be prescribed by the client's primary care provider and are paid only to the client's primary pharmacy, except in cases of:

(a) Emergency;

(b) Family planning services; or

(c) Services properly referred from the client's assigned pharmacy or physician/ARNP.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 16-01-046, § 182-530-5000, filed 12/9/15, effective 1/9/16. WSR 11-14-075, recodified as § 182-530-5000, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.04.050, 74.08.090, 74.09.530, and 74.09.700. WSR 07-20-049, § 388-530-5000, filed 9/26/07, effective 11/1/07.]

## WSR 21-05-044

## PERMANENT RULES

## WASHINGTON STATE PATROL

[Filed February 11, 2021, 4:12 p.m., effective March 14, 2021]

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

Purpose: The proposed changes will provide clean up and clarification to the existing language to ensure the rules reference and comply with current laws in the state of Washington.

Citation of Rules Affected by this Order: Amending chapter 446-20 WAC.

Statutory Authority for Adoption: Chapters 10.97 and 43.43 RCW.

Adopted under notice filed as WSR 21-01-033 on December 7, 2020.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 25, Repealed 3.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 25, Repealed 3.

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

Date Adopted: February 11, 2021.

John R. Batiste  
Chief

## OTS-2663.1

AMENDATORY SECTION (Amending WSR 10-01-109, filed 12/17/09, effective 1/17/10)

**WAC 446-20-020 Definitions.** For the purpose of this section the following apply:

(1) The definitions in RCW 10.97.030 will apply to these regulations.

(2) The definitions as enumerated in RCW 43.43.830 through 43.43.845, and as amended by chapter 9A.44 RCW, "An act relating to child and adult abuse information," will apply whenever applicable in these regulations.

(3) "Nonconviction data" has the meaning set forth in RCW 10.97.030 (2) (~~(, but will not include dismissals following a period of probation, or suspension, or deferral of sentence)~~) and (8).

(4) "~~(Section)~~ Division" means the ~~((identification and criminal history section))~~ criminal records division of the Washington state patrol.

(5) "The administration of criminal justice" has the meaning set forth in RCW 10.97.030 ~~((+6))~~ (1), but does not include crime prevention activities (if that is the sole function of the program or agency) or criminal defense activities.

[Statutory Authority: Chapters 10.97 and 43.43 RCW. WSR 10-01-109, § 446-20-020, filed 12/17/09, effective 1/17/10. Statutory Authority: RCW 10.97.090. WSR 91-24-099 (Order 91-004), § 446-20-020, filed 12/4/91, effective 1/4/92. Statutory Authority: 1990 c 3. WSR 90-20-003 (Order 90-003), § 446-20-020, filed 9/20/90, effective 10/21/90. Statutory Authority: RCW 43.43.838 and 1987 c 486 § 5. WSR 88-07-066 (Order 88-03-A), § 446-20-020, filed 3/17/88. Statutory Authority: RCW 10.97.080 and 10.97.090. WSR 80-08-057 (Order 80-2), § 446-20-020, filed 7/1/80.]

AMENDATORY SECTION (Amending WSR 15-22-078, filed 11/3/15, effective 12/4/15)

**WAC 446-20-040 Deferred prosecutions.** (1) A deferred prosecution under chapter 10.05 RCW of an alleged offender does not become nonconviction data until more than one year has elapsed since arrest, citation, charge, or service of warrant, or there is a final decision to dismiss charges or not to prosecute, whichever occurs first.

(2) A deferred prosecution under this section will not be subject to deletion under RCW 10.97.060 (~~until~~) unless there is a final decision (~~to dismiss charges or~~) not to prosecute.

(3) Notwithstanding subsection (2) (~~if~~) of this section, the (~~section~~) division retains the discretion to refuse to delete non-conviction data as provided in RCW 10.97.060.

[Statutory Authority: RCW 10.97.080 and 10.97.090. WSR 15-22-078, § 446-20-040, filed 11/3/15, effective 12/4/15; WSR 80-08-057 (Order 80-2), § 446-20-040, filed 7/1/80.]

AMENDATORY SECTION (Amending WSR 10-01-109, filed 12/17/09, effective 1/17/10)

**WAC 446-20-050 Criminal justice agencies.** (1) The following agencies will be considered criminal justice agencies for the purpose of chapter 10.97 RCW and these regulations.

(a) The Washington state patrol;

(b) Foreign, federal, state, and local governmental law enforcement agencies;

(c) State, county, or municipal agencies that have responsibility for the detention, pretrial release, post-trial release, correctional supervision, or rehabilitation of accused persons or criminal offenders;

(d) Indeterminate sentence review board;

(e) Courts at any level for the administration of criminal justice.

(2) An agency or portion thereof that has been certified as a criminal justice agency pursuant to WAC 446-20-060.

[Statutory Authority: Chapters 10.97 and 43.43 RCW. WSR 10-01-109, § 446-20-050, filed 12/17/09, effective 1/17/10; WSR 97-05-048, § 446-20-050, filed 2/18/97, effective 3/21/97. Statutory Authority: RCW

10.97.080 and 10.97.090. WSR 80-08-057 (Order 80-2), § 446-20-050, filed 7/1/80.]

AMENDATORY SECTION (Amending WSR 10-01-109, filed 12/17/09, effective 1/17/10)

**WAC 446-20-060 Certification of agencies.** (1) An agency or portion of an agency that asserts a right to receive criminal history record information based on its status as a criminal justice agency must show satisfactory evidence of its certification as a criminal justice agency prior to receiving such information. The ~~((section))~~ division will certify such an agency or portion of an agency, based on a showing that the agency or portion of an agency, meets the definition of a criminal justice agency in RCW 10.97.030. Agencies or portions of agencies which assert the right to be certified as a criminal justice agency must submit a written request for certification to the ~~((section on the form provided under WAC 446-20-430))~~ division.

(2) An agency or portion of an agency that asserts a right to receive nonconviction criminal history record information must show satisfactory evidence of certification to receive such information. Certification by the ~~((section))~~ division will be granted based upon statute, ordinance, executive order, or a court rule, decision, or order which expressly refers to nonconviction criminal history record information, and which authorizes or directs that it be available or accessible for a specific purpose.

(3) The application must include documentary evidence which establishes eligibility for access to criminal history record information.

(4) The ~~((section))~~ division will make a determination in writing on the eligibility or noneligibility of the applicant. The written determination, together with reasons for the decisions, will be sent to the applicant.

(5) The ~~((section))~~ division must keep a current list of all agencies that have been certified to receive criminal history record information.

[Statutory Authority: Chapters 10.97 and 43.43 RCW. WSR 10-01-109, § 446-20-060, filed 12/17/09, effective 1/17/10. Statutory Authority: RCW 10.97.080 and 10.97.090. WSR 80-08-057 (Order 80-2), § 446-20-060, filed 7/1/80.]

AMENDATORY SECTION (Amending WSR 12-17-114, filed 8/21/12, effective 9/21/12)

**WAC 446-20-090 Inspection of record by the subject of record.**

(1) Any person desiring to inspect his or her criminal history record information or request a copy of his or her nonconviction data for a reasonable fee may do so at the central records keeping office of any criminal justice agency or at the Washington state patrol ~~((identification and criminal history section))~~ criminal records division, during normal business hours, Monday through Friday, excepting legal holidays.

(2) Any person desiring to inspect his or her criminal history record information or request a copy of his or her nonconviction data for a reasonable fee must first permit his or her fingerprints to be taken by the criminal justice agency for identification purposes (~~(, if requested to do so)~~). The criminal justice agency in its discretion may accept other identification in lieu of fingerprints.

(3) A reasonable period of time, not to exceed thirty minutes, will be allowed each individual to visually examine criminal history record information pertaining to himself or herself.

(4) If any person who desires to examine his or her criminal history record information is unable to read or is otherwise unable to examine same because of a physical disability, he or she may designate another person of their own choice to assist him or her. The person about whom the information pertains must execute, with his or her mark, a form provided by the criminal justice agency consenting to the inspection of criminal history information pertaining to himself or herself by another person for the purpose of it being read or otherwise described to him or her. Such designated person will then be permitted to read or otherwise describe or translate the criminal history record information to the person about whom it pertains.

(5) Each criminal justice agency will develop procedures to ensure that no individual improperly retains or mechanically reproduces nonconviction data during the process of inspection.

[Statutory Authority: Chapters 10.97 and 43.43 RCW. WSR 12-17-114, § 446-20-090, filed 8/21/12, effective 9/21/12; WSR 10-01-109, § 446-20-090, filed 12/17/09, effective 1/17/10; WSR 97-05-048, § 446-20-090, filed 2/18/97, effective 3/21/97. Statutory Authority: RCW 10.97.080 and 10.97.090. WSR 80-08-057 (Order 80-2), § 446-20-090, filed 7/1/80.]

AMENDATORY SECTION (Amending WSR 12-17-114, filed 8/21/12, effective 9/21/12)

**WAC 446-20-100 Inspection—Timeliness and manner of agency response.** (1) A criminal justice agency not maintaining criminal history record information of the individual requesting inspection will not be obligated to further processing of inspection request.

(2) A criminal justice agency maintaining criminal history record information of the individual requesting inspection must respond in the manner following and as soon as administratively convenient, but in no event later than ten business days from the date of the receipt of the request.

(a) If the criminal history record information concerns offenses for which fingerprints were not submitted to the (~~(section)~~) division, the agency must respond by disclosing the identifiable descriptions and notations of arrests, charges, and dispositions that are contained in the files of the agency.

(b) If the criminal history record information concerns offenses for which fingerprints were submitted to the (~~(section)~~) division, the agency upon request of the subject of the record, must forward the request to the (~~(section)~~) division for processing.

(c) The (~~(section)~~) division will copy all Washington state criminal history record information in the files of the (~~(section)~~) divi-

sion relating to the individual requester and forward it to the criminal justice agency submitting the request. The ~~((section))~~ division may provide a copy of the individual's nonconviction data directly to the subject of record upon written request from the individual for a reasonable fee.

(d) Upon receipt by the criminal justice agency of the requester's criminal history record information, the agency will notify the requester at his or her designated address or telephone number that the requested information is available for inspection. The subject of the criminal history record information must appear at the agency during its normal business hours for purpose of inspecting the record.

[Statutory Authority: Chapters 10.97 and 43.43 RCW. WSR 12-17-114, § 446-20-100, filed 8/21/12, effective 9/21/12; WSR 10-01-109, § 446-20-100, filed 12/17/09, effective 1/17/10; WSR 97-05-048, § 446-20-100, filed 2/18/97, effective 3/21/97. Statutory Authority: RCW 10.97.080 and 10.97.090. WSR 80-08-057 (Order 80-2), § 446-20-100, filed 7/1/80.]

AMENDATORY SECTION (Amending WSR 10-01-109, filed 12/17/09, effective 1/17/10)

**WAC 446-20-130 Challenge—Forms to be made available.** Every criminal justice agency which authorizes individuals to use its facilities for the purpose of inspecting their criminal history record information ~~((must))~~ shall provide an appropriate challenge form and the ~~((address))~~ contact information of the agency whose record entry is being challenged. Such forms ~~((must))~~ shall be substantially equivalent to that set forth in WAC 446-20-450.

[Statutory Authority: Chapters 10.97 and 43.43 RCW. WSR 10-01-109, § 446-20-130, filed 12/17/09, effective 1/17/10. Statutory Authority: RCW 10.97.080 and 10.97.090. WSR 80-08-057 (Order 80-2), § 446-20-130, filed 7/1/80.]

AMENDATORY SECTION (Amending WSR 20-01-100, filed 12/13/19, effective 1/13/20)

**WAC 446-20-160 Review of refusal to alter record.** A person who is the subject of a criminal record and who disagrees with the refusal of the agency maintaining or submitting the record to correct, complete, or delete the record, may request a review of the refusal within twenty business days of the date of receipt of such refusal. The request for review must be in writing ~~((, and must be made by the completion of a form substantially equivalent to that set forth in WAC 446-20-410))~~. If review is requested in the time allowed, the head of the agency whose record or submission has been challenged must complete the review within thirty days and make a final determination of the challenge. The head of the agency may extend the thirty-day period for an additional period not to exceed thirty business days. If the head of the agency determines that the challenge should not be allowed, he or she must state his or her reasons in a written decision,

a copy of which must be provided to the subject of the record. Denial by the agency head will constitute a final decision under RCW 34.05.570. Notwithstanding this section, RCW 43.43.730 governs an individual's request to the Washington state patrol (~~(identification and eriminal history section)~~) criminal records division to purge, modify, or supplement that individual's criminal history record information on file with the Washington state patrol (~~(identification and eriminal history section)~~) criminal records division.

[Statutory Authority: RCW 10.97.080. WSR 20-01-100, § 446-20-160, filed 12/13/19, effective 1/13/20. Statutory Authority: Chapters 10.97 and 43.43 RCW. WSR 10-01-109, § 446-20-160, filed 12/17/09, effective 1/17/10. Statutory Authority: RCW 10.97.080 and 10.97.090. WSR 80-08-057 (Order 80-2), § 446-20-160, filed 7/1/80.]

AMENDATORY SECTION (Amending WSR 10-01-109, filed 12/17/09, effective 1/17/10)

**WAC 446-20-170 Secondary dissemination.** (1) Criminal justice agencies that receive state criminal history record information from the (~~(section)~~) division may disseminate them further, "but only to the same extent to which the (~~(section)~~) division itself would be authorized to make dissemination in the first instance." Nonconviction data based on an incident that arose in the jurisdiction of that agency about to make the dissemination is not subject to this restriction, if the agency is otherwise authorized to disseminate such information.

(2) Noncriminal justice agencies authorized to receive criminal history record information from whatever source may use it only for the specific purpose for which the agency is certified and shall not disseminate it further.

(3) Use of criminal history record information contrary to chapter 10.97 RCW or chapter 446-20 WAC may result in suspension or cancellation of authorization.

[Statutory Authority: Chapters 10.97 and 43.43 RCW. WSR 10-01-109, § 446-20-170, filed 12/17/09, effective 1/17/10; WSR 97-05-048, § 446-20-170, filed 2/18/97, effective 3/21/97. Statutory Authority: RCW 10.97.080 and 10.97.090. WSR 80-08-057 (Order 80-2), § 446-20-170, filed 7/1/80.]

AMENDATORY SECTION (Amending WSR 10-01-109, filed 12/17/09, effective 1/17/10)

**WAC 446-20-190 Dissemination—Research purposes.** Criminal history record information which includes nonconviction data may be disseminated for research, evaluative, or statistical purposes according to the provisions of RCW 10.97.050(6). The transfer agreement provided for by that section must be substantially similar to that set forth in WAC 446-20-420 (model transfer provisions).

[Statutory Authority: Chapters 10.97 and 43.43 RCW. WSR 10-01-109, § 446-20-190, filed 12/17/09, effective 1/17/10. Statutory Authority:



RCW 10.97.080 and 10.97.090. WSR 80-08-057 (Order 80-2), § 446-20-190, filed 7/1/80.]

AMENDATORY SECTION (Amending WSR 10-01-109, filed 12/17/09, effective 1/17/10)

**WAC 446-20-220 Protection against unauthorized access.** Criminal history record systems, whether dedicated to criminal justice purposes, or shared, will be designed and operated in accordance with procedures which will assure that:

(1) Access to criminal history record information facilities and system operating areas (whether for computerized or manual systems) and the content of data files and systems documentation, will be restricted to authorized personnel. These procedures may include use of guards, keys, badges, passwords, sign-in logs, or similar safeguards.

(2) All facilities which house criminal history record information must be designed and constructed so as to reduce the possibility of physical damage to the information resulting from unauthorized access.

(3) Criminal history record information is stored in such a manner that will prevent modification, destruction, access, change, purging, or overlay of criminal history record information by unauthorized personnel.

(4) Operational programs are used in computerized systems that will prohibit inquiry, record updates, or destruction of records from any terminal other than those authorized to perform criminal history record information functions.

(5) The purging or destruction of records is limited to personnel authorized by the criminal justice agency or through contract (~~with the noncriminal justice agency~~) as required under WAC 446-20-180, and consistent with WAC 446-20-230.

(6) Refuse from the criminal history record information system installations is transferred and destroyed under such reasonably secure conditions as will effectively guard against unauthorized availability.

(7) Operational procedures are used in computerized systems to detect and store unauthorized attempts to penetrate any criminal history record information system, program or file, and that such information is made available only to criminal justice agency employees with responsibility for system security, or as authorized by WAC 446-20-180.

(8) The procedures developed to meet standards of subsections (4) and (7) of this section, are known only to authorized employees responsible for criminal history records information system control.

[Statutory Authority: Chapters 10.97 and 43.43 RCW. WSR 10-01-109, § 446-20-220, filed 12/17/09, effective 1/17/10. Statutory Authority: RCW 10.97.080 and 10.97.090. WSR 80-08-057 (Order 80-2), § 446-20-220, filed 7/1/80.]

AMENDATORY SECTION (Amending WSR 10-01-109, filed 12/17/09, effective 1/17/10)

**WAC 446-20-230 Personnel security.** (~~((1) Agencies and contractors which collect and retrieve, or are authorized to maintain or modify, criminal history record information must: Identify those positions which are of such a sensitive nature that fingerprints of employees will be required and used to conduct a criminal record background investigation. Such background investigations will be the responsibility of the criminal justice agency and may consider the date, the disposition, number, and seriousness of any previous arrests or convictions. Decisions concerning employment will be the responsibility of the employing agency or contractor.~~

~~(2) When agency or contractor personnel violate the provisions of chapter 10.97 RCW or other security requirements established through administrative code for the collection, storage and dissemination of such information, agencies or contractors, as defined by subsection (1) of this section, must initiate, or cause to be initiated, action that will ensure the integrity of records containing criminal history record information.)) Any personnel with unescorted access to unencrypted criminal justice information including criminal history record information must meet the standards established by the Federal Bureau of Investigation's Criminal Justice Information Services (CJIS) Security Policy.~~

[Statutory Authority: Chapters 10.97 and 43.43 RCW. WSR 10-01-109, § 446-20-230, filed 12/17/09, effective 1/17/10. Statutory Authority: RCW 10.97.080 and 10.97.090. WSR 80-08-057 (Order 80-2), § 446-20-230, filed 7/1/80.]

AMENDATORY SECTION (Amending WSR 10-01-109, filed 12/17/09, effective 1/17/10)

**WAC 446-20-240 Personnel training.** (~~((1) Criminal justice agencies will be required directly, or in cooperation with the criminal justice training commission to familiarize their employees and those of the contractors, with all federal, state, and local legislation, executive orders, rules, and regulations, applicable to such a system.~~

~~(2) Training to be provided must include not only initial training, but continuing training, designed to maintain among criminal history record information system personnel current knowledge and operational proficiency with respect to security and privacy law and regulations.)) Any personnel with unescorted access to unencrypted criminal justice information including criminal history record information must meet the training standards established by the Federal Bureau of Investigation's Criminal Justice Information Services (CJIS) Security Policy.~~

[Statutory Authority: Chapters 10.97 and 43.43 RCW. WSR 10-01-109, § 446-20-240, filed 12/17/09, effective 1/17/10. Statutory Authority: RCW 10.97.080 and 10.97.090. WSR 80-08-057 (Order 80-2), § 446-20-240, filed 7/1/80.]

AMENDATORY SECTION (Amending WSR 10-01-109, filed 12/17/09, effective 1/17/10)

**WAC 446-20-250 Contractor personnel clearances.** (~~((1) No personnel of a noncriminal justice agency will be granted access to criminal history record information without appropriate security clearance by the contracting agency or agencies.~~

~~(2) To provide evidence of the person's security clearance, the grantor of such clearance may provide an authenticated card or certificate. Responsibility for control of the issuance, or revocation of such clearances must rest with the grantor.)~~ Any personnel with unescorted access to unencrypted criminal justice information including criminal history record information must meet the standards established by the Federal Bureau of Investigation's Criminal Justice Information Services (CJIS) Security Policy.

[Statutory Authority: Chapters 10.97 and 43.43 RCW. WSR 10-01-109, § 446-20-250, filed 12/17/09, effective 1/17/10. Statutory Authority: RCW 10.97.080 and 10.97.090. WSR 80-08-057 (Order 80-2), § 446-20-250, filed 7/1/80.]

AMENDATORY SECTION (Amending WSR 10-01-109, filed 12/17/09, effective 1/17/10)

**WAC 446-20-280 Employment—Conviction records.** (1) A conviction record will be furnished consistent with the provisions of RCW 43.43.815, upon the submission of a written or electronic request of any employer, accompanied by fingerprints and other identifying data of the employee or prospective employee.

(2) Fingerprints must be submitted on cards of the type specified by the (~~section~~) division, and must contain a certification by the employer that the information is being disseminated to and will be available only to persons involved in the hiring, background investigation, or job assignment of the person whose record is disseminated, that the record will be used only as necessary for the purposes enumerated in this section, and that the request for conviction data is for one of the following purposes:

- (a) Securing a bond required for any employment;
- (b) Conducting preemployment and postemployment evaluations of employees and prospective employees who, in the course of employment, may have access to information affecting national security, trade secrets, confidential or proprietary business information, money, or items of value; or
- (c) Assisting an investigation of suspected employee misconduct where such misconduct may also constitute a penal offense under the laws of the United States or any state.

[Statutory Authority: Chapters 10.97 and 43.43 RCW. WSR 10-01-109, § 446-20-280, filed 12/17/09, effective 1/17/10; WSR 97-05-048, § 446-20-280, filed 2/18/97, effective 3/21/97. Statutory Authority: RCW 10.97.090. WSR 91-24-099 (Order 91-004), § 446-20-280, filed 12/4/91, effective 1/4/92. Statutory Authority: 1982 c 202 § 1(7). WSR 82-22-006 (Order 82-5), § 446-20-280, filed 10/22/82.]

AMENDATORY SECTION (Amending WSR 12-17-114, filed 8/21/12, effective 9/21/12)

**WAC 446-20-285 Employment—Conviction records.** Conviction information will be furnished by the state patrol upon written or electronic request of any applicant, business or organization, the state board of education, or the department of social and health services. This information will consist of the following:

(1) Convictions of crimes; and

(2) Criminal history information will be furnished from the ~~((section))~~ division, consistent with the provisions of RCW 43.43.830 through 43.43.840, upon receipt of a written or electronic request.

School districts, the superintendent of public instruction, educational service districts and their contractors will also receive conviction information under RCW 10.97.030 and 10.97.050 pursuant to chapter 159, Laws of 1992.

The ~~((section))~~ division will also furnish any similar records maintained by the Federal Bureau of Investigation or records in custody of the National Crime Information Center, if available, subject to their policies and procedures regarding such dissemination.

(a) The business or organization making such request will not make an inquiry to the Washington state patrol or an equivalent inquiry to a federal law enforcement agency unless the business or organization has notified the applicant who has been offered a position as an employee or volunteer that an inquiry may be made.

(b) For positive identification, the request for criminal history information form may be accompanied by fingerprint cards of a type specified by the ~~((section))~~ division, and must contain a certification by the business or organization; the state board of education; or the department of social and health services, that the information is being requested and will be used only for the purposes as enumerated in RCW 43.43.830 through 43.43.845.

(c) In the absence of fingerprint cards, the applicant may provide a right thumb fingerprint impression in the area provided on the request for criminal history information form. In the event of a possible match to the applicant's name and date of birth, the right thumb fingerprint impression will be used for identification verification purposes only.

(d) After processing a properly completed request for criminal history information form, if the conviction record, disciplinary authority final decision, or equivalent response from a federal law enforcement agency shows no evidence of crimes, an identification declaring the showing of no evidence will be issued to the business or organization by the ~~((section))~~ division within fourteen working days of receipt of the request. Possession of such identification will satisfy future record check requirements for the applicant for a two-year period.

(e) The business or organization must notify the applicant of the state patrol's response within ten calendar days after receipt by the business or organization. The employer must provide a copy of the response to the applicant and must notify the applicant of such availability.

(f) The business or organization will be immune from civil liability for failure to request background information on a prospective employee or volunteer unless the failure to do so constitutes gross negligence.

[Statutory Authority: Chapters 10.97 and 43.43 RCW. WSR 12-17-114, § 446-20-285, filed 8/21/12, effective 9/21/12; WSR 10-01-109, § 446-20-285, filed 12/17/09, effective 1/17/10. Statutory Authority: RCW 10.97.030 and 43.830-845 [43.43.830-43.43.845]. WSR 03-05-007, § 446-20-285, filed 2/7/03, effective 3/10/03. Statutory Authority: Chapters 10.97 and 43.43 RCW. WSR 97-05-048, § 446-20-285, filed 2/18/97, effective 3/21/97. Statutory Authority: RCW 43.43.760, 43.43.815 and 43.43.838. WSR 92-15-015, § 446-20-285, filed 7/6/92, effective 8/6/92. Statutory Authority: RCW 10.97.090. WSR 91-24-099 (Order 91-004), § 446-20-285, filed 12/4/91, effective 1/4/92. Statutory Authority: 1990 c 3. WSR 90-20-003 (Order 90-003), § 446-20-285, filed 9/20/90, effective 10/21/90. Statutory Authority: RCW 43.43.838. WSR 89-23-017, § 446-20-285, filed 11/6/89, effective 12/7/89. Statutory Authority: RCW 43.43.838 and 1987 c 486 § 5. WSR 88-07-066 (Order 88-03-A), § 446-20-285, filed 3/17/88.]

AMENDATORY SECTION (Amending WSR 10-01-109, filed 12/17/09, effective 1/17/10)

**WAC 446-20-400 Form of request to inspect record.**

INSPECTION OF RECORD REQUEST  
(RCW 10.97.080/WAC 446-20-070)

Agency .....  
Agency No .....  
Date .....  
Time .....

I, ....., do hereby request to inspect my criminal history record information maintained in the files of the above named agency. In order to ensure positive identification as the person in question, I am submitting my fingerprints in the space below.

~~((I was born (Date of Birth), in (Place of Birth), and to ensure positive identification as the person in question, I am willing to submit my fingerprints in the space provided below, if required or requested.))~~

(Fill in ~~((and cheek))~~ where applicable box)

Because I am unable to read ; ~~((I))~~ do not understand English ; ~~((otherwise need assistance in reviewing my record))~~ other reason ; I hereby designate and consent that (Print Name), whose address is ....., ~~((assist me in examining))~~ read or otherwise described or translated to me the criminal history record information concerning myself.

.....  
.....

Prints of right four fingers taken simultaneously (Signature or mark of Applicant) .....  
(Address) .....  
.....  
(Signature of Designee)

[Statutory Authority: Chapters 10.97 and 43.43 RCW. WSR 10-01-109, § 446-20-400, filed 12/17/09, effective 1/17/10. Statutory Authority: RCW 10.97.080 and 10.97.090. WSR 80-08-057 (Order 80-2), § 446-20-400, filed 7/1/80.]

AMENDATORY SECTION (Amending WSR 80-08-057, filed 7/1/80)

**WAC 446-20-450 CHRI challenge form.**

CHRI CHALLENGE FORM  
(REQUEST FOR MODIFICATION OF CHRI)  
RCW 10.97.080/WAC 446-20-120

AGENCY ..... AGENCY CASE NO. ....  
ADDRESS ..... DATE .....  
.....

I,           (Print Name)          ,           Date of Birth           hereby acknowledge (~~review~~) receipt this date, ....., of a copy of a (~~CHRI rap sheet~~) Washington State Patrol Criminal Records Division RAPsheet bearing (~~agency number ....., or~~) SID number ....., consisting of .... page(s) and identified as a history of criminal offenses charged to me.

I challenge the following specific portion(s) of the CHRI as being inaccurate or incomplete:

<u>Agency</u>	<u>Case No.</u>	<u>Date</u>	<u>Charge</u>
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....

and request modification to read:

I further request(~~, if such modifications are determined to be valid, that all~~) that the following designated persons or agencies who have received (~~prior~~) copies of the (~~CHRI~~) record be advised of the modifications.

.....  
(Signature of (~~Challenger~~)  
Requestor)  
Prints of right four fingers taken  
simultaneously together

[Statutory Authority: RCW 10.97.080 and 10.97.090. WSR 80-08-057 (Order 80-2), § 446-20-450, filed 7/1/80.]

AMENDATORY SECTION (Amending WSR 10-01-109, filed 12/17/09, effective 1/17/10)

**WAC 446-20-500 Sex offender and kidnapping offender registration.** RCW 9A.44.130 requires any adult or juvenile residing in this state who has been found to have committed or has been convicted of any sex offense or kidnapping offense to register with the county

sheriff for the county of that person's residence. The sheriff is required to forward the registration information to the ~~((section))~~ division within five working days. The Washington state patrol is mandated to maintain a central registry of sex offenders and kidnapping offenders consistent with chapters 10.97, 10.98, and 43.43 RCW.

[Statutory Authority: Chapters 10.97 and 43.43 RCW. WSR 10-01-109, § 446-20-500, filed 12/17/09, effective 1/17/10. Statutory Authority: RCW 4.24.550, 9A.44.130, [9A.44.]140, 10.02.200, 43.43.540 and 70.48.470. WSR 98-01-021, § 446-20-500, filed 12/8/97, effective 1/8/98. Statutory Authority: Chapters 10.97 and 43.43 RCW. WSR 97-05-048, § 446-20-500, filed 2/18/97, effective 3/21/97. Statutory Authority: 1991 c 274. WSR 91-20-045 (Order 91-005), § 446-20-500, filed 9/24/91, effective 10/25/91. Statutory Authority: 1990 c 3. WSR 90-20-003 (Order 90-003), § 446-20-500, filed 9/20/90, effective 10/21/90.]

AMENDATORY SECTION (Amending WSR 10-01-109, filed 12/17/09, effective 1/17/10)

**WAC 446-20-515 Photograph/fingerprint requirement.** Registration requires the offender be fingerprinted and photographed and also provide the sheriff with the following information which must be forwarded to the Washington state patrol (~~((identification and criminal history section))~~) criminal records division within five working days:

Name;  
Address;  
Date of birth;  
Place of birth;  
Social Security number;  
Institution of higher education enrolled, attending;  
Place of employment;  
Crime for which convicted;  
Date/place of conviction; and  
Aliases used.

[Statutory Authority: Chapters 10.97 and 43.43 RCW. WSR 10-01-109, § 446-20-515, filed 12/17/09, effective 1/17/10. Statutory Authority: 1991 c 274. WSR 91-20-045 (Order 91-005), § 446-20-515, filed 9/24/91, effective 10/25/91. Statutory Authority: 1990 c 3. WSR 90-20-003 (Order 90-003), § 446-20-515, filed 9/20/90, effective 10/21/90.]

AMENDATORY SECTION (Amending WSR 10-01-109, filed 12/17/09, effective 1/17/10)

**WAC 446-20-520 Photographs.** Photographs must be in color. These are not to be file photographs. A new photograph is required.

For paper submissions, write full name, date of birth, and state identification number (SID). Paperclip (no staples please) the photograph to the fingerprint card with the registration information completed and forward to Washington state patrol, (~~((identification and criminal history section))~~) criminal records division. For electronic submissions, current color photographs (~~((may be))~~) added to Offender-

Watch can be electronically ((mailed to a designated email address at the section. Identifying information (full name, date of birth, and SID) must accompany the photograph)) uploaded to the Washington state patrol database.

[Statutory Authority: Chapters 10.97 and 43.43 RCW. WSR 10-01-109, § 446-20-520, filed 12/17/09, effective 1/17/10; WSR 97-05-048, § 446-20-520, filed 2/18/97, effective 3/21/97. Statutory Authority: RCW 43.43.760, 43.43.815 and 43.43.838. WSR 92-15-015, § 446-20-520, filed 7/6/92, effective 8/6/92. Statutory Authority: 1990 c 3. WSR 90-20-003 (Order 90-003), § 446-20-520, filed 9/20/90, effective 10/21/90.]

AMENDATORY SECTION (Amending WSR 10-01-109, filed 12/17/09, effective 1/17/10)

**WAC 446-20-525 Change of address form.** Registered sex and kidnapping offenders who change residence within the same county are required to submit change of address information to the county sheriff ((at least fourteen days before moving)) within three days.

Registered sex and kidnapping offenders who change residence from one county to another are required to ((send)) register with the new county of residence within three days of moving and must provide written notice ((fourteen days before moving to the county sheriff in the new county residence and must register with that county sheriff within twenty-four hours of moving. The offender must send "change of address" information within ten days of moving in the new county)) of the change of address or in person to the county sheriff with whom the offender last registered.

((Registered sex and kidnapping offenders who move to another state or county must submit "change of address" information ten days before moving to the new state or county to the county sheriff with whom the offender last registered in Washington state.))

County sheriffs must forward "change of address" information to the Washington state patrol ((identification and criminal history section)) criminal records division within five working days upon receipt.

[Statutory Authority: Chapters 10.97 and 43.43 RCW. WSR 10-01-109, § 446-20-525, filed 12/17/09, effective 1/17/10. Statutory Authority: RCW 4.24.550, 9A.44.130, [9A.44.]140, 10.02.200, 43.43.540 and 70.48.470. WSR 98-01-021, § 446-20-525, filed 12/8/97, effective 1/8/98. Statutory Authority: 1990 c 3. WSR 90-20-003 (Order 90-003), § 446-20-525, filed 9/20/90, effective 10/21/90.]

AMENDATORY SECTION (Amending WSR 10-01-109, filed 12/17/09, effective 1/17/10)

**WAC 446-20-530 Refundable fee.** The ((section)) division will reimburse sheriffs' offices for the actual registration cost, not to exceed thirty-two dollars for each registration, which must include photographs and fingerprints submitted pursuant to RCW 9A.44.130. This fee will further ensure that direct and indirect costs at the county level associated with the provisions of this chapter are refunded by



the ((section)) division on a monthly basis based upon the number of registrations submitted.

[Statutory Authority: Chapters 10.97 and 43.43 RCW. WSR 10-01-109, § 446-20-530, filed 12/17/09, effective 1/17/10; WSR 97-05-048, § 446-20-530, filed 2/18/97, effective 3/21/97. Statutory Authority: RCW 10.97.090. WSR 91-24-099 (Order 91-004), § 446-20-530, filed 12/4/91, effective 1/4/92. Statutory Authority: 1990 c 3. WSR 90-20-003 (Order 90-003), § 446-20-530, filed 9/20/90, effective 10/21/90.]

AMENDATORY SECTION (Amending WSR 12-17-114, filed 8/21/12, effective 9/21/12)

**WAC 446-20-600 Fees.** (1) A nonrefundable fee must accompany each request for conviction records submitted for a name and date of birth background check or a background check requested by fingerprint search at the state level pursuant to RCW 43.43.830 through 43.43.845, and chapter 10.97 RCW unless through prior arrangement, an account is authorized and established.

(2) A nonrefundable FBI fee will be charged for fingerprint cards submitted for federal searches. It will be the responsibility of the ((section)) division to collect all fees due and forward fingerprint cards and fees to the FBI.

(3) A nonrefundable fee will be charged for taking fingerprint impressions by the ((section)) division. Fees are to be deposited in the Washington state patrol fingerprint identification account.

(4) A reasonable fee will be charged for a request for nonconviction data in lieu of a record review pursuant to RCW 10.97.080.

(5) All fees are to be made payable to the Washington state patrol and are to be remitted by cash, cashier's check, money order or check written on a business account. Credit cards may be used only for payment of electronic requests and for any other fingerprint or conviction record services the state patrol has implemented credit card payment procedures. The ((section)) division must adjust the fee schedule as may be practicable to ensure that direct and indirect costs associated with the provisions of these chapters are recovered.

(6) Pursuant to the provisions of RCW 43.43.838 and chapter 28A.410 RCW, no fees will be charged to a nonprofit organization, or volunteers in school districts and educational service districts for background checks.

[Statutory Authority: Chapters 10.97 and 43.43 RCW. WSR 12-17-114, § 446-20-600, filed 8/21/12, effective 9/21/12; WSR 10-01-109, § 446-20-600, filed 12/17/09, effective 1/17/10. Statutory Authority: RCW 10.97.100, 43.43.742. WSR 05-03-034, § 446-20-600, filed 1/10/05, effective 2/10/05. Statutory Authority: RCW 43.43.742 through 43.43.845 and chapter 10.97 RCW. WSR 99-07-050, § 446-20-600, filed 3/15/99, effective 4/15/99. Statutory Authority: RCW 43.43.830 - [43.43.]845, chapters 10.97, 28A.400 and 74.15 RCW. WSR 96-18-017, § 446-20-600, filed 8/26/96, effective 9/26/96.]

AMENDATORY SECTION (Amending WSR 10-01-109, filed 12/17/09, effective 1/17/10)

**WAC 446-20-610 Superintendent of public instruction—Prospective educational employees—Fees.** (1) In addition to the state search, an FBI search is required for requests submitted under chapter 28A.410 RCW. One fingerprint card is required to be submitted to the Washington state patrol (~~(identification and criminal history section)~~) criminal records division.

(2) Appropriate nonrefundable fees are to be charged and made payable to the Washington state patrol for searches conducted under chapter 28A.410 RCW.

(3) Prospective employees hired by the superintendent of public instruction, educational service districts, school districts and/or their contractors must pay the appropriate fees for state and federal fingerprint checks conducted under chapter 28A.410 RCW.

(4) Fees are to be deposited in the Washington state patrol fingerprint identification account.

[Statutory Authority: Chapters 10.97 and 43.43 RCW. WSR 10-01-109, § 446-20-610, filed 12/17/09, effective 1/17/10. Statutory Authority: RCW 43.43.830 - 43.43.845. WSR 05-07-141, § 446-20-610, filed 3/23/05, effective 4/23/05. Statutory Authority: RCW 43.43.830 - [43.43.]845 and 1998 c 346. WSR 98-19-039, § 446-20-610, filed 9/11/98, effective 10/12/98. Statutory Authority: RCW 43.43.830 - [43.43.]845, chapters 10.97, 28A.400 and 74.15 RCW. WSR 96-18-017, § 446-20-610, filed 8/26/96, effective 9/26/96.]

AMENDATORY SECTION (Amending WSR 10-01-109, filed 12/17/09, effective 1/17/10)

**WAC 446-20-630 Department of social and health services—Child care licensing—Fees.** (1) In addition to the state search, an FBI search is required for requests submitted under chapter 74.15 RCW. One fingerprint card is required to be submitted to the Washington state patrol (~~(identification and criminal history section)~~) criminal records division.

(2) Department of social and health services (DSHS) will process fingerprint background checks under chapter 74.15 RCW, RCW 43.43.837 and 43.20A.710.

(3) All nonrefundable fees collected will be deposited into the Washington state patrol fingerprint identification account.

(4) A nonrefundable state and FBI fee will be charged on fingerprint cards clearly designated as "volunteer" pursuant to the provisions under Section 3e of the National Child Care Protection Act of 1993 as amended by the Crime Control Act of 1994.

"RCW 43.43.837" and "volunteer" must be entered in the "reason fingerprinted" box on (~~both~~) the (~~(state and FBI)~~) fingerprint card(~~(s)~~) submitted. Failure to indicate "volunteer" and the RCW citation on fingerprint cards will result in full fees being charged.

[Statutory Authority: Chapters 10.97 and 43.43 RCW. WSR 10-01-109, § 446-20-630, filed 12/17/09, effective 1/17/10. Statutory Authority: RCW 43.43.830 - 43.43.845. WSR 05-07-157, § 446-20-630, filed 3/23/05,

effective 4/23/05. Statutory Authority: RCW 43.43.830 - [43.43.]845, chapters 10.97, 28A.400 and 74.15 RCW. WSR 96-18-017, § 446-20-630, filed 8/26/96, effective 9/26/96.]

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 446-20-410            Form of request to review refusal to modify record.
- WAC 446-20-430            Certification request.
- WAC 446-20-440            Contract for support services model agreement under WAC 446-20-180.

## WSR 21-05-054

## PERMANENT RULES

## DEPARTMENT OF HEALTH

(Pharmacy Quality Assurance Commission)

[Filed February 15, 2021, 11:16 a.m., effective March 18, 2021]

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

Purpose: Title 246 WAC, rules regarding the practice of pharmacy. The pharmacy quality assurance commission (commission) recently completed a two-and-a-half-year process to consolidate all chapters of rule under Title 246 WAC within its authority into one new chapter, chapter 246-945 WAC. This package repeals the chapters of rules relating to pharmacy that were replaced by chapter 246-945 WAC, with the exception of the continuing education (CE) sections, which have a delayed effective date in the new chapter to align with rule making currently in progress regarding fees collected by the commission. Chapter 246-861 WAC and WAC 246-901-061, existing CE rules, will be repealed when the new CE rules in chapter 246-945 WAC become effective.

Citation of Rules Affected by this Order: Repealing chapters 246-856, 246-858, 246-860, 246-863, 246-865, 246-867, 246-869, 246-870, 246-871, 246-873, 246-874, 246-875, 246-877, 246-878, 246-879, 246-881, 246-883, 246-885, 246-886, 246-887, 246-888, 246-889, 246-891, 246-895, 246-897, 246-899, 246-901 (except for 246-901-061), 246-903, 246-904, and 246-905 WAC.

Statutory Authority for Adoption: RCW 18.64.005, 18.64.080, 18.130.075, 18.64.043, 18.64.044, 18.64.045, 18.64.046, 18.64.370, 18.64.460, 18.64.011, 18.64.245, 18.64.470, 18.64.255, 18.64.205, 18.64.253, 18.64.410, 18.64.500, 18.64.590, 69.50.310, 69.41.075.

Adopted under notice filed as WSR 20-16-045 on July 27, 2020.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 259.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 259.

Date Adopted: December 3, 2021.

Tim Lynch, PharmD, MS, FABC, FASHP  
Chair

**OTS-2336.1**REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 246-856-001 Purpose.  
WAC 246-856-020 Adjudicative proceedings—Procedural rules for the board of pharmacy.

**OTS-2337.1**REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 246-858-020 General requirements.  
WAC 246-858-030 Registration of interns.  
WAC 246-858-040 Rules for the pharmacy intern.  
WAC 246-858-050 Intern training reports.  
WAC 246-858-060 Requirements for preceptor certification.  
WAC 246-858-070 Rules for preceptors.  
WAC 246-858-080 Special internship approval.

**OTS-2338.1**REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 246-860-010 Purpose of chapter.  
WAC 246-860-020 Definitions.  
WAC 246-860-100 Sexual misconduct.

**OTS-2339.1**REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 246-863-020 Examinations.  
WAC 246-863-030 Applicants—Reciprocity applicants.  
WAC 246-863-035 Temporary permits.

WAC 246-863-040	Foreign-trained applicants.
WAC 246-863-060	Licensed pharmacists—Employed as responsible managers—Duty to notify board.
WAC 246-863-070	Inactive credential.
WAC 246-863-080	Retired pharmacist license.
WAC 246-863-090	Expired license.
WAC 246-863-095	Pharmacist's professional responsibilities.
WAC 246-863-100	Pharmacist prescriptive authority—Prior board notification of written guideline or protocol required.
WAC 246-863-110	Monitoring of drug therapy by pharmacists.
WAC 246-863-120	AIDS prevention and information education requirements.

**OTS-2340.1**REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 246-865-010	Definitions.
WAC 246-865-020	Promulgation.
WAC 246-865-030	Emergency kit.
WAC 246-865-040	Supplemental dose kits.
WAC 246-865-050	Drug facilities.
WAC 246-865-060	Pharmaceutical services.
WAC 246-865-070	Provision for continuity of drug therapy for residents.

**OTS-2341.1**REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 246-867-001	Purpose and scope.
WAC 246-867-010	Definitions.
WAC 246-867-020	Applicability.

WAC 246-867-030	Reporting and freedom from liability.
WAC 246-867-040	Approval of substance abuse monitoring programs.
WAC 246-867-050	Participation in approved substance abuse monitoring program.
WAC 246-867-060	Confidentiality.

**OTS-2342.1**REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 246-869-010	Pharmacies' responsibilities.
WAC 246-869-020	Pharmacies and differential hours.
WAC 246-869-030	Pharmacy license notice requirements.
WAC 246-869-040	New pharmacy registration.
WAC 246-869-060	Employers to require evidence of pharmacist's qualifications.
WAC 246-869-070	Responsible manager—Appointment.
WAC 246-869-080	Clinic dispensaries.
WAC 246-869-090	Prescription transfers.
WAC 246-869-100	Prescription record requirements.
WAC 246-869-105	Continuity of care refills in proclaimed emergencies.
WAC 246-869-110	Refusal to permit inspection.
WAC 246-869-130	Return or exchange of drugs.
WAC 246-869-140	Prescription department—Conversing with pharmacist prohibited.
WAC 246-869-150	Physical standards for pharmacies—Adequate stock.
WAC 246-869-160	Physical standards for pharmacies—Adequate facilities.
WAC 246-869-170	Physical standards for pharmacies—Sanitary conditions.
WAC 246-869-180	Physical standards for pharmacies—Adequate equipment.
WAC 246-869-190	Pharmacy inspections and self-inspection worksheets.
WAC 246-869-200	Poison control.
WAC 246-869-210	Prescription labeling.
WAC 246-869-220	Patient counseling required.
WAC 246-869-230	Child-resistant containers.

- WAC 246-869-235 Prescription drug repackaging—  
Definitions.
- WAC 246-869-250 Closing a pharmacy.
- WAC 246-869-255 Customized patient medication packages.

**OTS-2343.1**REPEALER

The following chapter of the Washington Administrative Code is repealed:

- WAC 246-870-010 Purpose.
- WAC 246-870-020 What definitions do I need to know to understand these rules?
- WAC 246-870-030 What is included in the electronic transmission and transfer of prescription information?
- WAC 246-870-040 Can all prescriptions be transmitted electronically?
- WAC 246-870-050 What are the requirements for fax machines?
- WAC 246-870-060 What are the board requirements for electronic prescription transmission systems?
- WAC 246-870-070 What are the board requirements for pharmacies using electronic prescription transmission systems?
- WAC 246-870-080 Can prescription records be stored electronically?
- WAC 246-870-090 Can electronic mail systems be used to transmit patient information?

**OTS-2344.1**REPEALER

The following chapter of the Washington Administrative Code is repealed:

- WAC 246-871-001 Scope and purpose.
- WAC 246-871-010 Definitions.
- WAC 246-871-020 Policy and procedure manual.
- WAC 246-871-030 Physical requirements.



WAC 246-871-040	Personnel.
WAC 246-871-050	Drug distribution and control.
WAC 246-871-060	Antineoplastic medications.
WAC 246-871-070	Clinical services.
WAC 246-871-080	Quality assurance.

**OTS-2345.1**REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 246-873-010	Definitions.
WAC 246-873-020	Applicability.
WAC 246-873-030	Licensure.
WAC 246-873-040	Personnel.
WAC 246-873-050	Absence of a pharmacist.
WAC 246-873-060	Provision of emergency department discharge medications when pharmacy services are unavailable.
WAC 246-873-070	Physical requirements.
WAC 246-873-080	Drug procurement, distribution and control.
WAC 246-873-090	Administration of drugs.
WAC 246-873-100	Investigational drugs.
WAC 246-873-110	Additional responsibilities of pharmacy service.

**OTS-2346.1**REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 246-874-010	Definitions.
WAC 246-874-020	General applicability.
WAC 246-874-025	Responsible manager designation requirement for an ADDD.
WAC 246-874-030	General requirements for an ADDD.
WAC 246-874-040	Security and safety requirements for ADDD.

WAC 246-874-050	Accountability requirements for an ADDD.
WAC 246-874-060	Quality assurance process requirements for ADDD.
WAC 246-874-070	Nursing students ADDD access.

**OTS-2347.1**REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 246-875-001	Purpose.
WAC 246-875-010	Definitions.
WAC 246-875-020	Minimum required information in an automated patient medication record system.
WAC 246-875-030	Minimum required information in a manual patient medication record system.
WAC 246-875-040	Minimum procedures for utilization of a patient medication record system.
WAC 246-875-050	Auxiliary recordkeeping procedure.
WAC 246-875-060	Retrieval of information from an automated system.
WAC 246-875-070	Confidentiality and security of data.
WAC 246-875-080	Extension of time for compliance.

**OTS-2348.1**REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 246-877-020	Drug sample prohibitions.
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**OTS-2349.1**

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 246-878-010	Definitions.
WAC 246-878-020	Compounded drug products—Pharmacist.
WAC 246-878-030	Organization and personnel.
WAC 246-878-040	Facilities.
WAC 246-878-050	Sterile pharmaceutical.
WAC 246-878-060	Radiopharmaceuticals.
WAC 246-878-070	Special precaution products.
WAC 246-878-080	Equipment.
WAC 246-878-090	Control of components and drug product containers and closures.
WAC 246-878-100	Drug compounding controls.
WAC 246-878-110	Labeling control of excess products.
WAC 246-878-120	Records and reports.

**OTS-2350.1**REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 246-879-010	Definitions.
WAC 246-879-020	Minimum standards for wholesalers.
WAC 246-879-030	Inspections.
WAC 246-879-040	Records.
WAC 246-879-050	Security.
WAC 246-879-060	Unauthorized sales.
WAC 246-879-070	Application for full line wholesaler license and over-the-counter only wholesaler license.
WAC 246-879-080	Application for controlled substance wholesaler license.
WAC 246-879-090	Export wholesaler.
WAC 246-879-100	Salvaging and reprocessing companies.
WAC 246-879-110	Violations and penalties.
WAC 246-879-120	Reciprocity.

**OTS-2351.1**

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 246-881-010	Drug price advertising defined.
WAC 246-881-020	Drug price advertising conditions.
WAC 246-881-030	Prohibition on advertising controlled substances.
WAC 246-881-040	Drug price disclosure—Required.

**OTS-2352.1**REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 246-883-020	Identification of legend drugs for purposes of chapter 69.41 RCW.
WAC 246-883-025	Introductory trade or stock packages.
WAC 246-883-030	Ephedrine prescription restrictions.
WAC 246-883-040	Regulated steroids.
WAC 246-883-050	Theophylline prescription restrictions.

**OTS-2353.1**REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 246-885-020	Drug imprint information provided by manufacturers and distributors.
WAC 246-885-030	Over-the-counter (OTC) drug imprint regulation.

**OTS-2354.1**REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 246-886-001	Purpose.
WAC 246-886-010	Definitions.
WAC 246-886-020	Registration.
WAC 246-886-030	Approved legend drugs.
WAC 246-886-035	Sodium pentobarbital—Approved controlled substance.
WAC 246-886-040	Training of personnel.
WAC 246-886-050	Legend drug administration.
WAC 246-886-060	Responsible individuals.
WAC 246-886-080	Recordkeeping and reports.
WAC 246-886-090	Drug storage and field use.
WAC 246-886-100	Violations.
WAC 246-886-150	Chemical capture programs.
WAC 246-886-160	Registration requirements.
WAC 246-886-170	Authorized individuals.
WAC 246-886-180	Approved legend drugs.
WAC 246-886-190	Controlled substances training.
WAC 246-886-200	Storage requirements.
WAC 246-886-210	Controlled substances records and reports.
WAC 246-886-220	Approved controlled substances.
WAC 246-886-230	Controlled substances registration disciplinary actions.

**OTS-2355.1**REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 246-887-020	Uniform Controlled Substances Act.
WAC 246-887-040	Designation of nonnarcotic stimulant drugs for purposes of RCW 69.50.402 (1) (c).
WAC 246-887-045	Prescribing, dispensing, or administering of Schedule II nonnarcotic stimulants.
WAC 246-887-080	Sodium pentobarbital registration disciplinary action.
WAC 246-887-090	Authority to control.
WAC 246-887-100	Schedule I.
WAC 246-887-140	Schedule II.
WAC 246-887-150	Schedule II immediate precursors.

WAC 246-887-160	Schedule III.
WAC 246-887-170	Schedule IV.
WAC 246-887-180	Schedule V.
WAC 246-887-200	Other controlled substance registrants— Requirements.
WAC 246-887-210	Standards for transmission of controlled substances sample distribution reports.

**OTS-2356.1**REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 246-888-010	Purpose.
WAC 246-888-020	What is self-administration with assistance and how is it different from independent self-administration or medication administration?
WAC 246-888-030	How is self-administration with assistance initiated in a community- based care setting or an in-home setting?
WAC 246-888-045	What is an enabler?
WAC 246-888-050	How can medications be altered to assist with self-administration?
WAC 246-888-060	Can all medications be altered to facilitate self-administration?
WAC 246-888-070	What other type of assistance can a nonpractitioner provide?
WAC 246-888-080	Is oxygen covered under this rule?
WAC 246-888-090	If a individual/resident is able to administer his or her own oral medication through a gastrostomy or "g- tube," can a nonpractitioner provide assistance as outlined in these rules?
WAC 246-888-100	Are there any other requirements I need to be aware of?

**OTS-2357.1**

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 246-889-010	Definitions.
WAC 246-889-020	Precursor substance defined.
WAC 246-889-030	Reports of precursor receipt.
WAC 246-889-040	Monthly reporting option.
WAC 246-889-050	Suspicious transactions and reporting requirements.
WAC 246-889-070	Retail sales of nonprescription ephedrine, pseudoephedrine, and phenylpropanolamine products.
WAC 246-889-085	Requirements for the sale of restricted product.
WAC 246-889-090	Acceptable forms of photo identification.
WAC 246-889-095	Record of sales—Electronic methamphetamine precursor tracking.
WAC 246-889-110	Maintenance of and access to retail sales records of restricted products.
WAC 246-889-115	Exemptions from electronic reporting.
WAC 246-889-120	Denial of sale—Override.

**OTS-2358.1**REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 246-891-010	Definitions.
WAC 246-891-020	Conditions for the sale of condoms.
WAC 246-891-030	Condom standards.

**OTS-2359.1**REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 246-895-010	Definitions.
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WAC 246-895-020	Finished pharmaceuticals—Manufacturing practice.
WAC 246-895-030	Personnel.
WAC 246-895-040	Buildings or facilities.
WAC 246-895-050	Equipment.
WAC 246-895-060	Production and control procedures.
WAC 246-895-070	Components.
WAC 246-895-080	Component and drug product containers and closures.
WAC 246-895-090	Reuse of teat dip containers and closures.
WAC 246-895-100	Laboratory controls.
WAC 246-895-110	Stability.
WAC 246-895-120	Expiration dating.
WAC 246-895-130	Packaging and labeling.
WAC 246-895-140	Master production and control records— Batch production and control records.
WAC 246-895-150	Distribution records.
WAC 246-895-160	Complaint files.
WAC 246-895-170	Variance and procedure.

**OTS-2360.1**REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 246-897-020	Availability.
WAC 246-897-060	Identity.

**OTS-2361.1**REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 246-899-020	Dispensing responsibilities.
WAC 246-899-030	Product selection responsibilities.



- WAC 246-899-040 Manufacturers, wholesalers, distributors, pharmacy location, requirement that drug products offered for sale comply with 21 U.S.C. 355— Immediate suspension and subsequent revocation of licenses authorized for violation.
- WAC 246-899-050 Out-of-state prescriptions.

**OTS-2362.3**REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 246-901-010 Definitions.
- WAC 246-901-020 Pharmacy ancillary personnel utilization.
- WAC 246-901-030 Technician education and training.
- WAC 246-901-035 Pharmacy technician specialized functions.
- WAC 246-901-040 Limitations, trainees.
- WAC 246-901-050 Technician program approval.
- WAC 246-901-060 Technician certification.
- WAC 246-901-065 Expired technician license.
- WAC 246-901-070 Pharmacy assistant utilization.
- WAC 246-901-080 Pharmacy assistant registration.
- WAC 246-901-090 Identification.
- WAC 246-901-100 Board approval of pharmacies utilizing pharmacy ancillary personnel and specialized functions.
- WAC 246-901-120 AIDS prevention and information education requirements.
- WAC 246-901-130 Pharmacist to pharmacy technician ratio.

**OTS-2363.1**REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 246-903-001	Purpose and scope.
WAC 246-903-010	Definitions.
WAC 246-903-020	Nuclear pharmacies.
WAC 246-903-030	Nuclear pharmacists.
WAC 246-903-040	Minimum equipment requirements.

**OTS-2364.1**REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 246-904-010	Definition.
WAC 246-904-020	New health care entity licensing.
WAC 246-904-030	Pharmacist in charge.
WAC 246-904-040	Drug procurement, distribution and control.
WAC 246-904-050	Dispensing of prescription medications from health care entities.
WAC 246-904-060	Labeling.
WAC 246-904-070	Records.
WAC 246-904-080	Absence of a pharmacist.
WAC 246-904-090	Administration.
WAC 246-904-100	Closing.

**OTS-2365.1**REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 246-905-020	Home dialysis program—Legend drugs.
WAC 246-905-030	Pharmacist consultant.
WAC 246-905-040	Records.
WAC 246-905-050	Quality assurance.

**WSR 21-05-062**  
**PERMANENT RULES**  
**GAMBLING COMMISSION**

[Filed February 16, 2021, 11:36 a.m., effective March 19, 2021]

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

Purpose: The gambling commission is amending WAC 230-11-025 Bundling and selling tickets at a discount, to allow for additional discount levels, and 230-11-055 Authorized alternative drawing formats, to authorize two additional alternative drawing formats. These changes will offer additional options to nonprofit organizations when conducting raffles.

Citation of Rules Affected by this Order: Amending WAC 230-11-025 Bundling and selling tickets at a discount, and 230-11-055 Authorized alternative drawing formats.

Statutory Authority for Adoption: RCW 9.46.070.

Adopted under notice filed as WSR 21-02-070 on January 5, 2021.

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

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

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

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

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

Date Adopted: February 11, 2021.

Ashlie Laydon  
Rules Coordinator

**OTS-2835.1**

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

**WAC 230-11-025 Bundling and selling tickets at a discount.** (1) Licensees may put tickets together in a bundle and sell them at a discount level if they:

(a) Create the discount ((~~plan~~)) levels before selling any raffle tickets; and

(b) Do not change the discount ((~~plan~~)) levels during the raffle; and

(c) Make single nondiscounted tickets available to all participants; and

(d) Use ((~~only one~~)) up to three discount ((~~plan~~)) levels for each raffle; and

(2) Booklets of bundled discounted tickets must contain the number of tickets named in the discount ((~~plan~~)) levels; and

- (3) Licensees must not remove tickets from a booklet to sell them individually; and
- (4) Each booklet of bundled tickets must have the following information printed on the cover:
- (a) A description of the discount (~~plan~~) levels; and
  - (b) The number of tickets in the booklet; and
  - (c) The total cost of the booklet; and
  - (d) A consecutive number; and
- (5) Licensees must establish controls and accounting procedures necessary to determine gross gambling receipts from ticket sales.

[Statutory Authority: RCW 9.46.070. WSR 06-20-040 (Order 602), § 230-11-025, filed 9/26/06, effective 1/1/08.]

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

**WAC 230-11-055 Authorized alternative drawing formats.** Except for enhanced raffles, licensees may use the following types of alternative drawing formats or similar random selection processes:

((~~Mock races.~~))

(1) Mock races. The licensee sells participants consecutively numbered tickets that identify a specific corresponding numbered mock animal(s), ball(s), or other similar object(s) that can use natural elements to move the objects (water, gravity, wind) in a race. All objects must be identical in weight, size, and shape, to have an equal opportunity to win. The licensee must release all objects simultaneously at a start line. The first numbered object to cross the finish line wins.

((~~Poker runs.~~))

(2) Poker runs. The licensee sells participants consecutively numbered tickets or poker tally sheets to participants. Participants travel a predetermined course with predetermined drawing stations (typically five drawing stations). At each drawing station, participants draw one playing card for each ticket purchased. Station attendants must verify the card drawn and record the card value on the poker ticket tally sheet. After all participants have completed the course, the participant with the best recorded poker hand wins.

((~~Ball drops.~~))

(3) Ball drops. The licensee sells participants consecutively numbered tickets that identify a specific corresponding numbered ball. All balls must be equal in size, weight, and shape, to have an equal opportunity to win. The licensee suspends all purchased numbered balls in the air and simultaneously releases them over a target zone. The ball, closest or first, to hit the predetermined target wins.

((~~Animal plops.~~))

(4) Animal plops. The licensee sells participants consecutively numbered tickets that identify a specific corresponding square on a numbered grid. The licensee releases the animal into the grid area until the animal has completed its plop. The numbered square containing the plop wins.

~~((Multiple stage drawings.))~~

(5) Multiple stage drawings. The licensee sells participants consecutively numbered tickets. The licensee uses multiple drawing phases to eliminate participants until the licensee declares the remaining ticket holder(s) the winner(s). The licensee may use second element of chance plans as long as the plans meet the criteria set out in WAC 230-11-060.

~~((Bucket raffles.))~~

(6) Bucket raffles. The licensee sells participants consecutively numbered tickets. Participants place their tickets into any number of separate buckets or other receptacles for separate prizes. We consider the multiple drawings one single raffle. If licensees use different tickets for each receptacle, we consider each drawing an individual raffle.

~~((Calendar raffles.))~~

(7) Calendar raffles. The licensee sells participants consecutively numbered calendars with removable stubs. The licensee places all sold calendar stubs into the drawing receptacle. On predetermined dates identified on the calendar, the licensee conducts drawings. The licensee places all winning stubs back into the drawing receptacle for future drawings.

(8) Heads/tails raffles. The licensee sells participants consecutively numbered tickets. Every participant who purchased a ticket stands up and places their hands on either their head or their tail. The licensee then flips a coin to determine heads or tails. Participants who selected the losing outcome (heads or tails) must sit down. The process is repeated until there is only one participant standing and they win the prize.

(9) Number raffles. The licensee sells participants consecutively numbered tickets. The participants select a number from a spot or square on a grid or from a list of numbers. The licensee then draws a number(s) that corresponds to the numbers on the grid or list to determine the winner(s).

[Statutory Authority: RCW 9.46.070 and 9.46.0209. WSR 13-19-056 (Order 692), § 230-11-055, filed 9/16/13, effective 10/17/13. Statutory Authority: RCW 9.46.070. WSR 06-20-040 (Order 602), § 230-11-055, filed 9/26/06, effective 1/1/08.]

**WSR 21-05-075**  
**PERMANENT RULES**  
**LIQUOR AND CANNABIS**  
**BOARD**

[Filed February 17, 2021, 10:41 a.m.]

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

Purpose: The Washington state liquor and cannabis board (board) has adopted amendments to WAC 314-55-010; and new WAC 314-55-550 and 314-55-1055 to implement the directives and requirements of HB 2826 (chapter 133, Laws of 2020) concerning marijuana vapor products, now codified in RCW 69.50.101, 69.50.327, 69.50.342.

Citation of Rules Affected by this Order: New WAC 314-55-550 and 314-55-1055; and amending WAC 314-55-010.

Statutory Authority for Adoption: RCW 69.50.342, 69.50.345.

Adopted under notice filed as WSR 21-01-058 on December 9, 2020.

A final cost-benefit analysis is available by contacting Casey Schaufler, 1025 Union Avenue S.E., Olympia, WA 98501, phone 360-664-1760, fax 360-664-3208, email rules@lcb.wa.gov, website www.lcb.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 2, Amended 1, Repealed 0.

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Date Adopted: February 17, 2021.

Jane Rushford  
Chair

**OTS-2758.1**

AMENDATORY SECTION (Amending WSR 18-22-055, filed 10/31/18, effective 12/1/18)

**WAC 314-55-010 Definitions.** The following definitions apply for the purpose of this chapter in addition to the definitions provided in RCW 69.50.101.

(1) "Applicant" or "marijuana license applicant" means any person or business entity who is considered by the WSLCB as a true party of interest in a marijuana license, as outlined in WAC 314-55-035. However, for purposes of determining an application's priority under RCW 69.50.331 (1)(a), only the person or business entity that is applying for the license will be considered the applicant.

(2) "Batch" means a quantity of marijuana-infused product containing material from one or more lots of marijuana.

(3) "Business name" or "trade name" means the name of a licensed business as used by the licensee on signs and advertising.

(4) "Characterizing flavor" means a noticeable taste, other than one of cannabis, resulting from an additive or combination of additives including, but not limited to, fruit, spice, herbs, alcohol, candy, or menthol, or that is noticeable before or during consumption of the cannabis product.

(5) "Child care center" means an entity that regularly provides child day care and early learning services for a group of children for periods of less than twenty-four hours licensed by the Washington state department of early learning under chapter 170-295 WAC.

~~((5))~~ (6) "Consultant" means an expert who provides advice or services in a particular field, whether a fee is charged or not. A consultant who is in receipt of, or has the right to receive, a percentage of the gross or net profit from the licensed business during any full or partial calendar or fiscal year is a true party of interest and subject to the requirements of WAC 314-55-035. A consultant who exercises any control over an applicant's or licensee's business operations is also subject to the requirements of WAC 314-55-035(4).

~~((6))~~ (7) "Cooperative" means a group of more than one, but no more than four qualified medical marijuana patients and/or designated providers who share responsibility for growing and processing marijuana only for the medical use of the members of the cooperative.

~~((7))~~ (8) "Domicile" means a person's true, fixed, primary permanent home and place of habitation and the tax parcel on which it is located. It is the place where the person intends to remain and to which the person expects to return when the person leaves without intending to establish a new domicile elsewhere.

~~((8))~~ (9) "Elementary school" means a school with a physical location for early education that provides the first four to eight years of basic education and recognized by the Washington state superintendent of public instruction.

~~((9))~~ (10) "Employee" means any person performing services on a licensed premises for the benefit of the licensee whether or not such person is compensated by the licensee.

~~((10))~~ (11) "End product" means a marijuana product that requires no further processing prior to retail sale.

~~((11))~~ (12) "Financier" means any person or entity, other than a banking institution, that provides money as a gift or loans money to the applicant/business and expects to be paid back the amount of the loan with or without reasonable interest.

~~((12))~~ (13) "Game arcade" means an entertainment venue featuring primarily video games, simulators, and/or other amusement devices where persons under twenty-one years of age are not restricted.

~~((13))~~ (14) "Harvest" means the marijuana plant material derived from plants of the same strain that were cultivated at the same licensed location and gathered at the same time.

~~((14))~~ (15) "Immature plant or clone" means a marijuana plant or clone that has no flowers, is less than twelve inches in height, and is less than twelve inches in diameter.

~~((15))~~ (16) "Intermediate product" means marijuana flower lots or other material lots that have been converted by a marijuana processor to a marijuana mix lot, marijuana concentrate or marijuana-infused product that must be or are intended to be converted further to an end product.

~~((16))~~ (17) "Library" means an organized collection of resources made accessible to the public for reference or borrowing supported with money derived from taxation.

~~((17))~~ (18) "Licensed premises" means all areas of a premises where the licensee has leasehold rights as listed in the property lease submitted to the board. Any vehicle assigned for the purposes of transporting marijuana, useable marijuana, marijuana concentrates, or marijuana-infused products shall be considered an extension of the licensed premises.

~~((18))~~ (19) "Licensee" or "marijuana licensee" means any person or entity that holds a marijuana license, or any person or entity who is a true party of interest in a marijuana license, as outlined in WAC 314-55-035.

~~((19))~~ (20) "Lot" means either of the following:

- (a) The flowers from one or more marijuana plants of the same strain. A single lot of flowers cannot weigh more than five pounds; or
- (b) The trim, leaves, or other plant matter from one or more marijuana plants. A single lot of trim, leaves, or other plant matter cannot weigh more than fifteen pounds.

~~((20))~~ (21) "Lozenge" means a marijuana-infused product such as a hard candy, mint, pastille, tablet, or similar type of edible product that is generally swallowed whole, chewed and swallowed, or dissolved in the mouth.

~~((21))~~ (22) "Marijuana strain" means a pure breed or hybrid variety of Cannabis reflecting similar or identical combinations of properties such as appearance, taste, color, smell, cannabinoid profile, and potency.

~~((22))~~ (23) "Marijuana mix" means an intermediate lot that contains multiple strains of useable marijuana and is chopped or ground so no particles are greater than 3 mm.

~~((23))~~ (24) "Marijuana mix infused" or "mix infused" means an end product that contains marijuana mix and may contain other intermediate products or useable marijuana.

~~((24))~~ (25) "Marijuana mix packaged" or "mix packaged" means an end product containing only marijuana mix and no other product types.

~~((25))~~ (26) "Member," except as that term is used in relation to registered cooperatives, means a principal or governing person of a given entity, including but not limited to: LLC member/manager, president, vice president, secretary, treasurer, CEO, director, stockholder, partner, general partner, limited partner. This includes all spouses of all principals or governing persons named in this definition and referenced in WAC 314-55-035.

~~((26))~~ (27) "Paraphernalia" means items used for the storage or use of useable marijuana, marijuana concentrates, or marijuana-infused products, such as, but not limited to, lighters, roach clips, pipes, rolling papers, bongos, and storage containers. Items for growing, cultivating, and processing marijuana, such as, but not limited to, butane, lights, and chemicals are not considered "paraphernalia."

~~((27))~~ (28) "Pesticide" means, but is not limited to: (a) Any substance or mixture of substances intended to prevent, destroy, control, repel, or mitigate any insect, rodent, snail, slug, fungus, weed, and any other form of plant or animal life or virus, except virus on or in a living person or other animal which is normally considered to be a pest; (b) any substance or mixture of substances intended to be used as a plant regulator, defoliant, or desiccant; and (c) any spray adjuvant. Pesticides include substances commonly referred to as herbicides, fungicides, insecticides, and cloning agents.



~~((28))~~ (29) "Perimeter" means a property line that encloses an area.

~~((29))~~ (30) "Plant" means a marijuana plant.

~~((30))~~ (31) "Plant canopy" means the square footage dedicated to live plant production, such as maintaining mother plants, propagating plants from seed to plant tissue, clones, vegetative or flowering area. Plant canopy does not include areas such as space used for the storage of fertilizers, pesticides, or other products, quarantine, office space, etc.

~~((31))~~ (32) "Playground" means a public outdoor recreation area for children, usually equipped with swings, slides, and other playground equipment, owned and/or managed by a city, county, state, federal government, or metropolitan park district.

~~((32))~~ (33) "Product(s) otherwise taken into the body" means a marijuana-infused product for human consumption or ingestion intended for uses other than inhalation, oral ingestion, or external application to the skin.

~~((33))~~ (34) "Public park" means an area of land for the enjoyment of the public, having facilities for rest and/or recreation, such as a baseball diamond or basketball court, owned and/or managed by a city, county, state, federal government, or metropolitan park district. Public park does not include trails.

~~((34))~~ (35) "Public transit center" means a facility located outside of the public right of way that is owned and managed by a transit agency or city, county, state, or federal government for the express purpose of staging people and vehicles where several bus or other transit routes converge. They serve as efficient hubs to allow bus riders from various locations to assemble at a central point to take advantage of express trips or other route to route transfers.

~~((35))~~ (36) "Recreation center or facility" means a supervised center that provides a broad range of activities and events intended primarily for use by persons under twenty-one years of age, owned and/or managed by a charitable nonprofit organization, city, county, state, federal government, or metropolitan park district.

~~((36))~~ (37) "Residence" means a person's address where he or she physically resides and maintains his or her abode.

~~((37))~~ (38) "Secondary school" means a high and/or middle school with a physical location: A school for students who have completed their primary education, usually attended by children in grades seven to twelve and recognized by the Washington state superintendent of public instruction.

~~((38))~~ (39) "Selling price" means the same meaning as in RCW 82.08.010, except that when the product is sold under circumstances where the total amount of consideration paid for the product is not indicative of its true value. Selling price means the true value of the product sold as determined or agreed to by the WSLCB. For purposes of this subsection:

(a) "Product" means marijuana, marijuana concentrates, useable marijuana, or marijuana-infused products; and

(b) "True value" means market value based on sales at comparable locations in the state of the same or similar product of like quality and character sold under comparable conditions of sale to comparable purchasers. In the absence of such sales of the same or similar product, true value means the value of the product sold as determined by all of the seller's direct and indirect costs attributed to the product.

~~((39))~~ (40) "Terpenes" means a class of compounds that impart smell, taste, or both occurring in the cannabis plant which consist of a carbon skeleton derived from isoprene units. The word "terpene" may include, but is not limited to, the following:

(a) "Botanical terpenes" means constituents derived from a spice, fruit, vegetable or vegetable juice, edible yeast, herb, bark, bud, root, or leaf or similar plant material. Their significant function in cannabis products is flavoring. This includes:

(i) Essential oil, which is natural oil typically obtained by distillation and possessing the characteristic fragrance of the plant or other source from which it is extracted;

(ii) Oleoresin, which is a natural or artificial mixture of essential oils and a resin;

(iii) Distillate; or

(iv) Any product of roasting, heating, or enzymolysis which contains terpenes.

(b) "Synthetic terpenes" means any terpene that does not occur in the cannabis plant, or in other botanical sources, and is produced through chemical manipulation in a laboratory or similar facility.

(c) "Terpenoids" means the natural products and related compounds formally derived from isoprene units, or "isoprenoids," that have the same meaning as that found in the current version of the International Union of Pure and Applied Chemistry (IUPAC) and as hereafter amended.

(41) "Unit" means an individually packaged marijuana-infused solid or liquid product meant to be eaten or swallowed, not to exceed ten servings or one hundred milligrams of active tetrahydrocannabinol (THC), or Delta 9.

~~((40))~~ (42) "WSLCB" means the Washington state liquor and cannabis board.

[Statutory Authority: RCW 69.50.325, 69.50.342, 69.50.345, and 69.50.369. WSR 18-22-055, § 314-55-010, filed 10/31/18, effective 12/1/18. Statutory Authority: RCW 69.50.342 and 69.50.345. WSR 16-11-110, § 314-55-010, filed 5/18/16, effective 6/18/16; WSR 15-11-107, § 314-55-010, filed 5/20/15, effective 6/20/15. Statutory Authority: RCW 69.50.325, 69.50.331, 69.50.342, 69.50.345. WSR 13-21-104, § 314-55-010, filed 10/21/13, effective 11/21/13.]

## NEW SECTION

**WAC 314-55-550 Marijuana vapor products.** (1) The purpose of this section is to:

(a) Support and further the protection of public health and prevention of youth access consistent with RCW 69.50.101(xx).

(b) Mitigate the risks to public health and youth access by prohibiting the use of any additive, solvent, ingredient, or compound in marijuana vapor product production and processing when appropriate, consistent with RCW 69.50.342 (1)(m).

(c) Mitigate the risks to public health and youth access by prohibiting any device used in conjunction with a marijuana vapor product when appropriate, consistent with RCW 69.50.342 (1)(n).

(2) Procedure for prohibited substances.

(a) The board may prohibit any type of device used in conjunction with a marijuana vapor product, and may prohibit the use of any type of additive, solvent, ingredient, or compound in the production of

marijuana vapor products that may pose a risk to public health or youth access.

(b) The board may consider, following consultation with the department of health or other authority the board deems appropriate, any relevant data when determining whether a device, additive, solvent, ingredient or compound may pose a risk to public health or youth access including, but not limited to:

(i) Case report data;

(ii) Other local, state and federal agency findings, reports, etc.;

(iii) A product or substance that is the subject of a recall under WAC 314-55-225;

(iv) Any other information sourced and confirmed from reliable entities.

(c) The board may prohibit the use of a product or substance by adoption of emergency or permanent rules. The board will provide notices of rule making consistent with the requirements of chapter 34.05 RCW.

(d) The board will maintain a list of prohibited substances prohibited by permanent or emergency rules on its website.

(e) The list of prohibited substances will be reviewed on an annual basis.

(f) Prohibited substances may be removed from the list of prohibited substances if the board determines, after a review consistent with (b) (i) through (iv) of this subsection, that it no longer poses a risk to public health or youth access.

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### OTS-1783.3

#### NEW SECTION

**WAC 314-55-1055 Ingredient disclosure.** (1) All licensed marijuana processors and producers must disclose all ingredients used in the production of marijuana concentrates for inhalation and marijuana-infused extracts for inhalation.

(2) All chemicals, compounds, additives, preservatives, thickening agents, terpenes, and other substances used at any point in the production or processing of marijuana concentrates for inhalation or marijuana-infused extracts for inhalation, regardless of source or origin, must be disclosed to the board as follows:

(a) On a form provided by the board and stored by the licensee, either electronically or in hard copy, and made available for inspection if requested by an employee of the board; and

(b) In a manner directed by the board including, but not limited to, submission to an email address or other online platform provided and maintained by the board.

(3) The complete list of all chemicals, compounds, additives, preservatives, thickening agents, terpenes, and other substances used at any point in the production or processing of marijuana concentrates for inhalation or marijuana-infused extracts for inhalation, regardless of source or origin, that is required under subsection (2) of

this section must be kept and maintained, consistent with recordkeeping requirements described in WAC 314-55-087, at the facility in which the products are processed. The list must be updated whenever there is any change in product composition.

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