

**WSR 21-12-003**  
**PERMANENT RULES**  
**DEPARTMENT OF**

**SOCIAL AND HEALTH SERVICES**

(Economic Services Administration)

[Filed May 19, 2021, 2:10 p.m., effective June 19, 2021]

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

Purpose: The department of social and health services division of child support (DCS) is amending the following sections in chapter 388-14A WAC to align WAC with the legislature's reenactment of pass-through payments in 2SSB 5144 (chapter 349, Laws of 2020).

Between October 1, 2008, and April 30, 2011, state law directed DCS to pass through a portion of child support collections to a family receiving temporary assistance for needy families (TANF). A pass-through payment is the portion of a support collection applied to assigned support that the state elects to pay a family receiving TANF at the time the collection was received. Due to budget constraints during the great recession, the legislature repealed the statutory authority to issue these pass-through payments. At that time, DCS amended its pass-through payment rules to sunset the policy (see WAC 388-14A-5015).

DCS is amending WAC 388-14A-5015 and 388-14A-5100 to clarify that pass-through payments are authorized again beginning February 1, 2021. These changes relate to internal governmental operations, are noncontroversial, and align with statutory provisions in RCW 26.23.035.

Citation of Rules Affected by this Order: Amending WAC 388-14A-5015 and 388-14A-5100.

Statutory Authority for Adoption: RCW 26.09.105(20), 26.18.170(21), 26.23.050, 26.23.110(14), 43.20A.550, 74.04.055, 74.04.057, 74.08.090, 74.20A.310.

Adopted under notice filed as WSR 21-06-093 on March 2, 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Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 2, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 2, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: May 19, 2021.

Katherine I. Vasquez  
Rules Coordinator

**SHS-4853.1**

AMENDATORY SECTION (Amending WSR 11-14-063, filed 6/30/11, effective 7/31/11)

**WAC 388-14A-5015 What is a pass-through payment?** (1) Between October 1, 2008 and April 30, 2011 and beginning again on February 1, 2021, the division of child support (DCS) (~~(passed)~~) passes through a portion of child support collections to a family receiving TANF.

(2) A pass-through payment (~~(was)~~) is the portion of a support collection applied to assigned support that the state (~~(elected)~~) elects to pay to a family receiving TANF at the time the collection (~~(was)~~) is received.

(3) Between October 1, 2008 and April 30, 2011, the pass-through payment was paid in the following amounts:

(a) Up to one hundred dollars per month to a family with one child in the assistance unit.

(b) Up to two hundred dollars per month to a family with two or more children in the assistance unit.

~~((3))~~ (4) Beginning February 1, 2021, the pass-through payment is paid in the following amounts:

(a) Up to fifty dollars per month to a family with one child in the assistance unit.

(b) Up to one hundred dollars per month to a family with two or more children in the assistance unit.

(5) The pass-through (~~(was)~~) is paid from collections distributed to either current support or assigned arrears.

~~((4))~~ (6) The pass-through amount for any month (~~(could not)~~) cannot exceed the amount collected in that month.

[Statutory Authority: RCW 26.23.035 and 74.08.090. WSR 11-14-063, § 388-14A-5015, filed 6/30/11, effective 7/31/11. Statutory Authority: RCW 26.18.170, 26.23.035, 26.23.050, [26.23.]110, 74.20.040, 74.20A.030, [74.20A.]055, [74.20A.]056, and 74.20A.310. WSR 09-02-059, § 388-14A-5015, filed 1/5/09, effective 1/27/09.]

AMENDATORY SECTION (Amending WSR 11-14-063, filed 6/30/11, effective 7/31/11)

**WAC 388-14A-5100 How does the division of child support notify the custodial parent about support collections?** (1) The division of child support (DCS) mails a distribution and disbursement statement once each month to the last known address of a person for whom it received a support collection during the month, except as provided under subsection (6) of this section.

(2) DCS includes the following information in the distribution and disbursement statement:

(a) The amount of support collections DCS received and the date of collection;

(b) A description of how DCS distributed each support collection between current support and the support debt and any fees required by state or federal law;

(c) The amount DCS claims as reimbursement for public assistance paid, if applicable;

(d) The amount kept by the state to repay public assistance paid to the family;

(e) The amount disbursed to the family as a pass-through payment under WAC 388-14A-5015 (~~for collections received between October 1, 2008 and April 30, 2011~~);

(f) The amount disbursed to the family as a payment on support owed to the family;

(g) The amount kept by the state to pay the twenty-five dollar annual fee, if applicable; and

(h) The amount kept by the state to repay child support paid to the family in error.

(3) The person to whom a distribution and disbursement statement is sent may file a request for a hearing under subsection (4) of this section within ninety days of the date of the statement to contest how DCS distributed the support collections, and must make specific objections to the statement. The effective date of a hearing request is the date DCS receives the request.

(4) A hearing under this section is for the limited purpose of determining if DCS correctly distributed the support money described in the contested statement.

(a) There is no hearing right regarding fees that have been charged on a case.

(b) If a custodial parent (CP) wants to request a hardship waiver of the fee, the CP may request a conference board under WAC 388-14A-6400.

(5) A person who requests a late hearing must show good cause for being late.

(6) This section does not require DCS to send a distribution and disbursement statement to a recipient of payment services only.

[Statutory Authority: RCW 26.23.035 and 74.08.090. WSR 11-14-063, § 388-14A-5100, filed 6/30/11, effective 7/31/11. Statutory Authority: RCW 26.18.170, 26.23.035, 26.23.050, [26.23.]110, 74.20.040, 74.20A.030, [74.20A.]055, [74.20A.]056, and 74.20A.310. WSR 09-02-059, § 388-14A-5100, filed 1/5/09, effective 1/27/09. Statutory Authority: 2007 c 143, §§ 1, 2, 3, 4, 5, 7, 8, and 9. WSR 08-12-029, § 388-14A-5100, filed 5/29/08, effective 7/1/08. Statutory Authority: RCW 74.08.090, 26.23.035, 74.20A.057, 74.20A.310. WSR 01-03-089, § 388-14A-5100, filed 1/17/01, effective 2/17/01. Formerly WAC 388-14-270 and 388-14-274.]

**WSR 21-12-004**  
**PERMANENT RULES**  
**DEPARTMENT OF**

**SOCIAL AND HEALTH SERVICES**

(Economic Services Administration)

[Filed May 19, 2021, 2:26 p.m., effective July 1, 2021]

Effective Date of Rule: July 1, 2021.

Purpose: The department is amending WAC 388-310-0350 WorkFirst—Other exemptions from mandatory participation, to expand and clarify exemptions from mandatory participation when clients are unable to participate in WorkFirst activities due to a declared state of emergency.

Citation of Rules Affected by this Order: Amending WAC 388-310-0350.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.010.

Other Authority: C.F.R. 20 § 416-2095 through § 416.2099.

Adopted under notice filed as WSR 21-08-082 on April 7, 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 0, Repealed 0.

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

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

Date Adopted: May 19, 2021.

Katherine I. Vasquez  
Rules Coordinator

**SHS-4789.3**

AMENDATORY SECTION (Amending WSR 15-24-056, filed 11/24/15, effective 1/1/16)

**WAC 388-310-0350 WorkFirst—Other exemptions from mandatory participation.** (1) **When am I exempt from mandatory participation?**

Except as provided in subsection (4) of this section, you are exempt from mandatory participation if you are:

(a) A caretaker relative as defined by WAC 388-454-0010, included in the assistance unit and:

(i) You are fifty-five years of age or older and caring for a child and you are not the child's parent; and

(ii) Your age is verified by any reliable documentation (such as a birth certificate or a driver's license).

(b) An adult with a severe and chronic disability as defined below:

(i) You have been assessed by a DSHS SSI facilitator as likely to be approved for SSI or other benefits and are required to apply for SSI or another type of federal disability benefit (such as railroad retirement or Social Security disability) in your individual responsibility plan. Your SSI application status may be verified through the SSI facilitator and/or state data exchange; or

(ii) Your disability is a severe and chronic mental, physical, emotional, or cognitive impairment that prevents you from participating in work activities for more than ten hours a week and is expected to last at least twelve months. Your disability and ability to participate must be verified by documentation from the division of developmental disabilities (DDD), division of vocational rehabilitation (DVR), home and community services division (HCS), division of mental health (MHD), behavioral health organization (BHO), and/or regional service area (RSA), or evidence from one of the medical or mental health professionals listed in subsection (2) of this section.

(c) Required in the home to care for a child with special needs when:

(i) The child has a special medical, developmental, mental, or behavioral condition; and

(ii) The child is determined by a public health nurse, school professional, one of the medical or mental health professionals listed in subsection (2) of this section, HCS, MHD, BHO, and/or an RSA to require specialized care or treatment that prevents you from participating in work activities for more than ten hours per week.

(d) Required to be in the home to care for another adult with disabilities when:

(i) The adult with disabilities cannot be left alone for significant periods of time; and

(ii) No adult other than yourself is available and able to provide the care; and

(iii) The adult with the disability is related to you; and

(iv) You are unable to participate in work activities for more than ten hours per week because you are required to be in the home to provide care; and

(v) The disability and your need to care for your disabled adult relative is verified by documentation from DDD, DVR, HCS, MHD, BHO and/or an RSA, or evidence from one of the medical or mental health professionals listed in subsection (2) of this section.

(e) Unable to participate in WorkFirst activities due to a declared state of emergency.

**(2) What types of medical or mental health professionals can provide medical evidence when I have a disability?**

We accept medical evidence from the following sources when considering disability:

(a) For a physical impairment:

(i) A physician, which includes:

(A) Medical doctor (M.D.); and

(B) Doctor of osteopathy (D.O.);

(ii) An advanced registered nurse practitioner (ARNP) for physical impairments;

(iii) A physician's assistant (P.A.);

(iv) A doctor of optometry (O.D.) for visual acuity impairments;

or

(v) Doctor of podiatry (D.P.) for foot disorders;

(b) For a mental impairment:

(i) A psychiatrist;

- (ii) A psychologist;
- (iii) An ARNP certified in psychiatric nursing;
- (iv) A mental health professional provided the person's training and qualifications at a minimum include a master's degree; or
- (v) A physician who is currently treating you for a mental impairment.

(c) We do not accept medical evidence from the medical professionals listed in subsections (2)(a) and (b), unless they are licensed in Washington state or the state where the examination was performed.

**(3) Who reviews and approves an exemption from participation?**

(a) If it appears that you may qualify for an exemption or you ask for an exemption, your case manager or social worker will review the information and we may use the case staffing process to determine whether the exemption will be approved. Case staffing is a process to bring together a team of multidisciplinary experts including relevant professionals and the client to identify participant issues, review case history and information, and recommend solutions.

(b) If additional medical or other documentation is needed to determine if you are exempt, your IRP will allow between thirty days and up to ninety if approved to gather the necessary documentation.

(c) Information needed to verify your exemption should meet the standards for verification described in WAC 388-490-0005. If you need help gathering information to verify your exemption, you can ask us for help. If you have been identified as needing NSA services, under chapter 388-472 WAC, your accommodation plan should include information on how we will assist you with getting the verification needed.

(d) After a case staffing, we will send you a notice that tells you whether your exemption was approved, how to request a fair hearing if you disagree with the decision, and any changes to your IRP that were made as a result of the case staffing.

**(4) If I am an adult who is exempt due to my severe and chronic disability, can I still be required to participate in the WorkFirst program?**

When you are exempt due to your severe and chronic disability, you may be required to:

(a) Pursue SSI or another type of federal disability benefit; and/or

(b) Participate in available treatment that is recommended by your treating medical or mental health provider or by a chemical dependency professional.

**(5) Can I participate in WorkFirst while I am exempt?**

(a) You may choose to fully participate in WorkFirst while you are exempt.

(b) Your WorkFirst case manager may refer you to other service providers who may help you improve your skills and move into employment.

(c) If you decide later to stop participating, and you still qualify for an exemption, you will be put back into exempt status with no financial penalty.

**(6) Does an exemption from participation affect my sixty-month time limit for receiving TANF/SFA benefits?**

Even if exempt from participation, each month you receive a TANF/SFA grant counts toward your sixty-month limit as described in WAC 388-484-0005.

**(7) How long will my exemption last?**

Unless you are an older caretaker relative, your exemption will be reviewed at least every twelve months to make sure that you still

meet the criteria for an exemption. Your exemption will continue as long as you continue to meet the criteria for an exemption.

(8) **What happens when I am no longer exempt?**

If you are no longer exempt, then:

(a) You will become a mandatory participant under WAC 388-310-0400; and

(b) If you have received sixty or more months of TANF/SFA, your case will be reviewed for an extension. (See WAC 388-484-0006 for a description of TANF/SFA time limit extensions.)

(9) For time-limited extensions, see WAC 388-484-0006.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and 74.08A.010. WSR 15-24-056, § 388-310-0350, filed 11/24/15, effective 1/1/16. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and chapters 74.08A and 74.12 RCW. WSR 10-24-013, § 388-310-0350, filed 11/18/10, effective 12/19/10. Statutory Authority: RCW 74.04.050, 74.08.090, and 74.08A.340. WSR 09-16-079, § 388-310-0350, filed 7/31/09, effective 9/1/09; WSR 03-24-057, § 388-310-0350, filed 12/1/03, effective 1/1/04. Statutory Authority: RCW 74.08A.010(4), 74.08A.340, 74.08.090, 74.04.050. WSR 02-12-068, § 388-310-0350, filed 5/31/02, effective 6/1/02.]

## WSR 21-12-008

## PERMANENT RULES

## GRAYS HARBOR COLLEGE

[Filed May 19, 2021, 4:23 p.m., effective June 19, 2021]

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

Purpose: Grays Harbor College is utilizing the rule-making process to update the student conduct code (currently WAC 132B-120) in order to address state and federal law compliance requirements and general updates to organization and usefulness for Grays Harbor College students and the Grays Harbor College community. The new student conduct code will be in chapter 132B-125 WAC.

Citation of Rules Affected by this Order: New WAC 132B-125-100, 132B-125-105, 132B-125-110, 132B-125-115, 132B-125-120, 132B-125-125, 132B-125-200, 132B-125-205, 132B-125-300, 132B-125-305, 132B-125-310, 132B-125-315, 132B-125-320, 132B-125-325, 132B-125-330, 132B-125-335, 132B-125-340, 132B-125-345, 132B-125-350, 132B-125-355, 132B-125-360, 132B-125-365, 132B-125-370, 132B-125-400, 132B-125-405, 132B-125-410, 132B-125-415, 132B-125-420, 132B-125-425, 132B-125-430, 132B-125-435, 132B-125-440 and 132B-125-500; and repealing WAC 132B-120-010, 132B-120-020, 132B-120-030, 132B-120-040, 132B-120-045, 132B-120-055, 132B-120-065, 132B-120-075, 132B-120-085, 132B-120-120, 132B-120-130, 132B-120-135, 132B-120-143, 132B-120-145, 132B-120-155, 132B-120-170, 132B-120-180, 132B-120-181, 132B-120-185, 132B-120-190, 132B-120-200, 132B-120-210, 132B-120-220, 132B-120-300, 132B-120-305, 132B-120-310, and 132B-120-315.

Statutory Authority for Adoption: RCW 28B.50.140(13).

Adopted under notice filed as WSR 21-07-024 on March 8, 2021, 1:53 p.m.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 10, Amended 0, Repealed 10; 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 23, Amended 0, Repealed 23.

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: May 18, 2021.

Darin Jones  
Chief Executive  
of Human Resources

**OTS-2751.1**REPEALER

The following chapter of the Washington Administrative Code is repealed:



WAC 132B-120-010	Definitions.
WAC 132B-120-020	Statement of policy and community philosophy.
WAC 132B-120-030	Jurisdiction.
WAC 132B-120-035	Interpretations.
WAC 132B-120-040	Authority.
WAC 132B-120-045	Loss of eligibility—Student athletic participation.
WAC 132B-120-055	Trespass.
WAC 132B-120-065	Student rights.
WAC 132B-120-075	Student responsibilities.
WAC 132B-120-085	Groups and organizations.
WAC 132B-120-120	Disciplinary process.
WAC 132B-120-130	Sanctions.
WAC 132B-120-135	Summary suspension.
WAC 132B-120-143	Brief adjudicative proceedings—Review of an initial decision.
WAC 132B-120-145	Brief adjudicative proceedings—Review of an initial decision.
WAC 132B-120-155	Appeal from disciplinary action.
WAC 132B-120-170	Student conduct committee.
WAC 132B-120-180	Student conduct committee procedures.
WAC 132B-120-181	Student conduct appeals committee hearings—Presentations of evidence.
WAC 132B-120-185	Student conduct committee—Initial decision.
WAC 132B-120-190	Appeal from student conduct committee's initial decision.
WAC 132B-120-200	Reporting, recording and maintaining records.
WAC 132B-120-210	Hazing sanctions.
WAC 132B-120-220	Student complaint, grievance and grade appeal processes.
WAC 132B-120-300	Supplemental sexual misconduct procedures.
WAC 132B-120-305	Supplemental definitions.
WAC 132B-120-310	Supplemental complaint process (sexual misconduct).
WAC 132B-120-315	Supplemental appeal rights.

OTS-2752.2

### Chapter 132B-125 WAC

## STUDENT CONDUCT CODE

## PART 1 - CONDUCT CODE

NEW SECTION

**WAC 132B-125-100 Purpose.** The purpose of these rules is to prescribe standards of conduct for students of Grays Harbor College. Violations of these standards may be cause for disciplinary action as described in this code. This code will be made available to students online or, when requested, paper copies will be made available.

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NEW SECTION

**WAC 132B-125-105 Authority.** The board of trustees, acting pursuant to RCW 28B.50.140(14), delegates to the president of the college the authority to administer disciplinary action. Administration of the disciplinary procedures is the responsibility of the student conduct officer or their designee. Unless otherwise specified, the student conduct officer or designee shall serve as the principal investigator and administrator for alleged violations of this code.

[]

NEW SECTION

**WAC 132B-125-110 Student rights.** As members of the academic community, students are encouraged to develop the capacity for critical judgment and to engage in an independent search for truth. Freedom to teach and freedom to learn are inseparable facets of academic freedom. The freedom to learn depends upon appropriate opportunities and conditions in the classroom, on the campus, and in the larger community. Students should exercise their freedom with responsibility. The responsibility to secure and to respect general conditions conducive to the freedom to learn is shared by all members of the college community.

The following enumerated rights are guaranteed to each student within the limitations of federal and state law and college rules, policies, and procedures:

- (1) **Academic freedom.**

(a) Students are guaranteed rights of free inquiry, expression and peaceful assembly upon and within college facilities that are generally open and available to the public.

(b) Students are free to pursue appropriate educational objectives from among the college's curricula, programs and services, subject to the limitations of RCW 28B.50.090 (3)(b) (College board—Powers and duties), available space in the class, and meeting any required prerequisites.

(c) Students have the right to a learning environment, which is free from unlawful discrimination, inappropriate or disrespectful conduct, and any and all harassment, including sexual harassment.

(d) Students are protected from academic evaluation, which is arbitrary, prejudiced or capricious, but are responsible for meeting the standards of academic performance established by each of their instructors.

(2) **Nondiscrimination.** Students have the right not to be discriminated against on the basis of age, color, creed, disability, gender, gender identity and expression, marital status, national origin or ancestry, race, religion, sexual orientation, or veteran status, or any other legally protected class.

(3) **Due process.**

(a) No disciplinary sanction may be imposed on any student without notice to the accused of the nature of the charges.

(b) A student accused of violating this code of student conduct is entitled to procedural due process as set forth in this chapter.

(4) **Right to assembly.** Students shall have the right of assembly upon college facilities that are generally available to the public provided such assemblies are in compliance with procedures established in Administrative Procedure 516.03, Rules for Use of Campus as Public Forums, and other behavioral expectations outlined in the code of conduct.

(5) **Grievances.** Students have the right to express and resolve misunderstandings, complaints and grievances according to the stated process in WAC 132B-125-500 Student complaint, grievance, and grade appeal policy and procedures.

(6) **Conduct code revision.** The associated students of Grays Harbor College has the right to participate in the formulation and review of all policies and rules pertaining to student conduct.

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NEW SECTION

**WAC 132B-125-115 Student responsibilities.** Students who choose to attend Grays Harbor College also choose to participate actively in the learning process offered by the college. The college is responsible for providing its students with an educational environment rich in the high quality resources needed by students to attain their educational goals. In return, the college expects each student assume responsibility to:

(1) Participate actively in the learning process, both in and out of the classroom;

(2) Seek timely assistance in meeting educational goals;

(3) Attend all class sessions;

- (4) Prepare adequately to participate fully in class activities;
- (5) Participate actively in the academic advising system;
- (6) Develop skills required for learning, e.g., basic skills, time management, and study skills;
- (7) Assume final responsibility for the selection of appropriate educational goals;
- (8) Select courses appropriate and required for meeting chosen educational goals;
- (9) Make appropriate use of services;
- (10) Contribute towards improving the college;
- (11) Become knowledgeable of and adhere to the college's policies, practices and procedures; and
- (12) Abide by the standards set forth in the code of conduct.

[]

#### NEW SECTION

**WAC 132B-125-120 Prohibited student conduct.** The college may impose disciplinary sanctions against a student who commits, attempts to commit, aids, abets, incites, encourages, or assists another person to commit, an act(s) of misconduct which include, but are not limited to, the following:

- (1) **Academic dishonesty.** Any act of academic dishonesty including, but not limited to, cheating, plagiarism, and fabrication.
  - (a) Cheating: Includes any attempt to give or obtain unauthorized assistance relating to the completion of an academic assignment.
  - (b) Plagiarism: Includes taking and using as one's own, without proper attribution, the ideas, writings, or work of another person in completing an academic assignment. Prohibited conduct may also include the unauthorized submission for credit of academic work that has been submitted for credit in another course.
  - (c) Fabrication: Includes falsifying data, information, or citations in completing an academic assignment and also includes providing false or deceptive information to an instructor concerning the completion of an assignment, including submitting for credit without authorization academic work also submitted for credit in another course.
  - (d) Academic consequences for academic dishonesty or abetting in academic dishonesty may be imposed at the discretion of a faculty member up to and including a failing grade for the course. Students should refer to each faculty member's course syllabus. Further academic consequences may follow consistent with the provisions in any program handbook. Incidents of academic dishonesty may also be referred to the student conduct officer for disciplinary action consistent with this chapter in addition to the academic consequences identified above.
  - (e) This section shall not be construed as preventing an instructor from taking immediate disciplinary action as provided herein where the instructor is required to act upon such breach of academic dishonesty in order to preserve order and prevent disruptive conduct in the classroom.

- (2) **Alcohol, drug, and tobacco violations.**

- (a) Alcohol. The use, possession, delivery, sale, or being observably under the influence of any alcoholic beverage, except as permitted by law and applicable college policies.

(b) Marijuana. The use, possession, delivery, or sale of marijuana or the psychoactive compounds found in marijuana intended for human consumption, regardless of form, or being observably under the influence of marijuana or the psychoactive compounds found in marijuana. While state law permits the recreational use of marijuana, federal law prohibits such use on college premises or in connection with college activities.

(c) Drugs. The use, possession, delivery, sale, or being observably under the influence of any legend drug, including anabolic steroids, androgens, or human growth hormones as defined in chapter 69.41 RCW, Legend drugs—Prescription drugs, or any other controlled substance under chapter 69.50 RCW, Uniform Controlled Substances Act, except as prescribed for a student's use by a licensed practitioner.

(d) Tobacco, electronic cigarettes, and related products. The use of tobacco, electronic cigarettes, and related products in any building owned, leased or operated by the college or in any location where such use is prohibited, including twenty-five feet from entrances, exits, windows that open, and ventilation intakes of any building owned, leased or operated by the college. The use of tobacco, electronic cigarettes, and related products on the college campus is restricted to designated smoking areas. "Related products" include, but are not limited to, cigarettes, pipes, bidi, clove cigarettes, water pipes, hookahs, chewing tobacco, vaporizers, and snuff.

(3) **Assault, intimidation, harassment.** Unwanted touching, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, or other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property. For purposes of this code, "bullying" is defined as repeated or aggressive unwanted behavior, not otherwise protected by law that intentionally humiliates, harms, or intimidates the victim.

(4) **Classroom conduct.** Classroom conduct that seriously interferes with either the instructor's ability to conduct the class or the ability of other students to profit from the instructional program.

(a) Faculty have the authority to take appropriate action to maintain proper conduct in the classroom and to maintain the effective cooperation of the class in fulfilling the objectives of the course.

(b) A faculty member may order a student removed for the single class session in which disruptive conduct occurs. The instructor will report any such removal from the class to the student conduct officer, or their designee, immediately following the class. The student conduct officer services or designee may initiate further conduct proceedings as provided in this procedure.

(c) The student is automatically permitted to return to the next class session pending the outcome of any investigation or disciplinary hearings by the student conduct officer. If the student repeats behavior in any class session that again disrupts the normal classroom procedure, the student may be ordered removed again for that class session by the instructor who shall again report the infraction to the student conduct officer in writing. In all cases involving classroom disruption, the student conduct officer will proceed with the investigation and any disciplinary actions as quickly as possible consistent with the procedural requirements established in this code.

(d) The student conduct officer or designee may set conditions for the student to meet upon return to the classroom or may enforce a continued removal from class pending an investigation. The student has

the right to appeal any disciplinary action of an instructor or college employee to the student conduct officer in accordance with the procedures set forth in this code.

(5) **Cyber misconduct.** Cyberstalking, cyberbullying or online harassment. Use of electronic communications including, but not limited to, electronic mail, instant messaging, texting, electronic bulletin boards, social media sites, and other communication apps, to harass, abuse, bully, or engage in other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person. Prohibited activities include, but are not limited to, unauthorized monitoring of another's email communications directly or through spyware, sending threatening emails, disrupting electronic communications with spam or by sending a computer virus or malware, sending false messages to third parties using another's identity, non-consensual recording of sexual activity or sexually explicit or intimate images as defined in RCW 9A.86.010, and nonconsensual distribution or disclosing of a recording of sexual activity or sexually explicit or intimate images as defined in RCW 9A.86.010.

(6) **Discriminatory conduct.** Conduct which harms or adversely affects any member of the college community because of their race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age (40+); religion; creed; sexual orientation; gender identity and expression; veteran's status; or any other legally protected classification.

(7) **Ethical violation.** The breach of any generally recognized and published code of ethics or standards of professional practice that governs the conduct of a particular profession for which the student is taking a course or is pursuing as an educational goal or major.

(8) **Failure to comply with directive.** Failure to comply with the direction of college officer or employee acting in the legitimate performance of their duties, including failure to properly identify oneself to such a person when requested to do so.

(9) **Harassment.**

(a) Unwelcome and offensive conduct, including verbal, nonverbal, or physical conduct, that is directed at a person because of such person's protected status and that is sufficiently serious as to deny or limit, and that does deny or limit, the ability of a student to participate in or benefit from the college's educational program or that creates an intimidating, hostile or offensive environment for other campus community members.

(b) Protected status includes a person's race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age; religion; creed; genetic information; sexual orientation; gender identity and expression; veteran's status; or any other legally protected classification. See "sexual misconduct" for the definition of "sexual harassment." Harassing conduct may include, but is not limited to, physical conduct, verbal, written, social media, and electronic communications.

(10) **Hazing.** Hazing includes, but is not limited to, any initiation into a student organization, or any pastime or amusement engaged in with respect to such an organization that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm to any student, regardless of whether the victim has consented.

(11) **Lewd conduct.** Conduct which is lewd or obscene that is not otherwise protected under the law.

(12) **Misuse of electronic resources.** Theft or misuse of computer time or other electronic information resources of the college. Such misuse includes, but is not limited to:

- (a) Unauthorized use of such resources or opening of a file, message or other item;
- (b) Unauthorized duplication, transfer, or distribution of a computer program, file, message or other item;
- (c) Unauthorized use or distribution of someone else's password or other identification;
- (d) Use of such time or resources to interfere with someone else's work;
- (e) Use of such time or resources to send, display, or print an obscene, abusive, threatening, or harassing message, text, or image;
- (f) Use of such time or resources to interfere with normal operation of the college's computing system or other electronic information resources;
- (g) Use of such time or resources in violation of applicable copyright or other law;
- (h) Adding to or otherwise altering the infrastructure of the college's electronic information resources without authorization;
- (i) Use of college electronic resources to intentionally disseminate viruses, destructive, malicious or invasive programs;
- (j) Failure to comply with the college's electronic use policy;

or

(k) Illegal peer-to-peer file sharing or distribution of copyrighted works using campus resources. In addition to code of conduct sanctions, students may be subject to criminal and civil penalties if they engage in such unauthorized activity.

(13) **Motor vehicle operation.** Operation of any motor vehicle on college property in an unsafe manner or contrary to posted signs or college procedures.

(14) **Obstructive or disruptive conduct.** Conduct, not otherwise protected by law, that interferes with, impedes, or otherwise unreasonably hinders:

- (a) Instruction, research, administration, disciplinary proceeding, or other college activities, including the obstruction of the free flow of pedestrian or vehicular movement on college property or at a college activity; or
- (b) Any activity that is authorized to occur on college property, whether or not actually conducted or sponsored by the college.
- (c) The person in charge of any college office, department, or facility is responsible for conduct in that office, department, or facility and is authorized to take such steps as are necessary when behavior of the student disrupts the normal operations. The person in charge may order a student removed for up to the full day in which such disruptive behavior occurs. When such behavior results in such removal from an office, department, or facility, the person in charge must report the infraction in writing to the student conduct officer at the earliest opportunity. The student is automatically permitted to return the next day pending the outcome of any investigation or disciplinary hearings by the student conduct officer. If the student repeats behavior at any time in the future that again disrupts the normal operations, the student may be ordered removed again for a single day by the person in charge who shall again report the infraction to the student conduct officer in writing. In all cases involving office, department, or facility disruption, the student conduct officer will proceed with the investigation and any disciplinary actions as quickly

as possible consistent with the procedural requirements established in this code.

(d) The student has the right to appeal any disciplinary action of a college employee to the student conduct officer in accordance with the procedures set forth in this code.

(15) **Other dishonesty.** Any other acts of dishonesty. Such acts include, but are not limited to:

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

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

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

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

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

(18) **Safety violations.** Nonaccidental conduct that interferes with or otherwise compromises any college policy, equipment, or procedure relating to the safety and security of the campus community, including tampering with fire safety equipment and triggering false alarms, or other emergency response systems.

(19) **Sexual misconduct.** The term "sexual misconduct" includes sexual harassment, sexual intimidation, and sexual violence. Sexual harassment prohibited by Title IX is defined in WAC 132B-125-405 Prohibited conduct under Title IX.

(a) Sexual harassment. The term "sexual harassment" means unwelcome sexual or gender based conduct, including unwelcome sexual advances, requests for sexual favors, quid pro quo harassment, and other verbal, nonverbal, or physical conduct of a sexual or a gendered nature that is sufficiently severe, persistent, or pervasive as to:

(i) Deny or limit the ability of a student to participate in or benefit from the college's educational program;

(ii) Alter the terms or conditions of employment for a college employee(s); and/or

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

(b) Sexual intimidation. The term "sexual intimidation" incorporates the definition of "sexual harassment" and means threatening or emotionally distressing conduct based on sex including, but not limited to, nonconsensual recording of sexual activity or the distribution of such recording.

(c) Sexual violence. "Sexual violence" is a type of sexual discrimination and harassment. Nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, dating violence, and stalking are all types of sexual violence.



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

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

(iii) Incest. Sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either wholly or half related. Descendant includes stepchildren, and adopted children under the age of eighteen.

(iv) Statutory rape. Consensual intercourse between a person who is eighteen years of age or older, and a person who is under the age of sixteen.

(v) Domestic violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Washington, RCW 26.50.010.

(vi) Dating violence, physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person:

(A) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(B) Where the existence of such a relationship shall be determined based on a consideration of the following factors:

(I) The length of the relationship;

(II) The type of relationship; and

(III) The frequency of interaction between the persons involved in the relationship.

(vii) Stalking. Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

(A) Fear for their safety or the safety of others; or

(B) Suffer substantial emotional distress.

(d) For purposes of this code, "consent" means knowing, voluntarily, and clear permission by word or action, to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact. A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct. Intoxication is not a defense against alle-

gations that an individual has engaged in nonconsensual sexual conduct.

(20) **Student procedure violations.** Abuse or misuse of any of the procedures relating to student complaints or misconduct including, but not limited to:

- (a) Failure to obey a subpoena;
- (b) Falsification or misrepresentation of information;
- (c) Disruption or interference with the orderly conduct of a proceeding;
- (d) Interfering with someone else's proper participation in a proceeding;
- (e) Destroying or altering potential evidence, or attempting to intimidate or otherwise improperly pressure a witness or potential witness;
- (f) Attempting to influence the impartiality of, or harassing or intimidating, a student conduct committee member or other disciplinary official; or
- (g) Failure to comply with any disciplinary sanction(s), action, term, or condition imposed under this chapter.

(21) **Unauthorized access.** Unauthorized possession, duplication, or other use of a key, keycard, code or other restricted means of access to college property, unauthorized entry onto or into college property, or entering or remaining in any closed college facility or entering after closing time of the college facility without permission of a college official. In situations of apparent misconduct or apparent unauthorized presence in a college facility, it may be necessary for properly identified college personnel to ask a person to produce evidence of being a currently enrolled student at the college. Failure to comply with a legitimate request for identification from properly identified college personnel is a violation of this code and may result in a disciplinary action if the person is found to be a student. In emergency situations, cases of misconduct, or where there is a substantial danger to the college community or college property, failure to produce identification by a student may result in the assumption by college personnel that the person questioned is not a student and may result in direct civil or criminal action.

(22) **Unauthorized use.** Unauthorized use of college equipment, facilities or supplies. Use of college equipment, facilities, supplies, or computer systems for personal gain without proper authority.

(23) **Weapons.** Possession, holding, wearing, transporting, storage or presence of any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, explosive device, or any other weapon apparently capable of producing bodily harm is prohibited on the college campus, subject to the following exceptions:

- (a) Commissioned law enforcement personnel or legally authorized military personnel while in performance of their duties;
- (b) A student with a valid concealed weapons permit may store a pistol in their vehicle parked on campus in accordance with RCW 9.41.050 Carrying firearms, provided the vehicle is locked and the weapon is concealed from view; or
- (c) The president may grant permission to bring a weapon on campus upon a determination that the weapon is reasonably related to a legitimate pedagogical purpose. Such permission shall be in writing and shall be subject to such terms or conditions incorporated in the written permission.

This policy does not apply to the possession and/or use of disabling chemical sprays when possessed and/or used for self defense.

(24) **Violation of other laws or policies.** Violation of any federal, state, or local law, rule, or regulation or other college rules or policies, including college traffic and parking rules.

(25) Intentionally encouraging, compelling, attempting, aiding, abetting, conspiring, hiring or being an accessory to commit any of the foregoing acts of misconduct.

In addition to initiating discipline proceedings for violation of the student conduct code, the college may refer any violations of federal, state, or local laws to civil and criminal authorities for disposition. The college reserves the right to pursue student disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution.

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#### NEW SECTION

**WAC 132B-125-125 Disciplinary sanctions.** More than one sanction may be imposed for any single violation as appropriate. The following disciplinary sanctions may be imposed upon students found to have violated the student conduct code:

(1) **Disciplinary warning.** A verbal statement to a student that there is a violation and that continued violation may be cause for further disciplinary action.

(2) **Written reprimand.** Notice in writing that the student has violated one or more terms of this code of conduct and that continuation of the same or similar behavior may result in more severe disciplinary action.

(3) **Disciplinary probation.** Formal action placing conditions and restrictions upon the student's continued attendance, depending upon the seriousness of the violation, and which may include a deferred disciplinary sanction. If the student subject to a deferred disciplinary sanction is found in violation of any college rule during the time of disciplinary probation, the deferred disciplinary sanction which may include, but is not limited to, a suspension or dismissal from the college, shall take effect immediately without further review. Any such sanction shall be in addition to any sanction or conditions arising from the new violation. Probation may be for a limited period of time, or may be for the duration of the student's attendance at the college.

(4) **Disciplinary suspension.** Dismissal from the college and from student status for a stated period of time. There will be no refund of tuition or fees for the quarter in which the action is taken. Access may be denied to all or part of college facilities.

(5) **Discretionary sanctions.** These may include, but are not limited to:

- (a) Work assignments;
- (b) Service to college or community;
- (c) Class/workshop attendance; or
- (d) Other discretionary assignments, such as educational interventions intended as learning experiences.

(6) **Loss of recognition.** A student organization's recognition may be withheld permanently or for a specific period of time. Loss of recognition is defined as withholding college services or administrative approval for a student organization. Loss of recognition may include,

but is not limited to, withdrawal of use of information technology resources, funding, college facility use and rental, and involvement in organizational activities.

(7) **Loss of privileges.** Loss of specific college privileges for a specified period of time. These may include, but are not limited to, student activities, athletic events, drama or music performances, or club participation.

(8) **No contact order.** An order directing a student to have no contact with a specified student, college employee, a member of the college community, or a particular college facility.

(9) **No trespass.** A student may be prohibited from entering upon or remaining upon college facilities and premises. Refer to WAC 132B-125-205 Trespass.

(10) **Revocation of admission or degree.** Admission to or a degree awarded from the college may be revoked for fraud, misrepresentation or for other serious violations committed by a student.

(11) **Dismissal.** The revocation of all rights and privileges of membership in the college community and exclusion from the campus and college-owned or controlled facilities without any possibility of return. There will be no refund of tuition or fees for the quarter in which the action is taken.

Disciplinary terms and conditions that may be imposed alone or in conjunction with the imposition of a disciplinary sanction include, but are not limited to, the following:

(1) **Restitution.** Reimbursement for damage to or misappropriation of property, or for injury to persons, or for reasonable costs incurred by the college in pursuing an investigation or disciplinary proceeding. This may take the form of monetary reimbursement, appropriate service, or other compensation.

(2) **Professional evaluation.** Referral for drug, alcohol, psychological or medical evaluation by an appropriately certified or licensed professional may be required. The student may choose the professional within the scope of practice and with the professional credentials as defined by the college. The student will sign all necessary releases to allow the college access to any such evaluation. The student's return to college may be conditioned upon compliance with recommendations set forth in such a professional evaluation. If the evaluation indicates that the student is not capable of functioning within the college community, the student will remain suspended until future evaluation recommends that the student is capable of reentering the college and complying with the rules of conduct.

(3) **Not in good standing.** A student may be deemed "not in good standing" with the college. If so, the student shall be subject to the following restrictions:

(a) Ineligible to hold an office in any student organization recognized by the college or to hold any elected or appointed office of the college.

(b) Ineligible to represent the college to anyone outside the college community in any way, including representing the college at any official function, or any forms of intercollegiate competition or representation.

(4) **Disqualification from athletics.** Any student found by the college to have violated this is subject to additional sanctions, including disqualification from college-sponsored athletic events.

(5) **Hazing sanction.** Any student found to have violated RCW 28B.10.900 related to hazing, by virtue of a criminal conviction or by final decision of the college president or designee shall, in lieu of,

or in addition to, any other disciplinary action which may be imposed under this chapter, forfeit any entitlement to state-funded grants, scholarships, or awards of a period of time determined by the college.

In addition, any organization or association found to have knowingly permitted hazing to be conducted by its members or by others subject to its direction or control shall be deprived of any official recognition or approval granted by the college.

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## PART 2 - PRELIMINARY MEASURES

### NEW SECTION

**WAC 132B-125-200 Summary suspension.** (1) Summary suspension is a temporary exclusion from specified college premises or denial of access to all activities or privileges for which a respondent might otherwise be eligible, while an investigation and/or formal disciplinary procedures are pending. Summary suspension may include no contact orders.

(2) The student conduct officer may impose a summary suspension if there is probable cause to believe that the respondent:

(a) Has been alleged of violating any provision of the code of conduct; and

(b) Presents an immediate danger to the health, safety, or welfare of members of the college community; or

(c) Poses an ongoing threat of disruption of, or interference with, the operations of the college.

(3) **Notice.** Any respondent who has been summarily suspended shall be served with oral or written notice of the summary suspension. If oral notice is given, a written notification shall be served on the respondent within two business days of the oral notice. The written notification shall be entitled "Notice of Summary Suspension" and shall include:

(a) The reasons for imposing the summary suspension, including a description of the conduct giving rise to the summary suspension and reference to the provisions of the student conduct code or the law allegedly violated;

(b) The date, time, and location when the respondent must appear before the student conduct officer for a hearing on the summary suspension; and

(c) The conditions, if any, under which the respondent may physically access the campus or communicate with members of the campus community. If the respondent has been trespassed from the campus, a notice against trespass shall be included that warns the student that their privilege to enter into or remain on college premises has been withdrawn, that the respondent shall be considered trespassing and subject to arrest for criminal trespass if the respondent enters the

college campus other than to meet with the student conduct officer or conduct review officer, or to attend a disciplinary hearing.

(4) **Summary suspension hearing.**

(a) The student conduct officer shall conduct a hearing on the summary suspension as soon as practicable after imposition of the summary suspension. The hearing will be conducted as a brief adjudicative proceeding.

(b) During the summary suspension hearing, the issue before the student conduct officer is whether there is probable cause to believe that the summary suspension should be continued pending the conclusion of disciplinary proceedings and/or whether the summary suspension should be less restrictive in scope.

(c) The respondent shall be afforded an opportunity to explain why summary suspension should not be continued while disciplinary proceedings are pending or why the summary suspension should be less restrictive in scope.

(d) If the student fails to appear at the designated hearing time, the conduct review officer may order that the summary suspension remain in place pending the conclusion of the disciplinary proceedings.

(e) As soon as practicable following the hearing, the student conduct officer shall issue a written decision which shall include a brief explanation for any decision continuing and/or modifying the summary suspension and notice of any right to appeal.

(f) To the extent permissible under applicable law, the student conduct officer shall provide a copy of the decision to all persons or offices that may be bound or protected by it.

(g) In cases involving allegations of sexual misconduct, the complainant shall be notified that a summary suspension has been imposed on the same day that the summary suspension notice is served on the respondent. The college will also provide the complainant with timely notice of any subsequent changes to the summary suspension order.

[]

NEW SECTION

**WAC 132B-125-205 Trespass.** The president, the student conduct officer, their designee(s), or the student conduct committee shall have the authority and power to prohibit the entry or withdraw the license or privilege of any person or group of persons to enter into or remain on any college property or facility. Such power and authority may be exercised to halt any event or activity which is deemed to be unreasonably disruptive of order or impedes the movement of persons or vehicles or which disrupts or threatens to disrupt the ingress and/or egress of persons from facilities owned and/or operated by the college. Any person remaining on or reentering college property after receiving notice that their license or privilege to be on that property has been revoked shall be subject to arrest for criminal trespass under the provisions of chapter 9A.52 RCW, Burglary and trespass.

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## PART 3 - STUDENT CONDUCT PROCEDURES

NEW SECTION

**WAC 132B-125-300 Jurisdiction.** (1) This chapter shall apply to student conduct that occurs:

(a) On college premises and/or in college facilities;  
(b) At or in connection with college-sponsored activities; and  
(c) Off-campus student conduct that, in the judgment of the college, adversely affects the well-being of the college community and/or the pursuit of its objectives. The college has sole discretion, on a case-by-case basis, to determine whether the code of student conduct will be applied to conduct occurring off campus.

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

(3) Students are responsible for their conduct from the time of application for admission through the actual receipt of a degree, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment. These standards shall apply to a student's conduct even if the student withdraws from college while a disciplinary matter is pending.

(4) The student conduct officer and the student conduct committee shall have the authority to interpret and apply the standards of conduct for students.

(5) In addition to initiating discipline proceedings for violation of the student conduct code, the college may refer any violations of federal, state, or local laws to civil and criminal authorities for disposition. The college may proceed with student disciplinary proceedings regardless of whether the underlying conduct is subject to civil proceedings or criminal prosecution.

[ ]

NEW SECTION

**WAC 132B-125-305 Definitions.** As used in this document the following words and phrases shall mean:

(1) "**Assembly**" shall mean any activity engaged in by two or more persons the object of which is to gain publicity, advocate a view, petition for a cause, or disseminate information to any person, persons or group of persons.

(2) "**Board**" shall mean the board of trustees of Community College District No. 2, state of Washington.

(3) "**College**" shall mean Grays Harbor College or any additional community college hereafter established within Community College District No. 2, state of Washington.

(4) "**College community**" shall mean all employees and students of the college.

(5) "**College facilities**" shall mean and include any or all real property owned, rented, leased, controlled or operated by the college and shall include all buildings and appurtenances affixed thereon or attached thereto. College facilities extend to affiliated websites, distance learning classroom environments and agencies or institutions that have educational agreements with Grays Harbor College.

(6) "**College official**" shall mean any person employed by the college performing assigned duties.

(7) "**Day**" means a calendar day, except when a "business day" is specified. "Business day" means a weekday, excluding weekends and college holidays.

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

(9) "**Disciplinary appeal**" is the process by which an aggrieved student can appeal the discipline imposed by the student conduct officer as provided in WAC 132B-125-320 Appeal from disciplinary action. The student conduct committee hears disciplinary appeals from a suspension in excess of ten instructional days or a dismissal/expulsion. Appeals of all other appealable disciplinary action shall be reviewed through brief adjudicative proceedings.

(10) "**Employee**" shall mean any classified, faculty, administrator, exempt, student worker or volunteer person of the college or an affiliated institution.

(11) "**Faculty**" shall mean any person employed on a full- or part-time basis as a teacher, instructor, counselor, coach or librarian for the college or an affiliated institution. Includes faculty of other colleges (whether or not employed by Grays Harbor College (GHC)) that provide instruction to GHC students through distance education.

(12) "**Filing**" is the process by which a document is officially delivered to a school official responsible for facilitating a disciplinary review or a presiding officer. Unless expressly specified otherwise, filing shall be accomplished by:

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

(b) By sending the document by email and/or first-class mail to the recipient's college email and office address. Papers required to be filed shall be deemed filed upon actual receipt during office hours at the office of the specified official or presiding officer.

(13) "**President**" is the president of the college appointed by the board of trustees. The president is authorized to delegate any of their responsibilities as set forth in this chapter as they deem appropriate.

(14) "**RCW**" shall mean the Revised Code of Washington.

(15) "**Respondent**" is the student against whom disciplinary action is initiated.

(16) "**Service**" is the process by which a document is officially delivered to a party. Unless expressly specified otherwise, service upon a party shall be accomplished by:

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

(b) By sending the document by email and/or by certified mail or first-class mail to the party's last known address. Service is deemed



complete upon hand delivery of the document or upon the date the document is emailed and deposited into the mail.

(17) "**Student**" shall mean and include any person who is enrolled in courses at or through the college, whether on a full-time or part-time basis, and whether such courses are credit courses, noncredit courses, online courses, or otherwise. Persons who withdraw after allegedly violating the code, who are not officially enrolled for a particular term but who have a continuing relationship with the college, or who have been notified of their acceptance for admission are considered "students."

(18) "**Student conduct officer**" is a college administrator designated by the president to be responsible for implementing and enforcing the student conduct code. The student conduct officer is authorized to delegate any and all of their responsibilities as set forth in this chapter as may be reasonably necessary.

(19) "**Vice president for student services**" is the administrator responsible for implementing and enforcing the student conduct code. The vice president is authorized to delegate any and all of their responsibilities as set forth in this chapter as may be reasonably necessary.

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#### NEW SECTION

**WAC 132B-125-310 Groups and organizations.** Recognized student groups and organizations may be charged with violations of this code. Such a group or organization and its officers may be held collectively or individually responsible when violations of this code by those associated with the group or organization have received the tacit or overt consent or encouragement of the organization, its leaders, officers or spokespersons.

Sanctions for group or organization misconduct may include, but are not limited to, loss of recognition, as well as other appropriate sanctions permitted under this code. Sanctions of groups or organizations are subject to the appeal process upon request.

[]

#### NEW SECTION

**WAC 132B-125-315 Disciplinary process. (1) Initiating disciplinary action (except summary suspension).**

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

(b) The student conduct officer shall initiate disciplinary action by notifying the respondent to attend a disciplinary meeting. At the meeting, the student will be presented with the allegations, the provisions of the conduct code the respondent is alleged to have violated; and the range of possible sanctions for the alleged violation.

This information will be provided in writing, either at the meeting or within three business days of the meeting. The respondent shall be afforded an opportunity to explain what took place. If the respondent fails to attend the meeting, the student conduct officer may take disciplinary action based upon the available information.

(c) Within ten business days of the initial disciplinary meeting, and after considering the evidence in the case, including any facts or argument presented by the respondent, the student conduct officer shall serve the respondent with a written disciplinary decision letter setting forth the facts and conclusions supporting their decision, the specific student conduct code provisions found to have been violated, the discipline imposed, if any, and a notice of any appeal rights with an explanation of the consequences of failing to file a timely appeal.

(d) The student conduct officer may take any of the following disciplinary actions:

(i) Exonerate the respondent and terminate the proceedings;

(ii) Impose a disciplinary sanction(s), as described in WAC 132B-125-125;

(iii) Refer the matter directly to the student conduct committee for such disciplinary action as the committee deems appropriate.

(e) Sexual harassment complaints or concerns may be directed to the Title IX coordinator or human resources office.

(f) A student formally charged or under investigation for a violation of this code may not excuse himself or herself from disciplinary hearings by withdrawing from the college.

(2) In cases involving allegations of sexual misconduct, the student conduct officer, on the same date that a disciplinary decision letter is served on the respondent, will serve a written notice informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including disciplinary suspension or dismissal of the respondent. The notice will also inform the complainant of their appeal rights. If protective sanctions and/or conditions are imposed, the student conduct officer shall make a reasonable effort to contact the complainant to ensure that prompt notice of the protective disciplinary sanctions and/or conditions.

[ ]

#### NEW SECTION

**WAC 132B-125-320 Appeal from disciplinary action.** (1) The respondent may appeal a disciplinary action by filing a written notice of appeal with the student conduct officer within ten calendar days of service of the student conduct officer's decision. Failure to timely file a notice of appeal constitutes a waiver of the right to appeal and the student conduct officer's decision shall be deemed final.

(2) The notice of appeal must include a brief statement explaining why the respondent is seeking review.

(3) The parties to an appeal shall be the respondent and the student conduct officer.

(4) A respondent, who timely appeals a disciplinary action or whose case is referred to the student conduct committee, has a right

to a prompt, fair, and impartial hearing as provided for in these procedures.

(5) On appeal, the college bears the burden of establishing the evidentiary facts underlying the imposition of a disciplinary sanction by a preponderance of the evidence.

(6) Imposition of disciplinary action for violation of the student conduct code shall be stayed pending appeal, unless respondent has been summarily suspended.

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

(a) The imposition of disciplinary suspensions in excess of ten instructional days;

(b) Dismissals; and

(c) Discipline cases referred to the committee by the student conduct officer or the president.

(8) Student conduct appeals from the imposition of the following disciplinary sanctions shall be reviewed through a brief adjudicative proceeding:

(a) Suspensions of ten instructional days or less;

(b) Disciplinary probation; and

(c) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions.

(9) Except as provided elsewhere in these rules, disciplinary warnings and dismissals of disciplinary actions are final and are not subject to appeal.

[]

#### NEW SECTION

**WAC 132B-125-325 Brief adjudicative proceedings—Initial hearing.** (1) Brief adjudicative proceedings shall be conducted by the conduct review officer. The conduct review officer shall not participate in any case in which they are a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

(a) The parties to a brief adjudicative proceeding are the respondent, the student conduct officer, and in cases involving sexual misconduct, the complainant. Before taking action, the conduct review officer shall conduct an informal hearing and provide each party an opportunity to be informed of the college's view of the matter; and

(b) An opportunity to explain the party's view of the matter.

(2) The conduct review officer shall serve an initial decision within ten business days of consideration of the appeal. The initial decision shall contain a brief written statement of the reasons for the decision and information about how to seek administrative review of the initial decision. If no request for review is filed within ten business days of service of the initial decision, the initial decision shall be deemed the final decision.

(3) In cases involving allegations of sexual misconduct, the conduct review officer, on the same date as the initial decision is served on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the com-

plainant's protection. The notice will also inform the complainant of their appeal rights.

(4) If the conduct review officer upon review determines that the respondent's conduct may warrant imposition of a disciplinary sanction of dismissal, the matter shall be referred to the student conduct committee for a disciplinary hearing.

[]

#### NEW SECTION

**WAC 132B-125-330 Brief adjudicative proceedings—Review of an initial decision.** (1) An initial decision is subject to review by the president, provided the respondent files a written request for review with the student conduct officer within ten calendar days of service of the initial decision.

(2) The president shall not participate in any case in which they are a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

(3) During the review, the president shall give each party an opportunity to file written responses explaining their view of the matter and shall make any inquiries necessary to ascertain whether the sanctions should be modified or whether the proceedings should be referred to the student conduct committee for a formal adjudicative hearing.

(4) The decision on review must be in writing and must include a brief statement of the reasons for the decision and must be served on the parties within ten business days. The decision on review will contain a notice that judicial review may be available. A request for review may be deemed to have been denied if the president does not make a disposition of the matter within ten business days after the request is submitted.

(5) If the president upon review determines that the respondent's conduct may warrant imposition of a disciplinary suspension or dismissal, the matter shall be referred to the student conduct committee for a disciplinary hearing.

(6) In cases involving allegations of sexual misconduct, the president, on the same date as the final decision is served on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent. The notice will also inform the complainant of their appeal rights.

[]

#### NEW SECTION

**WAC 132B-125-335 Student conduct committee.** (1) The student conduct committee shall consist of five members:

(a) Two full-time students appointed by the student government;  
 (b) Two faculty members appointed by the president; and  
 (c) One administrative staff member (other than an administrator serving as a student conduct or conduct review officer) appointed by the president at the beginning of the academic year.

(2) The administrative staff member shall serve as the chair of the committee and may take action on preliminary hearing matters prior to convening the committee. The chair shall receive training on protecting victims and promoting accountability in cases involving allegations of sexual misconduct.

(3) Hearings may be heard by a quorum of three members of the committee so long as one faculty member and one student are included on the hearing panel. Committee action may be taken upon a majority vote of all committee members attending the hearing.

(4) Members of the student conduct committee shall not participate in any case in which they are a party, complainant, or witness, in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity. Any party may petition for disqualification of a committee member pursuant to RCW 34.05.425(4).

[ ]

#### NEW SECTION

**WAC 132B-125-340 Student conduct committee process.** (1) Proceedings of the student conduct committee shall be governed by the Administrative Procedure Act, chapter 34.05 RCW.

(2) The student conduct committee chair shall serve all parties with written notice of the hearing not less than seven days in advance of the hearing date. The chair may shorten this notice period if both parties agree, and also may continue the hearing to a later time for good cause shown.

(3) The committee chair is authorized to conduct prehearing conferences and/or to make prehearing decisions concerning the extent and form of any discovery, issuance of protective decisions, and similar procedural matters.

(4) Upon request, filed at least five business days before the hearing by any party or at the direction of the committee chair, the parties shall exchange, no later than the third business day prior to the hearing, lists of potential witnesses and copies of potential exhibits that they reasonably expect to present to the committee. Failure to participate in good faith in such a requested exchange may be cause for exclusion from the hearing of any witness or exhibit not disclosed, absent a showing of good cause for such failure.

(5) The committee chair may provide to the committee members in advance of the hearing copies of:

(a) The conduct officer's notification of imposition of discipline (or referral to the committee); and

(b) The notice of appeal (or any response to referral) by the respondent. If doing so, however, the chair should remind the members that these "pleadings" are not evidence of any facts they may allege.

(6) The parties may agree before the hearing to designate specific exhibits as admissible without objection and, if they do so, wheth-

er the committee chair may provide copies of these admissible exhibits to the committee members before the hearing.

(7) The student conduct officer, upon request, shall provide reasonable assistance to the respondent in obtaining relevant and admissible evidence that is within the college's control.

(8) Communications between committee members and other hearing participants regarding any issue in the proceeding, other than procedural communications that are necessary to maintain an orderly process, are generally prohibited without notice and opportunity for all parties to participate, and any improper "ex parte" communication shall be placed on the record, as further provided in RCW 34.05.455.

(9) Each party may be accompanied at the hearing by a nonattorney assistant of their choice. A respondent may elect to be represented by an attorney at their own cost, but will be deemed to have waived that right unless, at least four business days before the hearing, written notice of the attorney's identity and participation is filed with the committee chair with a copy to the student conduct officer. The committee will ordinarily be advised by an assistant attorney general. If the respondent and/or the complainant is represented by an attorney, the student conduct officer may also be represented by a second appropriately screened assistant attorney general.

[ ]

#### NEW SECTION

#### **WAC 132B-125-345 Student conduct committee hearings—Presentations of evidence.**

(1) Upon the failure of any party to attend or participate in a hearing, the student conduct committee may either:

(a) Proceed with the hearing and issuance of its decision; or

(b) Serve a decision of default in accordance with RCW 34.05.440.

(2) The hearing will ordinarily be closed to the public. However, if all parties agree on the record that some or all of the proceedings be open, the chair shall determine any extent to which the hearing will be open. If any person disrupts the proceedings, the chair may exclude that person from the hearing room.

(3) The chair shall cause the hearing to be recorded by a method that they select, in accordance with RCW 34.05.449 Procedure at hearing. That recording, or a copy, shall be made available to any party upon request. The chair shall assure maintenance of the record of the proceeding that is required by RCW 34.05.476 Agency record, which shall also be available upon request for inspection and copying by any party. Other recording shall also be permitted, in accordance with WAC 10-08-190 Adjudicative proceedings—Cameras—Recording devices.

(4) The chair shall preside at the hearing and decide procedural questions that arise during the hearing, except as overridden by majority vote of the committee.

(5) The student conduct officer (unless represented by an assistant attorney general) shall present the case for imposing disciplinary sanctions.

(6) All testimony shall be given under oath or affirmation. Evidence shall be admitted or excluded in accordance with RCW 34.05.452 Rules of evidence—Cross-examination.

(7) In cases involving allegations of sexual misconduct, neither the complainant nor the respondent shall directly question or cross-examine one another. Attorneys or advisors for the parties are also prohibited from questioning the opposing party absent express permission from the committee chair. Subject to this exception, all cross-examination questions shall be directed to the committee chair, who in their discretion shall pose the questions on the party's behalf.

[]

#### NEW SECTION

##### **WAC 132B-125-350 Student conduct committee—Initial decision.**

(1) At the conclusion of the hearing, the student conduct committee shall permit the parties to make closing arguments in whatever form it wishes to receive them. The committee also may permit each party to propose findings, conclusions, and/or a proposed decision for its consideration.

(2) Within twenty business days following the conclusion of the hearing or the committee's receipt of closing arguments, the committee shall issue an initial decision in accordance with RCW 34.05.461 Entry of orders, and WAC 10-08-210 Adjudicative proceedings—Initial or final order. The initial decision shall include findings on all material issues of fact and conclusions on all material issues of law, including which, if any, provisions of the student conduct code were violated. Any findings based substantially on the credibility of evidence or the demeanor of witnesses shall be so identified.

(3) The committee's initial order shall also include a determination on appropriate discipline, if any. If the matter was referred to the committee by the student conduct officer, the committee shall identify and impose disciplinary sanction(s) or conditions, if any, as authorized in the student conduct code. If the matter is an appeal by the respondent, the committee may affirm, reverse, or modify the disciplinary sanction and/or conditions imposed by the student conduct officer and/or impose additional disciplinary sanction(s) or conditions as authorized herein.

(4) The committee chair shall cause copies of the initial decision to be served on the parties and their legal counsel of record. The committee chair shall also promptly transmit a copy of the decision and the record of the committee's proceedings to the president.

(5) In cases involving allegations of sexual misconduct, the chair of the student conduct committee, on the same date as the initial decision is served on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent. Complainant may appeal the student conduct committee's initial decision to the president subject to the same procedures and deadlines applicable to other parties. The notice will also inform the complainant of their appeal rights.

[]

NEW SECTION

**WAC 132B-125-355 Appeal from student conduct committee's initial decision.** (1) A party who is aggrieved by the findings or conclusions issued by the student conduct committee may appeal the committee's initial decision to the president by filing a notice of appeal with the president's office within twenty-one calendar days of service of the committee's initial decision. Failure to file a timely appeal constitutes a waiver of the right and the initial decision shall be deemed final.

(2) The notice of appeal must identify the specific findings of fact and/or conclusions of law in the initial decision that are challenged and must contain argument why the appeal should be granted. The president's review shall be restricted to the hearing record made before the student conduct committee and will normally be limited to a review of those issues and arguments raised in the notice of appeal.

(3) The president shall provide a written decision to all parties within twenty business days after receipt of the notice of appeal. The president's decision shall be final and shall include a notice of any rights to request reconsideration and/or judicial review.

(4) In cases involving allegations of sexual misconduct, the president, on the same date that the final decision is served upon the respondent, shall serve a written notice informing the complainant of the final decision. This notice shall inform the complainant whether the sexual misconduct allegation was found to have merit and describe any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent.

(5) The president may, at their discretion, suspend any disciplinary action pending review of the merits of the findings, conclusions, and disciplinary actions imposed.

(6) The president shall not engage in an ex parte communication with any of the parties regarding an appeal.

[]

NEW SECTION

**WAC 132B-125-360 Readmission after dismissal.** A student dismissed from the college may be readmitted only on written petition to the president. Petitions must indicate reasons that support reconsideration. The president may use whatever review procedures are at the president's disposal in consideration of readmission. The president shall convey a decision in writing to the student within thirty days after completion of the review process.

[]

NEW SECTION

**WAC 132B-125-365 Sexual misconduct proceedings—Dual procedural rights.** Both the respondent and the complainant in cases involving



allegations of sexual misconduct shall be provided the same procedural rights to participate in student discipline matters, including the right to participate in the initial disciplinary decision-making process and to appeal any disciplinary decision.

[]

NEW SECTION

**WAC 132B-125-370 Reporting, recording and maintaining records.**

The office of the student conduct officer shall keep records of all disciplinary cases. Except in proceedings where the student is exonerated, all documentary or other physical evidence produced or considered in disciplinary proceedings and all recorded testimony shall be preserved; insofar as possible, for not more than six years. No other records of proceedings wherein the student is exonerated, other than the fact of exoneration, shall be maintained in the student's file or other college repository after the date of the student's graduation or not more than six years.

[]

**PART 4 - SEXUAL MISCONDUCT**

NEW SECTION

**WAC 132B-125-400 Order of precedence.** This supplemental procedure applies to allegations of sexual harassment subject to Title IX jurisdiction pursuant to regulations promulgated by the United States Department of Education. See 34 C.F.R. Part 106. To the extent these supplemental hearing procedures conflict with Grays Harbor College's standard disciplinary procedures, chapter 132B-125 WAC, Student conduct code, these supplemental procedures shall take precedence. College may, at its discretion, contract with an administrative law judge or other person to act as presiding officer and assign such presiding officer to exercise any or all of the duties in lieu of the student conduct committee and committee chair.

[]

NEW SECTION

**WAC 132B-125-405 Prohibited conduct under Title IX.** Pursuant to RCW 28B.50.140(13) Boards of trustees—Powers and duties, and Title IX

of the Education Amendments Act of 1972, 20 U.S.C. Sec. 1681, Grays Harbor College may impose disciplinary sanctions against a student who commits, attempts to commit, or aids, abets, incites, encourages, or assists another person to commit, an act(s) of "sexual harassment."

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

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

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

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

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

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

(c) **Incest.** Sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either wholly or half related. Descendant includes stepchildren and adopted children under the age of eighteen.

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

(4) **Domestic violence.** Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Washington, RCW 26.50.010.

(5) **Dating violence.** Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person:

(a) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(b) Where the existence of such a relationship shall be determined based on a consideration of the following factors:

(i) The length of the relationship;

(ii) The type of relationship; and

(iii) The frequency of interaction between the persons involved in the relationship.

(6) **Stalking.** Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their

safety or the safety of others, or suffer substantial emotional distress.

[]

NEW SECTION

**WAC 132B-125-410 Title IX jurisdiction.** (1) This supplemental procedure applies only if the alleged misconduct:

- (a) Occurred in the United States;
- (b) Occurred during a Grays Harbor College educational program or activity; and
- (c) Meets the definition of sexual harassment as that term is defined in this supplemental procedure.

(2) For purposes of this supplemental procedure, an "educational program or activity" is defined as locations, events, or circumstances over which Grays Harbor College exercised substantial control over both the respondent and the context in which the alleged sexual harassment occurred. This definition includes any building owned or controlled by a student organization that is officially recognized by Grays Harbor College.

(3) Proceedings under this supplemental procedure must be dismissed if the decision maker determines that one or all of the requirements of subsection (1)(a) through (c) of this section have not been met. Dismissal under this supplemental procedure does not prohibit Grays Harbor College from pursuing other disciplinary action based on allegations that the respondent violated other provisions of Grays Harbor College's student conduct code, WAC 132B-125-120 Prohibited student conduct.

(4) If the student conduct officer determines the facts in the investigation report are not sufficient to support Title IX jurisdiction and/or pursuit of a Title IX violation, the student conduct officer will issue a notice of dismissal in whole or in part to both parties explaining why some or all of the Title IX claims have been dismissed.

[]

NEW SECTION

**WAC 132B-125-415 Initiation of discipline.** (1) Upon receiving the Title IX investigation report from the Title IX coordinator, the student conduct officer will independently review the report to determine whether there are sufficient grounds to pursue a disciplinary action against the respondent for engaging in prohibited conduct under Title IX.

(2) If the student conduct officer determines that there are sufficient grounds to proceed under these supplemental procedures, the student conduct officer will initiate a Title IX disciplinary proceeding by filing a written disciplinary notice with the chair of the Title IX conduct committee and serving the notice on the respondent and the complainant, and their respective advisors. The notice must:

- (a) Set forth the basis for Title IX jurisdiction;

- (b) Identify the alleged Title IX violation(s);
  - (c) Set forth the facts underlying the allegation(s);
  - (d) Identify the range of possible sanctions that may be imposed if the respondent is found responsible for the alleged violation(s); and
  - (e) Explain that the parties are entitled to be accompanied by their chosen advisors during the hearing and that:
    - (i) The advisors will be responsible for questioning all witnesses on the party's behalf;
    - (ii) An advisor may be an attorney; and
    - (iii) Grays Harbor College will appoint the party an advisor of the college's choosing at no cost to the party, if the party fails to do so.
- (3) Explain that if a party fails to appear at the hearing, a decision of responsibility may be made in their absence.

[ ]

NEW SECTION

**WAC 132B-125-420 Prehearing procedure.** (1) Upon receiving the disciplinary notice, the chair of the Title IX conduct committee will send a hearing notice to all parties, in compliance with WAC 132B-125-340 Student conduct committee process. In no event will the hearing date be set less than ten days after the Title IX coordinator provided the final investigation report to the parties.

(2) A party may choose to have an attorney serve as their advisor at the party's own expense. This right will be waived unless, at least five days before the hearing, the attorney files a notice of appearance with the committee chair with copies to all parties and the student conduct officer.

(3) In preparation for the hearing, the parties will have equal access to all evidence gathered by the investigator during the investigation, regardless of whether the college intends to offer the evidence at the hearing.

[ ]

NEW SECTION

**WAC 132B-125-425 Rights of parties.** (1) Grays Harbor College's student conduct procedures, chapter 132B-125 WAC, Student conduct code and this supplemental procedure shall apply equally to all parties.

(2) Grays Harbor College bears the burden of offering and presenting sufficient testimony and evidence to establish that the respondent is responsible for a Title IX violation by a preponderance of the evidence.

(3) The respondent will be presumed not responsible until such time as the disciplinary process has been finally resolved.

(4) During the hearing, each party shall be represented by an advisor. The parties are entitled to an advisor of their own choosing and the advisor may be an attorney. If a party does not choose an ad-

visor, then the Title IX coordinator will appoint an advisor of the college's choosing on the party's behalf at no expense to the party.

[]

NEW SECTION

**WAC 132B-125-430 Evidence.** The introduction and consideration of evidence during the hearing is subject to the following procedures and restrictions:

(1) **Relevance:** The committee chair shall review all questions for relevance and shall explain on the record their reasons for excluding any question based on lack of relevance.

(2) Relevance means that information elicited by the question makes facts in dispute more or less likely to be true.

(3) Questions or evidence about a complainant's sexual predisposition or prior sexual behavior are not relevant and must be excluded, unless such question or evidence:

(a) Is asked or offered to prove someone other than the respondent committed the alleged misconduct; or

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

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

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

(6) **Privileged evidence:** The committee shall not consider legally privileged information unless the holder has effectively waived the privilege. Privileged information includes, but is not limited to, information protected by the following:

(a) Spousal/domestic partner privilege;

(b) Attorney-client and attorney work product privileges;

(c) Privileges applicable to members of the clergy and priests;

(d) Privileges applicable to medical providers, mental health therapists, and counselors;

(e) Privileges applicable to sexual assault and domestic violence advocates; and

(f) Other legal privileges identified in RCW 5.60.060 Who is disqualified—Privileged communications.

[]

NEW SECTION

**WAC 132B-125-435 Initial order.** (1) In addition to complying with WAC 132B-125-340 Student conduct committee procedures, the Title IX conduct committee:

(a) Identifies the allegations of sexual harassment;

(b) Describes the grievance and disciplinary procedures, starting with filing of the formal complaint through the determination of responsibility, including notices to parties, interviews with witnesses and parties, site visits, methods used to gather evidence, and hearings held;

(c) Makes findings of fact supporting the determination of responsibility;

(d) Reaches conclusions as to whether the facts establish whether the respondent is responsible for engaging in sexual harassment in violation of Title IX;

(e) Contains a statement of, and rationale for, the committee's determination of responsibility for each allegation;

(f) Describes any disciplinary sanction or conditions imposed against the respondent, if any;

(g) Describes to what extent, if any, complainant is entitled to remedies designed to restore or preserve complainant's equal access to Grays Harbor College's educational programs or activities; and

(h) Describes the process for appealing the initial order to the Grays Harbor College president.

(2) The committee chair will serve the initial order on the parties simultaneously.

[]

#### NEW SECTION

**WAC 132B-125-440 Title IX appeals.** (1) The parties shall have the right to appeal from the initial order's determination of responsibility and/or dismissal of an allegation(s) of sexual harassment in a formal complaint. The right to appeal will be subject to the same procedures and time frames set forth in WAC 132B-125-320 Appeal from disciplinary action.

(2) The president or their delegate will determine whether the grounds for appeal have merit, provide the rationale for this conclusion, and state whether the disciplinary sanction and condition(s) imposed in the initial order are affirmed, vacated, or amended, and, if amended, set forth any new disciplinary sanction and/or condition(s).

(3) The president's office shall serve the final decision on the parties simultaneously.

[]

#### **PART 5 - STUDENT COMPLAINT, GRIEVANCE, AND GRADE APPEAL POLICY AND PROCEDURES**

NEW SECTION

**WAC 132B-125-500 Student complaint, grievance, and grade appeal policy and procedures.** The purpose of these procedures is to provide guidelines, which enable a student to express and resolve misunderstandings, complaints, or grievances in a fair and equitable manner. Students have the right to receive clear information and fair application of college policies, standards, rules and requirements and are responsible for complying with them in their relationships with college personnel. This grievance procedure emphasizes an informal resolution, which promotes constructive dialogue and understanding.

(1) **Complaint process.**

(a) A complaint is any expression of dissatisfaction with the performance of a college employee or with the implementation of policy and procedure. The goal is to informally resolve the complaint with the employee most closely responsible for the policy, procedure or action. The college employee and student shall make a good faith effort to resolve the issue on a one-to-one basis. (If the complaint is about a grade, follow the grade appeal process below.) Both parties should openly discuss the concern, attempt to understand the other's perspective, explore alternatives and attempt to arrive at a satisfactory resolution.

(b) The college recognizes that in some cases a student will be unwilling or unable to speak directly with the employee. In such cases, the student may proceed to step one of the grievance process. In general, a student wishing to express a complaint should do so no later than three weeks from the time the student became aware of the concern.

(c) For assistance in identifying the appropriate person a student should contact, the office of the vice president for student services is available to assist in that determination.

(d) The following are guidelines for determining who a student should contact with a complaint regarding:

- (i) **Academic/instruction:** Faculty/dean/vice president instruction;
- (ii) **Accommodations:** Coordinator of disability support services/dean of student access and support;
- (iii) **Bookstore:** Bookstore manager/vice president administrative services;
- (iv) **Problem student conduct:** Student conduct officer;
- (v) **Discrimination/harassment:** Title IX coordinator/human resources;
- (vi) **Facilities:** Chief of campus operations/vice president for administrative services;
- (vii) **Financial aid:** Assistant dean of financial aid/dean of student access and support;
- (viii) **Other:** Vice president for student services office for most appropriate contact.

(2) **Grievance process.**

(a) A grievance is a formal procedure instituted when a complaint is not resolved through the informal complaint process. It involves taking the concern to a person other than the employee involved such as a supervisor, dean or vice president. For assistance in identifying the specific person, a student should contact the vice president for student services office. The following procedures shall be used when a student initiates the grievance process.

(b) A discussion with the dean/vice president or supervisor who shall attempt to resolve the matter promptly and fairly. The student may be asked to express the grievance in writing. Written grievances should include an explanation of what has happened, the nature of the student's concern, what the student and/or others have done about it to date and what resolution the student seeks.

(c) The supervisor will investigate and may:

(i) Render an immediate decision;

(ii) Ask the staff members for a written response;

(iii) Request a meeting of one or both parties individually or together; and/or

(iv) Request supporting materials prior to rendering a decision.

In the case of a written grievance, the supervisor will provide a written decision within fifteen instructional days of receipt of the written grievance. If an investigation requires more time, the deadline may be extended to a mutually agreed future date.

(A) If the student feels a satisfactory resolution was not achieved in step two, they may appeal to the president of the college within five instructional days of receipt of the written decision. The president may amend, modify, reverse or accept the recommendation of the vice president. The decision of the president shall be final.

(B) In general, a student wishing to express a complaint should do so no later than three weeks from the time the student became aware of the concern. In any event, with the exception of discrimination and harassment, informal complaints and formal grievances must be filed within one academic quarter of the inciting event. Timely initiation of a complaint rests with the student.

(C) The appropriate vice president may suspend this rule under exceptional circumstances such as extended illness or leave of a party to the complaint. When either party to the complaint is no longer present at the college and does not expect to return, the vice president will give the absent party reasonable opportunity to reply to the complaint before making a decision.

### (3) **Grade appeal process.**

(a) Before a student can file a formal or written grade appeal, they should try to resolve the issue directly with the instructor. Grade appeals should occur within one quarter of issuance of the grade. In any event, appeals will not be considered beyond one year of the grade report.

(b) If direct discussion with the faculty does not resolve the grade dispute to the student's satisfaction the student, within ten instructional days after meeting with the faculty, shall take the matter to the vice president for instruction. The student shall express the appeal in writing. The written appeal should include the course and instructor involved, an explanation of why the student believes the grade received is unfair or unwarranted, what steps the student has taken with the faculty member to resolve the issue, and what resolution the student seeks.

(c) The vice president for instruction will attempt to investigate the appeal and will:

(i) Review the course syllabus;

(ii) Meet with the course instructor; and

(iii) May request and review other supporting documentation prior to rendering a decision. Within ten instructional days of receiving the written appeal, the vice president of instruction will provide a written decision. If an investigation requires more time, the deadline may be extended to a mutually agreed future date.



(d) If the student feels satisfactory resolution was not achieved in step three, they may, within five instructional days of receipt of the written decision, notify the vice president for instruction to request a hearing before the academic review committee. The vice president for student services or designee will chair the committee.

(i) If anyone on the academic review committee perceives a conflict of interest, they will recuse themselves from the committee for the duration of the appeal. Students are to be given an opportunity to talk with the committee chairperson regarding any concerns about committee membership.

(ii) As soon as possible, the academic review committee (with a minimum attendance of six individuals) will meet with the student, instructor, the vice president of instruction and relevant parties to hear the points at issue in the appeal. The committee will provide its written decision to all parties within five instructional days following the hearing. The decision is final and may not be reviewed further.

(4) **Grievances excluded.**

(a) The student grievance procedure described in this section is not intended to cover complaints of discrimination or sexual harassment. The college has separate specific procedures for such complaints. See the vice president for student services for information on those specific procedures.

(b) A student may not use the provisions of these sections as the basis for filing a grievance based on the outcome of summary or other disciplinary proceedings described in earlier sections of this student rights and responsibilities code or for resolution of specific categories of student complaints where other procedures are required.

(c) Federal and state laws, rules and regulations, in addition to policies, regulations and procedures adopted by the state board for community college education or the board of trustees of Community College District No. 2 shall not be grievable matters.

(5) **Records.** The appropriate supervisor shall keep all written statements or transcripts as follows:

(a) Complaints for one year from the initial complaint;

(b) Grievances for six years from the initial complaint;

(c) Grade appeals for five years following the last quarter attended by the student. At that time, the files shall be destroyed.

[ ]

WSR 21-12-014  
PERMANENT RULES  
DEPARTMENT OF

CHILDREN, YOUTH, AND FAMILIES

[Filed May 20, 2021, 12:32 p.m., effective June 20, 2021]

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

Purpose: Clarify the certificate for parental improvement application process, who is eligible to receive a certificate, and the review process and administrative hearing rights for applications that are denied.

Citation of Rules Affected by this Order: New WAC 110-05-0001, 110-05-0005, 110-05-0010, [110-05-0015,] 110-05-0020, 110-05-0025, 110-05-0030, and 110-05-0035.

Statutory Authority for Adoption: RCW 74.13.720(7).

Adopted under notice filed as WSR 21-01-183 on December 21, 2020.  
Changes Other than Editing from Proposed to Adopted Version:

- Definition for child abuse and neglect (CA/N) inserted in WAC 110-01-0005;
- Insert in WAC 110-05-0010: *An email address, if available, must be included when applying for a certificate;*
- In WAC 110-05-0020: *First-class mail and email, if available, replaces certified mail, return receipt requested, for delivering certificates. For denial delivery methods, first class mail and email, when available, are added to certified mail, return receipt requested;*
- In WAC 110-05-0025: *First-class mail and email, if available, inserted as additional methods for delivering review determinations that do not alter CPI denials and email, if available, inserted as additional method for delivering a certificate when the review determination overturns a denial;*
- WAC 110-05-0030(5) deleted; and
- "Requestor" changed to "subject individual" throughout the chapter.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 7, Amended 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 7, 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: May 20, 2021.

Brenda Villarreal  
Rules Coordinator

OTS-2775.7

**Chapter 110-05 WAC**  
**BACKGROUND CHECKS—CERTIFICATES OF PARENTAL IMPROVEMENT**

NEW SECTION

**WAC 110-05-0001 Scope and purpose.** (1) Chapter 26.44 RCW authorizes the department to investigate allegations of child abuse or neglect (CA/N) and to determine if allegations are founded or unfounded as defined in RCW 26.44.020. Prior to the creation of the department, these determinations were made by the department of social and health services, children's administration.

(2) RCW 74.13.720 directs the department to establish a process that allows the secretary to issue a certificate of parental improvement to an individual who is the subject of a founded finding of CA/N or a court determination that the individual's child was dependent as a result of a finding that the individual abused or neglected their child.

[]

NEW SECTION

**WAC 110-05-0005 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

"Abuse or neglect" has the same meaning as "abuse or neglect" in RCW 26.44.020.

"CA/N" means child abuse or neglect as defined in chapter 26.44 RCW.

"Certificate of parental improvement (CPI)" has the same meaning as "certificate of parental improvement" in RCW 74.13.020(2).

"Department" means the department of children, youth, and families.

"Dependency finding" means a court determination that an individual's child was found dependent as a result of a finding the individual abused or neglected their child, pursuant to RCW 13.34.030 (6)(b).

"Founded" has the same meaning as "founded" in RCW 26.44.020.

"Individual" means a person who has or is seeking a CPI.

"Negligent treatment or maltreatment" has the same meaning as "negligent treatment or maltreatment" in RCW 26.44.020.

"Physical abuse" has the same meaning as "physical abuse" in WAC 110-30-0030.

"Secretary" means the secretary of the department.

"Washington office of administrative hearings (OAH)" means the Washington state office of administrative hearings.

[]

NEW SECTION

**WAC 110-05-0010 Procedures for requesting a CPI and department consideration.** (1) **Requesting a CPI.** The request for a CPI must contain the following information:

(a) The individual's current name, mailing address, telephone number, and email address if available;

(b) The individual's name at the time the founded finding or dependency finding was issued;

(c) A description of the changed circumstances, from the date after the founded finding or dependency finding, that justify the issuance of a CPI to the individual; and

(d) The information described in subsection (5) of this section.

(2) Application forms and instructions are available on the department's website.

(3) The department may return an incomplete request or contact the individual for more information to complete the request.

(4) **Department consideration.** When determining whether to issue a CPI:

(a) The department considers:

(i) Documentation of any founded finding of CA/N and the underlying documentation the entity that issued the finding relied upon to make that finding;

(ii) Findings from any civil adjudication proceeding as defined in RCW 43.43.830;

(iii) Referral history alleging CA/N against the individual;

(iv) The length of time that has elapsed since the founded finding of CA/N;

(v) Whether a court made a finding that the individual's child or youth was dependent pursuant to chapter 13.34 RCW, the length of time elapsed since that dependency proceeding was dismissed, and the outcome of the dependency proceeding, including whether the child or youth was returned to the individual's home;

(vi) Any documentation submitted by the individual indicating whether the individual successfully addressed the circumstances that led to the founded finding of physical abuse or negligent treatment or maltreatment including, but not limited to:

(A) A declaration by the individual signed under penalty of perjury;

(B) Recent assessments or evaluations of the individual; and

(C) Completion or progress toward completion of recommended court-ordered treatment, services, or programs;

(vii) Any pending criminal or civil actions against the individual;

(viii) Results of background checks as authorized under RCW 10.97.050, 43.43.833, and 43.43.834, and the Federal Bureau of Investigation;

(ix) Personal and professional references submitted by the individual from employers, professionals, and agencies familiar with the individual who can address the individual's current character, suitability, or competence;

(x) Any education, volunteer work, employment history, or community involvement of the individual identified by the individual; and

(xi) Any additional information the department deems relevant; and

(b) The department must accept the underlying founded finding or dependency finding as valid and may not review the merits of that founded finding or dependency finding.

(5) The department must issue a CPI if, on a more probable than not basis, the individual has the character, suitability, and competence to care for children, youth, or vulnerable persons and meets the other requirements of RCW 74.13.720 at the time of the request.

(6) The decision to issue or not issue a CPI will be mailed to the individual within sixty calendar days from the date a request for a CPI as described in WAC 110-05-0010 was received.

[]

#### NEW SECTION

**WAC 110-05-0015 CPI—Exclusions.** The department may not issue a CPI if:

(1) Fewer than five years have elapsed since the date the investigative assessment was issued that resulted in the individual's last founded finding of CA/N;

(2) Fewer than two years have passed since the department denied the individual's request for a CPI;

(3) The individual has a founded finding for sexual abuse or sexual exploitation or has a founded finding for physical abuse and the conduct that was the basis for the physical abuse finding involved cutting, burning, interfering with a child's breathing, shaking a child under three, or threatening a child with a deadly weapon;

(4) The individual was convicted of or is the subject of a pending criminal investigation for:

(a) Any felony offense involving the physical neglect of a child under chapter 9A.42 RCW;

(b) Any felony offense under chapter 9A.32 or 9A.36 RCW involving a physical injury or death of a child;

(c) Any felony domestic violence offense committed against a family or household member as defined in chapter 10.99 RCW;

(d) A felony offense against a child under chapter 9.68A RCW; or

(e) Any of the following felony offenses:

(i) Defined under any law as a class A felony or an attempt to commit a class A felony;

(ii) Criminal solicitation of or criminal conspiracy to commit a class A felony;

(iii) Manslaughter in the first or second degree;

(iv) Indecent liberties;

(v) Kidnapping in the second degree;

(vi) Arson in the second degree;

(vii) Extortion in the first degree;

(viii) Robbery in the second degree;

(ix) Drive-by shooting; and

(x) Vehicular homicide; or

(f) Any out-of-state, federal, or state conviction for a felony offense that is comparable to an offense listed in subsection (4) of this section; or

(5) The individual applying for a CPI has previously received a CPI and is the alleged perpetrator in a subsequent founded finding of CA/N.

[]

NEW SECTION

**WAC 110-05-0020 Determination—Notice.** (1) The department will issue a written decision that states whether a CPI is granted or denied.

(2) The written decision to grant a CPI must be sent by first-class mail to the individual's last known address and to their email address, when available.

(3) If the department denies a CPI, the written decision must be sent certified mail, return-receipt requested, first-class mail, and email, when available, and include the following information:

(a) The reasons for the denial, including identifying any information relied upon that was not provided by the applicant;

(b) Copies of any information relied upon that was not provided by the applicant or directions on how to obtain copies of the information;

(c) Notice that the individual has a right to request a review of the denial and instructions for requesting a review; and

(d) A statement that the individual must wait two years from the date of the denial to request a CPI again, if the denial is not successfully appealed.

[]

NEW SECTION

**WAC 110-05-0025 Procedures for requesting review of a denied CPI and the secretary's review.** (1) **Requesting a review.** An individual whose request for a CPI is denied may request that the secretary or designee review the denial. The request for review must:

(a) Be in writing;

(b) Clearly state why the individual disagrees with the denial;

(c) Include any relevant supporting information and documentation; and

(d) Be received by the department within forty-five calendar days of when the decision described in WAC 110-05-0020 was mailed to the individual's last known address.

(2) The failure by an individual to timely request review of a CPI denial decision will result in the loss of any right to a hearing or further challenges to the denial.

(3) **The secretary's review.** A department management level staff-person designated by the secretary who was not involved in the decision-making process will review the CPI denial decision. The department must:

(a) Complete its review within thirty days after receiving the request for review;

(b) Notify the individual in writing of its review determination by sending the review determination to the individual's last known address.

(i) If the review determination does not alter the CPI denial decision, the department will send the review determination by certified mail, return-receipt requested, first-class mail, and email, when available.

(ii) If the CPI denial decision is overturned, the department will send the review decision by first-class mail and email, when available; and

(c) Include instructions for requesting an administrative hearing under chapter 34.05 RCW when the review determination does not alter the CPI denial decision.

[]

#### NEW SECTION

**WAC 110-05-0030 Procedures for requesting an administrative hearing.** (1) An individual who is denied a CPI under WAC 110-05-0025 has the right to request an administrative hearing under chapters 34.05 RCW and 110-03 WAC.

(2) A request for hearing under chapter 34.05 RCW must be filed with the OAH, as defined in WAC 110-03-0020, within forty-five calendar days of the date the department placed the agency review determination in the mail addressed to the individual.

(3) The failure to timely request an administrative hearing results in the loss of any right to a hearing or further challenges to the CPI denial.

(4) The request for administrative hearing filed with the OAH must include a copy of the review determination notice. OAH will conduct an administrative hearing and issue an initial order.

(5) An individual who disagrees with the initial order issued by OAH may appeal it to the DCYF board of appeals as provided in WAC 110-03-0520 through 110-03-0580. If an appeal is not filed on or before the twenty-first calendar day after the initial order is served on the individual, the initial order issued by OAH becomes the final order.

[]

#### NEW SECTION

**WAC 110-05-0035 Confidentiality.** Reviews and hearings conducted under this chapter are confidential and are not open to the public. Information about reports, reviews, and hearings may be disclosed only in accordance with federal and state laws pertaining to child welfare records and child protective services reports.

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**WSR 21-12-019**  
**PERMANENT RULES**  
**OFFICE OF**  
**FINANCIAL MANAGEMENT**

[Filed May 24, 2021, 9:23 a.m., effective July 1, 2021]

Effective Date of Rule: July 1, 2021.

Purpose: To align Title 357 WAC with the changes to the Washington Minimum Wage Act (chapter 49.46 RCW). The Washington state department of labor and industries (L&I) updated the minimum weekly standard salary level required to exempt executive, administrative or professional employees from Washington state's overtime pay requirements. The new state thresholds are more favorable than the current federal threshold, Washington employers must adhere to the state thresholds as of January 1, 2021. WAC 357-01-220 is amended to clarify an overtime eligible employee is an employee who is not exempt from the overtime provisions of either chapter 49.46 RCW (state law) or the Fair Labor Standards Act (federal law). WAC 357-01-225 is amended to clarify an overtime-exempt employee is an employee who is exempt from the overtime provisions of both chapter 49.46 RCW and the Fair Labor Standards Act. The amendments to chapter 357-01 WAC align with recent rule making by L&I modifying the state standards defining exempt employees. WAC 357-19-260 is amended to refer to "overtime eligibility" instead of "work period designation" to align with both federal and state law. The term "work period designation" is outdated terminology that is no longer relevant. WAC 357-58-120 is amended to clarify if a disciplinary demotion results in a salary decrease, the overtime status of the position may be impacted and must comply with the salary basis test of both the state and federal law. The amendment to WAC 357-58-120 clarifies the language and makes clear that the requirements of state law must also be followed.

Citation of Rules Affected by this Order: Amending WAC 357-01-220, 357-01-225, 357-19-260, and 357-58-120.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Other Authority: Chapter 49.46 RCW.

Adopted under notice filed as WSR 21-08-057 on April 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 4, Repealed 0.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 4, Repealed 0.

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

Date Adopted: May 24, 2021.

Roselyn Marcus  
Assistant Director of Legal  
and Legislative Affairs



**OTS-2976.2**

AMENDATORY SECTION (Amending WSR 05-01-204, filed 12/21/04, effective 7/1/05)

**WAC 357-01-220 Overtime eligible employee.** An employee who is ~~((covered by))~~ not exempt from the overtime provisions of either chapter 49.46 RCW or the Fair Labor Standards Act.

[Statutory Authority: Chapter 41.06 RCW. WSR 05-01-204, § 357-01-220, filed 12/21/04, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 05-01-204, filed 12/21/04, effective 7/1/05)

**WAC 357-01-225 Overtime-exempt employee.** An employee who is ~~((not covered by))~~ exempt from the overtime provisions of both chapter 49.46 RCW and the Fair Labor Standards Act.

[Statutory Authority: Chapter 41.06 RCW. WSR 05-01-204, § 357-01-225, filed 12/21/04, effective 7/1/05.]

**OTS-2977.1**

AMENDATORY SECTION (Amending WSR 05-01-206, filed 12/21/04, effective 7/1/05)

**WAC 357-19-260 While an employee is in an in-training appointment, what class is used to determine the employee's salary, ~~((work period designation))~~ overtime eligibility, and performance evaluation?** For each in-training step, the training plan must identify the job class to which the employee's work is being allocated. The employee's salary, ~~((work period designation))~~ overtime eligibility, and performance evaluation must be based upon the allocated class of the in-training step.

[Statutory Authority: Chapter 41.06 RCW. WSR 05-01-206, § 357-19-260, filed 12/21/04, effective 7/1/05.]

**OTS-2978.1**

AMENDATORY SECTION (Amending WSR 05-12-069, filed 5/27/05, effective 7/1/05)

**WAC 357-58-120 What is a disciplinary demotion and what changes may occur in salary?** Demotion for cause is a disciplinary demotion. A disciplinary demotion results in the:

(1) Assignment of responsibilities which results in a lower salary standard and/or lower evaluation points for the same position or results in the position being placed in the WGS with a lower base salary, or

(2) Movement to a different position that has a lower salary standard and/or lower evaluation points or to a WGS position with a lower base salary.

A disciplinary demotion may result in a salary decrease. (~~Any~~) If a disciplinary demotion results in a salary decrease, the overtime status of the position may be impacted and must comply with the salary basis test of both chapter 49.46 RCW and the Fair Labor Standards Act.

[Statutory Authority: Chapter 41.06 RCW. WSR 05-12-069, § 357-58-120, filed 5/27/05, effective 7/1/05.]

**WSR 21-12-020**  
**PERMANENT RULES**  
**OFFICE OF**  
**FINANCIAL MANAGEMENT**

[Filed May 24, 2021, 9:26 a.m., effective July 1, 2021]

Effective Date of Rule: July 1, 2021.

Purpose: To align Title 357 WAC with Proclamation 20-05, issued by Governor Jay Inslee, which declares a state of emergency in all counties in the state of Washington as a result of the outbreak of COVID-19. The governor further declared that state agencies and departments are directed to use state resources and to do everything reasonably possible to assist affected political subdivisions in an effort to respond to and recover from the COVID-19 outbreak. The worldwide outbreak of COVID-19 and the effects of its extreme risk of person-to-person transmission throughout the United States and Washington state significantly impacts the life and health of our people, as well as the economy of Washington state. WAC 357-31-325 is amended to require a general government employer to grant leave with pay (LWP) to allow an employee to take a reasonable amount of leave with pay for an employee to travel and receive each dose of COVID-19 immunization if the vaccine is not offered at the workplace; WAC 357-31-326 is amended to allow a general government employer to grant a reasonable amount of LWP for an employee to receive each dose of COVID-19 immunization if the vaccine is offered at the workplace; and to allow a higher education employer to grant a reasonable amount of LWP for an employee to receive each does [dose] of COVID-19 immunization if the vaccine is not offered at the workplace. An employer may authorize leave in excess of one day in extraordinary circumstances, such as to accommodate travel when the vaccine is unavailable locally. The employer may require that the request for leave be supported by documentation, which may include proof of the vaccination. If state or federal law provides paid leave specifically to receive the COVID-19 vaccination, the provisions concerning leave for immunization no longer apply. WAC 357-31-330 is amended to allow an employer to grant leave without pay for an employee to protect themselves, or a relative or household member, from risks related to COVID-19.

Citation of Rules Affected by this Order: Amending WAC 357-31-325, 357-31-326, and 357-31-330.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Adopted under notice filed as WSR 21-08-056 on April 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 3, 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 3, 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 3, Repealed 0.

Date Adopted: May 24, 2021.

Roselyn Marcus  
Assistant Director of Legal

## OTS-2885.5

AMENDATORY SECTION (Amending WSR 20-24-019, filed 11/20/20, effective 12/28/20)

**WAC 357-31-325 When must an employer grant leave with pay for other miscellaneous reasons?** Leave with pay **must** be granted to an employee in accordance with WAC 357-31-320 and for the following reasons:

(1) To allow an employee to receive assessment from the employee assistance program.

(2) When an employee is scheduled to take an examination or participate in an interview for a position with a state employer during scheduled work hours.

(a) Employers may limit the number of occurrences or the total amount of paid leave that will be granted to an employee to participate in an interview or take an examination during scheduled work hours.

(b) Employers may deny an employee's request to participate in an interview or take an examination during scheduled work hours based upon operational necessity.

(3) When an employee is required to appear during working hours for a physical examination to determine physical fitness for military service.

(4) To allow a general government employee to take paid leave, not to exceed thirty days in a two-year period to participate in life-giving procedures, such as medical procedures, including testing, sampling, or donation of organs, tissues, and other body components for the purpose of donation, without compensation. For this subsection blood or plasma donations are not considered life-giving procedures.

(a) General government employers may take operational necessity into account and require the employee to provide reasonable advance notice.

(b) Employees must provide written proof from an accredited medical institution, physician, or other medical professional that the employee will or has participated in a life-giving procedure.

(5) When a general government employee is required by Centers for Disease Control and Prevention guidelines to self-quarantine due to novel coronavirus disease 2019 (COVID-19), but is otherwise healthy and has not tested positive for COVID-19, and the employer has determined the employee does not have the option to telework. An employer may subsequently determine that a telework option exists for the employee and direct the employee to telework. If the employee is directed to telework under this subsection and declines to do so, the employee must use other available leave options. The employee may receive up to fourteen days of leave with pay under this subsection. This subsection is effective until the expiration of proclamation 20-05, issued February 29, 2020, by the governor and declaring an emergency in the state of Washington, or any amendment thereto, whichever is later. An employer may require written verification, including verification submitted electronically, confirming the circumstances

warranting the self-quarantine or inability to telework, which may include a signed affidavit from the employee or any other information requested by the employer.

(6) To allow a general government employee to take a reasonable amount of leave with pay for the employee to travel and receive each dose of COVID-19 immunization if the vaccine is not offered at the workplace. An employer may authorize leave in excess of one day in extraordinary circumstances, such as to accommodate travel where the vaccine is unavailable locally. The employer may require that the request for leave be supported by documentation, which may include proof of the vaccination. This subsection is effective until the expiration of proclamation 20-05, issued February 29, 2020, by the governor and declaring an emergency in the state of Washington, or any amendment thereto, whichever is later. This subsection no longer applies if state or federal law otherwise provides paid leave specifically for employees to receive the COVID-19 immunization.

[Statutory Authority: Chapter 41.06 RCW. WSR 20-24-019, § 357-31-325, filed 11/20/20, effective 12/28/20; WSR 14-11-033, § 357-31-325, filed 5/14/14, effective 6/16/14; WSR 10-23-041, § 357-31-325, filed 11/10/10, effective 12/13/10; WSR 09-03-014, § 357-31-325, filed 1/9/09, effective 2/13/09; WSR 08-07-062, § 357-31-325, filed 3/17/08, effective 4/18/08; WSR 05-21-055, § 357-31-325, filed 10/13/05, effective 11/15/05; WSR 05-08-138, § 357-31-325, filed 4/6/05, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 20-24-019, filed 11/20/20, effective 12/28/20)

**WAC 357-31-326 When may an employer grant leave with pay?** (1) A general government employer **may** grant leave with pay for an employee to perform civil duties as a volunteer including, but not limited to, firefighting, search and rescue efforts, or donating blood. Leave granted to participate in blood and plasma donations must not exceed five days in a two-year period.

(2) A higher education employer may grant leave with pay for an employee to perform civil duties as a volunteer including, but not limited to, firefighting, search and rescue efforts, participating in life-giving procedures, or donating blood. Leave granted to participate in life-giving procedures must not exceed five days in a two-year period.

(3) In the department of natural resources, leave with pay equivalent to one regular workshift **may** be allowed for the purpose of rest and recuperation after ten consecutive calendar days performing emergency work under an incident command system, defined in RCW 38.52.010. The employer may grant one additional day of leave with pay for rest and recuperation after twenty-one consecutive calendar days performing emergency work under an incident command system.

(4) When a higher education employee is required by Centers for Disease Control and Prevention guidelines to self-quarantine due to novel coronavirus disease 2019 (COVID-19), but is otherwise healthy and has not tested positive for COVID-19, and the employer has determined the employee does not have the option to telework. An employer may subsequently determine that a telework option exists for the employee and direct the employee to telework. If the employee is direc-

ted to telework under this subsection and declines to do so, the employee must use other available leave options. The employee may receive up to fourteen days of leave with pay under this subsection. This subsection is effective until the expiration of proclamation 20-05, issued February 29, 2020, by the governor and declaring an emergency in the state of Washington, or any amendment thereto, whichever is later. An employer may require written verification, including verification submitted electronically, confirming the circumstances warranting the self-quarantine or inability to telework, which may include a signed affidavit from the employee or any other information requested by the employer.

(5) A general government employer may grant a reasonable amount of leave with pay for an employee to receive each dose of COVID-19 immunization if the vaccine is offered at the workplace. An employer may authorize leave in excess of one day for receipt of the vaccine in extraordinary circumstances, such as to accommodate travel where the vaccine is unavailable locally. The employer may require that the request for leave be supported by documentation, which may include proof of the vaccination. This subsection is effective until the expiration of proclamation 20-05, issued February 29, 2020, by the governor and declaring an emergency in the state of Washington, or any amendment thereto, whichever is later. This subsection no longer applies if state or federal law otherwise provides paid leave specifically for employees to receive the COVID-19 immunization.

(6) A higher education employer may grant a reasonable amount of leave with pay for an employee to receive each dose of COVID-19 immunization if the vaccine is not offered at the workplace. An employer may authorize leave in excess of one day for receipt of the vaccine in extraordinary circumstances, such as to accommodate travel where the vaccine is unavailable locally. The employer may require that the request for leave be supported by documentation, which may include proof of the vaccination. This subsection is effective until the expiration of proclamation 20-05, issued February 29, 2020, by the governor and declaring an emergency in the state of Washington, or any amendment thereto, whichever is later. This subsection no longer applies if state or federal law otherwise provides paid leave specifically for employees to receive the COVID-19 immunization.

[Statutory Authority: Chapter 41.06 RCW. WSR 20-24-019, § 357-31-326, filed 11/20/20, effective 12/28/20; WSR 17-18-029, § 357-31-326, filed 8/28/17, effective 10/2/17. Statutory Authority: RCW 41.06.133. WSR 17-11-049, § 357-31-326, filed 5/15/17, effective 6/19/17. Statutory Authority: Chapter 41.06 RCW. WSR 09-03-014, § 357-31-326, filed 1/9/09, effective 2/13/09.]

AMENDATORY SECTION (Amending WSR 09-17-056 and 09-18-113, filed 8/13/09 and 9/2/09, effective 12/3/09)

**WAC 357-31-330 For what reasons may an employer grant leave without pay?** Leave without pay may be allowed for any of the following reasons in accordance with the employer's leave policy:

- (1) For any reason leave with pay may be granted, as long as the conditions for leave with pay are met;
- (2) Educational leave;
- (3) Leave for government service in the public interest;

- (4) Military leave of absence as required by WAC 357-31-370;
- (5) Parental leave as required by WAC 357-31-460;
- (6) Family care emergencies as required by WAC 357-31-295;
- (7) Bereavement or condolence;
- (8) Absence due to inclement weather as provided in WAC 357-31-255;
- (9) To accommodate annual work schedules of employees occupying cyclic year positions as specified in WAC 357-19-295;
- (10) Serious health condition of an eligible employee's child, spouse, registered domestic partner, or parent as required by WAC 357-31-525;
- (11) Leave taken voluntarily to reduce the effect of an employer's layoff;
- (12) Leave that is authorized in advance by the appointing authority as part of a plan to reasonably accommodate a person of disability; ((or))
- (13) Employees receiving time loss compensation; or
- (14) For an employee to protect themselves, or a relative or household member, from risks related to coronavirus disease 2019 (COVID-19). In determining whether to grant leave, an employer may consider whether the employee is needed to provide essential services because the employee is a health care provider, an emergency responder or otherwise necessary to maintain public safety. This subsection is effective until the expiration of proclamation 20-05, issued February 29, 2020, by the governor and declaring an emergency in the state of Washington, or any amendment thereto, whichever is later.

[Statutory Authority: Chapter 41.06 RCW. WSR 09-17-056 and 09-18-113, § 357-31-330, filed 8/13/09 and 9/2/09, effective 12/3/09; WSR 09-03-014, § 357-31-330, filed 1/9/09, effective 2/13/09; WSR 05-08-138, § 357-31-330, filed 4/6/05, effective 7/1/05.]

## WSR 21-12-026

## PERMANENT RULES

## DEPARTMENT OF COMMERCE

[Filed May 24, 2021, 12:11 p.m., effective June 24, 2021]

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

Purpose: The proposed rule establishes definitions for "energy assistance need" and "low-income" in WAC 194-40-030. The definitions affect requirements for electric utilities in RCW 19.405.120 and are proposed to ensure proper implementation of Clean Energy Transformation Act. These definitions do not limit any utility from designing a program that uses values below the defined threshold for energy assistance need and low-income to define eligible participants.

Citation of Rules Affected by this Order: Amending 1.

Statutory Authority for Adoption: RCW 19.405.100, 19.405.120.

Adopted under notice filed as WSR 21-07-150 on March 24, 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 1, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: May 24, 2021.

Amber Siefer  
Legislative and  
Rules Coordinator

**OTS-2972.1**

AMENDATORY SECTION (Amending WSR 21-02-039, filed 12/29/20, effective 1/29/21)

**WAC 194-40-030 Definitions.** Unless specifically provided otherwise, the terms defined in RCW 19.405.020 have the same meaning in this chapter.

"100% Clean electricity standard" means the standard established in RCW 19.405.050(1) and any requirements necessary for compliance with that standard.

"BPA" means the Bonneville Power Administration.

"CEIP" means a clean energy implementation plan prepared in compliance with RCW 19.405.060.

"Energy assistance need" means the amount of assistance necessary to achieve an energy burden equal to six percent for utility customers.

"GHG neutral compliance period" means each of the periods identified in RCW 19.405.040 (1) (a).



"GHG neutral standard" means the standard established in RCW 19.405.040(1) and any requirements necessary for compliance with that standard.

"Indicator" means an attribute, either quantitative or qualitative, of a condition, resource, program or related distribution investment that is tracked for the purpose of evaluating change over time.

"Interim performance period" means either of the following periods:

- (a) From January 1, 2022, until December 31, 2025; and
- (b) From January 1, 2026, until December 31, 2029.

"Interim target" means a target established in compliance with RCW 19.405.060 (2)(a)(i). An interim target may cover an interim performance period or a GHG neutral compliance period.

"Low-income" means household incomes that do not exceed the higher of eighty percent of area median income or two hundred percent of federal poverty level, adjusted for household size.

"REC" means renewable energy credit.

"Retail revenue requirement" means that portion of a utility's annual budget approved by its governing body that is intended to be recovered through retail electricity sales in the state of Washington in the applicable year. It includes revenues from any retail rate or charge that is necessary to receive electric service from the utility and does not include the effect of taxes imposed directly on retail customers.

"Verification protocol" means a procedure or method used, consistent with industry standards, to establish with reasonable certainty that a conservation, energy efficiency, or demand response measure was installed and is in service. Industry standards include a range of appropriate protocols reflecting a balance of cost and accuracy, such as tracking installation of measures through incentive payments and the use of on-site inspection of measures installed as part of a customer-specific project.

"WREGIS" means the Western Renewable Energy Generation Information System.

[Statutory Authority: RCW 19.405.100 and 19.405.060. WSR 21-02-039, § 194-40-030, filed 12/29/20, effective 1/29/21.]

**WSR 21-12-030**  
**PERMANENT RULES**  
**DEPARTMENT OF**

**SOCIAL AND HEALTH SERVICES**

(Economic Services Administration)

[Filed May 24, 2021, 5:25 p.m., effective July 1, 2021]

Effective Date of Rule: July 1, 2021.

Purpose: The department is amending WAC 388-310-1600 WorkFirst—Sanctions, to support implementation of SHB 2441 (chapter 338, Laws of 2020), effective July 1, 2021, which extends the amount of time a temporary assistance for needy families (TANF) program recipient can remain in sanction status due to noncompliance with WorkFirst activities before the assistance grant is terminated.

Citation of Rules Affected by this Order: Amending WAC 388-310-1600.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.025, 74.08.090, 74.09.035, 74.09.530, 74.62.030; chapters 74.08A and 74.12 RCW.

Other Authority: Chapter 338, Laws of 2020.

Adopted under notice filed as WSR 21-07-072 on March 16, 2021.

Changes Other than Editing from Proposed to Adopted Version: The date in subsection (9) was modified as there will be no mandatory participation requirements prior to July 1, 2021, due to the COVID-19 pandemic. No active WorkFirst participants will be in sanction status prior to July 1, 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 1, Repealed 0.

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

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

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

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

Date Adopted: May 24, 2021.

Katherine I. Vasquez  
Rules Coordinator

**SHS-4844.3**

AMENDATORY SECTION (Amending WSR 20-05-046, filed 2/13/20, effective 3/15/20)

**WAC 388-310-1600 WorkFirst—Sanctions. (1) What WorkFirst requirements do I have to meet?**

You must do the following when you are a mandatory WorkFirst participant:

(a) Give the department the information we need to develop your individual responsibility plan (IRP) (see WAC 388-310-0500);

(b) Show that you are participating fully to meet all of the requirements listed on your individual responsibility plan;

(c) Go to scheduled appointments listed in your individual responsibility plan;

(d) Follow the participation and attendance rules of the people who provide your assigned WorkFirst services or activities; and

(e) Accept available paid employment when it meets the criteria in WAC 388-310-1500.

**(2) What happens if I don't meet WorkFirst requirements?**

(a) If you do not meet WorkFirst requirements, we will send you a letter telling you what you did not do, and inviting you to a noncompliance case staffing. ~~((The letter will also schedule a home visit that will happen if you don't attend your noncompliance case staffing. We may schedule an alternative meeting, instead of a home visit, when there are safety or access issues.))~~

(i) A noncompliance case staffing is a meeting with you, your case manager, and other people who are working with your family, such as representatives from tribes, community or technical colleges, employment security, ~~((the children's administration))~~ department of children, youth, and families, family violence advocacy providers or limited-English proficient (LEP) pathway providers to review your situation and compliance with your participation requirements.

(ii) You will be notified when your noncompliance case staffing is scheduled so you can attend.

(iii) You may invite anyone you want to come with you to your noncompliance case staffing.

(b) You will have ten days to contact us so we can talk with you about your situation. You can contact us in writing, by phone, by going to the noncompliance case staffing ~~((appointment))~~ described in the letter, or by asking for an individual appointment.

(c) If you do not contact us within ten days, we will make sure you have been screened for family violence and other barriers to participation and that we provided necessary supplemental accommodations as required by chapter 388-472 WAC. We will use existing information to decide whether:

(i) You were unable to do what was required; or

(ii) You were able, but refused, to do what was required.

(d) If you had a good reason not to do a required activity we will work with you and may change the requirements in your individual responsibility plan if a different WorkFirst activity would help you move towards independence and employment sooner. If you have been unable to meet your WorkFirst requirements because of family violence, you and your case manager will develop an individual responsibility plan to help you with your situation, including referrals to appropriate services.

~~((e) If you do not attend your noncompliance case staffing, and we determine you did not have a good reason, we will conduct the home visit (or alternative meeting) to review your circumstances and discuss next steps and options.))~~

**(3) What is considered a good reason for not doing what WorkFirst requires?**

You have a good reason if you were not able to do what WorkFirst requires (or get an excused absence, described in WAC 388-310-0500(5)) due to a significant problem or event outside your control. Some examples of good reasons include, but are not limited to:

(a) You had an emergent or severe physical, mental or emotional condition, confirmed by a licensed health care professional that interfered with your ability to participate;

(b) You were threatened with or subjected to family violence;

(c) You could not locate child care for your children under thirteen years that was:

(i) Affordable (did not cost you more than your copayment would under the working connections child care program in chapter 110-15 WAC);

(ii) Appropriate (licensed, certified or approved under federal, state or tribal law and regulations for the type of care you use and you were able to choose, within locally available options, who would provide it); and

(iii) Within a reasonable distance (within reach without traveling farther than is normally expected in your community).

(d) You could not locate other care services for an incapacitated person who lives with you and your children.

(e) You had an immediate legal problem, such as an eviction notice; or

(f) You are a person who gets necessary supplemental accommodation (NSA) services under chapter 388-472 WAC and your limitation kept you from participating. If you have a good reason because you need NSA services, we will review your accommodation plan.

**(4) What happens in my noncompliance case staffing?**

(a) At your noncompliance case staffing we will ensure you were offered the opportunity to participate and discuss with you:

(i) Whether you had a good reason for not meeting WorkFirst requirements.

(ii) What happens if you are sanctioned;

(iii) How you can participate and get out of sanction status;

(iv) How you and your family benefit when you participate in WorkFirst activities;

(v) That your case may be closed after you have been in grant reduction sanction status for ~~((two))~~ ten months in a row;

(vi) How you plan to care for and support your children if your case is closed. We will also discuss the safety of your family, as needed, using the guidelines under RCW 26.44.030; and

(vii) How to reapply if your case is closed.

(b) If you do not come to your noncompliance case staffing, we will make a decision based on the information we have ~~((and))~~. We will send you a letter letting you know whether we found that you had a good reason for not meeting WorkFirst requirements.

**(5) ~~((What happens if we do a home visit because you didn't attend your noncompliance case staffing?~~**

~~If you didn't attend your noncompliance case staffing, and we determined you did not have a good reason for failure to meet WorkFirst requirements, we will attempt to contact you during your scheduled home visit (or alternative meeting).~~

~~(a) If we are able to contact you, we will review the information that we planned to discuss at your noncompliance case staffing, including whether you had a good reason for failing to meet WorkFirst requirements and how you can participate and get out of sanction status. If you don't have a good reason, we will follow the process to place you in sanction status.~~

~~(b) If we are unable to contact you, we will follow the process to place you in sanction status based on the determination we made at your noncompliance case staffing.~~

~~(6-))~~ **What if we decide that you did not have a good reason for not meeting WorkFirst requirements?**

(a) Before you are placed in sanction, a supervisory level employee will review your case to make sure:

(i) You knew what was required;

(ii) You were told how you can resume WorkFirst participation to avoid or end your sanction;

(iii) We tried to talk to you and encourage you to participate; and

(iv) You were given a chance to tell us if you were unable to do what we required.

(b) If we decide that you did not have a good reason for not meeting WorkFirst requirements, and a supervisory level employee approves the sanction and sanction penalties, we will send you a letter that tells you:

(i) What you failed to do;

(ii) That you are in sanction status;

(iii) Penalties that will be applied to your grant;

(iv) When the penalties will be applied;

(v) How to request an administrative hearing if you disagree with this decision; and

(vi) How to end the penalties and get out of sanction status.

~~(c) ((If your case is closed because you failed to attend your noncompliance case staffing and home visit (or alternative meeting), this information will be included in your termination letter.~~

~~(d-))~~ We will also provide you with information about resources you may need if your case is closed. If you are sanctioned, then we will actively attempt to contact you another way so we can talk to you about the benefits of participation and how to end your sanction.

~~((7-))~~ **(6) What is sanction status?**

When you are a mandatory WorkFirst participant, you must follow WorkFirst requirements to qualify for your full grant. If you or someone else on your grant doesn't do what is required and you can't prove that you had a good reason, you are placed in WorkFirst sanction status.

~~((8-))~~ **(7) Are there penalties when you or someone in your household goes into sanction status?**

When you or someone in your household is in sanction status, we impose penalties. The penalties last until you or the household member meet WorkFirst requirements. ~~((There are different penalties depending on if you attended your noncompliance case staffing or home visit (or alternative meeting).))~~ Your household will only enter sanction status if we determine that you or someone else in your household did not have a good reason for failing to meet the WorkFirst requirements.

~~(a) ((If you attended your noncompliance case staffing or home visit (or alternative meeting) and entered sanction status,))~~ You will receive a grant reduction sanction penalty following two months of noncompliance.

~~((i-))~~ (b) Your grant is reduced by one person's share or forty percent, whichever is more.

~~((ii-))~~ (c) The reduction is effective the first of the month following ten-day notice from the department; and

~~((iii-))~~ (d) Your case may be closed effective the first of the month after your grant has been reduced for ~~((two))~~ ten months in a row.

~~((b) If you did not attend your noncompliance case staffing or home visit (or alternative meeting) and entered sanction status you will receive a case closure sanction penalty.~~

~~(i) Your case may be closed the first of the month following the ten-day notice from the department.~~

~~(ii) If your case is reopened under subsection (14)(b), you will remain in sanction status and receive a grant reduction sanction penalty.~~

~~(A) Your grant is reduced by one person's share or forty percent, whichever is more.~~

~~(B) The reduction is effective the first of the month that your grant is reopened; and~~

~~(C) Your case may be closed effective the first of the month after your grant has been reduced for two months in a row.~~

~~(9)) **(8) What happens before your case is closed due to sanction?**~~

~~(a) Before we close your case due to sanction status, we will send you a letter to tell you:~~

~~((a)) (i) What you failed to do;~~

~~((b)) (ii) When your case will be closed;~~

~~((c)) (iii) How you can request an administrative hearing if you disagree with this decision;~~

~~((d)) (iv) How you can end your penalties and keep your case open (if you are able to participate for four weeks in a row before we close your case); and~~

~~((e)) (v) How your participation before your case is closed can be used to meet the participation requirement in subsection ((13)) (12).~~

~~(b) Attempt to contact you each month to begin the process of ending penalties and getting out of sanction status.~~

~~((10)) **(9) What happens ((if)) to my WorkFirst sanction ((grant reduction penalty started before November)) after July 1, ((2014)) 2021?**~~

~~If ((you are in)) your case enters sanction ((and entered sanction before November)) status after July 1, ((2014)) 2021, your case may be closed after you have been in grant reduction sanction status for ((four)) ten months in a row.~~

~~((11)) **(10) How do I resume participation to avoid or end ((the penalties and get out of)) sanction status?**~~

~~((To end the penalties and get out of sanction status:))~~

~~(a) You must provide the information we requested to develop your individual responsibility plan; and/or~~

~~(b) Start and continue to do your required WorkFirst activities for four weeks in a row (that is, twenty-eight calendar days). The four weeks starts on the day you complete your comprehensive evaluation and you agree to your individual responsibility plan activities.~~

~~((12)) **(11) What happens when I get out of sanction status before my case is closed?**~~

~~When you get out of sanction status before your case is closed, your grant will be restored to the level you are eligible for beginning the first of the month following your four weeks of participation. For example, if you finished your four weeks of participation on June 15, your grant would be restored on July 1.~~

~~((13)) **(12) What if I reapply for TANF or SFA and I was in sanction status when my case closed?**~~

~~(a) For cases that close on or after July 1, 2021:~~

(i) If your case closed due to sanction, you will need to follow the sanction reapplication process in subsection ~~((14))~~ (13).

(ii) If your case closed for another reason while you were in sanction status and is reopened, you will reopen in ~~((month two of))~~ grant reduction sanction status. For example, if you closed while you were in month four of grant reduction sanction status, your grant will be opened in month five of grant reduction sanction status.

(b) For cases that closed prior to July 1, 2021, your case will not open in sanction status, and subsection (13) will not apply.

~~((14))~~ (13) What if I reapply for TANF or SFA after my case is closed due to sanction?

~~((a) Except as specified in subsection (14)(b))~~ If you reapply for TANF or SFA after your case is closed due to sanction, you must participate for four weeks in a row before you can receive cash. Once you have met your four week participation requirement, your cash benefits will start, going back to the date we had all the other information we needed to make an eligibility decision.

~~((b) We will take the actions below if you received the sanction penalty in subsection (8)(b), you reapply for TANF or SFA after your case is closed due to sanction and you complete the interview required under WAC 388-452-0005 by the end of the month that your benefits stopped. For example, if your benefits stop effective July 1, you must reapply and complete the interview by July 31. If you meet this time-frame:~~

~~(i) We will undo your case closure sanction penalty; and~~

~~(ii) If you are determined eligible, we will reopen your grant in sanction status with a grant reduction sanction penalty, going back to the effective date of your case closure.)~~

[Statutory Authority: RCW 41.05.021, 74.04.050, 74.04.055, 74.04.057, 74.08.025, 74.08.090, 74.09.035, 74.09.530, 74.62.030, chapters 74.08A, and 74.12 RCW. WSR 20-05-046, § 388-310-1600, filed 2/13/20, effective 3/15/20. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08.025, chapters 74.08A and 74.12 RCW, and 2014 c 221. WSR 14-20-104, § 388-310-1600, filed 9/30/14, effective 11/1/14. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.025, 74.08.090, chapters 74.08A and 74.12 RCW, and 2011 c 42. WSR 11-22-042, § 388-310-1600, filed 10/27/11, effective 12/1/11. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and chapters 74.08A and 74.12 RCW. WSR 10-24-069, § 388-310-1600, filed 11/30/10, effective 12/31/10. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, 34.05.310, and chapters 74.08A and 74.12 RCW. WSR 10-12-044, § 388-310-1600, filed 5/26/10, effective 7/1/10. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, and 34.05.310 (4)(c). WSR 08-15-136, § 388-310-1600, filed 7/22/08, effective 8/22/08. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.500, 74.04.510, 74.08.090. WSR 07-09-081, § 388-310-1600, filed 4/17/07, effective 6/1/07. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.260, chapter 74.08A RCW. WSR 06-10-035, § 388-310-1600, filed 4/27/06, effective 6/1/06. Statutory Authority: RCW 74.08.090, 74.04.050, and 74.08A.340. WSR 04-07-025, § 388-310-1600, filed 3/8/04, effective 5/1/04. Statutory Authority: RCW 74.08A.010(4), 74.08A.340, 74.08.090, 74.04.050. WSR 02-15-067, § 388-310-1600, filed 7/11/02, effective 8/1/02. Statutory Authority: RCW 74.08.090 and 74.04.050. WSR 99-10-027, § 388-310-1600, filed 4/28/99, effective 5/29/99; WSR 98-23-037, § 388-310-1600, filed 11/10/98, effective

12/11/98; WSR 97-20-129, § 388-310-1600, filed 10/1/97, effective  
11/1/97.]



## WSR 21-12-033

## PERMANENT RULES

## SKAGIT VALLEY COLLEGE

[Filed May 25, 2021, 9:45 a.m., effective June 25, 2021]

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

Purpose: In June 2020, a new state law (HB 2513) was enacted that prevents colleges from withholding official transcripts for students owing past due fee amounts. As such, we have updated WAC 132D-122-010 Policy, to remove all references to withholding transcripts when fees are past due. While reviewing the language in WAC 132D-122-010 to be in compliance with the new law, college staff also reviewed a related WAC 132D-122-020. This review revealed the need to update methods for notifying students of outstanding debt to the college. WAC 132D-133-020 includes information regarding the current addresses of Skagit Valley College campuses and centers, as well as language regarding operational hours.

Citation of Rules Affected by this Order: Amending WAC 132D-122-010 Policy, 132D-122-020 Notification, and 132D-133-020 Organization—Operational—Information.

Statutory Authority for Adoption: RCW 28B.50.140.

Adopted under notice filed as WSR 21-07-059 on March 15, 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 1, Repealed 0.

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

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

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

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

Date Adopted: May 25, 2021.

Lisa Radeleff  
Rules Coordinator

## OTS-2959.1

AMENDATORY SECTION (Amending WSR 89-09-039, filed 4/14/89)

**WAC 132D-122-010 Policy.** If any person, including faculty, staff, student or former student, is indebted to the institution for an outstanding overdue debt, the institution need not provide any further services of any kind to such individual, including but not limited to transmitting files, records, (~~transcripts~~) or other services which have been requested by such person.

[Statutory Authority: RCW 28B.50.140. WSR 89-09-039 (Order 89-04), § 132D-122-010, filed 4/14/89.]

AMENDATORY SECTION (Amending WSR 89-09-039, filed 4/14/89)

**WAC 132D-122-020 Notification.** (1) Upon receiving a request for services where there is an outstanding debt due the institution from the requesting person, the institution shall notify the person in person, or by email or first-class mail that the services will not be provided since there is an outstanding debt due. The person shall be told that until the debt is satisfied, no such services as are requested will be provided.

(2) The letter of notification shall also state that the person has a right to a brief adjudicative proceeding before a person designated by the president of the institution. The proceeding must be requested within twenty days of the date of mailing notification of refusal to provide services.

[Statutory Authority: RCW 28B.50.140. WSR 89-09-039 (Order 89-04), § 132D-122-020, filed 4/14/89.]

### OTS-2960.1

AMENDATORY SECTION (Amending WSR 90-05-045, filed 2/16/90, effective 3/19/90)

**WAC 132D-133-020 Organization—Operation—Information.** (1) Organization. Skagit Valley College, Community College District No. 4, is established in Title 28B RCW as a public institution of higher education. The institution is governed by a five-member board of trustees, appointed by the governor. The board employs a president, who acts as the chief executive officer of the institution. The president establishes the structure of the administration.

(2) Operation. The administrative office is located at the following address:

2405 E. College Way  
Mount Vernon, WA 98273

The office hours are 8:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays. During the summer the college operates on an alternate schedule. Specific information is available through the college public information office and on the college website: [www.skagit.edu](http://www.skagit.edu). Educational operations are also located at the following addresses:

Whidbey Island Campus  
(~~(1201 E.)~~) 1900 S.E. Pioneer Way  
Oak Harbor, WA 98277

(~~(South Whidbey Campus  
5611 S. Bayview Road  
Langley, WA 98260)~~)

San Juan Center  
(~~(P.O. Box 1432)~~) 221 Weber Way  
Friday Harbor, WA 98250

Marine Technology Center  
1606 R Avenue  
Anacortes, WA 98221

Cardinal Craft Brewing Academy  
15579 Peterson Road  
Burlington, WA 98233

(3) Information. Additional and detailed information concerning the educational offerings may be obtained from the catalog, copies of which are available at the following address:

2405 E. College Way  
Mount Vernon, WA 98273

[Statutory Authority: RCW 28B.50.140, chapters 34.05 and 69.41 RCW and 26 U.S.C. 1232g. WSR 90-05-045, § 132D-133-020, filed 2/16/90, effective 3/19/90.]

## WSR 21-12-034

## PERMANENT RULES

## EASTERN WASHINGTON UNIVERSITY

[Filed May 25, 2021, 10:23 a.m., effective June 25, 2021]

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

Purpose: A new regulation is being added, WAC 172-108-100, to identify the process for requesting a hearing to appeal the athletic department's decision to reduce, revoke, or not renew athletic aid.

Citation of Rules Affected by this Order: New WAC 172-108-100; and amending WAC 172-108-050.

Statutory Authority for Adoption: RCW 28B.35.120(12).

Adopted under notice filed as WSR 21-07-048 on March 12, 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 1, 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 1, Amended 1, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: May 21, 2021.

Annika Scharosch  
Associate Vice President for  
Civil Rights, Compliance and  
Enterprise Risk Management

**OTS-2949.1**

AMENDATORY SECTION (Amending WSR 21-01-104, filed 12/11/20, effective 1/11/21)

**WAC 172-108-050 Brief adjudicative proceedings.** In accordance with RCW 34.05.410 (1)(a), the procedures identified in RCW 34.05.482 through 34.05.494 apply to all brief adjudicative proceedings at Eastern Washington University. All applications for a brief adjudicative proceeding shall be in writing. Application forms are available from: University Policy Administration; Tawanka 211; Eastern Washington University; Cheney, WA 99004-2496. Written application for a brief adjudicative proceeding in response to the institution's action must be submitted to the university within twenty-one calendar days of the action, unless a different time frame is specified in the regulations identified below that apply to the type of decision being challenged. When required by law or constitutional right, brief adjudicative proceedings shall be used in all matters of appeal related to:

(1) Residency determinations made pursuant to RCW 28B.15.013 and chapter 250-18 WAC;

(2) Challenges to contents of education records, review of the denial to inspect such records, or challenges to the disclosure of such records. In addition to the rules identified below, these challenges are governed by chapter 172-191 WAC;

(3) Student conduct proceedings, if the potential sanction for the alleged misconduct does not include suspension, expulsion, formal Title IX complaints, or an allegation of felony-level sexual misconduct. In addition to the rules identified below, these proceedings are governed by chapter 172-121 WAC;

(4) Outstanding debts owed by students or employees, pursuant to chapters 172-124 and 172-144 WAC;

(5) Traffic and parking violations and revocations of any parking permit pursuant to chapter 172-100 WAC;

(6) Student academic integrity proceedings, if the potential sanction for the alleged misconduct does not include suspension or expulsion. In addition to the rules identified in this section, these proceedings are governed by chapter 172-90 WAC;

(7) Library fines and charges;

(8) Reduction, cancellation, or nonrenewal of institutional financial aid when based in any degree on athletics ability per National Collegiate Athletic Association rules as detailed in WAC 172-108-100;

(9) Administrative decisions regarding statutorily mandated tuition and/or fee waivers;

(10) Research integrity violations in accordance with EWU Policy 302-05 when required by federal law;

(11) Citations issued by university police regarding the use of golf carts and utility vehicles, in accordance with EWU Policy 603-06;

(12) Fines imposed for impermissible use of tobacco, electronic cigarettes, and related products in accordance with WAC 172-122-310;

(13) Financial aid appeals as provided for by federal law and in accordance with EWU policies for satisfactory academic progress for undergraduate, post-baccalaureate, and graduate students;

(14) Denial of work study or termination from a work study position when required by federal law;

(15) Notice against trespass issued per WAC 172-122-200;

(16) Denial of request to waive undergraduate housing requirement under chapter 172-130 WAC;

(17) Fines assessed under a university housing agreement; and

(18) Penalties imposed for violations of pet control regulations in accordance with chapter 172-115 WAC.

[Statutory Authority: RCW 28B.35.120(12). WSR 21-01-104, § 172-108-050, filed 12/11/20, effective 1/11/21; WSR 17-11-051, § 172-108-050, filed 5/15/17, effective 6/15/17; WSR 14-24-038, § 172-108-050, filed 11/24/14, effective 12/25/14; WSR 92-09-100, § 172-108-050, filed 4/20/92, effective 5/21/92.]

#### NEW SECTION

**WAC 172-108-100 Procedures for reduction, revocation, or of athletic scholarships.** In accordance with NCAA requirements, a student athlete who is receiving athletic aid based in any degree on athletic ability has the right to request an appeal hearing when the athletic aid is reduced, revoked, or not renewed and the student has remaining athletic eligibility. The following process governs the student ath-

lete's appeal of the athletic department's decision to reduce, revoke, or not renew athletic aid.

(1) The athletic department makes the initial decision to reduce, revoke, or not renew the student's athletic aid. Before making such decision, the athletic department should provide the student athlete with notice that such a decision may be made and give the student an opportunity to respond. If the decision is made to reduce, revoke, or not renew the aid, the athletic department should convey such information to the financial aid and scholarship office with a brief statement of the reason for the decision.

(2) EWU's financial aid and scholarship office will then formally notify the student athlete of the athletic department's decision to reduce, revoke, or not renew the student's athletic aid. This notification will be sent via email to the student's official university email account and will include information about how to appeal the decision.

(3) The student will have twenty-one calendar days from the date the email is sent to request an appeal. Any request for appeal must be directed to the director of financial aid and sent via email to [fi-  
naid@ewu.edu](mailto:fi-<br/>naid@ewu.edu). Requests for appeal must be received within twenty-one days or they will be dismissed as untimely.

(4) Upon timely receipt of an appeal, the director of financial aid will convene the athletic aid appeals committee. The committee shall consist of four people who represent various areas of the university. The director serves as the presiding officer and a voting member of the committee. The director will schedule a hearing with the student, head coach or other athletics department representative, and the committee.

(5) Prior to the hearing, the student and head coach, or designee, should provide the committee with a written statement outlining the reasons they agree or disagree with the decision to reduce, revoke, or not renew athletic aid, along with any supporting documentation. The documentation may include statements from witnesses. These statements and documentation are reviewed by the committee in advance of the hearing.

(6) At the hearing, the director will ask the head coach or other athletics representative to explain the basis for their decision regarding athletic aid. The committee and athlete may ask questions of this head coach/athletics representative. The athlete will then have the opportunity to explain why they disagree with the decision. The committee and head coach may ask questions of the athlete. The head coach/athletics representative will then have the opportunity to provide a rebuttal statement.

(7) Either party in the hearing may be represented by an advisor as set forth in WAC 172-108-035. The hearing will be recorded and retained in accordance with EWU's records retention schedule.

(8) The student has the burden of proving by a preponderance of the evidence that the athletic department's decision to reduce, revoke, or not renew athletic aid was not supported by substantial evidence or is arbitrary or capricious. The committee may affirm, reverse, or modify the athletic department's decision regarding athletic aid eligibility. The committee's decision must be supported by a majority of committee members.

(9) Within twenty days of the hearing, the presiding officer will issue a written order containing a brief statement of the reasons for the committee's decision. The decision should be communicated in writing to both parties and should indicate that it is the final decision

of the university and judicial review may be available under chapter 34.05 RCW.

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## WSR 21-12-036

## PERMANENT RULES

## EASTERN WASHINGTON UNIVERSITY

[Filed May 25, 2021, 10:28 a.m., effective June 25, 2021]

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

Purpose: Due to personnel changes, the contact information for the public records officer is being updated. Eastern Washington University's law enforcement department also recently started using body cameras, so information is added about requests for recordings from such cameras.

Citation of Rules Affected by this Order: Amending WAC 172-10-020, 172-10-030, and 172-10-080.

Statutory Authority for Adoption: RCW 28B.35.120(12).

Adopted under notice filed as WSR 21-07-049 on March 12, 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 3, 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 3, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: May 21, 2021.

Annika Scharosch  
Associate Vice President for  
Civil Rights, Compliance and  
Enterprise Risk Management

## OTS-2950.2

AMENDATORY SECTION (Amending WSR 14-24-034, filed 11/24/14, effective 12/25/14)

**WAC 172-10-020 Public records officer.** (1) Any person wishing to request access to public records of Eastern Washington University, or seeking assistance in making such a request should contact the public records officer of Eastern Washington University. Throughout this chapter, references to the public records officer shall mean the public records officer or his/her designee.

(2) Contact information:

Public Records Officer  
Eastern Washington University  
Business and Finance Office  
(~~(307 Showalter Hall)~~)  
211 Tawanka Commons  
Cheney, WA 99004



Phone: ((~~509-359-4210~~) 509-359-7496)

Fax: ((~~509-359-6705~~) 509-359-2266)

Email: prr@ewu.edu

(3) Information is also available at the Eastern Washington University website at ((~~http://access.ewu.edu/public-records~~)) https://inside.ewu.edu/rcp/pr/.

(4) The public records officer and Eastern Washington University shall assist requestors, comply with the Public Records Act, and provide public records training and assistance to university employees.

[Statutory Authority: RCW 28B.35.120(12). WSR 14-24-034, § 172-10-020, filed 11/24/14, effective 12/25/14.]

AMENDATORY SECTION (Amending WSR 14-24-034, filed 11/24/14, effective 12/25/14)

**WAC 172-10-030 Availability of public records.** (1) Hours for inspection of records. Public records are available for inspection and copying during normal business hours of Eastern Washington University, Monday through Friday, 8:00 a.m. to 5:00 p.m., excluding legal holidays, unless the requestor and the public records officer agree on a different time. Records must be inspected at the offices of Eastern Washington University.

(2) *University Policy Index.* An index of Eastern Washington University's generally applicable rules, policies, and procedures is available for use by members of the public and may be accessed online at [www.ewu.edu/policy](http://www.ewu.edu/policy).

(3) Organization of records. Eastern Washington University will maintain its records in a reasonably organized manner. Eastern Washington University will take reasonable actions to protect records from damage and disorganization. A requestor shall not take Eastern Washington University records from Eastern Washington University offices without the permission of the public records officer. A variety of records are available on the Eastern Washington University website at [www.ewu.edu](http://www.ewu.edu). Requestors are encouraged to view the documents available on the website prior to submitting a records request.

(4) Making a request for public records.

(a) Any person wishing to inspect or copy public records of Eastern Washington University should make the request in writing on the Eastern Washington University public records request form, or by letter, fax, or email addressed to the public records officer and including the following information:

(i) Name of requestor;

(ii) Address of requestor;

(iii) Other contact information, including telephone number and any email address;

(iv) Adequate identification of the public records for the public records officer to locate the records;

(v) The date and time of day of the request; and

(vi) A verification that the records requested shall not be used to compile a commercial sales list.

(b) If the requestor wishes to have copies of the records made instead of simply inspecting them, he or she should so indicate and make arrangements to pay for copies of the records or a deposit. Pur-

suant to WAC 172-10-080, standard photocopies will be provided at fifteen cents per page.

(c) A form is available for use by requestors at the office of the public records officer and online at (~~http://access.ewu.edu/Documents/Public%20Records/public-records-request-form.pdf~~) <https://inside.ewu.edu/rcp/pr/>.

(d) The public records officer may accept requests for public records that contain the above information by telephone or in person, but is not required to do so. If the public records officer accepts such a request, he or she will confirm receipt of the information and the substance of the request in writing.

[Statutory Authority: RCW 28B.35.120(12). WSR 14-24-034, § 172-10-030, filed 11/24/14, effective 12/25/14.]

AMENDATORY SECTION (Amending WSR 18-06-019, filed 2/27/18, effective 3/30/18)

**WAC 172-10-080 Costs of providing copies of public records. (1)**

~~((The following copy fees and payment procedures apply to requests under chapter 42.56 RCW received on or after July 23, 2017.))~~ Pursuant to RCW 42.56.120 (2)(b), Eastern Washington University is not calculating all actual costs for copying records because to do so would be unduly burdensome as the university does not have the resources to conduct a study to determine all actual copying costs, it is difficult to calculate all costs directly incident to copying records, and to conduct such a study would interfere with other essential university functions. In addition, the university may charge the requestor the reasonable costs of redacting, altering, distorting, pixelating, suppressing or otherwise obscuring any portion of body camera recordings in accordance with RCW 42.56.240 regardless of whether or not the requestor asks for a copy of such recordings or asks to view them in person.

(2) Costs for copies. The university will charge for copies of records pursuant to the default fees in RCW 42.56.120 (2)(b) and (c). The university may also use any other method authorized by the Public Records Act for imposing charges for public records including, but not limited to, charging a flat fee, charging a customized service charge, or charging based on a contract or other agreement with a requestor. A copy of the university's fee schedule will be available on its public records website.

(3) The university may waive charges assessed for records when the public records officer determines collecting a fee is not cost effective.

(4) There is no fee for inspecting public records, unless it requires customized access to a database or the redaction of body camera footage. Before beginning to make the copies, the public records officer may require a deposit of up to ten percent of the estimated costs of copying all the records selected by the requestor. The public records officer may also require the payment of the remainder of the copying costs before providing all the records, or the payment of the costs of copying an installment before providing that installment. Eastern Washington University will not charge sales tax when it makes copies of public records.

(5) Costs of mailing. Eastern Washington University may also charge actual costs of mailing, including the cost of the shipping container.

(6) Payment. Payment may be made by cash, check, or money order to Eastern Washington University.

[Statutory Authority: RCW 28B.35.120(12) and 42.56.070. WSR 18-06-019, § 172-10-080, filed 2/27/18, effective 3/30/18. Statutory Authority: RCW 28B.35.120(12). WSR 14-24-034, § 172-10-080, filed 11/24/14, effective 12/25/14.]

## WSR 21-12-037

## PERMANENT RULES

## EASTERN WASHINGTON UNIVERSITY

[Filed May 25, 2021, 10:31 a.m., effective June 25, 2021]

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

Purpose: Clarifies that parties are only allowed to ask questions of witnesses in full adjudicative hearings. Modifies the language of some of the violations in the student conduct code, including the addition of reckless endangerment.

Citation of Rules Affected by this Order: Amending WAC 172-121-030 and 172-121-200.

Statutory Authority for Adoption: RCW 28B.35.120(12).

Adopted under notice filed as WSR 21-07-050 on March 12, 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: May 21, 2021.

Annika Scharosch  
Associate Vice President for  
Civil Rights, Compliance and  
Enterprise Risk Management

## OTS-2948.1

AMENDATORY SECTION (Amending WSR 20-19-046, filed 9/10/20, effective 10/11/20)

**WAC 172-121-030 Rights of students.** Any student or student organization charged with any violation of the student conduct code and the complainant in the case of an allegation of sexual misconduct or interpersonal violence, have the following rights where applicable:

- (1) The right to a fair and impartial conduct review process;
- (2) The right to prior written notice to attend a prehearing conference or hearing;
- (3) The right to remain silent during any conduct review hearing;
- (4) The right to know who filed the complaint against them as described in WAC 172-121-110;
- (5) The right to speak on their own behalf in all proceedings;
- (6) The right to hear all information and view all material presented against him or her;
- (7) The right to call witnesses for a full hearing as described in WAC 172-121-122;

(8) The right to ask or submit questions to be asked of witnesses for a full hearing, in a method determined by the conduct review officer, as described in WAC 172-121-122;

(9) The right to consult an advisor as described in WAC 172-121-105(3);

(10) The right to be presumed not responsible;

(11) Complainants have the right to opt out of participating in the student conduct process;

(12) The right to appeal as provided in WAC 172-121-130; and

(13) The right to be subjected to university disciplinary action only one time for the same conduct.

[Statutory Authority: RCW 28B.35.120(12). WSR 20-19-046, § 172-121-030, filed 9/10/20, effective 10/11/20. Statutory Authority: RCW 28B.35.120(12) and 42.56.070. WSR 19-01-047, § 172-121-030, filed 12/13/18, effective 1/13/19. Statutory Authority: RCW 28B.35.120(12). WSR 13-24-123, § 172-121-030, filed 12/4/13, effective 1/4/14; WSR 09-12-001, § 172-121-030, filed 5/20/09, effective 6/20/09.]

AMENDATORY SECTION (Amending WSR 20-19-046, filed 9/10/20, effective 10/11/20)

**WAC 172-121-200 Violations.** The following are defined as offenses which are subject to disciplinary action by the university.

(1) **Acts of academic dishonesty.** University policy regarding academic dishonesty is governed by the university academic integrity policy.

(2) **Abuse, threats and harassment.**

(a) Abuse. Assault and other forms of physical abuse.

(b) Threats. Any conduct or statement that, when viewed objectively, threatens bodily harm to another person or that endangers the health or safety of another person.

(c) Bullying. Bullying is behavior that is:

(i) Intentional;

(ii) Targeted at an individual or group;

(iii) Repeated;

(iv) Hostile or offensive; and

(v) Creates an intimidating and/or threatening environment that is so severe or pervasive, and objectively offensive, that it substantially interferes with another's ability to work, study, participate in, or benefit from the university's programs and activities.

(d) Discriminatory harassment. Physical, verbal, electronic, or other conduct based on an individual's race, color, religion, national origin, sex, age, pregnancy, marital status, sexual orientation, gender identity or expression, citizenship or immigration status, disability, or veteran status when one of the conditions outlined in (c) (i) or (ii) of this subsection are present:

(i) Submission to, or rejection of such conduct is made implicitly or explicitly a term or condition of a person's instruction, academic standing, employment, or participation in any university program, activity, or benefit, or is used as a basis for evaluation in making academic or personnel decisions; or

(ii) Such conduct creates a hostile environment. A hostile environment is created when the conduct is sufficiently severe or pervasive, and objectively offensive, that it unreasonably interferes with

an individual's academic or work performance, ability to participate in or benefit from the university's programs, services, opportunities, or activities. Unreasonable interference is viewed from both a subjective and objective standard.

(e) Interpersonal violence. Interpersonal violence includes domestic violence, dating violence, and stalking.

(i) Domestic violence means a felony or misdemeanor crime of violence committed by: A current or former spouse or intimate partner of the complainant; a person with whom the complainant shares a child in common; a person who is cohabitating with or has cohabitated with the complainant as a spouse or intimate partner; adult persons related by blood or marriage; adult persons who are presently residing together or who have resided together in the past; and, persons who have a biological or legal parent-child relationship. "Domestic violence" is further defined by 34 U.S.C. Sec. 12291(a)(8).

(ii) Dating violence means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the complainant. In determining whether such a relationship exists, the following factors are considered:

(A) The length of time the relationship has existed;

(B) The type of relationship; and

(C) The frequency of interaction between the parties involved in the relationship.

(f) Stalking. Stalking is engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

(i) Fear for their health and/or safety or the health/safety of others; or

(ii) Suffer substantial emotional distress.

(g) Retaliation. Any intimidation, threat, coercion, or discrimination against a person for the purpose of interfering with a person's rights under this code or because a person has made a report, complaint, testified, assisted, or participated or refused to participate in an investigation, proceeding, or hearing under this code is prohibited and is a separate violation of this code. Any actual or threatened retaliation is prohibited and is a separate violation of this code.

(3) **Sexual misconduct.** Sexual misconduct includes, but is not limited to:

(a) Sexual harassment. Sexual harassment is conduct that meets one or more of the following:

(i) An EWU employee conditioned the provision of an aid, benefit, or service of the university on the complainant's participation in unwelcome sexual conduct; or

(ii) Unwelcome conduct on the basis of sex that is determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies the complainant equal access to the university's programs or activities.

In determining whether conduct is severe or pervasive, the university shall consider all relevant circumstances from both an objective and subjective perspective, including the type of harassment (verbal or physical); the frequency and severity of the conduct; the age, sex, and relationship of the individuals involved; the degree to which the conduct affected the complainant; the setting and context in which the harassment occurred; whether other incidents have occurred at the university; and other relevant factors.

(b) Sexual assault. Any sexual act directed against another person, without a person's consent, including instances where a person is

not capable of giving consent. Consent means actual words or conduct indicating freely given agreement to the sexual act. Consent cannot be inferred from silence, passivity, or lack of active resistance. There is no consent where there is a threat of force or violence or any other form of coercion or intimidation, physical or psychological. Sexual activity is nonconsensual when one person is incapable of consent by reason of mental incapacity, drug/alcohol use, illness, unconsciousness, age, or physical condition. Incapacitation due to drugs or alcohol refers to an individual who is in a state of intoxication such that the individual is incapable of making rational, reasonable decisions because the person lacks the capacity to give knowing consent.

Sexual assault includes:

(i) Rape: The penetration, no matter how slight, of the vagina or anus, with any body part or object, or oral penetration by a sex organ of another person, without a person's consent.

(ii) Fondling: The touching of the private body parts of another person for the purpose of sexual gratification, without the person's consent. Private body parts include, but are not limited to, breasts, genitalia, thighs, and buttocks.

(iii) Incest: Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by state law.

(iv) Statutory rape: Sexual intercourse with a person who is under the age of consent as defined by state law.

(4) **Other forms of inappropriate sexual behavior.** Other forms of inappropriate sexual behavior that do not fall under Title IX or the definition of sexual harassment or interpersonal violence, such as indecent liberties; indecent exposure; sexual exhibitionism; prostitution or the solicitation of a prostitute; peeping or other voyeurism; sexual misconduct with a minor; or going beyond the boundaries of consent, such as by allowing others to view consensual sex or the nonconsensual recording of sexual activity.

(5) **Unauthorized use of electronic or other devices.** Making an audio or video recording of any person while on university premises without the person's prior knowledge or without their effective consent, when such a recording is of a private conversation or of images taken of a person(s) at a time and place where the person would reasonably expect privacy and where such recordings are likely to cause injury or distress. This includes, but is not limited to, surreptitiously taking pictures of another person in a gym, locker room, or restroom, but does not include taking pictures of persons in areas which are considered by the reasonable person to be open to public view.

(6) **Property violations.** Theft of, damage to, or misuse of another person's or entity's property. This also includes any conduct or statement that, when viewed objectively, threatens to damage another's property.

(7) **Weapons.** Possession, carrying, discharge or other use of any weapon is prohibited on property owned or controlled by Eastern Washington University, except as permitted in (a) through (d) of this subsection. Examples of weapons under this section include, but are not limited to: Explosives, chemical weapons, shotguns, rifles, pistols, air guns, BB guns, pellet guns, longbows, hunting bows, throwing weapons, stun guns, electroshock weapons, and any item that can be used as an object of intimidation and/or threat, such as replica or look-alike weapons.

(a) Commissioned law enforcement officers may carry weapons, which have been issued by their respective law enforcement agencies, while on campus or other university controlled property, including residence halls. Law enforcement officers must inform the university police of their presence on campus upon arrival.

(b) A person may possess a personal protection spray device, as authorized by RCW 9.91.160, while on property owned or controlled by Eastern Washington University.

(c) A person may bring a weapon onto campus for display or demonstration purposes directly related to a class or other educational activity, provided that they obtain prior authorization from the university police department. The university police department shall review any such request and may establish conditions to the authorization.

(d) Weapons that are owned by the institution for use in organized recreational activities or by special groups, such as EWU ROTC or university-sponsored clubs or teams, must be stored in a location approved by the university police department. These weapons must be checked out by the advisor or coach and are to be used only in organized recreational activities or by legitimate members of the club or team in the normal course of the club or team's related activity.

**(8) Failure to comply.**

(a) Failure to comply with lawful and/or reasonable directions of university officials, public health officials, or law enforcement officers (~~(acting in performance of their duties on campus or affecting conduct on campus)~~);

(b) Failure to identify oneself to university officials in their course of duty, refusal or failure to appear before university officials or disciplinary bodies when directed to do so;

(c) Failure to attend any medical treatment or evaluation program when directed to do so by the dean of students or other authorized university official.

**(9) Trespassing/unauthorized use of keys.**

(a) Trespass. Entering or remaining on university property without authorization.

(b) Unauthorized use of keys. Unauthorized possession, duplication, or use of university keys or access cards.

**(10) Deception, forgery, fraud, unauthorized representation.**

(a) Knowingly furnishing false information to the university.

(b) Forgery, alteration, or misuse of (~~(university)~~) documents, records, or instruments of identification. This includes situations of identity theft where a person knowingly uses or transfers another person's identification for any purpose. It also includes situations where a student knowingly obtains, possesses, or uses another person's identification or financial information with the intent to commit a crime.

(c) Forgery (~~(of)~~), issuing a bad check, or use of another person's access device, such as a debit card, credit card, EBT, or gift card, with intent to defraud.

(d) Unauthorized representation. The unauthorized use of the name of the university or the names of members or organizations in the university community.

**(11) Safety.**

(a) Intentionally activating a false fire alarm.

(b) Making a bomb threat.

(c) Tampering with fire extinguishers, alarms, or safety equipment.

(d) Tampering with elevator controls and/or equipment.



(e) Failure to evacuate during a fire, fire drill, or false alarm.

**(12) Alcohol, drugs, and controlled substances.**

(a) Alcohol and substance violations. Use, possession, distribution, or sale of alcoholic beverages (except as permitted by university policy and state law) is prohibited. Under no circumstances may individuals under the age of twenty-one use, possess, distribute, manufacture or sell alcoholic beverages. Public intoxication is prohibited.

(b) Drugs and paraphernalia.

(i) Use, possession, distribution, manufacture, or sale of illegal drugs, paraphernalia, narcotics or controlled substances, is prohibited.

(ii) Use, possession, distribution, manufacture, or sale of marijuana is prohibited except for reasons permitted under EWU Policy 602-01 (drug and alcohol abuse prevention).

(iii) Being under the influence of marijuana or an illegal substance, while on property owned or operated by the university, is prohibited. Being under the influence of a controlled substance, except when legally prescribed by a licensed medical practitioner, is also prohibited while on property owned or operated by the university.

**(13) Hazing.** Any act which, for the purpose of initiation, admission into, affiliation with, or as a condition for continued membership in, a group or organization:

(a) Endangers the mental or physical health or safety of any student or other person;

(b) Destroys or removes public or private property; or

(c) Compels an individual to participate in any activity which is illegal or contrary to university rules, regulations or policies.

The express or implied consent of any participant is not a defense. A person who is apathetic or acquiesces in the presence of hazing violates this rule.

**(14) Disruptive conduct/obstruction.**

(a) Disruptive conduct. Conduct which unreasonably interferes with any person's ability to work or study, or obstructs university operations or campus activities.

(b) Disorderly conduct. Conduct that is disorderly, lewd, indecent or a breach of peace.

(c) Obstruction. Obstruction of the free flow of pedestrian or vehicular traffic on university premises or at university-sponsored or university-supervised events.

**(15) Violations of other laws, regulations and policies.**

(a) Violation of a local, county, state, or federal law.

(b) Violation of other university policies, regulations, contracts, or handbook provisions.

**(16) Assisting/attempts.** Soliciting, aiding, abetting, concealing, or attempting conduct in violation of this code.

**(17) Reckless endangerment.** Engaging in conduct that creates an unreasonable risk of harm to self, another person, or property, regardless of whether or not a person or property is actually harmed. This includes, but is not limited to, operating a motor vehicle or having control over a motor vehicle while under the influence of alcohol, drugs, or both.

**(18) Acts against the administration of this code.**

(a) Initiation of a complaint or charge knowing that the charge was false or with reckless disregard of its truth.

(b) Interference with or attempt to interfere with the enforcement of this code including, but not limited to, intimidation or bribery of hearing participants, acceptance of bribes, dishonesty, or disruption of proceedings and hearings held under this code.

(c) Knowing violation of the terms of any disciplinary sanction or attached conditions imposed in accordance with this code.

~~((18))~~ **(19) Other responsibilities.**

(a) Guests. A student, student group or student organization is responsible for the conduct of guests on or in university property and at functions sponsored by the university or sponsored by any recognized university organization.

(b) Students studying abroad. Students who participate in any university sponsored or sanctioned foreign country study program shall observe the following rules and regulations:

(i) The laws of the host country;

(ii) The academic and disciplinary regulations of the educational institution or residential housing program where the student is studying;

(iii) Any other agreements related to the student's study program in the foreign country; and

(iv) The student conduct code.

~~((19))~~ **(20) Student organization and/or group offenses.** Clubs, organizations, societies or similarly organized groups in or recognized by the university and/or ASEWU are subject to the same standards as are individuals in the university community. The commission of any of the offenses in this section by such groups or the knowing failure of any organized group to exercise preventive measures relative to violations of the code by their members shall constitute a group offense.

[Statutory Authority: RCW 28B.35.120(12). WSR 20-19-046, § 172-121-200, filed 9/10/20, effective 10/11/20; WSR 20-01-032, § 172-121-200, filed 12/6/19, effective 1/6/20. Statutory Authority: RCW 28B.35.120(12) and 42.56.070. WSR 19-01-047, § 172-121-200, filed 12/13/18, effective 1/13/19. Statutory Authority: RCW 28B.35.120(12). WSR 17-17-031, § 172-121-200, filed 8/9/17, effective 9/9/17; WSR 15-24-050, § 172-121-200, filed 11/23/15, effective 12/24/15; WSR 15-14-078, § 172-121-200, filed 6/29/15, effective 7/30/15; WSR 14-24-039, § 172-121-200, filed 11/24/14, effective 12/25/14; WSR 13-24-123, § 172-121-200, filed 12/4/13, effective 1/4/14; WSR 09-12-001, § 172-121-200, filed 5/20/09, effective 6/20/09.]

WSR 21-12-038

PERMANENT RULES

EASTERN WASHINGTON UNIVERSITY

[Filed May 25, 2021, 10:34 a.m., effective June 25, 2021]

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

Purpose: Eastern Washington University is requesting to repeal this chapter as information about scholarships is now contained in new chapter 172-10 WAC.

Citation of Rules Affected by this Order: Amending WAC 172-123-010.

Statutory Authority for Adoption: RCW 28B.35.120(12).

Adopted under notice filed as WSR 21-07-063 on March 16, 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 0, Repealed 1.

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 1; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: May 21, 2021.

Annika Scharosch  
Associate Vice President for  
Civil Rights, Compliance and  
Enterprise Risk Management

**OTS-2962.1**

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 172-123-010 Scholarships.

**WSR 21-12-039**  
**PERMANENT RULES**  
**PROFESSIONAL EDUCATOR**  
**STANDARDS BOARD**

[Filed May 25, 2021, 10:55 a.m., effective June 25, 2021]

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

Purpose: This proposed rule makes nonsubstantive changes to the requirements for the career guidance specialist certificate. These nonsubstantive changes include updating citations and names of certificates, as well as clarification, organizational, and grammatical changes.

Citation of Rules Affected by this Order: Amending WAC 181-77-081.

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

Adopted under notice filed as WSR 21-07-079 on May 25 [March 17], 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 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: May 25, 2021.

Maren Johnson  
Rules Coordinator

**OTS-2952.1**

AMENDATORY SECTION (Amending WSR 19-15-112, filed 7/22/19, effective 8/22/19)

**WAC 181-77-081 Requirements for certification of career guidance specialist.** Career guidance specialists must meet the following requirements in addition to those set forth in WAC 181-79A-150 (1) and (2) and 181-79A-155:

(1) **Probationary certificate.**

(a) Beginning July 1, 2018, a candidate is eligible for the probationary career guidance specialist certification if meeting one or more of the following:

(i) Completion of three years of certificated experience at the initial, continuing, residency, or professional level as a ((certificated) career and technical education administrator((7)) career and technical education ((instructor)) teacher, ((or)) career and technical education counselor, ((at the initial or continuing certificate level)) or occupational information specialist; or

(ii) Hold a valid educational staff associate - School counselor certificate as provided in WAC 181-79A-221; or

(iii) Provide documentation of six thousand hours of occupational experience of which two thousand hours shall have been in the last ten years, dealing with employment, including personnel or ~~((with))~~ placement and evaluation of workers ~~((~~r~~))~~; or experience providing career guidance, employment, or career counseling services.

(b) Such a certificate may be issued upon recommendation by ~~((the employing))~~ a school district according to the following:

(i) The candidate shall have developed a written training plan in cooperation with the career and technical education administrator. The plan must be approved by a local career and technical education advisory committee.

(ii) The plan shall develop procedures and timelines for the candidate to meet the requirements for the initial certificate.

(c) The probationary certificate is valid for two years and ~~((is renewable))~~ may be reissued one time for two additional years upon recommendation of the ~~((employing))~~ school district if the individual has completed the procedures outlined for the first year in the written training plan and has made additional progress in meeting the requirements for the initial certificate.

**(2) Initial certificate.**

(a) The initial career guidance specialist certificate is valid for five years.

(b) Candidates must meet the eligibility requirements for the probationary certificate outlined in subsection (1)(a) of this section.

(c) Candidates for the initial certificate shall demonstrate competence through a course of study from a state approved educator preparation program provider or state approved continuing education credit hour provider in the general standards for career guidance specialist which include, but are not limited to, knowledge and skills in the following areas as approved by the professional educator standards board:

(i) Individual and group career guidance skills;

(ii) Individual and group career development assessment;

(iii) Information and resources in providing career guidance, including history and philosophy of career and technical education;

(iv) Career guidance program planning, implementation, and management;

(v) Diverse populations;

(vi) Student leadership development;

(vii) Ethical ~~((~~r~~))~~ and legal issues;

(viii) Technology ~~((~~r~~))~~

~~((ix) History and philosophy of career and technical education)).~~

(d) In order to teach worksite learning and career choices courses, candidates must successfully complete requirements per WAC 181-77A-180.

**(3) Initial certificate renewal.**

(a) Candidates for renewal of the initial career guidance specialist certificate must complete at least ten quarter hours of college credit, one hundred continuing education credit hours, or four professional growth plans since the initial certificate was issued or renewed. At least ~~((two quarter credits or))~~ fifteen continuing education credit hours or the equivalent in credit must be related to the knowledge and skills areas listed in subsection (2)(c) of this section. Individuals completing fewer than four annual professional

growth plans must complete the necessary continuing education credit hours needed to be the equivalent of one hundred continuing education credit hours.

Application for renewals shall not be submitted earlier than twelve months prior to the expiration date of the current certificate.

Expired certificates may be renewed with completion of one hundred continuing education credit hours within the previous five years from the date of the renewal application, or by completing four professional growth plans. Individuals completing fewer than four annual professional growth plans must complete the necessary continuing education credit hours needed to be the equivalent of one hundred continuing education credit hours.

An expired certificate may be renewed by presenting evidence to the superintendent of public instruction of completing the continuing education credit hours or professional growth plan requirement within the five years prior to the date of the renewal application.

(b) The initial renewal certificate is valid for five years.

**(4) Continuing certificate.**

(a) Candidates for the continuing career guidance specialist certificate shall have in addition to the requirements for the initial certificate at least (~~fifteen quarter hours of college credit or~~) one hundred fifty continuing education credit hours or the equivalent in credit completed subsequent to the issuance of the initial certificate; or hold a valid national board certificate issued by the National Board for Professional Teaching Standards in any certificate area.

(b) Candidates for the continuing certificate shall provide as a condition for the issuance of a continuing certificate documentation of two years full-time equivalency (FTE) as a career guidance specialist with (~~an authorized~~) a school employer (i.e., school district(s) or skills center(s)).

(c) The continuing career guidance specialist certificate is valid for five years.

**(5) Continuing certificate renewal.** The continuing career guidance specialist certificate shall be renewed with the completion of ten quarter hours of college credit, the equivalent of one hundred continuing education credit hours, or four professional growth plans prior to the lapse date of the first issuance of the continuing certificate and during each five-year period between subsequent lapse dates. At least (~~four quarter credits or~~) thirty continuing education credit hours or the equivalent in credit must be related to the knowledge and skills areas listed in subsection (2)(c) of this section. Individuals completing fewer than four annual professional growth plans must complete the necessary continuing education credit hours needed to be the equivalent of one hundred continuing education credit hours.

Application for renewals shall not be submitted earlier than twelve months prior to the expiration date of the current certificate.

Expired certificates may be renewed with completion of one hundred continuing education credit hours within the previous five years from the date of the renewal application, or by completing four professional growth plans. Individuals completing fewer than four annual professional growth plans must complete the necessary continuing education credit hours needed to be the equivalent of one hundred continuing education credit hours.

An expired certificate may be renewed by presenting evidence to the superintendent of public instruction of completing the continuing

education credit hours or professional growth plan requirement within the five years prior to the date of the renewal application.

**(6) Certificates issued under previous standards.**

(a) Any person with a valid one-year occupational information specialist, or career and technical education counselor, certificate issued prior to July 1, 2018, under previous standards of the professional educator standards board may apply for the initial career guidance specialist certificate, and will be considered to have met the requirements to obtain an initial career guidance specialist certificate in subsection (2) of this section.

Holders of expired one-year occupational information specialist, or one-year career and technical education counselor certificates, may apply for the initial career guidance specialist certificate, and will be considered to have met the requirements to obtain an initial career guidance specialist certificate with completion of one hundred continuing education credit hours within the previous five years from the date of the renewal application.

These holders of expired one-year certificates must present evidence to the superintendent of public instruction of completing the continuing education credit hours within the five years prior to the date of the renewal application.

(b) Any person with a valid three-year or five-year occupational information specialist, or career and technical education counselor, certificate issued prior to July 1, 2018, under previous standards of the professional educator standards board may apply for the continuing career guidance specialist certificate by the expiration date of the original certificate held, and will be considered to have met the requirements to obtain a continuing career guidance specialist certificate in subsection (4) of this section.

Holders of expired three-year or five-year occupational information specialist, or three-year or five-year career and technical education counselor certificates, may apply for the initial career guidance specialist certificate, and will be considered to have met the requirements to obtain an initial career guidance specialist certificate with completion of one hundred continuing education credit hours within the previous five years from the date of the renewal application.

These holders of expired three-year or five-year certificates must present evidence to the superintendent of public instruction of completing the continuing education credit hours within the five years prior to the date of the renewal application.

(c) Upon issuance of the (~~probationary~~) initial or continuing career guidance specialist certificate, individuals addressed in this subsection will be subject to certificate renewal requirements of this section.

[Statutory Authority: Chapters 28A.410 and 28A.413 RCW. WSR 19-15-112, § 181-77-081, filed 7/22/19, effective 8/22/19. Statutory Authority: RCW 28A.410.220. WSR 19-03-108, § 181-77-081, filed 1/16/19, effective 2/16/19; WSR 18-21-070, § 181-77-081, filed 10/11/18, effective 11/11/18. Statutory Authority: RCW 28A.410.210. WSR 16-23-064, § 181-77-081, filed 11/14/16, effective 12/15/16; WSR 16-12-025, § 181-77-081, filed 5/23/16, effective 6/23/16.]

## WSR 21-12-042

## PERMANENT RULES

## DEPARTMENT OF HEALTH

[Filed May 25, 2021, 1:13 p.m., effective July 1, 2021]

Effective Date of Rule: July 1, 2021.

Purpose: Chapter 246-341 WAC, Behavioral health services administrative requirements, the department of health (department) is updating the chapter of rules for licensed and certified behavioral health agencies that includes: (1) Changes to align with legislation; (2) changes related to federal requirements; (3) requests from partners and interested parties for clarification; and (4) areas of clean up that have been identified since the department began regulating behavioral health agencies in 2018. The department is changing the chapter title to "Behavioral health agency licensing and certification requirements."

In 2018, the legislature transferred authority and responsibility for behavioral health agency licensing and certification from the department of social and health services (DSHS) to the department. Over the last three years, the department has become aware of a number of policy issues that must be addressed to bring these regulations up to date and in alignment with the department's mission.

Chapter 246-341 WAC implements three main statutes that have been significantly amended since the department assumed responsibility for these rules: (a) Chapter 71.24 RCW governs community behavioral health services and agencies and was significantly amended by E2SSB 5432 (chapter 325, Laws of 2019); (b) chapter 71.05 RCW governs involuntary behavioral health services for adults and was significantly amended by 2E2SSB 5720 (chapter 302, Laws of 2020) and also changed by several other bills including 2SHB 1907 (chapter 446, Laws of 2019); and (c) chapter 71.34 RCW governs behavioral health services for minors and was significantly amended by several recent bills, including E2SHB 1874 (chapter 381, Laws of 2019) and SHB 2883 (chapter 185, Laws of 2020).

The department has published several guidance and interpretive statements to temporarily address several of the policy issues. The department examined and discussed the rules with interested parties and partners to incorporate the statements into permanent rules, consider what changes might be made to the licensure and certification of services in behavioral health facilities, and to consider incorporating and implementing other recommendations and legislative directives. The department held weekly rules workshops over four months in the summer and autumn of 2020 that were open to all partners and interested parties where every section in this WAC chapter was researched and scrutinized.

This revised rule represents the collective best efforts to improve these regulations and take the next step forward in improving the delivery of behavioral health services in the state of Washington.

Citation of Rules Affected by this Order: New WAC 246-341-0302, 246-341-0713, 246-341-1050, 246-341-1060 and 246-341-1070; repealing WAC 246-341-0305, 246-341-0315, 246-341-0325, 246-341-0330, 246-341-0340, 246-341-0345, 246-341-0350, 246-341-0355, 246-341-0360, 246-341-0430, 246-341-0500, 246-341-0610, 246-341-0620, 246-341-0716, 246-341-0726, 246-341-0732, 246-341-0734, 246-341-0736, 246-341-0752, 246-341-0920, 246-341-1102, 246-341-1106, 246-341-1116, 246-341-1120, 246-341-1122, 246-341-1126, 246-341-1128, 246-341-1130, 246-341-1132, 246-341-1142, 246-341-1144, 246-341-1146, 246-341-1148, 246-341-1150



and 246-341-1152; and amending WAC 246-341-0100, 246-341-0110, 246-341-0200, 246-341-0300, 246-341-0310, 246-341-0320, 246-341-0335, 246-341-0342, 246-341-0365, 246-341-0367, 246-341-0400, 246-341-0410, 246-341-0420, 246-341-0425, 246-341-0510, 246-341-0515, 246-341-0520, 246-341-0600, 246-341-0605, 246-341-0640, 246-341-0650, 246-341-0700, 246-341-0702, 246-341-0704, 246-341-0706, 246-341-0708, 246-341-0710, 246-341-0712, 246-341-0714, 246-341-0718, 246-341-0720, 246-341-0722, 246-341-0724, 246-341-0730, 246-341-0738, 246-341-0740, 246-341-0742, 246-341-0744, 246-341-0746, 246-341-0748, 246-341-0750, 246-341-0754, 246-341-0800, 246-341-0805, 246-341-0810, 246-341-0815, 246-341-0820, 246-341-0900, 246-341-0905, 246-341-0910, 246-341-0915, 246-341-1000, 246-341-1005, 246-341-1010, 246-341-1015, 246-341-1020, 246-341-1025, 246-341-1100, 246-341-1104, 246-341-1108, 246-341-1110, 246-341-1112, 246-341-1114, 246-341-1118, 246-341-1134, 246-341-1137, 246-341-1138, and 246-341-1140.

Statutory Authority for Adoption: RCW 71.24.037, 71.05.560, 71.34.380, 18.205.160.

Other Authority: RCW 71.24.037; chapters 71.05, 71.24, and 71.34 RCW.

Adopted under notice filed as WSR 21-04-132 on February 2, 2021.

Changes Other than Editing from Proposed to Adopted Version: 1.

Title - for clarification, "agency" was added to the chapter title so it is now called "Behavioral health agency licensing and certification."

2. Editing change - WAC 246-341-0110 (1)(p). Reinstated subsection (1)(p) Applied behavioral analysis (ABA) mental health services which was unintentionally [unintentionally] deleted from the list of available certifications in the proposed rule.

3. WAC 246-341-0300 (8)(a) - (d), to provide clarity in response to public comment, "and" was added at the end of subsection (a); "that demonstrate that the agency will operate in compliance with the licensure and service-specific certification standards." was added to the end of the sentence in subsection (8)(b); and (c) and (d) were deleted so that it now reads:

["](a) All of the applicable notification and application requirements of this section are met; and

(b) The department has reviewed and approved the policies and procedures for initial licensure or addition of new services that demonstrate that the agency will operate in compliance with the licensure and service-specific certification standards.["]

4. WAC 246-341-0310(2), to provide clarity in response to public comment, "type of" was added before the word "service" and "post-licensure on-site review" was changed to "initial on-site review" so it now says "To implement deemed status when opening a new main site agency, adding a new type of service to a main site agency, or adding a new type of service to a branch site location that is not currently offered at the main site agency, an agency must:

(a) Submit proof of accreditation for the services provided by the agency to the department; and

(b) Complete a department initial on-site review.["]

5. WAC 246-341-0320 introduction, to provide clarity in response to public comment, the first half of the sentence that said "To obtain and maintain a department-issued license and to continue to provide department-certified behavioral health services, each" was deleted, "on-site review" was changed to "initial on-site review," and "each agency that is not deemed in accordance with WAC 246-341-0310 is subject to routine, ongoing on-site reviews" was added so it now reads:

"Each agency is subject to an initial on-site review and each agency that is not deemed in accordance with WAC 246-341-0310 is subject to routine, ongoing on-site reviews to determine if the agency is in compliance with the minimum licensure and certification standards."

A final cost-benefit analysis is available by contacting Stephanie Vaughn, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-4617, fax 360-236-2321, TTY 711, email stephanie.vaughn@doh.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 5, Amended 68, 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 35.

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 5, Amended 68, Repealed 35.

Date Adopted: May 24, 2021.

Jessica Todorovich  
Chief of Staff  
for Umair A. Shah, MD, MPH  
Secretary

OTS-2836.4

**Chapter 246-341 WAC**  
**BEHAVIORAL HEALTH ((SERVICES ADMINISTRATIVE)) AGENCY LICENSING AND**  
**CERTIFICATION REQUIREMENTS**

**((SECTION ONE)) BEHAVIORAL HEALTH SERVICES—PURPOSE AND SCOPE**

AMENDATORY SECTION (Amending WSR 19-09-062, filed 4/16/19, effective 5/17/19)

**WAC 246-341-0100 Behavioral health services—Purpose and scope.**

(1) ((The rules in)) This chapter ((provide a single set of rules)) establishes state minimum standards for licensed behavioral health agencies ((to follow that provide any one or more of the following behavioral health services:

- ~~(a) Mental health services;~~
- ~~(b) Substance use disorder services;~~
- ~~(c) Co-occurring services (services to individuals with co-existing mental health and substance use disorders); and~~
- ~~(d) Problem and pathological gambling;~~
- ~~(2) These rules establish the following for agencies that provide behavioral health services:~~
  - ~~(a) Licensure and certification requirements;~~
  - ~~(b) Agency administrative requirements;~~
  - ~~(c) Agency personnel requirements; and~~
  - ~~(d) Agency clinical policies and procedures).~~
- (2) This chapter does not apply to state psychiatric hospitals as defined in chapter 72.23 RCW or facilities owned or operated by the department of veterans affairs or other agencies of the United States government.

[Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-0100, filed 4/16/19, effective 5/17/19.]

AMENDATORY SECTION (Amending WSR 20-07-091, filed 3/17/20, effective 5/1/20)

- WAC 246-341-0110 Behavioral health services—Available certifications.** A behavioral health agency licensed by the department may become certified to provide one or more of the mental health, substance use disorder, and problem gambling and (~~pathological~~) gambling disorder services listed below:
- (1) Outpatient and recovery support:
    - (a) Individual mental health treatment services;
    - (b) Brief mental health intervention treatment services;
    - (c) Group mental health therapy services;
    - (d) Family therapy mental health services;
    - (e) Rehabilitative case management mental health services;
    - (f) Psychiatric medication (~~mental health services and medication support~~) management services;
    - (g) Medication monitoring services;
    - (h) Day support mental health services;
    - ~~((h) Mental health outpatient services provided in a residential treatment facility (RTF);)~~
    - (i) Recovery support: Supported employment mental health services;
    - (j) Recovery support: Supported employment substance use disorder services;
    - (k) Recovery support: Supportive housing mental health services;
    - (l) Recovery support: Supportive housing substance use disorder services;
    - (m) Recovery support: Peer support mental health services;
    - (n) Recovery support: Peer support substance use disorder services;
    - (o) Recovery support: Mental health peer respite center;
    - ~~((o) Recovery support: Wraparound facilitation mental health services;)~~
    - (p) Recovery support: Applied behavior analysis (ABA) mental health services;

- (q) Consumer-run recovery support: Clubhouse mental health services;
- (r) Substance use disorder level one outpatient services;
- (s) Substance use disorder level two intensive outpatient services;
- (t) Substance use disorder assessment only services;
- (u) Substance use disorder alcohol and drug information school services;
- (v) Substance use disorder information and crisis services;
- (w) Substance use disorder emergency service patrol services; and
- (x) ~~((Substance use disorder screening and brief intervention services; and~~
- ~~(y))~~ Problem gambling and ~~((pathological))~~ gambling disorder services.
- (2) Involuntary and court-ordered outpatient services:
  - (a) Less restrictive alternative (LRA) or conditional release support behavioral health services;
  - (b) ~~((Emergency involuntary detention))~~ Designated crisis responder (DCR) ((mental health and substance use disorder)) services;
  - (c) Substance use disorder counseling services subject to RCW 46.61.5056; and
  - (d) Driving under the influence (DUI) substance use disorder assessment services.
- (3) Crisis mental health services:
  - (a) Crisis mental health telephone support services;
  - (b) Crisis mental health outreach services; and
  - (c) Crisis mental health stabilization services ~~((and~~
  - ~~(d) Crisis mental health peer support services))~~.
- (4) Opioid treatment program (OTP) services.
- (5) Withdrawal management, residential substance use disorder treatment, and mental health inpatient services:
  - (a) Withdrawal management facility services:
    - (i) Withdrawal management services - Adult;
    - (ii) Withdrawal management services - Youth;
    - (iii) Secure withdrawal management and stabilization services - Adult; and
    - (iv) Secure withdrawal management and stabilization services - Youth.
  - (b) Residential substance use disorder treatment services:
    - (i) Intensive substance use disorder inpatient services;
    - (ii) Low-intensity (recovery house) residential treatment services;
    - (iii) Long-term treatment services; and
    - (iv) Youth residential services.
  - (c) Mental health inpatient services:
    - (i) Evaluation and treatment services - Adult;
    - (ii) Evaluation and treatment services - Youth;
    - (iii) Intensive behavioral health treatment services;
    - (iv) Child long-term inpatient program services;
    - (v) Crisis stabilization unit services;
    - (vi) Triage - Involuntary services;
    - (vii) Triage - Voluntary services; and
    - (viii) Competency evaluation and restoration treatment services.

[Statutory Authority: 2019 c 324, RCW 71.24.037, 71.24.648, and 71.24.649. WSR 20-07-091, § 246-341-0110, filed 3/17/20, effective

5/1/20. Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-0110, filed 4/16/19, effective 5/17/19.]

~~((SECTION TWO))~~ BEHAVIORAL HEALTH SERVICES—DEFINITIONS

AMENDATORY SECTION (Amending WSR 20-07-091, filed 3/17/20, effective 5/1/20)

**WAC 246-341-0200 Behavioral health services—Definitions.** The definitions in this section (~~contain words and phrases used for behavioral health services~~) and RCW 71.05.010, 71.24.025, and 71.34.020 apply throughout this chapter unless the context clearly requires otherwise.

~~("Absentee coverage" means the temporary replacement a clubhouse provides for the clubhouse member who is currently employed in a time-limited, part-time community job managed by the clubhouse.)~~

(1) "Administrator" means the designated person responsible for the day-to-day operation of either the licensed (~~treatment~~) behavioral health agency, or certified treatment service, or both.

(2) "Adult" means an individual eighteen years of age or older. For purposes of the medicaid program, adult means an individual twenty-one years of age or older.

(3) "ASAM criteria" means admission, continued service, transfer, and discharge criteria for the treatment of substance use disorders as published by the American Society of Addiction Medicine (ASAM).

(4) "Assessment" means the process of obtaining all pertinent bio-psychosocial information, as identified by the individual, and family and collateral sources, for determining a diagnosis and to plan individualized services and supports.

~~("Authority" means the Washington state health care authority.~~

~~"Background check" means a search for criminal history record information that includes nonconviction data. A background check may include a national fingerprint-based background check, including a Federal Bureau of Investigation criminal history search.)~~

(5) "Behavioral health" means the prevention, treatment of, and recovery from any or all of the following disorders: Substance use disorders, mental health disorders, co-occurring disorders, or problem gambling and (~~pathological~~) gambling disorders.

(6) "Behavioral health agency," "licensed behavioral health agency," or "agency" means an entity licensed by the department to provide behavioral health services under chapter 71.24, 71.05, or 71.34 RCW.

~~("Behavioral health organization" or "BHO" means any county authority or group of county authorities or other entity recognized by the health care authority in contract in a defined region.)~~

(7) "Branch site" means a physically separate licensed site, governed by (~~a~~) the same parent organization as the main site, where qualified staff provides certified treatment services.

(8) "Campus" means an area where all of the agency's buildings are located on contiguous properties undivided by:

(a) Public streets, not including alleyways used primarily for delivery services or parking; or

(b) Other land that is not owned and maintained by the owners of the property on which the agency is located.

(9) "Care coordination" or "coordination of care" means a process-oriented activity to facilitate ongoing communication and collaboration to meet multiple needs of an individual. Care coordination includes facilitating communication between the family, natural supports, community resources, and involved providers and agencies, organizing, facilitating and participating in team meetings, and providing for continuity of care by creating linkages to and managing transitions between levels of care.

(10) "Certified" or "certification" means the status given by the department that authorizes the agency to provide specific substance use disorder, mental health, and problem gambling and ((pathological)) gambling disorder program-specific services.

~~(("Certified problem gambling counselor" is an individual certified gambling counselor (WSCGC) or a nationally certified gambling counselor (NCGC), certified by the Washington State Gambling Counselor Certification Committee or the International Gambling Counselor Certification Board to provide problem and pathological gambling treatment services.~~

~~"Change in ownership" means one of the following:~~

~~(a) The ownership of a licensed behavioral health agency changes from one distinct legal owner to another distinct legal owner;~~

~~(b) The type of business changes from one type to another, such as, from a sole proprietorship to a corporation; or~~

~~(c) The current ownership takes on a new owner of five per cent or more of the organizational assets.~~

~~"Chemical dependency professional" or "CDP" means a person credentialed by the department as a chemical dependency professional (CDP) under chapter 246-811 WAC.)~~

(11) "Child," "minor," and "youth" mean:

(a) An individual under the age of eighteen years; or

(b) An individual age eighteen to twenty-one years who is eligible to receive and who elects to receive an early and periodic screening, diagnostic, and treatment (EPSDT) medicaid service. An individual age eighteen to twenty-one years who receives EPSDT services is not considered a "child" for any other purpose.

~~(("Child mental health specialist" means a mental health professional with the following education and experience:~~

~~(a) A minimum of one hundred actual hours (not quarter or semester hours) of special training in child development and the treatment of children with serious emotional disturbance and their families; and~~

~~(b) The equivalent of one year of full-time experience in the treatment of seriously emotionally disturbed children and their families under the supervision of a child mental health specialist.)~~

(12) "Clinical record" means either a paper, or electronic file, or both that is maintained by the behavioral health agency and contains pertinent psychological, medical, and clinical information for each individual served.

(13) "Clinical supervision" means regular and periodic activities performed by a mental health professional ((licensed or certified)), co-occurring disorder specialist, or substance use disorder professional licensed, certified, or registered under Title 18 RCW ((practicing

within their scope of practice)). Clinical supervision may include ~~(s)~~ review of assessment, diagnostic formulation, ~~(treatment planning)~~ individual service plan development, progress toward completion of care, identification of barriers to care, continuation of services, authorization of care, and the direct observation of the delivery of clinical care. In the context of this chapter, clinical supervision is separate from clinical supervision required for purposes of obtaining supervised hours toward fulfilling requirements related to professional licensure under Title 18 RCW.

~~("Clubhouse" means a community-based, recovery-focused program designed to support individuals living with the effects of mental illness, through employment, shared contributions, and relationship building. A clubhouse operates under the fundamental principle that everyone has the potential to make productive contributions by focusing on the strengths, talents, and abilities of all members and fostering a sense of community and partnership.~~

~~"Community mental health agency" means the same as "behavioral health agency."~~

~~"Community relations plan" means a plan to minimize the impact of an opioid treatment program as defined by the Center for Substance Abuse Guidelines for the Accreditation of Opioid Treatment Programs, section 2.C.(4).~~

~~"Community support services" means services authorized, planned, and coordinated through resource management services including, at a minimum:~~

~~(a) Assessment, diagnosis, emergency crisis intervention available twenty-four hours, seven days a week;~~

~~(b) Prescreening determinations for persons who are mentally ill being considered for placement in nursing homes as required by federal law;~~

~~(c) Screening for patients being considered for admission to residential services;~~

~~(d) Diagnosis and treatment for children who are mentally or severely emotionally disturbed discovered under screening through the federal Title XIX early and periodic screening, diagnosis, and treatment (EPSDT) program;~~

~~(e) Investigation, legal, and other nonresidential services under chapter 71.05 RCW;~~

~~(f) Case management services;~~

~~(g) Psychiatric treatment including medication supervision;~~

~~(h) Counseling;~~

~~(i) Psychotherapy;~~

~~(j) Assuring transfer of relevant patient information between service providers;~~

~~(k) Recovery services; and~~

~~(l) Other services determined by behavioral health organizations.)~~

(14) "Complaint" means an alleged violation of licensing or certification requirements under chapters 71.05, 71.12, 71.24, 71.34 RCW, and this chapter, which has been authorized by the department for investigation.

(15) "Consent" means agreement given by an individual after ~~(the person is)~~ being provided with a description of the nature, character, anticipated results of proposed treatments and the recognized serious possible risks, complications, and anticipated benefits, including alternatives and nontreatment, that must be provided in a terminology that the ~~(person)~~ individual can reasonably be expected to

understand. Consent can be obtained from an individual's parent or legal representative, when applicable.

(16) "Consultation" means the clinical review and development of recommendations by persons with appropriate knowledge and experience regarding activities or decisions of clinical staff, contracted employees, volunteers, or students.

(17) "Co-occurring disorder" means the coexistence of both a mental health and a substance use disorder. Co-occurring treatment is a unified treatment approach intended to treat both disorders within the context of a primary treatment relationship or treatment setting.

~~("Crisis" means an actual or perceived urgent or emergent situation that occurs when an individual's stability or functioning is disrupted and there is an immediate need to resolve the situation to prevent a serious deterioration in the individual's mental or physical health, or to prevent the need for referral to a significantly higher level of care.~~

~~"Critical incident" means any one of the following events:~~

~~(a) Any death, serious injury, or sexual assault that occurs at an agency that is licensed by the department;~~

~~(b) Alleged abuse or neglect of an individual receiving services, that is of a serious or emergency nature, by an employee, volunteer, licensee, contractor, or another individual receiving services;~~

~~(c) A natural disaster, such as an earthquake, volcanic eruption, tsunami, urban fire, flood, or outbreak of communicable disease that presents substantial threat to facility operation or client safety;~~

~~(d) A bomb threat;~~

~~(e) Theft or loss of data in any form regarding an individual receiving services, such as a missing or stolen computer, or a missing or stolen computer disc or flash drive;~~

~~(f) Suicide attempt at the facility;~~

~~(g) An error in program-administered medication at an outpatient facility that results in adverse effects for the individual and requires urgent medical intervention; and~~

~~(h) Any media event regarding an individual receiving services, or regarding a staff member or owner(s) of the agency.)~~

(18) "Cultural competence" or "culturally competent" means the ability to recognize and respond to health-related beliefs and cultural values, disease incidence and prevalence, and treatment efficacy. Examples of culturally competent care include striving to overcome cultural, language, and communications barriers, providing an environment in which individuals from diverse cultural backgrounds feel comfortable discussing their cultural health beliefs and practices in the context of negotiating treatment options, encouraging individuals to express their spiritual beliefs and cultural practices, and being familiar with and respectful of various traditional healing systems and beliefs and, where appropriate, integrating these approaches into treatment plans.

(19) "Deemed" means a status that ~~((may be))~~ is given to a licensed behavioral health agency as a result of the agency receiving accreditation by a recognized behavioral health accrediting body which has a current agreement with the department.

~~("Department" means the Washington state department of health.~~

~~"Designated crisis responder" or "DCR" means a mental health professional appointed by the county or the BHO who is authorized to conduct investigations, detain persons up to seventy-two hours at the proper facility, and carry out the other functions identified in chapters 71.05 and 71.34 RCW. To qualify as a designated crisis responder,~~



~~a person must complete substance use disorder training specific to the duties of a designated crisis responder.))~~

(20) "Disability" means a physical or mental impairment that substantially limits one or more major life activities of the individual and the individual:

- (a) Has a record of such an impairment; or
- (b) Is regarded as having such impairment.

~~(("Early and periodic screening, diagnosis and treatment" or "EPSDT" means a comprehensive child health medicaid program that entitles individuals age twenty and younger to preventive care and treatment services. These services are outlined in chapter 182-534 WAC.~~

~~"Governing body" means the entity with legal authority and responsibility for the operation of the behavioral health agency, to include its officers, board of directors or the trustees of a corporation or limited liability company.~~

~~"Grievance" means the same as defined in WAC 182-538D-0655.~~

~~"HIV/AIDS brief risk intervention" means a face-to-face interview with an individual to help the individual assess personal risk for HIV/AIDS infection and discuss methods to reduce infection transmission.~~

~~"Individual" means a person who applies for, is eligible for, or receives behavioral health services from an agency licensed by the department.~~

~~"Less restrictive alternative (LRA)" means court ordered outpatient treatment in a setting less restrictive than total confinement.))~~

(21) "Licensed" or "licensure" means the status given to behavioral health agencies by the department under its authority to license and certify mental health and substance use disorder programs under chapters 71.05, 71.12, 71.34, and 71.24 RCW and its authority to certify problem gambling and ((pathological)) gambling disorder treatment programs under RCW 43.20A.890.

~~(("Medical necessity" or "medically necessary" is a term for describing a required service that is reasonably calculated to prevent, diagnose, correct, cure, alleviate or prevent the worsening of conditions in the recipient that endanger life, or cause suffering or pain, or result in illness or infirmity, or threaten to cause or aggravate a handicap, or cause physical deformity or malfunction, and there is no other equally effective, more conservative or substantially less costly course of treatment available or suitable for the person requesting service. Course of treatment may include mere observation or, where appropriate, no treatment at all.))~~

(22) "Medical practitioner" means a physician licensed under chapter 18.57 or 18.71 RCW, advance registered nurse practitioner (ARNP) licensed under chapter 18.79 RCW, or ((certified)) physician assistant licensed under chapter 18.71A or 18.57A RCW. ((An ARNP and a midwife with prescriptive authority may perform practitioner functions related only to specific specialty services.

~~"Medication administration" means the direct application of a medication or device by ingestion, inhalation, injection or any other means, whether self-administered by a resident, or administered by a guardian (for a minor), or an authorized health care provider.))~~

(23) "Mental health disorder" means any organic, mental, or emotional impairment that has substantial adverse effects on a person's cognitive or volitional functions.

(24) "Mental health professional" or "MHP" means ((a designation given by the department to an agency staff member or an attestation by

the licensed behavioral health agency that the person meets the following:

~~(a) A psychiatrist, psychologist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner (ARNP), psychiatric nurse, or social worker as defined in chapters 71.05 and 71.34 RCW;~~

~~(b) A person who is licensed by the department as a mental health counselor or mental health counselor associate, marriage and family therapist, or marriage and family therapist associate;~~

~~(c) A person with a master's degree or further advanced degree in counseling or one of the social sciences from an accredited college or university who has at least two years of experience in direct treatment of persons with mental illness or emotional disturbance, experience that was gained under the supervision of a mental health professional recognized by the department or attested to by the licensed behavioral health agency;~~

~~(d) A person who meets the waiver criteria of RCW 71.24.260, and the waiver was granted prior to 1986; or~~

~~(e) A person who had an approved waiver to perform the duties of a mental health professional (MHP), that was requested by the behavioral health organization (BHO) and granted by the mental health division prior to July 1, 2001.~~

"Minor" means the same as "child."

"Off-site" means the provision of services by a provider from a licensed behavioral health agency at a location where the assessment or treatment is not the primary purpose of the site, such as in schools, hospitals, long-term care facilities, correctional facilities, an individual's residence, the community, or housing provided by or under an agreement with the agency.

"Outpatient services" means behavioral health treatment services provided to an individual in a nonresidential setting. A residential treatment facility (RTF) may become certified to provide outpatient services.

"Peace officer" means a law enforcement official of a public agency or governmental unit, and includes persons specifically given peace officer powers by any state law, local ordinance, or judicial order of appointment) a person who meets the qualifications in WAC 246-341-0515(5).

(25) "Peer counselor" means the same as defined in WAC 182-538D-0200.

~~(("Probation" means a licensing or certification status resulting from a finding of deficiencies that requires immediate corrective action to maintain licensure or certification.))~~

(26) "Problem gambling and ((pathological)) gambling disorder" means one or more of the following disorders:

(a) "~~((Pathological))~~ Gambling disorder" means a mental disorder characterized by loss of control over gambling, progression in preoccupation with gambling and in obtaining money to gamble, and continuation of gambling despite adverse consequences;

(b) "Problem gambling" is an earlier stage of ~~((pathological))~~ gambling disorder that compromises, disrupts, or damages family or personal relationships or vocational pursuits.

(27) "Progress notes" means permanent written or electronic record of services and supports provided to an individual documenting the individual's participation in, and response to, treatment, progress in recovery, and progress toward intended outcomes.

~~(("Recovery" means the same as defined in RCW 71.24.025.~~

~~"Relocation" means a physical change in location from one address to another.~~

~~"Remodeling" means expanding existing office space to additional office space at the same address, or remodeling interior walls and space within existing office space to a degree that accessibility to or within the facility is impacted.)~~

~~(28) "Secretary" means the secretary of the department of health.~~

~~(("Service area" means the geographic area covered by each behavioral health organization (BHO) for which it is responsible.~~

~~"Short-term facility" means a facility licensed and certified by the department of health under RCW 71.24.035 which has been designed to assess, diagnose, and treat individuals experiencing an acute crisis without the use of long-term hospitalization. Length of stay in a short-term facility is less than fourteen days from the day of admission.)~~

~~(29) "State minimum standards" means minimum requirements established by rules adopted by the secretary and necessary to implement ((this)) chapters 71.05, 71.24, and 71.34 RCW for delivery of behavioral health services.~~

~~(("Substance use disorder" means a cluster of cognitive, behavioral, and physiological symptoms indicating that an individual continues using the substance despite significant substance-related problems. The diagnosis of a substance use disorder is based on a pathological pattern of behaviors related to the use of the substances.)~~

~~(30) "Substance use disorder professional" or "SUDP" means a person credentialed by the department as a substance use disorder professional (SUDP) under chapter 18.205 RCW.~~

~~(31) "Substance use disorder professional trainee" or "SUDPT" means a person credentialed by the department as a substance use disorder professional trainee (SUDPT) under chapter 18.205 RCW.~~

~~(32) "Summary suspension" means the immediate suspension of either a facility's license or program-specific certification or both by the department pending administrative proceedings for suspension, revocation, or other actions deemed necessary by the department.~~

~~(33) "Supervision" means the regular monitoring of the administrative, clinical, or clerical work performance of a staff member, trainee, student, volunteer, or employee on contract by a person with the authority to give direction and require change.~~

~~(34) "Suspend" means termination of a behavioral health agency's license or program specific certification to provide behavioral health treatment program service for a specified period or until specific conditions have been met and the department notifies the agency of the program's reinstatement of license or certification.~~

~~(("Triage facility" means a short-term facility or a portion of a facility licensed and certified by the department under RCW 71.24.035 that is designed as a facility to assess and stabilize an individual or determine the need for involuntary commitment of an individual. A triage facility must meet department residential treatment facility standards and may be structured as either a voluntary or involuntary placement facility or both.~~

~~"Triage involuntary placement facility" means a triage facility that has elected to operate as an involuntary facility and may, at the direction of a peace officer, hold an individual for up to twelve hours. A peace officer or designated crisis responder may take or cause the person to be taken into custody and immediately delivered to the triage facility. The facility may ask for an involuntarily admitted individual to be assessed by a mental health professional for po-~~

tential for voluntary admission. The individual has to agree in writing to the conditions of the voluntary admission.

~~"Triage voluntary placement facility" means a triage facility where the individual may elect to leave the facility of their own accord, at any time. A triage voluntary placement facility may only accept voluntary admissions.~~

~~"Tribal authority" means, for the purposes of behavioral health organizations and RCW 71.24.300 only, the federally recognized Indian tribes and the major Indian organizations recognized by the secretary as long as these organizations do not have a financial relationship with any behavioral health organization that would present a conflict of interest.~~

~~"Vulnerable adult" has the same meaning as defined in chapter 74.34 RCW.~~

~~"Withdrawal management" means services provided during the initial period of care and treatment to an individual intoxicated or incapacitated by substance use.~~

~~"Work-ordered day" means a model used to organize clubhouse activities during the clubhouse's normal working hours. Members and staff are organized into one or more work units which provide meaningful and engaging work essential to running the clubhouse. Activities include unit meetings, planning, organizing the work of the day, and performing the work that needs to be accomplished to keep the clubhouse functioning. Members and staff work side-by-side as colleagues. Members participate as they feel ready and according to their individual interests. While intended to provide members with working experience, work in the clubhouse is not intended to be job-specific training, and members are neither paid for clubhouse work nor provided artificial rewards. Work-ordered day does not include medication clinics, day treatment, or other therapy programs.~~

~~"Youth" means the same as "child.")~~

[Statutory Authority: 2019 c 324, RCW 71.24.037, 71.24.648, and 71.24.649. WSR 20-07-091, § 246-341-0200, filed 3/17/20, effective 5/1/20. Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-0200, filed 4/16/19, effective 5/17/19.]

**~~((SECTION THREE—)) BEHAVIORAL HEALTH SERVICES—AGENCY LICENSURE AND CERTIFICATION~~**

AMENDATORY SECTION (Amending WSR 19-09-062, filed 4/16/19, effective 5/17/19)

**WAC 246-341-0300 Agency licensure and certification—General information.** The department licenses behavioral health agencies and certifies them to provide behavioral health treatment services. To ~~((gain))~~ obtain and maintain licensure and certification, an applicant must meet the requirements of this chapter, applicable local and state

rules, and applicable state and federal statutes and regulations. In addition, the applicant must meet the applicable specific ((program)) service requirements for all behavioral health treatment services certified by the department.

~~((1) An applicant currently accredited by a national accreditation agency recognized by and having a current agreement with the department may be eligible for licensing through deeming. See WAC 246-341-0310.~~

~~(2) An agency must report to the department any changes that occur following the initial licensing or certification process. The department may request a copy of additional disclosure statements or background inquiries if there is reason to believe that offenses specified under RCW 43.43.830 have occurred since the original application was submitted.~~

~~(3) The department may grant an exemption or waiver from compliance with specific licensing or program certification requirements if the exemption does not violate an existing state, federal, or tribal law.~~

~~(a) To request an exemption to a rule in this chapter, the applicant must:~~

~~(i) Submit the request in writing to the department;~~

~~(ii) Assure the exemption request does not jeopardize the safety, health, or treatment of an individual; and~~

~~(iii) Assure the exemption request does not impede fair competition of another service agency.~~

~~(b) The department approves or denies an exemption request in writing and requires the agency to keep a copy of the decision.~~

~~(c) Appeal rights under WAC 246-341-0370 do not apply to exemption to rule decisions.~~

~~(4) In the event of an agency closure or the cancellation of a program-specific certification, the agency must provide each individual currently being served:~~

~~(a) Notice of the agency closure or program cancellation at least thirty days before the date of closure or program cancellation;~~

~~(b) Assistance with relocation; and~~

~~(c) Information on how to access records to which the individual is entitled.~~

~~(5) If an agency certified to provide any behavioral health service closes, the agency must ensure all individual clinical records are kept and managed for at least six years after the closure before destroying the records in a manner that preserves confidentiality. In addition:~~

~~(a) The closing agency must notify the department that the agency will do one of the following:~~

~~(i) Continue to retain and manage all individual clinical records; or~~

~~(ii) Arrange for the continued storage and management of all individual clinical records.~~

~~(b) The closing agency must notify the department in writing and include the name of the licensed agency or entity storing and managing the records, provide the method of contact, such as a telephone number, electronic address, or both, and provide the mailing and street address where the records will be stored.~~

~~(c) When a closing agency that has provided substance use disorder services arranges for the continued storage and management of clinical records by another entity, the closing agency must enter into~~

~~a specific qualified services organization agreement with a department licensed agency or other entity. See 42 C.F.R. Part 2, Subpart B.~~

~~(d) When any agency or entity storing and maintaining individual clinical records receives an authorized request for a record, the record must be provided to the requester within a reasonable period of time.)~~ The following licensure process in this section does not apply to a tribe that is licensed or seeking licensure via attestation as described in WAC 246-341-0367.

(1) Initial licensure of a behavioral health agency - Main site. The applicant shall submit a licensing application to the department that is signed by the agency's designated official. The application must include the following:

(a) The physical address of the agency;

(b) A list of the specific services for which the applicant is seeking certification;

(c) A statement assuring the location where the services will be provided meets the Americans with Disabilities Act (ADA) standards and that any agency-operated facility where behavioral health services will be provided is:

(i) Suitable for the purposes intended, including having adequate space for private personal consultation with an individual and clinical record storage that adheres to confidentiality requirements;

(ii) Not a personal residence; and

(iii) Approved as meeting all local and state building and safety requirements, as applicable.

(d) Payment of associated fees according to WAC 246-341-0365;

(e) A copy of the applicant's master business license that authorizes the organization to do business in Washington state;

(f) A copy of the disclosure statement and report of findings from a background check of the administrator completed within the previous three months of the application date; and

(g) A copy of the policies and procedures specific to the agency and the services for which the applicant is seeking certification that address all of the applicable requirements of this chapter.

(2) The department may issue a single agency license when the applicant identifies behavioral health treatment services will be provided in multiple buildings and either:

(a) The applicant operates the multiple buildings on the same campus as a single integrated system with governance by a single authority or body over all staff and buildings; or

(b) All behavioral health treatment services will be provided in buildings covered under a single hospital license.

(3) Initial licensure of a behavioral health agency - Branch site. To add a branch site, an existing behavioral health agency shall meet the application requirements in subsection (1)(a) through (c) of this section and submit to the department:

(a) A written declaration that a current copy of agency policies and procedures that address all of the applicable requirements of this chapter are accessible to the branch site;

(b) A copy of policies and procedures for any behavioral health service that is unique to the branch site location, if applicable; and

(c) A copy of the disclosure statement and report of findings from a background check of the administrator completed within the previous three months of the application date, if the administrator of the branch site is different than the administrator of the main site location.

(4) License renewal.

(a) To renew a main site or branch site license and certification, an agency shall submit to the department a renewal request signed by the agency's designated official. The renewal request must:

(i) Be received by the department before the expiration date of the agency's current license; and

(ii) Include full payment of the specific renewal fee according to WAC 246-341-0365.

(b) The department shall renew an agency's main site or branch site license if all the requirements for renewal are met and the renewal request is received before the expiration date of the agency's current license.

(5) Amending a license. A license amendment is required when there is a change in the administrator, when adding or removing a service, or when closing a location. To amend a license the agency shall submit to the department a licensing application requesting the amendment that is signed by the agency's designated official. The application process shall include the following requirements as applicable to the amendment being requested:

(a) Change of the administrator. The application must include a copy of the disclosure statement and report of findings from a background check of the new administrator completed within the previous three months of the application date and within thirty days of the change;

(b) Adding a service. The application must include:

(i) The physical address or addresses of the agency-operated facility or facilities where the new service(s) will be provided;

(ii) A copy of the agency's policies and procedures relating to the new service(s); and

(iii) Payment of fees according to WAC 246-341-0365.

(c) Canceling a service.

(i) The agency must provide notice to individuals who receive the service(s) to be canceled. The notice shall be provided at least thirty days before the service(s) are canceled and the agency must assist individuals in accessing services at another location.

(ii) The application must include the physical address or addresses of the agency-operated facility or facilities where the service(s) will no longer be provided.

(d) Closing a location.

(i) The application must include the name of the licensed agency or entity storing and managing the records, including:

(A) The method of contact, such as a telephone number, electronic address, or both; and

(B) The mailing and street address where the records will be stored.

(ii) When a closing agency that has provided substance use disorder services arranges for the continued storage and management of clinical records by a qualified service organization (QSO), the closing agency must enter into a written agreement with the QSO that meets the requirements of 42 C.F.R. Part 2.

(iii) In the event of an agency closure the agency must provide each individual currently being served:

(A) Notice of the agency closure at least thirty days before the date of closure;

(B) Assistance with accessing services at another location; and

(C) Information on how to access records to which the individual is entitled.

(6) Change of ownership.

(a) Change of ownership means one of the following:

(i) The ownership of a licensed behavioral health agency changes from one distinct legal owner to another distinct legal owner;

(ii) The type of business changes from one type to another, such as, from a sole proprietorship to a corporation; or

(iii) The current ownership takes on a new owner of five percent or more of the organizational assets.

(b) When a licensed behavioral health agency changes ownership, the department shall require:

(i) An initial license application from the new owner in accordance with subsection (1) of this section. The new agency must receive a new license under the new ownership before providing any behavioral health service; and

(ii) A statement from the current owner regarding the disposition and management of clinical records in accordance with applicable state and federal statutes and regulations.

(7) Change in location. A licensed behavioral health agency must receive a new license under the new location's address before providing any behavioral health service at that address. The agency shall submit to the department a licensing application requesting a change in location that is signed by the agency's designated official. The application must include:

(a) The new address;

(b) A statement assuring the location meets the Americans with Disabilities Act (ADA) standards and that any agency-operated facility where behavioral health services will be provided is:

(i) Suitable for the purposes intended, including having adequate space for private personal consultation with an individual and clinical record storage that adheres to confidentiality requirements;

(ii) Not a personal residence; and

(iii) Approved as meeting all local and state building and safety requirements, as applicable.

(c) Payment of initial licensure fees.

(8) Granting a license. A new or amended license or service-specific certification will not be granted to an agency until:

(a) All of the applicable notification and application requirements of this section are met; and

(b) The department has reviewed and approved the policies and procedures for initial licensure or addition of new services that demonstrate that the agency will operate in compliance with the licensure and service-specific certification standards.

(9) Effective date. An agency's license and any behavioral health services certification is effective for up to twelve months from the effective date, subject to the agency maintaining compliance with the minimum license and certification standards in this chapter.

(10) After receiving the license. The agency shall post the department-issued license and certification(s) in a conspicuous place on the agency's premises, and, if applicable, on the agency's branch site premises.

[Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-0300, filed 4/16/19, effective 5/17/19.]



NEW SECTION

**WAC 246-341-0302 Agency licensure and certification—Exemptions and alternative means or methods.** The department may grant an exemption or approve alternative means or methods of compliance from any part of this chapter so long as it does not violate an existing state or federal statute or regulation, or tribal law.

(1) An agency can request an exemption or alternative means or methods of compliance by submitting a written request to the department that includes:

(a) The specific section or sections of rules for which the exemption or alternative means or methods of compliance is requested;

(b) An explanation of the circumstances involved;

(c) A proposed alternative that would ensure the safety, health, and treatment of clients meeting the intent of the rule; and

(d) Any supporting research or other documentation, as applicable.

(2) The department shall approve or deny an exemption or alternative means or methods request in writing and the agency shall keep a copy of the decision for as long as the approval for exemption or alternative means or methods is in place.

(3) Appeal rights under WAC 246-341-0370 do not apply to exemption or alternative means or methods request decisions.

(4) The department may consider granting exemptions to a section or sections of this chapter during a governor declared state of emergency to ensure continued access to behavioral health treatment.

[ ]

AMENDATORY SECTION (Amending WSR 19-09-062, filed 4/16/19, effective 5/17/19)

**WAC 246-341-0310 Agency licensure and certification—Deeming.**

(1) ~~((If an agency is currently accredited))~~ The department shall deem an agency or branch site as meeting state minimum standards for licensing and certification described in this chapter as a result of accreditation by a national accreditation organization that is recognized by and has a current agreement with the department ~~((, the department must deem the agency to be in compliance with state standards for licensure and certification))~~.

(2) ~~((To be considered for deeming, an agency must submit a request to the department signed by the agency's administrator.))~~ To implement deemed status when opening a new main site agency, adding a new type of service to a main site agency, or adding a new type of service to a branch site location that is not currently offered at the main site agency, an agency must:

(a) Submit proof of accreditation for the services provided by the agency to the department; and

(b) Complete a department initial on-site review.

(3) To implement deemed status when opening a new branch site location that is providing the same services as a deemed main site agency, or a service is being added to a branch site location that is a deemed service at a main site location, an agency must submit proof of

accreditation for the services provided by the agency to the department.

(4) The department will not conduct an on-site review as part of the deeming process for tribal behavioral health agencies who seek licensure pursuant to WAC 246-341-0310.

(5) Deeming will be in accordance with the established written agreement between the ((accrediting agency)) national accreditation organization and the department.

~~((4))~~ (6) Specific licensing and certification requirements of any:

(a) State rule may only be waived through a deeming process consistent with the established written agreement between the ((accrediting agency)) recognized behavioral health accrediting body and the department.

(b) State or federal ((law)) statute or regulation will not be waived through a deeming process.

~~((5) An agency operating under a department-issued provisional license or provisional program-specific certification is not eligible for deeming.~~

~~(6) An~~) (7) A deemed main site agency ~~((+)~~

~~(a) Must provide~~) or branch site must submit to the department a copy of any relevant reports ((regarding accreditation from the accrediting agency);

~~(b) Must meet the requirements in WAC 246-341-0325 and 246-341-0345 before adding any additional service(s); and~~

~~(c) Is not eligible for deeming until the service(s) has been reviewed by the accrediting agency.~~

~~(7) Any branch site added to an existing agency:~~

~~(a) Must meet the requirements in WAC 246-341-0340; and~~

~~(b) Is not eligible for deeming until the site has been reviewed by the accrediting agency)~~ such as audits, findings, or documentation related to accreditation status.

[Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-0310, filed 4/16/19, effective 5/17/19.]

AMENDATORY SECTION (Amending WSR 19-09-062, filed 4/16/19, effective 5/17/19)

**WAC 246-341-0320 Agency licensure and certification—On-site reviews and plans of correction.** ~~((To obtain and maintain a department-issued license and to continue to provide department-certified behavioral health services,))~~ Each agency is subject to an initial on-site review and each agency that is not deemed in accordance with WAC 246-341-0310 is subject to routine, ongoing on-site reviews to determine if the agency is in compliance with the minimum licensure and certification standards.

(1) A department review team representative(s) conducts an entrance conference with the agency and an on-site review that may include:

- (a) A review of:
  - (i) Agency policies and procedures;
  - (ii) Personnel records;
  - (iii) Clinical records;

- (iv) Facility accessibility;
  - (v) The agency's internal quality management plan, process, or both, that demonstrates how the agency evaluates program effectiveness and individual participant satisfaction; and
  - (vi) Any other information, including the criteria in WAC 246-341-0335 (1)(b), that the department determines to be necessary to confirm compliance with the minimum standards of this chapter; and
- (b) Interviews with:
    - (i) Individuals served by the agency; and
    - (ii) Agency staff members.
- (2) The department review team representative(s) concludes an on-site review with an exit conference that includes a discussion of findings.
- (3) The department will send the agency a statement of deficiencies report that will include instructions and time frames for submission of a plan of correction.
- (4) The department requires the agency to correct the deficiencies listed on the plan of correction:
- (a) By the negotiated time frame agreed upon by the agency and the department review team representative; or
  - (b) Immediately if the department determines health and safety concerns require immediate corrective action.
- (5) On-site reviews of branch sites will occur at the same time as the main site review and take place at the main site location so long as the department can access the following either electronically or by hard copies brought to the main site agency location:
- (a) Personnel records of employees hired since the previous review;
  - (b) A sample of individual clinical records that reflect the services provided at each branch site location; and
  - (c) Policies and procedures that are unique to the services provided at the branch site locations.

[Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-0320, filed 4/16/19, effective 5/17/19.]

AMENDATORY SECTION (Amending WSR 19-09-062, filed 4/16/19, effective 5/17/19)

**WAC 246-341-0335 Agency licensure and certification—Denials, suspensions, revocations, and penalties.** (1) The department will deny issuing or renewing an agency's license or specific ((program)) service certification(s), place an agency on probation, or suspend, or revoke an agency's license or specific ((program)) service certification for any of the following reasons:

- (a) The agency fails to meet requirements in this chapter.
- (b) The agency fails to cooperate or disrupts department representatives during an on-site ((survey)) review or complaint investigation.
- (c) The agency fails to assist the department in conducting individual interviews with either staff members or individuals receiving services, or both.
- (d) The agency owner or governing person of a nonprofit corporation or agency administrator:

- (i) Had a license or specific (~~(program)~~) service certification issued by the department subsequently denied, suspended, (~~(or)~~) revoked, or any other sanction placed upon a license;
- (ii) Was convicted of child abuse or adjudicated as a perpetrator of a founded child protective services report;
- (iii) Was convicted of abuse of a vulnerable adult or adjudicated as a perpetrator of substantiated abuse of a vulnerable adult. A vulnerable adult means the same as defined in chapter 74.34 RCW;
- (iv) Obtained or attempted to obtain a health provider license, certification, or registration by fraudulent means or misrepresentation;
- (v) Committed, permitted, aided or abetted the (~~(commission)~~) committing of an illegal act or unprofessional conduct as defined under RCW 18.130.180;
- (vi) Demonstrated cruelty, abuse, negligence, misconduct, or indifference to the welfare of (~~(a patient)~~) an individual or displayed acts of discrimination;
- (vii) Misappropriated patient (individual) property or resources;
- (viii) Failed to meet financial obligations or contracted service commitments that affect (~~(patient)~~) care of individuals;
- (ix) Has a history of noncompliance with state or federal rules in an agency with which the applicant has been affiliated;
- (x) Knowingly, or with reason to know, made a false statement of fact or failed to submit necessary information in:
- (A) The submitted application or materials attached; or
- (B) Any matter under department investigation.
- (xi) Refused to allow the department access to view records, files, books, or portions of the premises relating to operation of the program;
- (xii) Willfully interfered with the preservation of material information or attempted to impede the work of an authorized department representative;
- (xiii) Is currently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in transactions involving certain federal funds (this also applies to any person or business entity named in the agency's application for licensure or certification);
- (xiv) Does not meet background check requirements;
- (xv) Fails to provide satisfactory application materials; or
- (xvi) Advertises the agency as certified when licensing or certification has not been granted, or has been revoked or canceled.
- (e) The department determines there is imminent risk to health and safety.
- (f) The agency's licensure or specific (~~(program)~~) service certification is in probationary status and the agency fails to correct the noted health and safety deficiencies within the agreed-upon time frames.
- (2) The department may deny issuing or renewing an agency's license or specific (~~(program)~~) service certification(s), place an agency on probation, or suspend or revoke an agency's license or specific (~~(program)~~) service certification(s) for any of the following reasons:
- (a) The agency voluntarily cancels licensure or certification(s).
- (b) The agency fails to pay the required license or certification fees.
- (c) The agency stops providing the services for which the agency is certified.

(d) The agency fails to notify the department before changing ownership.

(e) The agency fails to notify the department before relocating its licensed location.

(3) If the department (~~sends a written notice to deny~~) ~~denies~~, ~~suspends~~, ~~revokes~~, or (~~modify the licensure~~) ~~modifies the agency's license~~ or ~~specific service~~ certification (~~status~~), the department will send a written notice including the reason(s) for the decision and the agency's right to appeal a department decision according to the provisions of RCW 43.70.115, chapter 34.05 RCW, and chapter 246-10 WAC.

(4) The department may summarily suspend an agency's license or specific service certification(s) of a behavioral health service when an immediate danger to the public health, safety, or welfare requires emergency action.

(5) If an agency fails to comply with the requirements of this chapter, the department may:

(a) Assess fees to cover costs of added licensing and (~~program-specific~~) service-specific certification activities, including when the department determines a corrective action is required due to a complaint or incident investigation;

(b) Stop referral(s) of an individual who is a (~~program~~) service recipient of either a state or federally funded (~~program~~) service or both; and

(c) Notify the health care authority(~~(r)~~) and the (~~behavioral health organization (BHO) and/or local media~~) managed care organization of stopped referrals, suspensions, revocations, or nonrenewal of the agency's license or (~~program-specific~~) service-specific certification(s).

[Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-0335, filed 4/16/19, effective 5/17/19.]

AMENDATORY SECTION (Amending WSR 19-09-062, filed 4/16/19, effective 5/17/19)

**WAC 246-341-0342 Agency licensure and certification—Off-site locations.** (1) A behavioral health agency that provides outpatient services at an established off-site location(s) (~~must~~) shall:

(a) Maintain a list of each established off-site location where services are provided(~~(r)~~) on a regularly scheduled ongoing basis and (~~(b)~~) include, for each established off-site location:

(i) The name and address of the location the services are provided;

(ii) The primary purpose of the off-site location;

(iii) The service(s) provided; and

(iv) The date off-site services began at that location;

(b) Maintain an individual's confidentiality at the off-site location; and

(c) Securely transport confidential information and individual records between the licensed agency and the off-site location, if applicable.

(2) In addition to meeting the requirements in subsection (1) of this section, an agency providing (~~in-home~~) services to an individu-

al in their place of residence or services in a public setting that is not an established off-site location where services are provided on a regularly scheduled ongoing basis must:

- (a) Implement and maintain a written protocol of how services will be offered in a manner that promotes individual, staff member, and community safety; and
- (b) For the purpose of emergency communication and as required by RCW 71.05.710, provide access to a wireless telephone or comparable device to any ((mental health professional who makes)) employee, contractor, student, or volunteer when making home visits to individuals.

(3) ((An agency must:

- ~~(a) Maintain an individual's confidentiality at the off-site location;~~
- ~~(b) Securely transport confidential information and individual records between the licensed agency and the off-site location, if applicable;~~
- ~~(c) Ensure the type of behavioral health service offered at each off-site location is certified by the department; and~~
- ~~(d) Ensure the behavioral health services provided at off-site locations meet the requirements of all applicable local, state, and federal rules and laws.)) For the purposes of this section:~~

(a) "Off-site" means the provision of services by a licensed behavioral health agency at a location where the assessment or treatment is not the primary purpose of the site, such as in schools, hospitals, long-term care facilities, correctional facilities, an individual's residence, the community, or housing provided by or under an agreement with the agency.

(b) "Established off-site location" means a location that is regularly used and set up to provide services rather than a location used on an individual, case-by-case basis.

[Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-0342, filed 4/16/19, effective 5/17/19.]

AMENDATORY SECTION (Amending WSR 20-07-091, filed 3/17/20, effective 5/1/20)

**WAC 246-341-0365 Agency licensure and certification—Fee requirements.** (1) Payment of licensing and specific ((program)) service certification fees required under this chapter must be included with the initial application, renewal application, or with requests for other services.

(2) Payment of fees must be made by check, bank draft, electronic transfer, or money order made payable to the department.

(3) The department may refund one-half of the application fee if an application is withdrawn before certification or denial.

(4) Fees will not be refunded when licensure or certification is denied, revoked, or suspended.

(5) The department charges the following fees for approved substance use disorder treatment programs:

Application fees for agency certification for approved substance use disorder treatment programs	
New agency application	\$1,000

Application fees for agency certification for approved substance use disorder treatment programs	
Branch agency application	\$500
Application to add one or more services	\$200
Application to change ownership	\$500
Initial and annual certification fees for withdrawal management, residential, and nonresidential services	
Withdrawal management and residential services	\$100 per licensed bed, per year, for agencies not renewing certification through deeming
	\$50 per licensed bed, per year, for agencies renewing certification through deeming per WAC 246-341-0310
Nonresidential services	\$750 per year for agencies not renewing certification through deeming
	\$200 per year for agencies certified through deeming per WAC 246-341-0310
Complaint/critical incident investigation fees	
All agencies	\$1,000 per substantiated complaint investigation and \$1,000 per substantiated critical incident investigation that results in a requirement for corrective action

(6) (~~Agency providers~~) Agencies must annually complete a declaration form provided by the department to indicate information necessary for establishing fees and updating certification information. Required information includes, but is not limited to:

- (a) The number of licensed withdrawal management and residential beds; and
- (b) The agency provider's national accreditation status.

(7) The department charges the following fees for approved mental health treatment programs:

Initial licensing application fee for mental health treatment programs	
Licensing application fee	\$1,000 initial licensing fee
Initial and annual licensing fees for agencies not deemed	
Annual service hours provided:	Initial and annual licensing fees:
0-3,999	\$728
4,000-14,999	\$1,055
15,000-29,999	\$1,405
30,000-49,999	\$2,105
50,000 or more	\$2,575
Annual licensing fees for deemed agencies	

Initial licensing application fee for mental health treatment programs	
Deemed agencies licensed by the department	\$500 annual licensing fee
Complaint/critical incident investigation fee	
All residential and nonresidential agencies	\$1,000 per substantiated complaint investigation and \$1,000 per substantiated critical incident investigation that results in a requirement for corrective action

(8) Agencies providing nonresidential mental health services must report the number of annual service hours provided (~~(based on the department's current published "Service Encounter Reporting Instructions for BHOs" and the "Consumer Information System (CIS) Data Dictionary for BHOs.")~~).

(a) Existing licensed agencies must compute the annual service hours based on the most recent state fiscal year.

(b) Newly licensed agencies must compute the annual service hours by projecting the service hours for the first twelve months of operation.

(9) Agencies providing mental health peer respite services, intensive behavioral health treatment services, evaluation and treatment services, and competency evaluation and restoration treatment services must pay the following certification fees:

(a) Ninety dollars initial certification fee, per bed; and

(b) Ninety dollars annual certification fee, per bed.

[Statutory Authority: 2019 c 324, RCW 71.24.037, 71.24.648, and 71.24.649. WSR 20-07-091, § 246-341-0365, filed 3/17/20, effective 5/1/20. Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-0365, filed 4/16/19, effective 5/17/19.]

AMENDATORY SECTION (Amending WSR 20-02-116, filed 1/2/20, effective 1/2/20)

**WAC 246-341-0367 Agency licensure and certification—Fee requirements for tribal attestations.** (1) A tribe may attest that its behavioral health agency meets state minimum standards for a licensed or certified behavioral health agency, as described by the definition of "licensed or certified behavioral health agency" in RCW 71.24.025 (~~((26)(e))~~).

(2) A tribe that is pursuing attestation with the department must submit a two hundred sixty-one dollar administrative processing fee to the department for any new or renewed attestation.

[Statutory Authority: RCW 43.70.250, 43.70.280, 71.24.037, and 71.24.025. WSR 20-02-116, § 246-341-0367, filed 1/2/20, effective 1/2/20.]



~~((SECTION FOUR))~~ BEHAVIORAL HEALTH SERVICES—AGENCY ADMINISTRATION

AMENDATORY SECTION (Amending WSR 19-09-062, filed 4/16/19, effective 5/17/19)

**WAC 246-341-0400 Agency administration—Governing body requirements.** A governing body is the entity with legal authority and responsibility for the operation of the behavioral health agency, to include its officers, board of directors or the trustees of a corporation or limited liability company. An agency's governing body is responsible for the conduct and quality of the behavioral health services provided. The agency's governing body must:

- (1) Assure there is an administrator responsible for the day-to-day operation of services;
- (2) Maintain a current job description for the administrator, including the administrator's authority and duties; and
- (3) Notify the department within thirty days of ~~((changes of))~~ changing the administrator.

[Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-0400, filed 4/16/19, effective 5/17/19.]

AMENDATORY SECTION (Amending WSR 19-09-062, filed 4/16/19, effective 5/17/19)

**WAC 246-341-0410 Agency administration—Administrator key responsibilities.** (1) The agency administrator is responsible for the day-to-day operation of the agency's provision of certified behavioral health treatment services, including:

- (a) All administrative matters;
  - (b) Individual care services; and
  - (c) Meeting all applicable rules, policies, and ethical standards.
- (2) The administrator may delegate the responsibilities assigned to them under this section to appropriate staff. The administrator retains overall responsibility for responsibilities delegated to appropriate staff.
- (3) The administrator must delegate to a staff person the duty and responsibility to act on the administrator's behalf when the administrator is not on duty or on call.

- (4) The administrator or their designee must ensure:
- (a) ~~((Delegate to a staff person the duty and responsibility to act in the administrator's behalf when the administrator is not on duty or on call;~~
  - (b) Ensure)) Administrative, personnel, and clinical policies and procedures are adhered to and ~~((kept current to be in compliance)) compliant with the rules in this chapter(, as applicable)) and other applicable state and federal statutes and regulations;~~

~~((e) Employ))~~ (b) There is sufficient qualified personnel to provide adequate treatment services and facility security;

~~((d) Ensure))~~ (c) All persons providing clinical services are appropriately credentialed for ((their scope of practice as required by the department)) the clinical services they provide;

~~((e) Identify at least one person to be responsible for))~~ (d) Clinical supervision ((duties)) of all clinical services including clinical services provided by trainees, students, and volunteers;

~~((f) Ensure that))~~ (e) There is an up-to-date personnel file for each employee, trainee, student, volunteer, and for each contracted staff person who provides or supervises an individual's care; ((and

~~(g) Ensure that))~~ (f) Personnel records document that Washington state patrol background checks consistent with chapter 43.43 RCW have been completed for each employee in contact with individuals receiving services ((-

~~(3) The administrator must ensure the agency develops and maintains))~~; and

(g) A written internal quality management ((plan/process)) plan, human resources plan or similarly specialized plan, as appropriate, is developed and maintained that:

~~((a))~~ (i) Addresses the clinical supervision and training of ((clinical)) staff providing clinical services;

~~((b))~~ (ii) Monitors compliance with the rules in this chapter, and other state and federal rules and laws that govern agency licensing and certification requirements; and

~~((e))~~ (iii) Continuously improves the quality of care in all of the following:

~~((i))~~ (A) Cultural competency that aligns with the agency's local community and individuals the agency serves or may serve;

~~((ii))~~ (B) Use of evidence based and promising practices; and

~~((iii))~~ (C) In response to((+

~~(A) Critical incidents;~~

~~(B) Complaints; and~~

~~(C) Grievances and appeals))~~ critical incidents and substantiated complaints.

[Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-0410, filed 4/16/19, effective 5/17/19.]

AMENDATORY SECTION (Amending WSR 19-09-062, filed 4/16/19, effective 5/17/19)

**WAC 246-341-0420 Agency ((administration)) policies and procedures.** Each agency licensed by the department to provide any behavioral health service must develop, implement, and maintain policies and procedures that address all of the applicable licensing and certification requirements of this chapter including administrative and personnel policies and procedures ((to meet the minimum requirements of this chapter)). ((The)) Administrative policies and procedures must demonstrate the following, as applicable:

(1) Ownership. Documentation of the agency's governing body, including a description of membership and authorities, and documentation of the agency's:

(a) Articles and certificate of incorporation and bylaws if the owner is a corporation;

(b) Partnership agreement if the owner is a partnership; or

(c) Sole proprietorship if one person is the owner.

(2) Licensure. A copy of the agency's master business license that authorizes the organization to do business in Washington state that lists all addresses where the entity performs services.

(3) Organizational description. An organizational description detailing all positions and associated licensure or certification, updated as needed.

(4) Agency staffing (~~(and supervision)~~). Documentation that shows the agency has (~~(staff members who)~~) adequate staffing to provide treatment in accordance (~~(to)~~) with regulations relevant to their specialty or specialties and registration, certification, licensing, and trainee or volunteer status.

(5) Interpreter services for individuals with limited-English proficiency (LEP) and individuals who have sensory disabilities. Documentation that demonstrates the agency's ability to provide or coordinate services for individuals with LEP and individuals who have sensory disabilities. This means:

(a) Certified interpreters or other interpreter services must be available for individuals with (~~(limited-English-speaking proficiency)~~) LEP and individuals who have sensory disabilities; or

(b) The agency must have the ability to effectively provide, coordinate or refer individuals in these populations for appropriate assessment or treatment.

(6) Reasonable access for individuals with disabilities. A description of how reasonable accommodations will be provided to individuals with disabilities.

(7) Nondiscrimination. A description of how the agency complies with all state and federal nondiscrimination laws, rules, and plans.

~~(8) ((Fee schedules. A copy of the agency's current fee schedules for all services must be available on request.~~

~~(9) Funding options for treatment costs. A description of how the agency works with individuals to address the funding of an individual's treatment costs, including a mechanism to address changes in the individual's ability to pay.~~

~~(10))~~ State and federal rules on confidentiality. A description of how the agency implements state and federal rules on individuals' confidentiality consistent with the service or services being provided.

~~((11))~~ (9) Reporting and documentation of suspected abuse, neglect, or exploitation. A description how the agency directs staff to report and document suspected abuse, neglect, or exploitation of a child or vulnerable adult consistent with chapters 26.44 and 74.34 RCW.

~~((12))~~ (10) Reporting of impaired practitioners in accordance with chapters 18.130 RCW and 246-16 WAC.

(11) Protection of youth. Documentation of how the agency addresses compliance with (~~(program-specific)~~) service-specific rules and the protection of youth participating in group or residential treatment with adults and how the agency will follow the requirements of chapter 71.34 RCW when an adolescent seeks treatment for themselves and for family initiated treatment of an adolescent.

~~((13))~~ (12) Completing and submitting reports. A description of how the agency directs staff to(~~(:~~

~~(a))~~ complete and submit in a timely manner, all reports re-  
quired by entities such as the courts, department of corrections, de-  
partment of licensing, the department of social and health services,  
the health care authority, and the department of health~~(; and~~

~~(b) Include a copy of the report(s) in the clinical record and~~  
~~document the date submitted.~~

~~(14) Reporting the death of an individual seeking or receiving~~  
~~services. A description of how the agency directs staff to report to~~  
~~the department or behavioral health organization (BHO), as applicable,~~  
~~within one business day the death of any individual which occurs on~~  
~~the premises of a licensed agency).~~

~~((15))~~ (13) Reporting critical incidents. A description of how  
the agency directs staff to report to the department ~~((or BHO, as ap-~~  
~~licable,))~~ within ~~((one business day))~~ forty-eight hours any critical  
 incident that occurs involving an individual, and actions taken as a  
 result of the incident. A critical incident is a serious or undesira-  
ble outcome that occurs in the agency including:

(a) Allegations of abuse, neglect, or exploitation;

(b) Death, including death by suicide;

(c) Injuries resulting in admission to a hospital as an inpa-  
tient; or

(d) Outbreak of communicable disease within the agency.

~~((16))~~ (14) A smoking policy. Documentation that a smoking pol-  
icy consistent with chapter 70.160 RCW ~~((smoking in public places)),~~  
and in compliance with applicable county ordinances, is in effect.

~~((17) Outpatient))~~ (15) Evacuation plan. Documentation that the  
residential or inpatient agency has an evacuation plan consistent with  
chapter 246-320, 246-322, 246-324, or 246-337 WAC. For a nonresiden-  
tial agency, documentation of an evacuation plan for use in the event  
of a disaster or emergency that addresses:

(a) Different types of disasters or emergencies;

(b) Placement of posters showing routes of exit;

(c) The need to mention evacuation routes at public meetings;

(d) Communication methods for individuals, staff, and visitors,  
including persons with a visual or hearing impairment or limitation;

(e) Evacuation of mobility impaired individuals; and

(f) Evacuation of children if child care is offered.

~~((18))~~ (16) Individual rights. A description of how the agency  
has individual participation rights and policies consistent with WAC  
246-341-0600.

~~((19))~~ (17) Individual complaints ~~((and grievances)).~~ A de-  
 scription of how the agency addresses an individual's ~~((~~

~~(a))~~ right to report an alleged violation of chapter ~~((s))~~ 70.41,  
71.05, 71.12, 71.24, or 71.34 RCW, and this chapter consistent with  
WAC 246-341-0605;

~~((b) Grievance or appeal consistent with WAC 182-538D-0654~~  
~~through 182-538D-0680.))~~

(18) Personnel policies and procedures must address the follow-  
ing:

(a) Background checks and disclosure statements. Identification  
of how the agency conducts Washington state background checks and ob-  
tains disclosure statements on each agency employee with unsupervised  
access to individuals receiving services, consistent with RCW  
43.43.830 through 43.43.842.

(b) Drug-free workplace. Identification of how the agency pro-  
vides for a drug-free workplace that includes:

(i) Agency program standards of prohibited conduct; and

(ii) Actions to be taken in the event a staff member misuses alcohol or other drugs, including referral to a department-approved impaired practitioner or voluntary substance use monitoring program.

(c) Supervision. Identification of how supervision is provided to assist clinical and nonclinical staff and volunteers to increase their skills and improve quality of services to individuals and families.

(d) Staff training. A description of how the agency provides training initial orientation and annual training thereafter in accordance with WAC 246-341-0510.

[Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-0420, filed 4/16/19, effective 5/17/19.]

AMENDATORY SECTION (Amending WSR 19-09-062, filed 4/16/19, effective 5/17/19)

**WAC 246-341-0425 Agency administration—Individual clinical record system.** Each agency (~~licensed by the department to provide any behavioral health service~~) must:

(1) Maintain a comprehensive clinical record system that includes policies and procedures that protect an individual's personal health information;

(2) Ensure that the individual's personal health information is shared or released only in compliance with applicable state and federal law;

(3) If maintaining electronic individual clinical records:

(a) Provide secure, limited access through means that prevent modification or deletion after initial preparation;

(b) Provide for a backup of records in the event of equipment, media, or human error; ~~((and))~~

(c) Provide for protection from unauthorized access, including network and internet access;

(d) Provide that each entry made in an individual's clinical records clearly identifies the author and who approved the entry, if applicable; and

(e) Prohibit agency employees from using another employee's credentials to access, author, modify, or delete an entry from an individual's clinical record;

(4) Retain an individual's clinical record, including an electronic record, for a minimum of six years after the most recent discharge or transfer of any individual;

(5) Retain a youth's or child's individual clinical record, including an electronic record, for at least six years after the most recent discharge, or ~~((at least three years following))~~ until the youth's or child's ~~((eighteenth))~~ twenty-first birthday, whichever is longer; and

(6) ~~((Meet the access to clinical records requirements in WAC 246-341-0650.))~~ Ensure secure storage of active or closed confidential records.

[Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-0425, filed 4/16/19, effective 5/17/19.]

~~((SECTION FIVE))~~ BEHAVIORAL HEALTH SERVICES—PERSONNEL

AMENDATORY SECTION (Amending WSR 19-09-062, filed 4/16/19, effective 5/17/19)

**WAC 246-341-0510 Personnel—Agency record requirements.** Each agency (~~licensed by the department to provide any behavioral health service~~) must maintain a personnel record for each person employed by the agency.

(1) The personnel record must contain all of the following:

(a) (~~Documentation of annual training, including documentation that the employee successfully completed training on cultural competency.~~) A signed position description.

(b) A signed and dated commitment to maintain patient (individual) confidentiality in accordance with state and federal confidentiality requirements.

(c) A record of an orientation to the agency within ninety days of hire that includes all of the following:

(i) An overview of the agency's policies and procedures.

(ii) (~~The duty to warn or to take reasonable precautions to provide protection from violent behavior when an individual has communicated an actual imminent threat of physical violence against a reasonably identifiable victim or victims. Taking reasonable precautions includes notifying law enforcement as required and allowed by law.~~

~~(iii))~~ Staff ethical standards and conduct, including reporting of unprofessional conduct to appropriate authorities.

~~((iv))~~ (iii) The process for resolving client (complaints and grievances) concerns.

~~((d))~~ (iv) Cultural competency.

(v) Violence prevention training on the safety and violence prevention topics described in RCW 49.19.030.

(vi) If providing substance use disorder services, prevention and control of communicable disease, bloodborne pathogens, and tuberculosis.

(d) A record of annual training that includes:

(i) Cultural competency; and

(ii) If providing substance use disorder services, prevention and control of communicable disease, bloodborne pathogens, and tuberculosis.

(e) A record of violence prevention training on the safety and violence prevention topics described in RCW 49.19.030; annually for employees working directly with clients receiving mental health services per RCW 71.05.720 or according to the agency's workplace violence plan required per RCW 49.19.020.

(f) A copy of the staff member's valid current credential issued by the department ((for their scope of practice)) if they provide clinical services.

(2) Staff members who have received services from the agency must have personnel records that:

(a) Are separate from clinical records; and

(b) Have no indication of current or previous service recipient status, unless the information is shared voluntarily for the purposes of employment as a certified peer counselor.

[Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-0510, filed 4/16/19, effective 5/17/19.]

AMENDATORY SECTION (Amending WSR 19-09-062, filed 4/16/19, effective 5/17/19)

**WAC 246-341-0515 Personnel—Agency staff requirements.** Each agency (~~licensed by the department to provide one or more behavioral health service~~) must ensure that all of the following staff requirements are met:

(1) (~~An agency providing mental health services must ensure all of the following:~~

~~(a) Each mental health service is provided by qualified staff members who meet the following for their scope of practice and services provided:~~

~~(i) Professional standards, including documented coursework, continuing education, and training;~~

~~(ii) Clinical supervision requirements; and~~

~~(iii) Licensure and credentialing requirements.~~

~~(b) Each staff member working directly with an individual receiving mental health services receives:~~

~~(i) Clinical supervision from a mental health professional who has received documented training and competency in clinical supervision approved by the department; and~~

~~(ii) Annual violence prevention training on the safety and violence prevention topics described in RCW 49.19.030.~~

~~(c) Staff) All staff providing clinical services are appropriately credentialed for the services they provide, which may include a co-occurring disorder specialist enhancement.~~

(2) All staff providing clinical services receive clinical supervision;

(3) All staff providing clinical mental health services have access to consultation with a psychiatrist, physician, physician assistant, advanced registered nurse practitioner (~~(ARNP)~~), or psychologist who has at least one year's experience in the direct treatment of individuals who have a mental or emotional disorder.

~~((2) An agency providing substance use disorder treatment services must ensure all of the following:~~

~~(a) All substance use disorder assessment and counseling services are provided by a chemical dependency professional (CDP), or a department-credentialed chemical dependency professional trainee (CDPT) under the supervision of an approved supervisor.~~

~~(b) There is a designated clinical supervisor who:~~

~~(i) Is a CDP;~~

~~(ii) Is an approved supervisor who meets the requirements of chapter 246-811 WAC; and~~

~~(iii) Has not committed, permitted, aided, or abetted the commission of an illegal act or unprofessional conduct as defined under RCW 18.130.180.~~

~~(c) Each chemical dependency professional trainee has at least one approved supervisor who meets the qualifications in WAC 246-811-049. An approved supervisor must decrease the hours of individual contact by twenty percent for each full-time CDPT supervised.~~

~~(d) Each staff member that provides individual care has a copy of an initial tuberculosis (TB) screen or test and any subsequent screenings or testing in their personnel file.~~

~~(e) All staff members are provided annual training on the prevention and control of communicable disease, bloodborne pathogens, and TB, and document the training in the personnel file.~~

~~(3-))~~ (4) An agency providing group counseling or group therapy must have a staff ratio of at least one staff member to every sixteen individuals during group counseling or therapy sessions.

(5) A Mental health professional is:

(a) A psychiatrist, psychologist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner (ARNP), psychiatric nurse, or social worker as defined in chapters 71.05 and 71.34 RCW;

(b) A person who is licensed by the department as a mental health counselor or mental health counselor associate, marriage and family therapist, or marriage and family therapist associate; or

(c) An agency staff member with a designation given by the department or an attestation by the licensed behavioral health agency that the person meets the following:

(i) Holds a master's degree or further advanced degree in counseling or one of the social sciences from an accredited college or university who has at least two years of experience in direct treatment of persons with mental illness or emotional disturbance, experience that was gained under the supervision of a mental health professional recognized by the department or attested to by the licensed behavioral health agency;

(ii) Who meets the waiver criteria of RCW 71.24.260, and the waiver was granted prior to 1986; or

(iii) Who had an approved waiver to perform the duties of a mental health professional (MHP), that was requested by the behavioral health organization (BHO) and granted by the mental health division prior to July 1, 2001.

(6) An agency providing problem gambling and ((pathological)) gambling disorder treatment services must ensure ((all of the following):

~~(a) All problem and pathological gambling treatment services are provided by:~~

~~(i) A certified Washington state, national, or international gambling counselor who is credentialed by the department under chapter 18.19, 18.83, or 18.225 RCW; or~~

~~(ii) An individual credentialed by DOH under chapter 18.19, 18.83, or 18.225 RCW, under the supervision of a certified problem gambling counselor, in training to become a certified problem gambling counselor.~~

~~(b) Before providing problem and pathological treatment services, an individual in training to become a certified problem gambling counselor must have a minimum of:~~

~~(i) At least one thousand five hundred hours of professionally supervised postcertification or postregistration experience providing mental health or substance use disorder treatment services; and~~



~~(ii) Thirty hours of unduplicated gambling specific training, including the basic training; one of the following state, national, or international organizations must approve the training:~~

~~(A) Washington state gambling counselor certification committee;~~

~~(B) National or international gambling counselor certification board; or~~

~~(C) The department.~~

~~(c) An individual who meets subsection (3) (b) (ii) of this section must complete training to become a certified problem and pathological gambling counselor within two years of beginning problem and pathological gambling clinical practice.~~

~~(d) All staff members in training to become a certified problem gambling counselor must receive clinical supervision. The clinical supervisor must:~~

~~(i) Hold a valid international gambling counselor certification board approved clinical consultant credential, a valid Washington state certified gambling counselor II certification credential, or a valid national certified gambling counselor II certification credential; and~~

~~(ii) Complete training on gambling specific clinical supervision approved by a state, national, or international organization including, but not limited to, the:~~

~~(A) Washington state gambling counselor certification committee;~~

~~(B) National or international gambling counselor certification board; or~~

~~(C) The department)) staffing in accordance with WAC 246-341-0754.~~

[Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-0515, filed 4/16/19, effective 5/17/19.]

AMENDATORY SECTION (Amending WSR 19-09-062, filed 4/16/19, effective 5/17/19)

**WAC 246-341-0520 Personnel—Agency requirements for supervision of trainees, interns, volunteers, and students.** Each agency licensed by the department to provide any behavioral health service must ensure the following supervision requirements are met for trainees, interns, volunteers, and students:

(1) Each trainee, intern, volunteer, and student ((~~passes~~)) with unsupervised access to individuals receiving services obtains a background check and submits a disclosure statement consistent with RCW 43.43.830 through 43.43.842;

(2) Each trainee, intern, volunteer, and student who receives clinical training ((~~at an agency must be assigned a supervisor who has been approved by the agency administrator or designee. The assigned supervisor:~~

~~(a) Must be credentialed by the department for their scope of practice;~~

~~(b) Is responsible for all individuals assigned to the trainee or intern they supervise; and~~

~~(c))~~ must receive clinical supervision that includes review of clinical documentation with the trainee ((~~or~~)), intern, volunteer, or student as part of the supervision process; and

(3) The agency must obtain and retain a confidentiality statement signed by the trainee, intern, volunteer, and student and the person's academic supervisor, if applicable.

[Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-0520, filed 4/16/19, effective 5/17/19.]

**(~~(SECTION SIX)~~) BEHAVIORAL HEALTH SERVICES—CLINICAL**

AMENDATORY SECTION (Amending WSR 19-09-062, filed 4/16/19, effective 5/17/19)

**WAC 246-341-0600 Clinical—Individual rights.** (1) Each agency must protect and promote individual participant rights applicable to the services the agency is certified to provide in compliance with this chapter, and chapters 70.41, 71.05, 71.12, 71.24, and 71.34 RCW, as applicable.

(2) Each agency (~~(licensed by the department to provide any behavioral health service)~~) must develop a statement of individual participant rights applicable to the services (~~(categories)~~) the agency is (~~(licensed for)~~) certified to provide, to ensure an individual's rights are protected in compliance with chapters 70.41, 71.05, 71.12, 71.24, and 71.34 RCW(~~(. In addition)~~), as applicable. To the extent that the rights set out in those chapters do not specifically address the rights in this subsection or are not applicable to all of the agency's services, the agency must develop a general statement of individual participant rights that incorporates at a minimum the following statements. "You have the right to:"

(a) Receive services without regard to race, creed, national origin, religion, gender, sexual orientation, age or disability;

(b) Practice the religion of choice as long as the practice does not infringe on the rights and treatment of others or the treatment service. Individual participants have the right to refuse participation in any religious practice;

(c) Be reasonably accommodated in case of sensory or physical disability, limited ability to communicate, limited-English proficiency, and cultural differences;

(d) Be treated with respect, dignity and privacy, except that staff may conduct reasonable searches to detect and prevent possession or use of contraband on the premises or to address risk of harm to the individual or others. "Reasonable" is defined as minimally invasive searches to detect contraband or invasive searches only upon the initial intake process or if there is reasonable suspicion of possession of contraband or the presence of other risk that could be used to cause harm to self or others;

(e) Be free of any sexual harassment;

(f) Be free of exploitation, including physical and financial exploitation;

(g) Have all clinical and personal information treated in accord with state and federal confidentiality regulations;

(h) Participate in the development of your individual service plan and receive a copy of the plan if desired;

(i) Review your clinical record in the presence of the administrator or designee and be given an opportunity to request amendments or corrections; and

~~((i) Receive a copy of agency grievance system procedures according to WAC 182-538D-0654 through 182-538D-0680 upon request and to file a grievance with the agency, or behavioral health organization (BHO), if applicable, if you believe your rights have been violated; and))~~

(j) Submit a report to the department when you feel the agency has violated a WAC requirement regulating behavioral health agencies.

~~((2))~~ (3) Each agency must ensure the applicable individual participant rights described in subsection (1) of this section are:

(a) Provided in writing to each individual on or before admission;

(b) Available in alternative formats for individuals who are visually impaired;

(c) Translated to the most commonly used languages in the agency's service area;

(d) Posted in public areas; and

(e) Available to any participant upon request.

~~((3) Each agency must ensure all research concerning an individual whose cost of care is publicly funded is done in accordance with chapter 388-04 WAC, protection of human research subjects, and other applicable state and federal rules and laws.~~

~~(4) In addition to the requirements in this section, each agency providing services to medicaid recipients must ensure an individual seeking or participating in behavioral health treatment services, or the person legally responsible for the individual is informed of their medicaid rights at time of admission and in a manner that is understandable to the individual or legally responsible person.~~

~~(5) The grievance system rules in WAC 182-538D-0654 through 182-538D-0680 apply to an individual who receives behavioral health services funded through a federal medicaid program or sources other than a federal medicaid program.)~~ (4) At the time of admission and upon client request, the agency must provide each client with information on how to file a report to the department if they feel their rights or requirements of this chapter have been violated.

[Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-0600, filed 4/16/19, effective 5/17/19.]

AMENDATORY SECTION (Amending WSR 19-09-062, filed 4/16/19, effective 5/17/19)

**WAC 246-341-0605 Complaint process.** (1) Any person may submit a report to the department of an alleged violation of licensing and certification laws and rules.

(2) Health care professionals credentialed by the department must comply with the mandatory reporting requirements in chapters 18.130 RCW and 246-16 WAC.

(3) If the department determines a report should be investigated, the report becomes a complaint. If the department conducts a complaint investigation, agency representatives must cooperate to allow department representatives to:

(a) Examine any part of the facility at reasonable times and as needed;

(b) Review and evaluate agency records including, but not limited to:

(i) An individual's clinical record and personnel file; and

(ii) The agency's policies, procedures, fiscal records, and any other documents required by the department to determine compliance and to resolve the complaint; and

(c) Conduct individual interviews with staff members and individuals receiving services.

(4) An agency or agency provider must not retaliate against any:

(a) Individual or individual's representative for making a report with the department or being interviewed by the department about a complaint;

(b) A witness involved in the complaint issue; or

(c) An employee of the agency.

(5) The department may assess a ~~((fee))~~ fine under RCW 43.70.250, or deny, suspend, or modify a license or certification under RCW 43.70.115, if:

(a) Any allegation within the complaint is substantiated; or

(b) The department's finding that the individual or individual's representative, a witness, or employee of the agency experienced an act of retaliation by the agency as described in subsection (4) of this section during or after a complaint investigation.

[Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-0605, filed 4/16/19, effective 5/17/19.]

AMENDATORY SECTION (Amending WSR 19-09-062, filed 4/16/19, effective 5/17/19)

**WAC 246-341-0640 Clinical (~~(--Additional)~~) record content.** Each agency (~~((licensed by the department to provide any behavioral health service))~~) is responsible for the components and documentation in an individual's clinical record content unless specified otherwise in specific service certification requirements.

(1) The clinical record must include:

~~((1))~~ (a) Documentation the individual received a copy of counselor disclosure requirements as required for the counselor's credential ~~((1))~~.

~~((2--Demographic))~~ (b) Identifying information ~~((1))~~.

~~((3))~~ (c) An assessment ~~((1))~~.

~~(4) Documentation of the individual's response when asked if:~~

~~(a) The individual is under department of corrections (DOC) supervision;~~

~~(b) The individual is under civil or criminal court ordered mental health or substance use disorder treatment; and~~

~~(c) There is a court order exempting the individual participant from reporting requirements. A copy of the court order must be inclu-~~

ded in the record if the participant claims exemption from reporting requirements.

~~(5) Documentation that the agency is in compliance with RCW 71.05.445 regarding mental health services for individuals under department of corrections supervision;~~

~~(6) Documentation the individual was informed of applicable federal and state confidentiality requirements;~~

~~(7)) which is an age-appropriate, strengths-based psychosocial assessment that considers current needs and the individual's relevant behavioral and physical health history according to best practices, completed by a person appropriately credentialed or qualified to provide the type of assessment pertaining to the service(s) being sought, which includes:~~

~~(i) Presenting issue(s);~~

~~(ii) An assessment of any risk of harm to self and others, including suicide, homicide, and a history of self-harm and, if the assessment indicates there is such a risk, a referral for provision of emergency/crisis services;~~

~~(iii) Treatment recommendations or recommendations for additional program-specific assessment; and~~

~~(iv) A diagnostic assessment statement, including sufficient information to determine a diagnosis supported by the current and applicable *Diagnostic and Statistical Manual of Mental Disorders (DSM-5)* or a placement decision, using ASAM criteria dimensions, when the assessment indicates the individual is in need of substance use disorder services.~~

~~(d) Individual service plan that:~~

~~(i) Is completed or approved by a person appropriately credentialed or qualified to provide mental health, substance use, co-occurring, or problem gambling disorder services;~~

~~(ii) Addresses issues identified in the assessment and by the individual or, if applicable, the individual's parent(s) or legal representative;~~

~~(iii) Contains measurable goals or objectives and interventions;~~

~~(iv) Must be mutually agreed upon and updated to address changes in identified needs and achievement of goals or at the request of the individual or, if applicable, the individual's parent or legal representative;~~

~~(v) Must be in a terminology that is understandable to the individuals and the individual's family or legal representative, if applicable.~~

~~(e) If treatment is not court-ordered, documentation of informed consent to treatment by the individual or individual's parent, or other legal representative.~~

~~(f) Progress and group notes including the date, time, duration, participant's name, response to interventions or clinically significant behaviors during the group session, and a brief summary of the individual or group session and the name and credential of the staff member who provided it.~~

~~(g) If treatment is for a substance use disorder, documentation that ASAM criteria was used for admission, continued services, referral, and discharge planning and decisions.~~

~~(h) Discharge information as follows:~~

~~(i) A discharge statement if the individual left without notice;~~

or

(ii) Discharge information for an individual who did not leave without notice, completed within seven working days of the individual's discharge, including:

(A) The date of discharge;

(B) Continuing care plan; and

(C) If applicable, current prescribed medication.

(2) When the following situations apply, the clinical record must include:

(a) Documentation of confidential information that has been released without the consent of the individual under:

~~((a))~~ (i) RCW 70.02.050;

~~((b))~~ (ii) The Health Insurance Portability and Accountability Act (HIPAA); and

~~((e))~~ (iii) RCW 70.02.230 and 70.02.240 if the individual received mental health treatment services;

(iv) 42 C.F.R. Part 2.

~~((8))~~ (b) Documentation that any mandatory reporting of abuse, neglect, or exploitation consistent with chapters 26.44 and 74.34 RCW has occurred((?)).

~~((9) If treatment is not court-ordered, documentation of informed consent to treatment by the individual or individual's parent, or other legal representative;~~

~~(10))~~ (c) If treatment is court-ordered, a copy of the order((?)).

~~((11))~~ (d) Medication records((, if applicable;)).

~~((12))~~ (e) Laboratory reports((, if applicable;)).

~~((13))~~ (f) Properly completed authorizations for release of information((, if applicable;.

~~(14) Copies of applicable correspondence;~~

~~(15) Discharge information as follows:~~

~~(a) A discharge statement if the individual left without notice;~~

~~(b) Discharge information for an individual who did not leave without notice, completed within seven working days of the individual's discharge, including:~~

~~(i) The date of discharge;~~

~~(ii) Continuing care plan;~~

~~(iii) Legal status, and if applicable; and~~

~~(iv) Current prescribed medication)).~~

~~((c) When an individual is transferring to another service provider,))~~ (g) Documentation that copies of documents pertinent to the individual's course of treatment were forwarded to the new service provider with the individual's permission.

~~((16))~~ (h) A copy of any report required by entities such as the courts, department of corrections, department of licensing, and the department of health, and the date the report was submitted((?)).

~~((17) Progress notes must include the date, time, duration, participant's name, response to interventions, and a brief summary of the session and the name and credential of the staff member who provided it;~~

~~(18))~~ (i) Documentation of coordination with any systems or organizations the individual identifies as being relevant to treatment, with the individual's consent or if applicable, the consent of the individual's parent or legal representation((?and)).

~~((19))~~ (j) A crisis plan, if one has been developed.

[Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-0640, filed 4/16/19, effective 5/17/19.]

AMENDATORY SECTION (Amending WSR 19-09-062, filed 4/16/19, effective 5/17/19)

**WAC 246-341-0650 Clinical—Access to clinical records.** (1) Each agency (~~licensed by the department to provide any behavioral health service must:~~

~~(1) Provide access to an individual's clinical record at the request of the individual or, if applicable, the individual's designated representative, or legal representative, or both. The agency must:~~

~~(a) Ensure that any material confidential to another person, agency, or provider is not redisclosed.~~

~~(b) Make the clinical record available to the requester within fifteen days of the request.~~

~~(c) Allow appropriate time and privacy for the review.~~

~~(d) Have)) must only provide access to clinical records in compliance with applicable state and federal statutes and regulations.~~

(2) When providing access to clinical records to an individual, the agency must allow appropriate time and privacy for the review and have a clinical staff member available to answer questions.

~~((e) Assure the charge for duplicating or searching the record is at a rate not higher than the "reasonable fee" as defined in RCW 70.02.010.~~

~~(2) Make an individual's)) (3) If the agency maintains electronic clinical records, the agency must make the records available in hard-copy form.~~

(4) The agency must allow the department access to individual clinical records (~~available to department staff as required for department program review.~~

~~(3) If the agency maintains electronic individual clinical records, the agency must:~~

~~(a) Make the clinical record available, in paper form if requested; and~~

~~(b) Meet the criteria in subsections (1) and (2) of this section)).~~

~~((4)) (5) When an individual receiving mental health services is under the supervision of the department of corrections (DOC), the agency must make information available to DOC, in accordance with RCW 71.05.445. The information released does not require the consent of the individual.~~

[Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-0650, filed 4/16/19, effective 5/17/19.]

**(~~SECTION SEVEN~~) OUTPATIENT AND RECOVERY SUPPORT SERVICES**

AMENDATORY SECTION (Amending WSR 20-07-091, filed 3/17/20, effective 5/1/20)

**WAC 246-341-0700 Outpatient and recovery support services—General.** Outpatient behavioral health services and recovery support services are intended to improve or reduce symptoms and help facilitate resolution of situational disturbances for individuals in the areas of relationships, employment, and community integration.

(1) ~~Outpatient services include the ((following:~~

- ~~(a) Individual mental health treatment services;~~
- ~~(b) Brief mental health intervention treatment services;~~
- ~~(c) Group mental health therapy services;~~
- ~~(d) Family therapy mental health services;~~
- ~~(e) Rehabilitative case management mental health services;~~
- ~~(f) Psychiatric medication mental health services and medication support;~~
- ~~(g) Day support mental health services;~~
- ~~(h) Mental health outpatient services provided in a residential treatment facility (RTF);~~
- ~~(i) Level one outpatient substance use disorder services;~~
- ~~(j) Level two intensive outpatient substance use disorder services;~~
- ~~(k) Substance use disorder assessment only services;~~
- ~~(l) Alcohol and drug information school;~~
- ~~(m) Substance use disorder information and crisis services;~~
- ~~(n) Substance use disorder emergency service patrol services;~~
- ~~(o) Substance use disorder screening and brief intervention services; and~~
- ~~(p) Problem and pathological gambling services)) certifications described in WAC 246-341-0702 through 246-341-0754.~~

(2) Recovery support services include the ((following:

- ~~(a) Supported employment mental health and substance use disorder services;~~
- ~~(b) Supportive housing mental health and substance use disorder services;~~
- ~~(c) Peer support mental health services;~~
- ~~(d) Wraparound facilitation mental health services;~~
- ~~(e) Applied behavior analysis (ABA) mental health services;~~
- ~~(f) Consumer-run clubhouse mental health services; and~~
- ~~(g) Mental health peer respite services.~~

(3) ~~A behavioral health agency that provides outpatient or recovery support services must:~~

- ~~(a) Be licensed by the department as a behavioral health agency; and~~
- ~~(b) Meet the applicable program-specific requirements for each behavioral health service provided)) certifications described in WAC 246-341-0720 through 246-341-0730.~~

[Statutory Authority: 2019 c 324, RCW 71.24.037, 71.24.648, and 71.24.649. WSR 20-07-091, § 246-341-0700, filed 3/17/20, effective 5/1/20. Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-0700, filed 4/16/19, effective 5/17/19.]



AMENDATORY SECTION (Amending WSR 19-09-062, filed 4/16/19, effective 5/17/19)

**WAC 246-341-0702 Outpatient services—Individual mental health treatment services.** ~~((1))~~ Individual mental health treatment services are services designed to assist an individual in attaining the goals identified in the individual service plan. The treatment services are conducted with the individual and any natural supports as identified by the individual.

~~((2) An agency certified to provide individual treatment services must meet the behavioral health agency licensure, certification, administration, personnel, and clinical requirements in WAC 246-341-0300 through 246-341-0650.)~~

[Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-0702, filed 4/16/19, effective 5/17/19.]

AMENDATORY SECTION (Amending WSR 19-09-062, filed 4/16/19, effective 5/17/19)

**WAC 246-341-0704 Outpatient services—Brief mental health intervention treatment services.** ~~((1))~~ Brief mental health intervention treatment services are solution-focused and outcome-oriented cognitive and behavioral interventions, intended to resolve situational disturbances. These services do not require long-term treatment, are generally completed in six months or less, and do not include ongoing care, maintenance, or monitoring of the individual's current level of function or assistance with self-care or life skills training.

~~((2) An agency certified to provide brief mental health intervention treatment services must meet the behavioral health agency licensure, certification, administration, personnel, and clinical requirements in WAC 246-341-0300 through 246-341-0650.)~~

[Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-0704, filed 4/16/19, effective 5/17/19.]

AMENDATORY SECTION (Amending WSR 19-09-062, filed 4/16/19, effective 5/17/19)

**WAC 246-341-0706 Outpatient services—Group mental health therapy services.** Group mental health therapy services are provided to an individual in a group setting to assist the individual in attaining the goals described in the individual service plan. ~~((In addition to meeting the behavioral health agency licensure, certification, administration, personnel, and clinical requirements in WAC 246-341-0300 through 246-341-0650, an agency certified to provide group mental health services must:~~

- ~~(1) Have a written description of each group's purpose;~~
- ~~(2) Ensure group therapy services are provided with a staff ratio of one staff member for every sixteen individuals;~~

~~(3) Ensure any group containing more than twelve individuals has at least one facilitator or cofacilitator that is an appropriately credentialed professional; and~~

~~(4) Ensure group notes are recorded in each individual's clinical record and include the requirements of WAC 246-341-0640(17) for discharge information.)~~

[Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-0706, filed 4/16/19, effective 5/17/19.]

AMENDATORY SECTION (Amending WSR 19-09-062, filed 4/16/19, effective 5/17/19)

**WAC 246-341-0708 Outpatient services—Family therapy mental health services.** (1) Family therapy mental health services are services provided for the direct benefit of an individual, with either family members, or other relevant persons, or both, in attendance, with the consent of the individual.

(2) Interventions must identify and build competencies to strengthen family functioning in relationship to the individual's identified goals. The individual may or may not be present.

~~((3) An agency certified to provide family therapy mental health services must meet the behavioral health agency licensure, certification, administration, personnel, and clinical requirements in WAC 246-341-0300 through 246-341-0650.))~~

[Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-0708, filed 4/16/19, effective 5/17/19.]

AMENDATORY SECTION (Amending WSR 19-09-062, filed 4/16/19, effective 5/17/19)

**WAC 246-341-0710 Outpatient services—Rehabilitative case management mental health services.** Rehabilitative case management mental health services are services that meet the ongoing assessment, facilitation, care coordination and advocacy for options and services to meet an individual's needs through communication and available resources, to promote quality and effective outcomes during and following a hospitalization.

(1) Rehabilitative case management services support individual employment, education, and participation in other daily activities appropriate to the individual's age, gender, and culture, and assist individuals in resolving crises in the least restrictive setting.

(2) Rehabilitative case management services include specific rehabilitative services provided to:

(a) Assist in an individual's discharge from an inpatient facility; and

(b) Minimize the risk of readmission to an inpatient setting.

~~(3) An agency ((certified to provide rehabilitative case management services must meet the behavioral health agency licensure, certification, administration, personnel, and clinical requirements in WAC 246-341-0300 through 246-341-0650))~~ providing rehabilitative case

management is not required to complete the assessment requirement in WAC 246-341-0640 (1)(c).

[Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-0710, filed 4/16/19, effective 5/17/19.]

AMENDATORY SECTION (Amending WSR 19-09-062, filed 4/16/19, effective 5/17/19)

**WAC 246-341-0712 Outpatient services—Psychiatric medication ((mental health)) management services ((and medication support)).** Psychiatric medication ((mental health)) management services are a variety of activities related to prescribing and administering medication, including monitoring an individual for side effects and changes as needed. ~~((These services may only be provided with one of the outpatient mental health services in WAC 246-341-0700 (1)(a) through (e).))~~

~~(1) An agency providing psychiatric medication management services ((may also provide medication support services, described in subsections (2) and (3) of this section.~~

~~(1) An agency providing psychiatric medication services)) must:~~

(a) Ensure that medical direction and responsibility are assigned to a:

(i) Physician who is licensed to practice under chapter 18.57 or 18.71 RCW, and is board-certified or board-eligible in psychiatry;

(ii) Psychiatric advanced registered nurse practitioner (ARNP) licensed under chapter 18.79 RCW; or

(iii) Physician assistant licensed under chapter 18.71A or 18.57A RCW working with a supervising psychiatrist.

(b) Ensure that the services are provided by a prescriber licensed by the department who is practicing within the scope of that practice;

(c) Ensure that all staff administering medications are ~~((administered by staff practicing within the scope of their practice))~~ appropriately credentialed;

(d) Have a process by which the medication prescriber informs either the individual, the legally responsible party, or both, and, as appropriate, family members, of the potential benefits and side effects of the prescribed medication(s);

(e) Must ensure that all medications maintained by the agency are safely and securely stored, including assurance that:

(i) Medications are kept in locked cabinets within a well-lit, locked and properly ventilated room;

(ii) Medications kept for individuals on medication administration or self-administration programs are clearly labeled and stored separately from medication samples kept on-site;

(iii) Medications marked "for external use only" are stored separately from oral or injectable medications;

(iv) Refrigerated food or beverages used in the administration of medications are kept separate from the refrigerated medications by the use of trays or other designated containers;

(v) Syringes and sharp objects are properly stored and disposed of;

(vi) Refrigerated medications are maintained at the required temperature; and

(vii) If the individual gives permission for disposal, outdated medications are disposed of in accordance with the regulations of the ~~((state board of))~~ pharmacy quality assurance commission and no outdated medications are retained.

(2) An agency providing psychiatric medication management services may utilize a physician or ARNP without board eligibility in psychiatry if unable to employ or contract with a psychiatrist. In this case, the agency must ensure that:

(a) Psychiatrist consultation is provided to the physician or ARNP at least monthly; and

(b) A psychiatrist or psychiatric ARNP is accessible to the physician or ARNP for emergency consultation.

~~((3) Medication support services occur face-to-face and:~~

~~(a) Include one-on-one cueing, observing, and encouraging an individual to take medication as prescribed;~~

~~(b) Include reporting any pertinent information related to the individual's adherence to the medication back to the agency that is providing psychiatric medication services; and~~

~~(c) May take place at any location and for as long as it is clinically necessary.~~

~~(4) An agency providing medication support services must:~~

~~(a) Ensure that the staff positions responsible for providing either medication monitoring, or delivery services, or both, are clearly identified in the agency's medication support services policy;~~

~~(b) Have appropriate policies and procedures in place when the agency providing medication support services maintains or delivers medication to the individual that address:~~

~~(i) The maintenance of a medication log documenting medications that are received, prescribed, and dispensed;~~

~~(ii) Reasonable precautions that need to be taken when transporting medications to the intended individual and to assure staff safety during the transportation; and~~

~~(iii) The prevention of contamination of medication during delivery, if delivery is provided.)~~

(c) Ensure that the individual's clinical record contains ~~((the individual service plan, including))~~ documentation of medication ~~((support))~~ management services.

[Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-0712, filed 4/16/19, effective 5/17/19.]

#### NEW SECTION

**WAC 246-341-0713 Outpatient services—Medication monitoring services.** (1) Medication monitoring services occur face-to-face and:

(a) Include one-on-one cueing, observing, and encouraging an individual to take medication as prescribed;

(b) Include reporting any pertinent information related to the individual's adherence to the medication back to the agency that is providing psychiatric medication services; and

(c) May take place at any location and for as long as it is clinically necessary.

(2) An agency providing medication monitoring services must:

(a) Ensure that the staff positions responsible for providing either medication monitoring, or delivery services, or both, are clearly identified in the agency's medication monitoring services policy;

(b) Have appropriate policies and procedures in place when the agency providing medication monitoring services maintains or delivers medication to the individual that address:

(i) The maintenance of a medication log documenting the type and dosage of medications, and the time and date;

(ii) Reasonable precautions that need to be taken when transporting medications to the intended individual and to assure staff safety during the transportation; and

(iii) The prevention of contamination of medication during delivery, if delivery is provided.

(c) Ensure that the individual's clinical record includes documentation of medication monitoring services.

[ ]

AMENDATORY SECTION (Amending WSR 19-09-062, filed 4/16/19, effective 5/17/19)

**WAC 246-341-0714 Outpatient services—Day support mental health services.** (1) Day support mental health services provide a range of integrated and varied life skills training. Day support services are designed to assist an individual in the acquisition of skills, retention of current functioning, or improvement in the current level of functioning, appropriate socialization, and adaptive coping skills.

(2) Services include training in basic living and social skills, and educational, vocational, prevocational, and day activities. Day support services may include therapeutic treatment.

~~((3) An agency certified to provide day support services must meet the behavioral health agency licensure, certification, administration, personnel, and clinical requirements in WAC 246-341-0300 through 246-341-0650.))~~

[Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-0714, filed 4/16/19, effective 5/17/19.]

AMENDATORY SECTION (Amending WSR 20-07-091, filed 3/17/20, effective 5/1/20)

**WAC 246-341-0718 Recovery support services—Recovery support—General.** Recovery support services are intended to promote an individual's socialization, recovery, self-advocacy, development of natural support, and maintenance of community living skills.

(1) Recovery support services include:

(a) Supported employment services;

(b) Supportive housing services;

(c) Peer support services;

(d) Mental health peer respite services;

(e) ~~((Wraparound facilitation services;))~~

~~(f))~~ Applied behavior analysis (ABA) services; and

~~((g))~~ (f) Consumer-run clubhouse services.

(2) An agency that provides any recovery support service may operate through an agreement with a licensed behavioral health agency that provides certified outpatient behavioral health services (~~listed in WAC 246-341-0700~~) described in WAC 246-341-0702 through 246-341-0754. The agreement must specify the responsibility for initial assessments, the determination of appropriate services, individual service planning, and the documentation of these requirements in order to meet the requirements in WAC 246-341-0640. Subsections ~~(3)~~ ~~(through (5))~~ and (4) of this section list the abbreviated requirements for assessments, staff, and clinical records.

(3) When providing any recovery support service, a behavioral health agency must:

(a) Have an assessment process to determine the appropriateness of the agency's services, based on the individual's needs and goals;

(b) Refer an individual to a more intensive level of care when appropriate; and

(c) With the consent of the individual, include the individual's family members, significant others, and other relevant treatment providers as necessary to provide support to the individual.

~~(4) ((An agency providing recovery support services must ensure:~~

~~(a) Each staff member working directly with an individual receiving any recovery support service has annual violence prevention training on the safety and violence prevention topics described in RCW 49.19.030; and~~

~~(b) The staff member's personnel record documents the training.~~

~~(5))~~ An agency providing any recovery support service must maintain an individual's clinical record that contains:

(a) Documentation of the following:

(i) The name of the agency or other sources through which the individual was referred;

(ii) A brief summary of each service encounter, including the date, time, and duration of the encounter; and

(iii) Names of participant(s), including the name of the individual who provided the service.

(b) Any information or copies of documents shared by, or with, a behavioral health agency certified for outpatient mental health services.

[Statutory Authority: 2019 c 324, RCW 71.24.037, 71.24.648, and 71.24.649. WSR 20-07-091, § 246-341-0718, filed 3/17/20, effective 5/1/20. Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-0718, filed 4/16/19, effective 5/17/19.]

AMENDATORY SECTION (Amending WSR 19-09-062, filed 4/16/19, effective 5/17/19)

**WAC 246-341-0720 Outpatient services—Recovery support—Supported employment mental health and substance use disorder services.** Supported employment mental health and substance use disorder services assist in job search, placement services, and training to help individuals find competitive jobs in their local communities.

(1) ~~((An agency that provides certified supported employment services must meet the general requirements for recovery support services in WAC 246-341-0718.~~

~~(2))~~) A behavioral health agency that provides supported employment services must have knowledge of and provide individuals access to employment and education opportunities by coordinating efforts with one or more entities that provide other rehabilitation and employment services, such as:

(a) The department of social and health services' division of vocational rehabilitation (DVR) ~~((, which provides supported employment under WAC 388-891-0840 by community rehabilitation program contract as described in WAC 388-892-0100));~~

(b) The department of social and health services' community services offices;

(c) State board for community ~~((, trade,))~~ and technical colleges;

(d) The business community;

(e) WorkSource, Washington state's official site for online employment services;

(f) Washington state department of employment security; and

(g) Organizations that provide job placement within the community.

~~((3))~~) (2) A behavioral health agency that provides supported employment services must:

(a) Ensure all staff members who provide direct services for employment are knowledgeable and familiar with services provided by the ~~((department's))~~ department of social and health services' division of vocational rehabilitation;

(b) Conduct and document a vocational assessment in partnership with the individual that includes work history, skills, training, education, and personal career goals;

(c) Assist the individual to create an individualized job and career development plan that focuses on the individual's strengths and skills;

(d) Assist the individual to locate employment opportunities that are consistent with the individual's skills, goals, and interests;

(e) Provide and document any outreach, job coaching, and support at the individual's worksite when requested by the individual or the individual's employer; and

(f) If the employer makes a request, provide information regarding the requirements of reasonable accommodations, consistent with the Americans with Disabilities Act (ADA) of 1990 and Washington state antidiscrimination law.

[Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-0720, filed 4/16/19, effective 5/17/19.]

AMENDATORY SECTION (Amending WSR 19-09-062, filed 4/16/19, effective 5/17/19)

**WAC 246-341-0722 Outpatient services—Recovery support—Supportive housing mental health and substance use disorder services.** Supportive housing mental health and substance use disorder services support an individual's transition to community integrated housing and

support the individual to be a successful tenant in a housing arrangement.

~~(1) ((An agency that provides certified supportive housing services must meet the general requirements for recovery support services in WAC 246-341-0718.~~

~~(2))~~) A behavioral health agency that provides supportive housing services must have knowledge of and provide housing related collaborative activities to assist individuals in identifying, coordinating, and securing housing or housing resources with entities such as:

(a) Local homeless continuum of care groups or local homeless planning groups;

(b) Housing authorities that operate in a county or city (~~in the behavioral health organization's (BHO) regional service area~~);

(c) Community action councils (~~that operate in a county or region in the BHO's regional service area~~);

(d) Landlords of privately owned residential homes; and

(e) State agencies that provide housing resources.

~~((3))~~) (2) A behavioral health agency that provides supportive housing services must:

(a) Ensure all staff members who provide direct services for supportive housing are knowledgeable and familiar with fair housing laws;

(b) Conduct and document a housing assessment in partnership with the individual that includes housing preferences, affordability, and barriers to housing;

(c) Conduct and document a functional needs assessment in partnership with the individual that includes independent living skills and personal community integration goals;

(d) Assist the individual to create an individualized housing acquisition and maintenance plan that focuses on the individual's choice in housing;

(e) Assist the individual to locate housing opportunities that are consistent with the individual's preferences, goals, and interests;

(f) Provide any outreach, tenancy support, and independent living skill building supports at a location convenient to the individual;

(g) Provide the individual with information regarding the requirements of the Fair Housing Act, Americans with Disabilities Act (ADA) of 1990, and Washington state antidiscrimination law, and post this information in a public place in the agency; and

(h) Ensure the services are specific to each individual and meant to assist in obtaining and maintaining housing in scattered-site, clustered, integrated, or single-site housing as long as the individual holds a lease or sublease.

[Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-0722, filed 4/16/19, effective 5/17/19.]

AMENDATORY SECTION (Amending WSR 19-09-062, filed 4/16/19, effective 5/17/19)

**WAC 246-341-0724 Outpatient services—Recovery support—Peer support ((mental)) behavioral health services.** (1) Peer support (~~men-tal~~) behavioral health services provide a wide range of activities to



assist an individual in exercising control over their own life and recovery process through:

- (a) Developing self-advocacy and natural supports;
- (b) Maintenance of community living skills;
- (c) Promoting socialization; and
- (d) The practice of peer counselors sharing their own life experiences related to ((mental illness)) behavioral health disorders to build alliances that enhance the individual's ability to function.

(2) An agency that provides certified peer support services must ((meet the general requirements for recovery support services in WAC 246-341-0718.

~~(3) An agency providing peer support services must ensure peer support counselors)):~~

(a) Ensure peer support counselors are recognized by the health care authority as a "peer counselor" as defined in WAC ((182-538D-0200)) 246-341-0200; and

(b) Provide peer support services ((+  
 (i) Under the supervision of a mental health professional; and  
 (ii)) within the scope of the peer counselor's training and department of health credential.

((4) An agency providing peer support services must document the frequency, duration, and expected outcome of all peer support services in the individual service plan.))

[Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-0724, filed 4/16/19, effective 5/17/19.]

AMENDATORY SECTION (Amending WSR 19-09-062, filed 4/16/19, effective 5/17/19)

**WAC 246-341-0730 Outpatient services—Consumer-run recovery support—Clubhouses ((Required clubhouse components)).** (1) ((The department certifies consumer-run clubhouses under the provision of RCW 71.24.035. International center for clubhouse development certification is not a substitute for certification by the state of Washington.

(2) Required clubhouse components include all of the following:  
 (a) Voluntary member participation. Clubhouse members choose the way they use the clubhouse and the staff with whom they work. There are no agreements, contracts, schedules, or rules intended to enforce participation of members. All member participation is voluntary. Clubhouse policy and procedures must describe how members will have the opportunity to participate, based on their preferences, in the clubhouse.

(b) The work-ordered day.  
 (c) Activities, including:  
 (i) Personal advocacy;  
 (ii) Help with securing entitlements;  
 (iii) Information on safe, appropriate, and affordable housing;  
 (iv) Information related to accessing medical, psychological, pharmacological and substance use disorder services in the community;  
 (v) Outreach to members during periods of absence from the clubhouse and maintaining contact during periods of inpatient treatment;  
 (vi) In-house educational programs that use the teaching and tutoring skills of members;

~~(vii) Connecting members with adult education opportunities in the community;~~

~~(viii) An active employment program that assists members to gain and maintain employment in full- or part-time competitive jobs in integrated settings developed in partnership with the member, the clubhouse, and the employer and time-limited, part-time community jobs managed by the clubhouse with absentee coverage provided; and~~

~~(ix) An array of social and recreational opportunities.~~

~~(d) Operating at least thirty hours per week on a schedule that accommodates the needs of the members.)~~ A clubhouse is a community-based program that provides rehabilitation services.

(2) The clubhouse may be peer-operated and must:

(a) Be member-run with voluntary participation;

(b) Be recovery-focused;

(c) Focus on strengths, talents, and abilities of its members;

(d) Have a clubhouse director who:

(i) Engages members and staff in all aspects of the clubhouse operations; and

(ii) Is ultimately responsible for the operation of the clubhouse.

(e) Be comprised of structured activities including:

(i) Personal advocacy;

(ii) Help with securing entitlements;

(iii) Information on safe, appropriate, and affordable housing;

(iv) Community resource development;

(v) Connecting members with adult education opportunities in the community;

(vi) An active employment program that assists members to gain and maintain employment in full- or part-time competitive jobs. Employment related activities may include resume building, education on how employment will affect benefits, information on other employment services, and information regarding protections against employment discrimination; and

(vii) An array of social and recreational opportunities.

(f) Use a work-ordered day to allow all members the opportunity to participate in all the work of the clubhouse including:

(i) Administration;

(ii) Research;

(iii) Intake and orientation;

(iv) Outreach;

(v) Training and evaluation of staff;

(vi) Public relations;

(vii) Advocacy; and

(viii) Evaluation of clubhouse effectiveness.

(g) Provide in-house educational programs that significantly utilize the teaching and tutoring skills of members and assist members by helping them to take advantage of adult education opportunities in the community.

(3) "Work-ordered day" means a model used to organize clubhouse activities during the clubhouse's normal working hours.

(a) Members and staff are organized into one or more work units which provide meaningful and engaging work essential to running the clubhouse.

(b) Activities include unit meetings, planning, organizing the work of the day, and performing the work that needs to be accomplished to keep the clubhouse functioning.

(c) Members and staff work side-by-side as colleagues as evidenced by both the member and the staff signature on progress towards goals.

(d) Members participate as they feel ready and according to their individual interests.

(e) Work in the clubhouse is not intended to be job-specific training, and members are neither paid for clubhouse work nor provided artificial rewards.

(f) Work-ordered day does not include medication clinics, day treatment, or other therapy programs.

[Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-0730, filed 4/16/19, effective 5/17/19.]

AMENDATORY SECTION (Amending WSR 19-09-062, filed 4/16/19, effective 5/17/19)

**WAC 246-341-0738 Outpatient services—Level one outpatient substance use disorder services.** (~~((1) ASAM))~~ Level one outpatient substance use disorder services provide ((a program of)) individualized treatment that may include individual and group counseling, education, and activities ((, in accordance with ASAM criteria.

~~(2) An agency certified to provide level one outpatient substance use disorder services must meet the behavioral health agency licensure, certification, administration, personnel, and clinical requirements in WAC 246-341-0300 through 246-341-0650.~~

~~(3) An agency certified to provide level one outpatient substance use disorder services must ensure both of the following:~~

~~(a) Group therapy services are provided with a staff ratio of one staff member for every sixteen individuals; and~~

~~(b) A group counseling session with twelve to sixteen youths includes a second staff member).~~

[Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-0738, filed 4/16/19, effective 5/17/19.]

AMENDATORY SECTION (Amending WSR 19-09-062, filed 4/16/19, effective 5/17/19)

**WAC 246-341-0740 Outpatient services—Level two intensive outpatient substance use disorder services.** ((ASAM)) (1) Level two intensive outpatient substance use disorder services provide a higher-intensity, concentrated ((program of)) level of individualized treatment that may include individual and group counseling, education, and other activities ((, in accordance with ASAM criteria.

~~(1) An agency certified to provide level two intensive outpatient treatment services must meet the behavioral health agency licensure, certification, administration, personnel, and clinical requirements in WAC 246-341-0300 through 246-341-0650).~~

(2) An agency providing level two intensive outpatient treatment services for deferred prosecution under RCW 10.05.150 must:

(a) Ensure that ~~((individuals admitted under a deferred prosecution order receive services that meet the requirements of RCW 10.05.150, including, that the individual receives))~~ services include a minimum of seventy-two hours of treatment services within a maximum of twelve weeks, which consist of the following during the first four weeks of treatment:

(i) At least three sessions each week, with each session occurring on separate days of the week;

(ii) Group sessions that must last at least one hour; and

(iii) Attendance at self-help groups in addition to the seventy-two hours of treatment services.

(b) There must be approval, in writing, by the court having jurisdiction in the case, when there is any exception to the requirements in this subsection; ~~((and))~~

(c) The agency must refer for ongoing treatment or support upon completion of intensive outpatient treatment, as necessary; and

(d) The agency must report noncompliance with the court mandated treatment in accordance with WAC 246-341-0800.

~~((3) An agency certified to provide level two intensive outpatient substance use disorder services must ensure both of the following:~~

~~(a) Group therapy services are provided with a staff ratio of one staff member for every sixteen individuals; and~~

~~(b) A group counseling session with twelve to sixteen youths includes a second staff member.)~~

[Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-0740, filed 4/16/19, effective 5/17/19.]

AMENDATORY SECTION (Amending WSR 19-09-062, filed 4/16/19, effective 5/17/19)

**WAC 246-341-0742 Outpatient services—Substance use disorder assessment only services.** Substance use disorder assessment only services are provided to an individual to determine the individual's involvement with alcohol and other drugs and determine the appropriate course of care or referral.

(1) A behavioral health agency certified for assessment only services may choose to become certified to also provide driving under the influence (DUI) assessment services described in WAC 246-341-0820.

(2) ~~((An agency certified to provide assessment only services must meet the behavioral health agency licensure, certification, administration, personnel, and clinical requirements in WAC 246-341-0300 through 246-341-0650 except where specifically indicated.~~

~~(3))~~ An agency providing assessment only services:

(a) Must review, evaluate, and document information provided by the individual;

(b) May include information from external sources such as family, support individuals, legal entities, courts, and employers; and

(c) Is not required to meet the individual service plan requirements in WAC ~~((246-341-0620))~~ 246-341-0640.

~~((4))~~ (3) An agency must maintain and provide a list of resources, including self-help groups, and referral options that can be used by staff members to refer an individual to appropriate services.

~~((5) An agency that offers off-site assessment services must meet the requirements in WAC 246-341-0342.~~

~~(6) An agency providing assessment only services must ensure all assessment only services are provided by a chemical dependency professional (CDP).)~~

[Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-0742, filed 4/16/19, effective 5/17/19.]

AMENDATORY SECTION (Amending WSR 19-09-062, filed 4/16/19, effective 5/17/19)

**WAC 246-341-0744 Outpatient services—Information and assistance services—Substance use disorder services—General.** Information and assistance services are considered nontreatment substance use disorder services provided to support an individual who has a need for interventions related to substance use.

(1) Information and assistance services ~~((require additional program-specific certification by the department and))~~ include:

- (a) Alcohol and drug information school;
- (b) Information and crisis services; and
- (c) Emergency service patrol ~~((; and~~
- ~~(d) Screening and brief intervention)).~~

(2) Substance use disorder information and assistance services ~~((are available without an initial assessment or individual service plan and))~~ are not required to meet the requirements under WAC 246-341-0640.

(3) An agency providing information and assistance services must maintain and provide a list of resources, including self-help groups and referral options, that can be used by staff members to refer an individual to appropriate services.

[Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-0744, filed 4/16/19, effective 5/17/19.]

AMENDATORY SECTION (Amending WSR 19-09-062, filed 4/16/19, effective 5/17/19)

**WAC 246-341-0746 Outpatient services—Substance use disorder information and assistance services—Alcohol and drug information school.** Alcohol and drug information school services provide an educational program about substance use. These services are for an individual referred by a court or other jurisdiction(s) who may have been assessed and determined not to require treatment. ~~((In addition to meeting requirements for substance use disorder information and assistance services in WAC 246-341-0744,))~~ An agency providing alcohol and drug information school services must:

(1) Ensure courses are taught by a ~~((certified information school instructor or a chemical dependency professional (CDP) who:~~

~~(a) Advises))~~ substance use disorder professional, a substance use disorder professional trainee, or a person who has received documented training in:

- (a) Effects of alcohol and other drugs;
- (b) Patterns of use;
- (c) Current laws and regulations pertaining to substance use violations, and consequences of the violations; and
- (d) Available resources and referral options for additional services that may be appropriate for the individual.
- (2) Ensure the curriculum:
  - (a) Provides no less than eight hours of instruction for each course;
  - (b) Includes a post-test for each course after the course is completed;
  - (c) Includes a certificate of completion; and
  - (d) Covers the following topics:
    - (i) Information about the effects of alcohol and other drugs;
    - (ii) Patterns of use; and
    - (iii) Current laws, including Washington state specific laws and regulations, and consequences related to substance use violations.
- (3) Ensure each student be advised that there is no assumption the student has a substance use disorder and that the course is not a therapy session;
  - ~~((b) Follows a department approved curriculum;~~
  - ~~(c) Ensures each course has no fewer than eight hours of classroom instruction; and~~
  - ~~(d) Administers each enrolled student the post-test for each course after the course is completed;~~
- ~~(2) Ensure a school instructor who is not a CDP has a certificate of completion of an alcohol and other drug information school instructor's training course approved by the department, and the personnel file contains documentation of the training; and~~
- ~~(3-))~~ (4) Ensure each individual student record contains:
  - (a) An intake form, including demographics;
  - (b) The hours of attendance, including dates; and
  - (c) A copy of the scored post-test.

[Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-0746, filed 4/16/19, effective 5/17/19.]

AMENDATORY SECTION (Amending WSR 19-09-062, filed 4/16/19, effective 5/17/19)

**WAC 246-341-0748 Outpatient services—Substance use disorder information and assistance—Information and crisis services.** Substance use disorder information and crisis services provide an individual assistance or guidance related to substance use disorders, twenty-four hours a day by telephone or in person. ~~((In addition to meeting requirements for substance use disorder information and assistance services in WAC 246-341-0744,))~~ An agency providing information and crisis services must:

- (1) Have services available to any individual twenty-four hours a day, seven days a week;
- (2) Ensure each staff member completes forty hours of training that covers substance use disorders before assigning the staff member unsupervised duties;

(3) Ensure a ~~((chemical dependency professional (CDP), or a chemical dependency professional trainee (CDPT) under supervision of a CDP,))~~ substance use disorder professional or a substance use disorder professional trainee is available or on staff twenty-four hours a day, seven days a week;

(4) Maintain a current directory of all certified substance use disorder service providers in the state; and

(5) Maintain a current list of local resources for legal, employment, education, interpreter, and social and health services.

[Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-0748, filed 4/16/19, effective 5/17/19.]

AMENDATORY SECTION (Amending WSR 19-09-062, filed 4/16/19, effective 5/17/19)

**WAC 246-341-0750 Outpatient services—Substance use disorder information and assistance—Emergency service patrol.** Emergency service patrol services provide transport assistance to an intoxicated individual in a public place when a request has been received from police, merchants, or other persons. ~~((In addition to meeting requirements for substance use disorder information and assistance services in WAC 246-341-0744,))~~ An agency providing emergency service patrol services must:

- (1) Ensure the staff member providing the service:
  - (a) Has proof of a valid Washington state driver's license;
  - (b) Possesses annually updated verification of first-aid and cardiopulmonary resuscitation training; and
  - (c) Has completed forty hours of training in substance use disorder crisis intervention techniques and alcoholism and drug abuse, to improve skills in handling crisis situations.
- (2) Respond to calls from police, merchants, and other persons for assistance with an intoxicated individual in a public place;
- (3) Patrol assigned areas and give assistance to an individual intoxicated in a public place;
- (4) Conduct a preliminary screening of an individual's condition related to the state of their impairment and presence of a physical condition needing medical attention;
- (5) Transport the individual to their home or shelter ~~((,))~~ or to a ~~((certified))~~ substance use disorder ~~((provider, or a health care facility))~~ program if the individual is intoxicated, but subdued and willing to be transported;
- (6) Make reasonable efforts to take the individual into protective custody and transport the individual to an appropriate treatment or health care facility, when the individual is incapacitated, unconscious, or has threatened or inflicted harm on another person;
- (7) Call law enforcement for assistance if the individual is unwilling to be taken into protective custody; and
- (8) Maintain a log, including:
  - (a) The date, time and origin of each call received for assistance;
  - (b) The time of arrival at the scene;
  - (c) The location of the individual at the time of the assist;
  - (d) The name ~~((and sex))~~ of the individual transported;

- (e) The results of the preliminary screening;
- (f) The destination and address of the transport and time of arrival; and
- (g) In case of nonpickup of a person, documentation of why the pickup did not occur.

[Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-0750, filed 4/16/19, effective 5/17/19.]

AMENDATORY SECTION (Amending WSR 19-09-062, filed 4/16/19, effective 5/17/19)

**WAC 246-341-0754 Outpatient services—Problem gambling and ~~((pathological)) gambling ((treatment)) disorder services.~~ (1) Each agency licensed by the department to provide problem gambling and ~~((pathological)) gambling ((treatment)) disorder services ((provide treatment to an individual))~~ that includes diagnostic screening and assessment, and individual, group, couples, and family counseling and case management ~~((. In addition to meeting))~~ must ensure the following requirements are met:**

(a) Meet the behavioral health agency licensure, certification, administration, personnel, and clinical requirements in WAC 246-341-0300 through 246-341-0650 ~~((an agency that provides problem and pathological gambling treatment services must:~~

~~((1) Have an outline of each education session included in the service that is sufficient in detail for another trained staff person to deliver the session in the absence of the regular instructor));~~

~~((2)) (b) Be a problem gambling certified agency with the department;~~

(c) Maintain a list ~~((or source))~~ of resources, including self-help groups, and referral options that can be used by staff to refer an individual to appropriate services; and

~~((3) Limit the size of group counseling sessions to no more than sixteen individuals; and~~

~~((4)) (d) Maintain a written procedure for the response to medical and psychiatric emergencies.~~

(2) An agency certified to provide problem gambling and gambling disorder services must ensure:

(a) All problem gambling and gambling disorder treatment services are provided by:

(i) An individual credentialed by the department under chapter 18.19, 18.83, or 18.225 RCW and is a certified Washington state, national, or international gambling counselor; or

(ii) An individual credentialed by the department under chapter 18.19, 18.83, or 18.225 RCW, under the supervision of a certified gambling counselor, and in training to become a certified gambling counselor.

(b) Before providing problem gambling and gambling disorder treatment services, an individual in training to become a certified gambling counselor must have a minimum of:

(i) At least one thousand five hundred hours of professionally supervised postlicensure, postcertification, or postregistration experience providing mental health or substance use disorder treatment services; and



(ii) Thirty hours of unduplicated gambling specific training, including the basic training. One of the following state, national, or international organizations must approve the requirements of certification training:

(A) The Washington state gambling counselor certification committee is an independent body comprised of certified gambling counselors and advisory members as deemed appropriate by the committee and is responsible for determining the training and continuing education requirements for gambling counselor certification and gambling counselor supervision and any additional requirements not otherwise specified here;

(B) National or international gambling counselor certification board; or

(C) The health care authority problem gambling program.

(c) An individual who meets subsection (3) of this section must complete training within two years of acceptance to the certification program to become a certified gambling counselor;

(d) All staff members in training to become a certified gambling counselor must receive clinical supervision. The clinical supervisor must:

(i) Hold a valid international gambling counselor certification board-approved clinical consultant credential, a valid Washington state certified gambling counselor II certification credential, or a valid national certified gambling counselor II certification credential; and

(ii) Complete training requirements on problem gambling and gambling disorder specific clinical supervision approved by a state, national, or international organization including, but not limited to, the:

(A) Washington state gambling counselor certification committee;

(B) National or international gambling counselor certification board; or

(C) The health care authority problem gambling program.

(3) An agency that provides only problem gambling-related services, including diagnostic screening, brief intervention, case management, referral to certified problem gambling agencies and educational sessions but does not provide problem gambling assessment and treatment is not required to be certified for problem gambling services.

[Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-0754, filed 4/16/19, effective 5/17/19.]

**(~~SECTION EIGHT~~) INVOLUNTARY AND COURT-ORDERED OUTPATIENT TREATMENT**

AMENDATORY SECTION (Amending WSR 19-09-062, filed 4/16/19, effective 5/17/19)

**WAC 246-341-0800 Involuntary and court-ordered—Noncompliance reporting for outpatient court-ordered substance use disorder treatment.** An agency providing substance use disorder services must report noncompliance, in all levels of care, for an individual ordered into substance use disorder treatment by a court of law or other appropriate jurisdictions (~~(. An agency that fails to report noncompliance for an individual under chapter 46.61 RCW is subject to penalties as stated in RCW 46.61.5056(4). An agency providing treatment to a court-mandated individual, including deferred prosecution, must develop procedures addressing individual noncompliance and reporting requirements, including:~~

~~(1) Completing an authorization to release confidential information form that meets the requirements of 42 C.F.R. Part 2 and 45 C.F.R. Parts 160 and 164 or through a court order authorizing the disclosure pursuant to 42 C.F.R. Part 2, Sections 2.63 through 2.67;~~

~~(2) Notifying the designated crisis responder within three working days from obtaining information of any violation of the terms of the court order for purposes of revocation of the individual's conditional release, or department of corrections (DOC) if the individual is under DOC supervision;~~

~~(3) Reporting and recommending)) in accordance with RCW 71.05.445 and chapter 182-538D WAC for individuals receiving court-ordered services under chapter 71.05 RCW, RCW 10.05.090 for individuals under deferred prosecution, or RCW 46.61.5056 for individuals receiving court-ordered treatment for driving under the influence (DUI). Additionally, agencies providing services to individuals under a court-order for deferred prosecution under RCW 10.05.090 RCW or treatment under RCW 46.61.5056 must:~~

~~(1) Report and recommend~~ action for emergency noncompliance to the court or other appropriate jurisdiction(s) within three working days from obtaining information on:

(a) An individual's failure to maintain abstinence from alcohol and other nonprescribed drugs as verified by individual's self-report, identified third-party report confirmed by the agency, or blood alcohol content or other laboratory test;

(b) An individual's report of subsequent alcohol or drug related arrests; or

(c) An individual leaving the program against program advice or an individual discharged for rule violation;

~~((4) Reporting and recommending)) (2) Report and recommend~~ action for nonemergency, noncompliance to the court or other appropriate jurisdiction(s) within ten working days from the end of each reporting period, upon obtaining information on:

(a) An individual's unexcused absences or failure to report, including failure to attend mandatory self-help groups; or

(b) An individual's failure to make acceptable progress in any part of the treatment plan.

~~((5) Transmitting)) (3) Transmit information on~~ noncompliance or other significant changes as soon as possible, but no longer than ten working days from the date of the noncompliance, when the court does not wish to receive monthly reports;

~~((6) Reporting)) (4) Report~~ compliance status of persons convicted under chapter 46.61 RCW to the department of licensing.

[Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-0800, filed 4/16/19, effective 5/17/19.]

AMENDATORY SECTION (Amending WSR 19-09-062, filed 4/16/19, effective 5/17/19)

**WAC 246-341-0805 Involuntary and court-ordered—Outpatient less restrictive alternative (LRA) or conditional release support behavioral health services.** (~~Less restrictive alternative (LRA) support and conditional release behavioral health services are provided to individuals on a less restrictive alternative court order or conditional release.~~) An agency (~~agrees to~~) servicing individuals on a less restrictive alternative (LRA) or conditional release court order shall provide or monitor the provision of court-ordered services, including psychiatric, substance use disorder treatment, and medical components of community support services. (~~In addition to meeting the behavioral health agency licensure, certification, administration, personnel, and clinical requirements in WAC 246-341-0300 through 246-341-0650,~~) An agency providing court-ordered LRA support and conditional release services (must do all of the following) shall:

- (1) Have a written policy and procedure that allows for the referral of an individual to an involuntary treatment facility twenty-four hours a day, seven days a week.
- (2) Have a written policy and procedure for an individual who requires involuntary detention that includes procedures for:
  - (a) Contacting the designated crisis responder (DCR) regarding revocations or extension of an LRA or conditional release; and
  - (b) The transportation of an individual, in a safe and timely manner, for the purpose of:
    - (i) Evaluation; or
    - (ii) Evaluation and detention.
- (3) ~~Ensure ((a committed)) the individual is ((advised of)) provided everything~~ their rights afford them to and protect them from under chapter 71.05 or 71.34 RCW, as applicable(~~, and that the individual has the right:~~
  - ~~(a) To receive adequate care and individualized treatment;~~
  - ~~(b) To make an informed decision regarding the use of antipsychotic medication and to refuse medication beginning twenty-four hours before any court proceeding that the individual has the right to attend;~~
  - ~~(c) To maintain the right to be presumed competent and not lose any civil rights as a consequence of receiving evaluation and treatment for a mental health disorder or substance use disorder;~~
  - ~~(d) Of access to attorneys, courts, and other legal redress;~~
  - ~~(e) To be told statements the individual makes may be used in the involuntary proceedings; and~~
  - ~~(f) To have all information and records compiled, obtained, or maintained in the course of treatment kept confidential as described in chapters 70.02, 71.05, and 71.34 RCW).~~
- (4) Include in the clinical record a copy of the less restrictive alternative court order or conditional release and a copy of any subsequent modification.

(5) Ensure the ~~((development and implementation of an))~~ individual service plan ~~((which))~~ addresses the conditions of the less restrictive alternative court order or conditional release and a plan for transition to voluntary treatment.

(6) Ensure that the individual receives ~~((psychiatric))~~ medication services ~~((or medication assisted treatment for the))~~ including an assessment of the need for and prescription of ~~((psychotropic))~~ medications to treat mental health or substance use disorders ~~((treatment medications))~~, appropriate to the needs of the individual as follows:

(a) At least one time in the initial fourteen days following release from inpatient treatment for an individual on a ninety-day or one hundred eighty-day less restrictive alternative court order or conditional release, unless the individual's attending physician, physician assistant, or psychiatric advanced registered nurse practitioner (ARNP) determines another schedule is more appropriate and documents the new schedule and the reason(s) in the individual's clinical record; and

(b) At least one time every thirty days for the duration of the less restrictive alternative court order or conditional release, unless the individual's attending physician, physician assistant, or psychiatric ARNP determines another schedule is more appropriate and documents the new schedule and the reason(s) in the individual's clinical record.

(7) Keep a record of the periodic evaluation ~~((by a mental health professional for a mental health disorder or a chemical dependency professional for substance use disorder treatment,))~~ of each committed individual for release from, or continuation of, an involuntary treatment order. Evaluations must occur at least every thirty days for the duration of the commitments and include documentation of ~~((assessment))~~ the evaluation and rationale:

(a) For requesting a petition for an additional period of less restrictive or conditional release treatment under an involuntary treatment order; or

(b) Allowing the less restrictive court order or conditional release to expire without an extension request.

[Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-0805, filed 4/16/19, effective 5/17/19.]

AMENDATORY SECTION (Amending WSR 19-09-062, filed 4/16/19, effective 5/17/19)

**WAC 246-341-0810 Involuntary and court-ordered—~~((Emergency individual detention mental health and substance use disorder))~~ Designated crisis responder (DCR) services.** ~~((Emergency involuntary detention))~~ Designated crisis responder (DCR) services are services provided by a ~~((designated crisis responder (+)))~~ DCR ~~((+))~~ to evaluate an individual in crisis and determine if involuntary services are required. ~~((In addition to meeting the behavioral health agency licensure, certification, administration, personnel, and clinical requirements in WAC 246-341-0300 through 246-341-0650, an agency certified to provide emergency involuntary detention services))~~ An agency providing DCR

services must meet the general requirements for crisis services in WAC 246-341-0900 and must do all of the following:

- (1) Ensure that services are provided by a DCR.
- (2) ~~((Ensure staff members are available twenty-four hours a day, seven days a week.~~
- ~~(3))~~ Ensure staff members utilize the protocols for DCRs required by RCW 71.05.214.
- ~~((4) Have a written agreement with a certified inpatient evaluation and treatment or secure withdrawal management and stabilization facility to allow admission of an individual twenty-four hours a day, seven days a week.~~
- ~~(5) Have a plan for training, staff back-up, information sharing, and communication for a staff member who responds to a crisis in a private home or a nonpublic setting.~~
- ~~(6) Ensure that a DCR is able to be accompanied by a second trained individual when responding to a crisis in a private home or a nonpublic setting.~~
- ~~(7) Ensure that a DCR who engages in a home visit to a private home or a nonpublic setting is provided by their employer with a wireless telephone, or comparable device, for the purpose of emergency communication as described in RCW 71.05.710.~~
- ~~(8) Provide staff members, who are sent to a private home or other private location to evaluate an individual in crisis, prompt access to information about any history of dangerousness or potential dangerousness on the individual they are being sent to evaluate that is documented in a crisis plan(s) or commitment record(s). This information must be made available without unduly delaying the crisis response.~~
- ~~(9) Have a written protocol for the transportation of an individual, in a safe and timely manner, for the purpose of medical evaluation or detention.~~
- ~~(10))~~ (3) Document that services provided to the individual (~~(7~~ and other applicable information. At a minimum this must include:
  - ~~(a) That the individual was advised of their rights in accordance with RCW 71.05.360;~~
  - ~~(b) That if the evaluation was conducted in a hospital emergency department or inpatient unit, it occurred in accordance with the timelines required by RCW 71.05.050, 71.05.153, and 71.34.710;~~
  - ~~(c) That the DCR conducting the evaluation considered both of the following when evaluating the individual:
 
    - ~~(i) The imminent likelihood of serious harm or imminent danger because of being gravely disabled (see RCW 71.05.153); and~~
    - ~~(ii) The likelihood of serious harm or grave disability that does not meet the imminent standard for the emergency detention (see RCW 71.05.150).~~~~
  - ~~(d) That the DCR documented consultation with any examining emergency room physician as required by RCW 71.05.154;~~
  - ~~(e) If the individual was not detained:
 
    - ~~(i) A description of the disposition and follow-up plan; and~~
    - ~~(ii) Documentation that the minor's parent was informed of their right to request a court review of the DCR's decision not to detain the minor under RCW 71.34.710, if the individual is a minor thirteen years of age or older.~~~~
  - ~~(f) If the individual was detained, a petition for initial detention must include the following:
 
    - ~~(i) The circumstances under which the person's condition was made known;~~~~

~~(ii) Evidence, as a result of the DCR's personal observation or investigation, that the actions of the person for which application is made constitute a likelihood of serious harm, or that the individual is gravely disabled;~~

~~(iii) Evidence that the individual will not voluntarily seek appropriate treatment;~~

~~(iv) Consideration of all reasonably available information from credible witnesses, to include family members, landlords, neighbors, or others with significant contact and history of involvement with the individual, and records, as required by RCW 71.05.212; and~~

~~(v) Consideration of the individual's history of judicially required, or administratively ordered, anti-psychotic medications while in confinement when conducting an evaluation of an offender under RCW 72.09.370.~~

~~(g) Documentation that the individual, or the individual's guardian or conservator, received a copy of the following:~~

~~(i) Notice of detention;~~

~~(ii) Notice of rights; and~~

~~(iii) Initial petition)) were in accordance with the requirements in chapter 71.05 or 71.34 RCW, as applicable.~~

[Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-0810, filed 4/16/19, effective 5/17/19.]

AMENDATORY SECTION (Amending WSR 19-09-062, filed 4/16/19, effective 5/17/19)

**WAC 246-341-0815 Involuntary and court-ordered—Substance use disorder counseling for RCW 46.61.5056.** ((In addition to meeting the behavioral health agency licensure, certification, administration, personnel, and clinical requirements in WAC 246-341-0300 through 246-341-0650,)) An agency providing certified substance use disorder counseling services to an individual convicted of driving under the influence or physical control under RCW 46.61.5056 must ensure treatment is completed as follows:

(1) Treatment during the first sixty days must include:

(a) Weekly group or individual substance use disorder counseling sessions according to the individual service plan;

(b) One individual substance use disorder counseling session of not less than thirty minutes duration, excluding the time taken for a substance use disorder assessment, for each individual, according to the individual service plan;

(c) Alcohol and drug basic education for each individual;

(d) Participation in recovery oriented, community-based self-help groups ((for an individual with a diagnosis of substance use disorder)) according to the individual service plan. Participation must be documented in the individual's clinical record; and

(e) ((The balance of the sixty-day time period for)) Individuals who complete intensive inpatient substance use disorder treatment services must ((include)) attend, at a minimum, weekly outpatient counseling sessions for the remainder of their first sixty days of treatment according to the individual service plan.

(2) The next one hundred twenty days of treatment at a minimum shall include((s)):

- (a) Group or individual substance use disorder counseling sessions every two weeks according to the individual service plan;
  - (b) One individual substance use disorder counseling session of not less than thirty minutes duration, every sixty days according to the individual service plan; and
  - (c) Referral of each individual for ongoing treatment or support, as necessary, using ASAM criteria, upon completion of one hundred eighty days of treatment.
- (3) (~~(For)~~) An individual who is assessed with insufficient evidence of a substance use disorder (~~(, a substance use disorder professional (CDP) must refer the individual)~~) must be referred to alcohol/drug information school.

[Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-0815, filed 4/16/19, effective 5/17/19.]

AMENDATORY SECTION (Amending WSR 19-09-062, filed 4/16/19, effective 5/17/19)

**WAC 246-341-0820 Involuntary and court-ordered—Driving under the influence (DUI) substance use disorder assessment services.** Driving under the influence (DUI) assessment services, as defined in chapter 46.61 RCW, are provided to an individual to determine the individual's involvement with alcohol and other drugs and determine the appropriate course of care or referral.

(1) (~~(In addition to meeting the behavioral health agency licensure, certification, administration, personnel, and clinical requirements in WAC 246-341-0300 through 246-341-0650,)~~) An agency certified to provide DUI assessment services:

- (a) Must review, evaluate, and document information provided by the individual;
- (b) May include in the assessment information from external sources such as family, support individuals, legal entities, courts, and employers;
- (c) Is not required to meet the individual service plan requirements in WAC (~~(246-341-0620)~~) 246-341-0640 (1)(d); and
- (d) Must maintain and provide a list of resources, including self-help groups, and referral options that can be used by staff members to refer an individual to appropriate services.

(2) An agency certified to provide DUI assessment services must also ensure:

- (a) The assessment is conducted in person; and
- (b) The individual has a summary included in the assessment that evaluates the individual's:
  - (i) Blood or breath alcohol level and other drug levels, or documentation of the individual's refusal at the time of the arrest, if available; and
  - (ii) Self-reported driving record and the abstract of the individual's legal driving record.

(3) When the assessment findings do not result in a substance use disorder diagnosis, the assessment must also include:

- (a) A copy of the police report;
- (b) A copy of the court originated criminal case history;

(c) The results of a urinalysis or drug testing obtained at the time of the assessment; and

(d) A referral to alcohol and drug information school.

(4) If the information in subsection (3)(a) through (d) of this section is required and not readily available, the record must contain documentation of attempts to obtain the information.

(5) Upon completion of the DUI assessment, the individual must be:

(a) Informed of the results of the assessment; and

(b) Referred to the appropriate level of care according to ASAM criteria.

[Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-0820, filed 4/16/19, effective 5/17/19.]

**(~~(SECTION NINE—)~~) CRISIS OUTPATIENT MENTAL HEALTH SERVICES**

AMENDATORY SECTION (Amending WSR 19-09-062, filed 4/16/19, effective 5/17/19)

**WAC 246-341-0900 Crisis mental health services—General.** Crisis mental health services are intended to stabilize an individual in crisis to prevent further deterioration, provide immediate treatment and intervention in a location best suited to meet the needs of the individual, and provide treatment services in the least restrictive environment available. ~~((An agency certified to provide crisis mental health services must meet the general requirements in WAC 246-341-0300 through 246-341-0650 except the initial assessment, individual service plan, and clinical record requirements in WAC 246-341-0610, 246-341-0620, and 246-341-0640.))~~

(1) Crisis services include:

(a) Crisis telephone support;

(b) Crisis outreach services; and

(c) Crisis stabilization services (~~(~~

~~(d) Crisis peer support services; and~~

~~(e) Emergency involuntary detention services))~~.

(2) An agency providing crisis mental health services does not need to meet the requirements in WAC 246-341-0640.

(3) An agency providing any crisis mental health service must ((ensure)):

~~(a) ((All crisis services are provided by, or under the supervision of, a mental health professional;~~

~~(b) Each staff member working directly with an individual receiving any crisis mental health service receives:~~

~~(i) Clinical supervision from a mental health professional; and~~

~~(ii) Annual violence prevention training on the safety and violence prevention topics described in RCW 49.19.030. The staff member's personnel record must document the training.~~



~~(c) Staff access to consultation with one of the following professionals who has at least one year's experience in the direct treatment of individuals who have a mental or emotional disorder:~~

~~(i) A psychiatrist;~~

~~(ii) A physician;~~

~~(iii) A physician assistant; or~~

~~(iv) An advanced registered nurse practitioner (ARNP) who has prescriptive authority.~~

~~(3) Subsection (2)(c) of this section does not apply to agencies that only provide crisis telephone services.~~

~~(4)) Require that trained staff remain, in person or on the phone, with the individual in crisis in order to provide stabilization and support until the crisis is resolved or referral to another service is accomplished;~~

~~(b) Determine if an individual has a crisis plan and request a copy if available;~~

~~(c) As appropriate, refer individuals to voluntary or involuntary treatment facilities for admission on a seven-day-a-week, twenty-four-hour-a-day basis, including arrangements for contacting the designated crisis responder;~~

~~(d) Transport or arrange for transport of an individual in a safe and timely manner, when necessary;~~

~~(e) Be available twenty-four hours a day, seven days a week, unless providing only crisis stabilization services; and~~

~~(f) Include family members, significant others, and other relevant treatment providers, as necessary, to provide support to the individual in crisis.~~

~~(4) When services are provided in a private home or nonpublic setting the agency must:~~

~~(a) Have a written plan for training, staff back-up, information sharing, and communication for staff members who respond to a crisis in an individual's personal residence or in a nonpublic setting;~~

~~(b) Ensure that a staff member responding to a crisis is able to be accompanied by a second trained individual when services are provided in the individual's personal residence or other nonpublic location;~~

~~(c) Ensure that any staff member who engages in home visits is provided access, by their employer, to a wireless telephone or comparable device for the purpose of emergency communication as described in RCW 71.05.710;~~

~~(d) Provide staff members who are sent to a private home or other private location to evaluate an individual in crisis prompt access to information about any history of dangerousness or potential dangerousness on the individual they are being sent to evaluate that is documented in a crisis plan(s) or commitment record(s). This information must be made available without unduly delaying the crisis response.~~

~~(5) Documentation of a crisis service must include the following, as applicable to the crisis service provided:~~

~~(a) A brief summary of each crisis service encounter, including the date, time, and duration of the encounter;~~

~~(b) The names of the participants; ((and))~~

~~(c) A follow-up plan or disposition, including any referrals for services, including emergency medical services((-~~

~~(5) An agency must ensure crisis service:~~

~~(a) Are, with the exception of stabilization services, available twenty-four hours a day, seven days a week;~~

~~(b) Include family members, significant others, and other relevant treatment providers, as necessary, to provide support to the individual in crisis;~~

~~(c) Are provided in a setting that provides for the safety of the individual and agency staff members; and~~

~~(d) Require that trained staff remain with the individual in crisis in order to provide stabilization and support until the crisis is resolved or referral to another service is accomplished);~~

(d) Whether the individual has a crisis plan and any request to obtain the crisis plan; and

(e) The name and credential of the staff person providing the service.

[Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-0900, filed 4/16/19, effective 5/17/19.]

AMENDATORY SECTION (Amending WSR 19-09-062, filed 4/16/19, effective 5/17/19)

**WAC 246-341-0905 Crisis mental health services—Telephone support services.** Mental health telephone support services are services provided as a means of first contact to an individual in crisis. These services may include de-escalation and referral.

~~(1) ((In addition to meeting the general requirements for crisis services in WAC 246-341-0900,)) An agency certified to provide telephone support services must ((:~~

~~(a) Respond to crisis calls twenty-four hours a day, seven days a week;~~

~~(b) Have a written protocol for the referral of an individual to a voluntary or involuntary treatment facility for admission on a seven-day-a-week, twenty-four-hour-a-day basis, including arrangements for contacting the designated crisis responder;~~

~~(c)) assure communication and coordination with the individual's mental health care provider, if indicated and appropriate((; and~~

~~(d) Post a copy of the statement of individual rights in a location visible to staff and agency volunteers)).~~

~~(2) An agency ((must document each telephone crisis response contact made, including:~~

~~(a) The date, time, and duration of the telephone call;~~

~~(b) The relationship of the caller to the person in crisis, for example self, family member, or friend;~~

~~(c) Whether the individual in crisis has a crisis plan; and~~

~~(d) The outcome of the call, including:~~

~~(i) Any follow-up contacts made;~~

~~(ii) Any referrals made, including referrals to emergency or other medical services; and~~

~~(iii) The name of the staff person who took the crisis call))~~

providing telephone services only is not required to follow the consultation requirement in WAC 246-341-0515(3).

[Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-0905, filed 4/16/19, effective 5/17/19.]

AMENDATORY SECTION (Amending WSR 19-09-062, filed 4/16/19, effective 5/17/19)

**WAC 246-341-0910 Crisis mental health services—Outreach services.** Crisis mental health outreach services are face-to-face intervention services provided to assist individuals in a community setting. A community setting can be an individual's home, an emergency room, a nursing facility, or other private or public location. ~~((In addition to meeting the general requirements for crisis services in WAC 246-341-0900,))~~

~~(1) An agency certified to provide crisis outreach services must ((do all of the following)):~~

~~((1)) (a) Provide crisis telephone screening.~~

~~((2)) (b) Ensure face-to-face outreach services are provided by a mental health professional ((, or a mental health care provider under the supervision of a mental health professional)) or a department-credentialed staff person with documented training in crisis response.~~

~~((3) Ensure services are provided in a setting that provides for the safety of the individual and agency staff members.~~

~~(4) Have a protocol for requesting a copy of an individual's crisis plan twenty-four hours a day, seven days a week.~~

~~(5) Require that staff member(s) remain with the individual in crisis in order to provide stabilization and support until the crisis is resolved or a referral to another service is accomplished.~~

~~((6)) (c) Resolve the crisis in the least restrictive manner possible.~~

~~((7) Have a written plan for training, staff back-up, information sharing, and communication for staff members who respond to a crisis in an individual's private home or in a nonpublic setting.~~

~~(8) Ensure that a staff member responding to a crisis is able to be accompanied by a second trained individual when services are provided in the individual's home or other nonpublic location.~~

~~(9) Ensure that any staff member who engages in home visits is provided by their employer with a wireless telephone, or comparable device for the purpose of emergency communication as described in RCW 71.05.710.~~

~~(10) Provide staff members who are sent to a private home or other private location to evaluate an individual in crisis, prompt access to information about any history of dangerousness or potential dangerousness on the individual they are being sent to evaluate that is documented in a crisis plan(s) or commitment record(s). This information must be made available without unduly delaying the crisis response.~~

~~(11) Have a written protocol that allows for the referral of an individual to a voluntary or involuntary treatment facility twenty-four hours a day, seven days a week.~~

~~(12) Have a written protocol for the transportation of an individual in a safe and timely manner, when necessary.~~

~~(13) Document all crisis response contacts, including:~~

~~(a) The date, time, and location of the initial contact;~~

~~(b) The source of referral or identity of caller;~~

~~((c)) (2) An agency utilizing certified peer counselors to provide crisis outreach services must:~~

~~(a) Ensure services are provided by a person recognized by the health care authority as a peer counselor, as defined in WAC 246-341-0200;~~

- (b) Ensure services provided by a peer counselor are within the scope of the peer counselor's training and credential;
- (c) Ensure that a peer counselor responding to an initial crisis visit is accompanied by a mental health professional;
- (d) Develop and implement policies and procedures for determining when peer counselors may provide follow-up crisis outreach services without being accompanied by a mental health professional; and
- (e) Ensure peer counselors receive annual training that is relevant to their unique working environment.
- (3) In addition to the documentation requirements in WAC 246-341-0900, documentation must include:
- (a) The nature of the crisis;
- ~~((d) Whether the individual has a crisis plan and any attempts to obtain a copy;~~
- ~~(e)) (b) The time elapsed from the initial contact to the face-to-face response;~~
- ~~((f)) (c) The outcome, including ((~~
- ~~(i)) the basis for a decision not to respond in person((~~
- ~~(ii) Any follow-up contacts made; and~~
- ~~(iii) Any referrals made, including referrals to emergency medical services.~~
- ~~(g) The name of the staff person(s) who responded to the crisis)).~~

[Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-0910, filed 4/16/19, effective 5/17/19.]

AMENDATORY SECTION (Amending WSR 19-09-062, filed 4/16/19, effective 5/17/19)

**WAC 246-341-0915 Crisis mental health services—Stabilization services.** Crisis mental health stabilization services include short-term (less than two weeks per episode) face-to-face assistance with life skills training and understanding of medication effects on an individual. Stabilization services may be provided to an individual as a follow-up to crisis services provided or to any individual determined by a mental health professional to need ~~((additional))~~ stabilization services. ~~((In addition to meeting the general requirements for crisis services in WAC 246-341-0900, an agency certified to provide crisis stabilization services must:~~

- ~~(1) Ensure the services are provided by a mental health professional, or under the supervision of a mental health professional;~~
- ~~(2) Ensure the services are provided in a setting that provides for the safety of the individual and agency staff;~~
- ~~(3) Have a written plan for training, staff back-up, information sharing, and communication for staff members who are providing stabilization services in an individual's private home or in a nonpublic setting;~~
- ~~(4) Have a protocol for requesting a copy of an individual's crisis plan;~~
- ~~(5) Ensure that a staff member responding to a crisis is able to be accompanied by a second trained individual when services are provided in the individual's home or other nonpublic location;~~

~~(6) Ensure that any staff member who engages in home visits is provided by their employer with a wireless telephone, or comparable device, for the purpose of emergency communication as described in RCW 71.05.710;~~

~~(7) Have a written protocol that allows for the referral of an individual to a voluntary or involuntary treatment facility;~~

~~(8) Have a written protocol for the transportation of an individual in a safe and timely manner, when necessary; and~~

~~(9) Document all crisis stabilization response contacts, including identification of the staff person(s) who responded.)~~

[Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-0915, filed 4/16/19, effective 5/17/19.]

~~((SECTION TEN))~~ OPIOID TREATMENT PROGRAMS (OTP)

AMENDATORY SECTION (Amending WSR 19-09-062, filed 4/16/19, effective 5/17/19)

**WAC 246-341-1000 Opioid treatment programs (OTP)—General.** (1) Opioid treatment programs ~~((services include the dispensing of an opioid treatment medication, along with a comprehensive range of medical and rehabilitative services, when clinically necessary, to an individual to alleviate the adverse medical, psychological, or physical effects incident to opioid use disorder. These))~~ (OTP) may order, possess, dispense, and administer medications approved by the United States Food and Drug Administration for the treatment of opioid use disorder, alcohol use disorder, tobacco use disorder, and reversal of opioid overdose. OTP services include withdrawal management ((treatment)) and maintenance treatment along with evidence-based therapy.

(2) ~~((An agency must meet all the certification requirements in WAC 246-341-1005 in order to provide opioid treatment program services and:~~

~~(a) Be licensed by the department as a behavioral health agency;~~

~~(b) Meet the applicable behavioral health agency licensure, certification, administration, personnel, and clinical requirements in WAC 246-341-0300 through 246-341-0650; and~~

~~(c) Have policies and procedures to support and implement the:~~

~~(i) General requirements in WAC 246-341-0420; and~~

~~(ii) Program-specific requirements in WAC 246-341-1000 through 246-341-1025.~~

~~(3))~~ An agency providing opioid treatment program services must ensure that the agency's individual record system complies with all federal and state reporting requirements relevant to opioid drugs approved for use in treatment of opioid use disorder, alcohol use disorder, tobacco use disorder, and reversal of opioid overdose.

~~((4))~~ (3) An agency must:

(a) Use ~~((ASAM criteria for admission, continued services, and discharge planning and decisions;~~

~~(b))~~ evidence-based therapy in addition to medication in the treatment program;

(b) Identify individual mental health needs during assessment process and refer them to appropriate treatment if not available on-site;

(c) Provide education to each individual admitted, totaling no more than fifty percent of treatment services, on:

(i) Alcohol, other drugs, and substance use disorder;

(ii) Relapse prevention;

(iii) ~~((Bloodborne pathogens))~~ Infectious diseases including human immunodeficiency virus (HIV) and hepatitis A, B, and C; ~~((and))~~

(iv) Sexually transmitted infections; and

(v) Tuberculosis (TB);

~~((e))~~ (d) Provide ~~((education or))~~ information to each individual on:

(i) Emotional, physical, and sexual abuse;

(ii) Nicotine use disorder;

(iii) The impact of substance use during pregnancy, risks to the developing fetus before prescribing any medications to treat opioid use disorder, the risks to both the expecting parent and fetus of not treating opioid use disorder, and the importance of informing medical practitioners of substance use during pregnancy; and

(iv) Family planning.

~~((d) Have written))~~ (e) Create and implement policies and procedures for:

(i) Diversion control that contains specific measures to reduce the possibility of the diversion of controlled substances from legitimate treatment use, and assign specific responsibility to the medical and administrative staff members for carrying out the described diversion control measures and functions;

(ii) Urinalysis and drug testing, to include ~~((obtaining))~~:

(A) Obtaining specimen samples from each individual, at least eight times within twelve consecutive months;

(B) Documentation indicating the clinical need for additional urinalysis;

(C) Random samples, without notice to the individual;

~~((C))~~ (D) Samples in a therapeutic manner that minimizes falsification;

~~((D))~~ (E) Observed samples, when clinically appropriate; and

~~((E))~~ (F) Samples handled through proper chain of custody techniques.

(iii) Laboratory testing;

(iv) The response to medical and psychiatric emergencies; and

(v) Verifying the identity of an individual receiving treatment services, including maintaining a file in the dispensary with a photograph of the individual and updating the photographs when the individual's physical appearance changes significantly.

~~((5))~~ (4) An agency must ensure that an individual is not admitted to opioid treatment withdrawal management services more than two times in a twelve-month period following admission to services.

~~((6))~~ (5) An agency providing services to a pregnant woman must have a written procedure to address specific issues regarding their pregnancy and prenatal care needs, and to provide referral information to applicable resources.

~~((7))~~ (6) An agency providing youth opioid treatment program services must:

~~(a) ((Have a written procedure to assess and refer the youth to the department of children, youth, and families, when applicable;~~

~~(b) Ensure that a group counseling session with twelve to sixteen youths include a second staff member;~~

~~(c))~~ Ensure that before admission the youth has had two documented attempts at short-term withdrawal management or drug-free treatment within a twelve-month period, with a waiting period of no less than seven days between the first and second short-term withdrawal management treatment; and

~~((d))~~ (b) Ensure that when a youth is admitted for maintenance treatment, written consent by a parent or if applicable, legal guardian or responsible adult designated by the relevant state authority, is obtained.

~~((8))~~ (7) An agency providing opioid treatment program services must ensure:

(a) That notification to the federal Substance Abuse and Mental Health Services Administration (SAMHSA) and the department is made within three weeks of any replacement or other change in the status of the program, program sponsor ~~((+))~~ as defined in 42 C.F.R. Part 8~~((+))~~, or medical director;

(b) Treatment is provided to an individual in compliance with 42 C.F.R. Part 8;

(c) The individual record system complies with all federal and state reporting requirements relevant to opioid drugs approved for use in treatment of opioid use disorder; and

(d) The death of an individual enrolled in an opioid treatment program is reported to the department within ~~((one business day))~~ forty-eight hours.

[Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-1000, filed 4/16/19, effective 5/17/19.]

AMENDATORY SECTION (Amending WSR 19-09-062, filed 4/16/19, effective 5/17/19)

**WAC 246-341-1005 Opioid treatment programs (OTP)—Agency certification requirements.** An agency applying to provide opioid treatment program services must ~~((do all of the following))~~:

(1) Submit to the department documentation that the agency has communicated with the county legislative authority and if applicable, the city legislative authority or tribal authority, in order to secure a location for the new opioid treatment program that meets county, tribal or city land use ordinances.

(2) Ensure that a community relations plan developed and completed in consultation with the county, city, or tribal authority or their designee, in order to minimize the impact of the opioid treatment programs upon the business and residential neighborhoods in which the program is located. A community relations plan is a plan to minimize the impact of an opioid treatment program as defined by the Center for Substance Abuse Guidelines for the Accreditation of Opioid Treatment Programs, section 2.C.(4). The plan must include:

(a) Documentation of the strategies used to:

- (i) Obtain stakeholder input regarding the proposed location;
  - (ii) Address any concerns identified by stakeholders; and
  - (iii) Develop an ongoing community relations plan to address new concerns expressed by stakeholders.
- (b) For new applicants who operate opioid treatment programs in another state, copies of all (~~survey~~) review reports written by their national accreditation body and state certification, if applicable, within the past six years.
- (3) Have concurrent approval to provide an opioid treatment program by:
- (a) The Washington state department of health (~~board of~~) pharmacy quality assurance commission;
  - (b) The (~~federal~~) United States Center for Substance Abuse Treatment (CSAT), Substance Abuse and Mental Health Administration (SAMHSA), as required by 42 C.F.R. Part 8 for certification as an opioid treatment program; and
  - (c) The (~~federal~~) United States Drug Enforcement Administration (DEA).
- (4) An agency must ensure that the opioid treatment program is provided to an individual in compliance with the applicable requirements in 42 C.F.R. Part 8 and 21 C.F.R. Part 1301.
- (5) The department may deny an application for certification when the applicant has not demonstrated in the past, the capability to provide the appropriate services to assist individuals using the program to meet goals established by the legislature.

[Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-1005, filed 4/16/19, effective 5/17/19.]

AMENDATORY SECTION (Amending WSR 19-09-062, filed 4/16/19, effective 5/17/19)

**WAC 246-341-1010 Opioid treatment programs (OTP)—Agency staff requirements.** (~~In addition to meeting the agency administrative and personnel requirements in WAC 246-341-0400 through 246-341-0530,~~) An agency providing substance use disorder opioid treatment program services must:

(1) Appoint a program sponsor, as defined in 42 C.F.R. Part 8, who is responsible for notifying the (~~federal~~) United States Center for Substance Abuse Treatment (CSAT), Substance Abuse and Mental Health Services Administration (SAMHSA), the (~~federal~~) United States Drug Enforcement Administration (DEA), the department, and the Washington (~~state board of~~) pharmacy quality assurance commission of any theft or significant loss of a controlled substance that resulted in filing a DEA Form 106.

(2) Ensure there is an appointed medical director, as defined in 42 C.F.R. Part 8, who:

(a) Is licensed by the department under chapter 18.57 RCW or the Washington medical commission under chapter 18.71 RCW to practice medicine and practices within their scope of practice;

(b) Is responsible for all medical services performed; (~~and~~)

(c) Ensures all medical services provided are in compliance with applicable federal, state, and local rules and laws.



(3) ~~((Ensure all medical services provided are provided by an appropriate DOH-credentialed medical provider practicing within their scope of practice.~~

~~(4))~~ Ensure at least one staff member has documented training in:

- (a) Family planning;
- (b) Prenatal health care; and
- (c) Parenting skills.

~~((5))~~ (4) Ensure that at least one staff member is on duty at all times who has documented training in:

- (a) Cardiopulmonary resuscitation (CPR); and
- (b) Management of opioid overdose.

[Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-1010, filed 4/16/19, effective 5/17/19.]

AMENDATORY SECTION (Amending WSR 19-09-062, filed 4/16/19, effective 5/17/19)

**WAC 246-341-1015 Opioid treatment programs (OTP)—Clinical record content and documentation requirements.** ~~((In addition to the general clinical record content requirements in WAC 246-341-0640,))~~ An agency providing ~~((substance use disorder))~~ opioid treatment program services must maintain an individual's clinical record. The clinical record must contain:

(1) Documentation that the agency made a good faith effort to review if the individual is enrolled in any other opioid treatment program and take appropriate action;

(2) Documentation that the individual received a copy of the rules and responsibilities for treatment participants, including the potential use of interventions or sanction;

(3) Documentation that the individual service plan was reviewed quarterly and semi-annually after two years of continuous treatment;

(4) Documentation when an individual refuses to provide a drug testing specimen sample. The refusal is considered a positive drug screen specimen;

(5) Documentation in progress notes of ~~((the results and the discussion held with the individual regarding any positive drug screen specimens in the counseling session immediately following the notification of positive results; and))~~ timely interventions used to therapeutically address the disclosure of illicit drug use, a positive drug test, or possible diversion of opioid medication, as evidenced by the absence of opioids or related metabolites in drug toxicology test results;

(6) Documentation of all medical services ~~((see WAC 246-341-1020 and 246-341-1025 regarding program physician responsibility and medication management))~~ including:

- (a) Results of physical examination;
- (b) Medical and family history;
- (c) Nursing notes;

(d) Laboratory reports including results of regular toxicology screens, a problem list, and list of medications updated as clinically indicated; and

(e) Progress notes including documentation of all medications and dosages, if available.

[Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-1015, filed 4/16/19, effective 5/17/19.]

AMENDATORY SECTION (Amending WSR 19-09-062, filed 4/16/19, effective 5/17/19)

**WAC 246-341-1020 Opioid treatment programs (OTP)—((Program physician)) Medical director responsibility.** An agency providing substance use disorder opioid treatment program services must ensure the program physician, or the medical practitioner under supervision of the ((program physician)) medical director, performs and meets the following:

- (1) The program physician or medical practitioner under supervision of the ((program physician)) medical director:
  - (a) Is responsible to verify an individual is currently addicted to an opioid drug and that the ((person)) individual became addicted at least twelve months before admission to treatment; or
  - (b) May waive the twelve month requirement in (a) of this subsection upon receiving documentation that the individual:
    - (i) Was released from a penal institution, if the release was within the previous six months;
    - (ii) Is pregnant; or
    - (iii) Was previously treated within the previous twenty-four months.
- (2) A documented physical evaluation must be completed on the individual before admission and before starting medications approved to treat opioid use disorder that includes the determination of opioid use disorder consistent with the current and applicable Diagnostic and Statistical Manual of Mental Disorders (DSM-5) criteria ~~((, and an assessment for appropriateness for Sunday and holiday take-home medication))~~;
- (3) A documented review ~~((must be completed by))~~ of the department prescription drug monitoring program data on the individual:
  - (a) At admission;
  - (b) Annually after the date of admission; and
  - (c) Subsequent to any incidents of concern.
- (4) All relevant facts concerning the use of the opioid drug must be clearly and adequately explained to each individual;
- (5) Current written and verbal information must be provided to pregnant individuals, before the initial prescribed dosage regarding:
  - (a) The concerns of possible substance use disorder, health risks, and benefits the opioid treatment medication may have on the individual and the developing fetus;
  - (b) The risk of not initiating opioid treatment medication on the individual and the developing fetus; ~~((and))~~
  - (c) The potential need for the newborn baby to be treated in a hospital setting or in a specialized support environment designed to address and manage neonatal opioid or other drug withdrawal syndromes; and

(d) Referral options to address ((neonatal abstinence syndrome for the baby)) and manage neonatal opioid or other drug withdrawal syndromes.

(6) Each individual voluntarily choosing to receive maintenance treatment must sign an informed consent to treatment;

(7) Within fourteen days of admission, a medical examination must be completed that includes:

(a) Documentation of the results of serology and other tests, as determined by the medical practitioner; and

(b) ((An)) A documented assessment for the appropriateness of Sunday and holiday take-home medications as required by 42 C.F.R. Part 8.12(i).

(8) When exceptional circumstances exist for an individual to be enrolled with more than one opioid treatment program agency, justification granting permission must be documented in the individual's clinical record at each agency;

(9) Each individual admitted to withdrawal management services must have an approved withdrawal management schedule that is medically appropriate;

(10) Each individual administratively discharged from services must have an approved withdrawal management schedule that is medically appropriate;

(11) An assessment for other forms of treatment must be completed for each individual who has two or more unsuccessful withdrawal management episodes within twelve consecutive months; and

(12) An annual medical examination must be completed on each individual that includes the individual's overall physical condition and response to medication.

[Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-1020, filed 4/16/19, effective 5/17/19.]

AMENDATORY SECTION (Amending WSR 19-09-062, filed 4/16/19, effective 5/17/19)

**WAC 246-341-1025 Opioid treatment programs (OTP)—Medication management.** An agency providing ((substance use disorder)) opioid treatment program services must ensure the medication management requirements in this section are met.

(1) An agency must use only those opioid treatment medications that are approved by the United States Food and Drug Administration under section 505 of the ((federal)) United States Food, Drug, and Cosmetic Act (21 U.S.C. 355) for use in the treatment of opioid use disorder.

~~(2) ((An agency providing an opioid treatment program that is fully compliant with the procedures of an investigational use of a drug and other conditions set forth in the application may administer a drug that has been authorized by the Food and Drug Administration under an investigational new drug application under section 505(i) of the federal Food, Drug, and Cosmetic Act for investigational use in the treatment of opioid addiction. The following opioid treatment medications are approved by the Food and Drug Administration for use in the treatment of opioid use disorder:~~

~~(a) Methadone; and~~

~~(b) Buprenorphine.~~

~~(3))~~ An agency providing opioid treatment program services must ensure that initial dosing requirements are met as follows:

(a) Methadone must be administered or dispensed only in oral form and is formulated in such a way as to reduce its potential for parenteral abuse;

(b) The initial dose of methadone must not exceed thirty milligrams and the total dose for the first day must not exceed forty milligrams, unless the program physician documents in the individual's record that forty milligrams did not suppress opioid abstinence symptoms; and

(c) The establishment of the initial dose must consider:

(i) Signs and symptoms of withdrawal;

(ii) Individual comfort; and

(iii) Side effects from over medication.

~~((4))~~ (3) An agency providing an opioid treatment program services must ensure that:

(a) Each opioid treatment medication used by the program is administered and dispensed in accordance with its approved product labeling;

(b) Each individual admitted to an opioid treatment program shall receive overdose prevention education and information on how to access opioid overdose reversal medication;

(c) All dosing and administration decisions are made by a:

(i) Program physician; or

(ii) Medical practitioner under supervision of a program physician familiar with the most up-to-date product labeling.

~~((e))~~ (d) Any significant deviations from the approved labeling, including deviations with regard to dose, frequency, or the conditions of use described in the approved labeling, are specifically documented in the individual's record.

~~((5))~~ (4) An agency providing opioid treatment program services must ensure that all take-home medications are:

(a) Consistent with 42 C.F.R. Part 8.12 (i)(1) through (5) and are authorized only to stable individuals who:

(i) Have received opioid treatment medication for a minimum of ninety days; and

(ii) Have not had any positive drug screens in the last sixty days.

(b) Assessed and authorized, as appropriate, for a Sunday or legal holiday as identified in RCW 1.16.050;

(c) Assessed and authorized, as appropriate, when travel to the facility presents a safety risk for an individual or staff member due to inclement weather; and

(d) Not allowed in short-term withdrawal management or interim maintenance treatment.

~~((6))~~ (5) Registered nurses and licensed practical nurses may dispense up to a thirty-one day supply of medications approved by the United States Food and Drug Administration for the treatment of opioid use disorder under an order or prescription.

(6) All exceptions to take-home requirements must be submitted and approved by the state opioid treatment authority and Substance Abuse and Mental Health Services Administration (SAMHSA).

(7) An agency providing opioid treatment program services may accept, possess, and administer patient-owned medications.

[Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-1025, filed 4/16/19, effective 5/17/19.]

## GENERAL REQUIREMENTS THAT APPLY TO RESIDENTIAL AND INPATIENT SERVICES

### NEW SECTION

**WAC 246-341-1050 General requirements for mental health and substance use disorder inpatient and residential services.** (1) An agency providing substance use disorder services under WAC 246-341-1100 through 246-341-1114 or mental health services under WAC 246-341-1118 through 246-341-1158:

- (a) Must be a facility licensed by the department as:
  - (i) A hospital licensed under chapter 70.41 RCW;
  - (ii) A private psychiatric and alcoholism hospital licensed under chapter 71.12 RCW;
  - (iii) A private alcohol and substance use disorder hospital licensed under chapter 71.12 RCW; or
  - (iv) A residential treatment facility licensed under chapter 71.12 RCW;
- (b) If an agency is providing seclusion and restraint the agency must ensure that use of seclusion and restraint is documented and is used only to the extent necessary to ensure the safety of patients and others, and in accordance with WAC 246-320-226, 246-322-180, 246-324-200, or 246-337-110, as determined by the facility license type;
- (c) Must ensure access to necessary medical treatment, including emergency life-sustaining treatment and medication;
- (d) Must review the individual's crisis or recovery plan, if applicable and available;
- (e) Must determine the individual's risk of harm to self, others, or property;
- (f) Must coordinate with the individual's current treatment provider, if applicable, to assure continuity of care during admission and upon discharge;
- (g) Must develop and provide to the individual a discharge summary that must include:
  - (i) A continuing care recommendation; and
  - (ii) Scheduled follow-up appointments, including the time and date of the appointment(s), when possible;
- (h) If providing services to adults and minors, an agency must:
  - (i) Ensure that a minor who is at least age thirteen but not yet age eighteen is served with adults only if the minor's clinical record contains:
    - (A) Documentation that justifies such placement; and
    - (B) A professional judgment that placement in an inpatient facility that serves adults will not harm the minor;
  - (ii) Ensure the following for individuals who share a room:

(A) An individual fifteen years of age or younger must not room with an individual eighteen years of age or older;

(B) Anyone under thirteen years of age must be evaluated for clinical appropriateness before being placed in a room with an individual thirteen to sixteen years of age; and

(C) An individual sixteen or seventeen years of age must be evaluated for clinical appropriateness before being placed in a room with an individual eighteen years of age or older.

(2) An agency providing residential or inpatient mental health or substance use disorder services to youth must follow these additional requirements:

(a) Allow communication between the youth and the youth's parent or if applicable, a legal guardian, and facilitate the communication when clinically appropriate.

(b) Notify the parent or legal guardian within two hours of any significant decrease in the behavioral or physical health status of the youth and document all notification and attempts of notification in the clinical record.

(c) Discharge the youth to the care of the youth's parent or if applicable, legal guardian. For an unplanned discharge and when the parent or legal guardian is not available, the agency must contact the state child protective services.

(d) Ensure a staff member who demonstrates knowledge of adolescent development and substance use disorders is available at the agency or available by phone.

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#### NEW SECTION

**WAC 246-341-1060 General requirements for mental health and substance use disorder inpatient and residential services providing services under chapter 71.05 or 71.34 RCW.** This section applies to agencies providing secure withdrawal management, evaluation and treatment, involuntary crisis stabilization unit, and involuntary triage services.

(1) An agency providing services under chapter 71.05 or 71.34 RCW must:

(a) Follow the applicable statutory requirements in chapter 71.05 or 71.34 RCW;

(b) Ensure that services are provided in a secure environment.

"Secure" means having:

(i) All doors and windows leading to the outside locked at all times;

(ii) Visual monitoring, in a method appropriate to the individual;

(iii) A space to separate persons who are violent or may become violent from others when necessary to maintain safety of the individual and others;

(iv) The means to contact law enforcement immediately in the event of an elopement from the facility; and

(v) Adequate numbers of staff present at all times that are trained in facility security measures;

(c) Provide services, including admissions, seven days a week, twenty-four hours a day;

(d) Ensure that a mental health professional, substance use disorder professional, if appropriate, and physician, physician assistant, or psychiatric advanced registered nurse practitioner (ARNP) are available twenty-four hours a day, seven days a week for consultation and communication with the staff that provide direct care of individuals;

(e) Ensure at least daily contact between each involuntary individual and a mental health professional, substance use disorder professional, or person with a co-occurring disorder specialist enhancement as appropriate, for the purpose of evaluation as to:

(i) The need for further treatment;

(ii) Whether there is a change in involuntary status; or

(iii) Possible discharge;

(f) For an individual who has been delivered to the facility by a peace officer for evaluation the clinical record must contain:

(i) A statement of the circumstances under which the individual was brought to the unit;

(ii) The admission date and time;

(iii) Determination of whether to refer to a designated crisis responder (DCR) to initiate civil commitment proceedings;

(iv) If evaluated by a DCR, documentation that the evaluation was performed within the required time period, the results of the evaluation, and the disposition of the person.

(2) Upon discharge of the individual the agency shall provide notification to the DCR office responsible for the initial commitment, which may be a federally recognized Indian tribe or other Indian health care provider if the DCR is appointed by the health care authority, and the DCR office that serves the county in which the individual is expected to reside.

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#### NEW SECTION

**WAC 246-341-1070 Inpatient and residential substance use disorder services—General.** (1) An agency providing substance use disorder withdrawal management, secure withdrawal management, or residential substance use disorder services to an individual must:

(a) Inform individuals of their treatment options so they can make individualized choices for their treatment. This includes, as applicable, the initiation, continuation, or discontinuation of medications for substance use disorders.

(b) For individuals choosing to initiate or continue medications for their substance use disorder, make available on-site or facilitate off-site access to continue or initiate Federal Drug Administration (FDA)-approved medication for any substance use disorder, when clinically appropriate as determined by a medical practitioner.

(c) Provide continuity of care that allows individuals to receive timely and appropriate follow-up services upon discharge and, if applicable, allows the individual to continue medications with no missed doses.

(d) Document in the clinical record:

(i) The individual being informed of their treatment options including the use of medications for substance use disorder;

(ii) The continuation or initiation of FDA-approved medication for substance use disorder treatment that has been provided on-site or facilitated off-site, if applicable;

(iii) Referrals made to behavioral health providers including documentation that a discharge summary was provided to the receiving behavioral health provider as allowed under 42 C.F.R. Part 2; and

(iv) Contact or attempts to follow up with the individual post-discharge including the date of correspondence.

(2) An agency may not deny admission based solely on an individual taking FDA-approved medications, under the supervision of a medical provider, for their substance use disorder or require titration of dosages in order to be admitted or remain in the program.

[ ]

**((SECTION ELEVEN)) WITHDRAWAL MANAGEMENT, RESIDENTIAL SUBSTANCE USE DISORDER, AND MENTAL HEALTH INPATIENT SERVICES**

AMENDATORY SECTION (Amending WSR 19-09-062, filed 4/16/19, effective 5/17/19)

**WAC 246-341-1100 Withdrawal management services ((Adults)).**

Substance use disorder withdrawal management services are provided to ~~((an))~~ a voluntary individual to assist in the process of withdrawal from psychoactive substances in a safe and effective manner ~~((, in accordance with ASAM criteria. For secure withdrawal management and stabilization services for individuals who have been involuntarily committed, see WAC 246-341-1104.~~

~~(1) A behavioral health agency certified for adult withdrawal management services may choose to also become certified to provide youth withdrawal management services (see WAC 246-341-1102).~~

~~(2) An agency providing withdrawal management services to an individual must:~~

~~(a) Be a facility licensed by the department under one of the following chapters:~~

~~(i) Hospital licensing regulations (chapter 246-320 WAC);~~

~~(ii) Private psychiatric and alcoholism hospitals (chapter 246-322 WAC);~~

~~(iii) Private alcohol and substance use disorder hospitals (chapter 246-324 WAC); or~~

~~(iv) Residential treatment facility (chapter 246-337 WAC).~~

~~(b) Be licensed by the department as a behavioral health agency;~~

~~(c) Meet the applicable behavioral health agency licensure, certification, administration, personnel, and clinical requirements in WAC 246-341-0300 through 246-341-0650; and~~

~~(d) Have policies and procedures to support and implement the specific requirements in this section).~~

~~((3)) (1) An agency must:~~



(a) ~~((Use ASAM criteria for admission, continued services, and discharge planning and decisions;))~~ Ensure the individual receives a substance use disorder screening before admission;

(b) Provide counseling to each individual that addresses the individual's:

(i) Substance use disorder and motivation; and

(ii) Continuing care needs and need for referral to other services.

(c) Maintain a list of resources and referral options that can be used by staff members to refer an individual to appropriate services; and

(d) Post any rules and responsibilities for individuals receiving treatment, including information on potential use of increased motivation interventions or sanctions, in a public place in the facility(~~(~~

~~(e) Provide tuberculosis screenings to individuals for the prevention and control of tuberculosis; and~~

~~(f) Provide HIV/AIDS information and include a brief risk intervention and referral as indicated).)~~

~~((4))~~ (2) Ensure that each staff member providing withdrawal management services to an individual, with the exception of ((licensed staff members and chemical dependency)) substance use disorder professionals, substance use disorder professional trainees, physicians, physician assistants, advanced registered nurse practitioners, or person with a co-occurring disorder specialist enhancement, completes a minimum of forty hours of documented training before being assigned individual care duties. This personnel training must include the following topics:

(a) Substance use disorders;

(b) Infectious diseases, to include hepatitis and tuberculosis (TB); and

(c) Withdrawal screening, admission, and signs of trauma.

~~((5) In addition to the general clinical record content requirements in WAC 246-341-0640, an agency providing substance use disorder withdrawal management services must maintain an individual's clinical record that contains:~~

~~(a) Documentation of a substance use disorder screening before admission;~~

~~(b) A voluntary consent to treatment form, or any release forms, signed and dated by the individual, or the individual's parent or legal guardian, except as authorized by law for protective custody and involuntary treatment;~~

~~(c) Documentation that the individual received HIV/AIDS information and a brief risk intervention and referral as indicated; and~~

~~(d) Documentation that a discharge summary, including a continuing care recommendation and a description of the individual's physical condition, was completed within seven working days of discharge.)~~

[Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-1100, filed 4/16/19, effective 5/17/19.]

AMENDATORY SECTION (Amending WSR 19-09-062, filed 4/16/19, effective 5/17/19)

**WAC 246-341-1104 Secure withdrawal management and stabilization services (~~(—Adults)~~)**. Secure withdrawal management and stabilization services are provided to ~~((a))~~ a voluntary or involuntary individual to assist in the process of withdrawal from psychoactive substances in a safe and effective manner, or medically stabilize an individual after acute intoxication, in accordance with ~~((ASAM criteria and))~~ chapters 71.05 and 71.34 RCW.

~~(1) ((In addition to meeting the behavioral health agency licensure, certification, administration, personnel, and clinical requirements in WAC 246-341-0300 through 246-341-0650,))~~ An agency must ~~((:~~

~~(a))~~ meet the requirements for withdrawal management services in WAC 246-341-1100 ~~((; and~~

~~(b) Designate a physician or chemical dependency professional as the professional person as defined in RCW 71.05.020 in charge of clinical services at that facility).~~

~~(2) An agency certified to provide secure withdrawal management and stabilization services must ((have the following))~~ develop and implement policies and procedures ~~((:~~

~~(a) Policies to ensure that services are provided in a secure environment. "Secure" means having:~~

~~(i) All doors and windows leading to the outside locked at all times;~~

~~(ii) Visual monitoring, either by line of sight or camera as appropriate to the individual;~~

~~(iii) Adequate space to segregate violent or potentially violent persons from others;~~

~~(iv) The means to contact law enforcement immediately in the event of an elopement from the facility; and~~

~~(v) Adequate numbers of staff present at all times that are trained in facility security measures.~~

~~(b) Policies to ensure compliance with WAC 246-337-110 regarding seclusion and restraint;~~

~~(c) Procedures for admitting individuals needing secure withdrawal management and stabilization services seven days a week, twenty-four hours a day;~~

~~(d) Procedures to ensure that once an individual has been admitted, if a medical condition develops that is beyond the facility's ability to safely manage, the individual will be transported to the nearest hospital for emergency medical treatment;~~

~~(e) Procedures to assure access to necessary medical treatment, including emergency life-sustaining treatment and medication;~~

~~(f) Procedures to assure at least daily contact between each involuntary individual and a chemical dependency professional or a trained professional person for the purpose of:~~

~~(i) Observation;~~

~~(ii) Evaluation;~~

~~(iii) Release from involuntary commitment to accept treatment on a voluntary basis; and~~

~~(iv) Discharge from the facility to accept voluntary treatment upon referral.~~

~~(g) Procedures to assure the protection of individual and family rights as described in WAC 246-341-1122, rights related to antipsy-~~

~~chotic medication in WAC 246-341-1124, and rights as described in chapters 71.05 and 71.34 RCW;~~

~~(h) Procedures to inventory and safeguard the personal property of the individual being detained, including a process to limit inspection of the inventory list by responsible relatives or other persons designated by the detained individual;~~

~~(i) Procedures)) to assure that a ((chemical dependency)) substance use disorder professional and licensed physician, physician assistant, or advanced registered nurse practitioner ((-ARNP)) are available twenty-four hours a day, seven days a week for consultation and communication with the ((direct patient care)) staff ((twenty-four hours a day, seven days a week;~~

~~(j) Procedures to warn an identified person and law enforcement when an adult has made a threat against an identified victim as explained in RCW 70.02.050 and in compliance with 42 C.F.R. Part 2;~~

~~(k) Procedures to ensure that individuals detained for up to fourteen, ninety, or one hundred eighty additional days of treatment are evaluated by the professional staff of the facility in order to be prepared to testify that the individual's condition is caused by a substance use disorder and either results in likelihood of serious harm or the individual being gravely disabled)) that provide direct care to individuals.~~

(3) An agency providing secure withdrawal management and stabilization services must document that each individual has received necessary screenings, assessments, examinations, or evaluations to determine the nature of the disorder and the treatment necessary, including:

(a) A telephone screening reviewed by a nurse, as defined in chapter 18.79 RCW, or medical practitioner prior to admission that includes current level of intoxication, available medical history, and known medical risks; and

(b) An examination and evaluation ((by a chemical dependency professional)) in accordance with RCW 71.05.210 within ((seventy-two)) twenty-four hours of admission to the facility((; and

~~(c) An assessment for substance use disorder and additional mental health disorders or conditions, using the global appraisal of individual needs — Short screener (GAIN-SS) or its successor)).~~

(4) For individuals admitted to the secure withdrawal management and stabilization facility, the clinical record must contain:

(a) A statement of the circumstances under which the ((person)) individual was brought to the unit;

(b) The admission date and time;

(c) The date and time when the involuntary detention period ends;

(d) A determination of whether to refer to a ((designated crisis responder)) DCR to initiate civil commitment proceedings;

(e) If an individual is admitted voluntarily and appears to meet the criteria for initial detention, documentation that an evaluation was performed by a ((designated crisis responder)) DCR within the time period required in RCW 71.05.050, the results of the evaluation, and the disposition; and

(f) ((Review of the client's current crisis plan, if applicable and available; and

~~(g))~~) Review of the admission diagnosis and what information the determination was based upon.

(5) An agency certified to provide secure withdrawal management and stabilization services must ensure the treatment plan includes all of the following:

(a) A protocol for safe and effective withdrawal management, including medications as appropriate;

(b) Discharge assistance provided by ~~((chemical dependency))~~ substance use disorder professionals or persons with a co-occurring disorder specialist enhancement, including facilitating transitions to appropriate voluntary or involuntary inpatient services or to less restrictive alternatives as appropriate for the individual.

~~((6) An agency certified to provide secure withdrawal management and stabilization services must ensure that each staff member providing withdrawal management services to an individual, with the exception of licensed staff members and CDPs, completes a minimum of forty hours of documented training before being assigned individual care duties. This personnel training must include the following topics:~~

~~(a) Substance use disorders;~~

~~(b) Infectious diseases, to include hepatitis and tuberculosis (TB); and~~

~~(c) Withdrawal screening, admission, and signs of trauma.))~~

[Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-1104, filed 4/16/19, effective 5/17/19.]

AMENDATORY SECTION (Amending WSR 19-09-062, filed 4/16/19, effective 5/17/19)

**WAC 246-341-1108 Residential substance use disorder treatment services—General.** Residential substance use disorder treatment services provide substance use disorder treatment for an individual in a facility with twenty-four hours a day supervision.

(1) Residential treatment services include:

(a) Intensive inpatient services ~~((, ASAM level 3.5))~~;

(b) Low intensity (recovery house) residential treatment services ~~((, ASAM level 3.1))~~; and

(c) Long-term residential treatment services ~~((, ASAM level 3.1; and~~

~~(d) Youth residential services, ASAM levels 3.1, 3.5, and 3.7)).~~

(2) An agency certified to provide residential treatment services must:

(a) ~~((Be a facility licensed by the department and meet the criteria under one of the following DOH chapters:~~

~~(i) Hospital licensing regulations (chapter 246-320 WAC);~~

~~(ii) Private psychiatric and alcoholism hospitals (chapter 246-322 WAC);~~

~~(iii) Private alcohol and substance use disorder hospitals (chapter 246-324 WAC); or~~

~~(iv) Residential treatment facility (chapter 246-337 WAC).~~

~~(b) Be licensed by the department as a behavioral health agency;~~

~~(c) Meet the applicable behavioral health agency licensure, certification, administration, personnel, and clinical requirements in WAC 246-341-0300 through 246-341-0650;~~

~~(d) Have policies and procedures to support and implement the:~~

~~(i) General requirements in WAC 246-341-0420; and~~

~~(ii) Specific applicable requirements in WAC 246-341-1110 through 246-341-1116.~~

- ~~(e) Use ASAM criteria for admission, continued services, and discharge planning and decisions;~~
- ~~(f)) Provide education to each individual admitted to the treatment facility on:~~
- ~~(i) Substance use disorders;~~
  - ~~(ii) Relapse prevention;~~
  - ~~(iii) Bloodborne pathogens; ((and))~~
  - ~~(iv) Tuberculosis (TB) ((-));~~
- ~~((g) Provide education or information to each individual admitted on:~~
- ~~(i)) (v) Emotional, physical, and sexual abuse; and~~
  - ~~((ii)) (vi) Nicotine use disorder ((- and~~
  - ~~(iii) The impact of substance use during pregnancy, risks to the fetus, and the importance of informing medical practitioners of chemical use during pregnancy)).~~
- ~~((h)) (b) Maintain a list or source of resources, including self-help groups, and referral options that can be used by staff to refer an individual to appropriate services; and~~
- ~~((i) Screen for the prevention and control of tuberculosis;~~
  - ~~(j) Limit the size of group counseling sessions to no more than sixteen individuals;~~
  - ~~(k) Have)) (c) Develop and implement written procedures for:~~
- (i) Urinalysis and drug testing, including laboratory testing;
- and
- (ii) How agency staff members respond to medical and psychiatric emergencies.
- ~~((l) The individual service plan is initiated with at least one goal identified by the individual during the initial assessment or at the first service session following the assessment.))~~
- (3) An agency that provides services to a pregnant woman must:
- (a) ~~((Have)) Develop and implement a written procedure to address specific issues regarding the woman's pregnancy and prenatal care needs; ((and))~~
  - (b) Provide referral information to applicable resources; and
  - (c) Provide education on the impact of substance use during pregnancy, risks to the developing fetus, and the importance of informing medical practitioners of chemical use during pregnancy.
- (4) An agency that provides an assessment to an individual under RCW 46.61.5056 must also meet the requirements for driving under the influence (DUI) assessment providers in WAC 246-341-0820.
- (5) An agency that provides substance use disorder residential services to youth must:
- (a) Ensure staff members are trained in safe and therapeutic techniques for dealing with a youth's behavior and emotional crisis, including:
- (i) Verbal deescalation;
  - (ii) Crisis intervention;
  - (iii) Anger management;
  - (vi) Suicide assessment and intervention;
  - (v) Conflict management and problem solving skills;
  - (vii) Management of assaultive behavior;
  - (viii) Proper use of therapeutic physical intervention techniques; and
  - (ix) Emergency procedures.
  - (b) Provide group meetings to promote personal growth.
  - (c) Provide leisure, and other therapy or related activities.

(d) Provide seven or more hours of structured recreation each week, that is led or supervised by staff members.

(e) Provide each youth one or more hours per day, five days each week, of supervised academic tutoring or instruction by a certified teacher when the youth is unable to attend school for an estimated period of four weeks or more. The agency must:

(i) Document the individual's most recent academic placement and achievement level; and

(ii) Obtain school work from the individual's school, or when applicable, provide school work and assignments consistent with the individual's academic level and functioning.

(f) Conduct random and regular room checks when an individual is in their room, and more often when clinically indicated.

(g) Ensure each individual's clinical record:

(i) Contains any consent or release forms signed by the youth and their parent or legal guardian;

(ii) Contains the parent's or other referring person's agreement to participate in the treatment process, as appropriate and if possible; and

(iii) Documents any problems identified in specific youth assessment, including any referrals to school and community support services, on the individual service plan.

[Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-1108, filed 4/16/19, effective 5/17/19.]

AMENDATORY SECTION (Amending WSR 19-09-062, filed 4/16/19, effective 5/17/19)

**WAC 246-341-1110 Residential substance use disorder treatment services—Intensive inpatient services.** (1) Intensive inpatient services are clinically managed, high-intensity substance use disorder residential treatment services that provide a concentrated program of individual and group counseling, education, and activities for an individual who ~~((has completed))~~ is not in active withdrawal ~~((management))~~ and the individual's family to address overall functioning and to demonstrate aspects of recovery lifestyle.

(2) ~~((In addition to meeting the applicable behavioral health agency licensure, certification, administration, personnel, and clinical requirements in WAC 246-341-0300 through 246-341-0650 and the residential treatment services requirements in WAC 246-341-1108,))~~ An agency certified to provide intensive inpatient services must:

(a) Complete the individual service plan within five days of admission;

(b) Conduct and document at least weekly, one face-to-face individual substance use disorder counseling session with the individual; and

(c) ((Progress notes must include the date, time, duration, participant names, and a brief summary of the session and the name of the staff member who provided it;

~~(d))~~ Document at least weekly, an individual service plan review which determines continued stay needs and progress towards goals ~~((and~~

~~(e) Provide treatment services in line with ASAM 3.5 components appropriate to youth or adults).~~

[Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-1110, filed 4/16/19, effective 5/17/19.]

AMENDATORY SECTION (Amending WSR 19-09-062, filed 4/16/19, effective 5/17/19)

**WAC 246-341-1112 Residential substance use disorder treatment services—Low intensity (recovery house) residential treatment services.** (1) Low intensity (recovery house) services are clinically managed, low-intensity substance use disorder residential treatment services that provide ~~((a program of))~~ individualized care and treatment with social, vocational, and recreational activities to aid in individual adjustment to ~~((abstinence))~~ recovery, relapse prevention, recovery skills development, and to aid in job training, employment, or participating in other types of community services.

(2) ~~((In addition to meeting the behavioral health agency licensure, certification, administration, personnel, and clinical requirements in WAC 246-341-0300 through 246-341-0650 and the residential treatment services requirements in WAC 246-341-1108,))~~ An agency certified to provide low intensity (recovery house) services must:

(a) Provide no less than five hours per week of treatment services ~~((in line with ASAM level 3.1)); and~~

(b) ~~((Progress notes should include the date, time, duration, participant names, and a brief summary of the session and the name of the staff member who provided it; and~~

~~(e))~~ Conduct and document an individual service plan review at least monthly.

[Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-1112, filed 4/16/19, effective 5/17/19.]

AMENDATORY SECTION (Amending WSR 19-09-062, filed 4/16/19, effective 5/17/19)

**WAC 246-341-1114 Residential substance use disorder treatment services—Long-term treatment services.** (1) Long-term treatment services are clinically managed, higher-intensity substance use disorder residential treatment services that provide ~~((a program))~~ individualized care and treatment for an individual needing consistent structure over a longer period of time to develop and maintain ~~((abstinence))~~ recovery, develop recovery skills, and to improve overall health.

(2) ~~((In addition to meeting the behavioral health agency licensure, certification, administration, personnel, and clinical requirements in WAC 246-341-0300 through 246-341-0650 and the residential treatment services requirements in WAC 246-341-1108,))~~ An agency certified to provide long-term treatment services must:

(a) ~~((Provide an individual a minimum of two hours each week of individual or group counseling;~~

- ~~(b) Provide no less than five hours per week of treatment services in line with ASAM 3.1 components;~~
- ~~(c) Progress notes should include the date, time, duration, participant names, and a brief summary of the session and the names of the staff member who provided it;~~
- ~~(d)) Provide an individual, during the course of services, with:~~
- ~~(i) Education on social and coping skills, relapse prevention, and recovery skills development;~~
  - ~~(ii) Social and recreational activities;~~
  - ~~(iii) Assistance in seeking employment, when appropriate; and~~
  - ~~(iv) Assistance with reentry living skills to include seeking and obtaining safe housing.~~
- ~~((e)) (b) Conduct and document an individual service plan review at least monthly.~~

[Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-1114, filed 4/16/19, effective 5/17/19.]

AMENDATORY SECTION (Amending WSR 20-07-091, filed 3/17/20, effective 5/1/20)

- WAC 246-341-1118 Mental health inpatient services—General.** (1) Mental health inpatient services include the following types of behavioral health services certified by the department:
- (a) Evaluation and treatment services;
  - (b) Intensive behavioral health treatment services;
  - (c) Child long-term inpatient program (CLIP);
  - (d) Crisis stabilization units;
  - (e) Triage services; and
  - (f) Competency evaluation and ~~((treatment))~~ restoration services.
- (2) An ~~((agency providing inpatient services to an individual~~ must:
- ~~(a) Be a facility licensed by the department under one of the following chapters:~~
    - ~~(i) Hospital licensing regulations (chapter 246-320 WAC);~~
    - ~~(ii) Private psychiatric and alcoholism hospitals (chapter 246-322 WAC);~~
    - ~~(iii) Private alcohol and substance use disorder hospitals (chapter 246-324 WAC); or~~
    - ~~(iv) Residential treatment facility (chapter 246-337 WAC).~~
  - ~~(b) Be licensed by the department as a behavioral health agency;~~
  - ~~(c) Meet the applicable behavioral health agency licensure, certification, administration, personnel, and clinical requirements in WAC 246-341-0100 through 246-341-0650;~~
  - ~~(d) Meet the applicable inpatient services requirements in WAC 246-341-1118 through 246-341-1132;~~
  - ~~(e) Have policies and procedures to support and implement the specific applicable program-specific requirements; and~~
  - ~~(f) If applicable, have policies to ensure compliance with WAC 246-337-110 regarding seclusion and restraint.~~
- ~~(3) The behavioral health)) agency providing mental health inpatient services must ~~((document the development of))~~ develop and implement an individualized annual training plan for agency staff members, to include at least:~~



- (a) Least restrictive alternative options available in the community and how to access them;
- (b) Methods of individual care; and
- (c) Deescalation training and management of assaultive and self-destructive behaviors, including proper and safe use of seclusion and restraint procedures (~~(; and~~
- ~~(d) The requirements of chapter 71.05 and 71.34 RCW, this chapter, and protocols developed by the department).~~

~~((4))~~ (3) If contract staff are providing direct services, the facility must ensure compliance with the training requirements outlined in subsection ~~((3))~~ (2) of this section.

~~((5) This chapter does not apply to state psychiatric hospitals as defined in chapter 72.23 RCW or facilities owned or operated by the department of veterans affairs or other agencies of the United States government.)~~ (4) A behavioral health agency providing mental health inpatient services must:

(a) Document that each individual has received evaluations to determine the nature of the disorder and the treatment necessary, including:

(i) A health assessment of the individual's physical condition to determine if the individual needs to be transferred to an appropriate hospital for treatment;

(ii) Examination and medical evaluation within twenty-four hours of admission by a licensed physician, advanced registered nurse practitioner, or physician assistant;

(iii) Consideration of less restrictive alternative treatment at the time of admission; and

(iv) The admission diagnosis and what information the determination was based upon.

(b) Ensure the rights of individuals to make mental health advance directives, and facility protocols for responding to individual and agent requests consistent with RCW 71.32.150.

(c) Ensure examination and evaluation of a minor by a children's mental health specialist occurs within twenty-four hours of admission.

[Statutory Authority: 2019 c 324, RCW 71.24.037, 71.24.648, and 71.24.649. WSR 20-07-091, § 246-341-1118, filed 3/17/20, effective 5/1/20. Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-1118, filed 4/16/19, effective 5/17/19.]

AMENDATORY SECTION (Amending WSR 20-07-091, filed 3/17/20, effective 5/1/20)

**WAC 246-341-1134 Mental health inpatient services—Evaluation and treatment services.** (1) Evaluation and treatment services are provided for individuals who are ~~((detained)) held for one hundred twenty-hour detention~~ or on fourteen, ninety, or one hundred eighty-day civil commitment orders according to chapter 71.05 RCW. An agency providing evaluation and treatment services may choose to serve individuals who are held for one hundred twenty-hour detention, or on short-term commitment orders (fourteen-day), long-term commitment orders (ninety-day and one hundred eighty-day), or ~~((both)) all three.~~ Agencies providing evaluation and treatment services may also provide services for individuals who are not detained or committed.

~~((1) In addition to meeting the agency licensure, certification, administration, personnel, and clinical requirements in WAC 246-341-0100 through 246-341-0650, and the applicable inpatient services requirements in WAC 246-341-1118 through 246-341-1132 an agency providing evaluation and treatment services must ensure:~~

~~(a) Designation of a physician or other mental health professional as the professional person as defined in RCW 71.05.020 in charge of clinical services at that facility; and~~

~~(b) A policy management structure that establishes:~~

~~(i) Procedures to assure appropriate and safe transportation for persons who are not approved for admission to his or her residence or other appropriate place;~~

~~(ii) Procedures to detain arrested persons who are not approved for admission for up to eight hours so that reasonable attempts can be made to notify law enforcement to return to the facility and take the person back into custody;~~

~~(iii) Procedures to assure the rights of individuals to make mental health advance directives, and facility protocols for responding to individual and agent requests consistent with RCW 71.32.150;~~

~~(iv) Procedures to ensure that if the facility releases the individual to the community, the facility informs the peace officer of the release within a reasonable period of time after the release if the peace officer has specifically requested notification and has provided contact information to the facility;~~

~~(v) Procedures to document that each individual has received evaluations to determine the nature of the disorder and the treatment necessary, including a psychosocial evaluation by a mental health professional; and~~

~~(vi) For individuals who are being evaluated as dangerous mentally ill offenders under RCW 72.09.370(7), the professional person in charge of the evaluation and treatment facility must consider filing a petition for a ninety day less restrictive alternative in lieu of a petition for a fourteen-day commitment.)~~

(2) ((A facility)) An agency certified to provide evaluation and treatment services for youth may provide treatment for a child on a one hundred eighty-day inpatient involuntary commitment order only until the child is discharged from the order to the community, or until a bed is available for that child in a child long-term inpatient treatment facility (CLIP).

[Statutory Authority: 2019 c 324, RCW 71.24.037, 71.24.648, and 71.24.649. WSR 20-07-091, § 246-341-1134, filed 3/17/20, effective 5/1/20. Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-1134, filed 4/16/19, effective 5/17/19.]

AMENDATORY SECTION (Amending WSR 20-07-091, filed 3/17/20, effective 5/1/20)

**WAC 246-341-1137 Behavioral health inpatient services—Intensive behavioral health treatment services.** (1) Intensive behavioral health treatment services are intended to assist individuals in transitioning to lower levels of care, including individuals on a less restrictive alternative order. These services are provided for individuals with behavioral health conditions whose impairment or behaviors do not meet

or no longer meet criteria for involuntary inpatient commitment under chapter 71.05 RCW, but whose care needs cannot be met in other community-based settings due to one or more of the following:

(a) Self-endangering behaviors that are frequent or difficult to manage;

(b) Intrusive behaviors that put residents or staff at risk;

(c) Complex medication needs, which include psychotropic medications;

(d) A history or likelihood of unsuccessful placements in other community facilities or settings such as:

(i) Assisted living facilities licensed under chapters 18.20 RCW and 388-78A WAC;

(ii) Adult family homes licensed under chapters 70.128 RCW and 388-76 WAC;

(iii) Permanent supportive housing provided in accordance with chapter 388-106 WAC;

(iv) Supported living certified under chapter 388-101 WAC; or

(v) Residential treatment facilities licensed under chapters 71.12 RCW and 246-337 WAC providing a lower level of services.

(e) A history of frequent or protracted mental health hospitalizations; or

(f) A history of offenses against a person or felony offenses that cause physical damage to property.

(2) ~~((In addition to meeting the agency licensure, certification, administration, personnel, and clinical requirements in WAC 246-341-0100 through 246-341-0650, and the applicable inpatient services requirements in WAC 246-341-1118 through 246-341-1132,))~~ An agency providing intensive behavioral health treatment services must ensure services are provided:

(a) In a residential treatment facility licensed under chapters 71.12 RCW and 246-337 WAC;

(b) By a multidisciplinary team including clinicians, community supports, and those responsible for discharge planning; and

(c) With twenty-four hour observation of individuals by at least two staff who are awake and on duty.

(3) The agency may:

(a) Only admit individuals at least eighteen years of age whose primary care need is treatment for a mental health disorder that does not include a diagnosis of dementia or an organic brain disorder, but may include individuals who have a secondary diagnosis of intellectual or developmental disabilities;

(b) Only admit individuals who are capable of performing activities of daily living without direct assistance from agency staff; and

(c) Not admit individuals with a diagnosis of dementia or an organic brain disorder who can more appropriately be served in an enhanced services facility licensed under chapters 70.97 RCW and 388-107 WAC or other long-term care facility as defined in RCW 70.129.010.

(4) The agency must follow WAC 246-341-0805 regarding less restrictive alternative services.

(5) In addition to the applicable training requirements in this chapter, the agency must train all direct care staff on how to provide services and appropriate care to individuals with intellectual or developmental disabilities as described in Title 71A RCW, including:

(a) An overview of intellectual and developmental disabilities including how to differentiate intellectual or developmental disabilities from mental illness;

(b) Effective communication including methods of verbal and non-verbal communication when supporting individuals with intellectual or developmental disabilities; and

(c) How to identify behaviors in individuals that constitutes "normal stress" and behaviors that constitute a behavioral health crisis.

(6) The agency must develop and implement policies and procedures that explain how the agency will have sufficient numbers of appropriately trained, qualified, or credentialed staff available to safely provide all of the following services in accordance with an individual's care plan and needs:

(a) Planned activities for psychosocial rehabilitation services, including:

(i) Skills training in activities of daily living; skills training may include teaching and prompting or cueing individuals to perform activities, but does not include directly assisting individuals in performing the activities;

(ii) Social interaction;

(iii) Behavioral management, including self-management and understanding of recovery;

(iv) Impulse control;

(v) Training and assistance for self-management of medications; and

(vi) Community integration skills.

(b) Service coordination provided by a mental health professional;

(c) Psychiatric services, including:

(i) Psychiatric nursing, on-site, twenty-four hours per day, seven days per week;

(ii) Timely access to a psychiatrist, psychiatric advanced registered nurse practitioner, or physician's assistant who is licensed under Title 18 RCW operating within their scope of practice who by law can prescribe drugs in Washington state; and

(iii) A mental health professional on site at least eight hours per day and accessible twenty-four hours per day, seven days per week.

(d) Access to intellectual and developmental disability services provided by a disability mental health specialist as described in WAC 182-538D-0200 or a person credentialed to provide applied behavioral analysis; and

(e) Peer support services provided by certified peer counselors.

(7) The agency must provide access to or referral to substance use disorder services, and other specialized services, as needed.

(8) The agency must provide a system or systems within the building that give staff awareness of the movements of individuals within the facility. If a door control system is used, it shall not prevent a resident from leaving the licensed space on their own accord, except temporary delays as allowed by (a) of this subsection. Such systems include:

(a) Limited egress systems consistent with state building code, such as delayed egress;

(b) Appropriate staffing levels to address safety and security; and

(c) Policies and procedures that:

(i) Are consistent with the assessment of the individual's care needs and plan; and

(ii) Do not limit the rights of a voluntary individual.

(9) The agency must have a memorandum of understanding with the local crisis system, including the closest agency providing evaluation and treatment services and designated crisis responders to ensure timely response to and assessment of individuals who need a higher level of care.

(10) The agency must develop and implement policies and procedures regarding discharge and transfer that:

(a) Allows each individual to stay in the facility and not discharge the individual to another facility type or other level of care unless another placement has been secured, and:

(i) The individual completed their care objectives and no longer needs this level of care;

(ii) The individual has medical care needs that the agency cannot provide or needs direct assistance with activities of daily living;

(iii) The individual needs a higher level of behavioral health care, such as evaluation and treatment services, due to a change in behavioral health status or because the individual's conditional release or less restrictive alternative order is revoked; or

(iv) The individual is convicted of any gross misdemeanor or felony while being a resident in the facility where the conviction was based on conduct that caused significant harm to another individual residing in the agency or staff member and there is a likelihood the ((person)) individual continues to endanger the safety and health of residents or staff. For the purposes of this subsection, conviction includes all instances in which plea of guilty or nolo contendere is the basis for conviction and all proceedings in which the sentence have been deferred or suspended.

(b) Allows individuals who are discharged in accordance with (a)(ii) or (iii) of this subsection to be accepted back into the facility if and when it is medically, clinically, legally, and contractually appropriate;

(c) Allows each individual to stay in the facility and not transfer to another agency providing intensive behavioral health treatment services unless the individual requests to receive services in a different agency certified to provide intensive behavioral health treatment services;

(d) Follows all transfer and discharge documentation requirements in WAC 246-341-0640((+15)) and also documents the specific time and date of discharge or transfer. Additionally, the agency must give the following information to the individual, the individual's representative, and family or guardian, as appropriate, before discharge or transfer:

(i) The name, address, and telephone number of the applicable ombuds;

(ii) For individuals with disabilities, the mailing address and telephone number of the agency responsible for the protection and advocacy of developmentally disabled individuals; and

(iii) The mailing address and telephone number of the agency responsible for the protection and advocacy of mentally ill individuals.

(e) Includes transportation coordination that informs all parties involved in the coordination of care.

(11) The agency must protect and promote the rights of each individual and assist the individual to exercise their rights as an individual, as a citizen or resident of the United States and the state of Washington. To do this, the agency must:

(a) Train staff on resident rights and how to assist individuals in exercising their rights;

(b) Protect each individual's right to a dignified existence, self-determination, and communication with and access to persons and services inside and outside the agency;

(c) Post names, addresses, and telephone numbers of the state ((survey)) review and certification agency, the state licensure office, the relevant ombuds programs, and the protection and advocacy systems;

(d) Provide reasonable access to an individual by the individual's representative or an entity or individual that provides health, social, legal, or other services to the individual, subject to the individual's right to deny or withdraw consent at any time;

(e) Allow representatives of appropriate ombuds to examine a resident's clinical records with the permission of the individual or the individual's legal representative, and consistent with state and federal law;

(f) Not require or request individuals to sign waivers of potential liability for losses of personal property or injury, or to sign waivers of individual's rights;

(g) Fully disclose to individuals the agency's policy on accepting medicaid as a payment source; and

(h) Inform the individual both orally and in writing in a language that the individual understands of their applicable rights in accordance with this chapter. The notification must be made upon admission and the agency must document the information was provided.

(12) In addition to all other applicable rights, an individual receiving certified intensive behavioral health treatment services has the right to:

(a) Be free of interference, coercion, discrimination, and reprisal from the agency in exercising their rights;

(b) Choose a representative who may exercise the individual's rights to the extent provided by law;

(c) Manage their own financial affairs;

(d) Personal privacy and confidentiality, including the following considerations:

(i) Personal privacy applies to accommodations, medical treatment, written and telephone communications, personal care, visits, and meetings of family and resident groups.

(ii) The individual may approve or refuse the release of personal and clinical records to an individual outside the agency unless otherwise provided by law.

(iii) Privacy in communications, including the right to:

(A) Send and promptly receive mail that is unopened;

(B) Have access to stationery, postage, and writing implements;

and

(C) Have reasonable access to the use of a telephone where calls can be made without being overheard.

(e) Prompt resolution of voiced grievances including those with respect to treatment that has been furnished as well as that which has not been furnished and the behavior of other residents;

(f) File a ((complaint)) report with the department ((of health)) for any reason;

(g) Examine the results of the most recent ((survey)) review or inspection of the agency conducted by federal or state ((surveyors)) reviewers or inspectors and plans of correction in effect with respect to the agency;

(h) Receive information from client advocates, and be afforded the opportunity to contact these advocates;

(i) Access the following without interference:

- (i) Any representative of the state;
- (ii) The individual's medical provider;
- (iii) Ombuds;

(iv) The agencies responsible for the protection and advocacy system for individuals with disabilities, developmental disabilities, and individuals with mental illness created under federal law; and

(v) Subject to reasonable restrictions to protect the rights of others and to the individual's right to deny or withdraw consent at any time, immediate family or other relatives of the individual and others who are visiting with the consent of the resident.

(j) Retain and use personal possessions, including some furnishings, and appropriate clothing, as space permits, unless to do so would infringe upon the rights or health and safety of other residents;

(k) Secure storage, upon request, for small items of personal property;

(l) Be notified regarding transfer or discharge;

(m) Be free from restraint and involuntary seclusion;

(n) Be free from verbal, sexual, physical, and mental abuse, corporal punishment, and involuntary seclusion;

(o) Choose activities, schedules, and health care consistent with the individual's interests, assessments, and plans of care;

(p) Interact with members of the community both inside and outside the agency;

(q) Make choices about aspects of their life in the agency that are significant to the individual;

(r) Unless adjudged incompetent or otherwise found to be legally incapacitated, participate in planning care and treatment or changes in care and treatment;

(s) Unless adjudged incompetent or otherwise found to be legally incapacitated, to direct their own service plan and changes in the service plan, and to refuse any particular service so long as such refusal is documented in the record of the individual;

(t) Participate in social, religious, and community activities that do not interfere with the rights of other individuals in the agency;

(u) Reside and receive services in the agency with reasonable accommodation of individual needs and preferences, except when the health or safety of the individual or other individuals would be endangered; and

(v) Organize and participate in participant groups.

(13) The individual and their representative have the right to:

(a) Access all records pertaining to the individual including clinical records according to requirements in WAC 246-341-0650; and

(b) Be notified, along with interested family members, when there is:

(i) An accident involving the individual which requires or has the potential for requiring medical intervention;

(ii) A significant change in the individual's physical, mental, or psychosocial status; and

(iii) A change in room or roommate assignment.

[Statutory Authority: 2019 c 324, RCW 71.24.037, 71.24.648, and 71.24.649. WSR 20-07-091, § 246-341-1137, filed 3/17/20, effective 5/1/20.]

AMENDATORY SECTION (Amending WSR 19-09-062, filed 4/16/19, effective 5/17/19)

**WAC 246-341-1138 Mental health inpatient services—Child long-term inpatient program (CLIP).** In addition to meeting the ((agency licensure, certification, administration, personnel, and clinical requirements in WAC 246-341-0100 through 246-341-0650, the applicable inpatient services requirements in WAC 246-341-1118 through 246-341-1322, and the)) evaluation and treatment service requirements of WAC 246-341-1134, child long-term inpatient treatment facilities must develop a written plan for assuring that services provided are appropriate to the developmental needs of children, including all of the following:

(1) If there is not a child psychiatrist on the staff, there must be a child psychiatrist available for consultation.

(2) There must be a psychologist with documented evidence of skill and experience in working with children available either on the clinical staff or by consultation, responsible for planning and reviewing psychological services and for developing a written set of guidelines for psychological services.

(3) There must be a registered nurse, with training and experience in working with psychiatrically impaired children, on staff as a full-time or part-time employee who must be responsible for all nursing functions.

(4) There must be a social worker with experience in working with children on staff as a full-time or part-time employee who must be responsible for social work functions and the integration of these functions into the individual treatment plan.

(5) There must be an educational/vocational assessment of each resident with appropriate educational/vocational programs developed and implemented or assured on the basis of that assessment.

(6) There must be an occupational therapist licensed under chapter 18.59 RCW available who has experience in working with psychiatrically impaired children responsible for occupational therapy functions and the integration of these functions into treatment.

(7) There must be a registered recreational therapist under chapter 18.230 RCW available who has had experience in working with psychiatrically impaired children responsible for the recreational therapy functions and the integration of these functions into treatment.

(8) Disciplinary policies and practices must be stated in writing and all of the following must be true:

(a) Discipline must be fair, reasonable, consistent and related to the behavior of the resident. Discipline, when needed, must be consistent with the individual treatment plan.

(b) Abusive, cruel, hazardous, frightening or humiliating disciplinary practices must not be used. Seclusion and restraints must not be used as punitive measures. Corporal punishment must not be used.

(c) Disciplinary measures must be documented in the ((medical)) clinical record.

(9) Residents must be protected from assault, abuse and neglect. Suspected or alleged incidents of nonaccidental injury, sexual abuse, assault, cruelty or neglect to a child must be reported to a law enforcement agency or to the department of children, youth, and families and comply with chapter 26.44 RCW.

(10) Orientation material must be made available to any facility personnel, clinical staff or consultants informing practitioners of



their reporting responsibilities and requirements. Appropriate local police and department phone numbers must be available to personnel and staff.

(11) When suspected or alleged abuse is reported, the ~~((medical))~~ clinical record must reflect the fact that an oral or written report has been made to the child protective services of ~~((DSSH))~~ the department of children, youth, and families or to a law enforcement agency within the timelines identified in chapter 26.44 RCW. This note must include the date and time that the report was made, the agency to which it was made and the signature of the person making the report. Contents of the report need not be included in the medical record.

(12) Agencies that provide child long-term inpatient treatment services are exempt from the requirement in WAC 246-341-1060 to admit individuals needing treatment seven days a week, twenty-four hours a day.

[Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-1138, filed 4/16/19, effective 5/17/19.]

AMENDATORY SECTION (Amending WSR 19-09-062, filed 4/16/19, effective 5/17/19)

**WAC 246-341-1140 Mental health inpatient services—Crisis stabilization unit(~~(—Agency facility and administrative standards))~~ and triage.** ~~((In addition to meeting the agency licensure, certification, administration, personnel, and clinical requirements in WAC 246-341-0100 through 246-341-0650 and the applicable inpatient services requirements in WAC 246-341-1118 through 246-341-1132,))~~ An agency certified to provide crisis stabilization unit or triage services must meet all of the following criteria:

(1) A triage facility must be licensed ((by the department)) as a residential treatment facility under chapter 71.12 RCW.

(2) If a crisis stabilization unit or triage facility is part of a jail, the unit must be located in an area of the building that is physically separate from the general population. "Physically separate" means:

(a) Out of sight and sound of the general population at all times;

(b) Located in an area with no foot traffic between other areas of the building, except in the case of emergency evacuation; and

(c) Has a secured entrance and exit between the unit and the rest of the facility.

(3) ~~((The professional person in charge of administration of the unit must be a mental health professional.~~

~~(4) Have a policy management structure that establishes:~~

~~(a) Procedures to ensure that for persons who have been brought to the unit involuntarily by police, the stay is limited to twelve hours unless the individual has signed voluntarily into treatment;~~

~~(b) Procedures to ensure that within twelve hours of the time of arrival to the crisis stabilization unit, individuals who have been detained by a designated crisis responder under chapter 71.05 or 70.96B RCW are transferred to a certified evaluation and treatment facility;~~

~~(c) Procedures to assure appropriate and safe transportation of persons who are not approved for admission or detained for transfer to an evaluation and treatment facility, and if not in police custody, to their respective residence or other appropriate place;~~

~~(d) Procedures to detain arrested persons who are not approved for admission for up to eight hours so that reasonable attempts can be made to notify law enforcement to return to the facility and take the person back into custody;~~

~~(e) Procedures to ensure that a mental health professional is on-site twenty-four hours a day, seven days a week;~~

~~(f) Procedures to ensure that a licensed physician, physician assistant, or psychiatric advanced registered nurse practitioner (ARNP) is available for consultation to direct care staff twenty-four hours a day, seven days a week;~~

~~(g) Procedures to ensure that the following requirements are met when an individual is brought to the facility by a peace officer under RCW 71.05.153:~~

~~(i) Within twelve hours of arrival, a designated crisis responder (DCR) must determine if the individual meets detention criteria under chapter 71.05 RCW; and~~

~~(ii) If the facility releases the individual to the community, the facility must inform the peace officer of the release within a reasonable period of time after the release if the peace officer has specifically requested notification and has provided contact information to the facility.~~

~~(h) Procedures to ensure the rights of persons to make mental health advance directives;~~

~~(i) Procedures to establish unit protocols for responding to the provisions of the advanced directives consistent with RCW 71.32.150; and~~

~~(j) Procedures to assure that restraint and seclusion are utilized only to the extent necessary to ensure the safety of patients and others, and in accordance with WAC 246-337-110, 246-322-180, and 246-320-745(6).~~

~~(5) Prominently post within the crisis stabilization unit the rights stated in WAC 246-341-1122, Mental health inpatient services—Rights of individuals receiving inpatient services, and provide them in writing to the individual in a language or format that the individual can understand.) Ensure that a mental health professional is on-site at least eight hours per day, seven days a week, and accessible twenty-four hours per day, seven days per week.~~

~~(4) Ensure a mental health professional assesses an individual within three hours of the individual's arrival at the facility.~~

~~(5) For persons admitted to the crisis stabilization unit or triage facility on a voluntary basis, the clinical record must meet the clinical record requirements in WAC 246-341-0640.~~

[Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-1140, filed 4/16/19, effective 5/17/19.]

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 246-341-0305	Agency licensure and certification—Application.
WAC 246-341-0315	Agency licensure and certification—Renewals.
WAC 246-341-0325	Agency licensure and certification—Approvals and provisional approvals.
WAC 246-341-0330	Agency licensure and certification—Effective dates.
WAC 246-341-0340	Agency licensure and certification—Adding a branch site.
WAC 246-341-0345	Agency licensure and certification—Adding a new service.
WAC 246-341-0350	Agency licensure and certification—Change in ownership.
WAC 246-341-0355	Agency licensure and certification—Change in location.
WAC 246-341-0360	Agency licensure and certification—Facility remodel.
WAC 246-341-0430	Agency administration—Treatment facility requirements.
WAC 246-341-0500	Personnel—Agency policies and procedures.
WAC 246-341-0610	Clinical—Assessment.
WAC 246-341-0620	Clinical—Individual service plan.
WAC 246-341-0716	Outpatient services—Mental health outpatient services provided in a residential treatment facility (RTF).
WAC 246-341-0726	Outpatient services—Recovery support—Wraparound facilitation mental health services.
WAC 246-341-0732	Outpatient services—Consumer-run recovery support—Clubhouses—Management and operational requirements.
WAC 246-341-0734	Outpatient services—Consumer-run recovery support—Clubhouses—Certification process.
WAC 246-341-0736	Outpatient services—Consumer-run recovery support—Clubhouses—Employment-related services.
WAC 246-341-0752	Outpatient services—Substance use disorder information and assistance—Screening and brief intervention.
WAC 246-341-0920	Crisis mental health services—Peer support services.
WAC 246-341-1102	Withdrawal management services—Youth.
WAC 246-341-1106	Secure withdrawal management and stabilization services—Youth.

- WAC 246-341-1116 Residential substance use disorder treatment services—Youth residential services.
- WAC 246-341-1120 Mental health inpatient services—Posting of individual rights for minors.
- WAC 246-341-1122 Mental health inpatient services—Rights of individuals receiving inpatient services.
- WAC 246-341-1126 Mental health inpatient services—Policies and procedures—Adult.
- WAC 246-341-1128 Mental health inpatient services—Policies and procedures—Minors.
- WAC 246-341-1130 Mental health inpatient services—Treatment of a minor without consent of parent.
- WAC 246-341-1132 Mental health inpatient services—Treatment of a minor without consent of minor.
- WAC 246-341-1142 Mental health inpatient services—Crisis stabilization unit—Admission, assessment, and records.
- WAC 246-341-1144 Mental health inpatient services—Triage—Agency facility and administrative requirements.
- WAC 246-341-1146 Mental health inpatient services—Triage—Admission, assessment, and records.
- WAC 246-341-1148 Mental health inpatient services—Triage—Stabilization plan.
- WAC 246-341-1150 Mental health inpatient services—Triage—Discharge.
- WAC 246-341-1152 Mental health inpatient services—Triage—Involuntary.

**WSR 21-12-044**  
**PERMANENT RULES**  
**CENTRALIA COLLEGE**

[Filed May 25, 2021, 3:22 p.m., effective June 25, 2021]

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

Purpose: On May 19, 2020, the Federal Register printed amendments to Title IX regulations (85 F.R. 30575). The new regulations address the grievance process for formal complaints of sexual harassment and are scheduled to take effect on August 14, 2020. This requires emergency updates to the college's student conduct code to be compliant with federal regulations.

Citation of Rules Affected by this Order: New student rights and responsibilities code, WAC 132L-351-005, 132L-351-010, 132L-351-015, 132L-351-020, 132L-351-025, 132L-351-030, 132L-351-035, 132L-351-040, 132L-351-045, 132L-351-050, 132L-351-055, 132L-351-060, 132L-351-065, 132L-351-070, 132L-351-075, 132L-351-080, 132L-351-085, 132L-351-090, 132L-351-095, 132L-351-100, 132L-351-105, 132L-351-110, 132L-351-115, 132L-351-120, 132L-351-200, 132L-351-210, 132L-351-220, 132L-351-230, 132L-351-240, 132L-351-250, 132L-351-260, 132L-351-270 and 132L-351-280; and repealing WAC 132L-350-005, 132L-350-010, 132L-350-015, 132L-350-020, 132L-350-030, 132L-350-040, 132L-350-070, 132L-350-080, 132L-350-090, 132L-350-100, 132L-350-110, 132L-350-120, 132L-350-130, 132L-350-140, 132L-350-150, 132L-350-160, 132L-350-170, 132L-350-180, 132L-350-190, 132L-350-200, 132L-350-210, 132L-350-220, 132L-350-230, 132L-350-240, 132L-350-250, 132L-350-260, 132L-350-270, and Discrimination and harassment procedure 132L-300-015.

Statutory Authority for Adoption: Chapter 34.05 RCW; and RCW 28B.50.140(13); 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq.

Adopted under notice filed as WSR 21-06-015 on February 19, 2021.

Changes Other than Editing from Proposed to Adopted Version: Language broadened to allow college to use administrative law judges for student conduct and Title IX hearings.

A final cost-benefit analysis is available by contacting Erica Holmes, Vice President, Human Resources and Equity, 600 Centralia College Boulevard, Centralia, WA 98531, phone 360-623-8474, fax 360-330-7103, email erica.holmes@centralia.edu, website www.centralia.edu.

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

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

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

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

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

Date Adopted: April 6, 2021.

Dr. Bob Mohrbacher  
President

OTS-2565.3

**Chapter 132L-351 WAC**  
**CENTRALIA COLLEGE—STUDENT RIGHTS AND RESPONSIBILITIES CODE**

NEW SECTION

**WAC 132L-351-005 Authority.** The board of trustees, acting pursuant to RCW 28B.50.140(14), delegates to the president of the college the authority to administer disciplinary action. Administration of the disciplinary procedures is the responsibility of the vice president of student services or their designee. Unless otherwise specified, the student conduct officer shall serve as the principal investigator and administrator for alleged violations of this code.

[]

NEW SECTION

**WAC 132L-351-010 Student responsibilities.** Centralia College is a dynamic learning community that promotes growth and development by offering opportunities to gain knowledge, entrance skills, examine values, and pursue learning options. The college is committed to quality life-long learning through its values of respect, responsibility, and responsiveness. To that end, Centralia College maintains a strong commitment to providing a civil and nondisruptive learning environment. Students are reminded that they assume certain responsibilities of performance and conduct which have been reasonably established in order to accomplish Centralia College's education goals. Therefore, the college expects that students will conduct themselves as responsible members of the college community, will comply with the rules and regulations of the college, will maintain high standards of integrity and honesty, and will respect the rights, privileges, and property of other members of the college community.

[]

NEW SECTION

**WAC 132L-351-015 Purpose.** The purpose of these rules is to prescribe standards of conduct for students of Centralia College. Violations of these standards may be cause for disciplinary action as described in this code.

[]

NEW SECTION

**WAC 132L-351-020 Definitions.** The following definitions shall apply for purpose of this student conduct code:

(1) "Student conduct officer" is a college administrator designated by the president to be responsible for implementing and enforcing the student conduct code.

(2) "Conduct review officer" is the vice president of student services or other college administrator designated by the president to be responsible for receiving and for reviewing or referring appeals of student disciplinary actions in accordance with the procedures of this code.

(3) "President" is the president of the college. The president is authorized to:

(a) Delegate any of their responsibilities as set forth in this chapter as may be reasonably necessary; and

(b) Reassign any and all duties and responsibilities as set forth in this chapter as may be reasonably necessary.

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

(5) "Disciplinary appeal" is the process by which an aggrieved student can appeal the discipline imposed by the student conduct officer. Disciplinary appeals from a suspension in excess of ten instructional days or an expulsion are heard by the student conduct appeals board. Appeals of all other appealable disciplinary action shall be reviewed through brief adjudicative proceedings.

(6) "Respondent" is the student against whom disciplinary action is initiated.

(7) "Service" is the process by which a document is officially delivered to a party. Unless otherwise provided, service upon a party shall be accomplished by:

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

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

Service is deemed complete upon hand delivery of the document or upon the date the document is emailed and deposited in the mail.

(8) "Filing" is the process by which a document is officially delivered to a college official responsible for facilitating a disciplinary review. Unless otherwise provided, filing shall be accomplished by:

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

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

Papers required to be filed shall be deemed filed upon actual receipt during office hours at the office of the specified college official.

(9) "College premises" shall include all campuses of the college, wherever located, and includes all land, buildings, facilities, vehicles, equipment, and other property owned, used, or controlled by the college.

(10) "Student" includes all persons taking courses at or through the college, whether on a full-time or part-time basis, and whether such courses are credit courses, noncredit courses, online courses, or otherwise. Persons who withdraw after allegedly violating the code, persons who are not officially enrolled for a particular term but who

have a continuing relationship with the college, and persons who have been notified of their acceptance for admission are considered "students" for purposes of this chapter.

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

(12) "Complainant" is an alleged victim of sexual misconduct.

(13) "Sexual misconduct" has the meaning ascribed to this term in WAC 132L-351-130.

[]

#### NEW SECTION

**WAC 132L-351-025 Jurisdiction.** The student conduct code shall apply to student conduct that occurs on college premises, to conduct that occurs at or in connection with college-sponsored activities, or to off-campus conduct that in the judgment of the college adversely affects the college community or the pursuit of its objectives. Jurisdiction extends to, but is not limited to, locations in which students are engaged in official college activities including, but not limited to, foreign or domestic travel, activities funded by the associated students, athletic events, training internships, cooperative and distance education, online education, practicums, supervised work experiences or any other college-sanctioned social or club activities. Students are responsible for their conduct from the time of application for admission through the actual receipt of a degree, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment. These standards shall apply to a student's conduct even if the student withdraws from college while a disciplinary matter is pending. The college has sole discretion, on a case-by-case basis, to determine whether the student conduct code will be applied to conduct that occurs off-campus.

[]

#### NEW SECTION

**WAC 132L-351-030 General policies.** (1) Centralia College is an agency of the state of Washington and adheres to all local, state, and federal laws. The college is obligated to demonstrate respect for laws by cooperating in their enforcement.

(2) Centralia College cannot and will not establish regulations that would abridge constitutional rights.

(3) Proper procedures are established to maintain conditions helpful to the effective function of the college, to protect individual students from unfair penalties, and to assure due process. Centralia College is granted the right by law to adopt rules to govern its operations.

(4) If these rules are broken, the college has the right and the obligation to take that action which is in the best interest of the entire college.



(5) Centralia College reserves the right to impose the provisions of this code and provide further sanctions before or after law enforcement agencies, courts, or other agencies have imposed penalties or otherwise disposed of a case. College hearings are not subject to challenge on the grounds that criminal or civil charges involving the same incident have been dismissed or reduced or in which the defendant has been found not guilty or otherwise not liable. In addition, the college reserves the right to refer incidents to the appropriate civilian authorities or law enforcement agencies.

(6) The ASCC has the right to participate in the formulation and review of all policies and rules pertaining to student conduct and in the enforcement of all such rules as provided by this chapter.

(7) This code will be printed and made available to students.

[ ]

#### NEW SECTION

**WAC 132L-351-035 Student rights.** As members of the academic community, students are encouraged to develop the capacity for critical judgment and to engage in an independent search for truth. Freedom to teach and freedom to learn are inseparable facets of academic freedom. The freedom to learn depends upon appropriate opportunities and conditions in the classroom, on the campus, and in the larger community. Students should exercise their freedom with responsibility. The responsibility to secure and to respect general conditions conducive to the freedom to learn is shared by all members of the college community.

The following enumerated rights are guaranteed to each student within the limitations of statutory law and college policy which are deemed necessary to achieve the educational goals of the college:

(1) Academic freedom.

(a) Students are guaranteed the rights of free inquiry, expression, and assembly upon and within college facilities that are generally open and available to the public.

(b) Students are free to pursue appropriate educational objectives from among the college's curricula, programs, and services, subject to the limitations of RCW 28B.50.090 (3)(b).

(c) Students shall be protected from academic evaluation which is arbitrary, prejudiced, or capricious, but are responsible for meeting the standards of academic performance established by each of their instructors.

(d) Students have the right to a learning environment which is free from unlawful discrimination, inappropriate and disrespectful conduct, and any and all harassment, including sexual harassment.

(2) Due process.

(a) The rights of students to be secure in their persons, quarters, papers, and effects against unreasonable searches and seizures is guaranteed.

(b) No disciplinary sanction may be imposed on any student without notice to the accused of the nature of the charges.

(c) A student accused of violating this code of student conduct is entitled, upon request, to procedural due process as set forth in this chapter.

[]

NEW SECTION

**WAC 132L-351-040 Prohibited student conduct.** The college may impose disciplinary sanctions against a student who commits, attempts to commit, aids, abets, incites, encourages or assists another person to commit, an act(s) of misconduct, which include, but are not limited to, the following:

(1) **Academic dishonesty.** Any act of academic dishonesty including, but not limited to, cheating, plagiarism, and fabrication.

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

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

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

(d) Academic consequences for academic dishonesty or abetting in academic dishonesty may be imposed at the discretion of a faculty member up to and including a failing grade for the course. Students should refer to each of their faculty's course syllabus. Further academic consequences may follow consistent with the provisions in any program handbook. Incidents of academic dishonesty may also be referred to the student conduct officer for disciplinary action consistent with this chapter in addition to the academic consequences identified above.

(2) **Other dishonesty.** Any other acts of dishonesty. Such acts include, but are not limited to:

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

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

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

(3) **Obstruction or disruption.** Conduct, not otherwise protected by law that interferes with, impedes, or otherwise unreasonably hinders:

(a) Instruction, research, administration, disciplinary proceeding, or other college activities, including the obstruction of the free flow of pedestrian or vehicular movement on college property or at a college activity; or

(b) Any activity that is authorized to occur on college property, whether or not actually conducted or sponsored by the college.

(4) **Assault, intimidation, harassment.** Unwanted touching, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, or other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another

er person's property. For purposes of this code, "bullying" is defined as repeated or aggressive unwanted behavior, not otherwise protected by law that intentionally humiliates, harms, or intimidates the victim.

(5) **Cyber misconduct.** Cyberstalking, cyberbullying or online harassment. Use of electronic communications including, but not limited to, electronic mail, instant messaging, electronic bulletin boards, and social media sites, to harass, abuse, bully or engage in other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person. Prohibited activities include, but are not limited to, unauthorized monitoring of another's email communications directly or through spyware, sending threatening emails, disrupting electronic communications with spam or by sending a computer virus, sending false messages to third parties using another's email identity, nonconsensual recording of sexual activity, and nonconsensual distribution of a recording of sexual activity.

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

(7) **Failure to comply with directive.** Failure to comply with the direction of a college officer or employee who is acting in the legitimate performance of his or her duties, including failure to properly identify oneself to such a person when requested to do so.

(8) **Weapons.** Carrying, exhibiting, displaying or drawing any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, or any other weapon apparently capable of producing bodily harm, in a manner, under circumstances, and at a time and place that either manifests an intent to intimidate another or that warrants alarm for the safety of other persons.

(9) **Hazing.** Hazing includes, but is not limited to, any initiation into a student organization or any pastime or amusement engaged in with respect to such an organization that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm, to any student.

(10) **Alcohol, drug, and tobacco violations.**

(a) **Alcohol.** The use, possession, delivery, sale, or being observably under the influence of any alcoholic beverage, except as permitted by law and applicable college policies.

(b) **Marijuana.** The use, possession, delivery, sale, or being observably under the influence of marijuana or the psychoactive compounds found in marijuana and intended for human consumption, regardless of form. While state law permits the recreational use of marijuana, federal law prohibits such use on college premises or in connection with college activities.

(c) **Drugs.** The use, possession, delivery, sale, or being observably under the influence of any legend drug, including anabolic steroids, androgens, or human growth hormones as defined in chapter 69.41 RCW, or any other controlled substance under chapter 69.50 RCW, except as prescribed for a student's use by a licensed practitioner.

(d) **Tobacco, electronic cigarettes, and related products.** The use of tobacco, electronic cigarettes, and related products in any building owned, leased or operated by the college or in any location where such use is prohibited, including twenty-five feet from entrances, ex-

its, windows that open, and ventilation intakes of any building owned, leased or operated by the college. The use of tobacco, electronic cigarettes, and related products on the college campus is restricted to designated smoking areas. "Related products" include, but are not limited to, cigarettes, pipes, bidi, clove cigarettes, water pipes, hookahs, chewing tobacco, vaporizers, and snuff.

(11) **Lewd conduct.** Conduct which is lewd or obscene that is not otherwise protected under the law.

(12) **Discriminatory conduct.** Conduct which harms or adversely affects any member of the college community because of her/his race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age; religion; creed; sexual orientation; gender identity; veteran's status; or any other legally protected classification.

(13) **Sexual misconduct.** The term "sexual misconduct" includes sexual harassment, sexual intimidation, and sexual violence. Sexual harassment prohibited by Title IX is defined in the supplemental procedures to this code. See WAC 132L-351-210.

(a) **Sexual harassment.** The term "sexual harassment" means unwelcome sexual or gender-based conduct, including unwelcome sexual advances, requests for sexual favors, quid pro quo harassment, and other verbal, nonverbal, or physical conduct of a sexual or a gendered nature that is sufficiently severe, persistent, or pervasive as to:

(i) Deny or limit the ability of a student to participate in or benefit from the college's educational program;

(ii) Alter the terms or conditions of employment for a college employee(s); and/or

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

(b) **Sexual intimidation.** The term "sexual intimidation" incorporates the definition of "sexual harassment" and means threatening or emotionally distressing conduct based on sex including, but not limited to, nonconsensual recording of sexual activity or the distribution of such recording.

(c) **Sexual violence.** "Sexual violence" is a type of sexual discrimination and harassment. Nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, dating violence, and stalking.

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

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

(f) **Incest.** Sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either wholly or half related. Descendant includes stepchildren and adopted children under the age of eighteen.

(g) **Statutory rape.** Consensual intercourse between a person who is eighteen years of age or older, and a person who is under the age of sixteen.

(h) **Domestic violence.** Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Washington, RCW 26.50.010.

(i) **Dating violence.** Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person:

(i) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(ii) Where the existence of such a relationship shall be determined based on a consideration of the following factors:

(A) The length of the relationship;

(B) The type of relationship; and

(C) The frequency of interaction between the persons involved in the relationship,

(j) **Stalking.** Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

(i) Fear for their safety or the safety of others; or

(ii) Suffer substantial emotional distress.

(k) For purposes of this code, "**consent**" means knowing, voluntary, and clear permission by word or action, to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact. A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct. Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

(14) **Harassment.** Unwelcome conduct, including verbal, nonverbal, or physical conduct, that is directed at a person because of such person's protected status and that is sufficiently serious as to deny or limit, and that does deny or limit, the ability of a student to participate in or benefit from the college's educational program, that changes the terms or conditions of employment for a college employee, or that creates an intimidating or hostile environment for other campus community members.

Protected status includes a person's race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age; religion; creed; sexual orientation; gender identity; veteran's status; or any other legally protected classification. See "sexual misconduct" for the definition of "sexual harassment." Harassing conduct may include, but is

not limited to, physical conduct, verbal, written, social media, and electronic communications.

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

(16) **Misuse of electronic resources.** Theft or other misuse of computer time or other electronic information resources of the college. Such misuse includes, but is not limited to:

(a) Unauthorized use of such resources or opening of a file, message, or other item;

(b) Unauthorized duplication, transfer, or distribution of a computer program, file, message, or other item;

(c) Unauthorized use or distribution of someone else's password or other identification;

(d) Use of such time or resources to interfere with someone else's work;

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

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

(g) Use of such time or resources in violation of applicable copyright or other law;

(h) Adding to or otherwise altering the infrastructure of the college's electronic information resources without authorization; or

(i) Failure to comply with the college's electronic use policy.

(17) **Unauthorized access.** Unauthorized possession, duplication, or other use of a key, keycard, or other restricted means of access to college property, or unauthorized entry onto or into college property.

(18) **Safety violations.** Safety violation includes any nonaccidental conduct that interferes with or otherwise compromises any college policy, equipment, or procedure relating to the safety and security of the campus community, including tampering with fire safety equipment and triggering false alarms or other emergency response systems.

(19) **Violation of other laws or policies.** Violation of any federal, state, or local law, rule, or regulation or other college rules or policies, including college traffic and parking rules.

(20) **Ethical violation.** The breach of any generally recognized and published code of ethics or standards of professional practice that governs the conduct of a particular profession for which the student is taking a course or is pursuing as an educational goal or major.

In addition to initiating discipline proceedings for violation of the student conduct code, the college may refer any violations of federal, state, or local laws to civil and criminal authorities for disposition. The college reserves the right to pursue student disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution.

[]

NEW SECTION

**WAC 132L-351-045 Disciplinary sanctions.** (1) Administration of the disciplinary procedure is the responsibility of the student conduct officer. The student conduct officer shall serve as the principal investigator and prosecutor for alleged violations of this code.

(2) In situations of apparent misconduct or apparent unauthorized presence in a college facility, it may be necessary for properly identified college personnel to ask a person to produce evidence of being a currently enrolled student at the college. Failure to comply with a legitimate request for identification from properly identified college personnel is a violation of this code and may result in a disciplinary action if the person is found to be a student. In emergency situations, cases of misconduct, or where there is a substantial danger to the college community or college property, failure to produce identification by a student may result in the assumption by college personnel that the person questioned is not a student and may result in direct civil or criminal action.

(3) The instructor is responsible for conduct in the classroom or any course-related activity or event and is authorized to take such steps as are necessary when behavior of the student disrupts the normal classroom procedure. Instructors may remove a student for the single class session in which such disruptive behavior occurs. When such behavior results in expulsion from a class session, the instructor must report the infraction in writing to the student conduct officer at the earliest opportunity. The student is automatically permitted to return to the next class session pending the outcome of any investigation or disciplinary hearings by the student conduct officer. If the student repeats behavior in any class session that again disrupts the normal classroom procedure, the student may be removed again for that class session by the instructor who shall again report the infraction to the student conduct officer in writing. In all cases involving classroom disruption, the student conduct officer will proceed with the investigation and/or disciplinary hearings in the quickest possible time consistent with the procedural requirements established in this code.

(4) The person in charge of any college office, department, or facility is responsible for conduct in that office, department, or facility and is authorized to take such steps as are necessary when behavior of the student disrupts the normal office procedure. The person in charge may remove a student for the single day in which such disruptive behavior occurs. When such behavior results in expulsion from an office, department, or facility, the person in charge must report the infraction in writing to the student conduct officer at the earliest opportunity. The student is automatically permitted to return the next day pending the outcome of any investigation or disciplinary hearings by the student conduct officer. If the student repeats behavior at any time in the future that again disrupts the normal office procedure, the student may be removed again for a single day by the person in charge who shall again report the infraction to the student conduct officer in writing. In all cases involving office disruption, the student conduct officer will proceed with the investigation and/or disciplinary hearings in the quickest possible time consistent with the procedural requirements established in this code.

(5) The student has the right to appeal any disciplinary action of an instructor or college employee to the student conduct officer in accordance with the procedures set forth in this code.

(6) A student formally charged or under investigation for a violation of this code may not excuse himself or herself from disciplinary hearings by withdrawing from the college.

(7) In addition to initiating disciplinary proceedings for violation of the student conduct code, the college may refer any violations of federal, state or local laws to civil and criminal authorities for disposition. The college shall proceed with student disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution.

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#### NEW SECTION

##### **WAC 132L-351-050 Disciplinary sanctions terms and conditions.**

(1) The following disciplinary sanctions may be imposed upon students found to have violated the student conduct code:

(a) **Disciplinary warning.** A verbal statement to a student that there is a violation and that continued violation may be cause for further disciplinary action.

(b) **Written reprimand.** Notice in writing that the student has violated one or more terms of this code of conduct and that continuation or repetition of the same or similar may be cause for more severe disciplinary action. This sanction is not subject to appeal.

(c) **Disciplinary probation.** Formal action placing specific conditions and restrictions upon the student's continued attendance depending upon the seriousness of the violation and which may include a deferred disciplinary sanction. If the student subject to a deferred disciplinary sanction is found in violation of any college rule during the time of disciplinary probation, the deferred disciplinary sanction, which may include, but is not limited to, a suspension or a dismissal from the college, shall take effect immediately without further review. Any such sanction shall be in addition to any sanction or conditions arising from the new violation. Probation may be for a limited period of time or may be for the duration of the student's attendance at the college.

(d) **Summary suspension.** Immediate exclusion from classes and other privileges or activities in accordance with this code.

(e) **Disciplinary suspension.** Dismissal from the college and from the student status for a stated period of time. There will be no refund of tuition or fees for the quarter in which the action is taken.

(f) **Deferred suspension.** Notice of suspension from the college with the provision that the student may remain enrolled contingent on meeting any condition(s) specified. Not meeting the contingency shall immediately invoke the suspension for the period of time and under the conditions originally imposed.

(g) **Dismissal.** The revocation of all rights and privileges of membership in the college community and exclusion from the campus and college-owned or controlled facilities without any possibility of return. There will be no refund of tuition or fees for the quarter in which the action is taken.

(2) Disciplinary terms and conditions that may be imposed alone or in conjunction with the imposition of a disciplinary sanction include, but are not limited to, the following:



(a) **Restitution.** Reimbursement for damage to or misappropriation of property, or for injury to persons, or for reasonable costs incurred by the college in pursuing an investigation or disciplinary proceeding. This may take the form of monetary reimbursement, appropriate service, or other compensation.

(b) **Professional evaluation.** Referral for drug, alcohol, psychological or medical evaluation by an appropriately certified or licensed professional may be required. The student may choose the professional within the scope of practice and with the professional credentials as defined by the college. The student will sign all necessary releases to allow the college access to any such evaluation. The student's return to college may be conditioned upon compliance with recommendations set forth in such a professional evaluation. If the evaluation indicates that the student is not capable of functioning within the college community, the student will remain suspended until future evaluation recommends that the student is capable of reentering the college and complying with the rules of conduct.

(c) **Not in good standing.** A student may be deemed "not in good standing" with the college. If so, the student shall be subject to the following restrictions:

(i) Ineligible to hold an office in any student organization recognized by the college or to hold any elected or appointed office of the college.

(ii) Ineligible to represent the college to anyone outside the college community in any way, including representing the college at any official function, or any form of intercollegiate competition or representation.

(d) **No contact order.** An order directing a student to have no contact with a specified student, college employee, a member of the college community, or a particular college facility.

(e) **Disqualification from athletics.** Any student found by the college to have violated this code related to the use, possession, sale, or delivery of legend drugs is subject to additional sanctions, including disqualification from college-sponsored athletic events.

(f) **College or community service.** Assignment of labor or responsibilities to any student or student organization with the college or local community. May also include mandatory attendance at educational programs or courses or other assignments.

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#### NEW SECTION

**WAC 132L-351-055 Initiation of disciplinary action.** (1) All disciplinary actions will be initiated by the student conduct officer. If that officer is the subject of a complaint initiated by the respondent, the president shall, upon request and when feasible, designate another person to fulfill any such disciplinary responsibilities relative to the complainant.

(2) The student conduct officer shall initiate disciplinary action by serving the respondent with written notice directing him or her to attend a disciplinary meeting. The notice shall briefly describe the factual allegations, the provision(s) of the conduct code the respondent is alleged to have violated, the range of possible sanctions for the alleged violation(s), and specify the time and loca-

tion of the meeting. At the meeting, the student conduct officer will present the allegations to the respondent and the respondent shall be afforded an opportunity to explain what took place. If the respondent fails to attend the meeting after proper service of notice the student conduct officer may take disciplinary action based upon the available information.

(3) The student conduct officer, prior to taking disciplinary action in a case involving allegations of sexual misconduct, will make a reasonable effort to contact the complainant to discuss the results of the investigation and possible disciplinary sanctions and/or conditions, if any, that may be imposed upon the respondent if the allegations of sexual misconduct are found to have merit.

(4) Within ten days of the initial disciplinary meeting, and after considering the evidence in the case, including any facts or argument presented by the respondent, the student conduct officer shall serve the respondent with a written decision setting forth the facts and conclusions supporting his or her decision, the specific student conduct code provisions found to have been violated, the discipline imposed, if any, and a notice of any appeal rights with an explanation of the consequences of failing to file a timely appeal.

(5) The student conduct officer may take any of the following disciplinary actions:

(a) Exonerate the respondent and terminate the proceedings.

(b) Impose a disciplinary sanction(s), as described in WAC 132L-351-045.

(c) Refer the matter directly to the student conduct committee for such disciplinary action as the committee deems appropriate. Such referral shall be in writing, to the attention of the chair of the student conduct committee, with a copy served on the respondent.

(6) In cases involving allegations of sexual misconduct, the student conduct officer, on the same date that a disciplinary decision is served on the respondent, will serve a written notice informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including disciplinary suspension or dismissal of the respondent. The notice will also inform the complainant of their appeal rights. If protective sanctions and/or conditions are imposed, the student conduct officer shall make a reasonable effort to contact the complainant to ensure that prompt notice of the protective disciplinary sanctions and/or conditions.

[ ]

#### NEW SECTION

**WAC 132L-351-060 Appeal from disciplinary action.** (1) The respondent may appeal a disciplinary action by filing a written notice of appeal with the conduct review officer within ten days of service of the student conduct officer's decision. Failure to timely file a notice of appeal constitutes a waiver of the right to appeal and the student conduct officer's decision shall be deemed final.

(2) The notice of appeal must include a brief statement explaining why the respondent is seeking review.

(3) The parties to an appeal shall be the respondent and the conduct review officer.

(4) A respondent, who timely appeals a disciplinary action or whose case is referred to the student conduct committee, has a right to a prompt, fair, and impartial hearing as provided for in these procedures.

(5) On appeal, the college bears the burden of establishing the evidentiary facts underlying the imposition of a disciplinary sanction by a preponderance of the evidence.

(6) Imposition of disciplinary action for violation of the student conduct code shall be stayed pending appeal, unless respondent has been summarily suspended.

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

(a) The imposition of disciplinary suspensions in excess of ten instructional days;

(b) Dismissals; and

(c) Discipline cases referred to the committee by the student conduct officer, the conduct review officer, or the president.

(8) Student conduct appeals from the imposition of the following disciplinary sanctions shall be reviewed through a brief adjudicative proceeding:

(a) Suspensions of ten instructional days or less;

(b) Disciplinary probation;

(c) Written reprimands; and

(d) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions.

(9) Except as provided elsewhere in these rules, disciplinary warnings and dismissals of disciplinary actions are final action and are not subject to appeal.

(10) In cases involving allegations of sexual misconduct, the complainant has the right to appeal the following actions by the student conduct officer following the same procedures as set forth above for the respondent:

(a) The dismissal of a sexual misconduct complaint; or

(b) Any disciplinary sanction(s) and conditions imposed against a respondent for a sexual misconduct violation, including a disciplinary warning.

(11) If the respondent timely appeals a decision imposing discipline for a sexual misconduct violation, the college shall notify the complainant of the appeal and provide the complainant an opportunity to intervene as a party to the appeal.

(12) Except as provided elsewhere in these rules, disciplinary warnings and dismissals of disciplinary actions are final action and are not subject to appeal.

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#### NEW SECTION

**WAC 132L-351-065 Brief adjudicative proceedings—Initial hearing.** (1) Brief adjudicative proceedings shall be conducted by a conduct review officer. The conduct review officer shall not participate in any case in which he or she is a complainant or witness, or in

which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

(2) The parties to a brief adjudicative proceeding are the respondent, the student conduct officer, and in cases involving sexual misconduct, the complainant. Before taking action, the conduct review officer shall conduct an informal hearing and provide each party:

(a) An opportunity to be informed of the agency's view of the matter; and

(b) An opportunity to explain the party's view of the matter.

(3) The conduct review officer shall serve an initial decision upon both the parties within ten days of consideration of the appeal. The initial decision shall contain a brief written statement of the reasons for the decision and information about how to seek administrative review of the initial decision. If no request for review is filed within ten days of service of the initial decision, the initial decision shall be deemed the final decision.

(4) In cases involving allegations of sexual misconduct, the conduct review officer, on the same date as the initial decision is served on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection. The notice will also inform the complainant of their appeal rights.

(5) If the conduct review officer upon review determines that the respondent's conduct may warrant imposition of a disciplinary suspension of more than ten instructional days or expulsion, the matter shall be referred to the student conduct committee for a disciplinary hearing.

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#### NEW SECTION

**WAC 132L-351-070 Brief adjudicative proceedings—Review of initial decision.** (1) An initial decision is subject to review by the president, provided the respondent files a written request for review with the conduct review officer within ten days of service of the initial decision.

(2) The president shall not participate in any case in which he or she is a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

(3) During the review, the president shall give each party an opportunity to file written responses explaining their view of the matter and shall make any inquiries necessary to ascertain whether the sanctions should be modified or whether the proceedings should be referred to the student conduct committee for a formal adjudicative hearing.

(4) The decision on review must be in writing and must include a brief statement of the reasons for the decision and must be served on the parties within twenty days of the initial decision or of the request for review, whichever is later. The decision on review will contain a notice that judicial review may be available. A request for re-

view may be deemed to have been denied if the president does not make a disposition of the matter within twenty days after the request is submitted.

(5) If the president upon review determines that the respondent's conduct may warrant imposition of a disciplinary suspension of more than ten instructional days or expulsion, the matter shall be referred to the student conduct committee for a disciplinary hearing.

(6) In cases involving allegations of sexual misconduct, the president, on the same date as the final decision is served on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent. The notice will also inform the complainant of their appeal rights.

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#### NEW SECTION

**WAC 132L-351-075 Student conduct committee.** (1) The student conduct committee shall consist of five members:

(a) Two full-time students appointed by the student government;

(b) Two faculty members appointed by the president;

(c) One faculty member or administrator (other than an administrator serving as a student conduct or conduct review officer) appointed by the president at the beginning of the academic year.

(2) The faculty member or administrator appointed on a yearly basis shall serve as the chair of the committee and may take action on preliminary hearing matters prior to convening the committee. The chair shall receive annual training on protecting victims and promoting accountability in cases involving allegations of sexual misconduct.

(3) Hearings may be heard by a quorum of three members of the committee so long as one faculty member and one student are included on the hearing panel. Committee action may be taken upon a majority vote of all committee members attending the hearing.

(4) Members of the student conduct committee shall not participate in any case in which they are a party, complainant, or witness, in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity. Any party may petition for disqualification of a committee member pursuant to RCW 34.05.425(4).

(5) At the option of the college president, the college may appoint an administrative law judge to serve as a hearing officer responsible for handling procedural matters otherwise assigned to the chair and to conduct the hearing on behalf of the student conduct committee.

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NEW SECTION**WAC 132L-351-080 Conduct committee—Procedure and evidence. (1)**

Proceedings of the student conduct committee shall be governed by the Administrative Procedure Act, chapter 34.05 RCW.

(2) The student conduct committee chair shall serve all parties with written notice of the hearing not less than seven days in advance of the hearing. The chair may shorten this notice period if both parties agree, and also may continue the hearing to a later time for good cause shown.

(3) The committee chair is authorized to conduct prehearing conferences and/or to make prehearing decisions concerning the extent and form of any discovery, issuance of protective decisions, and similar procedural matters.

(4) Upon request filed at least five days before the hearing by any party or at the direction of the committee chair, the parties shall exchange, no later than the third day prior to the hearing, lists of potential witnesses and copies of potential exhibits that they reasonably expect to present to the committee. Failure to participate in good faith in such a requested exchange may be cause for exclusion from the hearing of any witness or exhibit not disclosed, absent a showing of good cause for such failure.

(5) The committee chair may provide to the committee members in advance of the hearing copies of (a) the conduct officer's notification of imposition of discipline (or referral to the committee) and (b) the notice of appeal (or any response to referral) by the respondent. If doing so, however, the chair should remind the members that these "pleadings" are not evidence of any facts they may allege.

(6) The parties may agree before the hearing to designate specific exhibits as admissible without objection and, if they do so, whether the committee chair may provide copies of these admissible exhibits to the committee members before the hearing.

(7) The student conduct officer, upon request, shall provide reasonable assistance to the respondent in obtaining relevant and admissible evidence that is within the college's control.

(8) Communications between committee members and other hearing participants regarding any issue in the proceeding, other than procedural communications that are necessary to maintain an orderly process, are generally prohibited without notice and opportunity for all parties to participate, and any improper "ex parte" communication shall be placed on the record, as further provided in RCW 34.05.455.

(9) In cases heard by the committee, each party may be accompanied at the hearing by a nonattorney assistant of their choice. The respondent in all appeals before the committee, or a complainant in an appeal involving allegations of sexual misconduct before the committee, may elect to be represented by an attorney at their own cost, but will be deemed to have waived that right unless, at least four business days before the hearing, written notice of the attorney's identity and participation is filed with the committee chair with a copy to the student conduct officer. The committee will ordinarily be advised by an assistant attorney general. If the respondent and/or the complainant is represented by an attorney, the student conduct officer may also be represented by a second, appropriately screened assistant attorney general.

[ ]

NEW SECTION**WAC 132L-351-085 Student conduct committee hearing procedures.**

- (1) Upon the failure of any party to attend or participate in a hearing, the student conduct committee may either:
  - (a) Proceed with the hearing and issuance of its decision; or
  - (b) Serve a decision of default in accordance with RCW 34.05.440.
- (2) The hearing will ordinarily be closed to the public. However, if all parties agree on the record that some or all of the proceedings be open, the chair shall determine any extent to which the hearing will be open. If any person disrupts the proceedings, the chair may exclude that person from the hearing room.
- (3) The chair shall cause the hearing to be recorded by a method that he/she selects, in accordance with RCW 34.05.449. That recording, or a copy, shall be made available to any party upon request. The chair shall assure maintenance of the record of the proceeding that is required by RCW 34.05.476, which shall also be available upon request for inspection and copying by any party. Other recording shall also be permitted, in accordance with WAC 10-08-190.
- (4) The chair shall preside at the hearing and decide procedural questions that arise during the hearing, except as overridden by majority vote of the committee.
- (5) The student conduct officer (unless represented by an assistant attorney general) shall present the case for imposing disciplinary sanctions.
- (6) All testimony shall be given under oath or affirmation. Evidence shall be admitted or excluded in accordance with RCW 34.05.452.
- (7) In cases involving allegations of sexual misconduct, neither the complainant nor the respondent shall directly question or cross examine one another. Attorneys or advisors for the parties are also prohibited from questioning the opposing party absent express permission from the committee chair. Subject to this exception, all cross-examination questions shall be directed to the committee chair, who in their discretion shall pose the questions on the party's behalf.

[]

NEW SECTION**WAC 132L-351-090 Student conduct committee—Initial decision.**

- (1) At the conclusion of the hearing, the student conduct committee shall permit the parties to make closing arguments in whatever form it wishes to receive them. The committee also may permit each party to propose findings, conclusions, and/or a proposed decision for its consideration.
- (2) Within twenty days following the later of the conclusion of the hearing or the committee's receipt of closing arguments, the committee shall issue an initial decision in accordance with RCW 34.05.461 and WAC 10-08-210. The initial decision shall include findings on all material issues of fact and conclusions on all material issues of law, including which, if any, provisions of the student conduct code were violated. Any findings based substantially on the credibility of evidence or the demeanor of witnesses shall be so identified.

(3) The committee's initial order shall also include a determination on appropriate discipline, if any. If the matter was referred to the committee by the student conduct officer, the committee shall identify and impose disciplinary sanction(s) or conditions, if any, as authorized in the student code. If the matter is an appeal by the respondent, the committee may affirm, reverse, or modify the disciplinary sanction and/or conditions imposed by the student conduct officer and/or impose additional disciplinary sanction(s) or conditions as authorized herein.

(4) The committee chair shall cause copies of the initial decision to be served on the parties and their legal counsel of record. The committee chair shall also promptly transmit a copy of the decision and the record of the committee's proceedings to the president.

(5) In cases involving allegations of sexual misconduct, the chair of the student conduct committee, on the same date as the initial decision is served on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent. Complainant may appeal the student conduct committee's initial decision to the president subject to the same procedures and deadlines applicable to other parties. The notice will also inform the complainant of their appeal rights.

[ ]

#### NEW SECTION

**WAC 132L-351-095 Appeal from student conduct committee initial decision.** (1) A party who is aggrieved by the findings or conclusions issued by the student conduct committee may appeal the committee's initial decision to the president by filing a notice of appeal with the president's office within ten days of service of the committee's initial decision. Failure to file a timely appeal constitutes a waiver of the right and the initial decision shall be deemed final.

(2) The notice of appeal must identify the specific findings of fact and/or conclusions of law in the initial decision that are challenged and must contain argument why the appeal should be granted. If necessary to aid review, the president may ask for additional briefing from the parties on issues raised on appeal. The president's review shall be restricted to the hearing record made before the student conduct committee and will normally be limited to a review of those issues and arguments raised in the notice of appeal.

(3) The president shall provide a written decision to all parties within twenty days after receipt of the notice of appeal. The president's decision shall be final and shall include a notice of any rights to request reconsideration and/or judicial review.

(4) In cases involving allegations of sexual misconduct, the president, on the same date that the final decision is served upon the respondent, shall serve a written notice informing the complainant of the final decision. This notice shall inform the complainant whether the sexual misconduct allegation was found to have merit and describe any disciplinary sanctions and/or conditions imposed upon the respond-



ent for the complainant's protection, including suspension or dismissal of the respondent.

(5) The president shall not engage in an ex parte communication with any of the parties regarding an appeal.

[]

NEW SECTION

**WAC 132L-351-100 Summary suspension.** (1) Summary suspension is a temporary exclusion from specified college premises or denial of access to all activities or privileges for which a respondent might otherwise be eligible, while an investigation and/or formal disciplinary procedures are pending.

(2) The student conduct officer may impose a summary suspension if there is probable cause to believe that the respondent:

(a) Has violated any provision of the code of conduct; and

(b) Presents an immediate danger to the health, safety, or welfare of members of the college community; or

(c) Poses an ongoing threat of substantial disruption of, or interference with, the operations of the college.

(3) Notice. Any respondent who has been summarily suspended shall be served with oral or written notice of the summary suspension. If oral notice is given, a written notification shall be served on the respondent within two business days of the oral notice.

(4) The written notification shall be entitled "Notice of Summary Suspension" and shall include:

(a) The reasons for imposing the summary suspension, including a description of the conduct giving rise to the summary suspension and reference to the provisions of the student conduct code or the law allegedly violated;

(b) The date, time, and location when the respondent must appear before the conduct review officer for a hearing on the summary suspension; and

(c) The conditions, if any, under which the respondent may physically access the campus or communicate with members of the campus community. If the respondent has been trespassed from the campus, a notice against trespass shall be included that warns the student that his or her privilege to enter into or remain on college premises has been withdrawn, that the respondent shall be considered trespassing and subject to arrest for criminal trespass if the respondent enters the college campus other than to meet with the student conduct officer or conduct review officer, or to attend a disciplinary hearing.

(5) The conduct review officer shall conduct a hearing on the summary suspension as soon as practicable after imposition of the summary suspension. At the hearing the review officer:

(a) Will determine whether there is probable cause to believe that the summary suspension should be continued pending the conclusion of disciplinary proceedings and/or whether the summary suspension should be less restrictive in scope.

(b) Provide the respondent the opportunity to explain why summary suspension should not be continued while disciplinary proceedings are pending or why the summary suspension should be less restrictive in scope.

(6) If the student fails to appear at the designated hearing time, the conduct review officer may order that the summary suspension remain in place pending the conclusion of the disciplinary proceedings.

(7) As soon as practicable following the hearing, the conduct review officer shall issue a written decision which shall include a brief explanation for any decision continuing and/or modifying the summary suspension and notice of any right to appeal.

(8) To the extent permissible under applicable law, the conduct review officer shall provide a copy of the decision to all persons or offices who may be bound or protected by it.

(9) In cases involving allegations of sexual misconduct, the complainant shall be notified that a summary suspension has been imposed on the same day that the summary suspension notice is served on the respondent. The college will also provide the complainant with timely notice of any subsequent changes to the summary suspension order.

[]

#### NEW SECTION

**WAC 132L-351-105 Readmission after dismissal.** A student dismissed from the college may be readmitted only on written petition to the president. Petitions must indicate reasons that support reconsideration. The president may use whatever review procedures are at the president's disposal in consideration of readmission. The president shall convey a decision in writing to the student within thirty days after completion of the review process.

[]

#### NEW SECTION

**WAC 132L-351-110 Brief adjudicative proceedings—Authorized.**  
Student conduct appeals involving the following disciplinary actions:

- (1) Suspensions of ten instructional days or less;
- (2) Disciplinary probation;
- (3) Written reprimands;
- (4) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions; and
- (5) Appeals by a complainant in student disciplinary proceedings involving allegations of sexual misconduct in which the student conduct officer:
  - (a) Dismisses disciplinary proceedings based upon a finding that the allegations of sexual misconduct have no merit; or
  - (b) Issues a verbal warning to respondent.

[]

NEW SECTION**WAC 132L-351-115 Brief adjudicative proceedings—Agency record.**

The agency record for brief adjudicative proceedings shall consist of any documents regarding the matter that were considered or prepared by the presiding officer for the brief adjudicative proceeding or by the reviewing officer for any review. These records shall be maintained as the official record of the proceedings.

[]

NEW SECTION

**WAC 132L-351-120 Review of rules.** These rules will be reviewed annually by the student conduct officer. The student conduct officer, upon determining a need to revise this code shall convene a review committee to make recommendations for change in the code.

[]

**SUPPLEMENTAL PROCEDURES FOR TITLE IX GRIEVANCES**NEW SECTION

**WAC 132L-351-200 Title IX supplemental procedures—Order of precedence.** This supplemental procedure applies to allegations of sexual harassment subject to Title IX jurisdiction pursuant to regulations promulgated by the United States Department of Education. See 34 C.F.R. Part 106. To the extent these supplemental hearing procedures conflict with Centralia College's standard disciplinary procedures in WAC 132L-351-005 through 132L-351-095, these supplemental procedures shall take precedence. The college may, at its discretion, contract with an administrative law judge or other person to act as presiding officer and assign such presiding officer to exercise any or all of the duties in lieu of the student conduct committee and committee chair.

[]

NEW SECTION

**WAC 132L-351-210 Prohibited conduct under Title IX.** Pursuant to RCW 28B.50.140(13) and Title IX of the Education Amendments Act of 1972, 20 U.S.C. Sec. 1681, the Centralia College may impose discipli-

nary sanctions against a student who commits, attempts to commit, or aids, abets, incites, encourages, or assists another person to commit, an act(s) of "sexual harassment."

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

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

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

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

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

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

(c) Incest. Sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either wholly or half related. Descendant includes stepchildren and adopted children under the age of eighteen.

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

(4) Domestic violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Washington, RCW 26.50.010.

(5) Dating violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person:

(a) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(b) Where the existence of such a relationship shall be determined based on a consideration of the following factors:

(i) The length of the relationship;

(ii) The type of relationship; and

(iii) The frequency of interaction between the persons involved in the relationship.

(6) Stalking. Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their

safety or the safety of others, or suffer substantial emotional distress.

[]

#### NEW SECTION

**WAC 132L-351-220 Title IX jurisdiction.** (1) This supplemental procedure applies only if the alleged misconduct:

- (a) Occurred in the United States;
- (b) Occurred during a Centralia College educational program or activity; and
- (c) Meets the definition of sexual harassment as that term is defined in this supplemental procedure.

(2) For purposes of this supplemental procedure, an "educational program or activity" is defined as locations, events, or circumstances over which Centralia College exercised substantial control over both the respondent and the context in which the alleged sexual harassment occurred. This definition includes any building owned or controlled by a student organization that is officially recognized by the Centralia College.

(3) Proceedings under this supplemental procedure must be dismissed if the decision maker determines that one or all of the requirements of subsection (1)(a) through (c) of this section have not been met. Dismissal under this supplemental procedure does not prohibit Centralia College from pursuing other disciplinary action based on allegations that the respondent violated other provisions of Centralia College's student conduct code, and this chapter.

(4) If the student conduct officer determines the facts in the investigation report are not sufficient to support Title IX jurisdiction and/or pursuit of a Title IX violation, the student conduct officer will issue a notice of dismissal in whole or part to both parties explaining why some or all of the Title IX claims have been dismissed.

[]

#### NEW SECTION

**WAC 132L-351-230 Initiation of discipline.** (1) Upon receiving the Title IX investigation report from the Title IX coordinator, the student conduct officer will independently review the report to determine whether there are sufficient grounds to pursue a disciplinary action against the respondent for engaging in prohibited conduct under Title IX.

(2) If the student conduct officer determines that there are sufficient grounds to proceed under these supplemental procedures, the student conduct officer will initiate a Title IX disciplinary proceeding by filing a written disciplinary notice with the chair of the student conduct committee and serving the notice on the respondent and the complainant, and their respective advisors. The notice must:

- (a) Set forth the basis for Title IX jurisdiction;
- (b) Identify the alleged Title IX violation(s);
- (c) Set forth the facts underlying the allegation(s);

(d) Identify the range of possible sanctions that may be imposed if the respondent is found responsible for the alleged violation(s); and

(e) Explain that the parties are entitled to be accompanied by their chosen advisors during the hearing and that:

(i) The advisors will be responsible for questioning all witnesses on the party's behalf;

(ii) An advisor may be an attorney; and

(iii) Centralia College will appoint the party an advisor of the college's choosing at no cost to the party, if the party fails to do so.

(3) Explain that if a party fails to appear at the hearing, a decision of responsibility may be made in their absence.

[]

#### NEW SECTION

**WAC 132L-351-240 Prehearing procedures.** (1) Upon receiving the disciplinary notice, the chair of the student conduct committee will send a hearing notice to all parties, in compliance with WAC 132L-351-080. In no event will the hearing date be set less than ten days after the Title IX coordinator provided the final investigation report to the parties.

(2) A party may choose to have an attorney serve as their advisor at the party's own expense. This right will be waived unless, at least five days before the hearing, the attorney files a notice of appearance with the committee chair with copies to all parties and the student conduct officer.

(3) In preparation for the hearing, the parties will have equal access to all evidence gathered by the investigator during the investigation, regardless of whether the college intends to offer the evidence at the hearing.

[]

#### NEW SECTION

**WAC 132L-351-250 Rights of parties.** (1) The Centralia College's student conduct procedures, this chapter and this supplemental procedure shall apply equally to all parties.

(2) The college bears the burden of offering and presenting sufficient testimony and evidence to establish that the respondent is responsible for a Title IX violation by a preponderance of the evidence.

(3) The respondent will be presumed not responsible until such time as the disciplinary process has been finally resolved.

(4) During the hearing, each party shall be represented by an advisor. The parties are entitled to an advisor of their own choosing and the advisor may be an attorney. If a party does not choose an advisor, then the Title IX coordinator will appoint an advisor of the college's choosing on the party's behalf at no expense to the party.

[]

NEW SECTION

**WAC 132L-351-260 Evidence.** The introduction and consideration of evidence during the hearing is subject to the following procedures and restrictions:

(1) **Relevance:** The committee chair shall review all questions for relevance and shall explain on the record their reasons for excluding any question based on lack of relevance.

(2) **Relevance** means that information elicited by the question makes facts in dispute more or less likely to be true.

(3) Questions or evidence about a complainant's sexual predisposition or prior sexual behavior are not relevant and must be excluded, unless such question or evidence:

(a) Is asked or offered to prove someone other than the respondent committed the alleged misconduct; or

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

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

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

(6) **Privileged evidence:** The committee shall not consider legally privileged information unless the holder has effectively waived the privilege. Privileged information includes, but is not limited to, information protected by the following:

(a) Spousal/domestic partner privilege;

(b) Attorney-client and attorney work product privileges;

(c) Privileges applicable to members of the clergy and priests;

(d) Privileges applicable to medical providers, mental health therapists, and counselors;

(e) Privileges applicable to sexual assault and domestic violence advocates; and

(f) Other legal privileges identified in RCW 5.60.060.

[]

NEW SECTION

**WAC 132L-351-270 Initial order.** (1) In addition to complying with WAC 132L-351-090, the student conduct committee will be responsible for conferring and drafting an initial order that:

(a) Identifies the allegations of sexual harassment;

(b) Describes the grievance and disciplinary procedures, starting with filing of the formal complaint through the determination of responsibility, including notices to parties, interviews with witnesses and parties, site visits, methods used to gather evidence, and hearings held;

(c) Makes findings of fact supporting the determination of responsibility;

(d) Reaches conclusions as to whether the facts establish whether the respondent is responsible for engaging in sexual harassment in violation of Title IX;

(e) Contains a statement of, and rationale for, the committee's determination of responsibility for each allegation;

(f) Describes any disciplinary sanction or conditions imposed against the respondent, if any;

(g) Describes to what extent, if any, complainant is entitled to remedies designed to restore or preserve complainant's equal access to the college's educational programs or activities; and

(h) Describes the process for appealing the initial order to the college's president.

(2) The committee chair will serve the initial order on the parties simultaneously.

[]

#### NEW SECTION

**WAC 132L-351-280 Appeals.** (1) The parties shall have the right to appeal from the initial order's determination of responsibility and/or dismissal of an allegation(s) of sexual harassment in a formal complaint. The right to appeal will be subject to the same procedures and time frames set forth in WAC 132L-351-095.

(2) The president or their delegate will determine whether the grounds for appeal have merit, provide the rationale for this conclusion, and state whether the disciplinary sanction and condition(s) imposed in the initial order are affirmed, vacated, or amended, and, if amended, set forth any new disciplinary sanction and/or condition(s).

(3) President's office shall serve the final decision on the parties simultaneously.

[]



**WSR 21-12-050**  
**PERMANENT RULES**  
**COMMUNITY COLLEGES**  
**OF SPOKANE**

[Filed May 26, 2021, 10:36 a.m., effective June 26, 2021]

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

Purpose: Update Spokane Falls Community College's official address.

Citation of Rules Affected by this Order: Amending WAC 132Q-01-006 Organization and operation, 132Q-01-020 Regular meetings of the board of trustees, 132Q-10-305 Process to file complaints, 132Q-276-030 Central and field organization, and 132Q-276-040 Operations and procedures.

Statutory Authority for Adoption: RCW 34.05.353.

Adopted under notice filed as WSR 21-06-061 on February 26, 2021.

Changes Other than Editing from Proposed to Adopted Version: Updated addresses.

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 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: May 26, 2021.

John O'Rourke  
WAC Coordinator

**OTS-2922.2**

AMENDATORY SECTION (Amending WSR 13-15-149, filed 7/23/13, effective 8/23/13)

**WAC 132Q-01-006 Organization and operation.** (1) Organization: Washington State Community College District 17, Community Colleges of Spokane including Spokane Community College and Spokane Falls Community College, is established in Title 28B RCW as a public institution of higher education. District 17 is governed by a five-member board of trustees, appointed by the governor. The board employs a chancellor who establishes the structure of the administration.

(2) Operation: The administrative office is located at 501 North Riverpoint Boulevard, P.O. Box 6000, Spokane, Washington 99217-6000. Spokane Community College is located at ((2000)) 1810 North Greene Street, Spokane, Washington 99217-5499; Spokane Falls Community College is located at 3410 West ((Fort George Wright Drive)) Whistalks Way, Spokane, Washington 99224-5288. The office hours are 8:00 a.m. to

5:00 p.m. Monday through Friday, except for legal holidays. During summer months, sections of the district may operate on an alternate schedule and throughout the year, evening services are provided. Specific information is available through each campus.

(3) Additional and detailed information concerning the educational offerings may be obtained from the college catalog, available on the Community Colleges of Spokane website and at various locations including college libraries, admissions, and counseling offices.

[Statutory Authority: RCW 28B.50.140. WSR 13-15-149, § 132Q-01-006, filed 7/23/13, effective 8/23/13; WSR 11-20-021, § 132Q-01-006, filed 9/23/11, effective 10/24/11; WSR 04-10-065, § 132Q-01-006, filed 4/30/04, effective 5/31/04; WSR 90-21-014, § 132Q-01-006, filed 10/8/90, effective 11/8/90.]

AMENDATORY SECTION (Amending WSR 11-20-021, filed 9/23/11, effective 10/24/11)

**WAC 132Q-01-020 Regular meetings of the board of trustees.** The board of trustees of Washington State Community College District 17 (Community Colleges of Spokane) shall hold regular monthly meetings according to a schedule including place, time and date filed with the Washington state code reviser on or before January 1 of each year for publication in the Washington State Register. Notice of any change from such meeting schedule shall be published in the Washington State Register at least twenty days prior to the rescheduled meeting date.

All regular meetings of the board of trustees shall be held at 3305 (~~W. Fort George Wright Drive~~) West Whistalks Way, Spokane, Washington(~~r~~) 99217-5228, unless otherwise announced. Information about specific meeting places and times may be obtained from the office of the board.

[Statutory Authority: RCW 28B.50.140. WSR 11-20-021, § 132Q-01-020, filed 9/23/11, effective 10/24/11; WSR 04-10-065, § 132Q-01-020, filed 4/30/04, effective 5/31/04; WSR 86-04-010 (Resolution No. 25), § 132Q-01-020, filed 1/24/86.]

#### **OTS-2923.4**

AMENDATORY SECTION (Amending WSR 15-15-161, filed 7/21/15, effective 8/21/15)

**WAC 132Q-10-305 Process to file complaints.** (1) General complaints - Individuals may file with the student conduct officer a written complaint, a student conduct incident report (SCIR), against a student or student organization for alleged violation(s) of the standards of conduct for students specified in WAC 132Q-10-130 through 132Q-10-240, 132Q-10-246 and 132Q-10-250 through 132Q-10-255. Complaints are to be submitted as soon as possible after the event takes place, preferably within thirty calendar days after the event. A copy of an SCIR can be obtained from the office of student conduct, the of-

office of the Title IX coordinator, or the office of campus safety, on both the SCC and SFCC campuses. The SCIR is also available online at <http://www.ccs.spokane.edu/Forms/SCC-Forms/Student-Svcs/ccs-5761.aspx>. SCIRs must be submitted to:

**Student Conduct Officer SCC**

Spokane Community College  
1810 N. Greene St., MS 2061  
Room 125  
Bldg. 6, Lair Student Center  
Phone: 509-533-8657

**Student Conduct Officer SFCC**

Spokane Falls Community College  
3410 W. (~~Fort George Wright Dr.~~) Whistalks Way, MS 3010  
Room (~~(140)~~) 244  
Bldg. (~~(17)~~) 30, (~~Student Union~~) Falls Gateway Building  
Phone: (~~(509-533-3570)~~) 509-533-3682

**Title IX Coordinator SCC**

Spokane Community College  
1810 N. Greene St., MS (~~(2061)~~) 2150  
Room (~~(218)~~) R228  
(~~Lair~~) Main Building, Building (~~(6)~~) 1  
Fax: (~~(509-533-8444)~~) 509-533-7132  
Phone: 509-533-7015

**Title IX Coordinator SFCC**

Spokane Falls Community College  
3410 W. (~~Fort George Wright Dr.~~) Whistalks Way, MS 3010  
Administration Offices Room 225  
Falls Gateway Building, Building 30  
Fax: 509-533-3225  
Phone: 509-533-3514

**Office of Campus Safety SCC**

1810 N. Greene St., MS (~~(2010)~~) 2159  
Room (~~(149A)~~) 118  
(~~Main Building~~) Max Snyder, Building (~~(1)~~) 50  
Phone: (~~(509-533-7287)~~) 509-533-8624

**Office of Campus Safety SFCC**

3410 W. (~~Fort George Wright Dr.~~) Whistalks Way, MS 3174  
Room (~~(127)~~) 145  
(~~Student Union~~) Human Services Building, Building (~~(17)~~) 16  
Phone: (~~(509-533-3407)~~) 509-533-3555

(2) Sexually violent conduct, discrimination, and sexual harassment complaints. Individuals may file complaints of sexually violent conduct as defined in WAC 132Q-10-105(18) and further detailed in WAC 132Q-10-244; complaints of discrimination as set forth in WAC 132Q-10-242; and sexual harassment as set forth in WAC 132Q-10-243 to the Title IX coordinator at the appropriate address listed below. Complaints are to be submitted as soon as possible after the event takes place, preferably within thirty calendar days after the event. Complaints may be submitted by using a Student Conduct Incident Report (SCIR) form. If the complaint is against the Title IX coordinator, the complainant should report the matter to the Spokane Community College president's office or Spokane Falls Community College president's office for referral to an alternate designee. A copy of the SCIR can be

obtained from the office of student conduct, the office of the Title IX coordinator, or the office of campus safety, on both the SCC and SFCC campuses. A copy of the SCIR form is also available online at <http://www.ccs.spokane.edu/Forms/SCC-Forms/Student-Svcs/ccs-5761.aspx>.

**Student Conduct Officer SCC**

Spokane Community College  
1810 N. Greene St., MS 2061  
Room 125  
Bldg. 6, Lair Student Center  
Phone: 509-533-8657

**Student Conduct Officer SFCC**

Spokane Falls Community College  
3410 W. (~~Fort George Wright Dr.~~) Whistalks Way, MS 3010  
Room (~~(140)~~) 244  
Bldg. (~~(17)~~) 30, (~~Student Union~~) Falls Gateway Building  
Phone: (~~(509-533-3570)~~) 509-533-3682

**Title IX Coordinator SCC**

Spokane Community College  
1810 N. Greene St., MS (~~(2061)~~) 2150  
Room (~~(218)~~) R228  
(~~Lair~~) Main Building, Building (~~(6)~~) 1  
Fax: (~~(509-533-8444)~~) 509-533-7132  
Phone: 509-533-7015

**Title IX Coordinator SFCC**

Spokane Falls Community College  
3410 W. (~~Fort George Wright Dr.~~) Whistalks Way, MS 3010  
Administration Offices Room 225  
Falls Gateway Building, Building 30  
Fax: 509-533-3225  
Phone: 509-533-3514

**Office of Campus Safety SCC**

1810 N. Greene St., MS (~~(2010)~~) 2159  
Room (~~(149A)~~) 118  
(~~Main Building~~) Max Snyder, Building (~~(1)~~) 50  
Phone: (~~(509-533-7287)~~) 509-533-8624

**Office of Campus Safety SFCC**

3410 W. (~~Fort George Wright Dr.~~) Whistalks Way, MS 3174  
Room (~~(127)~~) 145  
(~~Student Union~~) Human Services Building, Building (~~(17)~~) 16  
Phone: (~~(509-533-3407)~~) 509-533-3555

**President**

Spokane Community College  
1810 N. Greene St., MS 2150  
Spokane, WA 99217-5399  
Fax: 509-533-7321

**President**

Spokane Falls Community College  
3410 W. (~~Fort George Wright Dr.~~) Whistalks Way, MS 3010  
Spokane, WA 99224-5288  
Fax: 509-533-3225

[Statutory Authority: RCW 28B.50.140. WSR 15-15-161, § 132Q-10-305, filed 7/21/15, effective 8/21/15.]

### OTS-2924.1

AMENDATORY SECTION (Amending WSR 18-09-007, filed 4/6/18, effective 5/7/18)

**WAC 132Q-276-030 Central and field organization.** Washington State Community College District 17 is a community college district organized under RCW 28B.50.040. The administrative office of the district and its staff is located at 501 North Riverpoint Boulevard, P.O. Box 6000, Spokane, Washington((~~7~~)) 99217-6000. The district operates two colleges, Spokane Community College, located at 1810 North Greene Street, Spokane, Washington((~~7~~)) 99217-5399; and Spokane Falls Community College, located at 3410 West ((~~Fort George Wright Drive~~)) Whistalks Way, Spokane, Washington((~~7~~)) 99224-5288. The district also delivers instructional programming in the counties of Ferry, Lincoln (except Consolidated School District 105-157-166J and the Lincoln County portion of Common School District 167-202), Pend Oreille, Spokane, Stevens, and Whitman.

[Statutory Authority: RCW 25B.50.140 [28B.50.140]. WSR 18-09-007, § 132Q-276-030, filed 4/6/18, effective 5/7/18; WSR 13-15-154, § 132Q-276-030, filed 7/23/13, effective 8/23/13; WSR 04-10-065, § 132Q-276-030, filed 4/30/04, effective 5/31/04. Statutory Authority: RCW 42.17.250. WSR 83-10-004 (Order 83-29, Resolution No. 21), § 132Q-276-030, filed 4/22/83.]

AMENDATORY SECTION (Amending WSR 18-09-007, filed 4/6/18, effective 5/7/18)

**WAC 132Q-276-040 Operations and procedures.** Washington State Community College District 17 is established under RCW 28B.50.040 to implement the educational purposes established by RCW 28B.50.020. District 17 is operated under the supervision and control of a board of trustees appointed by the governor as provided in RCW 28B.50.100. The chief administrative officer of the district is the chancellor/chief executive officer, who also serves as secretary to the board of trustees. The day-to-day operation of the district, pursuant to policy established and approved by the board of trustees, is implemented through the office of the chancellor/chief executive officer or designee.

The board of trustees meets the third Tuesday of each month at 8:30 a.m. at the Lodge Building, 3305 West ((~~Fort George Wright Drive~~)) Whistalks Way, Spokane, Washington((~~7~~)) 99224, unless public notice is given of a special meeting. At such time, the trustees exercise the powers and duties granted to the board by RCW 28B.50.140.

[Statutory Authority: RCW 25B.50.140 [28B.50.140]. WSR 18-09-007, § 132Q-276-040, filed 4/6/18, effective 5/7/18; WSR 04-10-065, § 132Q-276-040, filed 4/30/04, effective 5/31/04. Statutory Authority: RCW 42.17.250. WSR 83-10-004 (Order 83-29, Resolution No. 21), § 132Q-276-040, filed 4/22/83.]

## WSR 21-12-051

## PERMANENT RULES

## HEALTH CARE AUTHORITY

[Filed May 26, 2021, 10:54 a.m., effective June 26, 2021]

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

Purpose: The health care authority is amending WAC 182-543-0500 and 182-551-2040 to allow ordering of home health services, including medical supplies, by certain nonphysician practitioners.

Citation of Rules Affected by this Order: Amending WAC 182-543-0500 and 182-551-2040.

Statutory Authority for Adoption: Amending WAC 182-543-0500 and 182-551-2040.

Other Authority: 42 C.F.R. § 440.70.

Adopted under notice filed as WSR 21-09-084 on April 21, 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 2, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: May 26, 2021.

Wendy Barcus  
Rules Coordinator

**OTS-2194.6**

AMENDATORY SECTION (Amending WSR 18-24-021, filed 11/27/18, effective 1/1/19)

**WAC 182-543-0500 General.** (1) The federal government considers medical equipment, supplies, and appliances, which the medicaid agency refers to throughout this chapter as medical equipment, services under the medicaid program.

(2) The agency pays for medical equipment, including modifications, accessories, and repairs, according to agency rules and subject to the limitations and requirements in this chapter when the medical equipment is:

(a) Medically necessary, as defined in WAC 182-500-0070;

(b) Authorized, as required within this chapter, chapters 182-501 and 182-502 WAC, and the agency's published billing instructions and provider notices; and

(c) Billed according to this chapter, chapters 182-501 and 182-502 WAC, and the agency's published billing instructions and provider notices.

(3) For the initiation of medical equipment under WAC 182-551-2122, the face-to-face encounter must be related to the primary reason the client requires medical equipment and must occur no later than six months prior to the start of services.

(4) The face-to-face encounter (~~must~~) may be conducted by (~~the ordering~~):

~~(a) A physician (, a nonphysician practitioner as described in WAC 182-500-0075,);~~

(b) A nurse practitioner;

(c) A clinical nurse specialist;

(d) A certified nurse midwife under 42 C.F.R. 440.70 when furnished by a home health agency that meets the conditions of participation for medicare;

(e) A physician assistant; or

(f) The attending acute, or post-acute physician, for beneficiaries admitted to home health immediately after an acute or post-acute stay.

~~(5) ((If a nonphysician practitioner as described in WAC 182-500-0075 (or the attending physician when a client is discharged from an acute hospital stay) performs the face-to-face encounter, the nonphysician practitioner (or attending physician) must communicate the clinical findings of that face-to-face encounter to the ordering physician. Those clinical findings must be incorporated into a written or electronic document included in the client's medical record.))~~  
Services may be ordered by:

(a) Physicians;

(b) Nurse practitioners;

(c) Clinical nurse specialists; or

(d) Physician assistants.

(6) The agency requires prior authorization for covered medical equipment when the clinical criteria set forth in this chapter are not met, including the criteria associated with the expedited prior authorization process.

(a) The agency evaluates requests requiring prior authorization on a case-by-case basis to determine medical necessity as defined in WAC 182-500-0070, according to the process found in WAC 182-501-0165.

(b) Refer to WAC 182-543-7000, 182-543-7100, 182-543-7200, and 182-543-7300 for specific details regarding authorization.

(7) The agency bases its determination about which medical equipment requires prior authorization (PA) or expedited prior authorization (EPA) on utilization criteria (see WAC 182-543-7100 for PA and WAC 182-543-7300 for EPA). The agency considers all of the following when establishing utilization criteria:

(a) Cost;

(b) The potential for utilization abuse;

(c) A narrow therapeutic indication; and

(d) Safety.

(8) The agency evaluates a request for equipment that does not meet the definition of medical equipment or that is determined not medically necessary under the provisions of WAC 182-501-0160. When early and periodic screening, diagnosis and treatment (EPSDT) applies, the agency evaluates a noncovered service, equipment, or supply according to the process in WAC 182-501-0165 to determine if it is medically necessary, safe, effective, and not experimental (see WAC 182-543-0100 for EPSDT rules).

(9) The agency may terminate a provider's participation with the agency according to WAC 182-502-0030 and 182-502-0040.



(10) The agency evaluates a request for a service that meets the definition of medical equipment but has been determined to be experimental or investigational, under the provisions of WAC 182-501-0165.

(11) If the agency denies a requested service, the agency notifies the client in writing that the client may request an administrative hearing under chapter 182-526 WAC. (For MCO enrollees, see WAC 182-538-110.)

[Statutory Authority: RCW 41.05.021, 41.05.160 and 42 C.F.R. Part 440.70; 42 U.S.C. section 1396 (b) (i) (27). WSR 18-24-021, § 182-543-0500, filed 11/27/18, effective 1/1/19. Statutory Authority: RCW 41.05.021 and 2013 c 178. WSR 14-08-035, § 182-543-0500, filed 3/25/14, effective 4/25/14. WSR 11-14-075, recodified as § 182-543-0500, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.08.090 and 74.04.050. WSR 11-14-052, § 388-543-0500, filed 6/29/11, effective 8/1/11.]

## OTS-2195.7

AMENDATORY SECTION (Amending WSR 18-24-023, filed 11/27/18, effective 1/1/19)

**WAC 182-551-2040 Face-to-face encounter requirements.** (1) The face-to-face encounter requirements of this section may be met using telemedicine or telehealth services. See WAC 182-551-2125.

(2) The medicaid agency pays for home health services provided under this chapter only when the face-to-face encounter requirements in this section are met.

~~((2))~~ (3) For initiation of home health services, with the exception of medical equipment under WAC 182-551-2122, the face-to-face encounter must be related to the primary reason the client requires home health services and must occur within ninety days before or within the thirty days after the start of the services.

~~((3))~~ (4) For the initiation of medical equipment under WAC 182-551-2122, the face-to-face encounter must be related to the primary reason the client requires medical equipment and must occur no ~~((later))~~ more than six months ~~((prior to))~~ before the start of services.

~~((4))~~ (5) The face-to-face encounter may be conducted by ~~((the ordering))~~ :

~~((a))~~ A physician ~~((, a nonphysician practitioner as described in WAC 182-500-0075,))~~ ;

(b) A nurse practitioner;

(c) A clinical nurse specialist;

(d) A certified nurse midwife under 42 C.F.R. 440.70 when furnished by a home health agency that meets the conditions of participation for medicare;

(e) A physician assistant; or

(f) The attending acute, or post-acute physician, for beneficiaries admitted to home health immediately after an acute or post-acute stay.

~~((5))~~ ~~If a nonphysician practitioner as described in WAC 182-500-0075 (or the attending physician when a client is discharged~~

~~from an acute hospital stay) performs the face-to-face encounter, the nonphysician practitioner (or attending physician) must communicate the clinical findings of that face-to-face encounter to the ordering physician. Those clinical findings must be incorporated into a written or electronic document included in the client's medical record.))~~

(6) Services may be ordered by:

- (a) Physicians;
- (b) Nurse practitioners;
- (c) Clinical nurse specialists; or
- (d) Physician assistants.

(7) For all home health services except medical equipment under WAC 182-551-2122, the physician, nurse practitioner, clinical nurse specialist, or physician assistant responsible for ordering the services must:

(a) Document that the face-to-face encounter, which is related to the primary reason the client requires home health services, occurred within the required time frames described in subsection ~~((2))~~ (3) of this section prior to the start of home health services; and

(b) Indicate the practitioner who conducted the encounter, and the date of the encounter.

~~((7))~~ (8) For medical equipment under WAC 182-551-2122, except as provided in (b) of this subsection, an ordering physician, ~~((a non-physician practitioner as described in WAC 182-500-0075, except for certified nurse midwives))~~ nurse practitioner, clinical nurse specialist, physician assistant, or the attending physician when a client is discharged from an acute hospital stay, must:

(a) Document that the face-to-face encounter, which is related to the primary reason the client requires home health services, occurred within the required time frames described in subsection ~~((3))~~ (4) of this section prior to the start of home health services; and

(b) Indicate the practitioner who conducted the encounter, and the date of the encounter.

~~((8) The face-to-face encounter may occur through telemedicine. See WAC 182-551-2125.))~~

[Statutory Authority: RCW 41.05.021, 41.05.160 and 42 C.F.R. Section 440.70. WSR 18-24-023, § 182-551-2040, filed 11/27/18, effective 1/1/19.]

**WSR 21-12-060**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Developmental Disabilities Administration)  
[Filed May 27, 2021, 9:37 a.m., effective June 27, 2021]

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

Purpose: These amendments add several providers to the scope of WAC 388-829-0005:

- Children's state-operated living alternative providers;
- Overnight planned respite services providers;
- Group training home providers; and
- Stabilization, assessment, and intervention facility (SAIF) providers.

These amendments also replace "community crisis stabilization services" with the program's new name, "intensive habilitation services for children."

With the exception of SAIF, which is a new provider type, all of the other providers were already beholden to chapter 388-829 WAC by program-specific rules.

Citation of Rules Affected by this Order: Amending WAC 388-829-0005.

Statutory Authority for Adoption: RCW 71A.12.030.

Other Authority: RCW 74.39A.074, 74.39A.341, 18.88B.041.

Adopted under notice filed as WSR 21-07-099 on March 22, 2021.

A final cost-benefit analysis is available by contacting Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, fax 360-407-0955, TTY 1-800-833-6388, email Chantelle.Diaz@dshs.wa.gov.

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

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

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

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

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

Date Adopted: May 27, 2021.

Donald Clintsman  
Acting Secretary

**SHS-4854.2**

AMENDATORY SECTION (Amending WSR 18-18-020, filed 8/24/18, effective 9/24/18)

**WAC 388-829-0005 Who do the training requirements in this chapter apply to?** (1) The training requirements in this chapter apply to:

- (a) Community residential service businesses under RCW 74.39A.009;
  - (b) Alternative living providers under chapter 388-829A WAC;
  - (c) ~~((Community crisis stabilization services providers under chapter 388-833 WAC; and~~
  - ~~(d-))~~ Companion home providers under chapter 388-829C WAC;
  - (d) Intensive habilitation services for children providers under chapter 388-833 WAC;
  - (e) Overnight planned respite service providers;
  - (f) Stabilization, assessment, and intervention facility providers;
  - (g) State-operated living alternatives for adults; and
  - (h) State-operated living alternatives for children.
- (2) Under this chapter, the term "service provider" includes:
- ~~(a) ((Supported living service providers;~~
  - ~~(b) State-operated living alternatives;~~
  - ~~(c) DDA group homes;~~
  - ~~(d) Licensed staffed residential homes;~~
  - ~~(e-))~~ Alternative living providers;
  - ~~((f) Community crisis stabilization services for children; and~~
  - ~~(g-))~~ (b) Companion home providers;
  - (c) DDA group homes;
  - (d) Group training homes;
  - (e) Intensive habilitation services for children;
  - (f) Licensed staffed residential homes;
  - (g) Overnight planned respite service providers;
  - (h) Stabilization, assessment, and intervention facility providers;
  - (i) State-operated living alternatives for adults;
  - (j) State-operated living alternatives for children; and
  - (k) Supported living service providers.

(3) A DDA group home licensed as an adult family home or assisted living facility must meet the training requirements in this chapter and the home care aide certification requirements under chapter 388-112A WAC.

(4) All other service providers listed in subsection (2) of this section (~~must meet the training requirements in this chapter but~~) are exempt from home care aide certification through the department of health.

[Statutory Authority: RCW 71A.12.030 and RCW 74.39A.009. WSR 18-18-020, § 388-829-0005, filed 8/24/18, effective 9/24/18. Statutory Authority: RCW 71A.12.030, 74.39A.074, 74.39A.341, 74.39A.351, and 18.88B.041. WSR 17-14-090, § 388-829-0005, filed 6/30/17, effective 8/1/17. Statutory Authority: RCW 71A.12.030, 71A.12.120, and chapter 74.39A RCW. WSR 15-20-045, § 388-829-0005, filed 9/29/15, effective 1/1/16.]

**WSR 21-12-061**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
 (Developmental Disabilities Administration)  
 [Filed May 27, 2021, 9:48 a.m., effective June 27, 2021]

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

Purpose: The developmental disabilities administration (DDA) repealed WAC 388-101D-0360 to remove the requirement for providers to maintain a psychotropic medication treatment plan. Amendments to WAC 388-101D-0355 establish requirements for what must be in a client's record if the client is prescribed a psychotropic medication. Amendments to WAC 388-101D-0405 and 388-101D-0410 state when functional assessments and positive behavior support plans are required and establish criteria for their development and implementation.

Citation of Rules Affected by this Order: Repealing WAC 388-101D-0360; and amending WAC 388-101D-0355, 388-101D-0405, and 388-101D-0410.

Statutory Authority for Adoption: RCW 71A.12.030.

Other Authority: RCW 71A.12.120.

Adopted under notice filed as WSR 21-05-066 on February 16, 2021.

Changes Other than Editing from Proposed to Adopted Version: **To address commenter confusion, and for clarification purposes, DDA edited WAC 388-101D-0410 (1) (a) and (1) (a) (vii) to make nonsubstantive changes in nomenclature as shown below:**

(1) The provider must complete a functional assessment of a client's behavior if:

(a) The client's supports intensity scale results exceptional behavior support needs section of the client's person-centered service plan indicates extensive support is necessary to prevent:

- (i) Self-injury;
- (ii) Sexual aggression;
- (iii) Suicide attempt;
- (iv) Emotional outburst;
- (v) Property destruction;
- (vi) Assault or injury to others; or

(vii) A behavior identified by question seventeen the case manager's comments in the client's person-centered service plan under "prevention of other serious behavior problem(s)-specify";

**DDA removed "intensity" from WAC 388-101D-0410 (2) (a) (iv), (6) (a) (ii), (b) (ii), and (8). These deletions are nonsubstantive because they do not remove the requirement to collect data. Removing "intensity" addresses commenter concern that "intensity" is similar to "impact" yet "impact" is easier to quantify.**

A final cost-benefit analysis is available by contacting Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, fax 360-407-0955, TTY 1-800-833-6388, email Chantelle.Diaz@dshs.wa.gov.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 3, 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 3, Repealed 1.

Date Adopted: May 27, 2021.

Donald Clintsman  
Acting Secretary

## SHS-4768.7

AMENDATORY SECTION (Amending WSR 16-14-058, filed 6/30/16, effective 8/1/16)

**WAC 388-101D-0355 ((Psychoactive)) What must a client record contain if the client is prescribed a psychotropic medication ((treatment plan.))?** (1) If the ((assessing treatment professional recommends psychoactive medications, the prescribing professional or service provider must document this in)) client is prescribed psychotropic medication, the client's ((psychoactive medication treatment plan. The service provider)) record must ((ensure the plan includes the following)) contain:

(a) ((A description of the behaviors, symptoms or conditions for which the medication is prescribed and a mental health diagnosis, if available)) The date the client met with the prescriber;

(b) ((The name, dosage, and frequency of the medication and subsequent changes in dosage must be documented in the person's medical record)) Whether the provider was present when the prescriber examined the client;

(c) ((The length of time considered sufficient to determine if the medication is effective)) Any medical or behavioral information the provider conveyed to the prescriber;

(d) ((The behavioral criteria to determine whether the medication is effective and what changes in behavior, mood, thought, or functioning are considered evidence that the medication is effective)) Any instructions the provider received from the prescriber; ((and))

(e) The ((anticipated schedule of visits with the prescribing professional)) drug information sheet obtained from the prescriber or dispensing pharmacy for the psychotropic medication prescribed;

(f) The date the provider sent the client's legal representative a copy of the psychotropic drug information sheet, if requested; and

(g) Any documentation required under WAC 388-101D-0340.

(2) If the ((service)) provider ((must make sure the treatment plan is updated when there is a change in psychoactive medication type, including intra-class changes)) does not attend the appointment, the provider must document in the client record whether the client attended the appointment independently or with a third party.

(3) The ((service)) provider must report to the prescriber if:

(a) ((Review the name, purpose, potential side effects and any known potential drug interactions of the psychoactive medication(s) with the client and his/her legal representative and document the re-

~~view in the client record)) The medication does not appear to have the prescriber's intended effects; ((and)) or~~

~~(b) ((Have available to staff and clients an information sheet for each psychoactive medication that is being used by each client served by the provider)) Any changes in the client's behavior or health might be an adverse side effect of the medication.~~

~~((4) The service provider must assist the client in obtaining and taking the medication when:~~

~~(a) The client's legal representative if any, is unavailable; and~~

~~(b) In the prescribing professional's opinion, medication is needed and no significant risks are associated with the use of the medication.~~

~~(5) If a client takes psychoactive medications to reduce challenging behaviors or to treat symptoms of a mental illness that are interfering with the client's ability to have positive life experiences and form and maintain relationships, the service provider must develop and implement a positive behavior support plan.))~~

[WSR 16-14-058, recodified as § 388-101D-0355, filed 6/30/16, effective 8/1/16. Statutory Authority: Chapter 71A.12 RCW. WSR 08-02-022, § 388-101-3750, filed 12/21/07, effective 2/1/08.]

AMENDATORY SECTION (Amending WSR 16-14-058, filed 6/30/16, effective 8/1/16)

**WAC 388-101D-0405 When is a functional assessment((-)) required?**

~~(1) The ((service)) provider must ((conduct and document)) complete a functional assessment ((before developing and implementing)) of a ((client's positive behavior support plan)) client's behavior if:~~

~~(a) The exceptional behavior support needs section of the client's person-centered service plan indicates extensive support is necessary to prevent:~~

~~(i) Self-injury;~~

~~(ii) Sexual aggression;~~

~~(iii) Suicide attempt;~~

~~(iv) Emotional outburst;~~

~~(v) Property destruction;~~

~~(vi) Assault or injury to others; or~~

~~(vii) A behavior identified in the client's person-centered service plan under "prevention of other serious behavior problem(s)-specify";~~

~~(b) The client is prescribed a psychotropic medication on a pro re nata (PRN or as needed) basis to change a target behavior; or~~

~~(c) The provider uses—or plans to use—restrictive procedures or physical restraints as defined in WAC 388-101-3000.~~

~~(2) ((The service provider must start the functional assessment when the client begins to engage in challenging behaviors that interfere with the client's ability to have positive life experiences and form and maintain relationships)) Target behavior means a behavior identified by the provider that needs to be modified or replaced to meet the client's health and safety needs.~~

~~(3) The ((service provider must ensure that a)) client's ((written)) functional assessment ((addresses)) must:~~

(a) ~~((A description of the client and pertinent history))~~ Be based on two or more of the following:

- (i) Direct observation;
- (ii) Interview with anyone who has personal knowledge of the client;
- (iii) Questionnaire; or
- (iv) Record review;

(b) ~~((The client's overall quality of life))~~ Describe:

- (i) Client history and antecedents pertinent to the target behavior;
- (ii) The client's current status;
- (iii) The target behavior; and
- (iv) The apparent function of the target behavior; and

(c) ~~((The behaviors that are considered challenging and/or are of concern))~~ Exist:

- (i) In draft form before the effective date of the client being added to the provider's contract; and
- (ii) In final form no later than forty-five calendar days after the effective date of the client being added to the provider's contract

~~((d) The factors or events which increase the likelihood of challenging behaviors;~~

~~(e) When and where the challenging behavior(s) occurs most frequently;~~

~~(f) The factors or events which increase the likelihood of appropriate behavior;~~

~~(g) An analysis and assessment of the possible functions or purpose the challenging behavior(s) serve for the client including what he or she obtains or avoids by engaging in the behavior(s); and~~

~~(h) A concluding summary of the functions or purpose that each challenging behavior serves for the client)).~~

(4) A draft functional assessment must define the target behavior and its apparent function.

(5) The ((service)) provider ((must include the following sections in the format of each client's written)) may revise a functional assessment ((:

- ~~(a) Description and pertinent history;~~
- ~~(b) Definition of challenging behaviors;~~
- ~~(c) Data analysis/assessment procedures; and~~
- ~~(d) Summary statement(s))~~ written by another provider. The provider must identify the adapted functional assessment as its own.

(6) If the provider identifies a new target behavior for a client, the provider must complete a functional assessment for that behavior within forty-five days.

(7) The provider may use a community protection participant's risk assessment in place of a functional assessment if it was completed in the past eighteen months and describes:

- (a) The client's history pertinent to the target behavior;
- (b) The client's current status;
- (c) The target behavior; and
- (d) The apparent function of the target behavior.

(8) A functional assessment is required for any target behavior not included in the client's community protection program risk assessment.



[WSR 16-14-058, recodified as § 388-101D-0405, filed 6/30/16, effective 8/1/16. Statutory Authority: Chapter 71A.12 RCW. WSR 08-02-022, § 388-101-3850, filed 12/21/07, effective 2/1/08.]

AMENDATORY SECTION (Amending WSR 16-14-058, filed 6/30/16, effective 8/1/16)

**WAC 388-101D-0410 When is a positive behavior support plan((-)) required?** (1) If a client requires a functional assessment under WAC 388-101D-0405, the ((service)) provider must ((develop,)) train to((-)) and implement a written individualized positive behavior support plan ((for each client when:

- ~~(a) The client takes psychoactive medications to reduce challenging behavior or treat a mental illness currently interfering with the client's ability to have positive life experiences and form and maintain personal relationships; or~~
- ~~(b) Restrictive procedures, including physical restraints, identified in the residential services contract are planned or used))~~

based on that functional assessment.

(2) The ((service provider)) client's positive behavior support plan must:

- ~~(a) ((Base each client's positive behavior support plan on the functional assessment required in WAC 388-101-3850)) Describe:~~
  - ~~(i) The target behavior;~~
  - ~~(ii) Actions that may be taken to prevent the target behavior;~~
  - ~~(iii) Actions that may be taken in response to the target behavior;~~
  - ~~(iv) Actions that may be taken if the target behavior increases in frequency, duration, or impact;~~
  - ~~(v) The replacement behavior that matches the target behavior's function;~~
  - ~~(vi) How to teach the replacement behavior;~~
  - ~~(vii) How to respond to the replacement behavior; and~~
  - ~~(viii) Benchmarks to evaluate the positive behavior support plan's effectiveness; and~~
- ~~(b) ((Complete and implement the client's positive behavior support plan within ninety days of identifying the client's symptoms and challenging behavior)) Exist:~~
  - ~~(i) In draft form before the effective date of the client being added to the provider's contract; and~~
  - ~~(ii) In final form no later than sixty calendar days after the effective date of the client being added to the provider's contract.~~

(3) A draft positive behavior support plan must include direction to direct-support professionals on how to respond to target behaviors.

(4) The ((service)) provider ((must develop and implement)) may revise a positive behavior support plan ((that is consistent with the client's cross-system crisis plan, if any)) written by another provider. The provider must identify the adapted positive behavior support plan as its own.

~~((4)) (5) If the ((service)) provider ((must include the following sections in the format of each client's written)) identifies a new target behavior for a client, the provider must implement a positive behavior support plan((-)~~

- ~~(a) Prevention strategies;~~

- ~~(b) Teaching and training supports;~~  
~~(c) Strategies for responding to challenging behaviors; and~~  
~~(d) Data collection and monitoring methods)) addressing that behavior within sixty days.~~
- ~~((5) If data indicates that progress is not occurring after a reasonable time, but not longer than six months,)) (6) The ((service)) provider must collect data on:~~
- ~~(a) ((Evaluate the positive behavior support plan and the data collected)) The target behavior's:~~
- ~~(i) Frequency;~~  
~~(ii) Duration;~~  
~~(iii) Impact; and~~
- ~~(b) ((Conduct a new functional assessment when necessary)) The replacement behavior's:~~
- ~~(i) Frequency;~~  
~~(ii) Duration; and~~  
~~((c) Develop and implement revisions as needed)) (iii) Impact.~~
- ~~(7) The provider must analyze the data collected under subsection (6) of this section at least every six months to determine the effectiveness of the positive behavior support plan.~~
- ~~(8) If the analysis under subsection (7) of this section indicates the target behavior is not decreasing in frequency, duration, or impact, the provider must:~~
- ~~(a) Revise the positive behavior support plan; or~~  
~~(b) Document the reason revising the support plan is not indicated.~~

[WSR 16-14-058, recodified as § 388-101D-0410, filed 6/30/16, effective 8/1/16. Statutory Authority: Chapter 71A.12 RCW. WSR 08-02-022, § 388-101-3860, filed 12/21/07, effective 2/1/08.]

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-101D-0360 Psychoactive medication monitoring.

WSR 21-12-065  
PERMANENT RULES  
DEPARTMENT OF

**SOCIAL AND HEALTH SERVICES**

[Filed May 27, 2021, 4:00 p.m., effective June 27, 2021]

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

Purpose: The purpose of these adopted rules is to amend WAC 388-78A-2371 Investigations, in response to public comments. After the rule was adopted in 2019, the department evaluated the rule and agreed the effect of the new rule was broader than was intended. This amendment revises the rule to meet its intended purpose. WAC 388-78A-2360 Adult day services, is updated to correct a cross-reference to WAC 388-78A-2371.

Citation of Rules Affected by this Order: Amending WAC 388-78A-2371 and 388-78A-2360.

Statutory Authority for Adoption: RCW 18.20.090.

Other Authority: RCW 74.34.068.

Adopted under notice filed as WSR 21-06-048 on February 25, 2021.

A final cost-benefit analysis is available by contacting Debbie Hoeman, P.O. Box 45600, Olympia, WA 98504, phone 360-725-3210, fax 360-438-7903, email Debbie.hoeman@dshs.wa.gov.

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

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 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 2, Repealed 0.

Date Adopted: May 27, 2021.

Donald Clintsman  
Acting Secretary

**SHS-4822.1**

AMENDATORY SECTION (Amending WSR 13-13-063, filed 6/18/13, effective 7/19/13)

**WAC 388-78A-2360 Adult day services.** (1) The assisted living facility may, but is not required to, provide an adult day services program for nonresidents.

(2) If adult day services are provided, the assisted living facility must:

(a) Ensure each adult day services client receives appropriate supervision and agreed upon care and services during the time spent in the day services program;

- (b) Ensure the care and services provided to adult day services clients do not compromise the care and services provided to assisted living facility residents;
- (c) Ensure the total number of residents plus adult day services clients does not exceed the assisted living facility's maximum facility capacity;
- (d) Only accept adult day services clients who are appropriate for assisted living facility care and services, consistent with WAC 388-78A-2050;
- (e) Provide sufficient furniture for the comfort of day services clients, in addition to furniture provided for residents;
- (f) Notify appropriate individuals specified in the client's record and consistent with WAC 388-78A-2640 when there is a significant change in the condition of an adult day services client;
- (g) Investigate and document incidents and accidents involving adult day services clients consistent with WAC (~~388-78A-2700~~) 388-78A-2371;
- (h) Maintain a separate register of adult day services clients; and
- (i) Maintain a record for each adult day services client.

[Statutory Authority: Chapter 18.20 RCW. WSR 13-13-063, § 388-78A-2360, filed 6/18/13, effective 7/19/13. Statutory Authority: RCW 18.20.090. WSR 06-01-047, § 388-78A-2360, filed 12/15/05, effective 1/15/06. Statutory Authority: RCW 18.20.090 (2004 c 142 § 19) and chapter 18.20 RCW. WSR 04-16-065, § 388-78A-2360, filed 7/30/04, effective 9/1/04.]

AMENDATORY SECTION (Amending WSR 20-02-104, filed 12/31/19, effective 1/31/20)

**WAC 388-78A-2371 Investigations.** The assisted living facility must:

- (1) (~~Report to the local law enforcement agency and the department any individual threatening bodily harm or causing a disturbance, that threatens any individual's welfare and safety~~) Investigate and document investigative actions and findings for any alleged or suspected abuse, neglect, or financial exploitation; or accident or incident jeopardizing or affecting a resident health or life;
- (2) (~~Identify, investigate, and report incidents involving residents according to department established assisted living facility guidelines~~) Determine the circumstances of the event;
- (3) (~~Protect residents during the course of the investigation~~) When necessary, institute and document appropriate measures to prevent similar future situations if the alleged incident is substantiated; and
- (4) (~~Comply with "whistle blower" laws as defined in chapter 74.34 RCW~~) Protect residents during the course of the investigation.

[Statutory Authority: Chapters 18.20 and 74.39A RCW. WSR 20-02-104, § 388-78A-2371, filed 12/31/19, effective 1/31/20.]

## WSR 21-12-068

## PERMANENT RULES

## EMPLOYMENT SECURITY DEPARTMENT

[Filed May 28, 2021, 8:20 a.m., effective June 28, 2021]

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

Purpose: The adoption of amendments corrects the numbering of subsections within WAC 192-170-010, which was amended by WSR 20-11-022 and 20-10-056. It also amends other rules to correct cross-references to subsections of RCW 50.29.021, which was amended in 2020 by the legislature in SHB 2613, section 3, chapter 86, Laws of 2020, and RCW 50.29.025 and 50.29.062, which were amended by the Legislature in 2021 in ESSB 5061, sections 17 and 20, chapter 2, Laws of 2021.

Citation of Rules Affected by this Order: Amending WAC 192-300-220, 192-320-036, 192-350-070, 192-170-010, 192-320-070, 192-320-075, 192-320-080, 192-320-081, 192-320-082, 192-320-083, and 192-320-084.

Statutory Authority for Adoption: RCW 50.12.010 and 50.12.040 provide general rule-making authority to the employment security department; RCW 50.20.010, 50.20.230, 50.20.240, 50.29.021, 50.29.025, 50.29.062.

Adopted under notice filed as WSR 21-07-034 on March 10, 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 11, 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: May 28, 2021.

Dan Zeitlin  
Employment Security  
Policy Director

## OTS-2473.1

AMENDATORY SECTION (Amending WSR 20-11-022, filed 5/13/20, effective 7/5/20)

**WAC 192-170-010 Availability for work—RCW 50.20.010.** (1) In general, the department will consider you available for work if you:

(a) Are willing to work full-time, part-time, and accept temporary work during all of the usual hours and days of the week customary for your occupation.

(i) You are not required to be available for part-time or temporary work if it would substantially interfere with your return to your regular occupation.

(ii) The requirement to be available for full-time work does not apply under the circumstances described in WAC 192-170-050 (1)(b) or 192-170-070;

(b) Are capable of accepting and reporting for any suitable work within the labor market in which you are seeking work;

(c) Do not impose conditions that substantially reduce or limit your opportunity to return to work at the earliest possible time;

(d) Are available for work during the hours customary for your trade or occupation; and

(e) Are physically present in your normal labor market area, unless you are actively seeking and willing to accept work outside your normal labor market.

(2) ((+)) You are considered available for work if you are an active registered electrical apprentice in an approved electrical apprenticeship program under chapter 49.04 RCW and chapter 296-05 WAC.

(3) ((+)) You are not considered available for work if you fail or refuse to seek work as required in a directive issued by the department under WAC 192-180-010.

((+3)) (4) If you are physically located outside of the United States, Puerto Rico, or the U.S. Virgin Islands, the department will consider you available for work if you meet the requirements of subsections (1) and (2) of this section, and:

(a) You are legally authorized to work in the country in which you are physically located;

(b) You are immediately available for work in the United States; or

(c) You are a spouse or domestic partner of a member of the United States Armed Forces and you are legally authorized to work within the foreign military base where your spouse or domestic partner is stationed.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042 and 50.20.010. WSR 20-11-022, § 192-170-010, filed 5/13/20, effective 7/5/20. Statutory Authority: RCW 50.12.010, 50.20.010, 50.20.230, 50.20.240, and 50.12.040. WSR 20-10-056, § 192-170-010, filed 4/30/20, effective 7/5/20. Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. WSR 10-11-046, § 192-170-010, filed 5/12/10, effective 6/12/10.]

**Reviser's note:** RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules, and deems ineffectual changes not filed by the agency in this manner. The bracketed material in the above section does not appear to conform to the statutory requirement.

## OTS-2945.1

AMENDATORY SECTION (Amending WSR 07-23-130, filed 11/21/07, effective 1/1/08)

**WAC 192-300-220 What unemployment taxes apply to professional employer organizations and client employers?** (1) Effective January 1, 2008, each professional employer organization and each client employer shall be assigned an individual tax rate based on its own experience.

(2)(a) This subsection applies to professional employer organizations and client employers which have a coemployment relationship as of January 1, 2008.

(b) Except as provided in (d) and (e) of this subsection, the tax rate for professional employer organizations and client employers shall be determined on the basis that the client employer transferred from the professional employer organization effective January 1, 2008. A client employer's proportionate experience (benefits charged and taxable payroll) for the entire first quarter beginning January 1, 2008, shall transfer to the client employer. On or after January 1, 2008, experience shall transfer to a client employer regardless of whether the professional employer organization was the base year employer prior to that date.

(c) The client employer's tax rate shall remain unchanged for the remainder of the rate year in which the transfer occurred.

(d) Client employers that are qualified employers under RCW 50.29.010 or are delinquent under RCW 50.29.025 (~~((+2+))~~) (1)(c)(i) and that joined a professional employment organization after the computation date of July 1, 2007, shall be assigned their own tax rate for 2008 as if they had not joined the professional employer organization. Any experience from July 1, 2007, to December 31, 2007, assigned to the professional employer organization for those client employers shall transfer to the client employer for purposes of setting future rates.

(e) If an employer is registered with the department and has its own tax rate, but is also a client employer for purposes of some of its employees, it shall keep its own tax rate for 2008 and that rate shall apply to all its employees. Any employees of a client employer that is in a coemployment relationship with a professional employer organization shall be considered a branch account under the registered employer.

(f) Beginning on January 1 of the year after the transfer, the client employer's tax rate for each rate year shall be based on a combination of:

(i) The client employer's experience with payrolls and benefits; and

(ii) The experience assigned to the professional employer organization which is attributable to the client employer, based on the percentage of employees transferred as of January 1, 2008, regardless of the date the client employer joined the professional employer organization.

(g)(i) The professional employer organization's tax rate on any payroll retained by the professional employer organization shall remain unchanged for the remainder of the year in which the transfer occurs.

(ii) Beginning on January 1 of the year after the transfer, the professional employer organization's tax rate for each rate year shall be based on its experience with payrolls and benefits as of the regular computation date for that rate year excluding the experience that has been attributed to client employers.

[Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 07-23-130, § 192-300-220, filed 11/21/07, effective 1/1/08.]

OTS-2946.1

AMENDATORY SECTION (Amending WSR 17-14-077, filed 6/29/17, effective 7/30/17)

**WAC 192-320-036 How are unemployment insurance tax rates determined for employers who are delinquent on taxes or reports, beginning in rate year 2011?** (1) An employer that has not submitted by September 30th all reports, taxes, interest, and penalties required under Title 50 RCW for the period preceding July 1st of any year is not a "qualified employer."

(2) For purposes of this section, the department will disregard unpaid taxes, interest, and penalties if:

(a) The unpaid taxes, interest, and penalties add up to less than either one hundred dollars or one-half of one percent of the employer's total tax reported for the twelve-month period immediately preceding July 1st. These minimum amounts only apply to taxes, interest, and penalties, not failure to submit the required tax and wage reports; or

(b) The unpaid taxes, interest, and penalties were found in a voluntary audit unless the department determines the employer did not make a good faith effort to comply with the law.

(3) (a) Under RCW 50.29.080, the department may redetermine an employer's previously assigned tax rate and retroactively assign delinquent tax rates to prior years if the department discovers an employer did not correctly report its taxes and wages.

(b) In the event an employer does not register with the department, the department may assign the delinquent tax rate beginning the calendar year after the July 1st following the first quarter an employer paid wages.

(4) (a) This section does not apply if the otherwise qualified employer shows to the satisfaction of the department that he or she acted in good faith and that applying the delinquent tax rate would be inequitable. This exception is to be narrowly construed to apply at the sole discretion of the department. The department's decision will be subject to review only under the arbitrary and capricious standard and will be reversed in administrative proceedings only for manifest injustice.

(b) If the department finds the employer knew or should have known its actions or inactions would result in a failure to submit all reports, taxes, penalties and interest by September 30th, then the department will find that an employer did not act in good faith and that application of the delinquent tax rate will not be inequitable.

(c) In determining if an employer acted in good faith and if application of the delinquent tax rate would be inequitable, the department may consider all facts surrounding the delinquent reports, taxes, penalties and interest.

(i) The department will consider the following factors when determining if an employer acted in good faith and if application of the delinquent tax rate will be inequitable. No single factor is conclusive. The factors include, but are not limited to:

(A) Whether there were events beyond the employer's reasonable control;

(B) Whether departmental error led to the delinquency;

(C) Whether the employer made only isolated errors instead of repeated errors;



(D) If the employer was a domestic service employer under RCW 50.04.160;

(E) Whether the employer, upon learning of the delinquency, made a diligent effort to pay overdue taxes, penalties, and interest and file overdue reports within ninety days;

(F) The amount of taxes, penalties and interest an employer failed to pay compared to the amount of taxes an employer reported and paid during the same time period;

(G) The number of employees an employer failed to report compared to the number of employees an employer reported during the same time period;

(H) The additional amount of taxes, penalties, and interest resulting from the application of delinquent tax rates compared to the amount of taxes, penalties, and interest the employer failed to pay originally.

(ii) The department will not consider the following factors when determining if an employer acted in good faith and if application of the delinquent tax rate would be inequitable:

(A) An employer's lack of available funds to pay taxes, penalties, and interest;

(B) Delay by the employer or its representative in opening mail or receiving other notices from the department relating to tax filing and payment.

(5) (a) An employer that is not a "qualified employer" because of failure to pay contributions when due will be assigned the array calculation factor rate it would otherwise have had if it had not been delinquent, plus an additional one percent. If the employer fails to pay contributions when due for a second or more consecutive year, it will be assigned the array calculation factor rate it would otherwise have had if it had not been delinquent, plus an additional two percent.

(b) If the employer fails to provide quarterly tax reports and the department cannot otherwise calculate what tax rate the employer would otherwise have had if it had not been delinquent, the department will use the higher of the rate calculated under RCW 50.29.025 (~~((+2-))~~) (1)(d) (NAICS rate with one percent minimum) or the last annual rate assigned to the employer.

(c) The higher rate for an employer in (a) of this subsection will not apply if the employer enters a deferred payment contract approved by the agency by September 30th of the previous rate year.

(d) If, after September 30th of the previous rate year and within thirty days after the date the department sent its first subsequent tax rate notice to the employer, an employer in (a) of this subsection pays all amounts owed or enters a deferred payment contract approved by the department, the additional rate will be one-half percent less than it would otherwise have been in (a) of this subsection. "First subsequent tax rate notice to the employer" means the first notice to the employer assigning that specific delinquent tax rate, regardless of whether the notice is part of the department's annual tax rate run.

(e) If an employer with an approved deferred payment contract fails to make any one of the payments or fails to submit any tax report and payment in a timely manner, the employer's tax rate will immediately revert to the rate in (a) of this subsection.

(6) An employer that is not a "qualified employer" because of failure to pay contributions when due will be assigned a social cost factor rate in rate class 40. The tax rate caps for "qualified employers" in RCW 50.29.025 will not apply either to the calculation of the

social cost factor rate in rate class 40 or to the sum of the array calculation factor rate and the graduated social cost factor rate for employers that are not "qualified employers."

(7) An employer that is not a "qualified employer" because it is a successor and its predecessor was not a "qualified employer" will be assigned rates based on its successor status.

(8) Assignment of the rate for delinquent taxes is not considered a penalty that is subject to waiver under WAC 192-310-030.

[Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 17-14-077, § 192-320-036, filed 6/29/17, effective 7/30/17; WSR 10-23-065, § 192-320-036, filed 11/12/10, effective 12/13/10.]

### OTS-2493.1

AMENDATORY SECTION (Amending WSR 10-23-064, filed 11/12/10, effective 12/13/10)

**WAC 192-320-070 What conditions apply for relief of benefit charges due to a voluntary quit? (RCW 50.29.021.)** (1) A contribution-paying base year employer, who has not been granted relief of charges under RCW 50.29.021(~~((3))~~) (2), may request relief of charges for a voluntary quit not attributable to the employer under RCW 50.29.021(~~((4))~~) (3) and WAC 192-320-065. This section does not apply to local governments.

(2) **Reasons for a voluntary quit not attributable to the employer.** A claimant may have been denied unemployment benefits for voluntarily quitting work without good cause, but subsequently requalify for unemployment benefits through work and earnings. Even if the claimant has requalified for benefits, the following reasons for leaving work will be considered reasons not attributable to the employer:

(a) The claimant's illness or disability or the illness, disability or death of a member(s) of the claimant's immediate family;

(b) The claimant's domestic responsibilities;

(c) Accepting a job with another employer;

(d) Relocating for a spouse's or domestic partner's employment;

(e) Starting or resuming school or training;

(f) Being in jail;

(g) The distance to the job site when the job was accepted and the distance at the time of the quit remained the same; or the job location may have changed but the distance traveled or difficulty of travel was not increased;

(h) Being dissatisfied with wages, hours or other working conditions generally known when the job was accepted; and the working conditions are determined suitable for the occupation in the claimant's labor market; and

(i) Separation necessary to protect the claimant or any member of the claimant's immediate family from domestic violence or stalking; and

(j) Entry into an apprenticeship program approved by the Washington state apprenticeship training council.

(3) **Reasons for a voluntary quit considered attributable to employer** are those work-related factors of such a compelling nature as

to cause a reasonably prudent person to leave employment. The work factors must have been reported to the employer if the employer has reasons not to be aware of the conditions, and the employer failed to improve the factors within a reasonable period of time. The reason for quitting may or may not have been determined good cause for voluntarily leaving work under RCW 50.20.050. For benefit charging purposes, however, such work-related factors may include, but are not limited to:

- (a) Change in work location which causes an increase in distance and/or difficulty of travel, but only if it is clearly greater than is customary for workers in the individual's classification and labor market;
- (b) Deterioration of work site safety provided the employee has reported such safety deterioration to the employer and the employer has failed to correct the hazards within a reasonable period of time;
- (c) Employee skills no longer required for the job;
- (d) Unreasonable hardship on the health or morals of the employee;
- (e) Reductions in hours;
- (f) Reduction in pay;
- (g) Notification of impending layoff; and
- (h) Other work-related factors the commissioner considers pertinent.

[Statutory Authority: RCW 50.12.010, 50.12.040. WSR 10-23-064, § 192-320-070, filed 11/12/10, effective 12/13/10; WSR 07-23-127, § 192-320-070, filed 11/21/07, effective 1/1/08. Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042. WSR 04-23-058, § 192-320-070, filed 11/15/04, effective 12/16/04. Statutory Authority: RCW 50.12.010, 50.12.040. WSR 00-05-069, § 192-320-070, filed 2/15/00, effective 3/17/00.]

AMENDATORY SECTION (Amending WSR 04-23-058, filed 11/15/04, effective 12/16/04)

**WAC 192-320-075 Charges to the separating employer—RCW**

**50.29.021 ((-2-)) (1) (c).** (1) If a claimant voluntarily quits work to accept a job with a new employer, one hundred percent of benefits paid on the claim will be charged to the new employer when this new employer is the claimant's last employer, a base period employer, and a contribution-paying employer.

(2) If a claimant quits work because of the working conditions listed in this subsection, the employer from whom the separation occurred will be charged for one hundred percent of benefits paid on the claim if the employer is the claimant's last employer, a base period employer, and a contribution-paying employer. These working conditions include:

- (a) A reduction in the individual's usual compensation of twenty-five percent or more under WAC 192-150-115;
- (b) A reduction in the individual's usual hours of twenty-five percent or more under WAC 192-150-120;
- (c) A change in the work location which caused a substantial increase in distance or difficulty of travel under WAC 192-150-125;

(d) A deterioration in the individual's worksite safety under WAC 192-150-130;

(e) Illegal activities in the individual's worksite under WAC 192-150-135; or

(f) The individual's usual work was changed to work that violates the individual's religious convictions or sincere moral beliefs under WAC 192-150-140.

(3) Benefits based on wages paid by the following entities will **not** be charged to the experience-rating account of the separating employer as described in subsections (1) and (2) if they were earned:

(a) In another state;

(b) From a local government employer;

(c) From the federal government; or

(d) From any branch of the United States military.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042. WSR 04-23-058, § 192-320-075, filed 11/15/04, effective 12/16/04.]

AMENDATORY SECTION (Amending WSR 16-21-013, filed 10/7/16, effective 11/14/16)

**WAC 192-320-080 Overpayments caused by incorrect reporting of wages and hours—RCW 50.12.070 (2) (b) and 50.29.021 (~~((3)(a))~~) (4).**

(1) When an employer incorrectly reports an individual's wages or hours, and the claim becomes invalid due to a later correction in wages or hours, the department will charge that employer one hundred percent of benefits paid to that individual, except as provided in subsection (3) of this section.

(2) When an employer incorrectly reports an individual's wages and a claimant's weekly benefit amount or maximum benefits payable is reduced due to a later correction in wages, the department will charge that employer for the benefits that should not have been paid, but nonetheless were paid as a result of the employer's incorrect reports, except as provided in subsection (3) of this section.

(3) This section does not apply to the entities listed below. The department will charge only for the percentage of benefits that represent their percentage of base period wages. These include wages earned:

(a) In another state;

(b) From a local government employer;

(c) From the federal government; or

(d) From any branch of the United States military.

[Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 16-21-013, § 192-320-080, filed 10/7/16, effective 11/14/16. Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. WSR 07-23-128, § 192-320-080, filed 11/21/07, effective 1/1/08.]

AMENDATORY SECTION (Amending WSR 13-24-108, filed 12/3/13, effective 1/3/14)

**WAC 192-320-081 What constitutes an "event" for the purpose of determining if there is a pattern of failing to respond timely or adequately?—RCW 50.29.021(~~(-6)~~) (5).** (1) An event occurs if a benefit overpayment is created and the employer or the employer's agent significantly contributed to the overpayment by failing to respond timely or adequately without good cause to the department's written request for information relating to a claim.

(2) When deciding if an event has occurred, there must be a decision made by the department resulting in a benefit overpayment.

(3) An event may occur even if the employer is not in the base year of the claim.

(4) The department must examine past events which contributed to benefit overpayments when deciding if a pattern exists.

[Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 13-24-108, § 192-320-081, filed 12/3/13, effective 1/3/14.]

AMENDATORY SECTION (Amending WSR 13-24-108, filed 12/3/13, effective 1/3/14)

**WAC 192-320-082 How will the department determine good cause exists for failing to respond timely or adequately?—RCW 50.29.021(~~(-6)~~) (5).** (1) The department may find that good cause exists in certain situations when the employer fails to respond due to an unforeseen event outside of the employer's or employer's agent's control, such as:

(a) The death or serious illness of the employer;

(b) Destruction of the employer's place of business or business records not caused by, or at the direction of, the employer or the employer's agent;

(c) Fraud or theft against the employer.

(2) The employer is responsible to provide all pertinent facts and evidence or documentation for the department to determine good cause.

[Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 13-24-108, § 192-320-082, filed 12/3/13, effective 1/3/14.]

AMENDATORY SECTION (Amending WSR 13-24-108, filed 12/3/13, effective 1/3/14)

**WAC 192-320-083 What is a written request for information?—RCW 50.29.021(~~(-6)~~) (5).** For the purposes of this chapter, a written request for information relating to a claim is a paper or electronic transmission by the department requesting information from an employer or an employer's agent.

[Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 13-24-108, § 192-320-083, filed 12/3/13, effective 1/3/14.]

AMENDATORY SECTION (Amending WSR 13-24-108, filed 12/3/13, effective 1/3/14)

**WAC 192-320-084 What is an employer's agent?—RCW**

**50.29.021(~~(+6)~~) (5)**. For the purposes of this chapter, the employer's agent is the employer's designated representative responsible for providing information to the department.

[Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 13-24-108, § 192-320-084, filed 12/3/13, effective 1/3/14.]

**OTS-2947.2**

AMENDATORY SECTION (Amending WSR 10-23-064, filed 11/12/10, effective 12/13/10)

**WAC 192-350-070 What effect does a predecessor-successor relationship have on tax rates?** (1) Under RCW 50.29.062(1), if the successor is an employer at the time of the transfer of a business, the successor's tax rate shall remain unchanged for the rest of the calendar year. Beginning on January 1 of the year after the transfer and until the successor qualifies for its own rate, the successor's tax rate for each rate year shall combine the successor's experience with the experience of the predecessor or the relevant portions of the partial predecessor.

(2) (a) Under RCW 50.29.062 (2) (b), if the successor is not an employer at the time of the transfer of a business and if the transfer occurs after January 1, 2005, the successor's tax rate for the rest of the calendar year shall be the same as the predecessor employer at the time of the transfer. Any experience attributable to the predecessor shall be transferred to the successor.

(b) Under RCW 50.29.062 (2) (b) (ii), if there is a substantial continuity of ownership, control, or management by the successor, beginning on January 1 after the transfer, the successor's tax rate shall be based on a combination of the successor's experience and the transferred experience from the predecessor.

(c) Under RCW 50.29.062 (2) (b) (i), if there is not a substantial continuity of ownership, control, or management by the successor, beginning on January 1 after the transfer, the successor's tax rate shall be assigned under RCW 50.29.062 (2) (b) (i) (B). However, if the predecessor terminates business on December 31st of any year and the successor begins business on January 1st of the next year, the department will calculate tax rates as if the transfer occurred on January 1st. Therefore, the department will assign a tax rate to the predecessor for January 1st and that rate will transfer to the successor.

(3) If the successor simultaneously acquires businesses from two or more employers with different tax rates, the successor's tax rate shall be assigned under RCW 50.29.062 (2) (b) (iii).

(4) The tax rate on any payroll retained by a predecessor employer shall remain unchanged for the rest of the rate year in which the transfer occurs. Beginning on January 1 after the transfer, the prede-

cessor's tax rate shall be assigned under RCW 50.29.062 (~~(3)(b)~~)  
(2)(c)(ii).

(5) Changes in rate class for a predecessor or successor are effective only for the rate year the information was provided and for subsequent rate years.

(6) This section does not apply to a transfer of less than one percent of a business.

(7) This section does not apply if there is "SUTA dumping" under RCW 50.29.063.

[Statutory Authority: RCW 50.12.010, 50.12.040. WSR 10-23-064, § 192-350-070, filed 11/12/10, effective 12/13/10. Statutory Authority: RCW 50.12.010, 50.12.040, and 50.29.064. WSR 07-23-131, § 192-350-070, filed 11/21/07, effective 1/1/08.]

## WSR 21-12-075

## PERMANENT RULES

## BUILDING CODE COUNCIL

[Filed May 28, 2021, 11:07 a.m., effective June 28, 2021]

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

Purpose: To add amended section to chapter 51-50 WAC; specifically addressing chapter 16, section 1615 on tsunami loads. The state building code council convened a technical advisory group to develop this amendment to provide a more accurate map reference to areas effected [affected] in Washington state.

Citation of Rules Affected by this Order: New 1.

Statutory Authority for Adoption: RCW 19.27.031.

Other Authority: RCW 19.27.074.

Adopted under notice filed as WSR 21-05-067 on February 17, 2021.

A final cost-benefit analysis is available by contacting Stoyan Bumbalov, 1500 Jefferson Street, Olympia, WA 98504, phone 360-407-9277, email Stoyan.bumbalov@des.wa.gov.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 1, 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: May 21, 2021.

Diane Glenn  
Chair

## OTS-2881.1

### NEW SECTION

#### **WAC 51-50-1615 Tsunami loads.**

**1615.1 General.** The design and construction of Risk Category III and IV buildings and structures located in the Tsunami Design Zones shall be in accordance with Chapter 6 of ASCE 7, except as modified by this code.

USER NOTE: The intent of the Washington state amendments to ASCE 7 Chapter 6 (Tsunami Loads and Effects) is to require use of the Washington Tsunami Design maps to determine inundation limits, i.e., when a site is within a tsunami design zone, where those maps are available. If they are not available for a given site, ASCE 7 maps are to be used. For sites where the Washington state department of natural resources has parameters for tsunami inundation depth and flow velocity available, those parameters are required to be used in the energy grade line analysis methodology, and as a basis for comparison in the probabilistic tsunami hazard analysis in this chapter.

**1615.2 Modifications to ASCE 7.** The text of Chapter 6 of ASCE 7 shall be modified as indicated in this section.

**1615.2.1 ASCE 7 Section 6.1.1.** Modify the third paragraph and its exception in ASCE 7 Section 6.1.1 to read as follows:



The Tsunami Design Zone shall be determined using the Washington Tsunami Design Zone maps (WA-TDZ). The WA-TDZ maps are available at <https://www.dnr.wa.gov/wa-tdz>. For areas not covered by the extent of the WA-TDZ maps, the Tsunami Design Zone shall be determined using the ASCE Tsunami Design Geodatabase of geocoded reference points shown in Fig. 6.1-1. The ASCE Tsunami Design Geodatabase of geocoded reference points of runup and associated inundation Limits of the Tsunami Design Zone is available at <http://asce7tsunami.online>.

**EXCEPTION:** For coastal regions subject to tsunami inundation and not covered by WA-TDZ maps or Fig. 6.1-1, Tsunami Design Zone, inundation limits, and runup elevations shall be determined using the site-specific procedures of Section 6.7, or for Tsunami Risk Category II or III structures, determined in accordance with the procedures of Section 6.5.1.1 using Fig. 6.7-1.

**1615.2.2 ASCE 7 Section 6.1.1.** Add new fifth paragraph and user note to ASCE 7 Section 6.1.1 to read as follows:

Whenever a Tsunami Design Zone or Fig. 6.1-1 is referenced in ASCE 7 Chapter 6, it shall include the WA-TDZ maps, within the extent of those maps.

**USER NOTE:** Tsunami inundation depths and flow velocities may be obtained from the Washington state department of natural resources. See <https://www.dnr.wa.gov/wa-tdz>.

**1615.2.3 ASCE 7 Section 6.2.** Modify ASCE 7 Section 6.2 definitions to read as follows:

**MAXIMUM CONSIDERED TSUNAMI:** A probabilistic tsunami having a 2% probability of being exceeded in a 50-year period or a 2,475-year mean recurrence, or a deterministic assessment considering the maximum tsunami that can reasonably be expected to affect a site.

**TSUNAMI DESIGN ZONE MAP:** The Washington Tsunami Design Zone maps (WA-TDZ) designating the potential horizontal inundation limit of the Maximum Considered Tsunami, or outside of the extent of WA-TDZ maps, the map given in Fig. 6.1-1.

**1615.2.4 ASCE 7 Section 6.2.** Add new definitions to ASCE 7 Section 6.2 to read as follows:

**SHORELINE AMPLITUDE:** The Maximum Considered Tsunami amplitude at the shoreline, where the shoreline is determined by vertical datum in North American Vertical Datum (NAVD 88).

**WASHINGTON TSUNAMI DESIGN ZONE MAP (WA-TDZ):** The Washington department of natural resources maps of potential tsunami inundation limits for the Maximum Considered Tsunami, designated as follows:

Anacortes Bellingham area	MS 2018-02 Anacortes Bellingham
Elliott Bay Seattle	OFR 2003-14
Everett area	OFR 2014-03
Port Angeles and Port Townsend area	MS 2018-03 Port Angeles and Port Townsend
San Juan Islands	MS 2016-01
Southern Washington Coast	MS 2018-01
Tacoma area	OFR 2009-9

**1615.2.5 ASCE 7 Section 6.5.1.** Add new second paragraph to ASCE 7 Section 6.5.1 to read as follows:

**6.5.1 Tsunami Risk Category II and III buildings and other structures.** The Maximum Considered Tsunami inundation depth and tsunami flow velocity characteristics at a Tsunami Risk Category II or III building or other structure shall be determined by using the Energy

Grade Line Analysis of Section 6.6 using the inundation limit and run-up elevation of the Maximum Considered Tsunami given in Fig. 6.1-1.

Where tsunami inundation depth and flow velocity characteristics are available from the Washington state department of natural resources, those parameters shall be used to determine design forces in the Energy Grade Line Analysis in Section 6.6.

**1615.2.6 ASCE 7 Section 6.5.1.1.** Modify the first paragraph of ASCE 7 Section 6.5.1.1 to read as follows:

**6.5.1.1 Runup evaluation for areas where no map values are given.**

For Tsunami Risk Category II and III buildings and other structures where no mapped inundation limit is shown in the Tsunami Design Zone map, the ratio of tsunami runup elevation above Mean High Water Level to Offshore Tsunami Amplitude,  $R/HT$ , shall be permitted to be determined using the surf similarity parameter  $\xi_{100}$ , according to Eqs. (6.5-2a, b, c, d, or e) and Fig. 6.5-1.

**1615.2.7 ASCE 7 Section 6.5.2.** Add new second paragraph to ASCE 7 Section 6.5.2 to read as follows:

**6.5.2 Tsunami Risk Category IV buildings and other structures.**

The Energy Grade Line Analysis of Section 6.6 shall be performed for Tsunami Risk Category IV buildings and other structures, and the site-specific Probabilistic Tsunami Hazard Analysis (PTHA) of Section 6.7 shall also be performed. Site-specific velocities determined by site-specific PTHA determined to be less than the Energy Grade Line Analysis shall be subject to the limitation in Section 6.7.6.8. Site-specific velocities determined to be greater than the Energy Grade Line Analysis shall be used.

**EXCEPTIONS:** For structures other than Tsunami Vertical Evacuation Refuge Structures, a site-specific Probabilistic Tsunami Hazard Analysis need not be performed where the inundation depth resulting from the Energy Grade Line Analysis is determined to be less than 12 ft (3.66 m) at any point within the location of the Tsunami Risk Category IV structure. Where tsunami inundation depths and flow velocities are available for a site from the Washington state department of natural resources, those parameters shall be used as the basis of comparison for the PTHA above and to determine whether the exception applies, in lieu of the Energy Grade Line Analysis.

**1615.2.8 ASCE 7 Section 6.6.1.** Add new third paragraph to ASCE 7 Section 6.6.1 to read as follows:

**6.6.1 Maximum inundation depth and flow velocities based on run-up.** The maximum inundation depths and flow velocities associated with the stages of tsunami flooding shall be determined in accordance with Section 6.6.2. Calculated flow velocity shall not be taken as less than 10 ft/s (3.0 m/s) and need not be taken as greater than the lesser of  $1.5(g h_{max})^{1/2}$  and 50 ft/s (15.2 m/s).

Where the maximum topographic elevation along the topographic transect between the shoreline and the inundation limit is greater than the runup elevation, one of the following methods shall be used:

1. The site-specific procedure of Section 6.7.6 shall be used to determine inundation depth and flow velocities at the site, subject to the above range of calculated velocities.

2. For determination of the inundation depth and flow velocity at the site, the procedure of Section 6.6.2, Energy Grade Line Analysis, shall be used, assuming a runup elevation and horizontal inundation limit that has at least 100% of the maximum topographic elevation along the topographic transect.

Where tsunami inundation depths and flow velocities are available from Washington state department of natural resources, those parameters shall be used to determine design forces in the Energy Grade Line Analysis in Section 6.6.2.

**1615.2.9 ASCE 7 Section 6.7.** Modify ASCE 7 Section 6.7 and add a user note to read as follows:

When required by Section 6.5, the inundation depths and flow velocities shall be determined by site-specific inundation studies complying with the requirements of this section. Site-specific analyses shall use an integrated generation, propagation, and inundation model that replicates the given offshore tsunami waveform amplitude and period from the seismic sources given in Section 6.7.2.

USER NOTE: Washington Tsunami Design Zone maps and inundation depths and flow velocities from Washington state department of natural resources are based on an integrated generation, propagation, and inundation model replicating waveforms from the seismic sources specific to Washington state. Model data can be obtained by contacting Washington state department of natural resources. See <https://www.dnr.wa.gov/wa-tdz>.

**1615.2.10 ASCE 7 Section 6.7.5.1, Item 4.** Modify ASCE 7 Section 6.7.5.1, Item 4 to read as follows:

**6.7.5.1 Offshore tsunami amplitude for distant seismic sources.** Offshore tsunami amplitude shall be probabilistically determined in accordance with the following:

4. The value of tsunami wave amplitude shall be not less than 80% of the shoreline amplitude value associated with the Washington state inundation models as measured in the direction of the incoming wave propagation.

**1615.2.11 ASCE 7 Table 6.7-2.** Modify ASCE 7 Table 6.7-2 to read as follows:

**Table 6.7-2**

**Maximum Moment Magnitude**

<b>Subduction Zone</b>	<b>Moment Magnitude <math>M_{Wmax}</math></b>
Alaskan-Aleutian	9.2
Cascadia	9.0
Chile-Peru	9.5
Izu-Bonin-Mariana	9.0
Kamchatka-Kurile and Japan Trench	9.4

**1615.2.12 ASCE 7 Section 6.7.5.2.** Modify ASCE 7 Section 6.7.5.2 to read as follows:

**6.7.5.2 Direct computation of probabilistic inundation and runup.** It shall be permitted to compute probabilistic inundation and runup directly from a probabilistic set of sources, source characterizations, and uncertainties consistent with Section 6.7.2, Section 6.7.4, and the computing conditions set out in Section 6.7.6. The shoreline amplitude values computed shall not be lower than 80% of the shoreline amplitude value associated with the Washington state inundation models as measured in the direction of the incoming wave propagation.

**1615.2.13 ASCE 7 Section 6.7.6.2.** Modify ASCE 7 Section 6.7.6.2 and add a user note to read as follows:

**6.7.6.2 Seismic subsidence before tsunami arrival.** Where the seismic source is a local earthquake event, the Maximum Considered Tsunami inundation shall be determined for an overall elevation subsidence value shown in Fig. 6.7-3(a) and 6.7-3(b) or shall be directly computed for the seismic source mechanism. The GIS digital map layers of subsidence are available in the ASCE Tsunami Design Geodatabase at <http://asce7tsunami.online>.

USER NOTE: The WA-TDZ maps include computed subsidence in the inundation. Subsidence data may be obtained from the Washington state department of natural resources. See <https://www.dnr.wa.gov/wa-tdz>.

**1615.2.14 ASCE 7 Section 6.8.9.** Modify the first sentence of ASCE 7 Section 6.8.9 to read as follows:

**6.8.9 Seismic effects on the foundations preceding maximum considered tsunami.** Where designated in the Tsunami Design Zone map as a site subject to a tsunami from a local earthquake, the structure shall be designed for the preceding coseismic effects.

[]

**WSR 21-12-077**  
**PERMANENT RULES**  
**DEPARTMENT OF**

**SOCIAL AND HEALTH SERVICES**

(Economic Services Administration)

[Filed May 28, 2021, 1:13 p.m., effective July 1, 2021]

Effective Date of Rule: July 1, 2021.

Purpose: The department is amending WAC 388-484-0006 TANF/SFA time limit extensions, to implement statutory requirements under 2SSB 6478 (chapter 320, Laws of 2020) and expand the definition of homelessness, as defined in the McKinney-Vento Homeless Assistance Act.

Citation of Rules Affected by this Order: Amending WAC 388-484-0006.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.770, 74.08.090.

Other Authority: 2SSB 6478 (chapter 320, Laws of 2020); C.F.R. 20 § 416-2095 through § 416.2099.

Adopted under notice filed as WSR 21-09-069 on April 20, 2021.

Changes Other than Editing from Proposed to Adopted Version: The department removed language from the proposed version that granted a time limit extension to clients who are "Washington state residents affected by a governor declared state of emergency."

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

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

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

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

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

Date Adopted: May 28, 2021.

Katherine I. Vasquez  
Rules Coordinator

**SHS-4800.4**

AMENDATORY SECTION (Amending WSR 20-05-046, filed 2/13/20, effective 3/15/20)

**WAC 388-484-0006 TANF/SFA time limit extensions. (1) What happens after I receive sixty or more months of TANF/SFA cash assistance?**

After you receive sixty or more months of TANF/SFA cash assistance according to WAC 388-484-0005, you may qualify for additional months of cash assistance. We call these additional months of TANF/SFA cash assistance a hardship TANF/SFA time limit extension.

**(2) Who is eligible for a hardship TANF/SFA time limit extension?**

You are eligible for a hardship TANF/SFA time limit extension if you are on TANF, are otherwise eligible for TANF, or are an ineligible parent, and you have received sixty cumulative months of TANF and:

(a) You are approved for one of the exemptions from mandatory participation according to WAC 388-310-0350 (1)(a) through (d) or you are an ineligible parent who meets the criteria for an exemption from mandatory WorkFirst participation; or

(b) You:

(i) Are a supplemental security income recipient or a Social Security disability insurance recipient; or

(ii) Are at least sixty-five years old, blind as defined by the Social Security Administration or disabled as determined under chapter 388-449 WAC; or

(iii) Have an open child welfare case with a state or tribal government and this is the first time you have had a child dependent under RCW 13.34.030 in this or another state or had a child a ward of a tribal court; or

(iv) Are working in unsubsidized employment for thirty-two hours or more per week; or

(v) Document that you meet the family violence option criteria in WAC 388-61-001 and are participating satisfactorily in specialized activities needed to address your family violence according to a service plan developed by a person trained in family violence or have a good reason, as described in WAC 388-310-1600(3) for failure to participate satisfactorily in specialized activities; or

(vi) Are homeless by reason of hardship, including when your family includes a child or youth who is without a fixed regular, and adequate nighttime residence as described in ((RCW 43.185C.010(12-))) the federal McKinney-Vento Homeless Assistance Act (Title 42. U.S.C. 11434a(2), chapter 119, subchapter VI, part B) as it existed on January 1, 2020.

**(3) Who reviews and approves a hardship time limit extension?**

(a) Your case manager or social worker will review your case and determine whether a hardship time limit extension type will be approved.

(b) This review will not happen until after you have received at least fifty-two months of assistance but before you reach your time limit or lose cash assistance due to the time limit.

(c) Before you reach your time limit or lose cash assistance due to the time limit, the department will send you a notice that tells you whether a hardship time limit extension will be approved when your time limit expires and how to request an administrative hearing if you disagree with the decision.

**(4) When I have an individual responsibility plan, do my WorkFirst participation requirements change when I receive a hardship TANF/SFA time limit extension?**

(a) Even if you qualify for a hardship TANF/SFA time limit extension you will still be required to participate as required in your individual responsibility plan (WAC 388-310-0500). You must still meet all of the WorkFirst participation requirements listed in chapter 388-310 WAC while you receive a hardship TANF/SFA time limit extension.

(b) If you do not participate in the WorkFirst activities required by your individual responsibility plan, and you do not have a good reason under WAC 388-310-1600, the department will follow the sanction rules in WAC 388-310-1600.

**(5) Do my benefits change if I receive a hardship TANF/SFA time limit extension?**

(a) You are still a TANF/SFA recipient or an ineligible parent who is receiving TANF/SFA cash assistance on behalf of your child and your cash assistance, services, or supports will not change as long as you continue to meet all other TANF/SFA eligibility requirements.

(b) During the hardship TANF/SFA time limit extension, you must continue to meet all other TANF/SFA eligibility requirements. If you no longer meet TANF/SFA eligibility criteria during your hardship time limit extension, your benefits will end.

**(6) How long will a hardship TANF/SFA time limit extension last?**

(a) We will review your hardship TANF/SFA time limit extension and your case periodically for changes in family circumstances:

(i) If you are extended under WAC 388-484-0006 (2)(a), (b)(i) or (ii) then we will review your extension at least every twelve months;

(ii) If you are extended under WAC 388-484-0006 (2)(b)(iii), (iv), (v), or (vi) then we will review your extension at least every six months.

(b) Your hardship TANF/SFA time limit extension may be renewed for as long as you continue to meet the criteria to qualify for a hardship time limit extension.

(c) If during the extension period we get proof that your circumstances have changed, we may review your case and determine if you continue to qualify for a hardship TANF/SFA time limit extension. When you no longer qualify for a hardship TANF/SFA time limit extension we will stop your TANF/SFA cash assistance. You will be notified of your case closing and will be given the opportunity to request an administrative hearing before your benefits will stop.

[Statutory Authority: RCW 41.05.021, 74.04.050, 74.04.055, 74.04.057, 74.08.025, 74.08.090, 74.09.035, 74.09.530, 74.62.030, chapters 74.08A, and 74.12 RCW. WSR 20-05-046, § 388-484-0006, filed 2/13/20, effective 3/15/20. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and 74.08A.010. WSR 15-24-056, § 388-484-0006, filed 11/24/15, effective 1/1/16. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, chapters 74.08A and 74.12 RCW, 2011 1st sp.s. c 42, and 2011 1st sp.s. c 2. WSR 12-05-039, § 388-484-0006, filed 2/10/12, effective 3/12/12. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and chapters 74.08A and 74.12 RCW. WSR 10-24-013, § 388-484-0006, filed 11/18/10, effective 12/19/10. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and chapter 74.08A RCW. WSR 06-10-034, § 388-484-0006, filed 4/27/06, effective 6/1/06. Statutory Authority: RCW 74.08.090, 74.04.050, and 74.08A.340. WSR 03-24-057, § 388-484-0006, filed 12/1/03, effective 1/1/04. Statutory Authority: RCW 74.08A.010(4), 74.08A.340, 74.08.090, 74.04.050. WSR 02-12-068, § 388-484-0006, filed 5/31/02, effective 6/1/02.]

## WSR 21-12-084

## PERMANENT RULES

## DEPARTMENT OF REVENUE

[Filed June 1, 2021, 10:26 a.m., effective July 2, 2021]

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

Purpose: This rule provides guidance on who qualifies as a marketplace facilitator and describes the tax reporting responsibilities of a marketplace facilitator.

Citation of Rules Affected by this Order: New WAC 458-20-282.

Statutory Authority for Adoption: RCW 82.32.300, 82.01.060(2).

Other Authority: RCW 82.08.0531, 82.08.010, 82.08.052, 82.02.250, 82.02.260, 82.32.762.

Adopted under notice filed as WSR 21-07-065 on March 16, 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 1, Amended 0, Repealed 0.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, 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: June 1, 2021.

Atif Aziz  
Rules Coordinator

**OTS-2750.2**NEW SECTION**WAC 458-20-282 Marketplace tax collection and reporting. (1)**

**Introduction.** This rule explains the reporting responsibilities of a marketplace facilitator required to collect sales and use tax on behalf of marketplace sellers making retail sales through the facilitator's marketplace. See Substitute Senate Bill 5581 (2019). This rule presumes the marketplace facilitator has substantial nexus with Washington to incur a sales or use tax collection obligation.

(2) **Other rules.** In addition to this rule, readers may want to refer to the following rules for additional information:

- WAC 458-20-103 Gift certificates—Sale deemed to occur and retail sales tax collected at time of redemption.
- WAC 458-20-108 Selling price—Credit card service fees, foreign currency, discounts, patronage dividends.
- WAC 458-20-145 Local sales and use tax.
- WAC 458-20-193 Interstate sales of tangible personal property.
- WAC 458-20-193C Imports and exports—Sales of goods from or to persons in foreign countries.



• WAC 458-20-221 Collection of use tax by retailers and selling agents.

(3) **Rule examples.** This rule includes examples that identify a set of facts and then state a conclusion. These examples are only a general guide. The department will evaluate each case on its particular facts and circumstances.

(4) **Organization of rule.** This rule is divided into six parts:

- Part I - Definitions.
- Part II - Defining a Marketplace Facilitator.
- Part III - Tax Collection Responsibilities.
- Part IV - Liability Relief.
- Part V - Providing Sales Information to Marketplace Sellers.
- Part VI - Marketplace Audits.

### Part I - Definitions

The definitions in this part are provided in RCW 82.08.010 and apply throughout this rule unless the context clearly requires otherwise.

(101) (a) "Affiliated person" means a person that, with respect to another person:

- (i) Has an ownership interest of more than five percent, whether direct or indirect, in the other person; or
- (ii) Is related to the other person because a third person, or group of third persons who are affiliated persons with respect to each other, holds an ownership interest of more than five percent, whether direct or indirect, in the related persons.

(b) For purposes of this subsection:

- (i) "Ownership interest" means the possession of equity in the capital, the stock, or the profits of the other person; and
- (ii) An indirect ownership interest in a person is an ownership interest in an entity that has an ownership interest in the person or in an entity that has an indirect ownership interest in the person.

(102) "Consumer" has the same meaning as provided in chapters 82.04, 82.08, and 82.12 RCW.

(103) "Marketplace" means a physical or electronic place including, but not limited to, a store, a booth, an internet website, a catalog or a dedicated sales software application, where tangible personal property, digital codes and digital products, or services are offered for sale.

(104) (a) "Marketplace facilitator" means a person that:

(i) Contracts with sellers to facilitate for consideration, regardless of whether deducted as fees from the transaction, the sale of the seller's products through a marketplace owned or operated by the person (collectively "facilitates sales for consideration");

(ii) Engages directly or indirectly, through one or more affiliated persons, in transmitting or otherwise communicating the offer or acceptance between the buyer and seller (collectively "transmits offer or acceptance"). For purposes of this subsection, mere advertising does not constitute transmitting or otherwise communicating the offer or acceptance between the buyer and seller; and

(iii) Engages directly or indirectly, through one or more affiliated persons, in any of the following activities with respect to the seller's products:

- (A) Payment processing services;
- (B) Fulfillment or storage services;
- (C) Listing products for sale;
- (D) Setting prices;

(E) Branding sales as those of the marketplace facilitator;  
 (F) Taking orders; or  
 (G) Providing customer service or accepting or assisting with returns or exchanges (collectively "specified activities").

(b) (i) "Marketplace facilitator" does not include:

(A) A person who provides internet advertising services, including listing products for sale, so long as the person does not also transmit offer or acceptance and engage in any specified activities; or

(B) A person with respect to the provision of travel agency services or the operation of a marketplace or that portion of a marketplace that enables consumers to purchase transient lodging accommodations in a hotel or other commercial transient lodging facility.

(ii) The exclusion in (b) of this subsection does not apply to a marketplace or that portion of a marketplace that facilitates the retail sale of transient lodging accommodations in homes, apartments, cabins, or other residential dwelling units.

(iii) For purposes of (b) of this subsection, the following definitions apply:

(A) "Hotel" has the same meaning as in RCW 19.48.010.

(B) "Travel agency services" means arranging or booking, for a commission, fee or other consideration, vacation or travel packages, rental car or other travel reservations or accommodations, tickets for domestic or foreign travel by air, rail, ship, bus, or other medium of transportation, or hotel or other lodging accommodations.

(105) "Marketplace seller" means a seller that makes retail sales through any marketplaces operated by a marketplace facilitator, regardless of whether the seller is required to be registered with the department as provided in RCW 82.32.030.

(106) "Person" means any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, copartnership, joint venture, club, company, joint stock company, business trust, municipal corporation, political subdivision of the state of Washington, corporation, limited liability company, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise and the United States or any instrumentality thereof.

(107) "Product" has the same meaning as provided in RCW 82.32.023.

(108) "Purchaser" means any consumer who purchases or leases a product sourced to this state under RCW 82.32.730.

(109) "Retail sale" and "sale" have the same meaning as provided in chapter 82.04 RCW.

(110) "Seller" has the same meaning as provided in RCW 82.08.010.

## Part II - Defining A Marketplace Facilitator

(201) (a) **Who is a marketplace facilitator?** A marketplace facilitator is a person who facilitates sales for consideration of a marketplace seller's products through a marketplace, transmits offer or acceptance between the buyer and seller, and engages in at least one of the specified activities listed in subsection (104) (a) (iii) of this rule. A person must meet all three parts of the definition to be a marketplace facilitator. Generally, a person is facilitating a sale when the sale is conducted through the person's marketplace.

(b) **Who is not a marketplace facilitator?**

(i) **Advertisers.** Persons that merely advertise goods for sale, including listing products for sale in the advertisement, and do not

handle transactions do not meet the definition of a marketplace facilitator, as long as those persons do not meet the other requirements of the marketplace facilitator definition. Additionally, mere advertising does not constitute transmitting or otherwise communicating the offer or acceptance between the buyer and seller for the purposes of subsection (104) (a) (ii) of this rule of the marketplace facilitator definition.

(ii) **Travel agents and hotel marketplaces.** A person operating a marketplace is not considered a marketplace facilitator for any portion of its marketplace that provides travel agency services or enables consumers to purchase transient lodging accommodations in a hotel or other commercial transient lodging facility. This exclusion does not apply to any portion of a marketplace that facilitates the retail sale of transient lodging accommodations in homes, apartments, cabins, or other residential dwelling units.

(c) **Responsibilities depend on role in transaction.** A person can be a retailer for some transactions and a marketplace facilitator for some transactions, but it can only be one of these designations in any particular transaction. A person's specific reporting responsibilities as a retailer or marketplace facilitator depends on its particular role in the transaction.

**Example 1.** Intergalactic Fulfillment Portal (IFP) lists products sold by third parties at retail on its website. IFP communicates the offer and acceptance between the seller and buyer for the sale of these third-party products. IFP completes the sales transactions on its website, processes the payments, and is paid a percentage of the sales price. IFP is a marketplace facilitator, as it meets all three parts of the marketplace facilitator definition (facilitates sales for consideration, transmits offer or acceptance, and engages in at least one specified activity--processing payments).

**Example 2.** Same facts as Example 1, except IFP uses a third party to process the payments. IFP still meets the definition of a marketplace facilitator, as it still meets all three parts of the marketplace facilitator definition (facilitates sales for consideration, transmits the offer or acceptance, and engages in a specified activity--listing products for sale). A person does not need to process payments to meet the definition of a marketplace facilitator, as any one of the specified activities listed in subsection (104) (a) (iii) of this rule is sufficient.

**Example 3.** Taste of Andromeda (TOA) is a business that contracts with various restaurants to allow them to prepare and sell food (all of which is subject to retail sales tax) in the business's food court. Customers order and collect their food from the restaurants, but TOA, not the third-party restaurants, completes the sale and accepts payment for the prepared food. TOA gives the third-party restaurants the remaining proceeds of the sale net of the amount TOA retains for itself. TOA meets the definition of a marketplace facilitator, as it meets all three parts of the marketplace facilitator definition (facilitates sales for consideration, transmits offer or acceptance, and engages in a specified activity--processing payments).

**Example 4.** First Alpha Centauri Technology (FACT) performs the payment processing for an online marketplace. Neither FACT nor any of FACT's affiliates performs any other function related to the operation or sale of products on the marketplace. FACT does not meet the definition of a marketplace facilitator, as it only satisfies one of the three parts of the marketplace facilitator definition, in this case engaging in a specified activity. FACT does not meet the other two

parts of the marketplace facilitator definition (it is neither facilitating sales for consideration, nor is it transmitting offer or acceptance).

**Example 5.** Neptunian Connection (NC) is a business that lists products sold by third parties on its website. NC does not facilitate the sale of these products for consideration. When purchasers want to purchase a listed product, NC transfers the purchaser to the third-party seller's website to complete the sale. NC has no involvement in the sales transaction. NC does not meet the definition of a marketplace facilitator (NC neither gets paid to facilitate a sale for consideration on a marketplace, nor transmits offer or acceptance).

**Example 6.** Antares Travel Solutions (ATS) owns and operates a marketplace for used teleporters and gets paid for facilitating sales of used teleporters by third-party sellers. ATS facilitates sales for consideration, but neither transmits offers or acceptances, nor engages in a specified activity. However, ATS owns 19% of the capital stock of the Scorpius-Centaurus Association (SCA). SCA owns 11% of the capital stock of Mahtab Affiliated Technologies (MAT), which transmits the offers and acceptances on the ATS marketplace, and processes payments for the ATS marketplace. Since ATS has an indirect ownership interest in MAT, MAT is an affiliated person with respect to ATS. As a result, ATS meets all three parts of the definition of a marketplace facilitator (facilitates sales for consideration, transmits offers or acceptances indirectly through an affiliated person, and engages in a specified activity indirectly through affiliated person--payment processing services).

**Example 7.** Triangulum Transient Geological Excursions (TTGE) operates a marketplace specializing in transient lodging for individuals interested in geology. TTGE's marketplace facilitates the retail sale of transient lodging accommodations in residential cabins offering views of volcanoes. TTGE's marketplace also allows for the sale of transient lodging located in a hotel next to a tectonic fault. TTGE is a marketplace facilitator for the sales of transient lodging located in the residential cabins, but is not a marketplace facilitator for the sales of the transient lodging located in the hotel. TTGE does not need to report its sales of the transient lodging located in the hotel.

### Part III - Tax Collection Responsibilities

#### (301) What must be collected and remitted?

(a) **Requirement to collect and remit sales or use tax.** A marketplace facilitator must collect and remit sales or use tax on all taxable retail sales sourced to Washington on behalf of any marketplace seller making retail sales through the marketplace facilitator's marketplace.

(i) **Determining the correct combined state and local sale of use tax rate.** The marketplace facilitator must determine the correct combined state and local sales or use tax rate to charge for sales sourced to Washington. The state tax rate is established in RCW 82.08.020. For information on determining the applicable local tax rate, see WAC 458-20-145.

(ii) **Relief for marketplace seller.** Except as otherwise provided in subsection (401)(b) of this rule, a marketplace seller is not required to collect or remit sales or use tax on taxable retail sales through a marketplace facilitator's marketplace if the marketplace seller has obtained documentation from the marketplace facilitator indicating that the marketplace facilitator is registered with the de-

partment and will collect all applicable taxes due under chapters 82.08 and 82.12 RCW on all taxable retail sales made on behalf of the marketplace seller through the facilitator's marketplace. The required documentation must be in writing, but may be transmitted electronically. The required documentation may be included in agreements between the marketplace seller and the marketplace facilitator or in information distributed or accessible to marketplace sellers through the facilitator's marketplace. Marketplace sellers should retain this documentation with their own tax records. The documentation must clearly state the marketplace facilitator's intention to collect sales or use tax on behalf of the marketplace seller, along with the department-issued tax account ID number that the marketplace facilitator will use to report and remit the sales or use tax collected on behalf of the marketplace seller. If the marketplace seller does not obtain documentation from the marketplace facilitator, then it may be held liable for any uncollected sales tax on sales through that facilitator's marketplace.

(b) **Requirement to collect and remit other taxes and fees.**

(i) (A) **Taxes and fees authorized in chapter 82.08 RCW.** In addition to collecting and remitting sales or use tax, a marketplace facilitator must also collect and remit all other applicable taxes and fees authorized in chapter 82.08 RCW on all retail sales sourced to Washington on behalf of any marketplace seller making retail sales through the marketplace facilitator's marketplace.

(B) **Taxes and fees in chapter 82.08 RCW.** Applicable taxes and fees in chapter 82.08 RCW may include, but are not limited to:

(I) Motor vehicle sales tax (see RCW 82.08.020(2)).

(II) Spirits taxes (see RCW 82.08.150).

(ii) (A) **Other applicable taxes and fees.** Beginning January 1, 2020, a marketplace facilitator must also collect and remit all other applicable taxes and fees on all retail sales sourced to Washington on behalf of any marketplace seller making retail sales through the marketplace facilitator's marketplace. For the purposes of this subsection, "taxes and fees" means any monetary exaction, regardless of its label, imposed on a buyer and that the seller is required to collect and pay over to the department.

(B) **Examples of taxes and fees.** Other applicable taxes and fees may include, but are not limited to:

(I) Lodging taxes and charges (see WAC 458-20-166).

(II) Solid fuel burning device fee (see RCW 70A.15.3620).

(III) Tire fees (see RCW 70A.205.405, 46.37.427, and WAC 458-20-272).

(302) **Exemptions.**

(a) **Verification.** In cases where a marketplace facilitator seeks to determine whether an exemption applies to a particular retail sale, the marketplace facilitator may request required documentation from the marketplace seller or purchaser to determine whether the exemption applies. This subsection does not obligate a marketplace facilitator to accept a purchaser's claim of an exempt sale.

(b) **Documentation.** The marketplace facilitator must retain any documentation from the marketplace seller or purchaser needed to verify any exemption claimed. See RCW 82.08.050. Exemption certificates provided by purchasers may designate either the name of the marketplace facilitator or the marketplace seller in the field referring to the seller in order to ensure there is a properly completed exemption certificate.

(c) **Common exemptions.** Applicable exemptions may include, but are not limited to:

(i) Sales of food and food ingredients (see RCW 82.08.0293 and 82.12.0293 and WAC 458-20-244).

(ii) Sales of prescription drugs and prosthetic devices (see RCW 82.08.0281 and WAC 458-20-18801).

(iii) Sales to an Indian tribal member in Indian country (see WAC 458-20-192).

(iv) Sales to the United States government (see WAC 458-20-190).

(d) **Sales for resale.** If a marketplace facilitator chooses to make a sale for resale, it must also accept and retain any documentation from the purchaser needed to verify that a sale is for resale rather than for end use by the purchaser (see RCW 82.04.060 and WAC 458-20-102).

(303) **Tax return reporting.**

(a) **Remitting tax.** A marketplace facilitator may report the sales or use tax, along with any other applicable taxes and fees, collected on behalf of marketplace sellers separately from the sales or use tax collected on its own sales into Washington under a separate tax reporting account or separate legal entity account. Alternatively, a marketplace facilitator may report all such taxes on the same tax reporting account as it reports its own direct sales.

(b) **Business and occupation tax.** Generally, marketplace facilitators do not owe retailing business and occupation (B&O) tax on retail sales facilitated on its marketplace, but do owe retailing B&O tax on products they sell in their own name (see RCW 82.04.480). A marketplace facilitator may be subject to B&O tax under the service and other activities classification on the gross income from any commission, fee, or other compensation earned from facilitating a sale. See WAC 458-20-19401 and 458-20-19402 for more information on when such B&O tax is due.

#### Part IV - Liability Relief

(401) **Incorrect information provided by marketplace seller.**

(a) **Marketplace facilitator relief.** A marketplace facilitator is relieved of liability for failure to collect the correct amount of sales or use tax, with respect to sales on behalf of marketplace sellers, to the extent that the marketplace facilitator can show to the department's satisfaction that the error was due to incorrect information given to the marketplace facilitator by the marketplace seller, unless the marketplace facilitator and the marketplace seller are affiliated persons. To qualify for the liability relief under this subsection, a marketplace facilitator must have received erroneous information from a marketplace seller that prevented the marketplace facilitator from properly determining the correct tax amount owed. A marketplace facilitator does not qualify for the liability relief under this subsection when a marketplace seller provided information that was correct, but was incomplete or insufficient to make the proper taxability determination.

(b) **Marketplace seller liability.** Where the marketplace facilitator is relieved of liability under (a) of this subsection, the marketplace seller is solely liable for the amount of uncollected tax due.

(402) **Percentage of tax due.**

(a) **Conditions for relief.** Subject to the limits detailed below in (b) and (c) of this subsection, and subsection (403) of this rule, a marketplace facilitator is relieved of liability for the failure to collect sales and use tax on taxable retail sales to the extent that

the marketplace facilitator can show to the department's satisfaction that:

(i) The taxable retail sale was made through the marketplace facilitator's marketplace;

(ii) The taxable retail sale was made solely as the agent of a marketplace seller, and the marketplace facilitator and the marketplace seller are not affiliated persons; and

(iii) The failure to collect sales or use tax was not due to an error in sourcing the sale under RCW 82.32.730.

(b) **Limitations on relief.** Liability relief for a marketplace facilitator under (a) of this subsection is limited as follows:

(i) For calendar year 2018, the liability relief may not exceed ten percent of the total tax due under chapters 82.08 and 82.12 RCW on taxable retail sales by the marketplace facilitator and collected on behalf of a marketplace seller and sourced to this state under RCW 82.32.730 during the same calendar year.

(ii) For calendar year 2019, the liability relief may not exceed five percent of the total tax due under chapters 82.08 and 82.12 RCW on taxable retail sales by the marketplace facilitator and collected on behalf of a marketplace seller and sourced to this state under RCW 82.32.730 during the same calendar year.

(c) **Situations when relief is not available.** The liability relief identified in this subsection is not available for retail sales that a marketplace facilitator determined were subject to sales or use tax but chose not to collect the tax, or where the marketplace facilitator otherwise acts fraudulently to avoid collecting tax. Liability relief is also not available when the failure to collect sales or use tax was contrary to specific written instructions provided by the department.

(d) **Marketplace seller relief.** Where the marketplace facilitator is relieved of liability under (a) of this subsection, the marketplace seller is also relieved of liability for the amount of uncollected tax due.

(e) **How to claim the relief.** The liability relief provided in (a) of this subsection may be claimed when the department determines that additional sales or use tax is due for a particular calendar year on sales meeting the criteria of (a)(i) through (iii) of this subsection. Upon such a determination by the department, the marketplace facilitator may claim relief from liability on such additional tax, subject to the limitations in (b) and (c) of this subsection, and subsection (403) of this rule. Any amounts remaining after application of these limitations are due in full by the taxpayer and subject to any applicable penalty and interest as provided in chapter 82.32 RCW.

(f) **When is a sale facilitated?** For purposes of this subsection, a retail sale is deemed to be facilitated by a marketplace facilitator when the marketplace facilitator either:

(i) Accepts the order for the product;

(ii) Communicates to the marketplace seller the buyer's offer to purchase the product;

(iii) Accepts the buyer's payment for the product; or

(iv) Delivers or arranges for delivery of the product.

(403) **Loss of liability relief.** A marketplace facilitator that does not provide the reports required under subsection (501) of this rule is not eligible for the liability relief provided under subsections (401) and (402) of this rule.

## **Part V - Providing Sales Information to Marketplace Sellers**

### **(501) Facilitated Washington sales.**

(a) **Monthly access.** Beginning July 1, 2019, a marketplace facilitator must provide each of its marketplace sellers with access, through a written report or other means, to gross sales information for all Washington sales facilitated on behalf of the marketplace seller during the immediately preceding month. Marketplace facilitators must provide such written report or access within fifteen calendar days following the end of each month. The report must include all information required by the marketplace seller to fulfill its tax reporting obligations with the department, including any delivery charges, fees, or other charges on sales facilitated by the marketplace facilitator.

(b) **Reasonable method of estimating sales.** If a marketplace seller does not receive the gross sales information for all Washington sales through a marketplace facilitator, the marketplace seller may determine its business and occupation tax liability under chapter 82.04 RCW based on a reasonable method of estimating Washington sales as may be required or approved by the department.

(c) **What are Washington sales?** For purposes of this subsection, "Washington sales" means any sale sourced to this state under RCW 82.32.730, regardless of whether the sale is a retail sale or wholesale sale.

(502) **Loss of liability relief.** A marketplace facilitator that does not comply with subsection (501)(a) of this rule is not eligible for the sales tax liability relief provided in subsections (401) and (402) of this rule.

#### Part VI - Marketplace Audits

(601) **Marketplace audit.** A marketplace facilitator is subject to audit in order to ensure tax is properly reported and remitted on all sales occurring on the marketplace, including sales facilitated on behalf of marketplace sellers.

##### (602) **Additional documentation.**

(a) **Verifying tax collection and exemptions.** A marketplace facilitator may be required to provide documentation for all sales occurring on its marketplace to verify that the marketplace facilitator:

(i) Remitted all tax charged to customers, charged the correct amount of tax on all taxable retail transactions, and properly sourced all taxable retail sales pursuant to RCW 82.32.730; and

(ii) Properly granted exemptions, if applicable, verified the type of exemption granted, and retained the appropriate supporting documentation to substantiate the exemption as required under RCW 82.32.070 and subsection (302) of this rule.

(b) **Electronic format.** The marketplace facilitator must provide this information electronically, in agreed upon format, at the department's request.

(c) **Frequency.** The department may request this information on a more frequent or periodic basis to supplement its routine audit effort.

(603) **Information from marketplace sellers.** The marketplace facilitator may request additional information from a marketplace seller making sales on its marketplace in order to comply with these audit requirements.

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## WSR 21-12-085

## PERMANENT RULES

## DEPARTMENT OF REVENUE

[Filed June 1, 2021, 10:29 a.m., effective July 2, 2021]

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

Purpose: Proposed technical corrections to edit two typographical errors and make two nonsubstantive changes restoring "special programming" from "custom-made programming" and restoring "special programs" to reflect industry usage.

Citation of Rules Affected by this Order: Amending WAC 458-20-241.

Statutory Authority for Adoption: RCW 82.04.280, 82.32.300, and 82.01.060.

Adopted under notice filed as WSR 21-07-064 on March 16, 2021.

A final cost-benefit analysis is available by contacting Tim Danforth, 6400 Linderson Way S.W., Tumwater, WA 98501, phone 360-534-1538, fax 360-534-1526, email TimD@dor.wa.gov.

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

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Date Adopted: June 1, 2021.

Atif Aziz  
Rules Coordinator

**OTS-2916.1**

AMENDATORY SECTION (Amending WSR 20-20-036, filed 9/30/20, effective 9/30/20)

**WAC 458-20-241 Radio and television broadcasting. (1) Introduction.**

(a) This section provides tax reporting instructions for persons in the radio and television broadcasting industry. It explains the application of business and occupation (B&O) tax, retail sales tax, and use tax to the industry and provides an explanation of the various deductions available.

(b) For a discussion of the tax liabilities of subscriber television services, see WAC 458-20-227.

(c) For a discussion of the taxability of digital products, see WAC 458-20-15503.

(2) **Definitions.** For the purpose of this rule:

(a) "Broadcast" or "broadcasting" includes both radio and television commercial broadcasting stations unless it clearly appears from the context to refer only to radio or television.

(b) "Local advertising" means all broadcast advertising other than national, network, or regional advertising as herein defined.

(c) "National advertising" means broadcast advertising paid for by sponsors that supply goods or services on a national or international basis.

(d) "Network advertising" means broadcast advertising originated by national or regional broadcast networks from outside the state of Washington, the broadcast advertising being supplied by national or regional network broadcasting companies.

(e) "Regional advertising" means broadcast advertising paid for by sponsors that supply goods or services on a regional basis over two or more states.

(3) **Business and occupation tax classifications.** Persons in the radio and television broadcasting industry must report business and occupation (B&O) tax based on the B&O classification of their income, as follows:

(a) **Radio and television broadcasting.** Gross income from the sale of radio or television advertising is taxable under the radio and television broadcasting classification, subject to the deduction authorized under RCW 82.04.280 (1)(f)(i) or (ii). (See subsection (4)(b) of this section for more information on the deduction);

(b) **Service and other activities.** Gross income from personal or professional services not taxed under a different classification, such as gross income from producing and making custom commercials or (~~custom-made programming~~) special programs, fees for providing writers, directors, artists, and technicians, and granting a license to use facilities (as distinct from the leasing or renting of tangible personal property, see WAC 458-20-211) is taxable under the service and other classification;

(c) **Royalties.** Gross income from charges to other broadcasters for granting the right to use intangible property (e.g., the right to use broadcast material) is taxable under the royalties classification;

(d) **Retailing or wholesaling.** Gross income from sales of tangible personal property to consumers, including gross proceeds from sales of films and tape produced for general distribution and from sales of copies of commercials, programs, films, etc., is taxable under the retailing classification even though the original was not subject to retail sales tax. Gross income from sales of tangible personal property to persons other than consumers is taxable under the wholesaling classification. Gross income from the sale of custom-made programs, commercials, films, etc., is taxable under the service and other activities classification; and

(e) **Manufacturing.** The value of special programs, such as public affairs, religious, travelogues, and other general programming, which are distributed via tangible media to other broadcasters under a lease or contract granting a mere license to use, is taxable under the manufacturing classification. (For a discussion of the taxability of digital products transferred electronically, see WAC 458-20-15503.) Manufacturing B&O tax does not apply to a recording made for the broadcaster's own use, including news, delayed programs, commercials and promotions, special and syndicated programming, and "entire day" programming.

(4) **Deductions from gross income from advertising.**

(a) **Agency fees.** It is a general trade practice in the broadcasting industry to make allowances to advertising agencies in the form of the deduction or exclusion of a certain percentage of the gross charge made for advertising ordered by the agency for the advertiser. This allowance is deductible as a discount in the computation of the broadcaster's tax liability in the event that the allowance is shown as a discount or price reduction in the billing or that the billing is on a net basis, i.e., less the discount.

(b) **Gross receipts from national, network, and regional advertising.** The broadcasting station may deduct actual gross receipts from national, network, and regional advertising, as included in the gross amount reported under radio and television broadcasting, either by using the "standard deduction" or by itemization of the individual broadcasting station's actual receipts.

(i) The "standard deduction" for gross receipts from national, network, and regional advertising as provided by RCW 82.04.280, is a percentage based on the national average of national, network, and regional advertising as reported by the United States Census Bureau's economic census. The standard deduction percentage must be published by the department by rule by September 30, 2020, and by September 30th of every fifth year thereafter. The standard deduction percentage as of September 30, 2020, is sixty-two percent.

(ii) As an alternative to using the standard deduction in (b) (i) of this subsection, a broadcasting station may opt to deduct gross receipts from national, network, and regional advertising (~~on an~~) by itemizing the actual receipts therefrom.

(c) **Allocation of local advertising revenues.** Revenues from local advertising may be allocated to remove from the tax base the gross income from advertising that is intended to reach potential customers of the advertiser who are located outside the state of Washington.

(i) **Presumption.** It will be presumed that the entire gross income of radio and television stations located within the state of Washington from local advertising is subject to tax unless the taxpayer submits proof to the department that some portion of such income is exempt according to the principles set forth herein and until a specific allocation formula has been approved by the department.

(ii) **Method of allocation.**

(A) When the total daytime listening area of a radio or television station extends beyond the boundaries of the state of Washington, the allowable deduction is that portion of revenue represented by the out-of-state audience computed as a ratio to the broadcasting station's total audience as measured by the .5 millivolt/meter signal strength contour for AM radio, the one millivolt/meter or sixty dBu signal strength contour for FM radio, the twenty-eight dBu signal strength contour for television channels two through six, the thirty-six dBu signal strength contour for television channels seven through thirteen, and the forty-one dBu signal strength contour for television channels fourteen through sixty-nine with delivery by wire, satellite, or any other means, if any. The out-of-state audience may therefore be determined by delivery "over the air" and by community antenna television systems. However, community antenna television audiences may not be claimed by a station in the same area in which it claims an audience served over the air, thus eliminating a claim for double exemption.

(B) The most current United States and Canadian census figures must be used to determine the in-state and out-of-state audience.

(C) In the event that community antenna television subscribers are claimed as part of the out-of-state audience, the name of the systems, the location, and the number of subscribers must be provided to the department upon request. The number of subscribers will be multiplied by a factor of 2.5, representing the average size household.

(D) Upon request by the department, the broadcasting station must submit documentation substantiating the computation of the out-of-state exclusion to the department, as directed.

(5) **Retail sales tax.**

(a) Purchases by broadcasters of equipment, supplies and materials for the broadcaster's own use and not for resale are subject to the retail sales tax. This includes purchases of raw or unprocessed film, magnetic tape, DVDs, and other transcription material.

(b) If the tapes, films, etc., upon which the sales tax has been paid are later sold by the broadcaster in the regular course of business, the provisions of WAC 458-20-102 concerning purchases for dual purposes will apply.

(c) The broadcaster must collect retail sales tax on sales to consumers of packaged films, programs, etc., produced for general distribution, including training and industrial films, and also on sales of copies of films, commercials, programs, etc., even though the original was not subjected to retail sales tax.

(6) **Use tax.**

(a) Acquisition or exercise of the right to broadcast material under a right or license granted by lease or contract is not the use of tangible personal property by the broadcaster and the use tax is not applicable.

(b) Broadcasters of radio and television programs are subject to use tax on the value of articles manufactured or produced by them for their own use (excluding custom produced commercials or special programs which include, but is not necessarily limited to, recordings of news, delayed programs, commercials and promotions, special and syndicated programming, and "entire day" programming) and on the use of tangible personal property purchased or acquired under conditions whereby the retail sales tax has not been paid. The broadcaster is liable for use tax on the value (cost of production) of programming when the broadcaster sells merely the right to broadcast such material under a right or license granted by lease or contract.

[Statutory Authority: RCW 82.04.280, 82.32.300, and 82.01.060. WSR 20-20-036, § 458-20-241, filed 9/30/20, effective 9/30/20. Statutory Authority: RCW 82.32.300 and 82.01.060. WSR 15-01-126, § 458-20-241, filed 12/19/14, effective 1/19/15. Statutory Authority: RCW 82.32.300. WSR 83-08-026 (Order ET 83-1), § 458-20-241, filed 3/30/83; Order ET 70-3, § 458-20-241 (Rule 241), filed 5/29/70, effective 7/1/70.]

**WSR 21-12-088**  
**PERMANENT RULES**  
**DEPARTMENT OF**

**LABOR AND INDUSTRIES**

(Board of Boiler Rules)

[Filed June 1, 2021, 2:31 p.m., effective July 2, 2021]

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

Purpose: The purpose of this rule making is to adopt a fee increase of 5.79 percent to support operating expenses for inspections of boilers and pressure vessels and other boiler program public safety activities. This is the office of financial management's maximum allowable fiscal growth factor rate for fiscal year 2022.

The boiler program's budget and projected revenue was evaluated and a fee increase is needed to support the cost of ongoing services. A fee increase enables the program to continue providing quality and timely services to customers to protect structures, workers, and the public from boiler and/or unfired pressure vessel incidents.

Citation of Rules Affected by this Order: Amending WAC 296-104-700.

Statutory Authority for Adoption: Chapter 70.79 RCW, Boilers and unfired pressure vessels.

Adopted under notice filed as WSR 21-09-068 on April 20, 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 0, Repealed 0.

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

Date Adopted: June 1, 2021.

Terry Chapin, Chair  
Board of Boiler Rules

**OTS-2956.1**

AMENDATORY SECTION (Amending WSR 21-03-067, filed 1/19/21, effective 2/19/21)

**WAC 296-104-700 What are the inspection fees—Examination fees—Certificate fees—Expenses?** The following fees shall be paid by, or on behalf of, the owner or user upon the completion of the inspection. The inspection fees apply to inspections made by inspectors employed by the state.

The boiler and pressure vessel installation/reinstallation permit fee of (~~(\$62.40)~~) \$66.00 shall be paid by the installer, as defined in WAC 296-104-010.

Certificate of inspection fees: For objects inspected, the certificate of inspection fee per object is (~~(\$26.90)~~) \$28.40.

Hot water heaters per RCW 70.79.090, inspection fee: (~~(\$8.10)~~) \$8.50.

The department shall assess a \$7.00 fee, per object, for processing of jurisdictional inspection reports to any authorized in-service inspection agency or inspector who does not file the report directly into the department's electronic inspection report system.

Heating boilers:	Internal	External
Cast iron—All sizes	<del>(\$45.40)</del>	<del>\$36.30</del>
	<u>\$48.00</u>	<u>\$38.40</u>
All other boilers less than 500 sq. ft.	<del>(\$45.40)</del>	<del>\$36.30</del>
	<u>\$48.00</u>	<u>\$38.40</u>
500 sq. ft. to 2500 sq. ft.	<del>(\$90.80)</del>	<del>\$45.40</del>
	<u>\$96.00</u>	<u>\$48.00</u>
Each additional 2500 sq. ft. of total heating surface, or any portion thereof	<del>(\$36.30)</del>	<del>\$17.70</del>
	<u>\$38.40</u>	<u>\$18.70</u>
Power boilers:	Internal	External
Less than 100 sq. ft.	<del>(\$45.40)</del>	<del>\$36.30</del>
	<u>\$48.00</u>	<u>\$38.40</u>
100 sq. ft. to less than 500 sq. ft.	<del>(\$55.00)</del>	<del>\$36.30</del>
	<u>\$58.10</u>	<u>\$48.00</u>
500 sq. ft. to 2500 sq. ft.	<del>(\$90.80)</del>	<del>\$45.40</del>
	<u>\$96.00</u>	<u>\$48.00</u>
Each additional 2500 sq. ft. of total heating surface, or any portion thereof	<del>(\$36.30)</del>	<del>\$17.70</del>
	<u>\$48.00</u>	<u>\$18.70</u>
Pressure vessels:		
Square feet shall be determined by multiplying the length of the shell by its diameter.	Internal	External
Less than 15 sq. ft.	<del>(\$36.30)</del>	<del>\$26.90</del>
	<u>\$48.00</u>	<u>\$28.40</u>
15 sq. ft. to less than 50 sq. ft.	<del>(\$53.90)</del>	<del>\$26.90</del>
	<u>\$57.00</u>	<u>\$28.40</u>
50 sq. ft. to 100 sq. ft.	<del>(\$62.90)</del>	<del>\$36.30</del>
	<u>\$66.50</u>	<u>\$48.00</u>
For each additional 100 sq. ft. or any portion thereof	<del>(\$62.80)</del>	<del>\$17.70</del>
	<u>\$66.40</u>	<u>\$18.70</u>
Nonnuclear shop inspections, field construction inspections, and special inspection services:		
For each hour or part of an hour up to 8 hours		<del>(\$55.00)</del>
		<u>\$58.10</u>
For each hour or part of an hour in excess of 8 hours		<del>(\$82.10)</del>
		<u>\$86.80</u>
Nuclear shop inspections, nuclear field construction inspections, and nuclear triennial shop survey and audit:		
For each hour or part of an hour up to 8 hours		<del>(\$82.10)</del>
		<u>\$86.80</u>
For each hour or part of an hour in excess of 8 hours		<del>(\$128.60)</del>
		<u>\$136.00</u>
Nonnuclear triennial shop survey and audit:		
When state is authorized inspection agency:		
For each hour or part of an hour up to 8 hours		<del>(\$55.00)</del>
		<u>\$58.10</u>



6/28/02; WSR 01-24-061, § 296-104-700, filed 11/30/01, effective 12/31/01; WSR 01-12-034, § 296-104-700, filed 5/29/01, effective 6/29/01. Statutory Authority: RCW 70.79.030, 70.79.040 and chapter 70.79 RCW. WSR 00-21-024, § 296-104-700, filed 10/10/00, effective 11/13/00. Statutory Authority: RCW 70.79.030 and 70.79.040. WSR 99-08-049, § 296-104-700, filed 4/1/99, effective 5/2/99; WSR 98-09-064, § 296-104-700, filed 4/20/98, effective 5/21/98. Statutory Authority: RCW 70.79.040. WSR 93-12-014, § 296-104-700, filed 5/21/93, effective 6/21/93. Statutory Authority: RCW 70.79.030 and 70.79.330. WSR 84-21-012 (Order 84-20), § 296-104-700, filed 10/5/84; WSR 84-11-016 (Order 84-09), § 296-104-700, filed 5/10/84; WSR 82-24-025 (Order 82-36), § 296-104-700, filed 11/23/82, effective 1/1/83; Order 77-23, § 296-104-700, filed 11/8/77; Emergency Order 77-22, § 296-104-700, filed 11/8/77.]



## WSR 21-12-094

## PERMANENT RULES

## DEPARTMENT OF AGRICULTURE

[Filed June 2, 2021, 6:57 a.m., effective July 3, 2021]

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

Purpose: This rule-making order amends chapter 16-470 WAC, Quarantine—Agricultural pests, by adding all species in the genus *Vespa* (hornet) to the list of quarantined pests.

The amended rule prohibits live life stages of hornet species from being sold, offered for sale, distributed, or knowingly moved throughout or received within Washington.

Under the amendment, additional restrictions apply to "infested sites," defined as all real property within twenty meters of a nest containing any live life stage of hornet. The Washington state department of agriculture (WSDA) will attempt to notify occupants and/or owners of those properties that their property has been designated as an infested site. When an infested site has been designated, no person may enter the area without authorization until WSDA has deemed it clear of infestation. This limits the risk to public health and safety, as well as prevents further infestation. The rule clarifies that WSDA inspectors may enter infested sites to remove and treat the nest and hornets.

A special permit is established under the amendment, which allows for the possession of live hornets for research purposes.

Citation of Rules Affected by this Order: New WAC 16-470-070, 16-470-075, 16-470-080, and 16-470-085.

Statutory Authority for Adoption: RCW 17.24.011, 17.24.021, and 17.24.041.

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 21-08-087 on April 7, 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 4, 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: June 1, 2021.

Derek I. Sandison  
Director

OTS-2981.1

NEW SECTION

**WAC 16-470-070 Quarantine—Hornet.** A quarantine is established under this chapter against any live life stages of all species in the genus *Vespa* (hornet) including, but not limited to, *Vespa mandarinia*. The quarantine does not include species that are not classified within the genus *Vespa* (such as wasps in the genus *Vespula*). Hornets feed on fruit and damage plants, as well as attack managed bee and other native insect populations. No species of hornet are native to Washington state. The director of agriculture has determined that the regulation and exclusion of all species of hornet is necessary to protect the environmental quality, forests, floriculture and agricultural crops of the state of Washington.

[]

NEW SECTION

**WAC 16-470-075 Quarantine—Hornet—Area under order.** (1) The area under quarantine includes the entire state of Washington.

(2) Within the state of Washington, infested sites are subject to additional restrictions. For purposes of this hornet quarantine, "infested sites" include all real property within 20 meters of a nest containing any live life stage of hornet. After identifying an infested site, the department will attempt to notify occupants and owners of properties within the infested site that the property or a portion thereof has been designated as an infested site and is subject to additional restrictions. The designation of an infested site will remain in place until department inspectors have removed the nest and determined that the area is clear of all live life stages of hornet.

[]

NEW SECTION

**WAC 16-470-080 Hornet quarantine restrictions.** (1) No live life stage of hornet may be sold, offered for sale, distributed, or knowingly moved throughout or received within Washington unless the entity or person proposing such action has been issued a special permit under WAC 16-470-085.

(2) No unauthorized person may enter an infested site until the department has deemed the area clear of the infestation. Department inspectors may enter upon public and private premises within an infested site to remove and treat the nest and hornets. Authorization to enter an infested site will be granted to the property owners, occupants, and other persons in the department's discretion and such authorization may be made subject to conditions to limit the risks to public health and safety, as well as to prevent further infestation and ensure that the nest is appropriately and safely removed and treated.

[]

NEW SECTION

**WAC 16-470-085 Special permits.** The director may issue special permits subject to conditions and provisions deemed necessary for the protection of Washington agriculture. Additionally, a special permit may be issued which allows for the possession of live hornets for research purposes.

[]

## WSR 21-12-102

## PERMANENT RULES

## BUILDING CODE COUNCIL

[Filed June 2, 2021, 9:42 a.m., effective July 3, 2021]

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

Purpose: This rule is in response to ESHB 1023 and addresses increasing beds for adult family homes. Chapter 51-51 WAC, Amendments to the 2018 International Residential Code.

Citation of Rules Affected by this Order: Amending 1.

Statutory Authority for Adoption: RCW 19.27.031.

Other Authority: RCW 19.27.074.

Adopted under notice filed as WSR 21-03-080 on January 19, 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 1, Repealed 0.

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

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

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

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

Date Adopted: May 21, 2021.

Diane Glenn  
Chair

## OTS-2876.1

AMENDATORY SECTION (Amending WSR 20-21-041, filed 10/13/20, effective 11/13/20)

### WAC 51-51-0202 Section R202—Definitions.

**ADULT FAMILY HOME.** ((means)) A dwelling, licensed by the state of Washington department of social and health services, in which a person or persons provide personal care, special care, room and board to more than one but not more than six adults who are not related by blood or marriage to the person or persons providing the services. An existing adult family home may provide services to up to eight adults upon approval from the department of social and health services in accordance with RCW 70.128.066.

**BALANCED WHOLE HOUSE VENTILATION.** Balanced whole house ventilation is defined as any combination of concurrently operating residential unit mechanical exhaust and mechanical supply whereby the total mechanical exhaust airflow rate is within 10 percent or 5 cfm, whichever is greater, of the total mechanical supply airflow rate. 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.

**BATTERY SYSTEM, STATIONARY STORAGE.** This definition is not adopted.

**BUILDING, EXISTING.** A building or structure erected prior to the adoption of this code, or one that has passed a final inspection.

**BUILDING.** Any one- or two-family dwelling or *townhouse*, or portion thereof used or intended to be used for human habitation, for living, sleeping, cooking or eating purposes, or any combination thereof, or any accessory structure.

**CHILD CARE, FAMILY HOME.** A child care facility, licensed by Washington state, located in the dwelling of the person or persons under whose direct care and supervision the child is placed, for the care of twelve or fewer children, including children who reside at the home.

**CHILD DAY CARE,** shall, for the purposes of these regulations, mean the care of children during any period of a 24 hour day.

**CONDITIONED SPACE.** An area, room or space that is enclosed within the building thermal envelope and that is directly or indirectly heated or cooled. Spaces are indirectly heated or cooled where they communicate through openings with conditioned spaces, where they are separated from conditioned spaces by uninsulated walls, floors or ceilings, or where they contain uninsulated ducts, piping or other sources of heating or cooling.

**DISTRIBUTED WHOLE HOUSE VENTILATION.** A whole house ventilation system shall be considered distributed when it supplies outdoor air directly (not transfer air) to each dwelling or sleeping unit habitable space (living room, den, office, interior adjoining spaces or bedroom), and exhausts air from all kitchens and bathrooms directly outside.

**DWELLING UNIT.** A single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation. Dwelling units may also include the following uses:

1. Adult family homes, foster family care homes and family day care homes licensed by the Washington state department of social and health services.
2. Offices, mercantile, food preparation for off-site consumption, personal care salons or similar uses which are conducted primarily by the occupants of the dwelling unit and are secondary to the use of the unit for dwelling purposes, and which do not exceed 500 square feet (46.4 m<sup>2</sup>).

**EGRESS ROOF ACCESS WINDOW.** A skylight or roof window designed and installed to satisfy the *Emergency Escape and Rescue Opening* requirements of Section R310.2.

**ENERGY STORAGE SYSTEMS (ESS).** One or more devices, assembled together, capable of storing energy in order to supply electrical energy at a future time.

**FIRE SEPARATION DISTANCE.** The distance measured from the foundation wall or face of the wall framing, whichever is closer, to one of the following:

1. To the closest interior lot line; or
2. To the centerline of a street, an alley or public way; or
3. To an imaginary line between two buildings on the lot.

The distance shall be measured at a right angle from the wall.

**FLOOR AREA.** The area within the inside perimeter of exterior walls of the building. The floor area of a building, or portion thereof, not provided with surrounding exterior walls shall be the usable area under the horizontal projection of the roof or floor above.

**LANDING PLATFORM.** A landing provided as the top step of a stairway accessing a *Sleeping Loft*.

**LOCAL EXHAUST.** An exhaust system that uses one or more fans to exhaust air from a specific room or rooms within a residential dwelling or sleeping unit.

**LOT.** A measured portion or parcel of land considered as a unit having fixed boundaries.

**LOT LINE.** The line which bounds a plot of ground described as a *lot* in the title to the property.

**MIXED VENTILATION ZONE.** This definition is not adopted.

**SALT WATER COASTAL AREA.** Those areas designated as salt water coastal areas by the local jurisdiction.

**SLEEPING LOFT.** A sleeping space on a floor level located more than 30 inches (726 mm) above the main floor and open to the main floor on one or more sides with a ceiling height of less than 6 feet 8 inches (2032 mm).

**SMALL BUSINESS.** Any business entity (including a sole proprietorship, corporation, partnership or other legal entity) which is owned and operated independently from all other businesses, which has the purpose of making a profit, and which has fifty or fewer employees.

**TOWNHOUSE.** A building that contains three or more attached *townhouse units*.

**TOWNHOUSE UNIT.** A single-family *dwelling unit* in a *townhouse* that extends from foundation to roof and that has a yard or public way on not less than two sides that extends at least 50 percent of the length of each of these two sides.

**WHOLE HOUSE VENTILATION SYSTEM.** A mechanical ventilation system, including fans, controls, and ducts, which replaces, by direct means, air from the habitable rooms with outdoor air.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-21-041, § 51-51-0202, filed 10/13/20, effective 11/13/20; WSR 20-03-023, § 51-51-0202, filed 1/6/20, effective 7/1/20; WSR 16-03-025, § 51-51-0202, filed 1/11/16, effective 7/1/16. Statutory Authority: RCW 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 13-04-068, § 51-51-0202, filed 2/1/13, effective 7/1/13. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 10-03-098, § 51-51-0202, 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 09-04-023, § 51-51-0202, filed 1/27/09, effective 7/1/09; WSR 08-01-102, § 51-51-0202, filed 12/18/07, effective 4/1/08. Statutory Authority: RCW 19.27.074, 19.27.020, and chapters 19.27 and 34.05 RCW. WSR 07-01-090, § 51-51-0202, filed 12/19/06, effective 7/1/07. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 04-01-109, § 51-51-0202, filed 12/17/03, effective 7/1/04.]

## WSR 21-12-103

## PERMANENT RULES

## BUILDING CODE COUNCIL

[Filed June 2, 2021, 9:44 a.m., effective July 3, 2021]

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

Purpose: This rule is in response to ESHB 1023 and addresses increasing beds for adult family homes. Chapter 51-50 WAC, Amendments to the 2018 International Building Code and International Existing Building Code.

Citation of Rules Affected by this Order: Amending 2.

Statutory Authority for Adoption: RCW 19.27.031.

Other Authority: RCW 19.27.074.

Adopted under notice filed as WSR 21-03-079 on January 19, 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 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: May 21, 2021.

Diane Glenn  
Chair

## OTS-2855.1

AMENDATORY SECTION (Amending WSR 20-01-090, filed 12/12/19, effective 7/1/20)

### WAC 51-50-0200 Chapter 2—Definitions.

#### SECTION 202—DEFINITIONS.

**ADULT FAMILY HOME.** A dwelling, licensed by (~~Washington~~) the state of Washington department of social and health services, in which a person or persons provide personal care, special care, room and board to more than one but not more than six adults who are not related by blood or marriage to the person or persons providing the services. An existing adult family home may provide services to up to eight adults upon approval from the department of social and health services in accordance with RCW 70.128.066.

**ASSISTED LIVING FACILITY.** A home or other institution, licensed by the state of Washington, providing housing, basic services and assuming general responsibility for the safety and well-being of residents under chapters 18.20 RCW and 388-78A WAC. These facilities may provide care to

residents with symptoms consistent with dementia requiring additional security measures.

**BOTTLE FILLING STATION.** A plumbing fixture connected to the potable water distribution system and sanitary drainage system that is designed and intended for filling personal use drinking water bottles or containers not less than 10 inches (254 mm) in height. Such fixtures can be separate from or integral to a drinking fountain and can incorporate a water filter and a cooling system for chilling the drinking water.

**CHILD CARE.** The care of children during any period of a 24-hour day.

**CHILD CARE, FAMILY HOME.** A child care facility, licensed by Washington state, located in the dwelling of the person or persons under whose direct care and supervision the child is placed, for the care of twelve or fewer children, including children who reside at the home.

**CLIMATE ZONE.** A geographical region that has been assigned climatic criteria as specified in the Washington State Energy Code.

**CLUSTER.** Clusters are multiple *portable school classrooms* separated by less than the requirements of the building code for separate buildings.

**EFFICIENCY DWELLING UNIT.** A dwelling unit where all permanent provisions for living, sleeping, eating and cooking are contained in a single room.

**HOSPICE CARE CENTER.** A building or portion thereof used on a 24-hour basis for the provision of hospice services to terminally ill inpatients.

**MASS TIMBER.** Structural elements of Type IV construction primarily of solid, built-up, panelized or engineered wood products that meet minimum cross section dimensions of Type IV construction.

**NIGHTCLUB.** An A-2 Occupancy use under the 2006 *International Building Code* in which the aggregate area of concentrated use of unfixed chairs and standing space that is specifically designated and primarily used for dancing or viewing performers exceeds three hundred fifty square feet, excluding adjacent lobby areas. "Nightclub" does not include theaters with fixed seating, banquet halls, or lodge halls.

**NONCOMBUSTIBLE PROTECTION (For MASS TIMBER).** Noncombustible material, in accordance with Section 703.5, designed to increase the fire-resistance rating and delay the combustion of mass timber.

**PORTABLE SCHOOL CLASSROOM.** A prefabricated structure consisting of one or more rooms with direct exterior egress from the classroom(s). The structure is transportable in one or more sections and is designed to be used as an educational space with or without a permanent foundation. The structure shall be capable of being demounted and relocated to other locations as needs arise.

**RESIDENTIAL SLEEPING SUITES.** A unit that provides multiple rooms or spaces for up to five residents, includes provisions for sleeping and can include provisions for living, eating, sanitation, and kitchen facilities.

**SMALL BUSINESS.** Any business entity (including a sole proprietorship, corporation, partnership or other legal entity) which is owned and operated independently from all other businesses, which has the purpose of making a profit, and which has fifty or fewer employees.

**STAGED EVACUATION.** A method of emergency response, that engages building components and trained staff to provide occupant safety during an emergency. Emergency response involves moving or holding certain occu-



pants at temporary locations for a brief period of time before evacuating the building. This response is used by ambulatory surgery facility and assisted living facilities to protect the health and safety of fragile occupants and residents.

**WALL, LOAD-BEARING.** Any wall meeting either of the following classifications:

1. Any metal or wood stud wall that supports more than 100 pounds per linear foot (1459 N/m) of vertical load in addition to its own weight.
2. Any masonry or concrete, or mass timber wall that supports more than 200 pounds per linear foot (2919 N/m) of vertical load in addition to its own weight.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-01-090, § 51-50-0200, filed 12/12/19, effective 7/1/20; WSR 19-02-038, § 51-50-0200, filed 12/26/18, effective 7/1/19; WSR 16-03-064, § 51-50-0200, filed 1/19/16, effective 7/1/16. Statutory Authority: RCW 19.27.074, 19.27.020, and 19.27.031. WSR 14-24-089, § 51-50-0200, filed 12/1/14, effective 5/1/15. Statutory Authority: RCW 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 13-04-067, § 51-50-0200, filed 2/1/13, effective 7/1/13. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 10-03-097, § 51-50-0200, 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 08-01-110, § 51-50-0200, filed 12/18/07, effective 4/1/08. Statutory Authority: RCW 19.27.074, 19.27.020, and chapters 70.92, 19.27, and 34.05 RCW. WSR 07-01-091, § 51-50-0200, 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 05-24-070, § 51-50-0200, filed 12/5/05, effective 7/1/06. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 04-01-108, § 51-50-0200, filed 12/17/03, effective 7/1/04.]

AMENDATORY SECTION (Amending WSR 20-21-021, filed 10/9/20, effective 11/9/20)

**WAC 51-50-480200 Section 201.3—Definitions.**

**201.3 Terms defined in other codes.** Where terms are not defined in this code and are defined in the other International Codes and the Uniform Plumbing Code, such terms shall have the meanings ascribed to them in those codes.

**202 General definitions.**

ADULT FAMILY HOME. A dwelling, licensed by the state of Washington department of social and health services, in which a person or persons provide personal care, special care, room and board to more than one but not more than six adults who are not related by blood or marriage to the person or persons providing the services. An existing adult family home may provide services to up to eight adults upon approval from the department of social and health services in accordance with RCW 70.128.066.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-21-021, § 51-50-480200, filed 10/9/20, effective 11/9/20.]

## WSR 21-12-107

## PERMANENT RULES

## DEPARTMENT OF HEALTH

(Dental Quality Assurance Commission)

[Filed June 2, 2021, 10:31 a.m., effective July 3, 2021]

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

Purpose: WAC 246-817-420 Specialty representation, the dental quality assurance commission (commission) adopted rule amendments to clarify dental specialty areas of practice and requirements for those who want to represent themselves as a specialist. The adopted rule offers two options to obtain recognized specialty designation and provides requirements for representation of themselves.

The commission received a petition for rule making in July 2017 requesting the commission recognize American Board of Dental Specialties (ABDS) boards/areas of practice specialty in WAC 246-817-420. The current rule lists American Dental Association recognized specialties only. The commission determined ABDS certifying criteria did not meet minimum education and training standards nationally recognized by the National Commission on Recognition of Dental Specialties and Certifying Boards. Although the commission did not add ABDS to the proposed rule, the commission recognizes there are additional specialty areas in dentistry that could be considered. The adopted rule offers an additional method to obtain specialty training by completing a commission on dental accreditation advanced educational program or program of any other accreditors recognized by the United States Department of Education which is at least two years in length in a special interest area of dentistry not recognized by the National Commission on Recognition of Dental Specialties and Certifying Boards.

To ensure proper representation, effective July 1, 2022, the adopted rule will also require a licensed dentist in a group practice that includes two or more dentists to identify themselves as a general dentist or a specialist. If the provider is a specialist, the adopted rule then requires the provider to include the area of their specialty. In addition, the adopted rule clarifies the licensed dentist must now provide qualifications of specialty to a patient if requested.

This adopted rule will provide the public with information to prevent fraud or deceiving advertisements related to the skills or method of practice of the dentist. Advertising of dental specialty provides the public with perception related to the education and skill of the dentist.

Citation of Rules Affected by this Order: Amending WAC 246-817-420.

Statutory Authority for Adoption: RCW 18.32.0365 and 18.32.665.

Other Authority: RCW 18.32.002.

Adopted under notice filed as WSR 21-06-105 on March 3, 2021.

A final cost-benefit analysis is available by contacting Jennifer Santiago, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-4893, fax 360-236-2901, TTY 711, email [jennifer.santiago@doh.wa.gov](mailto:jennifer.santiago@doh.wa.gov), website [www.doh.wa.gov/dental](http://www.doh.wa.gov/dental), [dental@doh.wa.gov](mailto:dental@doh.wa.gov).

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

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

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

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

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

Date Adopted: April 30, 2021.

Aaron Stevens, DMD, Chairperson  
Dental Quality Assurance Commission

#### OTS-2147.4

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

**WAC 246-817-420 Specialty representation.** (~~((1) It shall be misleading, deceptive or improper conduct for a dentist to represent or imply that he/she is a specialist or use any of the terms to designate a dental specialty such as:~~

- ~~(a) Endodontist~~
- ~~(b) Oral or maxillofacial surgeon~~
- ~~(c) Oral pathologist~~
- ~~(d) Orthodontist~~
- ~~(e) Pediatric dentist~~
- ~~(f) Periodontist~~
- ~~(g) Prosthodontist~~
- ~~(h) Public health~~

~~or any derivation of these specialties unless he/she is entitled to such specialty designation under the guidelines or requirements for specialties approved by the Commission on Dental Accreditation and the Council on Dental Education of the American Dental Association, or such guidelines or requirements as subsequently amended and approved by the DQAC, or other such organization recognized by the DQAC.~~

~~(2) A dentist not currently entitled to such specialty designation shall not represent that his/her practice is limited to providing services in a specialty area without clearly disclosing in the representation that he/she is a general dentist. A specialist who represents services in areas other than his/her specialty is considered a general dentist.)~~ In order to protect the public from inherently misleading claims of specialty expertise by dentists who are not adequately trained and experienced, a licensed dentist must comply with the requirements in this section to avoid deception of the public with accurate advertising and representation.

(1) A licensed dentist has the legal authority to practice in all areas of dentistry as defined in RCW 18.32.020 and also the authority to confine their practice in areas within the scope of their education, training, and experience and in accordance with chapters 18.32 RCW and 246-817 WAC.

(2) A licensed dentist may advertise or represent themselves as a specialist if the dentist meets the standards listed in subsection (4) of this section.

(3) A licensed dentist who does not meet the standards listed in subsection (4) of this section is considered a general dentist. A general dentist is permitted to render specialty services but shall not advertise or represent themselves as a specialist in the areas listed in subsection (4) of this section.

(4) A licensed dentist must comply with one of the following requirements before advertising or representing themselves as a specialist in Washington:

(a) Successfully complete a Commission on Dental Accreditation postdoctoral education program at least two years in length, and is recognized by the National Commission on Recognition of Dental Specialties and Certifying Boards in one of the following specialty areas:

- (i) Dental anesthesiology;
- (ii) Dental public health;
- (iii) Endodontics;
- (iv) Oral and maxillofacial pathology;
- (v) Oral and maxillofacial radiology;
- (vi) Oral and maxillofacial surgery;
- (vii) Oral medicine;
- (viii) Orofacial pain;
- (ix) Orthodontics and dentofacial orthopedics;
- (x) Pediatric dentistry;
- (xi) Periodontics; or
- (xii) Prosthodontics.

(b) Successfully complete a Commission on Dental Accreditation advanced educational program or program of any other accreditors recognized by the United States Department of Education which is at least two years in length in a special interest area of dentistry not listed in (a) of this subsection.

(5) It is misleading, deceptive, or unprofessional conduct for a licensed dentist to advertise or represent themselves by adopting or using any title to the public as a dental specialist, expert, board certified, or diplomate practicing in an area when they have not successfully completed the requirements specified for the dental specialty listed in subsection (4) of this section.

(a) Effective July 1, 2022, a licensed dentist in a group practice that includes two or more dentists must be identified as a general dentist or a specialist as listed in subsection (4) of this section.

(b) A licensed dentist in a group practice who meets the standards listed in subsection (4) of this section shall include the area of their specialty.

(c) Qualifications of any licensed dentist must be made available to the public upon request.

[Statutory Authority: RCW 18.32.035. WSR 95-21-041, § 246-817-420, filed 10/10/95, effective 11/10/95.]

## WSR 21-12-108

## PERMANENT RULES

## DEPARTMENT OF ECOLOGY

[Order 20-06—Filed June 2, 2021, 11:07 a.m., effective July 3, 2021]

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

Purpose: The purpose of the rule is to repeal two chapters that ecology no longer has authority to implement, chapters 173-422 and 173-422A WAC. The authority for the motor vehicle emission inspection program expired January 1, 2020. This repeal will eliminate possible confusion over obsolete rules.

In 2005, the legislature phased out emission testing in Clark, King, Pierce, Snohomish, and Spokane counties on January 1, 2020. After thirty-eight years, Washington's emission check program ended, so vehicle owners are no longer required to have their vehicles' emissions tested before renewing their registrations.

Citation of Rules Affected by this Order: Repealing chapters 173-422 and 173-422A WAC.

Statutory Authority for Adoption: Chapter 70A.25 RCW, Motor vehicle emission control (RCW 70A.25.100).

Adopted under notice filed as WSR 21-04-032 on January 26, 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 41.

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: June 2, 2021.

Laura Watson  
Director

**OTS-2691.1**REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 173-422-010	Purpose.
WAC 173-422-020	Definitions.
WAC 173-422-030	Vehicle emission inspection requirement.
WAC 173-422-031	Vehicle emission inspection schedules.
WAC 173-422-035	Registration requirements.

WAC 173-422-040	Noncompliance areas.
WAC 173-422-050	Emission contributing areas.
WAC 173-422-060	Gasoline vehicle emission standards.
WAC 173-422-065	Diesel vehicle exhaust emission standards.
WAC 173-422-070	Gasoline vehicle exhaust emission testing procedures.
WAC 173-422-075	Diesel vehicle inspection procedure.
WAC 173-422-090	Exhaust gas analyzer specifications.
WAC 173-422-095	Exhaust opacity testing equipment.
WAC 173-422-100	Testing equipment maintenance and calibration.
WAC 173-422-120	Quality assurance.
WAC 173-422-130	Inspection fees.
WAC 173-422-145	Fraudulent certificates of compliance/acceptance.
WAC 173-422-160	Fleet and diesel owner vehicle testing requirements.
WAC 173-422-170	Exemptions.
WAC 173-422-175	Fraudulent exemptions.
WAC 173-422-190	Emission specialist authorization.
WAC 173-422-195	Listing of authorized emission specialists.

**OTS-2692.1**REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 173-422A-010	Purpose.
WAC 173-422A-020	Definitions.
WAC 173-422A-030	Vehicle emission test requirements and testing schedule for private and United States government vehicles.
WAC 173-422A-040	Emission test schedule for state and local government vehicles.
WAC 173-422A-050	Emission test areas.
WAC 173-422A-060	Exemptions.
WAC 173-422A-100	Gasoline vehicle emission test standards.
WAC 173-422A-110	Gasoline vehicle emission testing procedures.

WAC 173-422A-120	Gasoline vehicle emission testing equipment specifications.
WAC 173-422A-200	Exhaust emission test standards for diesel vehicles.
WAC 173-422A-210	Test procedure for diesel vehicles.
WAC 173-422A-220	Diesel vehicle testing equipment specifications.
WAC 173-422A-300	Testing equipment maintenance and calibration.
WAC 173-422A-310	Quality assurance.
WAC 173-422A-320	Test fees.
WAC 173-422A-340	Authorized testers.
WAC 173-422A-400	Emission specialist authorization.
WAC 173-422A-410	Requirements for listing businesses with authorized emission specialists.
WAC 173-422A-500	Civil penalty.