

WSR 22-01-009

WITHDRAWAL OF PROPOSED RULES

CHARTER SCHOOL COMMISSION

(By the Code Reviser's Office)

[Filed December 2, 2021, 9:38 a.m.]

WAC 108-30-020, 108-30-030, 108-40-070, and 108-40-090, proposed by the charter school commission in WSR 21-11-075, appearing in issue 21-11 of the Washington State Register, which was distributed on June 2, 2021, is withdrawn by the office of the code reviser under RCW 34.05.335(3), since the proposal was not adopted within the 180-day period allowed by the statute.

Jennifer C. Meas, Editor
Washington State Register

WSR 22-01-009A

WITHDRAWAL OF PROPOSED RULES

CHARTER SCHOOL COMMISSION

(By the Code Reviser's Office)

[Filed December 20, 2021, 8:41 a.m.]

WAC 108-60-010, 108-60-020, and 108-60-030, proposed by the charter school commission in WSR 21-11-076, appearing in issue 21-11 of the Washington State Register, which was distributed on June 2, 2021, is withdrawn by the office of the code reviser under RCW 34.05.335(3), since the proposal was not adopted within the 180-day period allowed by the statute.

Jennifer C. Meas, Editor
Washington State Register

WSR 22-01-015

PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed December 2, 2021, 12:22 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-13-051.

Title of Rule and Other Identifying Information: WAC 182-550-4550
Administrative day rate and swing bed day rate.

Hearing Location(s): On January 25, 2022, at 10:00 a.m. The health care authority (HCA) remains closed in response to the coronavirus disease 2019 (COVID-19) public health emergency. Until further notice, HCA continues to hold public hearings virtually without a physical meeting place. This promotes social distancing and the safety of Washington state residents. To attend the virtual public hearing, you must register in advance https://zoom.us/webinar/register/WN__vMMTnCNS5mu-Qn3-CoICQ. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: Not sooner than January 26, 2022.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by January 25, 2022.

Assistance for Persons with Disabilities: Contact HCA rules coordinator, phone 360-725-1306, fax 360-586-9727, telecommunication[s] relay service 711, email arc@hca.wa.gov, by January 14, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is amending WAC 182-550-4550 to provide hospitals an administrative day rate for days in which a postpartum parent does not meet criteria for acute inpatient level of care but their infant is still an inpatient being observed for potential post-in utero exposure to substances that may lead to physiologic dependence and continuous care by the postpartum parent is the appropriate first line treatment.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Not applicable.

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Brian Jensen, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-0815; Implementation and Enforcement: Elizabeth Tinker, P.O. Box 45502, Olympia, WA 98504-5502, 360-725-1047.

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

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: The rule applies to birthing hospitals and does not apply to any "small businesses."

December 2, 2021

Wendy Barcus

OTS-3475.1

AMENDATORY SECTION (Amending WSR 19-18-026, filed 8/28/19, effective 9/28/19)

WAC 182-550-4550 Administrative day rate and swing bed day rate.**(1) Administrative day rate.**

(a) The medicaid agency allows hospitals an administrative day rate for those days of hospital stay in which a client does not meet criteria for acute inpatient level of care, but is not discharged because:

(i) An appropriate placement outside the hospital is not available (no placement administrative day); or

(ii) The postpartum parent's newborn remains on an inpatient claim for monitoring post-in utero exposure to substances that may lead to physiologic dependence and continuous care by the postpartum parent is the appropriate first-line treatment (newborn administrative day). "Postpartum parent" means the client who delivered the baby(ies).

~~((a))~~ (b) The agency uses the annual statewide weighted average nursing facility medicaid payment rate to update the all-inclusive administrative day rate on November 1st of each year.

~~((b))~~ (c) The agency does not pay for ancillary services, except for pharmacy services and pharmaceuticals, provided during administrative days.

~~((e))~~ (d) The agency identifies administrative days during the length of stay review process after the client's discharge from the hospital.

~~((d))~~ (e) The agency pays for up to five newborn administrative days. The agency pays for additional days with expedited prior authorization (EPA). For EPA, a hospital must establish that the clinically appropriate EPA criteria outlined in the agency's published billing guides have been met. The hospital must use the appropriate EPA number when billing the agency.

(f) The agency pays the hospital the administrative day rate starting with the date of hospital admission if the admission is solely for a no placement administrative day stay ~~((until an appropriate subacute placement can be made))~~.

(g) The agency pays the hospital the newborn administrative day rate only if:

(i) The postpartum parent rooms in with their newborn and provides parental support/care; and

(ii) The hospital provides all prescribed medications to the postpartum parent for the duration of the stay, including medications prescribed to treat substance use disorder.

(2) Swing bed day rate. The agency allows hospitals a swing bed day rate for those days when a client is receiving agency-approved nursing service level of care in a swing bed. The agency's aging and disability services administration (ADSA) determines the swing bed day rate.

(a) The agency does not pay a hospital the rate applicable to the acute inpatient level of care for those days of a hospital stay when a client is receiving agency-approved nursing service level of care in a swing bed.

(b) The agency's allowed amount for those ancillary services not covered under the swing bed day rate is based on the payment methods provided in WAC 182-550-6000 and 182-550-7200. These ancillary services may be billed by the hospital on an outpatient hospital claim, except for pharmacy services and pharmaceuticals.

(c) The agency allows pharmacy services and pharmaceuticals not covered under the swing bed day rate, that are provided to a client receiving agency-approved nursing service level of care, to be billed directly by a pharmacy through the point of sale system. The agency does not allow those pharmacy services and pharmaceuticals to be paid to the hospital through submission of a hospital outpatient claim.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 19-18-026, § 182-550-4550, filed 8/28/19, effective 9/28/19; WSR 15-18-065, § 182-550-4550, filed 8/27/15, effective 9/27/15. WSR 11-14-075, recodified as § 182-550-4550, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, and 2009-11 Omnibus Operating Budget (ESHB 1244). WSR 09-12-062, § 388-550-4550, filed 5/28/09, effective 7/1/09.]

WSR 22-01-020
WITHDRAWAL OF PROPOSED RULES
OFFICE OF
FINANCIAL MANAGEMENT

[Filed December 3, 2021, 8:07 a.m.]

The office of financial management (OFM) requests to withdraw WSR 21-20-113 and 21-21-108. WSR 21-20-113 was filed with the office of the code reviser on October 4, 2021. WSR 21-21-108 was filed with the office of the code reviser on October 20, 2021, with the purpose of changing the hearing date of November 11, 2021, established in WSR 21-20-113. The purpose of OFM's request to withdraw WSR 21-20-113 and 21-21-108 is due to comments received at the public hearing on November 23, 2021, regarding the permanent rule effective date. During the public hearing OFM proposed a January 1, 2022, permanent effective date; however, a stakeholder requested a July 1, 2022, effective date. OFM intends to refile this rule making in order to accommodate the request for delayed effective date.

Should you have any questions regarding this matter, please contact Brandy Chinn at Brandy.Chinn@ofm.wa.gov or at 360-810-0919.

WSR 22-01-045

PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed December 7, 2021, 2:49 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-21-076.

Title of Rule and Other Identifying Information: WAC 182-550-6000
Outpatient hospital services—Conditions of payment and payment meth-
ods.

Hearing Location(s): On January 25, 2022, at 10:00 a.m. The health care authority (HCA) remains closed in response to the coronavirus disease 2019 (COVID-19) public health emergency. Until further notice, HCA continues to hold public hearings virtually without a physical meeting place. This promotes social distancing and the safety of the residents of Washington state. To attend the virtual public hearing, you must register in advance https://zoom.us/webinar/register/WN_vMMTnCN5mu-Qn3-CoICQ. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: January 26, 2022.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by January 25, 2022.

Assistance for Persons with Disabilities: Contact HCA rules coordinator, phone 360-725-1306, fax 360-586-9727, telecommunication[s] relay service 711, email arc@hca.wa.gov, by January 14, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is amending subsection (3)(c) of this rule, which states that the agency does not pay separately for certain services provided within one calendar day of an inpatient hospital admission. The agency is adding to this section to state that separate payments are not made for certain services provided within one calendar day of discharge.

The agency also intends to remove subsections (6) and (7). These subsections reference the maximum allowable fee schedule and the hospital outpatient rate for payment of certain services. The agency is making these changes because it does not use these payment methods, but instead uses the enhanced ambulatory payment group method to determine payments, consistent with WAC 182-550-7200.

Reasons Supporting Proposal: See purpose above.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Not applicable.

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Melinda Froud, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1408; Implementation and Enforcement: Tracy Huynh, P.O. Box 45500, Olympia, WA 98504-5500, 360-725-1311.

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

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The revised rule does not impose more-than-minor costs on small businesses.

December 7, 2021
Wendy Barcus
Rules Coordinator

OTS-3462.1

AMENDATORY SECTION (Amending WSR 15-18-065, filed 8/27/15, effective 9/27/15)

WAC 182-550-6000 Outpatient hospital services—Conditions of payment and payment methods. (1) The medicaid agency pays hospitals for covered outpatient hospital services provided to eligible clients when the services meet the provisions in WAC 182-550-1700. All professional medical services must be billed according to chapter 182-531 WAC.

(2) To be paid for covered outpatient hospital services, a hospital provider must:

(a) Have a current core provider agreement with the agency;

(b) Bill the agency according to the conditions of payment under WAC 182-502-0100;

(c) Bill the agency according to the time limits under WAC 182-502-0150; and

(d) Meet program requirements in other applicable WAC and the agency's published issuances.

(3) The agency does not pay separately for any services:

(a) Included in a hospital's room charges;

(b) Included as covered under the agency's definition of room and board (e.g., nursing services). See WAC 182-550-1050; or

(c) Related to an inpatient hospital admission and provided within one calendar day of a client's inpatient admission or discharge.

(4) The agency does not pay:

(a) A hospital for outpatient hospital services when a managed care plan is contracted with the agency to cover these services;

(b) More than the "acquisition cost" ("A.C.") for HCPCS (health care common procedure coding system) codes noted in the outpatient fee schedule; or

(c) For cast room, emergency room, labor room, observation room, treatment room, and other room charges in combination when billing periods for these charges overlap.

(5) The agency uses the outpatient weighted costs-to-charges (OWCC) rate to pay for covered outpatient services provided in a critical access hospital (CAH). See WAC 182-550-2598.

~~(6) (The agency uses the maximum allowable fee schedule to pay non-OPPS hospitals and non-CAH hospitals for the following types of~~

~~covered outpatient hospital services listed in the agency's current published outpatient hospital fee schedule and billing instructions:~~

- ~~(a) EKG/ECG/EEG and other diagnostics;~~
- ~~(b) Imaging services;~~
- ~~(c) Immunizations;~~
- ~~(d) Laboratory services;~~
- ~~(e) Occupational therapy;~~
- ~~(f) Physical therapy;~~
- ~~(g) Sleep studies;~~
- ~~(h) Speech/language therapy;~~
- ~~(i) Synagis; and~~
- ~~(j) Other hospital services identified and published by the agency.~~

~~(7) The agency uses the hospital outpatient rate as described in WAC 182-550-4500 to pay for covered outpatient hospital services when:~~

- ~~(a) A hospital provider is a non-OPPS or a non-CAH provider; and~~
- ~~(b) The services are not included in subsection (6) of this section.~~

~~(8)) Hospitals must provide documentation as required or requested by the agency.~~

~~((9)) (7) All hospital providers must present final charges to the agency within ((three hundred sixty-five)) 365 days of the "statement covers period from date" shown on the claim. The state of Washington is not liable for payment based on billed charges received beyond ((three hundred sixty-five)) 365 days from the "statement covers period from date" shown on the claim.~~

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 15-18-065, § 182-550-6000, filed 8/27/15, effective 9/27/15. WSR 11-14-075, recodified as § 182-550-6000, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.08.090, 74.09.500. WSR 07-13-100, § 388-550-6000, filed 6/20/07, effective 8/1/07; WSR 04-20-060, § 388-550-6000, filed 10/1/04, effective 11/1/04. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, and Public Law 104-191. WSR 03-19-044, § 388-550-6000, filed 9/10/03, effective 10/11/03. Statutory Authority: RCW 74.08.090, 74.09.500, 74.09.035(1), and 43.88.290. WSR 02-21-019, § 388-550-6000, filed 10/8/02, effective 11/8/02. Statutory Authority: RCW 74.09.090, 42 U.S.C. 1395x(v), 42 C.F.R. 447.271 and 42 C.F.R. 11303. WSR 99-14-028, § 388-550-6000, filed 6/28/99, effective 7/1/99. Statutory Authority: RCW 74.08.090, 42 U.S.C. 1395 x(v), 42 C.F.R. 447.271, 447.11303, and 447.2652. WSR 99-06-046, § 388-550-6000, filed 2/26/99, effective 3/29/99. Statutory Authority: RCW 74.08.090, 74.09.730, 74.04.050, 70.01.010, 74.09.200, [74.09.]500, [74.09.]530 and 43.20B.020. WSR 98-01-124, § 388-550-6000, filed 12/18/97, effective 1/18/98.]

WSR 22-01-046

PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed December 7, 2021, 3:00 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-15-070.

Title of Rule and Other Identifying Information: WAC 182-521-0200
—Coverage after the public health emergency (PHE) ends.

Hearing Location(s): On January 25, 2022, at 10:00 a.m. The health care authority (HCA) remains closed in response to the coronavirus disease 2019 (COVID-19) public health emergency. Until further notice, HCA continues to hold public hearings virtually without a physical meeting place. This promotes social distancing and the safety of the residents of Washington state. To attend the virtual public hearing, you must register in advance https://zoom.us/webinar/register/WN_vMMTnCNS5mu-Qn3-CoICQ. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: January 26, 2022.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by January 25, 2022.

Assistance for Persons with Disabilities: Contact HCA rules coordinator, phone 360-725-1306, fax 360-586-9727, telecommunication[s] relay service 711, email arc@hca.wa.gov, by January 14, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is proposing this rule to avoid a gap in coverage between the time the PHE ends and the time similar coverage is reinstated under medicaid verification procedures that existed before the PHE.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Not applicable.

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Melinda Froud, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1408; Implementation and Enforcement: Mark Westenhaver, P.O. Box 45534, Olympia, WA 98504-5534, 360-725-1324.

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

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. This rule does not create more-than-minor costs to small businesses.

December 7, 2021
Wendy Barcus
Rules Coordinator

OTS-3311.2

NEW SECTION

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

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

- (i) Are deceased;
- (ii) Move out-of-state;
- (iii) Request termination of your coverage; or
- (iv) No longer meet citizenship or immigration requirements as described in WAC 182-503-0535.

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

- (i) Apple health for kids with premiums (CHIP), as described in WAC 182-505-0215; and
- (ii) Health care for workers with disabilities (HWD) program, as described in WAC 182-511-1250.

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

(2) If you receive continued apple health due to the suspension of certain eligibility rules during the PHE, the agency, after the PHE ends:

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

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

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

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

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

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

[]

WSR 22-01-055
PROPOSED RULES
LIQUOR AND CANNABIS
BOARD

[Filed December 8, 2021, 11:26 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-17-041.

Title of Rule and Other Identifying Information: WAC 314-55-101 Quality assurance sampling protocols, 314-55-102 Quality assurance testing, and 314-55-1025 Proficiency testing. The Washington state liquor and cannabis board (WSLCB) proposes amendments to current marijuana product testing standards to require pesticide testing for all marijuana produced, processed, and sold in Washington state, and randomized or investigation driven testing of marijuana for heavy metals.

Hearing Location(s): On February 2, 2022, at 10:00 a.m. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the board will not provide a physical location for this hearing to promote social distancing and the safety of the citizens of Washington state. A virtual public hearing, without a physical meeting space, will be held instead. Board members, presenters, and staff will all participate remotely. The public may log in using a computer or device, or call-in using a phone, to listen to the meeting through the Microsoft Teams application. The public may provide verbal comments during the specified public comment and rules hearing segments. For more information about board meetings, please visit https://lcb.wa.gov/Boardmeetings/Board_meetings.

Date of Intended Adoption: Not earlier than February 16, 2022.

Submit Written Comments to: Jeff Kildahl, 1025 Union Avenue S.E., Olympia, WA 98501, email rules@lcb.wa.gov, fax 360-664-9689, by February 2, 2022.

Assistance for Persons with Disabilities: Contact Anita Bingham, ADA coordinator, human resources, phone 360-664-1739, fax 360-664-9689, TTY 711 or 1-800-833-6388, email anita.bingham@lcb.wa.gov, by January 26, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposed rules is to require that all marijuana products produced and sold in Washington state are tested for pesticides. The proposed rules also allow WSLCB to conduct random or investigation driven testing for heavy metals in marijuana products. It is anticipated that the effect of these rules will be to promote the overarching goal of WSLCB to protect public health and safety, and to assure [ensure] that all products sold within the I-502 market are safe for all consumers.

Changes in existing rules include increasing the maximum amount of marijuana flower that may be represented by a single I-502 panel of tests and updating the number of one-gram flower samples required; revised sample collection and storage procedures; elimination of the ability of certified labs to return unused portions of samples to licensees; revised guidance to labs regarding when to reject or fail a sample; updated lab testing requirements and procedures; updated and expanded information regarding testing levels for water activity, potency analysis, foreign matter inspection, microbial screening, mycotoxin screening, and residual solvent screening; addition of required pesticide screening and randomized or investigation driven testing for heavy metals; updated rule language regarding product retesting, reme-

diation of failed lots, expiration of certificates of analysis, and referencing of samples; and updated reporting requirements for lab proficiency testing.

This proposal also renames and more appropriately refers to marijuana quality control sampling protocols and marijuana quality control and assurance testing standards. While quality control is a set of activities designed to evaluate a product, quality assurance pertains to activities that are designed to ensure that a process is adequate and the system meets its objectives. In contrast, quality control focuses on finding defects or anomalies in a product or deliverable, and checks whether defined requirements are the right requirements. Testing is one example of a quality control activity, but there are many more such activities that make up quality control. For these reasons, this proposal renames WAC 314-55-101 and 314-55-102.

Reasons Supporting Proposal: Existing testing requirements for adult use marijuana are intended to safeguard products for sale and list potency levels. However, Washington recreational marijuana products are currently not required to be tested for pesticides or heavy metals, and although not precluded from doing so, many producers and processors do not test for either. Based on a number of elements, including consumer concern and national best practices, it has become evident that mandatory pesticide testing for all marijuana products produced, processed, and sold in Washington state is necessary, and that random or investigation driven heavy metal testing conducted by WSLCB is also needed.

There is no product testing guidance available to WSLCB or any other state agency regulating marijuana from federal agencies who set standards for agriculture, food, and other products because marijuana remains classified as a Schedule I drug, and federally illegal. This presents regulatory challenges to WSLCB, regulators throughout the country, and the industry since there is limited funding to support research on how marijuana tainted with potential toxins affects humans. However, while the possible health impact of consuming marijuana products with unapproved pesticides is an emerging area of research, the overarching goal of WSLCB is to protect public health and safety, and to assure [ensure] that all products sold within the I-502 market are safe for all consumers.

With the recent increase in hemp-derived delta-8, delta-9, and other unregulated products entering the I-502 market, it is important at this time to require pesticide testing and random or investigation driven heavy metal testing for adult use marijuana products to protect public health and safety.

Statutory Authority for Adoption: RCW 69.50.345 and 69.50.348.

Statute Being Implemented: RCW 69.50.345 and 69.50.348.

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

Name of Proponent: WSLCB, governmental.

Name of Agency Personnel Responsible for Drafting: Jeff Kildahl, Policy and Rules Coordinator, 1025 Union Avenue S.E., Olympia, WA 98501, 360-664-1781; Implementation: Kendra Hodgson, Marijuana Examiners Unit Manager, 1025 Union Avenue S.E., Olympia, WA 98501, 360-664-4555; and Enforcement: Chandra Brady, Director of the Enforcement and Education, 1025 Union Avenue S.E., Olympia, WA 98501, 360-664-1726.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Jeff Kildahl, 1025 Union Avenue S.E., Olympia, WA 98501, phone 360-664-1781, fax 360-664-9689, email rules@lcb.wa.gov.

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

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Is exempt under RCW 19.85.025(4): WAC 314-55-1025.

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

Small Business Economic Impact Statement (SBEIS)

What is the scope of the rule package? Compliance with the proposed, specific requirements described [in] WAC 314-55-101 and 314-55-102 will likely result in additional compliance costs. This includes the requirement to test all marijuana products for pesticides, in addition to the current required suite of tests for adult use products.

Which businesses are impacted by the proposed rule package? What was their North American Industry Classification (NAICS) code or codes? What are their minor cost thresholds? As of July 2021, there were 1,306 licensed marijuana producers and processors in the state of Washington. Of those businesses, nine employ more than 50 individuals, indicating that 99.3 percent of the businesses in this industry are considered small. Any licensed business producing marijuana flower and/or intermediate products for which existing regulations require testing would incur costs under the proposed rule. Licensed business[es] that are not currently operating, or that produce only flower marked for extraction, would not be affected by this rule.

"Minor cost" is defined in RCW 19.85.020 as a cost per business that is less than 0.3 percent of annual revenue or income or one hundred dollars, whichever is greater, or one percent of annual payroll. As revenue information is more readily available than payroll, the analysis calculates minor cost thresholds based on revenues of business entities in the affected industries. The minor cost threshold is \$3,466 (2020\$) per business within the industry, based on the average annual revenues reported for calendar years 2018 through 2020 and the number of licensed producers and/or processors as of August 2021.

TYPE OF BUSINESS ¹	# OF BUSINESSES IN WASHINGTON ²	PERCENTAGE OF BUSINESSES CONSIDERED SMALL ³	AVERAGE ANNUAL REVENUES (2020\$) ⁴	MINOR COST THRESHOLD = 0.3% AVERAGE ANNUAL REVENUES (2020\$)
Cannabis Producer and/or Processor	1,306	99.3%	\$1,155,374	\$3,466

Notes:
 1. Relevant NAICS codes for this industry include the following:
 111998 – All Other Miscellaneous Crop Farming, including Marijuana Grown in an Open Field
 111419 – Other Food Crops Grown Under Cover, including Marijuana Grown Under Cover
 115112 – Soil Preparation, Planting, and Cultivating
 325411 – Medicinal and Botanical Manufacturing
 311812 – Commercial Bakeries
 311991 – Perishable Food Manufacturing
 424590 – Other Farm Product Raw Material Merchant Wholesalers, including Marijuana Merchant wholesalers.
 2. Represents the total number of cannabis producer, producer/processor, and processor licenses as of July 2021 (email communications from WSLCB August 24, 2021).
 3. Number of businesses with <50 employees of all producer/processor license holders (nine) provided by the employment security division (ESD) via email on September 20, 2021.
 4. Average annual revenues for all licensees that reported revenues between 2018 and 2020, provided by WSLCB on October 22, 2021.

⁷ Email communications from WSLCB to IEC, August 24, 2021. Licensed businesses include holders of three license types – Producer, Processor, and Producer/Processor. This report refers to this group of businesses collectively as "producers and processors."

8 Number of large businesses provided by the employment security division (ESD) via email on September 20, 2021.

Does the rule have a disproportionate impact on small businesses?

When proposed rule changes cause more-than-minor costs to small businesses, the Regulatory Fairness Act (RCW 19.85.040) requires an analysis that compares the cost of compliance for small business[es] with the cost of compliance for the 10 percent of businesses that are the largest businesses required to comply with the proposed rules to determine whether the costs are considered disproportionate. Over 99 percent of the regulated businesses in this industry are small. As a result, the rule is found to disproportionately impact small businesses, and this SBEIS accordingly identifies and documents cost mitigation strategies.

Did the agency make an effort to reduce the impact of the rule?

RCW 19.85.030 requires that, when a rule is expected to disproportionately impact small businesses, the agency consider[s] several methods for reducing the impact of the rule on small businesses. The proposed rule itself includes several provisions that are intended to reduce the compliance costs for small businesses.

RULE PROVISION	DESCRIPTION	MECHANISM OF COST REDUCTION
Addition of random or investigation-driven heavy metals screening.	WSLCB may conduct investigation-driven or random spot testing of flower and intermediate product for heavy metals.	Businesses do not have to incur the costs of heavy metals testing on all amounts of flower or batches of intermediate product.
Increase in maximum amount of marijuana flower that may be represented by a single I-502 panel of tests.	Increasing the amount of flower that can be tested using a single I-502 test panel from one test panel per five-pound lot to a single test panel per amounts up to 50 pounds.	Businesses that are able to prepare larger quantities of flower for testing can reduce the number of pesticides tests required under the proposed rule, as well as reduce the number of I-502 test panels currently required, which reduces their testing costs.
Change in number of one-gram flower samples required.	For amounts of flower greater than five pounds, reducing the number of one-gram samples required per pound of tested flower.	On a per pound basis, reduces the amount of flower diverted to testing, instead allowing that flower to be sold, and reducing lost revenues associated with diverted flower.

During development of the proposed rule, through an amendment to WAC 314-55-075, WSLCB increased the allowable canopy size for Tier 1 producers to allow for larger harvests, increasing the ability of those producers to take advantage of the proposed rule provision that allows for amounts of flower up to 50 pounds to be tested with a single panel of tests. In addition, WSLCB considered a range of suggestions from industry representatives as to how the costs of the rule could be reduced, including:

1. Reduce the number of existing mandatory I-502 tests to accommodate pesticide testing without increasing costs to businesses.
2. Reduce the amount of flower necessary to divert for testing (i.e., maintaining the same four-gram requirement for five-pound lots).
3. Reduce the total number and frequency of pesticides tests required, for example:

- Regular third-party testing periodically (e.g., quarterly or once a month), funded by the industry.
 - Allowing for more than one strain to be tested together as a single lot, so long as strains are grown in the same indoor room, or receive the same outdoor treatment.
4. Implement measures that might facilitate an ability for producers and processors to raise the price of their products:
- Consider an education campaign to inform retailers and consumers of the benefits of pesticides and heavy metals testing; could help increase prices to allow for producer/processors to pass on some of the increased cost of testing.
 - Consider revisions to the structure of the industry in which producers may pass costs of testing onto retailers.
5. Shift testing requirements from flower and intermediate products to end products.
6. Consider having WSLCB test flower at the retailer level, rather than having flower tested by producers.
- Consider increased enforcement through increased random sampling by WSLCB to ensure those acting fairly are not disadvantaged.

WSLCB considered these and other cost reduction options presented by the industry. However, WSLCB has determined they cannot be included for multiple reasons, including that they didn't meet the intended goals of the rule (e.g., testing end products after they were already placed on retail shelves), did not meaningfully reduce the costs of the rule (e.g., eliminating existing I-502 panel tests identified by the industry), were not feasible due to constraints (e.g., reducing the number of one-gram samples of flower required to test a five-pound amount of flower), or were outside of the bounds of the rule.

The regulating agency must consider delaying compliance timetables as a potential cost mitigation option. During this rule making, WSLCB did consider delaying the time frame for compliance with the heavy metals testing requirement at the request of the industry. As heavy metals testing is no longer required under the proposed rule, WSLCB is no longer considering a delay in compliance timing.

Other types of cost mitigation strategies that must be considered are not relevant to this rule making:

- Reducing the frequency of inspections: This rule does not change the rate at which inspections carried out by WSLCB would occur.
- Simplifying, reducing, or eliminating recordkeeping and reporting requirements: The rule does not impose any additional reporting or recordkeeping requirements on the industry.
- Reducing or modifying fine schedules for noncompliance: This rule does not affect fines for noncompliance.

Did the agency involve small businesses in the rule development process? Throughout the rule-development process, WSLCB has engaged with small businesses likely to be affected by the rule. In 2019, WSLCB hosted two "listen and learn" sessions, inviting industry discussion and feedback on the proposed rules. The WSLCB's stakeholder process encouraged interested parties and industry partners to:

- Identify burdensome areas of existing and proposed rules;
- Proposed initial or draft rule changes; and

- Refine those changes.

In 2021, WSLCB hosted a series of three deliberative dialog sessions to allow the regulated community an opportunity to voice their perspectives on cannabis quality assurance testing. The three sessions focused on the perspectives of three distinct elements of the supply chain affected by changes to cannabis quality assurance testing - consumers, producers and processors, and testing labs, respectively. Information collected during these sessions further informed development of the proposed rule.

The proposed rule went through several stages of edits, review, discussion, and then further refinement before arriving at the final proposal. The end result of this process is a proposed rule that would provide a framework and guidance for testing marijuana products that supports the overarching WSLCB goal of public health and safety.

A summary of the description of issues related to the proposed rule set and how the agency collaborated with stakeholders and industry partners to mitigate potential burden associated with rule compliance is more fully described in the significant analysis prepared consistent with RCW 34.05.328, and offered as part of this rule proposal.

To support development of this SBEIS, WSLCB invited licensed businesses to participate in a one-hour interview with the authors of the SBEIS. WSLCB selected 25 producers and/or processors representing a range of business types, producer tiers, business sizes, and geographies to participate in the interviews. WSLCB's contractor contacted prospective interviewees via email or phone call to schedule interviews. Potential interviewees were given several options within a one-month window for an interview, with additional times and dates offered if those originally proposed were not compatible with interviewee schedules. In the case that prospective interviewees did not respond after the first contact, they were contacted two to three times in additional attempts to schedule an interview. Ultimately, interviews were conducted with 14 producer/processors and four processors. Additional opportunity for public comment will be available when the proposed rule is published.

To solicit information to support this SBEIS from as broad a sample of licensed businesses as possible, WSLCB also worked with its contractor to design an online survey targeted to collecting key data points and business thoughts regarding potential provisions of the proposed rule. WSLCB invited all licensed businesses to participate in this survey, which was distributed by email on September 17, 2021. Of the 4,820 email recipients representing license holders to whom the survey was provided, 116 (two percent) provided a response by the September 24, 2021, deadline.

Will businesses have to hire or fire employees because of the requirements in the rule? The impacts to individual producers and processors would depend on their ability to limit their increased costs by increasing the amount of flower that is tested per testing panel, and to pass on increased testing costs (in the form of higher prices to retailers). However, the proposed rule is not expected to affect the amount of cannabis produced. Thus, the proposed rule is unlikely to affect the overall (i.e. industry-wide) number of employees of producer/processors. For example, if increased testing costs lead some smaller entities to cease production, other entities may produce larger volumes. While the additional testing costs may cause some small businesses to close if they are unable to pass on the increased testing costs, the likelihood of this occurring is unknown.

The extent to which employment may change within an individual business would depend on the specific costs incurred by that business and its ability to absorb those costs by reducing costs in other areas, raising prices, or reducing profits, for example. Several interviewees suggested that the increased costs of pesticide testing may be substantial enough to result in reduction of staff hours or release of staff. One interviewee noted that there are substantial operating costs associated with marijuana production and processing, and that modifications to employment is oftentimes the only available option for reducing costs. Conversely, at least one interviewee anticipated that compliance with the new regulations may require him to hire an additional employee. Overall, given the relatively low costs of the rule compared to revenues reported for these businesses, it seems unlikely that the costs of the rule would result in widespread reductions in employment across these businesses.

A copy of the statement may be obtained by contacting Jeff Kildahl, 1025 Union Avenue S.E., Olympia, WA 98501, phone 360-664-1781, fax 360-664-9689, email rules@lcb.wa.gov.

December 8, 2021
David Postman
Chair

OTS-3473.2

AMENDATORY SECTION (Amending WSR 17-12-032, filed 5/31/17, effective 8/31/17)

WAC 314-55-101 Quality ((assurance sampling protocols)) control sampling. (1) ((To ensure quality assurance samples submitted to certified third-party laboratories (certified labs) are representative from the lot or batch from which they were sampled as required in RCW 69.50.348, licensed producers, licensed processors, certified labs, and their employees must adhere to the minimum sampling protocols as provided in this section.

(2) Sampling protocols for all marijuana product lots and batches:

(a) Samples must be deducted in a way that is most representative of the lot or batch and maintains the structure of the marijuana sample. Licensees, certified labs, and their employees may not adulterate or change in any way the representative sample from a lot or batch before submitting the sample to certified labs. This includes adulterating or changing the sample in any way as to inflate the level of potency, or to hide any microbiological contaminants from the required microbiological screening such as, but not limited to:

(i) Adulterating the sample with kief, concentrates, or other extracts;

(ii) Treating a sample with solvents to hide the microbial count of the lot or batch from which it was deducted. This subsection does not prohibit the treatment of failed lots or batches with methods approved by the WSLCB; or

(iii) Pregrinding a flower lot sample.

~~(b) All samples must be taken in a sanitary environment using sanitary practices and ensure facilities are constructed, kept, and maintained in a clean and sanitary condition in accordance with rules and as prescribed by the Washington state department of agriculture under chapters 16-165 and 16-167 WAC.~~

~~(c) Persons collecting samples must wash their hands prior to collecting a sample from a lot or batch, wear appropriate gloves while preparing or deducting the lot or batch for sample collection, and must use sanitary utensils and storage devices when collecting samples.~~

~~(d) Samples must be placed in a sanitary plastic or glass container, and stored in a location that prevents the propagation of pathogens and other contaminants, such as a secure, low-light, cool and dry location.~~

~~(e) The licensee must maintain the lot or batch from which the sample was deducted in a secure, low-light, cool, and dry location to prevent the marijuana from becoming contaminated or losing its efficacy.~~

~~(f) Each quality assurance sample must be clearly marked "quality assurance sample" and be labeled with the following information:~~

~~(i) The sixteen digit identification number generated by the traceability system;~~

~~(ii) The license number and name of the certified lab receiving the sample;~~

~~(iii) The license number and trade name of the licensee sending the sample;~~

~~(iv) The date the sample was collected; and~~

~~(v) The weight of the sample.) All licensed marijuana processors, producers, certified labs, and certified lab employees must comply with the sampling procedures described in this section, consistent with RCW 69.50.348. Noncompliance may result in disciplinary action as described in this chapter and applicable law.~~

(2) **Sample collection.** All samples of marijuana, useable marijuana, or marijuana-infused products must be submitted to a certified lab for testing consistent with this chapter.

(a) All samples must be deducted, stored, and transported in a way that prevents contamination and degradation.

(b) To maximize sample integrity, samples must be placed in a sanitary container and stored in a location that prevents contamination and degradation.

(c) Each quality control sample container must be clearly marked "quality control sample" and labeled with the following information:

(i) The certificate number and name of the certified lab receiving the sample;

(ii) The license number and registered trade name of the licensee sending the sample;

(iii) The date the sample was collected; and

(iv) The weight of the marijuana, useable marijuana, or marijuana-infused product the sample was collected from.

(d) Sampling and analysis requirements apply to all marijuana products regulated by the board.

(3) **Additional sampling protocols for ((flower lots)) quantities of marijuana flower:**

(a) ((Licensees or certified labs must collect a minimum of four separate samples from each marijuana flower lot up to five pounds. Licensees or certified labs may collect more samples than this minimum, but must not collect less. The)) Samples must be of roughly equal

weight not less than one gram each. Each sample must be deducted from a harvest as defined in WAC 314-55-010(14).

~~(b) ((The four separate samples must be taken from different quadrants of the flower lot. A quadrant is the division of a lot into four equal parts. Dividing a lot into quadrants prior to collecting samples must be done in a manner that ensures the samples are collected from four evenly distributed areas of the flower lot and may be done visually or physically.~~

~~(c) The four samples may be placed together in one container conforming to the packaging and labeling requirements in subsection (2) of this section for storage and transfer to a certified lab.)) For marijuana flower weighing up to 10 pounds, a minimum of eight samples must be taken.~~

(c) For marijuana flower weighing 10 pounds or more but less than 20 pounds, a minimum of 12 samples must be taken.

(d) For marijuana flower weighing 20 pounds or more but less than 30 pounds, a minimum of 15 samples must be taken.

(e) For marijuana flower weighing 30 pounds or more but less than 40 pounds, a minimum of 18 samples must be taken.

(f) For marijuana flower weighing 40 pounds or more but not more than 50 pounds, a minimum of 19 samples must be taken.

(4) **Sample retrieval and transportation.** Certified labs may retrieve samples from a marijuana licensee's licensed premises and transport the samples directly to the lab. ~~((Certified labs may also return any unused portion of the samples.))~~

(5) Certified labs ~~((may))~~ must reject or fail a sample if the lab has reason to believe the sample was not collected in the manner required by this section, adulterated in any way, contaminated with known or unknown solvents, or manipulated in a manner that violates the sampling protocols, limit tests, or action levels.

~~((6) The WSLCB or its designee will take immediate disciplinary action against any licensee or certified lab that fails to comply with the provisions of this section or falsifies records related to this section including, without limitation, revoking the license the licensed producer or processor, or certification of the certified lab.))~~

[Statutory Authority: RCW 69.50.342 and 69.50.345. WSR 17-12-032, § 314-55-101, filed 5/31/17, effective 8/31/17; WSR 16-11-110, § 314-55-101, filed 5/18/16, effective 6/18/16.]

AMENDATORY SECTION (Amending WSR 17-12-032, filed 5/31/17, effective 8/31/17)

WAC 314-55-102 Quality assurance ((testing)) and quality control. ~~((A third-party testing lab must be certified by the WSLCB or the WSLCB's vendor as meeting the WSLCB's accreditation and other requirements prior to conducting quality assurance tests required under this section.~~

(1) **Quality assurance fields of testing.** Certified labs must be certified to the following fields of testing by the WSLCB or its designee and must adhere to the guidelines for each quality assurance field of testing listed below, with the exception of mycotoxin, heavy metal, or pesticide residue screening. Certification to perform mycotoxin, heavy metals and pesticides may be obtained but is not required to obtain certification as a testing lab. A lab must become certified

~~in all fields of testing prior to conducting any testing or screening in that field of testing, regardless of whether the test is required under this section.~~

~~(a) **Potency analysis.**~~

~~(i) Certified labs must test and report the following cannabinoids to the WSLCB when testing for potency:~~

- ~~(A) THCA;~~
- ~~(B) THC;~~
- ~~(C) Total THC;~~
- ~~(D) CBDA;~~
- ~~(E) CBD; and~~
- ~~(F) Total CBD.~~

~~(ii) Calculating total THC and total CBD.~~

~~(A) Total THC must be calculated as follows, where M is the mass or mass fraction of delta-9 THC or delta-9 THCA: $M \text{ total delta-9 THC} = M \text{ delta-9 THC} + (0.877 \times M \text{ delta-9 THCA})$.~~

~~(B) Total CBD must be calculated as follows, where M is the mass or mass fraction of CBD and CBDA: $M \text{ total CBD} = M \text{ CBD} + (0.877 \times M \text{ CBDA})$.~~

~~(iii) Regardless of analytical equipment or methodology, certified labs must accurately measure and report the acidic (THCA and CBDA) and neutral (THC and CBD) forms of the cannabinoids.~~

~~(b) **Potency analysis for flower lots.**~~

~~(i) Certified labs must test and report the results for the required flower lot samples as described in WAC 314-55-101(3) for the following required cannabinoids:~~

- ~~(A) THCA;~~
- ~~(B) THC;~~
- ~~(C) Total THC;~~
- ~~(D) CBDA;~~
- ~~(E) CBD; and~~
- ~~(F) Total CBD.~~

~~(ii) Calculating total THC and total CBD.~~

~~(A) Total THC must be calculated as follows, where M is the mass or mass fraction of delta-9 THC or delta-9 THCA: $M \text{ total delta-9 THC} = M \text{ delta-9 THC} + (0.877 \times M \text{ delta-9 THCA})$.~~

~~(B) Total CBD must be calculated as follows, where M is the mass or mass fraction of CBD and CBDA: $M \text{ total CBD} = M \text{ CBD} + (0.877 \times M \text{ CBDA})$.~~

~~(c) Certified labs may combine in equal parts multiple samples from the same flower lot for the purposes of the following tests after the individual samples described in WAC 314-55-101(3) have been tested for potency analysis.~~

~~(i) **Moisture analysis.** The sample and related lot or batch fails quality assurance testing for moisture analysis if the results exceed the following limits:~~

- ~~(A) Water activity rate of more than 0.65 a_w ; and~~
- ~~(B) Moisture content more than fifteen percent.~~

~~(ii) **Foreign matter screening.** The sample and related lot or batch fail quality assurance testing for foreign matter screening if the results exceed the following limits:~~

- ~~(A) Five percent of stems 3mm or more in diameter; and~~
- ~~(B) Two percent of seeds or other foreign matter.~~

~~(iii) **Microbiological screening.** The sample and related lot or batch fail quality assurance testing for microbiological screening if the results exceed the following limits:~~

	Enterobacteria (bile-tolerant gram-negative bacteria)	<i>E. coli</i> (pathogenic strains) and <i>Salmonella spp.</i>
Unprocessed Plant Material	10 ⁴	Not detected in 1g
Extracted or processed Botanical Product	10 ³	Not detected in 1g

~~(iv) **Mycotoxin screening.** The sample and related lot or batch fail quality assurance testing for mycotoxin screening if the results exceed the following limits:~~

- ~~(A) Total of Aflatoxin B1, B2, G1, G2: 20 µg/kg of substance; and~~
- ~~(B) Ochratoxin A: 20 µg/kg of substance.~~

~~(d) **Residual solvent screening.** Except as otherwise provided in this subsection, a sample and related lot or batch fail quality assurance testing for residual solvents if the results exceed the limits provided in the table below. Residual solvent results of more than 5,000 ppm for class three solvents, 50 ppm for class two solvents, and 2 ppm for class one solvents as defined in *United States Pharmacopoeia, USP 30 Chemical Tests / <467> - Residual Solvents (USP <467>)* not listed in the table below fail quality assurance testing. When residual solvent screening is required, certified labs must test for the solvents listed in the table below at a minimum.~~

Solvent*	ppm
Acetone	5,000
Benzene	2
Butanes	5,000
Cyclohexane	3,880
Chloroform	2
Dichloromethane	600
Ethyl acetate	5,000
Heptanes	5,000
Hexanes	290
Isopropanol (2-propanol)	5,000
Methanol	3,000
Pentanes	5,000
Propane	5,000
Toluene	890
Xylene**	2,170

*And isomers thereof.

**Usually 60% *m*-xylene, 14% *p*-xylene, 9% *o*-xylene with 17% ethyl benzene.

~~(e) **Heavy metal screening.** A sample and related lot or batch fail quality assurance testing for heavy metals if the results exceed the limits provided in the table below.~~

Metal	µ/daily dose (5 grams)
Inorganic arsenic	10.0
Cadmium	4.1
Lead	6.0
Mercury	2.0

~~(2) **Quality assurance testing required.** The following quality assurance tests are the minimum required tests for each of the following marijuana products, respectively. Licensees and certified labs may elect to do multiple quality assurance tests on the same lot or testing for mycotoxin, pesticides, or heavy metals pursuant to chapter 246-70 WAC.~~

~~(a) **General quality assurance testing requirements for certified labs.**~~

~~(i) Certified labs must record an acknowledgment of the receipt of samples from producers or processors in the WSLCB seed to sale traceability system. Certified labs must also verify if any unused portion of the sample was destroyed or returned to the licensee after the completion of required testing.~~

~~(ii) Certified labs must report quality assurance test results directly to the WSLCB traceability system when quality assurance tests for the field of testing are required within twenty-four hours of completion of the test(s).~~

~~(iii) Certified labs must fail a sample if the results for any limit test are above allowable levels regardless of whether the limit test is required in the testing tables in this section.~~

~~(b) **Marijuana flower lots and other material lots.** Marijuana flower lots or other material lots require the following quality assurance tests:~~

Product	Test(s) Required
Lots of marijuana flowers or other material that will not be extracted	1. Moisture content 2. Potency analysis 3. Foreign matter inspection 4. Microbiological screening 5. Mycotoxin screening

~~(c) **Intermediate products.** Intermediate products must meet the following requirements related to quality assurance testing:~~

~~(i) All intermediate products must be homogenized prior to quality assurance testing;~~

~~(ii) For the purposes of this section, a batch is defined as a single run through the extraction or infusion process;~~

~~(iii) A batch of marijuana mix may not exceed five pounds and must be chopped or ground so no particles are greater than 3 mm; and~~

~~(iv) All batches of intermediate products require the following quality assurance tests:~~

Product	Test(s) Required Intermediate Products
Marijuana mix	1. Moisture content* 2. Potency analysis 3. Foreign matter inspection* 4. Microbiological screening 5. Mycotoxin screening
Concentrate or extract made with hydrocarbons (solvent-based made using n-butane, isobutane, propane, heptane, or other solvents or gases approved by the board of at least 99% purity)	1. Potency analysis 2. Mycotoxin screening* 3. Residual solvent test

Product	Test(s) Required Intermediate Products
Concentrate or extract made with a CO ₂ extractor like hash oil	1. Potency analysis 2. Mycotoxin screening* 3. Residual solvent test
Concentrate or extract made with ethanol	1. Potency analysis 2. Mycotoxin screening* 3. Residual solvent test
Concentrate or extract made with approved food grade solvent	1. Potency analysis 2. Microbiological screening* 3. Mycotoxin screening* 4. Residual solvent test
Concentrate or extract (nonsolvent) such as kief, hash, rosin, or bubble hash	1. Potency analysis 2. Microbiological screening 3. Mycotoxin screening
Infused cooking oil or fat in solid form	1. Potency analysis 2. Microbiological screening* 3. Mycotoxin screening*

* Field of testing is only required if using lots of marijuana flower and other plant material that has not passed QA testing.

~~(d) **End products.** All marijuana, marijuana-infused products, marijuana concentrates, marijuana mix packaged, and marijuana mix infused sold from a processor to a retailer require the following quality assurance tests:~~

Product	Test(s) Required End Products
Infused solid edible	Potency analysis
Infused liquid (like a soda or tonic)	Potency analysis
Infused topical	Potency analysis
Marijuana mix packaged (loose or rolled)	Potency analysis
Marijuana mix infused (loose or rolled)	Potency analysis
Concentrate or marijuana-infused product for inhalation	Potency analysis

~~(e) End products consisting of only one intermediate product that has not been changed in any way are not subject to potency analysis.~~

~~(3) No lot of usable flower, batch of marijuana concentrate, or batch of marijuana-infused product may be sold or transported until the completion and successful passage of quality assurance testing as required in this section, except:~~

~~(a) Business entities with multiple locations licensed under the same UBI number may transfer marijuana products between the licensed locations under the same UBI number prior to quality assurance testing; and~~

~~(b) Licensees may wholesale and transfer batches or lots of flower and other material that will be extracted and marijuana mix and nonsolvent extracts for the purposes of further extraction prior to completing required quality assurance testing. Licensees may wholesale and transfer failed lots or batches to be extracted pursuant to subsection (5) of this section.~~

~~(4) **Samples, lots, or batches that fail quality assurance testing.**~~

~~(a) Upon approval by the WSLCB, failed lots or batches may be used to create extracts. After processing, the extract must pass all quality assurance tests required in this section before it may be sold.~~

~~(b) **Retesting.** At the request of the producer or processor, the WSLCB may authorize a retest to validate a failed test result on a case-by-case basis. All costs of the retest will be borne by the producer or the processor requesting the retest. Potency retesting will generally not be authorized.~~

~~(c) **Remediation.** Producers and processors may remediate failed harvests, lots, or batches so long as the remediation method does not impart any toxic or deleterious substance to the usable marijuana, marijuana concentrates, or marijuana-infused product. Remediation solvents or methods used on the marijuana product must be disclosed to a licensed processor the producer or producer/processor transfers the products to; a licensed retailer carrying marijuana products derived from the remediated harvest, lot, or batch; or consumer upon request. The entire harvest, lot, or batch the failed sample(s) were deducted from must be remediated using the same remediation technique. No remediated harvest, lots or batches may be sold or transported until the completion and successful passage of quality assurance testing as required in this section.~~

~~(5) **Referencing.** Certified labs may reference samples for mycotoxin, heavy metals, and pesticides testing to other certified labs by subcontracting for those fields of testing. Labs must record all referencing to other labs on a chain-of-custody manifest that includes, but is not limited to, the following information: Lab name, certification number, transfer date, address, contact information, delivery personnel, sample ID numbers, field of testing, receiving personnel.~~

~~(6) Certified labs are not limited in the amount of usable marijuana and marijuana products they may have on their premises at any given time, but a certified lab must have records proving all marijuana and marijuana-infused products in the certified lab's possession are held only for the testing purposes described in this section.~~

~~(7) Upon the request of the WSLCB or its designee, a licensee or a certified lab must provide an employee of the WSLCB or their designee samples of marijuana or marijuana products or samples of the growing medium, soil amendments, fertilizers, crop production aids, pesticides, or water for random compliance checks. Samples may be screened for pesticides and chemical residues, unsafe levels of heavy metals, and used for other quality assurance tests deemed necessary by the WSLCB.)~~ (1) **Lab certification and accreditation for quality control testing.** To become certified, a third-party lab must meet the board's certification and accreditation requirements as described in WAC 314-55-0995 and this chapter before conducting quality control tests required under this section.

(a) Certified labs must be certified to conduct the following fields of testing:

- (i) Water activity;
- (ii) Potency analysis;
- (iii) Foreign matter inspection;
- (iv) Microbiological screening;
- (v) Mycotoxin screening;
- (vi) Pesticide screening; and
- (vii) Residual solvent screening.

(b) Certified labs may be certified for heavy metal testing. Certified labs must comply with the guidelines for each quality control

field of testing described in this chapter if they offer that testing service.

(c) Certified labs may reference samples for mycotoxin, heavy metal, or pesticide testing by subcontracting for those fields of testing.

(2) General quality control testing requirements for certified labs.

(a) Certified labs must record an acknowledgment of the receipt of samples from producers or processors. Certified labs must also verify if any unused portion of the sample is destroyed after the completion of required testing.

(b) Certified labs must report quality control test results directly to the board in the required format.

(c) Product must not be converted, transferred, or sold by the licensee until the required tests are reported to the board and the licensee.

(d) Certified labs must fail a sample if the results for any limit test are above allowable levels regardless of whether the limit test is required in the testing tables in this chapter.

(e) Certified labs must test samples on an "as is" or "as received" basis.

(f) For the purposes of this section, limits have been written to the number of significant digits that laboratories are expected to use when reporting to the board and on associated certificates of analysis.

(3) Quality control analysis and screening. The following analysis and screening are only required for samples that have not been previously tested, or that have failed quality control testing.

(a) Potency analysis.

(i) Certified labs must test and report the following cannabinoids to the board when testing for potency:

(A)

<u>Cannabinoid</u>	<u>Lower Limit of Quantitation (mg/g)</u>	<u>CAS #</u>
<u>CBD</u>	<u>1.0</u>	<u>13956-29-1</u>
<u>CBDA</u>	<u>1.0</u>	<u>1244-58-2</u>
<u>Δ⁹-THC</u>	<u>1.0</u>	<u>1972-08-3</u>
<u>Δ⁹-THCA</u>	<u>1.0</u>	<u>23978-85-0</u>

(B) Total THC;

(C) Total CBD.

(ii) Calculating total THC and total CBD.

(A) Total THC must be calculated as follows, where M is the mass or mass fraction of delta-9 THC or delta-9 THCA: M total delta-9 THC = M delta-9 THC + (0.877 × M delta-9 THCA).

(B) Total CBD must be calculated as follows, where M is the mass or mass fraction of CBD and CBDA: M total CBD = M CBD + (0.877 × M CBDA).

(iii) Regardless of analytical equipment or methodology, certified labs must accurately measure and report the acidic (THCA and CBDA) and neutral (THC and CBD) forms of the cannabinoids.

(b) Water activity testing. The sample fails quality control testing for water activity if the results exceed the following limits:

(i) Water activity rate of more than 0.65 a_w for useable marijuana;

(ii) Water activity rate of more than 0.85 a_w for solid edible products.

(c) **Foreign matter screening.** The sample fails quality control testing for foreign matter screening if the results exceed the following limits:

(i) Five percent of stems 3 mm or more in diameter; or

(ii) Two percent of seeds or other foreign matter; or

(iii) One insect fragment, one hair, or one mammalian excreta in sample.

(d) **Microbiological screening.** The sample and the related population fails quality control testing for microbiological screening if the results exceed the following limits:

<u>Unprocessed Plant Material</u>	<u>Colony Forming Unit per Gram (CFU/g)</u>
<u>Bile Tolerant Gram Negative bacteria (BTGN)</u>	<u>$1.0 * 10^4$</u>
<u>Shiga toxin-producing Escherichia coli (STEC)</u>	<u><1</u>
<u>Salmonella spp.</u>	<u><1</u>
<u>Processed Plant Material</u>	<u>Colony Forming Unit per Gram (CFU/g)</u>
<u>Bile Tolerant Gram Negative bacteria (BTGN)</u>	<u>$1.0 * 10^3$</u>
<u>Shiga toxin-producing Escherichia coli (STEC)</u>	<u><1</u>
<u>Salmonella spp.</u>	<u><1</u>

(e) **Mycotoxin screening.** The sample and the related population fails quality control testing if the results exceed the following limits:

<u>Mycotoxin</u>	<u>$\mu\text{g/kg}$</u>	<u>CAS #</u>
<u>Aflatoxins (Sum of Isomers)</u>	<u>20.</u>	
<u>• Aflatoxin B1</u>		<u>1162-65-8</u>
<u>• Aflatoxin B2</u>		<u>7220-81-7</u>
<u>• Aflatoxin G1</u>		<u>1165-39-5</u>
<u>• Aflatoxin G2</u>		<u>7241-98-7</u>
<u>Ochratoxin A</u>	<u>20.</u>	<u>303-47-9</u>

(f) **Residual solvent screening.** Except as otherwise provided in this subsection, a sample and the related population fails quality control testing for residual solvents if the results exceed the limits provided in the table below. Residual solvent results of more than 5,000 ppm for class three solvents, 50 ppm for class two solvents, and 2 ppm for any class one solvents as defined in *United States Pharmacopoeia USP 30 Chemical Tests / <467> - Residual Solvents (USP <467>)* not listed in the table below fail quality control testing. When residual solvent screening is required, certified labs must test for the solvents listed in the table below at a minimum.

<u>Solvent</u>	<u>$\mu\text{g/g}$</u>	<u>ppm (simplified)</u>	<u>CAS #</u>
<u>Acetone</u>	<u>$5.0 * 10^3$</u>	<u>5000</u>	<u>67-64-1</u>
<u>Benzene</u>	<u>2.0</u>	<u>2</u>	<u>71-43-2</u>
<u>Butanes (Sum of Isomers)</u>	<u>$5.0 * 10^3$</u>	<u>5000</u>	

<u>Solvent</u>	<u>µg/g</u>	<u>ppm (simplified)</u>	<u>CAS #</u>
• <u>n-butane</u>			<u>106-97-8</u>
• <u>2-methylpropane (isobutane)</u>			<u>75-28-5</u>
<u>Cyclohexane</u>	<u>3.9 * 10³</u>	<u>3880</u>	<u>110-82-7</u>
<u>Chloroform</u>	<u>2.0</u>	<u>2</u>	<u>67-66-3</u>
<u>Dichloromethane</u>	<u>6.0 * 10²</u>	<u>600</u>	<u>75-09-2</u>
<u>Ethanol</u>	<u>5.0 * 10³</u>	<u>5000</u>	<u>64-17-5</u>
<u>Ethyl acetate</u>	<u>5.0 * 10³</u>	<u>5000</u>	<u>141-78-6</u>
<u>Heptanes (Single Isomer)</u>	<u>5.0 * 10³</u>	<u>5000</u>	
• <u>n-heptane</u>			<u>142-82-5</u>
<u>Hexanes (Sum of Isomers)</u>	<u>2.9 * 10²</u>	<u>290</u>	
• <u>n-hexane</u>			<u>110-54-3</u>
• <u>2-methylpentane</u>			<u>107-83-5</u>
• <u>3-methylpentane</u>			<u>96-14-0</u>
• <u>2,2-dimethylbutane</u>			<u>75-83-2</u>
• <u>2,3-dimethylbutane</u>			<u>79-29-8</u>
<u>Isopropanol (2-propanol)</u>	<u>5.0 * 10³</u>	<u>5000</u>	<u>67-63-0</u>
<u>Methanol</u>	<u>3.0 * 10³</u>	<u>3000</u>	<u>67-56-1</u>
<u>Pentanes (Sum of Isomers)</u>	<u>5.0 * 10³</u>	<u>5000</u>	
• <u>n-pentane</u>			<u>109-66-0</u>
• <u>methylbutane (isopentane)</u>			<u>78-78-4</u>
• <u>dimethylpropane (neopentane)</u>			<u>463-82-1</u>
<u>Propane</u>	<u>5.0 * 10³</u>	<u>5000</u>	<u>74-98-6</u>
<u>Toluene</u>	<u>8.9 * 10²</u>	<u>890</u>	<u>108-88-3</u>
<u>Xylenes (Sum of Isomers)</u>	<u>2.2 * 10³</u>	<u>2170</u>	
• <u>1,2-dimethylbenzene (ortho-)</u>			<u>95-47-6</u>
• <u>1,3-dimethylbenzene (meta-)</u>			<u>108-38-3</u>
• <u>1,4-dimethylbenzene (para-)</u>			<u>106-42-3</u>

(g) **Heavy metal screening.** Heavy metal screening is required for all DOH compliant product as described in chapter 246-70 WAC. Heavy metal screening is optional for non-DOH compliant product; however, heavy metal limits provided below apply to all products. Any product exceeding the provided limits is subject to recall and destruction. The board may conduct random or investigation driven heavy metal screening for compliance. A sample and related quantity of product fail quality control testing for heavy metals if the results exceed the limits provided in the table below.

<u>Metal</u>	<u>µg/g</u>
<u>Arsenic</u>	<u>2.0</u>
<u>Cadmium</u>	<u>0.82</u>
<u>Lead</u>	<u>1.2</u>
<u>Mercury</u>	<u>0.40</u>

(h) **Pesticide screening.** For purposes of pesticide screening, a sample and the related quantity of marijuana is considered to have passed if it meets the standards described in WAC 314-55-108 and applicable department of agriculture rules.

(4) **Required quality control tests.** The following quality control tests are required for each of the marijuana products described below. Licensees and certified labs may opt to perform additional quality control tests on the same sample.

(a) **Marijuana flower.** Marijuana flower requires the following quality control tests:

Product	Test(s) Required
<u>Marijuana flower</u>	<ol style="list-style-type: none"> <u>1. Water activity testing</u> <u>2. Potency analysis</u> <u>3. Foreign matter inspection</u> <u>4. Microbiological screening</u> <u>5. Mycotoxin screening</u> <u>6. Pesticide screening</u>

(b) If marijuana flower will be sold as useable flower, no further testing is required.

(c) **Intermediate products.** Intermediate products must meet the following requirements related to quality control testing:

(i) All intermediate products must be homogenized prior to quality assurance testing;

(ii) For the purposes of this section, a batch is defined as a single run through the extraction or infusion process;

(iii) Marijuana mix must be chopped or ground so no particles are greater than 3 mm; and

(iv) Intermediate products require the following quality assurance tests:

Intermediate Product Type	Tests Required
<u>Marijuana mix</u>	<ol style="list-style-type: none"> <u>1. Water activity testing</u> <u>2. Potency analysis</u> <u>3. Foreign matter inspection</u> <u>4. Microbiological screening</u> <u>5. Mycotoxin screening</u> <u>6. Pesticide screening</u>
<u>Concentrate or extract made with hydrocarbons (solvent based made using n-butane, isobutane, propane, heptane, or other solvents or gases approved by the board of at least 99% purity)</u>	<ol style="list-style-type: none"> <u>1. Potency analysis</u> <u>2. Mycotoxin screening</u> <u>3. Residual solvent test</u> <u>4. Pesticide screening</u>
<u>Concentrate or extract made with a CO₂ extractor like hash oil</u>	<ol style="list-style-type: none"> <u>1. Potency analysis</u> <u>2. Mycotoxin screening</u> <u>3. Residual solvent test</u> <u>4. Pesticide screening</u>
<u>Concentrate or extract made with ethanol</u>	<ol style="list-style-type: none"> <u>1. Potency analysis</u> <u>2. Mycotoxin screening</u> <u>3. Residual solvent test</u> <u>4. Pesticide screening</u>
<u>Concentrate or extract made with approved food grade solvent</u>	<ol style="list-style-type: none"> <u>1. Potency analysis</u> <u>2. Microbiological screening</u> <u>3. Mycotoxin screening</u> <u>4. Residual solvent test</u> <u>5. Pesticide screening</u>
<u>Concentrate or extract (nonsolvent) such as kief, hash, rosin, or bubble hash</u>	<ol style="list-style-type: none"> <u>1. Potency analysis</u> <u>2. Microbiological screening</u> <u>3. Mycotoxin screening</u> <u>4. Pesticide screening</u>

Intermediate Product Type	Tests Required
<u>Infused cooking oil or fat in solid form</u>	<ol style="list-style-type: none"> 1. Potency analysis 2. Microbiological screening 3. Mycotoxin screening 4. Pesticide screening

(d) **End products.** All marijuana, marijuana-infused products, marijuana concentrates, marijuana mix packaged, and marijuana mix infused sold from a processor to a retailer require the following quality assurance tests:

End Product Type	Tests Required
<u>Infused solid edible</u>	<ol style="list-style-type: none"> 1. Potency analysis 2. Water activity testing
<u>Infused liquid (like a soda or tonic)</u>	<ol style="list-style-type: none"> 1. Potency analysis
<u>Infused topical</u>	<ol style="list-style-type: none"> 1. Potency analysis
<u>Marijuana mix packaged (loose or rolled)</u>	<ol style="list-style-type: none"> 1. Potency analysis
<u>Marijuana mix infused (loose or rolled)</u>	<ol style="list-style-type: none"> 1. Potency analysis
<u>Concentrate or marijuana-infused product for inhalation</u>	<ol style="list-style-type: none"> 1. Potency analysis

(e) End products consisting of only one intermediate product that has not been changed in any way are not subject to potency analysis.

(5) Useable flower, a batch of marijuana concentrate, or a batch of marijuana-infused product may not be sold until the completion and successful passage of required quality control testing, except:

(a) Licensees may wholesale and transfer batches or quantities of marijuana flower and other material that will be extracted, and marijuana mix and nonsolvent extracts, for the purposes of further extraction prior to completing required quality control testing.

(b) Business entities with multiple locations licensed under the same UBI number may transfer marijuana products between the licensed locations under the same UBI number prior to quality control testing.

(c) Licensees may wholesale and transfer failed batches or quantities of marijuana flower to be extracted pursuant to subsection (6) of this section, unless failed for tests that require immediate destruction.

(6) **Failed test samples.**

(a) Upon approval by the board, failed quantities of marijuana or batches may be used to create extracts. After processing, the extract must pass all quality control tests required in this section before it may be sold, unless failed for tests that require immediate destruction.

(b) Retesting. A producer or processor must request retesting. The board may authorize the retest to validate a failed test result on a case-by-case basis. The producer or the processor requesting the retest must pay for the cost of all retesting.

(c) Remediation. Remediation is a process or technique applied to quantities of marijuana flower, lots, or batches. Remediation may occur after the first failure, depending on the failure, or if a retest process results in a second failure. Pesticide failures may not be remediated.

(i) Producers and processors may remediate failed

marijuana flower, lots, or batches so long as the remediation method does not impart any toxic or harmful substance to the useable marijuana, marijuana concentrates, or marijuana-infused product. Remediation solvents or methods used on the marijuana product must be disclosed to:

(A) A licensed processor;

(B) The producer or producer/processor who transfers the marijuana products;

(C) A licensed retailer carrying marijuana products derived from the remediated marijuana flower, lot, or batch; or

(D) The consumer upon request.

(ii) The entire quantity of marijuana from which the failed sample(s) were deducted must be remediated.

(iii) No remediated quantity of marijuana may be sold or transported until quality control testing consistent with the requirements of this section is completed.

(iv) If a failed quantity of remediated marijuana is not remediated or reprocessed in any way after a first failure, it cannot be retested. Any subsequent certificates of analysis produced without remediation or reprocessing of the failed quantity of marijuana will not supersede the original compliance testing certificate of analysis.

(7) **Referencing.** Certified labs may reference samples for mycotoxins, heavy metals, and pesticides testing to other certified labs by subcontracting for those fields of testing. Labs must record all referencing to other labs on a chain-of-custody manifest that includes, but is not limited to, the following information: Lab name, certification number, transfer date, address, contact information, delivery personnel, sample ID numbers, field of testing, and receiving personnel.

(8) Certified labs are not limited in the amount of useable marijuana and marijuana products they may have on their premises at any given time, but a certified lab must have records proving all marijuana and marijuana-infused products in the certified lab's possession are held only for the testing purposes described in this chapter.

(9) A certificate of analysis issued by a certified lab for any marijuana product subject to the requirements of this chapter that has not already been transferred to a retail location expires 12 calendar months after issuance.

(10) The board, or its designee, may request that a licensee or a certified lab provide an employee of the board or their designee samples of marijuana or marijuana products, or samples of the growing medium, soil amendments, fertilizers, crop production aids, pesticides, or water for random or investigatory compliance checks. Samples may be randomly screened and used for other quality control tests deemed necessary by the board.

[Statutory Authority: RCW 69.50.342 and 69.50.345. WSR 17-12-032, § 314-55-102, filed 5/31/17, effective 8/31/17; WSR 16-11-110, § 314-55-102, filed 5/18/16, effective 6/18/16; WSR 15-11-107, § 314-55-102, filed 5/20/15, effective 6/20/15; WSR 14-07-116, § 314-55-102, filed 3/19/14, effective 4/19/14. Statutory Authority: RCW 69.50.325, 69.50.331, 69.50.342, 69.50.345. WSR 13-21-104, § 314-55-102, filed 10/21/13, effective 11/21/13.]

AMENDATORY SECTION (Amending WSR 17-12-032, filed 5/31/17, effective 8/31/17)

WAC 314-55-1025 Proficiency testing. (1) For the purposes of this (~~section~~) chapter, the following definitions apply:

(a) "Field of testing" means the categories of subject matter the laboratory tests, such as pesticide, microbial, potency, residual solvent, heavy metal, mycotoxin, foreign matter, and moisture content detection.

(b) "Proficiency testing (PT)" means the analysis of samples by a laboratory obtained from providers where the composition of the sample is unknown to the laboratory performing the analysis and the results of the analysis are used in part to evaluate the laboratory's ability to produce precise and accurate results.

(c) "Proficiency testing (PT) program" means an operation offered by a provider to detect a laboratory's ability to produce valid results for a given field of testing.

(d) "Provider" means a third-party company, organization, or entity not associated with certified laboratories or a laboratory seeking certification that operates an approved PT program and provides samples for use in PT testing.

(e) "Vendor" means an organization(s) approved by the (~~WSLCB~~) board to certify laboratories for marijuana testing, approve PT programs, and perform on-site assessments of laboratories.

(2) The (~~WSLCB~~) board or its vendor determines the sufficiency of PTs and maintains a list of approved PT programs. Laboratories may request authorization to conduct PT through other PT programs but must obtain approval for the PT program from (~~WSLCB or WSLCB's~~) the board or the board's vendor prior to conducting PT. The (~~WSLCB~~) board may add the newly approved PT program to the list of approved PT programs as appropriate.

(3) As a condition of certification, laboratories must participate in PT and achieve a passing score for each field of testing for which the lab will be or is certified.

(4) A laboratory must successfully complete a minimum of one round of PT for each field of testing the lab seeks to be certified for and provide proof of the successful PT results prior to initial certification.

(5)(a) A certified laboratory must participate in a minimum of two rounds of PT per year for each field of testing to maintain its certification.

(b) To maintain certification, the laboratory must achieve a passing score, on an ongoing basis, in a minimum of two out of three successive rounds of PT. At least one of the scores must be from a round of PT that occurs within six months prior to the laboratory's certification renewal date.

(6) If the laboratory fails to achieve a passing score on at least (~~eighty~~) 80 percent of the analytes in any proficiency test, the test is considered a failure. If the PT provider provides a pass/fail on a per analyte basis but not on the overall round of PT the lab participates in, the pass/fail evaluation for each analyte will be used to evaluate whether the lab passed (~~eighty~~) 80 percent of the analytes. If the PT provider does not provide individual acceptance criteria for each analyte, the following criteria will be applied to determine whether the lab achieves a passing score for the round of PT:

(a) +/- 30% recovery from the reference value for residual solvent testing; or

(b) +/- 3 z or 3 standard deviations from the reference value for all other fields of testing.

(7) If a laboratory fails a round of PT or reports a false negative on a micro PT, the laboratory must investigate the root cause of the laboratory's performance and establish a corrective action report for each unsatisfactory analytical result. The corrective action report must be kept and maintained by the laboratory for a period of three years, available for review during an on-site assessment or inspection, and provided to the ~~((WSLCB or WSLCB's))~~ board or the board's vendor upon request.

(8) Laboratories are responsible for obtaining PT samples from vendors approved by ~~((WSLCB or WSLCB's))~~ the board or the board's vendor. Laboratories are responsible for all costs associated with obtaining PT samples and rounds of PT.

(9) The laboratory must manage, analyze and report all PT samples in the same manner as customer samples including, but not limited to, adhering to the same sample tracking, sample preparation, analysis methods, standard operating procedures, calibrations, quality control, and acceptance criteria used in testing customer samples.

(10) The laboratory must authorize the PT provider to release all results ~~((used for certification and/or remediation of failed studies to WSLCB or WSLCB's))~~ at the same time, whether pass or fail, to the laboratory and the board, or the board's vendor.

(11) The ~~((WSLCB))~~ board may require the laboratory to submit raw data and all photographs of plated materials along with the report of analysis of PT samples. The laboratory must keep and maintain all raw data and all photographs of plated materials from PT for a period of three years.

(12) The ~~((WSLCB))~~ board may waive proficiency tests for certain fields of testing if PT samples or PT programs are not readily available or for other valid reasons as determined by ~~((WSLCB))~~ the board.

(13)(a) The ~~((WSLCB))~~ board will suspend a laboratory's certification if the laboratory fails to maintain a passing score on an ongoing basis in two out of three successive PT studies. The ~~((WSLCB))~~ board may reinstate a laboratory's suspended certification if the laboratory successfully analyzes PT samples from ~~((a WSLCB or WSLCB's))~~ the board or the board's vendor approved PT provider, so long as the supplemental PT studies are performed at least ~~((fifteen))~~ 15 days apart from the analysis date of one PT study to the analysis date of another PT study.

(b) The ~~((WSLCB))~~ board will suspend a laboratory's certification if the laboratory fails two consecutive rounds of PT. ~~((WSLCB))~~ The board may reinstate a laboratory's suspended certification once the laboratory conducts an investigation, provides the ~~((WSLCB))~~ board a deficiency report identifying the root cause of the failed PT, and successfully analyzes PT samples from a ~~((WSLCB or WSLCB's))~~ board or board's vendor approved PT provider. The supplemental PT studies must be performed at least ~~((fifteen))~~ 15 days apart from the analysis date of one PT study to the analysis date of another PT study.

(14) If a laboratory fails to remediate and have its certification reinstated under subsection (13)(a) or (b) of this section within six months of the suspension, the laboratory must reapply for certification as if the laboratory was never certified previously.

(15) A laboratory that has its certification suspended or revoked under this section may request an administrative hearing to contest the suspension as provided in chapter 34.05 RCW.

[Statutory Authority: RCW 69.50.342 and 69.50.345. WSR 17-12-032, § 314-55-1025, filed 5/31/17, effective 8/31/17.]

WSR 22-01-056
PROPOSED RULES
NORTHWEST CLEAN
AIR AGENCY

[Filed December 8, 2021, 11:43 a.m.]

Original Notice.

Proposal is exempt under RCW 70A.15.2040(1).

Title of Rule and Other Identifying Information: Regulation of the Northwest Clean Air Agency (NWCAA).

Hearing Location(s): On January 26, 2022, at 10 a.m., video and teleconference, <https://us06web.zoom.us/j/86092273295>, Meeting ID 860 9227 3295, phone 253-215-8782.

Date of Intended Adoption: February 10, 2022.

Submit Written Comments to: Mark Buford, 1600 South 2nd Street, Mount Vernon, WA 98273, email info@nwcleanairwa.gov, fax 360-428-1620, by January 26, 2022, at 11 a.m.

Assistance for Persons with Disabilities: Contact Laurie Caskey-Schreiber, phone 360-428-1617, fax 360-428-1620, email info@nwcleanairwa.gov, by January 19, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules:

- Update the adoption-by-reference date to allow us to implement the most recent version of the referenced state and federal rules (NWCAA Section 104).
- Amending program that regulates sources that move around (i.e., portable sources) to make it easier for NWCAA to keep track of these types of sources, which helps level the playing field with respect to permitting, registration (emissions and billing), and inspections (Sections 133, 200, 300, 320, 514).
- Update emission inventory reporting for all registered sources to clarify the rule to reflect current practice and house the requirement in a single section rather than relying on multiple authorities (Section 150).
- Clarify fee for air operating permit (AOP) facilities operating sewage sludge incinerators to maintain a level playing field, minimize emissions to protect public health, and to administer fair and appropriate fees while maintaining agency financial stability (Sections 200, 320).
- Create a regulatory program to reduce emissions from all crushing operations to level the playing field for dust control by applying the same standards to most existing and new crushers (Sections 200, 300, 512).
- Clarifying permanent shutdown concept to make the requirements clearer to NWCAA staff and the regulated public, better avoiding surprises and misunderstandings (Sections 200, 320, 325).
- Roll exemptions from registration in Section 321 into Section 320 to make the rule clearer and more consistent with the rest of the regulation (Sections 320 and 321).

New/Amended Regulation Section Derivations: Amending NWCAA Section 200: Added definition of Air Operating Permit (AOP) Affected Source, Crushing Operation, Portable Source; Deleted Temporary Source; New NWCAA 320.6: Based on former NWCAA Section 321, NWCAA Section 512, and NWCAA Section 514.

Distributions for Section Being Replaced: Former NWCAA 300.17: Deleted; and former NWCAA Section 321: See NWCAA 320.6.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: Chapter 70A.15 RCW.

Statute Being Implemented: RCW 70A.15.2040(1).

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

Name of Proponent: NWCAA, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Mark Buford, 1600 South 2nd Street, Mount Vernon, WA, 360-428-1617.

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

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable under RCW 70A.15.2040.

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

Is exempt under RCW 70A.15.2040.

Explanation of exemptions: Not applicable under RCW 70A.15.2040.

December 8, 2021

Mark Buford

Executive Director

AMENDATORY SECTION

SECTION 104 - ADOPTION OF STATE AND FEDERAL LAWS AND RULES

104.1 All provisions of the following state rules that are in effect as of December 8, 2021 (~~April 21, 2021~~) are hereby adopted by reference and made part of the Regulation of the NWCAA: chapter 173-400 WAC, (except - -025, -030, -035, -036, -040(1) & (7), -045, -075, -099, -100, -101, -102, -103, -104, -105(7), -110, -114, -115, -116, -171, -930), chapter 173-401 WAC, chapter 173-407 WAC, chapter 173-420 WAC, chapter 173-425 WAC, chapter 173-430 WAC, chapter 173-433 WAC, chapter 173-434 WAC, chapter 173-435 WAC, chapter 173-441 WAC, chapter 173-442 WAC, chapter 173-450 WAC, chapter 173-460 WAC, chapter 173-476 WAC, chapter 173-480 WAC, chapter 173-481 WAC, chapter 173-485 WAC, chapter 173-491 WAC. The requirements of the NWCAA Regulation apply in addition to the state-wide regulations adopted and enforced under this paragraph.

104.2 All provisions of the following federal rules that are in effect as of December 8, 2021 (~~April 21, 2021~~) are hereby adopted by reference and made part of the Regulation of the NWCAA: 40 CFR Part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans) Appendix M; 40 CFR Part 60 (Standards of Performance For New Stationary Sources) subparts A, D, Da, Db, Dc, E, Ea, Eb, Ec, F, G, Ga, H, I, J, Ja, K, Ka, Kb, L, M, N, Na, O, P, Q, R, T, U, V, W, X, Y, Z, AA, AAa, CC, DD, EE, GG, HH, KK, LL, MM, NN, PP, QQ, RR, SS, TT, UU, VV, VVa, WW, XX, AAA, BBB, DDD, FFF, GGG, GGGa, HHH, III, JJJ, KKK, LLL, NNN, OOO, PPP, QQQ, RRR, SSS, TTT, UUU, VVV, WWW, XXX, AAAA, CCCC, EEEE, IIII, JJJJ, KKKK, LLLL, OOOO, OOOOa, QQQQ, and Appendix A - I; 40 CFR Part 61 (National Emission Standards For Hazardous Air Pollutants) Subparts A, C, D, E, F, J, L, M, N, O, P, V, Y, BB, FF; 40 CFR Part 62 (Approval and Promulgation of State Plans for Designated Facilities and Pollutants) Subpart LLL; 40 CFR Part 63 (National Emission Standards for Hazardous Air Pollutants for Source Categories) Subparts A, B, C, D, F, G, H, I, L, M, N, O, Q, R, T, U, W, X, Y, AA, BB, CC, DD, EE, GG, HH, II, JJ, KK, OO, PP, QQ, RR, SS, TT, UU, VV, WW, XX, YY, CCC, DDD, EEE, GGG, HHH, III, JJJ, LLL, MMM, NNN, OOO, PPP, QQQ, TTT, UUU, VVV, XXX, AAAA, CCCC, DDDD, EEEE, FFFF, GGGG,

HHHH, IIII, JJJJ, KKKK, MMMM, NNNN, OOOO, PPPP, QQQQ, RRRR, SSSS, TTTT, UUUU, VVVV, WWWW, XXXX, YYYY, ZZZZ, AAAAA, BBBB, CCCC, DDDD, EEEE, FFFF, GGGG, HHHH, IIII, LLLL, MMMM, NNNN, PPPP, QQQQ, RRRR, SSSS, TTTT, UUUU, WWWW, YYYY, ZZZZ, BBBB, CCCC, EEEE, FFFF, GGGG, HHHH, JJJJ, MMMM, NNNN, QQQQ, SSSS, TTTT, VVVV, WWWW, XXXX, ZZZZ, AAAAA, DDDDD, EEEEE, and HHHHHH; and 40 CFR Parts 72, 73, 74, 75, 76, 77 and 78 (Acid Rain Program).

PASSED: July 8, 1970 AMENDED: April 14, 1993, September 8, 1993, December 8, 1993, October 13, 1994, May 11, 1995, February 8, 1996, May 9, 1996, March 13, 1997, May 14, 1998, November 12, 1998, November 12, 1999, June 14, 2001, July 10, 2003, July 14, 2005, November 8, 2007, June 10, 2010, June 9, 2011, November 17, 2011, August 9, 2012, March 14, 2013, September 11, 2014, August 13, 2015, August 11, 2016, September 13, 2018, April 11, 2019, May 14, 2020, June 10, 2021, February 10, 2022

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION
SECTION 133 - CIVIL PENALTY

133.1 In addition to or as an alternate to any other penalty provided by law, any person who violates any of the provisions of chapter 70.94 RCW, or any of the rules in force pursuant thereto, including the Regulation of the NWCAA may incur a civil penalty in an amount not to exceed \$19,000 per day for each violation. Each such violation shall be a separate and distinct offense, and in the case of a continuing violation, each day's continuance shall be a separate and distinct violation.

Any person who fails to take action as specified by an order shall be liable for a civil penalty of not more than \$19,000 for each day of continued noncompliance.

133.2 The penalty is due and payable 30 days after a notice is served unless an appeal is filed with the Pollution Control Hearings Board (PCHB).

(A) Within 30 days after the Notice is served, the person incurring the penalty may apply in writing to the Control Officer for the remission or mitigation of the penalty. Upon receipt of the application the Control Officer shall remit or mitigate the penalty only upon a demonstration of extraordinary circumstance such as the presence of information or factors not considered in setting the original penalty.

(B) If such penalty is not paid to the NWCAA within 30 days after such payment is due, the Board or Control Officer may direct the attorney for the NWCAA to bring an action to recover the penalty in Superior Court.

(C) Any judgment will bear interest as provided by statute until satisfied.

133.3 Penalties incurred but not paid shall accrue interest, beginning on the 91st day following the date that the penalty becomes due and payable, at the highest rate allowed by RCW 19.52.020. If penalties are appealed, interest shall not begin to accrue until the 31st day following final resolution of the appeal. The maximum penalty amounts established in this section may be increased annually to account for inflation as determined by the State Office of the Economic and Revenue Forecast Council.

133.4 In addition to other penalties, persons knowingly under-reporting emissions or other information used to set fees, ((~~or~~)) persons required to pay emission or permit fees who are more than 90 days

late with such payments, or persons failing to file a relocation notice to relocate into NWCAA jurisdiction with required registration fee under NWCAA 514.3 may be assessed (~~(subject to)~~) a penalty equal to 3 (~~(three)~~) times the amount of the original fee owed.

133.5 The suspended portion of any civil penalty, issued under Section 133 of this Regulation, shall be due and payable in the event of future penalties against the same person within 5 (~~(five)~~) years from the date of said suspension. After 5 (~~(five)~~) years the suspended portion of the Penalty shall be considered void and of no force or effect.

PASSED: January 8, 1969 AMENDED: November 14, 1984, April 14, 1993, September 8, 1993, October 13, 1994, February 8, 1996, November 12, 1998, November 12, 1999, June 14, 2001, July 10, 2003, July 14, 2005, November 8, 2007, August 13, 2015, February 10, 2022

AMENDATORY SECTION

SECTION 150 - POLLUTANT DISCLOSURE - REPORTING BY AIR CONTAMINANT SOURCES

150.1 Every person operating a registered air contaminant source (~~(with actual annual emissions of 25 tons or more of a single air pollutant)~~) or a Chapter 401 source, as defined in WAC 173-401-200, (~~(subject to the operating permit program)~~) shall file annually (~~(at a time determined by the NWCAA)~~) and on forms furnished by the NWCAA a report setting forth:

(~~(150.11)~~) (A) The nature of the enterprise.

(~~(150.12)~~) (B) A list of process materials which are potentially significant sources of emissions used in, and incidental to, its manufacturing processes, including by-products and waste products.

(~~(150.13)~~) (C) The estimated calendar year emissions (~~(of)~~) which may include each criteria air pollutant, hazardous air pollutant, toxic air pollutant, and volatile organic compounds (VOC). Every person filing an annual emissions inventory shall retain at the facility the calculations, associated production data, and emission factors used to obtain the estimates.

150.~~(14)~~ 2 Annual calendar year emission reports shall be submitted to the NWCAA by no later than April 15 of the following year (~~((e.g., 2010 emission report is due April 15, 2011))~~) unless otherwise specified by NWCAA. If the emission report is not submitted by the required date and the emissions are used to determine (~~(operating permit)~~) fees as described in NWCAA (~~(Section)~~) 322.4 and 320.3, potential to emit may be used to determine said fees.

(~~(150.2 Every person operating a registered source other than those identified in 150.1 may be required by the Control Officer to submit periodic emission reports.)~~)

150.3 Every person operating any source or sources which directly or indirectly emits or contributes air contaminants within the jurisdictional area of the NWCAA may be required to report to the Control Officer, at a time or times (~~(7)~~) selected by the Control Officer, (~~(such as)~~) production rates, sales or other data (including quantities of products used or any other information) as may be required to estimate the emissions from the various air contaminant sources. (~~(Data will be held confidential under Section 114 if so requested by the owner or manager and such request meets the requirements of Section 114. Such sources include, but are not limited to, dealers in gaseous liquid or solid fossil fuels for public consumption in motor vehicles or for space heating purposes.)~~)

PASSED: February 14, 1973 AMENDED: September 8, 1993, December 8, 1993, November 12, 1999, November 8, 2007, February 10, 2022

AMENDATORY SECTION
SECTION 200 - DEFINITIONS

The terms used in the Regulation of the NWCAA are defined in this section as follows:

...

AIR OPERATING PERMIT (AOP) AFFECTED SOURCE - This term shall have the meaning given to it in WAC 173-401-200. Additionally, for the purposes of NWCAA 322.4e), for Chapter 401 sources operating Sewage Sludge Incinerators (SSI), those emissions units not included in the Air Operating Permit are not part of the AOP affected source.

...

CRUSHING OPERATION - Metallic and nonmetallic mineral processing plants including, but not limited to, rock, asphalt, and concrete crushers, aggregate screens, and sand and gravel operations. It includes: crushers, grinding mills, screening operations, bucket elevators, belt conveyors, bagging operations, storage bins, enclosed truck or railcar loading stations as well as crushers and grinding mills at hot mix asphalt facilities that reduce the size of nonmetallic minerals embedded in recycled asphalt pavement and subsequent affected facilities up to, but not including, the first storage silo or bin. Sources subject to 40 CFR 60 Subpart 000 (Standards of Performance for Nonmetallic Mineral Processing Plants) are considered crushing operations.

...

NEW SOURCE - means one or more of the following:

(A) The construction or modification of a stationary source that increases the amount of any air contaminant emitted by such (~~stationary~~) source or that results in the emission of any air contaminant not previously emitted

(B) The restart of a stationary source after permanent shutdown

(C) Any other project that constitutes a new (~~stationary~~) source under the Federal Clean Air Act

...

PERMANENT SHUTDOWN - Permanently stopping or terminating all processes at a "stationary source" or "emissions unit." Except as provided in subsections (A), ~~(and)~~ (B), and (C), whether a shutdown is permanent depends on the intention of the owner or operator at the time of the shutdown as determined from all facts and circumstances, including the cause of the shutdown.

(A) A shutdown is permanent if the owner or operator files a report of shutdown, as provided in NWCAA Section 325. Failure to file such a report does not mean that a shutdown was not permanent.

(B) Any shutdown lasting 2 or more years is considered to be permanent.

(C) A registered source that does not pay the applicable annual registration fee by the deadline is considered in permanent shutdown unless notified in writing by the NWCAA.

...

PORTABLE SOURCE - A portable source is one that is designed to be and capable of being carried or moved from one location to another. Indicia of transportability include, but are not limited to, wheels, skids, carrying handles, dolly, trailer, or platform. Portable sources include only those that are subject to registration under NWCAA Section 320. Nonroad engines are not considered portable sources.

...

~~(TEMPORARY SOURCE - An emissions unit that remains or will remain at one location for less than 12 consecutive months. A location is any~~

single site at a building, structure, facility, or installation. A nonroad engine is not considered a temporary source.))

...

PASSED: January 8, 1969 AMENDED: October 31, 1969, September 3, 1971, June 14, 1972, July 11, 1973, February 14, 1973, January 9, 1974, October 13, 1982, November 14, 1984, October 13, 1994, February 8, 1996, May 9, 1996, March 13, 1997, November 12, 1998, June 14, 2001, July 10, 2003, July 14, 2005, November 8, 2007, November 17, 2011, March 14, 2013, August 13, 2015, August 11, 2016, September 13, 2018, April 11, 2019, February 10, 2022

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION

SECTION 300 - NEW SOURCE REVIEW

300.1(A) A Notice of Construction (NOC) application must be filed by the owner or operator and an Order of Approval must be issued by the NWCAA, prior to beginning actual construction of any new source or making any modification, except for any of the following:

(1) Emissions units that are categorically exempt under NWCAA 300.3.

(2) Emissions units that are exempt under NWCAA 300.4.

~~((3) Any temporary sources operating under NWCAA 300.17.))~~

~~((4))~~ (3) Any emissions unit covered under a General Order of Approval and operating in accordance with NWCAA 300.16.

(B) New source review of a modification is limited to the emissions unit or units proposed to be added to or modified at an existing stationary source and the air contaminants whose emissions would increase above the emission thresholds in NWCAA 300.4 as a result of the modification.

(C) New source review is required for an increase in a plant-wide cap or an emissions-unit-specific emission limit.

(D) The Control Officer may require that a new source or modification, that would otherwise be exempt under this section, submit a Notice of Construction application and be issued an Order of Approval as specified in this section. The Control Officer may also require that individual pollutant emission increases that would otherwise be exempt under this section be included in the Order of Approval review. This discretionary determination will be based on the nature of air pollution emissions from the stationary source and its potential effect on health, economic and social factors, or physical effects on property. Upon request, the proponent shall submit to the Control Officer appropriate information as necessary to make this determination.

300.2 In lieu of this section, any new major stationary source or major modification located in an attainment or unclassifiable area as defined in WAC 173-400-030 shall be processed in accordance with the requirements of WAC 173-400-113 and WAC 173-400-700 through 173-400-750, as applicable, for the pollutant for which the project is major. Additionally, any new major stationary source or major modification located in a nonattainment area as defined in WAC 173-400-030 shall be processed in accordance with the requirements of WAC 173-400-112 and WAC 173-400-800 through 173-400-860, as applicable, for the pollutant and for precursors of the pollutant for which the area is in nonattainment.

300.3 Categorical Exemptions from New Source Review

Construction of a new emissions unit that falls within one of the categories listed in NWCAA 300.3 is exempt from new source review.

Modification of any emissions unit listed in NWCAA 300.3 is exempt from new source review, provided that the modified unit continues to fall within one of the listed categories. The owner or operator shall keep sufficient records to document the exemption under this subsection.

(A) Maintenance/construction:

(1) Cleaning and sweeping of streets and paved surfaces
 (2) Concrete application, and installation
 (3) Dredging wet spoils handling and placement
 (4) Paving application and maintenance, excluding asphalt plants
 (5) Plant maintenance and upkeep activities (grounds keeping, general repairs, routine house keeping, architectural or maintenance coatings to stationary structures, welding, cutting, brazing, soldering, plumbing, retarring roofs, etc.)

(6) Plumbing installation, plumbing protective coating application and maintenance activities

(7) Roofing application and maintenance

(8) Insulation application and maintenance, excluding products for resale

(9) Janitorial services and consumer use of janitorial products

(B) Storage tanks:

(1) Lubricating oil storage tanks except those facilities that are wholesale or retail distributors of lubricating oils

(2) Polymer tanks and storage devices and associated pumping and handling equipment, used for solids dewatering and flocculation

(3) Storage tanks, reservoirs, pumping and handling equipment of any size containing soaps, vegetable oil, grease, animal fat, and non-volatile aqueous salt solutions

(4) Process and white water storage tanks

(5) Operation, loading and unloading of storage tanks and storage vessels, with lids or other appropriate closure and less than 260 gallon capacity

(6) Operation, loading, and unloading of storage tanks less than or equal to 1,100 gallon capacity, with lids or other appropriate closure, that store materials that do not contain Toxic Air Pollutants, as defined in chapter 173-460 WAC, or that have a maximum vapor pressure of 550 mm mercury at 21°C

(7) Operation, loading and unloading storage of butane, propane, or liquefied petroleum gas with a vessel capacity less than 40,000 gallons

(8) Tanks, vessels and pumping equipment, with lids or other appropriate closure for storage or dispensing of aqueous solutions of inorganic salts, bases and acids with no VOC content

(C) New or modified fuel burning equipment with a heat input capacity (higher heating value) less than all of the following:

(1) 500,000 Btu/hr coal or other solid fuels with less than or equal to 0.5% sulfur

(2) 500,000 Btu/hr used oil, per the requirements of RCW 70.94.610

(3) 400,000 Btu/hr wood

(4) 1,000,000 Btu/hr gasoline, kerosene, #1 or #2 fuel oil and with less than or equal to 0.05% sulfur

(5) 10,000,000 Btu/hr natural gas, propane, or LPG. This includes combustion units that have natural gas as a primary fuel source and ultra-low sulfur diesel (less than 15 ppm by weight sulfur) as a secondary fuel source that is combusted only during testing or periods of natural gas curtailment beyond the control of the source.

(D) Material handling:

(1) Continuous digester chip feeders
(2) Grain elevators not licensed as warehouses or dealers by either the Washington State Department of Agriculture or the U.S. Department of Agriculture

(3) Storage and handling of water based lubricants for metal working where organic content of the lubricant is less than or equal to 10%

(4) Equipment used exclusively to pump, load, unload, or store high boiling point organic material in tanks less than one million gallon capacity with lids or other appropriate closure. The high boiling point organic material shall not have an atmospheric boiling point of less than 150°C or a vapor pressure more than 5 mm mercury at 21°C.

(E) Water treatment:

(1) Septic sewer systems, not including active wastewater treatment facilities

(2) NPDES permitted ponds and lagoons used solely for the purpose of settling suspended solids and skimming of oil and grease

(3) De-aeration (oxygen scavenging) of water where Toxic Air Pollutants as defined in chapter 173-460 WAC are not emitted

(4) Process water filtration system and demineralizer vents

(5) Sewer manholes, junction boxes, sumps, and lift stations associated with wastewater treatment systems

(6) Demineralizer tanks

(7) Alum tanks

(8) Clean water condensate tanks

(F) Laboratory testing and quality assurance/control testing equipment, including fume hoods, used exclusively for chemical and physical analysis, teaching, or experimentation, used specifically in achieving the purpose of the analysis, test, or teaching activity. Non-production bench scale research equipment is also included.

(G) Monitoring/quality assurance/testing:

(1) Equipment and instrumentation used for quality control/assurance or inspection purpose

(2) Hydraulic and hydrostatic testing equipment

(3) Sample gathering, preparation, and management

(4) Vents from continuous emission monitors and other analyzers

(H) Dry Cleaning: Unvented, dry-to-dry, dry-cleaning equipment that is equipped with refrigerated condensers and carbon absorption to recover the cleaning solvent

(I) Emergency Stationary Internal Combustion Engines (ICE): Any stationary internal combustion engine whose operation is limited to emergency situations and required testing and maintenance, and operates in these capacities for less than 500 hours a year. Examples include stationary ICE used to produce power for critical networks or equipment (including power supplied to portions of a facility) when electric power from the local utility (or the normal power source, if the facility runs on its own power production) is interrupted, or stationary ICE used to pump water in the case of fire or flood, etc. Stationary ICE used to supply power to an electric grid or that supply power as part of a financial arrangement with another entity are not considered to be emergency engines.

(J) Miscellaneous:

(1) Single-family residences and duplexes

(2) Plastic pipe welding

- (3) Primary agricultural production activities including soil preparation, planting, fertilizing, weed and pest control, and harvesting
- (4) Comfort air conditioning
- (5) Flares used to indicate danger to the public
- (6) Natural and forced air vents and stacks for bathroom/toilet activities
- (7) Personal care activities
- (8) Recreational fireplaces including the use of barbecues, campfires, and ceremonial fires
- (9) Tobacco smoking rooms and areas
- (10) Noncommercial smokehouses
- (11) Blacksmith forges for single forges
- (12) Vehicle maintenance activities, not including vehicle surface coating
- (13) Vehicle or equipment washing
- (14) Wax application
- (15) Oxygen, nitrogen, or rare gas extraction and liquefaction equipment not including internal and external combustion equipment
- (16) Ozone generators and ozonation equipment
- (17) Solar simulators
- (18) Ultraviolet curing processes, to the extent that Toxic Air Pollutant gases as defined in chapter 173-460 WAC are not emitted
- (19) Electrical circuit breakers, transformers, or switching equipment installation or operation
- (20) Pulse capacitors
- (21) Pneumatically operated equipment, including tools and hand held applicator equipment for hot melt adhesives, excluding pneumatic conveying
- (22) Fire suppression equipment
- (23) Recovery boiler blow-down tank
- (24) Screw press vents
- (25) Drop hammers or hydraulic presses for forging or metal working
- (26) Production of foundry sand molds, unheated and using binders less than 0.25% free phenol by sand weight
- (27) Natural gas pressure regulator vents, excluding venting at oil and gas production facilities and transportation marketing facilities
- (28) Solvent cleaners less than 10 square feet air-vapor interface with solvent vapor pressure not more than 30 mm mercury at 21°C not emitting Toxic Air Pollutants as defined in chapter 173-460 WAC
- (29) Surface coating and dip coating operations using materials containing less than or equal to 1% by weight VOC and 1% by weight Toxic Air Pollutants as defined in chapter 173-460 WAC
- (30) Cleaning and stripping activities and equipment using solutions containing less than or equal to 1% by weight VOC and 1% by weight Toxic Air Pollutants as defined in chapter 173-460 WAC. Acid solutions used on metallic substances are not exempt
- (31) Gasoline dispensing facilities subject to chapter 173-491 WAC are exempt from Toxic Air Pollutant analysis pursuant to chapter 173-460 WAC
- (32) Crushing operations less than 4,500 tons per calendar day
- (33) Relocation of a subject portable source operating in accordance with a NWCAA Order of Approval
- 300.4 Emissions Threshold Exemptions from New Source Review

(A) Construction of a new emissions unit that has an uncontrolled potential to emit emission rate below all of the threshold levels listed in the table contained in NWCAA 300.4(D) is exempt from new source review.

(B) A modification to an existing emissions unit that increases the unit's actual emissions by less than all of the threshold levels listed in the table contained in NWCAA 300.4(D) is exempt from new source review.

(C) Greenhouse gas emissions are exempt from new source review under this section except to the extent required under WAC 173-400-720, Prevention of Significant Deterioration. The owner or operator of a source or emissions unit may request that the NWCAA issue an Order to impose emission limits and/or operation limitations for greenhouse gas emissions.

(D) Exemption threshold levels:

POLLUTANT THRESHOLD LEVEL (ton per year)

(1) Total Suspended Particulates: 1.25

(2) PM₁₀: 0.75

(3) PM_{2.5}: 0.5

(4) Sulfur Dioxide: 2.0

(5) Nitrogen Oxides: 2.0

(6) Volatile Organic Compounds, total: 2.0

(7) Carbon Monoxide: 5.0

(8) Lead: 0.005

(9) Ozone Depleting Substances, total: 1.0

(10) Toxic Air Pollutants: The small quantity emission rate (SQER) specified for each TAP in WAC 173-460-150

300.7 Notice of Construction - Submittal Requirements

Each Notice of Construction application shall be submitted on forms provided by the NWCAA and be accompanied by the appropriate new source review fee specified in NWCAA 324.2.

300.8 Notice of Construction - Completeness Determination.

(A) Within 30 days after receiving a Notice of Construction application, the NWCAA shall either notify the applicant in writing that the application is complete or notify the applicant in writing of the additional information necessary to complete the application.

(B) A complete application contains all the information necessary for processing the application. At a minimum, the application shall include information on the nature and amounts of emissions to be emitted by the proposed new source or increased as part of a modification, as well as the location, design, construction, and operation of the new source as needed to enable the NWCAA to determine that the construction or modification will meet the applicable requirements. Designating an application complete for purposes of permit processing does not preclude the NWCAA from requesting or accepting additional information.

(C) An application is not complete until the State Environmental Policy Act (SEPA) has been addressed under chapter 197-11 WAC and NWCAA Section 155.

(D) An application is not complete until the new source review fee specified in NWCAA 324.2 has been paid.

300.9 Notice of Construction - Final Determination

(A) Within 60 days after receipt of a complete Notice of Construction application, the NWCAA shall either issue a final decision on the application or initiate public notice under NWCAA Section 305

as applicable on a preliminary decision, followed as promptly as practicable by a final decision.

(B) An Order of Approval cannot be issued for the Notice of Construction application until the following criteria are met for those proposed emissions units and pollutants that triggered new source review, as applicable:

(1) Comply with all applicable New Source Performance Standards (NSPS), National Emission Standards for Hazardous Air Pollutants (NESHAP), National Emission Standards for Hazardous Air Pollutants for source categories (NESHAP), emission standards adopted under chapter 70.94 RCW and all applicable NWCAA emission standards.

(2) Employ Best Available Control Technology (BACT).

(3) Allowable emissions will not cause or contribute to a violation of any ambient air quality standard. In addition, if located in a nonattainment area, allowable emissions will not violate the requirements for reasonable further progress established by the State Implementation Plan (SIP). If NWCAA has reason to be concerned that the construction or modification would cause or contribute to a violation of a NAAQS, NWCAA may require modeling using the guideline models and procedures of Appendix W of 40 CFR Part 51 as referenced in NWCAA 104.2. Written approval from the EPA must be obtained for any modification to or substitution for a guideline model.

(4) Comply with the applicable requirements of NWCAA Section 305.

(5) Comply with the applicable requirements of WAC 173-400-200 and 173-400-205.

(6) All fees required under NWCAA 324.2 have been paid.

(C) In addition to the requirements of NWCAA 300.9(B), an Order of Approval cannot be issued until the new project meets the Toxic Air Pollutant requirements of WAC 173-400-110 (2)(d).

(D) A person seeking approval to construct a new source or modification that requires an operating permit may elect to integrate review of the operating permit application or amendment required under chapter 173-401 WAC and the Notice of Construction application required by this section. A Notice of Construction application designated for integrated review shall be processed in accordance with operating permit program procedures and deadlines in chapter 173-401 WAC and must comply with NWCAA Section 305.

(E) Every final determination on a Notice of Construction application shall be reviewed and signed prior to issuance by a professional engineer or staff under the direct supervision of a professional engineer in the employ of the NWCAA.

300.10 Order of Approval - Appeals

(A) The issuance of an Order of Approval, any conditions contained in an Order of Approval, or the denial of a Notice of Construction application may be appealed to the pollution control hearings board as provided in chapter 43.21B RCW.

(B) The NWCAA shall promptly mail copies of each Order approving or denying a Notice of Construction application to the applicant and to any other party who submitted timely comments on the application, along with a notice advising parties of their rights of appeal to the pollution control hearings board.

300.11 Order of Approval - Time Limitations

(A) An Order of Approval becomes invalid if the owner or operator has not begun actual construction within 18 months of approval, if construction is discontinued for a period of 18 months or more, or if construction is not completed within a reasonable time. The NWCAA may extend the approval period upon a satisfactory showing that an exten-

sion is justified. A written request for an extension shall include an updated BACT analysis submitted prior to the expiration of the current approval period. No single extension of time shall be longer than 18 months. The cumulative period between initial permit issuance and the end of any approved time extensions shall not exceed 54 months.

(B) This provision does not apply to the time period between construction of the approved phases of a phased construction project. Each phase must begin actual construction within 18 months of the approved commencement date.

300.12 Order of Approval - Revision

(A) The owner or operator may request a revision to an Order of Approval and the NWCAA may approve the request provided that the revision:

(1) Will not cause the source to exceed an emissions standard set by regulation or rule;

(2) Will not result in an exceedance of any ambient air quality standard;

(3) Will not adversely impact the ability to determine compliance with an emissions standard;

(4) Will continue to require Best Available Control Technology (BACT), Lowest Achievable Emission Rate (LAER), and Toxic Air Pollutant Best Available Control Technology (T-BACT), as applicable, for each new source or modification approved by the original Order of Approval (BACT and T-BACT as defined at the time of original approval); and

(5) Will meet the requirements of NWCAA 300.7 through 300.13 and NWCAA Section 305, as applicable.

(B) A revision under NWCAA 300.12 only addresses projects where the emissions increase from each emissions unit qualifies as exempt under NWCAA 300.4.

(C) Each Order of Approval revision request shall be submitted and will be processed as a Notice of Construction application. The application shall be submitted with the appropriate new source review fee specified in NWCAA 324.2.

300.13 Order of Approval - Requirements to Comply

Owners and operators of a source or emissions unit shall:

(A) Comply with the conditions in the Order of Approval or General Order of Approval, as applicable.

(B) Install and operate in accordance with the information submitted in the Notice of Construction application or application for coverage under a General Order of Approval.

300.14 Notice of Construction Application Inapplicability Determination

An owner or operator may submit a written request to the NWCAA to obtain a written determination that a project is exempt from new source review under NWCAA 300.1 or from replacement or substantial alteration of control technology under NWCAA 300.25. The request shall include a summary of the project, a narrative describing why the project should be exempt from applicability, and the appropriate fee in accordance with NWCAA 324.2.

Within 30 days after receiving a request under this subsection, the NWCAA shall either provide the written determination of inapplicability, notify the applicant in writing that the project requires an Order of Approval, or notify the applicant in writing of the additional information necessary to complete the request.

300.16 General Order of Approval

In lieu of filing a Notice of Construction application under NWCAA 300.7, the owner or operator of a qualifying emissions unit may apply for coverage under a General Order of Approval issued under this section.

(A) The NWCAA may issue a General Order of Approval applicable to a specific source type or emissions unit. A General Order of Approval shall identify criteria by which a source or emissions unit may qualify for coverage under the General Order of Approval and shall include terms and conditions under which the owner or operator agrees to install and/or operate the covered source or emissions unit.

(1) These terms and conditions shall include as appropriate:

(a) Emissions limitations and/or control requirements based on Best Available Control Technology (BACT) and/or BACT for Toxic Air Pollutants (T-BACT);

(b) Operational restrictions, such as:

(i) Criteria related to the physical size of the source or emissions unit(s) covered;

(ii) Criteria related to raw materials and fuels used;

(iii) Criteria related to allowed or prohibited locations; and

(iv) Other similar criteria as determined by the NWCAA;

(c) Monitoring, reporting, and recordkeeping requirements to ensure compliance with the applicable emission limits and/or control requirements;

(d) Initial and periodic emission testing requirements;

(e) Compliance with WAC 173-400-112, NWCAA 300.9(B), and 300.9(C), as applicable;

(f) Compliance with 40 CFR Parts 60, 61, 62, and 63; emission standards adopted under chapter 70.94 RCW; and all applicable NWCAA emission standards; and

(g) The application and approval process to obtain coverage under the specific General Order of Approval.

(2) The original issuance and any revisions to a General Order of Approval must comply with NWCAA Section 305, as applicable.

(3) The NWCAA may review and revise a General Order of Approval at any time. Revisions to General Orders of Approval shall only take effect prospectively.

(B) Application for coverage under a General Order of Approval.

(1) In lieu of applying for an individual Order of Approval under NWCAA 300.7, an owner or operator of a source or emissions unit may apply for and receive coverage from the NWCAA under a General Order of Approval if:

(a) The owner or operator of the source or emissions unit applies for coverage under a General Order of Approval in accordance with NWCAA 300.16 and any conditions of the specific General Order of Approval related to application for and the granting of coverage;

(b) The source or emissions unit meets all the applicability qualifications listed in the requested General Order of Approval;

(c) The requested source or emissions unit is not part of a new major stationary source or major modification subject to the requirements of WAC 173-400-113 (3) and (4), WAC 173-400-700 through 173-400-750, or 173-400-800 through 173-400-860; and

(d) The requested source or emissions unit does not trigger applicability of the Air Operating Permit program under NWCAA Section 322, or trigger a required modification of an existing Air Operating Permit.

(2) Owners or operators of sources or emissions units applying for coverage under a General Order of Approval shall do so using the

forms provided by the NWCAA and include the application fee as specified in NWCAA 324.2. The application must include all information necessary to determine qualification for, and to assure compliance with, a General Order of Approval.

(3) An application is incomplete until the NWCAA has received all required fees.

(4) The owner or operator of the proposed source or emissions unit that qualifies for coverage under a General Order of Approval shall not begin actual construction of the proposed source or emissions unit until written confirmation of coverage from the NWCAA has been received in accordance with the procedures established in NWCAA 300.16(C).

(C) Each General Order of Approval shall include a section on how an applicant is to request coverage and how the NWCAA will grant coverage.

(1) Within 30 days after receipt of an application for coverage under a General Order of Approval, the NWCAA shall either provide written confirmation of coverage under the General Order of Approval or notify the applicant in writing that the application is incomplete, inaccurate, or does not qualify for coverage under the General Order of Approval. If an application is incomplete, the NWCAA shall notify the applicant of the information needed to complete the application. If an application does not qualify for coverage under the General Order of Approval, the NWCAA shall notify the applicant of the reasons why the application does not qualify. Coverage under a General Order of Approval is effective as of the date of issuance of the written confirmation of coverage under the General Order.

(2) Failure of an owner or operator to obtain written confirmation of coverage under NWCAA 300.16 prior to beginning actual construction is considered failure to obtain an Order of Approval pursuant to NWCAA 300.1.

(D) An owner or operator who has received confirmation of coverage under a specific General Order of Approval may later request to be excluded from coverage under that General Order of Approval by applying to the NWCAA for an individual Order of Approval under NWCAA 300.7 or for coverage under another General Order of Approval. If the NWCAA issues an individual Order of Approval or confirms coverage under a different General Order of Approval, coverage under the original General Order of Approval is automatically terminated, effective on the effective date of the individual Order of Approval or confirmation of coverage under the new General Order of Approval.

(E) The Control Officer may require that a new source or modification, that would otherwise be covered under a General Order of Approval, submit a Notice of Construction application and be issued an individual Order of Approval under NWCAA 300.7 through 300.13. This discretionary determination shall be based on the nature of air pollution emissions from the source and its potential effect on health, economic and social factors, or physical effects on property. Upon request, the owner or operator shall submit to the Control Officer, appropriate information as necessary to make this determination.

~~(300.17 Temporary Sources~~

~~(A) This section applies to temporary sources that do not qualify for exemption under NWCAA 300.3 or 300.4.~~

~~(B) Temporary sources shall submit a Notice of Construction application and an Order of Approval must be issued by the NWCAA in accordance with NWCAA 300.7 through 300.13 prior to beginning operation~~

within the NWCAA jurisdiction except as provided under NWCAA 300.17(E).

~~(C) If a temporary source is locating in a nonattainment area within the NWCAA jurisdiction and if the source emits the pollutants or pollutant precursors for which the area is classified as nonattainment, the source must obtain an Order of Approval from the NWCAA regardless of the exemption in NWCAA 300.17(E).~~

~~(D) If a temporary source is a major stationary source then it must also comply with WAC 173-400-700 through 173-400-750 as applicable.~~

~~(E) Except as provided in 300.17 (C) and (D), temporary sources are allowed to operate within the NWCAA jurisdiction without obtaining an Order of Approval from the NWCAA provided that:~~

~~(1) A permitting authority in Washington State issued a Notice of Construction Order of Approval for the temporary source after July 1, 2010 identifying the emissions unit as a "portable" or "temporary" source.~~

~~(2) Operation within the NWCAA jurisdiction under this provision is limited to a single 12 consecutive month period commencing with initial startup within the NWCAA jurisdiction. For operation within the NWCAA jurisdiction after this initial 12 consecutive month period, the owner or operator must obtain an Order of Approval from the NWCAA in accordance with NWCAA 300.17(B).~~

~~(F) The owner or operator shall notify the NWCAA of the intent to relocate into or within the NWCAA jurisdiction at least 15 calendar days prior to beginning operation at a different location. Notification is not required for relocation within the same major source. The notification shall include a copy of the applicable temporary source Order of Approval and estimated start and end dates at the new location. The owner or operator shall keep a record of the date of initial startup within the NWCAA jurisdiction along with durations and locations of operation.~~

~~(G) The first time the owner or operator locates the temporary source within the NWCAA jurisdiction, the initial relocation notice shall include the appropriate annual registered source fee specified in NWCAA 324.1. The owner or operator shall pay an annual registered source fee for each calendar year during which the temporary source operates within the NWCAA jurisdiction.~~

~~(H) The owner or operator shall submit the emission inventory required under NWCAA Section 150 to the NWCAA if the temporary source operated in the NWCAA jurisdiction during the preceding calendar year. The data must be sufficient in detail to enable the NWCAA to determine the emissions within its jurisdiction and the yearly aggregate.~~

~~(I) To change the conditions in an Order of Approval issued by a permitting authority other than the NWCAA while operating in the NWCAA jurisdiction, the owner or operator must obtain an Order of Approval from the NWCAA in accordance with NWCAA 300.7 through 300.13.~~

~~(J) Prior to modifying a temporary source while operating within the NWCAA jurisdiction under a non-NWCAA Order of Approval, the owner or operator must obtain an Order of Approval from the NWCAA in accordance with NWCAA 300.7 through 300.13.~~

~~(K) The NWCAA has authority to enforce the conditions of the Order of Approval that authorizes the temporary source operation, regardless of which permitting authority issued the Order of Approval. The owner or operator shall operate the temporary source in compliance with the conditions set forth in the Order of Approval and any other~~

~~applicable requirements. Any reports required by the Order of Approval shall be submitted to the NWCAA.~~

~~(L) Temporary sources relying upon an Order of Approval issued by a permitting authority other than the NWCAA may be required to obtain an Order of Approval from the NWCAA in accordance with NWCAA 300.17(B) at the discretion of the Control Officer based on the source type, emission quantity, or suitability of the non-NWCAA Order of Approval requirements.)~~

300.25 Replacement or Substantial Alteration of Emission Control Technology at an Existing Stationary Source.

(A) Any person proposing to replace or substantially alter the emission control technology installed on an existing stationary source or emissions unit shall file a Notice of Construction application with the NWCAA. Replacement or substantial alteration of control technology does not include routine maintenance, repair, or similar parts replacement.

(B) For emissions units and associated pollutants not otherwise reviewable under NWCAA Section 300, the NWCAA may:

(1) Require that the owner or operator employ RACT for the affected emissions unit;

(2) Prescribe reasonable operation and maintenance conditions for the control equipment; and

(3) Prescribe other requirements as authorized by chapter 70.94 RCW.

(C) Within 30 days after receiving a Notice of Construction application under this subsection, the NWCAA shall either notify the applicant in writing that the application is complete or notify the applicant in writing of the additional information necessary to complete the application. Within 30 days of receipt of a complete Notice of Construction application under this section the NWCAA shall either issue an Order of Approval or a proposed RACT determination for the proposed project.

(D) An owner or operator shall not begin actual construction on a project subject to review under this section until the NWCAA issues a final Order of Approval. However, any Notice of Construction application filed under this section shall be deemed to be approved without conditions if the NWCAA takes no action within 30 days of receipt of a complete Notice of Construction application.

(E) Approval to replace or substantially alter emission control technology shall become invalid if the owner or operator has not begun actual construction within 18 months of approval, if construction is discontinued for a period of 18 months or more, or if construction is not completed within a reasonable time. The NWCAA may extend the 18-month approval period upon a satisfactory showing that an extension is justified. No single extension of time shall be longer than 18 months. The cumulative period between initial permit issuance and the end of any approved time extensions shall not exceed 54 months. This provision does not apply to the time period between construction of the approved phases of a phased construction project. Each phase must begin actual construction within 18 months of the approved commencement date.

PASSED: January 8, 1969 AMENDED: July 8, 1970, February 14, 1973, July 11, 1973, August 9, 1978, October 12, 1989, February 14, 1990, April 14, 1993, November 12, 1998, November 12, 1999, March 9, 2000, June 14, 2001, July 10, 2003, July 14, 2005, November 8, 2007, June 10, 2010, June 9, 2011, November 17, 2011, August 13, 2015, April 11, 2019, February 10, 2022

AMENDATORY SECTION

SECTION 320 - REGISTRATION PROGRAM

320.1 Program Authority, Applicability and Purpose. As authorized by RCW 70.94.151, the Board, by the NWCAA Regulation, requires registration and reporting for specified classes of stationary air contaminant sources (~~((including temporary sources))~~) which may cause or contribute to air pollution. This classification is made according to levels and types of emissions and other characteristics that cause or contribute to air pollution with special reference to effects on health, economic and social factors, and physical effects on property. The purpose of the registration program is to develop and maintain a current and accurate record of stationary air contaminant sources (~~((including temporary sources))~~) within the NWCAA jurisdiction. Information collected through the registration program is used to evaluate the effectiveness of air pollution control strategies and to verify source compliance with applicable air pollution requirements.

320.2 Registration and Reporting. The owner or operator of a stationary air contaminant source (~~((including temporary sources))~~) for which registration and reporting are required, shall register the source with the NWCAA. The owner or operator shall make reports to the NWCAA containing information as may be required by the NWCAA concerning location, size, and height of air contaminant outlets, processes employed, nature of the air contaminant emission, and such other information as is relevant to air pollution and available or reasonably capable of being assembled. All records and reports required by the NWCAA Regulation for registered sources shall be maintained for at least 3 years from the date of generation and be made available to NWCAA personnel upon request.

320.3 Annual Registration Fees. Registered sources shall pay an annual registration fee. The Board has determined the fee for registered sources as specified in Section 324.1. The amount of fees collected shall not exceed the costs of implementing this registration program. Implementing the registration program includes, but is not limited to:

(A) Review of registered source emission reports and other periodic reports and conducting related compilation and reporting activities;

(B) Conducting compliance inspections, complaint investigations, and other activities necessary to ensure that a registered source is complying with permit, Order, or regulatory requirements, as applicable, including determination of registration applicability;

(C) The share attributable to registered sources of the development and maintenance of emissions inventories;

(D) The share attributable to registered sources for data storage and retrieval systems necessary for support of the registration program;

(E) Registered source fee determinations, assessment, and collection, including the costs of necessary administrative dispute resolution and penalty collection;

(F) The share attributable to registered sources for administration of the program including costs of clerical support, supervision, and management; tracking of time, revenues and expenditures; accounting activities; required fiscal audits and reporting activities; enforcement activities and penalty assessment, excluding the costs of proceedings before the pollution control hearings board and all costs of judicial enforcement.

320.4 Any registered source that does not pay the applicable annual registration fee by the deadline shall be considered in permanent shutdown unless notified in writing by the NWCAA. (~~a new source and shall submit a Notice of Construction application and receive an Order of Approval prior to resumption of operation.~~)

320.5 Registration Required

(A) Source categories. Except as provided in NWCAA (~~Section 321~~) 320.6, the owner or operator of a source that falls into at least one of the following source categories shall register with the NWCAA:

Any source subject to a National Emission Standard for Hazardous Air Pollutants (NESHAP) under 40 CFR Part 61 other than Subpart M (National Emission Standard for Asbestos).

Any source subject to 40 CFR Part 62.

Any affected source subject to a National Emission Standard for Hazardous Air Pollutants for Source Categories (NESHAP) under 40 CFR Part 63.

Any source that has elected to opt-out of the operating permit program by limiting its potential-to-emit (synthetic minor) or is required to report periodically to demonstrate nonapplicability of EPA requirements under 40 CFR Part 63.

Any source that is subject to an Order of Approval or has been confirmed to be covered by a General Order of Approval by the NWCAA.

Any source with a facility-wide uncontrolled potential to emit emission rates listed in NWCAA 300.4(D). (~~registered source exemption emission rates as specified in WAC 173-400-102(5) or the Small Quantity Emission Rates (SQER) for Toxic Air Pollutants as specified in chapter 173-460 WAC.~~)

(B) Source types. Except as provided in NWCAA (~~Section 321~~) 320.6, the owner or operator of a source that falls into at least one of the following source types shall register with the NWCAA:

Abrasive blasting operations.

Agricultural chemical facilities engaged in the manufacturing of liquid or dry fertilizers or pesticides including, but not limited to, ammonium sulfate.

Agricultural drying and dehydrating operations.

Asphalt and asphalt products production facilities, not including asphalt laying equipment.

Casting facilities and foundries, ferrous and nonferrous.

Coffee roasting facilities.

Commercial smoke houses.

Composite fabrication and repair facilities including fiberglass boat building and repair, and miscellaneous parts fabrication.

Composting operations (commercial, industrial, and municipal).

Concrete product manufacturers and ready mix and premix concrete plants.

Flexible vinyl and urethane coating and printing operations.

Gasoline dispensing facilities and bulk gasoline plants.

Glass manufacturing plants.

Grain, seed, animal feed, legume, and flour processing operations and handling facilities.

Graphic art systems including, but not limited to, lithographic and screen printing operations.

Material handling and transfer facilities that emit fine particulate to the atmosphere, which may include pneumatic conveying, cyclones, baghouses, and industrial housekeeping vacuuming systems.

Metal plating and anodizing operations.

~~((Metallic and nonmetallic mineral processing plants, including rock crushing plants and sand and gravel operations.))~~ Crushing operations.

Perchloroethylene dry cleaners.

Soil and groundwater remediation projects including soil vapor extraction (active), thermal soil desorption, or groundwater air stripping operations. Surface coating operations, including coating of motor vehicles, mobile equipment, boats, ships, metal, cans, pressure sensitive tape, labels, coils, wood, plastic, rubber, glass, paper and other substrates.

Wastewater treatment plants.

Welding and metal cutting operations.

Wood products mills, including lumber, plywood, shingle, wood-chip, veneer operations, dry kilns, pulpwood insulating board, cabinet works, casket works, furniture, wood byproducts, or any combination thereof.

(C) Equipment classification list. Except as provided in NWCAA (~~(Section 321)~~) 320.6, the owner or operator of the following equipment shall register with the NWCAA:

Any affected source subject to a New Source Performance Standard (NSPS) under 40 CFR Part 60, other than Subpart AAA (Standards of Performance for New Residential Wood Heaters).

Chemical concentration evaporators.

Crematoria or animal carcass incinerators.

Degreasers of the cold or vapor type where the solvent for which contains more than 5 percent halogenated compounds or Toxic Air Pollutants.

Ethylene oxide (ETO) sterilizers.

Fuel burning equipment (except natural gas only) with a heat input of more than 1 million Btu per hour, except comfort heating, air conditioning systems, or ventilation systems not designed to remove contaminants generated by or released from equipment.

Fuel burning equipment that fires only natural gas with a heat input of more than 10 million Btu per hour.

Gas collection systems with flares or other combustion devices.

Gas or odor control equipment having a rated capacity greater than or equal to 200 cfm including, but not limited to:

- (1) Activated carbon adsorption
- (2) Barometric condenser
- (3) Biofilter
- (4) Catalytic oxidizer
- (5) Chemical oxidation
- (6) Dry sorbent injection
- (7) Non-selective catalytic reduction (NSCR)
- (8) Refrigerated condenser
- (9) Selective catalytic reduction (SCR)
- (10) Selective non-catalytic reduction (SNCR)
- (11) Wet scrubber

Incinerators;

Ovens, burn-out or heat-treat.

Particulate control equipment having a rated capacity greater than or equal to 2,000 cfm including, but not limited to:

- (1) Baghouse
- (2) Cyclone
- (3) Demister
- (4) Electrostatic precipitator (ESP), dry or wet

- (5) High efficiency particulate air (HEPA) filter
- (6) High velocity air filter
- (7) Mat or panel filter
- (8) Mist eliminator
- (9) Multiclones
- (10) Rotoclone
- (11) Screen
- (12) Venturi scrubber
- (13) Water curtain

Stationary internal combustion engines and turbines rated at 500 horsepower or more.

Storage tanks, reservoirs, or containers with:

- (1) a rated capacity greater than 6,000 gallons storing volatile organic liquids, other than petroleum liquids, having a true vapor pressure equal to or greater than 1.5 psia or
- (2) a rated capacity greater than 40,000 gallons storing petroleum liquids having a true vapor pressure equal to or greater than 1.5 psia.

Waste oil burners rated at greater than 0.5 million Btu per hour.

(D) The Control Officer may require that any source or equipment, that would otherwise be exempt, be registered as specified in this section. This discretionary determination will be based on the amount and nature of air contaminants produced, or the potential to contribute to air pollution, with special reference to effects on health, economic and social factors, and physical effects on property.

((PASSED: January 8, 1969 AMENDED: February 14, 1973, August 9, 1978, February 8, 1996, November 12, 1998, November 12, 1999, July 14, 2005, June 9, 2011, April 11, 2019))

320.6 Exemptions from Registration

(A) Exclusion or exemption from registration does not absolve the owner or operator from complying with all other requirements of the NWCAA Regulation.

(B) The following sources are exempt from registration:

Chapter 401 sources, as defined in WAC 173-401-200. For Chapter 401 sources operating Sewage Sludge Incinerators (SSI), those emissions units not included in the Air Operating Permit shall be subject to registration as applicable with the NWCAA and incur associated fees.

Residential and agricultural composting activities.

(C) The Control Officer may exempt any source or equipment, including any listed in NWCAA 320.5, from registration. This discretionary determination will be based on the amount and nature of air contaminants produced, or the potential to contribute to air pollution, with special reference to effects on health, economic and social factors, and physical effects on property.

(D) An exemption from new source review under NWCAA Section 300 is not explicitly an exemption from registration under NWCAA Section 320.

PASSED: January 8, 1969 AMENDED: February 14, 1973, August 9, 1978, February 8, 1996, November 12, 1998, November 12, 1999, July 14, 2005, June 9, 2011, April 11, 2019, February 10, 2022

REPEALER

The following section is being repealed:

((SECTION 321 — EXEMPTIONS FROM REGISTRATION

~~321.1 Exclusion or exemption from registration does not absolve the owner or operator from complying with all other requirements of the NWCAA Regulation.~~

~~321.2 The following stationary sources of air contaminants are exempt from registration:~~

~~Sources that require an Air Operating Permit pursuant to NWCAA Section 322.~~

~~Residential and agricultural composting activities.~~

~~321.3 The Control Officer may exempt any source or equipment, including any listed in NWCAA Section 320, from registration. This discretionary determination will be based on the amount and nature of air contaminants produced, or the potential to contribute to air pollution, with special reference to effects on health, economic and social factors, and physical effects on property.~~

~~321.4 An exemption from new source review under NWCAA Section 300 is not explicitly an exemption from registration under NWCAA Section 320.~~

~~PASSED: January 8, 1969 AMENDED: February 14, 1973, August 8, 1978, March 13, 1997, November 12, 1998, June 9, 2011, November 17, 2011, April 11, 2019)~~

AMENDATORY SECTION

SECTION 325 - TRANSFER OR PERMANENT SHUTDOWN

325.1 A registration, regulatory order, approval to construct, operate or use any article, machine, equipment, or other contrivance, shall not be transferable, whether by operation of law or otherwise, either from one location to another or from one piece of equipment to another provided that, registered sources which are designed to be portable and are moved from one location to another may retain the same registration so long as they abide by the requirements of NWCAA Section((s)) 300 ((and 301)).

325.2 The registered owner or operator shall report the transfer of ownership or permanent shutdown of a registered source to the NWCAA within ninety (90) days of shutdown or transfer. The report shall contain the following information:

((a)) (A) Legal name of the existing business as registered with the NWCAA;

((b)) (B) Effective date of the shutdown or transfer;

((e)) (C) Description of the affected emission units; ((and))

((d)) (D) Name and telephone number of the owner, operator, and authorized representative((-)); and

((e)) (E) The new legal name of the business, and legal names and contact information for the owner, operator, and registered agent.

325.3 Any party that assumes ownership and/or operational control of a registered source shall file a written report with the NWCAA within ((ninety (90))) 90 days of completing transfer of ownership and/or assuming operational control. The report shall contain the following information:

((a)) (A) Legal name of the business before and after the transfer and individuals involved in the transfer;

((b)) (B) Effective date of the transfer;

((e)) (C) Description of the affected emission units; and

((d)) (D) Name and telephone number of the owner, operator, and authorized representative.

325.4 In the case of a permanent shutdown, process and pollution control equipment may remain in place and on site, but shall be configured such that the equipment or processes are incapable of generating emissions to the atmosphere (e.g., disconnection of power to equipment, mechanical positioning that inhibits processing; placing of padlocks on equipment to prevent operation).

325.5 Upon permanent shutdown, the source no longer has authorization to operate and any associated Orders become invalid. Prior to resumption of operation after a permanent shutdown, the source shall obtain, as applicable, a new Order of Approval as a new source and re-register.

PASSED: February 4, 1970 AMENDED: February 14, 1973, July 10, 2003, July 14, 2005, November 8, 2007, February 10, 2022

Reviser's note: The typographical errors in the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

NEW SECTION

SECTION 512 - CRUSHING OPERATIONS

512.1 Purpose.

This section of the NWCAA Regulation establishes general standards to control particulate emissions from crushing operations.

512.2 Applicability.

The provisions of this section apply to crushing operations as defined in NWCAA Section 200.

512.3 Definitions.

All terms not defined herein shall have the meaning given in NWCAA Section 200 or 40 CFR 60 Subpart 000.

512.4 Visible Emissions.

Visible emissions from crushing operations, including but not limited to, any crusher, screening operation, belt conveyor, or transfer point, greater than 5% opacity for more than an aggregate of 3 minutes in any consecutive 60-minute period, as measured by Ecology Method 9A, are prohibited. Visible emissions observed at or beyond the property boundary are prohibited.

512.5 Dust Suppression Plan.

(A) The facility shall develop and implement a written Dust Suppression Plan. The plan must be adequate to control visible emissions as limited in NWCAA 512.4. The Dust Suppression Plan shall be updated if found inadequate to maintain emissions at or below the limits in NWCAA 512.4 and maintained for the active life of the facility. The plan shall list equipment and measures taken to prevent or minimize dust from fugitive and process emission points including:

(1) Materials loading (e.g., front-end loader dumping, surface mining, loading primary (jaw) crusher, loading aggregate trucks, aggregate and/or waste added to/removed from stockpiles);

(2) Wind erosion;

(3) Paved and unpaved traveled surfaces;

(4) Conveyors;

(5) Crushers;

(6) Screens; and

(7) Other fugitive and process emission points, as applicable.

(B) Upon initial startup and weekly thereafter, conduct qualitative inspections for visible emissions from the crushing operations including at or beyond the property boundary. At any time, if visible emissions are seen in excess of the limit in NWCAA 512.4, take corrective action and update Dust Suppression Plan as necessary.

512.6 Recordkeeping.

(A) Records shall be kept of the total tons crushed: each day (recorded daily) and each calendar month.

(B) Keep a log of the inspections under NWCAA 512.5(B) to demonstrate implementation of the Dust Suppression Plan. At a minimum, the log shall include the following:

(1) Date & time of inspections.

(2) Outcome of the observations of visible emissions.

(3) What action(s) in the Dust Suppression Plan is/are being followed.

(4) Description of corrective action taken if dust emissions were observed.

(5) Name of person making the record.

PASSED: February 10, 2022

NEW SECTION

Section 514 - PORTABLE SOURCES

514.1 Applicability.

The provisions of this section apply to portable sources as defined in NWCAA Section 200.

514.2 Recordkeeping.

Keep records of location and dates of operation in NWCAA jurisdiction.

514.3 Relocation Notice Required.

The owner or operator shall notify the NWCAA in writing in a format provided or approved by NWCAA of the intent to relocate into, out of, or within the NWCAA jurisdiction at least 15 calendar days prior to commencing relocating to a different location (e.g., pit, quarry, operating site). Failure to file a relocation notice to relocate into NWCAA jurisdiction pursuant to this section with required registration fee may result in penalties up to 3 times the original registration fee owed under NWCAA 324.1.

Notification is not required for relocating within the same stationary source (e.g., Chapter 401 source or pit).

PASSED: February 10, 2022

WSR 22-01-073
WITHDRAWAL OF PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Filed December 10, 2021, 8:51 a.m.]

The department of fish and wildlife has withdrawn the proposed rule, listed in WSR 21-18-084. Additional information about this rule is at <https://wdfw.wa.gov/about/regulations/development/2022-spring-black-bear-rules-and-regulations>.

For more information, contact the agency rules coordinator Annie Szvetecz, rules.coordinator@dfw.wa.gov.

Annie Szvetecz
Rules Coordinator

WSR 22-01-121

PROPOSED RULES

LOWER COLUMBIA COLLEGE

[Filed December 13, 2021, 10:16 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-21-044.

Title of Rule and Other Identifying Information: Lower Columbia College's (LCC) code of student conduct rules that pertain to how LCC responds to allegations of sexual harassment consistent with Title IX's prohibition against sex discrimination amending portions of their code of student conduct, specifically, WAC 132M-126-115, 132M-126-145, and 132M-126-155.

Hearing Location(s): On February 16, 2022, at 8:30 a.m. Join Zoom meeting <https://lowercolumbia.zoom.us/j/85968228886>. Meeting ID 859 6822 8886, One tap mobile +12532158782,,85968228886# US (Tacoma), +13462487799,,85968228886# US (Houston). Dial by your location +1 253 215 8782 US (Tacoma), +1 346 248 7799 US (Houston), +1 669 900 6833 US (San Jose), +1 646 876 9923 US (New York), +1 301 715 8592 US (Washington DC), +1 312 626 6799 US (Chicago), Meeting ID 859 6822 8886. Find your local number <https://lowercolumbia.zoom.us/j/85968228886>. Join by SIP 85968228886@zoomcrc.com. Join by H.323, 162.255.37.11 (US West), 162.255.36.11 (US East), 115.114.131.7 (India Mumbai), 115.114.115.7 (India Hyderabad), 213.19.144.110 (Amsterdam Netherlands), 213.244.140.110 (Germany), 103.122.166.55 (Australia Sydney), 103.122.167.55 (Australia Melbourne), 149.137.40.110 (Singapore), 64.211.144.160 (Brazil), 149.137.68.253 (Mexico), 69.174.57.160 (Canada Toronto), 65.39.152.160 (Canada Vancouver), 207.226.132.110 (Japan Tokyo), 149.137.24.110 (Japan Osaka), Meeting ID: 859 6822 8886.

Date of Intended Adoption: February 16, 2022.

Submit Written Comments to: Bryanna Smith, 1600 Maple Street, P.O. Box 3010, Longview, WA 98632, email rulemaking@lowercolumbia.edu, fax 360-442-2129, by February 11, 2022.

Assistance for Persons with Disabilities: Contact Bryanna Smith, phone 360-442-2100, fax 360-442-2129, TTY 800-833-6388, email rulemaking@lowercolumbia.edu, by February 11, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: LCC must amend WAC 132M-126-115, 132M-126-145, and 132M-126-155 to meet new case law and guidance from the department of education regarding the federal regulations for Title IX of the Education Amendments of 1972 (Title IX) that specify how recipients of federal financial assistance covered by Title IX, including postsecondary institutions, must respond to allegations of sexual harassment consistent with Title IX's prohibition against sex discrimination. Specifically, the changes include modifications to the appeal process, evidentiary procedure, and appointment of a hearing officer.

Reasons Supporting Proposal: LCC must amend WAC 132M-126-115, 132M-126-145, and 132M-126-155 to meet new case law and guidance from the Department of Education regarding the federal regulations for Title IX of the Education Amendments of 1972 (Title IX) that specify how recipients of federal financial assistance covered by Title IX, including postsecondary institutions, must respond to allegations of sexual harassment consistent with Title IX's prohibition against sex discrimination.

Statutory Authority for Adoption: Chapter 34.05 RCW; 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.

Statute Being Implemented: Chapter 34.05 RCW; 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.

Rule is necessary because of federal law, federal court decision, and state court decision, 34 C.F.R. 106; *Nelson v. Spokane Community College*, 14 Wn.App.2d 40, 469 P.3d 317 (2020); *Victim Rights Law Center et al. v. Cardona*, No. 1:20-cv-11104, 2021 WL 3185743 (D. Mass. July 28, 2021).

Name of Proponent: LCC, governmental.

Name of Agency Personnel Responsible for Drafting: Kendra Sprague, 1600 Maple Street, P.O. Box 3010, Longview, WA 98632, 360-442-2121; Implementation and Enforcement: Sue Orchard, 1600 Maple Street, P.O. Box 3010, Longview, WA 98632, 360-442-2301.

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

A cost-benefit analysis is not required under RCW 34.05.328. Pursuant to RCW 34.05.328 (5)(a)(i), this agency is not mandated to comply with RCW 34.05.328. Further, the agency does not voluntarily make that section applicable to the adoption of this rule pursuant to subsection (5)(a)(ii), and to date the joint administrative rules committee has not made that section applicable to the adoption of this rule.

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

Is exempt under RCW 19.85.025(3) and 34.05.310 (4)(g)(i).

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. This change is not anticipated to impose any additional cost on business.

December 10, 2021

Kendra Sprague

Vice President of Foundation
Human Resources and Legal Affairs

OTS-3298.1

AMENDATORY SECTION (Amending WSR 21-01-145, filed 12/17/20, effective 1/17/21)

WAC 132M-126-115 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 the college's standard disciplinary procedures, WAC 132M-126-005 through 132M-126-110, 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.

[Statutory Authority: RCW 28B.50.140. WSR 21-01-145, § 132M-126-115, filed 12/17/20, effective 1/17/21.]

AMENDATORY SECTION (Amending WSR 21-01-145, filed 12/17/20, effective 1/17/21)

WAC 132M-126-155 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 132M-126-090.~~

(2)) All parties, including the student conduct officer, in their capacity as a representative of the college, have the right to appeal from the determination of responsibility and/or from a dismissal, in whole or part, of a formal complaint during the investigative or hearing process. Appeals must be in writing and filed with the president's office within 21 days of service of the initial order or notice of dismissal. Appeals must identify the specific findings of fact and/or conclusions of law in the initial order or dismissal that the appealing party is challenging and must contain argument as to why the appeal should be granted. Failure to file a timely appeal constitutes a waiver of the right to appeal and the initial order or dismissal shall be deemed final.

(2) Upon receiving a timely appeal, the president's office will serve a copy of the appeal on all parties, who will have 10 days from the date of service to submit written responses to the president's office addressing issues raised in the appeal. Failure to file a timely response constitutes a waiver of the right to participate in the appeal. Upon receipt of written responses, the president's office shall serve copies of the responses to the other parties.

(3) Parties receiving a copy of the responses shall have five days in which to submit a written reply addressing issues raised in the responses to the president's office.

(4) The president or their delegate, based on their review of parties' submissions and the hearing or investigative record, will determine whether the grounds for appeal have merit, provide the rationale for this conclusion, and state whether a dismissal is affirmed or denied, or if the disciplinary sanction(s) and condition(s) imposed in the initial order are affirmed, vacated, or amended, and, if amended, set forth any new disciplinary sanction(s) and/or condition(s).

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

(6) All administrative decisions reached through this process are and may be judicially appealed pursuant to applicable provisions of chapter 34.05 RCW including, but not limited to, the timelines set forth in RCW 34.05.542. No decisions or recommendations arising from this disciplinary procedure will be subject to grievance pursuant to any collective bargaining agreement.

[Statutory Authority: RCW 28B.50.140. WSR 21-01-145, § 132M-126-155, filed 12/17/20, effective 1/17/21.]

OTS-3305.1

AMENDATORY SECTION (Amending WSR 21-01-145, filed 12/17/20, effective 1/17/21)

WAC 132M-126-145 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))~~ (5) 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.

[Statutory Authority: RCW 28B.50.140. WSR 21-01-145, § 132M-126-145, filed 12/17/20, effective 1/17/21.]

WSR 22-01-126
PROPOSED RULES
DEPARTMENT OF
RETIREMENT SYSTEMS

[Filed December 13, 2021, 11:23 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-17-139.

Title of Rule and Other Identifying Information: WAC 415-104-486

When does my disability benefit end?

Hearing Location(s): On January 25, 2022, at 11:30 a.m. The hearing will be conducted by Zoom. See <https://www.drs.wa.gov/sitemap/rules/#proposed-rule-hearings> for details. Zoom meeting ID 881 4900 1711, Link <https://us02web.zoom.us/j/88149001711>, Dial-in 253 215 8782 US (Tacoma).

Date of Intended Adoption: January 26, 2022.

Submit Written Comments to: Jilene Siegel, Department of Retirement Systems (DRS), P.O. Box 48380, Olympia, WA 98504-8380, email drs.Rules@drs.wa.gov, by January 24, 2022.

Assistance for Persons with Disabilities: Contact Jilene Siegel, phone 360-664-7291, TTY 711, email drs.Rules@drs.wa.gov, by January 19, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To clarify the process when a law enforcement officers' and firefighters' (LEOFF) plan 2 disability retiree returns to work.

Reasons Supporting Proposal: When a LEOFF plan 2 disability retiree returns to work, this amendment will clarify when their disability retirement benefits will stop. If the member does not meet the employer's requirement for returning to employment, this rule clarifies the process for challenging the determination.

Statutory Authority for Adoption: RCW 41.50.050.

Statute Being Implemented: RCW 41.26.470.

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

Name of Proponent: DRS, governmental.

Name of Agency Personnel Responsible for Implementation: Candice Myrum, DRS, P.O. Box 48380, Olympia, WA 98504-8380, 360-664-7288.

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

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 (5) (a) (i) does not apply to this proposed rule and is not voluntarily made applicable by the agency.

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

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: DRS rules only impact members and beneficiaries of the state retirement systems and participating public employers, and do not affect small businesses.

December 13, 2021
Jilene Siegel
Rules Coordinator

OTS-3264.2

AMENDATORY SECTION (Amending WSR 18-13-078, filed 6/15/18, effective 7/16/18)

WAC 415-104-486 When does my disability benefit end? The department may require comprehensive medical or psychological examinations to reevaluate your continued eligibility for disability benefits. For catastrophic benefits the department may also require or offer to provide comprehensive vocational examinations and/or submission of earnings information to evaluate your continued eligibility. You are required to contact the department if your medical/vocational or financial situation changes.

(1) Your duty or nonduty disability benefit will cease if:

(a) You return to work in a LEOFF-eligible position; or

(b) Medical examination reveals that you are no longer totally incapacitated for employment in a LEOFF-eligible position and you are no longer entitled to workers' compensation benefits under Title 51 RCW.

(2) Your catastrophic disability benefit will cease if:

(a) You return to work in a LEOFF-eligible position;

(b) Medical/vocational examination, or other information commonly available or provided to the department by an employer, reveals that your disability no longer prevents you from performing substantial gainful activity; or

(c) Your earnings exceed the threshold for substantial gainful activity.

If you believe you are capable of returning from your disability to work for your former employer and your employer agrees that you have met their requirements (examples could include a fit for duty test or polygraph), your disability benefit will end on the date you start working, as reported to the department by your employer. If you do not meet the requirements of your employer, you may challenge your employer's decision through the collective bargaining process, or other legal process against your employer.

[Statutory Authority: RCW 41.50.050. WSR 18-13-078, § 415-104-486, filed 6/15/18, effective 7/16/18.]

WSR 22-01-127
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed December 13, 2021, 12:44 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-19-116.

Title of Rule and Other Identifying Information: The department is proposing amendments to WAC 388-412-0025 How do I receive my benefits?

Hearing Location(s): On January 25, 2022, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington [Street S.E.], Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2>; or virtually. Due to the COVID-19 pandemic, hearings are being held virtually. Please see the DSHS website for the most up-to-date information.

Date of Intended Adoption: Not earlier than January 26, 2022.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by January 25, 2022, at 5:00 p.m.

Assistance for Persons with Disabilities: Contact Shelley Tencza, DSHS rules consultant, phone 360-664-6198, fax 360-664-6185, TTY 711 relay service, email Tencza@dshs.wa.gov [Tencza@dshs.wa.gov], by January 11, 2022, by 5:00 p.m.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Proposed amendments to WAC 388-412-0025 align policy regarding replacement of cancelled benefits from an electronic benefit transfer (EBT) account with that of current federal regulations.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090

Rule is necessary because of federal law, 7 C.F.R. 274.2 (i)(3).

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Patrick Budde, P.O. Box 45470, Olympia, WA 98504-5470, 360-764-0068.

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

A cost-benefit analysis is not required under RCW 34.05.328. This amendment is exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in part, "[t]his section does not apply to ... rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents.["]

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

Is exempt under RCW 34.05.328 (5)(b)(vii).

Explanation of exemptions: The proposed rules do not affect small businesses. They only affect DSHS clients.

December 10, 2021
Katherine I. Vasquez
Rules Coordinator

SHS-4904.1

AMENDATORY SECTION (Amending WSR 21-13-168, filed 6/23/21, effective 8/1/21)

- WAC 388-412-0025 How do I receive my benefits?** (1) You can choose to get your cash benefits by:
- (a) Electronic benefit transfer (EBT), which is a direct deposit into a DSHS account that you access with a debit card called the Washington EBT Quest card;
 - (b) Electronic funds transfer (EFT), which is a direct deposit into your own bank account;
 - (c) A warrant (check) to an approved authorized representative (AREP);
 - (d) A warrant (check) to a payee who is not approved for direct deposit; or
 - (e) A warrant (check) to you if you get:
 - (i) Diversion cash assistance (DCA) that is not paid directly to a vendor;
 - (ii) Ongoing additional requirements (OAR) that cannot be paid directly to a vendor; or
 - (iii) Clothing and personal incidentals (CPI) payments.
- (2) We send your **basic food** benefits to you by EBT.
- (3) **EBT accounts:**
- (a) We set up an EBT account for the head of household of each assistance unit (AU) that receives benefits by EBT.
 - (b) You use a Quest debit card to access your benefits in your EBT account. You select a personal identification number (PIN) that you must enter when using this card.
 - (c) You must use your cash and basic food benefits from your EBT account. We cannot transfer cash to your bank account or change cash or basic food benefits to checks.
- (4) **Suspended EBT benefits:**
- (a) We suspend access to benefits from your EBT account if:
 - (i) You are a single-person household; and
 - (ii) We are notified that you are incarcerated over (~~(thirty)~~) 30 days.
 - (b) You must contact the department upon release to activate your EBT account for use within (~~(forty-eight)~~) 48 hours.
- (5) **Unused EBT benefits:**
- (a) If you do not use your EBT account within (~~(two-hundred-seventy-four)~~) 274 days, we cancel the cash and basic food on your account; or
 - (b) Benefits on your account will be canceled upon verification you and all members of your household are deceased.
- (6) **Replacing benefits:**
- (a) Replacing basic food benefits:
 - (i) We **can replace** cancelled benefits we deposited **less than** (~~(three-hundred-sixty-five)~~) 274 days from the date you ask for us to replace your benefits.
 - (ii) We **cannot replace** cancelled benefits deposited (~~(three-hundred-sixty-five)~~) 274 or more days from the date you ask us to replace your benefits.
 - (b) **Replacing cash benefits:** We **can replace** cancelled cash benefits for you or another member of your assistance unit. Cash benefits are not transferable to someone outside of your assistance unit.

(c) Replacing cash warrants:

(i) If we issued you cash benefits as a warrant we can replace these benefits for you or a member of your assistance unit. Cash benefits are not transferable to someone outside of your assistance unit.

(ii) If we issued the benefits as a warrant (~~(one hundred sixty)~~) 160 or fewer days ago, your local office can replace the warrant.

(iii) If we issued the benefits as a warrant more than (~~(one hundred sixty)~~) 160 days ago, the Office of Accounting Services (OAS) can replace the warrant. We will contact OAS with the request.

(7) **Correcting your EBT balance:** When you make a purchase with your EBT card a system error can occur where the purchase amount is not deducted from your EBT account. When the error is discovered the following will happen:

(a) You will be notified in writing of the system error before the money is removed from your account; and

(b) You will have (~~(ninety)~~) 90 days to request an administrative hearing. If you ask for an administrative hearing within (~~(ten)~~) 10 calendar days, the money will not be removed from your EBT account unless:

(i) You withdraw your administrative hearing request in writing;

(ii) You do not follow through with the administrative hearing process; or

(iii) The administrative law judge tells us in writing to remove the money.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090 and 7 C.F.R. 274.2(i). WSR 21-13-168, § 388-412-0025, filed 6/23/21, effective 8/1/21. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, and 74.08.090. WSR 12-14-052, § 388-412-0025, filed 6/28/12, effective 8/1/12. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.04.005, 74.08.090, 74.08A.020, 7 C.F.R. 274.12 and Quest operating rules. WSR 09-21-071, § 388-412-0025, filed 10/16/09, effective 11/16/09. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.04.515, 74.08.090, and 7 C.F.R. 274.12. WSR 07-04-029, § 388-412-0025, filed 1/29/07, effective 3/1/07. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090. WSR 05-17-089, § 388-412-0025, filed 8/12/05, effective 9/12/05. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510. WSR 03-22-038, § 388-412-0025, filed 10/28/03, effective 12/1/03. Statutory Authority: RCW 74.04.510 and 74.08.090. WSR 02-18-105, § 388-412-0025, filed 9/3/02, effective 10/4/02; WSR 01-18-054, § 388-412-0025, filed 8/30/01, effective 9/30/01. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-412-0025, filed 7/31/98, effective 9/1/98.]

WSR 22-01-132

PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed December 13, 2021, 5:57 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-20-063.

Title of Rule and Other Identifying Information: WAC 182-551-2000 General, 182-551-2010 Definitions, 182-551-2115 Covered medical social services, and 182-551-2130 Noncovered services.

Hearing Location(s): On January 25, 2022, at 10:00 a.m. The health care authority (HCA) remains closed in response to the coronavirus disease 2019 (COVID-19) public health emergency. Until further notice, HCA continues to hold public hearings virtually without a physical meeting place. This promotes social distancing and the safety of Washington state residents. To attend the virtual public hearing, you must register in advance https://zoom.us/webinar/register/WN__vMMTnCNS5mu-Qn3-CoICQ. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: Not sooner than January 26, 2022.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by January 25, 2022.

Assistance for Persons with Disabilities: Contact HCA rules coordinator, phone 360-725-1306, fax 360-586-9727, telecommunication[s] relay service 711, email arc@hca.wa.gov, by January 14, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The 2021-2023 operating budget included a proviso (section 211(65), chapter 334, Laws of 2021, specifying that certain appropriated funds are provided to reimburse social workers as part of the medical assistance home health benefit. The agency is amending home health rules in chapter 182-551 WAC, subchapter II, to include medical social services within the home health program.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160; section 211(65), chapter 334, Laws of 2021.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Not applicable.

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Brian Jensen, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-0815; Implementation and Enforcement: Cynthia Rivers, P.O. Box 45502, Olympia, WA 98504-5502, 360-725-5282.

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

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. This rule adds medical social services as a

client benefit within the home health services program and does not impose any costs on businesses.

December 13, 2021
Wendy Barcus
Rules Coordinator

OTS-3409.2

AMENDATORY SECTION (Amending WSR 18-24-023, filed 11/27/18, effective 1/1/19)

WAC 182-551-2000 General. (1) The purpose of the medicaid agency's home health program is to reduce the costs of health care services by providing equally effective, less restrictive quality care to the client in any setting where normal life activities take place, subject to the restrictions and limitations in subchapter II.

(2) A client does not have to be homebound or need nursing or therapy services to receive services under this chapter.

(3) Home health skilled services are provided for acute, intermittent, short-term, and intensive courses of treatment. See chapters 182-514 and 388-71 WAC for programs administered to clients who need chronic, long-term maintenance care.

(4) Home health services include the following services and items:

(a) Nursing service, see WAC 182-551-2100;

(b) Home health aide service, see WAC 182-551-2120;

(c) Medical supplies, equipment, and appliances suitable for use in any setting where normal life activities take place, see chapter 182-543 WAC; ~~((and))~~

(d) Physical therapy, occupational therapy, or speech therapy, see WAC 182-551-2110, and audiology services, see WAC 182-531-0375; and

(e) Medical social services, see WAC 182-551-2115.

(5) The agency evaluates medical equipment requests for medical necessity according to WAC 182-501-0165.

[Statutory Authority: RCW 41.05.021, 41.05.160 and 42 C.F.R. Section 440.70. WSR 18-24-023, § 182-551-2000, filed 11/27/18, effective 1/1/19. Statutory Authority: RCW 41.05.021, 41.05.160. WSR 16-03-035, § 182-551-2000, filed 1/12/16, effective 2/12/16. WSR 11-14-075, recodified as § 182-551-2000, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.08.090, chapter 74.09 RCW, and 2009 c 326. WSR 10-10-087, § 388-551-2000, filed 5/3/10, effective 6/3/10. Statutory Authority: RCW 74.08.090, 74.09.520, 74.09.530, and 74.09.500. WSR 02-15-082, § 388-551-2000, filed 7/15/02, effective 8/15/02. Statutory Authority: RCW 74.08.090 and 74.09.530. WSR 99-16-069, § 388-551-2000, filed 8/2/99, effective 9/2/99.]

AMENDATORY SECTION (Amending WSR 21-23-044, filed 11/9/21, effective 12/10/21)

WAC 182-551-2010 Definitions. The following definitions and abbreviations and those found in chapter 182-500 WAC apply to subchapter II:

"Acute care" means care provided by a home health agency for clients who are not medically stable or have not attained a satisfactory level of rehabilitation. These clients require frequent intervention by a registered nurse or licensed therapist.

"Authorized practitioner" means:

(a) A physician, nurse practitioner, clinical nurse specialist, or physician assistant who may order and conduct home health services, including face-to-face encounter services; or

(b) 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 who may conduct home health services, including face-to-face encounter services.

"Brief skilled nursing visit" means a registered nurse, or a licensed practical nurse under the supervision of a registered nurse, performs only one of the following activities during a visit to a client:

- (a) An injection;
- (b) Blood draw; or
- (c) Placement of medications in containers.

"Chronic care" means long-term care for medically stable clients.

"Full skilled nursing visit" means a registered nurse, or a licensed practical nurse under the supervision of a registered nurse, performs one or more of the following activities during a visit to a client:

- (a) Observation;
- (b) Assessment;
- (c) Treatment;
- (d) Teaching;
- (e) Training;
- (f) Management; and
- (g) Evaluation.

"Home health agency" means an agency or organization certified under medicare to provide comprehensive health care on an intermittent or part-time basis to a patient in any setting where the patient's normal life activities takeplace.

"Home health aide" means a person registered or certified as a nursing assistant under chapter 18.88 RCW who, under the direction and supervision of a registered nurse or licensed therapist, assists in the delivery of nursing or therapy related activities, or both.

"Home health aide services" means services provided by a home health aide only when a client has an acute, intermittent, short-term need for the services of a registered nurse, physical therapist, occupational therapist, or speech therapist who is employed by or under contract with a home health agency. These services are provided under the supervision of the previously identified authorized practitioners and include, but are not limited to, ambulation and exercise, assistance with self-administered medications, reporting changes in a client's condition and needs, and completing appropriate records.

"Home health skilled services" means skilled health care (nursing, specialized therapy, and home health aide) services provided on an intermittent or part-time basis by a medicare-certified home health

agency with a current provider number in any setting where the client's normal life activities take place. See also WAC 182-551-2000.

"Long-term care" is a generic term referring to various programs and services, including services provided in home and community settings, administered directly or through contract by the department of social and health services' (DSHS) division of developmental disabilities (DDD) or aging and long-term support administration (AL TSA) through home and community services (HCS).

"Medical social services" are services delivered by a medical social worker that are intended to resolve social or emotional problems that are expected to be an impediment to the effective treatment of the client's medical condition or rate of recovery. Medical social services include assessment of the social and emotional factors related to the client's illness, need for care, response to treatment, and adjustment to care; evaluation of the client's home situation, financial resources, and availability of community resources; assistance in obtaining available community resources and financial resources; and counseling the client and family to address emotional issues related to the illness.

"Medical social worker" has the same meaning given for "social worker" in WAC 246-335-510.

"Plan of care (POC)" (also known as **"plan of treatment (POT)"**) means a written plan of care that is established and periodically reviewed and signed by both an authorized practitioner and a home health agency provider. The plan describes the home health care to be provided in any setting where the client's normal life activities take place. See WAC 182-551-2210.

"Review period" means the three-month period the medicaid agency assigns to a home health agency, based on the address of the agency's main office, during which the medicaid agency reviews all claims submitted by that home health agency.

"Specialized therapy" means skilled therapy services provided to clients that include:

- (a) Physical;
- (b) Occupational; or
- (c) Speech/audiology services.

(See WAC 182-551-2110.)

"Telemedicine" - For the purposes of WAC 182-551-2000 through 182-551-2220, means the use of telemonitoring to enhance the delivery of certain home health skilled nursing services through:

- (a) The collection and transmission of clinical data between a patient at a distant location and the home health provider through electronic processing technologies. Objective clinical data that may be transmitted includes, but is not limited to, weight, blood pressure, pulse, respirations, blood glucose, and pulse oximetry; or
- (b) The provision of certain education related to health care services using audio, video, or data communication instead of a face-to-face visit.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 21-23-044, § 182-551-2010, filed 11/9/21, effective 12/10/21. Statutory Authority: RCW 41.05.021, 41.05.160 and 42 C.F.R. Section 440.70. WSR 18-24-023, § 182-551-2010, filed 11/27/18, effective 1/1/19. Statutory Authority: RCW 41.05.021, 41.05.160. WSR 16-03-035, § 182-551-2010, filed 1/12/16, effective 2/12/16. WSR 11-14-075, recodified as § 182-551-2010, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.08.090, chapter 74.09 RCW, and 2009 c 326. WSR 10-10-087, §

388-551-2010, filed 5/3/10, effective 6/3/10. Statutory Authority: RCW 74.08.090, 74.09.520, 74.09.530, and 74.09.500. WSR 02-15-082, § 388-551-2010, filed 7/15/02, effective 8/15/02. Statutory Authority: RCW 74.08.090 and 74.09.530. WSR 99-16-069, § 388-551-2010, filed 8/2/99, effective 9/2/99.]

NEW SECTION

WAC 182-551-2115 Covered medical social services. (1) Subject to funding appropriated by the legislature, the medicaid agency covers medical social services, as defined in WAC 182-551-2010, provided by a home health agency in any setting where normal life activities take place.

(2) The medicaid agency pays for one encounter per 12-month period up to eight 15-minute units per encounter. The medicaid agency pays for additional services with prior authorization on a case-by-case basis when medically necessary.

[]

AMENDATORY SECTION (Amending WSR 18-24-023, filed 11/27/18, effective 1/1/19)

WAC 182-551-2130 Noncovered services. (1) The medicaid agency does not cover the following home health services under the home health program, unless otherwise specified:

(a) Chronic long-term care skilled nursing visits or specialized therapy visits for a medically stable client when a long-term care skilled nursing plan or specialized therapy plan is in place through the department of social and health services' aging and long-term support administration (ALTSA).

(i) The medicaid agency considers requests for interim chronic long-term care skilled nursing services or specialized therapy services for a client while the client is waiting for ALTSA to implement a long-term care skilled nursing plan or specialized therapy plan; and

(ii) On a case-by-case basis, the medicaid agency may authorize long-term care skilled nursing visits or specialized therapy visits for a client for a limited time until a long-term care skilled nursing plan or specialized therapy plan is in place. Any services authorized are subject to the provisions in this section and other applicable published WAC.

(b) Social work services that are not "medical social services" as defined in WAC 182-551-2010.

(c) Psychiatric skilled nursing services.

(d) Pre- and postnatal skilled nursing services, except as listed under WAC 182-551-2100 (2) (e).

(e) Well-baby follow-up care.

(f) Services performed in hospitals, correctional facilities, skilled nursing facilities, or a residential facility with skilled nursing services available.

(g) Health care for a medically stable client (e.g., one who does not have an acute episode, a disease exacerbation, or treatment change).

(h) Home health specialized therapies and home health aide visits for clients that are covered under the AEM categorically needy and medically needy programs and are in the following programs:

- (i) Categorically needy - Emergency medical only; and
- (ii) Medically needy - Emergency medical only.

(i) Skilled nursing visits for a client when a home health agency cannot safely meet the medical needs of that client within home health services program limitations (e.g., for a client to receive infusion therapy services, the caregiver must be willing and capable of managing the client's care).

(j) More than one of the same type of specialized therapy and home health aide visit per day.

(k) The medicaid agency does not pay for duplicate services for any specialized therapy for the same client when both providers are performing the same or similar procedure or procedures.

(1) Home health visits made without a written physician's order, unless the verbal order is:

(i) Documented before the visit; and

(ii) The document is signed by the ordering physician within forty-five days of the order being given.

(2) The medicaid agency does not cover additional administrative costs billed above the visit rate (these costs are included in the visit rate and will not be paid separately).

(3) The medicaid agency evaluates a request for any service that is listed as noncovered under WAC 182-501-0160.

[Statutory Authority: RCW 41.05.021, 41.05.160 and 42 C.F.R. Section 440.70. WSR 18-24-023, § 182-551-2130, filed 11/27/18, effective 1/1/19. Statutory Authority: RCW 41.05.021, 41.05.160. WSR 16-03-035, § 182-551-2130, filed 1/12/16, effective 2/12/16. WSR 11-14-075, redefined as § 182-551-2130, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.08.090, chapter 74.09 RCW, and 2009 c 326. WSR 10-10-087, § 388-551-2130, filed 5/3/10, effective 6/3/10. Statutory Authority: RCW 74.04.050, 74.08.090, 74.09.530, and 74.09.700. WSR 06-24-036, § 388-551-2130, filed 11/30/06, effective 1/1/07. Statutory Authority: RCW 74.08.090, 74.09.520, 74.09.530, and 74.09.500. WSR 02-15-082, § 388-551-2130, filed 7/15/02, effective 8/15/02. Statutory Authority: RCW 74.08.090 and 74.09.530. WSR 99-16-069, § 388-551-2130, filed 8/2/99, effective 9/2/99.]

WSR 22-01-140
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed December 15, 2021, 9:24 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-17-026.

Title of Rule and Other Identifying Information: The department is proposing amendments to WAC 388-437-0005 Changes to food assistance in response to the COVID-19 pandemic.

Hearing Location(s): On January 25, 2021, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington [Street S.E.], Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2>; or virtually. Due to the impacts of COVID-19, hearings are being held virtually. Please see the DSHS website for the most current information.

Date of Intended Adoption: Not earlier than January 26, 2022.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by January 25, 2022, 5:00 p.m.

Assistance for Persons with Disabilities: Contact Shelley Tencza, DSHS rules consultant, phone 360-664-6196, fax 360-664-6185, TTY 711 relay service, email Tencza@dshs.wa.gov [Tencza@dshs.wa.gov], by January 11, 2022, 5:00 p.m.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Proposed amendments define that households that receive a zero benefit are not eligible for emergency adjustments to food assistance benefit issuances and households that are eligible to receive an emergency adjustment will receive a minimum of \$95, as implemented under the Families First Coronavirus Response Act (H.R. 6201, Section 2302). These policies are currently in place under emergency rule filed as WSR 22-01-035.

Reasons Supporting Proposal: Rules were created and amended via emergency adoption in response to food assistance benefit issuances implemented under the Families First Coronavirus Response Act (H.R. 6201, Section 2302), updated guidance from Food and Nutrition Services issued on April 1, 2021, and a clarification from Food and Nutrition Services issued on April 21, 2021. DSHS is proposing permanent adoption of these rules and amendments [amendments].

Statutory Authority for Adoption: RCW 74.04.500, 74.04.510, 74.08A.120.

Rule is necessary because of federal law, H.R. 6201, Section 2302.

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Patrick Budde, P.O. Box 45470, Olympia, WA 98504, 360-764-0068.

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

A cost-benefit analysis is not required under RCW 34.05.328. This amendment is exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in part, "[t]his section does not apply to ... rules of the department of social and health services relating only to client medical

or financial eligibility and rules concerning liability for care of dependents.["]

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

Is exempt under RCW 34.05.328 (5)(b)(vii).

Explanation of exemptions: The proposed amendments do not impact small businesses. They only impact DSHS clients.

December 15, 2021
Katherine I. Vasquez
Rules Coordinator

SHS-4883.3

AMENDATORY SECTION (Amending WSR 21-07-098, filed 3/22/21, effective 4/22/21)

WAC 388-437-0005 Changes to food assistance in response to the COVID-19 pandemic. Starting March 2020, assistance units (AUs) eligible for either federal or state-funded food assistance, or both, will receive emergency allotments that bring the AU up to the maximum benefit for their household size.

(1) The amount is the maximum food assistance benefit allotment for your AU size under WAC 388-478-0060(1) less the amount received under WAC 388-450-0162 (4)(b).

(2) Beginning April 2021, AUs that receive less than \$95.00 in emergency allotments under WAC 388-437-0005(1) will receive a minimum emergency allotment of \$95.00.

(3) AUs receiving zero benefits due to income do not qualify for an emergency allotment unless the zero benefit is due to a prorated issuance in the first month of eligibility, as described in WAC 388-412-0015(4), with ongoing months above zero benefits.

(4) Emergency allotments will continue each month until:

(a) The secretary for health and human services rescinds the public health emergency declaration that was issued on January 27, 2020, under section 319 of the Public Health Service Act;

(b) The state-issued emergency or disaster declaration expires;
or

(c) The food and nutrition service directs otherwise.

~~((3))~~ (5) Emergency allotments for state-funded food assistance will continue each month, contingent on the availability of state funds.

[Statutory Authority: RCW 74.04.500, 74.04.510, 74.08A.120 and H.R. 6201. WSR 21-07-098, § 388-437-0005, filed 3/22/21, effective 4/22/21.]

WSR 22-01-141
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed December 15, 2021, 9:27 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-20-054.

Title of Rule and Other Identifying Information: The department is proposing adoption of new WAC 388-436-0065 What is the pandemic emergency assistance fund (PEAF)?

Hearing Location(s): On January 25, 2021, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington [Street S.E.], Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2>; or virtually. Due to the impacts of COVID-19, hearings are being held virtually. Please see the DSHS website for the most current information.

Date of Intended Adoption: Not earlier than January 26, 2022.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m. on January 25, 2022.

Assistance for Persons with Disabilities: Contact Shelley Tencza, DSHS rules consultant, phone 360-664-6196, fax 360-664-6185, TTY 711 relay service, email Tencza@dshs.wa.gov [Tencza@dshs.wa.gov], by 5:00 p.m. on January 11, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule will allow for issuance of pandemic emergency assistance funds, a one-time cash payment to all families with children receiving temporary assistance for needy families, state family assistance, or basic food (state or federal) whose household income is at or below 75 percent of the federal poverty level. Proposed rule language provides definitions and eligibility requirements associated with the funds. The funds are part of the federal American Rescue Plan Act of 2021 (P.L. 117-2, Title IX, Subtitle C, Sec. 9201), enacted March 11, 2021.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057.

Statute Being Implemented: 2021-2023 Operating Budget (chapter 334, Laws of 2021).

Rule is necessary because of federal law, P.L. 117-2, Title IX, Subtitle C, Sec. 9201.

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Jennie Fitzpatrick, P.O. Box 45470, Olympia, WA 98504, 360-688-6275.

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

A cost-benefit analysis is not required under RCW 34.05.328. This amendment is exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in part, "[t]his section does not apply to ... rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents."

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

Is exempt under RCW 34.05.328 (5) (b) (vii).

Explanation of exemptions: The proposed amendments do not impact small businesses. They only impact DSHS clients.

December 15, 2021
Katherine I. Vasquez
Rules Coordinator

SHS-4906.1

NEW SECTION

WAC 388-436-0065 What is the pandemic emergency assistance fund (PEAF)? (1) What is the pandemic emergency assistance fund (PEAF)?

The pandemic emergency assistance fund (PEAF) is administered by the department of social and health services and provides a one-time cash benefit to low income families with at least one qualifying child, to support them in meeting their basic needs as a result of the COVID-19 pandemic.

(2) The following definitions apply to PEAF:

(a) "Household" as defined in WAC 388-408-0015 or WAC 388-408-0035.

(b) "Qualifying child" means a child as defined in WAC 388-404-0005.

(3) Who is eligible for the PEAF?

Each child in your household may be eligible for PEAF if your child meets all of the following:

(a) A qualifying child lives in your home and has not already received PEAF;

(b) The household is active, eligible, and receiving TANF, SNAP, SFA, or FAP benefits in the month of issuance;

(c) The reported household income, as defined in chapter 388-450 WAC, at the time of issuance is at or below 75% of the federal poverty level;

(d) You reside in Washington state as required under WAC 388-468-0005.

(4) How do I apply for the pandemic emergency assistance fund?

(a) The department automatically reviews your eligibility for PEAF during the month of issuance:

(b) When you apply for TANF, SFA, SNAP, or FAP; or

(c) You are an active household receiving TANF, SFA, SNAP, or FAP.

(5) What benefits will I receive if I am eligible for PEAF?

(a) PEAF is issued only once per qualifying child.

(b) The amount of the PEAF benefit is the same for each qualifying child and is determined based on:

(i) The amount of available PEAF funding; and

(ii) The number of qualifying children in the month of issuance.

[]

WSR 22-01-150

PROPOSED RULES

SECRETARY OF STATE

[Filed December 15, 2021, 12:57 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-15-054.

Title of Rule and Other Identifying Information: Updating and modernizing the address confidentiality program (ACP) rules.

Hearing Location(s): On January 26, 2022, at 1:15 p.m., WebEx meeting, tel [phone] 1-408-418-9388, Meeting number (access code) 2480 898 9974, Meeting password PFT2eKH22bG. Pandemic meeting is telephonic.

Date of Intended Adoption: January 26, 2022.

Submit Written Comments to: ACP, P.O. Box 40220 Olympia, WA 98504, email ACPrules@sos.wa.gov, fax 360-586-5629.

Assistance for Persons with Disabilities: Contact ACP, phone 360-902-4151, fax 360-586-5629, email ACPrules@sos.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Rule changes are needed to update definitions and processes for ACP.

Reasons Supporting Proposal: The existing rules are in many cases out-of-date.

Statutory Authority for Adoption: RCW 40.24.090, 40.24.030.

Statute Being Implemented: Chapter 40.24 RCW.

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

Name of Proponent: Office of the secretary of state, ACP, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: ACP, Olympia, 360-902-4151.

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

A cost-benefit analysis is not required under RCW 34.05.328.

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

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; and rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

December 15, 2021

Randy Bolerjack

Deputy Secretary of State

OTS-3210.3

AMENDATORY SECTION (Amending WSR 19-12-002, filed 5/22/19, effective 6/22/19)

WAC 434-840-005 Definitions. For the purposes of this chapter:

(1) "Actual residential address" for purposes of the application means ((any)) the physical location((s)) where the participant re-

sides, (~~works, or attends school,~~) for which the participant is requesting confidentiality.

(2) "Address confidentiality program (ACP)" means the agency employee designated by the secretary of state with responsibility for developing and administering the program that implements the provisions of chapter 40.24 RCW.

(3) "Agency" means every elected or appointed state or local public office, public officer, or official, department, division, bureau, board, commission, committee, council, authority, agency, institution of higher education, or other unit of the executive, legislative, or judicial branch of the state; or any city, county, city and county, town, special district, school district, local improvement district, or other statutory unit of state or local government or any functional subdivision of that agency, or any other kind of municipal, quasi-municipal, or public corporation.

(4) "Applicant" means an adult person, a parent or guardian acting on behalf of a minor, if the minor resides with the applicant, or a guardian acting on behalf of an incapacitated person as defined in RCW 11.88.010.

(5) "Application assistant" means an employee of a state or local agency, or of a nonprofit program that provides advocacy, counseling, referral, or shelter services to victims of sexual assault, domestic violence, trafficking, or stalking who has been designated by the respective agency, and has been accepted by the secretary of state to assist individuals with threat assessment, safety planning, (~~determining whether the program's services can help keep the victim safe,~~) and the completion and submission of the ACP application.

(6) "Authorization card" means the official card issued by the secretary of state to a participant, which must state the participant's name, date of birth, substitute address, certification expiration date, and signature (~~of~~) line for the program participant.

(7) (~~"Authorization card application form" means the incomplete form for an authorization card on which no identifying program participant information has been entered.~~

~~(8))~~ "Authorized personnel" means an employee of a county auditor's office, a county recording office, the Washington state department of health, or the office of the secretary of state who has been designated by the chief executive officer of the respective agency, to process and have access to voter application, voting records, marriage applications and records pertaining to program participants.

~~((9))~~ (8) "Bona fide statutory or administrative requirement" means that without possession of an individual's actual residential address the agency is incapable of fulfilling its statutory duties and obligations.

~~((10))~~ (9) "Certification" means that the secretary of state has determined that the (~~eligible person~~) application has been properly completed and meets the requirements for entering into or continuing in the program.

~~((11))~~ (10) "Change of identity" means that the program participant has changed the participant's name and Social Security number in an attempt to sever all connections to a previous name.

~~((12))~~ (11) "Criminal justice participant" means a criminal justice employee as defined in RCW 9A.46.020 who is a target for threats or harassment prohibited under RCW 9A.46.020 (2)(b)(iii) or (iv), and any family members residing with them.

~~((13))~~ (12) "Domestic violence" means an act as defined in RCW 10.99.020, including a threat of such acts, committed against an indi-

vidual in a domestic situation, regardless of whether these acts of threats have been reported to law enforcement officers.

~~((14))~~ (13) "Mail" means first class letters and flats delivered via the United States Postal Service, including priority, express, certified, and registered mail, and excluding packages, parcels, periodicals, and catalogues, unless they are clearly identifiable as pharmaceuticals or clearly indicate they are sent by a government agency.

~~((15))~~ (14) "Mailing address" means the residential street address to which the secretary of state ~~((must))~~ will forward a participant's mail ~~((, except in those cases where the United States Postal Service provides no delivery service to the residential address.~~

~~(16))~~ or the alternative mailing address provided by the participant.

(15) "Minor child" means an individual who has not attained the age of ~~((eighteen))~~ 18, residing with or under the guardianship of an adult applicant or program participant.

~~((17))~~ (16) "Participant mail box (PMB)" means the specific identifier assigned by the secretary of state to a program participant for use in sorting mail and confirming program participation in accordance with subsection (10) of this section.

~~((18))~~ (17) "Program participant" means an individual accepted as certified for the program under RCW 40.24.030.

~~((19))~~ (18) "Protected records marriage" means a program participant who has applied for and qualified for protected marriage records, as provided under WAC 434-840-200 and 434-840-310.

~~((20))~~ (19) "Protected records voter" means a program participant who has applied and qualified for confidential voter registration, as provided under RCW 40.24.060, WAC 434-840-100, and 434-840-310.

~~((21))~~ (20) "Public record" means any paper, correspondence, completed form, bound record book, photograph, film, sound recording, map drawing, machine-readable material, compact disc meeting current industry ISO specifications, or other document, regardless of physical form or characteristics, and including such copies thereof, that have been made by or received by any state or local governmental agency of the state of Washington in connection with the transaction of public business, and legislative records as described in RCW 40.14.100.

~~((22))~~ (21) "Sexual assault" means an act as defined in RCW 70.125.030 and includes an attempt to commit such acts against an individual, regardless of whether these acts, attempts, or threats have been reported to law enforcement officers.

~~((23))~~ (22) "Stalking" means an act as defined in RCW 9A.46.110 and includes threats of such acts committed against an individual, regardless of whether these acts or threats have been reported to law enforcement officers.

~~((24))~~ (23) "Substitute address" means an address designated by the secretary, including the identification number that is used by a participant to receive mail, instead of providing their actual residence address.

~~((25))~~ (24) "Trafficking" means an act as defined in RCW 9A.40.100 or an act recognized as a severe form of trafficking under 22 U.S.C. Sec. 7102(8) as it existed on June 12, 2008, or such subsequent date as may be provided by the secretary of state by rule, consistent with the purposes of this subsection, regardless of whether the act has been reported to law enforcement.

[Statutory Authority: RCW 40.24.090 and 40.24.030. WSR 19-12-002, § 434-840-005, filed 5/22/19, effective 6/22/19. Statutory Authority: RCW 29A.04.611. WSR 14-06-040, § 434-840-005, filed 2/26/14, effective 3/29/14. Statutory Authority: RCW 40.24.090. WSR 08-23-094, § 434-840-005, filed 11/19/08, effective 12/20/08; WSR 05-13-059, § 434-840-005, filed 6/9/05, effective 7/10/05. Statutory Authority: RCW 29A.04.610. WSR 04-15-089, § 434-840-005, filed 7/16/04, effective 8/16/04. Statutory Authority: RCW 40.24.090. WSR 98-19-063, § 434-840-005, filed 9/16/98, effective 10/17/98. Statutory Authority: 1991 c 23. WSR 91-20-074, § 434-840-005, filed 9/26/91, effective 10/27/91.]

AMENDATORY SECTION (Amending WSR 19-12-002, filed 5/22/19, effective 6/22/19)

WAC 434-840-010 Application process. (1) The secretary of state shall certify an (~~eligible person~~) applicant as a program participant when the secretary of state receives an application that contains:

- (a) The full legal name and date of birth of the applicant(s);
- (b) A listing of all minor children residing at the residential address, each minor child's full legal name, and each minor child's date of birth, and each minor child's relationship to the applicant;
- (c) A listing of all adults residing at the residential address requesting participation, each adult's full legal name, date of birth, and relationship to the applicant;
- (d) The applicant's actual Washington state residential (~~addresses, work, and school addresses, if any, for which confidentiality is requested~~) address;
- (e) The telephone number of the applicant(s);
- (f) The address to which mail should be sent, this may be the same as the residential address;
- (g) A sworn statement, under penalty of perjury, by the applicant, that the applicant has good reason to believe either:
 - (i) That the applicant, or the minor or incapacitated person on whose behalf the application is made, is a victim of domestic violence, sexual assault, trafficking, or stalking, and that the applicant fears for their safety or the safety of their children, or the safety of any minor children or incapacitated person on whose behalf the application is made; or
 - (ii) That the applicant, as a criminal justice participant as defined in RCW 9A.46.020, is a target for threats or harassment prohibited under RCW 9A.46.020.
- (h) The state of Washington personnel number, if the applicant or any of the persons covered by the application is a Washington state employee;
- (i) The applicant's signature;
- (j) The date on which the applicant signed the application;
- (k) The signature, printed name, and phone number of the application assistant designated by the secretary of state under RCW 40.24.080 who assisted in preparation of the application;
- (l) A (~~completed checklist of understanding, signed and dated by the applicant designating~~) designation of the secretary of state to

act as legal agent for purposes of service of process and for the purpose of receipt of mail.

~~((m) Signed authorization card form for each member of household.))~~

~~(2) ((The application must be completed and signed in the presence of an application assistant;~~

~~(3)) The completed application ((assistant shall submit completed applications)) and any additional materials shall be submitted to the secretary of state ((using first class mail)); and~~

~~((4))~~ (3) If the completed application does not meet the requirements of this part, the secretary of state ~~((shall))~~ will contact the applicant to obtain missing information. The applicant shall be certified only if the missing information is provided.

[Statutory Authority: RCW 40.24.090 and 40.24.030. WSR 19-12-002, § 434-840-010, filed 5/22/19, effective 6/22/19. Statutory Authority: RCW 40.24.090. WSR 08-23-094, § 434-840-010, filed 11/19/08, effective 12/20/08; WSR 98-19-063, § 434-840-010, filed 9/16/98, effective 10/17/98. Statutory Authority: 1991 c 23. WSR 91-20-074, § 434-840-010, filed 9/26/91, effective 10/27/91.]

AMENDATORY SECTION (Amending WSR 19-12-002, filed 5/22/19, effective 6/22/19)

WAC 434-840-015 Certification of participants. (1) The secretary of state shall certify an ~~((eligible person))~~ applicant, minor children, and adults residing at the residential address for whom a properly completed application or renewal is filed as a program participant.

(2) Upon certification of the applicant, the secretary of state ~~((shall))~~ will issue, and mail, an address confidentiality program participant authorization card to the applicant's mailing address with instructions on how to use the address confidentiality program card. For participants under age ~~((eighteen))~~ 18, the card must be signed by the adult responsible for the participant. The authorization card ~~((shall))~~ will include the program participant's name, authorization code, substitute mailing address, certification expiration date, and ~~((applicant's signature))~~ a signature line for the applicant.

(3) A properly completed application ~~((shall))~~ will be effective ~~((on the day it is received))~~ within two business days of receipt by the address confidentiality program.

(4) The term of a program participant's certification shall be four years following the effective date of her or his application unless the certification is withdrawn or invalidated before that date.

(5) At the time of certification, the secretary of state will send a voter registration application to the applicant accompanied by information related to participating in voting as a protected records voter.

(6) Secretary of state staff members must first verify the identity of an application assistant, program applicant, or program participant prior to any discussion of any data related to any applicant or participant or their certification.

[Statutory Authority: RCW 40.24.090 and 40.24.030. WSR 19-12-002, § 434-840-015, filed 5/22/19, effective 6/22/19.]

AMENDATORY SECTION (Amending WSR 19-12-002, filed 5/22/19, effective 6/22/19)

WAC 434-840-017 Substitute address. (1) Program participants may use the substitute address provided by the secretary of state when interacting with any state or local agency on all forms or applications that require an address. (~~This is done by providing the substitute address and presenting the authorization card and PMB authorization number to the agency.~~)

(2) Every state or local government agency, or office, shall accept the substitute address issued by the secretary of state as the only address for all program participants when the participant provides the address and authorization card and authorization number unless the agency has an exemption pursuant to RCW 40.24.050 and WAC 434-840-070. Program participants are not required to respond to any question regarding the details or circumstances of the person's inclusion in the program. The public agency may contact the secretary of state to verify program participation and for additional program information.

(3) (~~Program participants are solely responsible for requesting the use of a substitute address by any agency as the participant's address for use in interaction with each agency or office.~~)

~~(4))~~ The agency official creating a new record may make a file photocopy of the authorization card and will immediately return the authorization card to the program participant.

(4) The agency official may call the program to verify an individual's participation status in the program and to confirm the participant's authorization number (PMB).

(5) The secretary of state is the agent for receipt of all mail sent to program participants at the substitute address.

~~((5))~~ (6) All first class mail specifically addressed to the program participant at the substitute address (~~must~~) will be forwarded at least every second business day to each participant's mailing address, using "return service requested" designation on the envelope. The secretary of state is not required to forward mail that is not specifically addressed to the participant.

~~((6))~~ (7) The secretary of state may hold a participant's mail for up to (~~three~~) five business days upon verbal request of the participant. The hold may be up to three weeks if the participant's request is written and signed and provides a contact telephone number for the hold period. The secretary of state must compare the signature on the hold request with that on file for the participant prior to holding the mail. In the absence of a specific hold date from the participant, the hold date is the date of receipt by the secretary of state.

~~((7) For services delivered to an actual physical address or tied to residency in a particular jurisdiction, the state or local agency must request only the smallest portion of the actual address needed to provide service, in addition to the substitute address.~~

~~(a) In cases in which all or part of the actual address has been disclosed pursuant to this section, the substitute address must be used by the agency as the address of the program participant for all public data or purposes that the actual address is not required.~~

~~(b) The secretary of state, upon request of the agency, shall suggest measures that assist in protecting the actual address and the participant's name against disclosure in any way. Measures may include, but are not limited to, assigning a pseudonym to the partici-~~

~~pant, keeping the actual address in the participant's paper file at an agency (not in an electronic system), and making the records password protected and limiting record access to a small pool of staff.))~~

[Statutory Authority: RCW 40.24.090 and 40.24.030. WSR 19-12-002, § 434-840-017, filed 5/22/19, effective 6/22/19.]

AMENDATORY SECTION (Amending WSR 19-12-002, filed 5/22/19, effective 6/22/19)

WAC 434-840-020 Exercise of program participant's privileges.

(1) At the time any state or local government agency creates a new record or updates an existing record, a program participant may request that the agency use the substitute mailing address as the participant's residence, work and/or school address.

(2) Program participants are solely responsible for requesting the use of a substitute address.

(3) A program participant shall show their authorization card to the agency official creating a new record and request address confidentiality through the use of the substitute mailing address as it appears on the authorization card, in lieu of their actual location.

~~((4) The agency official creating a new record may make a file photocopy of the authorization card and shall immediately return the authorization card to the program participant. The agency official may call the program to verify an individual's current participation status in the program.~~

~~(5) An agency shall accept the substitute address unless the agency has received a written exemption from the secretary of state pursuant to RCW 40.24.050 and WAC 434-840-070.~~

~~(6) For services delivered to an actual address or tied to residency in a particular jurisdiction, the state or local agency must request only the smallest portion of the actual address needed to provide services, in addition to the substitute address.~~

~~(7) In cases in which all or part of the actual address has been disclosed pursuant to this section, the substitute address must be used by the agency as the address of the program participant for all public data or purposes that the actual address is not required.~~

~~(8) The secretary of state, upon request of the agency, shall suggest measures that assist in protecting the actual address and the participant's name against disclosure in any way.))~~

[Statutory Authority: RCW 40.24.090 and 40.24.030. WSR 19-12-002, § 434-840-020, filed 5/22/19, effective 6/22/19. Statutory Authority: RCW 40.24.090. WSR 05-13-059, § 434-840-020, filed 6/9/05, effective 7/10/05; WSR 98-19-063, § 434-840-020, filed 9/16/98, effective 10/17/98. Statutory Authority: 1991 c 23. WSR 91-20-074, § 434-840-020, filed 9/26/91, effective 10/27/91.]

AMENDATORY SECTION (Amending WSR 19-12-002, filed 5/22/19, effective 6/22/19)

WAC 434-840-025 Attaining age of majority. When ((a participant reaches)) the secretary of state becomes aware that a minor child has

reached the age of ~~((eighteen))~~ 18, the secretary of state ~~((shall))~~ will inform the minor child participant of options related to continued participation in the address confidentiality program. These options include leaving the program, applying for continuation in the program, and reapplying on their own behalf.

(1) In anticipation of the minor child participant's ~~((eighteenth))~~ 18th birthday, the secretary of state ~~((shall))~~ will send an application packet via first class mail to the participant's substitute address. The packet ~~((must))~~ will include instructions on actions to be taken by age ~~((eighteen))~~ 18. The packet ~~((must))~~ will include notice that if the participant does not respond within ~~((thirty))~~ 30 days they will be removed from the program, ~~((they must return their authorization card,))~~ and mail forwarding will stop. If ~~((thirty))~~ 30 days passes without contact from the participant, the secretary of state ~~((shall))~~ will mail a final notice that the participant's certification will be canceled if the participant fails to submit the certification of continuance within ~~((ten))~~ 10 days.

(2) The packet ~~((shall))~~ will include the application form ~~((, checklist of understanding, authorization card form,))~~ and information about voter registration ~~((. The secretary of state must offer the participant the opportunity)),~~ including information about how to register to vote as a protected records voter.

(3) The secretary of state shall renew the certification of a participant upon receipt of a properly completed application form ~~((and checklist of understanding. If the form is for continuance of participation, it does not require the signature of an application assistant. Responsibility for changes in information and renewal belong to the participant once the participant reaches age eighteen)).~~

(4) A participant who reaches age ~~((eighteen))~~ 18 and changes residence may reapply through an application assistant, or withdraw.

(5) Program participants that have reached age ~~((eighteen))~~ 18 who have withdrawn, or allowed certification to expire, may reapply on their own behalf by contacting an application assistant.

[Statutory Authority: RCW 40.24.090 and 40.24.030. WSR 19-12-002, § 434-840-025, filed 5/22/19, effective 6/22/19.]

AMENDATORY SECTION (Amending WSR 19-12-002, filed 5/22/19, effective 6/22/19)

WAC 434-840-030 Certification renewal. (1) At least ~~((thirty))~~ 30 days prior to the expiration of a certification, the secretary of state ~~((shall))~~ will inform a program participant, of the option of renewing certification in the program by sending a renewal form to the participant's mailing address. The notice ~~((must))~~ will provide instructions on actions the participant must take upon expiration of certification, if the participant chooses to leave the program. These include ~~((return of the authorization card,))~~ notifying senders of the former participant's actual address and notifying that the substitute address is no longer valid for the former participant. Ten days prior to expiration of certification, the secretary of state ~~((must))~~ will mail a second notice to the participant unless the participant has responded with a renewal or communication indicating intent to withdraw from the program.

(2) Information about voter registration should be provided to the participant as part of the notification process.

(3) A program participant may renew her or his program certification by (~~first class mail~~) filing with the address confidentiality program (~~(a) The participant's current authorization card; (b)~~) by first class mail, a properly completed renewal application (~~and checklist of understanding forms; and (c) a new authorization card form with signature~~).

(4) If the completed renewal does not meet the requirements of this part, the secretary of state (~~shall~~) will contact the participant (~~or applicant~~) to obtain the missing information.

(5) For a program participant who has properly filed a completed renewal application, the address confidentiality program shall: (a) Certify a program participant (~~(, who has filed a properly completed renewal application form,)~~) to participate in the program for an additional four year term unless the certification is withdrawn or invalidated before that date; (b) issue to the program participant a new authorization card which includes the (~~program~~) participant's name, authorization code, substitute mailing address, certification expiration date, and signature line.

(6) A properly completed renewal application, postmarked on or before the expiration date, is effective on the day it is reviewed and certified by the secretary of state.

[Statutory Authority: RCW 40.24.090 and 40.24.030. WSR 19-12-002, § 434-840-030, filed 5/22/19, effective 6/22/19. Statutory Authority: RCW 40.24.090. WSR 05-13-059, § 434-840-030, filed 6/9/05, effective 7/10/05; WSR 98-19-063, § 434-840-030, filed 9/16/98, effective 10/17/98. Statutory Authority: 1991 c 23. WSR 91-20-074, § 434-840-030, filed 9/26/91, effective 10/27/91.]

AMENDATORY SECTION (Amending WSR 19-12-002, filed 5/22/19, effective 6/22/19)

WAC 434-840-035 Certification cancellation. (1) The address confidentiality program shall terminate a participant's certification and invalidate that participant's authorization card if:

(a) The participant's certification term has expired and renewal of certification is not completed;

(b) The address confidentiality program has determined that false information was used in the application process; or

(c) The participant (~~(fails to respond to the program's request for verification of the participant's residential address)~~) obtains a legal change of identity.

(2) The address confidentiality program may terminate a participant's certification and invalidate that participant's authorization card if:

(a) The participant no longer resides at the residential address on file, and has not provided at least two days prior notice in writing of a change of address;

(b) Any first class or certified mailing, or service of process document forwarded by the program is returned as nondeliverable, refused, or unclaimed; or

(c) The participant (~~(obtains a legal change of identity)~~) fails to respond to the program's request for verification of the participant's residential address.

(3) The address confidentiality program (~~(shall)~~) will send written notification of the pending termination to the participant's last known mailing or residential address. The participant shall have (~~(ten)~~) 10 business days in which to appeal the termination under procedures developed by the secretary of state.

(4) After the secretary of state has provided notice as required in subsection (3) of this section the participant's certification is considered to be in pending status. While in this status, the secretary of state (~~(must)~~) will hold the participant's mail without forwarding to the participant. Pending status ends after (~~(ten)~~) 10 business days, or upon the participant's compliance with this section, whichever occurs first. This does not prevent the secretary of state from forwarding correspondence marked "service of process."

(5) If the participant's pending cancellation status expires, the secretary of state (~~(must)~~) will cancel the certification of the program participant.

(6) The address confidentiality program (~~(shall)~~) will notify authorized election officials and authorized Washington state department of health personnel if the participant is registered to vote or has a protected records marriage license when a participant's authorization has been terminated from the program. The authorized elections (~~(and health)~~) department personnel (~~(shall)~~) will transmit to the address confidentiality program all appropriate administrative records pertaining to the participant.

(7) If the certification of a participant is canceled, mail addressed to the program participant (~~(must)~~) will be returned to sender.

[Statutory Authority: RCW 40.24.090 and 40.24.030. WSR 19-12-002, § 434-840-035, filed 5/22/19, effective 6/22/19.]

AMENDATORY SECTION (Amending WSR 05-13-059, filed 6/9/05, effective 7/10/05)

WAC 434-840-070 Agency exemption request. (1) An agency requesting an exemption under RCW 40.24.050, must provide in writing to the secretary of state:

(a) Identification of the statute or administrative rule which demonstrates the agency's bona fide requirement and authority for the use of the actual address of an individual;

(b) Identification and description of the specific record or record series for which the exemption is requested;

(c) Identification of the individuals who will have access to the record;

(d) Explanation of how the agency's acceptance of a substitute address will prevent the agency from meeting its obligations under the statute or rule identified above; and

(e) (i) Explanation of why the agency cannot meet its statutory or administrative obligations by a change in its internal procedures; and, where appropriate (~~(7)~~);

(ii) Description of any agency procedural change(s) that could be made that would allow it to accept the substitute address and meet its

statutory or administrative obligations and an estimate of implementation time needed.

(2) The secretary of state shall file and review an agency's request for an exemption.

(3) During the review, evaluation and appeal of an agency's exemption request, the agency shall accept the use of a program participant's substitute address.

(4) The secretary of state's determination to grant or withhold a requested exemption shall be based on, but not limited to, an evaluation of the information provided under subsection (1) of this section in conformance with the statutory standard of a bona fide statutory or administrative requirement for the use of a program participant's actual address.

(5) If the secretary of state determines that an agency has a bona fide statutory or administrative requirement for the use of a program participant's actual address information and that the actual address information will be used only for those statutory and administrative purposes, the secretary may issue a written exemption for the agency. When granting an exemption, the secretary may include:

(a) An agency's obligation to maintain the confidentiality of a program participant's address information;

(b) Limitations on use and access to that address information;

(c) Term during which the exemption is authorized for the agency;

(d) Designation of the record format on which the address information may be maintained;

(e) Designation of an address information disposition date after which the agency may no longer maintain a record of the address information; and

(f) Any other provisions and qualifications determined appropriate by the secretary of state.

(6) When a program participant requests use of the substitute address in a record, and the agency has received an exemption for that record, the agency shall immediately provide a copy of the written exemption to the requesting program participant. The agency shall notify the address confidentiality program of the occurrence and denial of the program participant's request.

(7) The secretary of state's denial of an agency exemption request shall be made in writing and include a statement of the specific reasons therefore.

(8) An agency may appeal the denial of its request by resubmitting its written request together with additional data, information, and an explanation of corrective action taken to alleviate concerns and considerations included in the secretary of state's denial determination.

[Statutory Authority: RCW 40.24.090. WSR 05-13-059, § 434-840-070, filed 6/9/05, effective 7/10/05; WSR 98-19-063, § 434-840-070, filed 9/16/98, effective 10/17/98. Statutory Authority: 1991 c 23. WSR 91-20-074, § 434-840-070, filed 9/26/91, effective 10/27/91.]

AMENDATORY SECTION (Amending WSR 98-19-063, filed 9/16/98, effective 10/17/98)

WAC 434-840-240 Certified copy of marriage certificates. (1)
Upon the request of a program participant, accompanied by the appro-

priate fee, the address confidentiality program may request in writing a certified copy of a program participant's marriage certificate from the agency maintaining that record and release it to the program participant. A certified copy of a marriage certificate containing the name of the program participant is only available through the address confidentiality program.

(2) Upon cancellation from the program, the former program participant must work directly with the department of health personnel to request a copy of their marriage certificate.

[Statutory Authority: RCW 40.24.090. WSR 98-19-063, § 434-840-240, filed 9/16/98, effective 10/17/98. Statutory Authority: 1991 c 23. WSR 91-20-074, § 434-840-240, filed 9/26/91, effective 10/27/91.]

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 434-840-065	Information release to nonlaw enforcement agency.
WAC 434-840-110	Proof of program participant's authority.

WSR 22-01-155

PROPOSED RULES

BOARD OF TAX APPEALS

[Filed December 15, 2021, 3:12 p.m.]

Continuance of WSR 21-22-059.

Preproposal statement of inquiry was filed as WSR 21-17-074.

Title of Rule and Other Identifying Information: Chapter 456-12 WAC, Administrative processes.

Hearing Location(s): On January 28, 2022, at 10:00 a.m., electronic meeting via [Microsoft] Teams; information on agency website.

Date of Intended Adoption: February 1, 2022.

Submit Written Comments to: Keri Lamb, 360-586-9020, email bta@bta.wa.gov, fax 360-586-9020, by January 21, 2022.

Assistance for Persons with Disabilities: Contact Keri Lamb, phone 360-753-5446, fax 360-586-9020, TTY 360-753-5446, email bta@bta.wa.gov, by January 21, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose is threefold. First, this section was edited for clarity and flow. Second, provisions from other of the board's WAC sections have been relocated here if they pertain to the board's administrative functions. Third, the sections pertaining to the Public Records Act have been expanded and edited to reflect current law. These changes are anticipated to improve the public's comprehension of the rules, and to outline a detailed process for public records requests.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 82.03.170.

Statute Being Implemented: Chapter 42.30 and 42.56 RCW.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The board itself has drafted the proposed changes, and therefore recommends them in full. The board implements and enforces its own rules, so the proposed changes have no fiscal impact.

Name of Proponent: Washington state board of tax appeals, governmental.

Name of Agency Personnel Responsible for Drafting: Andrea Vingo, board of tax appeals, 360-753-5446; Implementation and Enforcement: Board of tax appeals, 360-753-5446.

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

A cost-benefit analysis is not required under RCW 34.05.328. Changes have no fiscal impact.

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

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. No changes in the board's administrative process.

October 4, 2021
Andrea Vingo
Tax Referee

OTS-3408.1

AMENDATORY SECTION (Amending WSR 19-21-045, filed 10/9/19, effective 11/9/19)

WAC 456-12-015 Purpose of this chapter. The purpose of this chapter is to ~~((set forth rules on))~~ outline the organization and administration of the board of tax appeals (board), and to set forth rules that comply with the Open Public Meetings Act, chapter 42.30 RCW, ((regarding open public meetings,)) and the Public Records Act, chapter 42.56 RCW((, regarding public records)).

[Statutory Authority: RCW 82.03.170. WSR 19-21-045, § 456-12-015, filed 10/9/19, effective 11/9/19; WSR 99-13-098, § 456-12-015, filed 6/15/99, effective 7/16/99.]

AMENDATORY SECTION (Amending WSR 99-13-098, filed 6/15/99, effective 7/16/99)

WAC 456-12-035 Description of the board. (1) ~~((As an independent state agency,))~~ The board is an independent state agency that reviews, holds hearings on, and decides state tax appeals filed by taxpayers and taxing authorities. The board consists of three members, an executive director, tax referees, and staff ~~((hired by the board))~~. The three members of the board serve on a full-time basis, and are appointed by the governor, with the consent of the senate, for a term of six years.

(2) The executive director is the board's chief executive officer and is responsible for implementing board directions and for directing the board's staff.

~~((3) The board holds regular meetings at 10:00 a.m. on the second Thursday of each March, June, September, and December. The meetings are held at the board's office at 910 5th Avenue S.E., Olympia, WA 98504-0915.))~~

[Statutory Authority: [RCW 82.03.170.] WSR 99-13-098, § 456-12-035, filed 6/15/99, effective 7/16/99.]

NEW SECTION

WAC 456-12-037 Communication and contact with the board. (1) The board's office is located at 1110 Capitol Way South, Suite 307, Olympia, WA 98501. The board's mailing address is P.O. Box 40915, Olympia, WA 98504-0915. The board's telephone number is 360-753-5446. The board's fax number is 360-586-9020. The board's email address is bta@bta.wa.gov, and the board's website is bta.wa.gov.

(2) The board's primary method of communication is by electronic mail.

(3) Decisions and other correspondence will be sent by electronic mail unless an individual or party has made prior arrangements with the board.

[]

PUBLIC MEETINGSNEW SECTION

WAC 456-12-039 Meetings and quorums. (1) The board holds regular meetings at 9:30 a.m. on the third Friday of each month. The meetings are held at the board's office.

(2) All meetings of the board are open to the public. Anyone is allowed to attend except as limited by the Open Public Meetings Act, chapter 42.30 RCW.

(3) Two members of the board constitute a quorum for the purpose of making orders or decisions, or for promulgating rules and regulations relating to the board's procedures. A quorum of the board may act even though one position is vacant.

[]

NEW SECTION

WAC 456-12-041 Meeting agendas and minutes. (1) The agenda for a board meeting is available at least 24 hours in advance of the meeting, and is posted on the board's website at bta.wa.gov.

(2) The minutes of any meeting are available for public inspection as provided in RCW 42.30.035. Meeting minutes are available by emailing the clerk of the board at bta@bta.wa.gov.

[]

PUBLIC RECORDSNEW SECTION

WAC 456-12-043 Purpose and intent. (1) These rules provide information to those who want to request access to public records of the board, and to establish processes for both requestors and the board.

They are designed to best assist members of the public in obtaining such access.

(2) The board will respond promptly to requests for records made under chapter 42.56 RCW, Public Records Act.

[]

AMENDATORY SECTION (Amending WSR 19-17-042, filed 8/15/19, effective 9/15/19)

WAC 456-12-045 (~~(Public records available.)~~) Hours for inspection and copying. (~~(Unless exempt under chapter 42.17 RCW or other law, all public records and indexes of the board are available for public inspection and copying at the board's main office during customary office hours.)~~) Public records of the board are available for inspection and copying from 9:00 a.m. to noon and from 1:00 p.m. to 4:30 p.m., Monday through Friday, excluding legal holidays and the days the board is closed.

[Statutory Authority: RCW 82.03.170. WSR 19-17-042, § 456-12-045, filed 8/15/19, effective 9/15/19. Statutory Authority: [RCW 82.03.170.] WSR 99-13-098, § 456-12-045, filed 6/15/99, effective 7/16/99.]

AMENDATORY SECTION (Amending WSR 99-13-098, filed 6/15/99, effective 7/16/99)

WAC 456-12-055 Public records officer. (1) The board's executive director is (~~(identified as)~~) the board's public records officer and is responsible for reviewing requests for public records.

(2) The public records officer will oversee compliance with the act, but a designee may process a request. The public records officer or designee and the board will provide the fullest assistance to requestors; ensure that public records are protected from damage or disorganization; and prevent the fulfilling of public records requests to cause excessive interference with the essential functions of the board.

(3) The board encourages communication with the public records officer if a requestor has not received a response in writing or has questions or concerns about a records request.

[Statutory Authority: [RCW 82.03.170.] WSR 99-13-098, § 456-12-055, filed 6/15/99, effective 7/16/99.]

NEW SECTION

WAC 456-12-073 Public Records Act requests to the board. (1) **Website records.** Before submitting a records request, those seeking public records of the board are strongly encouraged to first review the board's website at bta.wa.gov. This website includes the board's decisions from 1967 to the present, board policies, and public meeting

schedules, and agendas. These are free for viewing and downloading at any time, and are accessible without making a Public Records Act request.

(2) **Public Records Act requests.** Public Records Act requests must be sent or submitted to the public records officer in one of the following ways:

(a) Online: <http://www.bta.wa.gov>

(b) Email: bta@bta.wa.gov with subject line indicating "public records request"

(c) U.S. Mail or Delivery: Public Records Officer
Washington State Board of Tax Appeals
P.O. Box 40915

Olympia, WA 98504-0915

(d) In person: 1110 Capitol Way South, Suite 307
Olympia, WA 98501

Communications that seek the board's records, but which are sent or provided to unauthorized addresses or staff, will not be accepted or processed as Public Records Act requests. The board will instead process such communications as general informal inquiries, general correspondence, or general requests for information.

(3) **Manner of requests.** Requestors are strongly encouraged to make requests in writing. If the board receives an oral request, the board will reduce the request to writing and verify with the requestor in writing that it correctly memorializes the request. Requestors are also urged to include a description of the records requested by docket number, appellant name, subject matter, suggested search terms, or other means that will allow the public records officer or designee to identify the requested records. The board accepts in-person requests at its office during normal business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding holidays and days the board's office is closed.

[]

NEW SECTION

WAC 456-12-078 Response to Public Records Act requests.

(1) Within five business days of receiving a Public Records Act request, the board will assign the request a tracking number and log it. The public records officer or designee will evaluate the request according to the nature of the request, clarity, volume, and availability of requested records.

(2) Following the initial evaluation of the request, and within five business days of receipt of the request, the public records officer or designee will do one or more of the following:

(a) Make the records available for inspection or copying including:

(i) Providing an internet address and link on the website to specific records requested if copies are available on the office's website;

(ii) Sending copies to the requestor, if requested and where a payment or a deposit has been made, if any, or other terms of payment are agreed upon and have been satisfied.

(b) Acknowledge receipt of the request and provide a reasonable estimate of when records or an installment of records will be available. The public records officer or designee may revise the estimate.

(c) Acknowledge receipt of the request and ask the requestor to provide clarification for all or part of a request that is unclear, and provide, to the greatest extent possible, a reasonable estimate of time the board will need to respond to the unclear request or unclear part of a request if it is not clarified.

(i) Clarification may be requested and provided by phone and memorialized in writing, or by email or letter;

(ii) If the requestor fails to respond to a request for clarification within 30 calendar days and the entire request is unclear, the office need not respond to it. The board will only respond to those portions of a request that are clear.

(d) Deny the request.

(3) The board may request additional time to respond to a request because of the need to clarify the request, locate and assemble the records requested, notify third persons or agencies affected by the request, or determine whether any of the information requested is exempt and that a denial should be made as to all or part of the request.

(4) The board will provide an estimate of the time required to respond to a request, and may provide an estimate of copying costs specific to a request seeking an estimate of cost. If the requestor believes the amount of time or estimated costs are not reasonable, the requestor may petition the board for review as outlined in WAC 456-12-115(2).

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NEW SECTION

WAC 456-12-083 Providing responsive records to a Public Records Act request. (1) **Inspecting records.** Consistent with other demands, the board will provide space to inspect public records at a designated location. No member of the public may remove a document from the viewing area or disassemble or alter any document. The requestor must indicate which documents he or she wishes the office to copy.

(a) The requestor must claim or review the assembled records within 30 days of the board's notification that the records are available for inspection or copying. The board will notify the requestor in writing of this requirement and inform the requestor that he or she should contact the board to make arrangements to claim or review the records.

(b) If the requestor fails to claim or review the records within the 30-day period or make other arrangements, the board may close the request and refile the assembled records.

(2) **Providing copies of records.** After inspection is complete and the requestor asks for copies of some or all of the inspected records, or where copies are otherwise requested, the public records officer or designee will make the requested copies or arrange for copying.

(a) If the board charges for copies, the requestor must pay for the copies before the copies are provided.

(b) Electronic records will be provided as a link to the records if the records are located on the website, or in a format used by the

board which is generally commercially available to the public. Records will generally not be provided by email for records responses with multiple records, or where records may not be successfully delivered or received via the board's or the requestor's email systems.

(3) **Providing records in installments.** When a request is for a large number of records, the public records officer or designee will provide access for inspection and copying in installments, if he or she reasonably determines that it would be practical to provide the records in that way. If, within 30 days, the requestor fails to inspect or pay for the entire set of records or for one or more of the installments, the public records officer or designee may stop searching for or producing the remaining records and close the request.

(4) **Multiple requests.** Multiple public records requests from the same requestor will be processed in a manner so as not to interfere with essential agency functions including processing records requests from other requestors. The board may process such requests in the order received, and may complete one request before searching for records for a subsequent request.

(5) **Completion of inspection.** When the review of the requested records is complete and all requested copies are provided, the public records officer or designee will indicate that the board has completed a reasonable search for the requested records and made any located nonexempt records available for inspection.

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AMENDATORY SECTION (Amending WSR 99-13-098, filed 6/15/99, effective 7/16/99)

WAC 456-12-085 Costs and fees. (1) No fee will be charged for inspecting the board's public records.

(2) ~~The board ((will charge ten cents per page for copies of requested public records. Payment will be made by check payable to the board. The board may require that all charges be paid before the copies are released. The executive director may decide that no fee will be charged for the copies if the expense of processing the payment is greater than the cost of providing the copies.))~~ does not calculate all actual costs for copying records because to do so would be unduly burdensome for the following reasons:

(a) The board does not have the resources to conduct a study to determine all its actual copying costs; and

(b) Conducting such a study would interfere with other essential agency functions.

(3) The board will charge for copies of records pursuant to the default fees in RCW 42.56.120 (2) (b) and (c). The board may charge other copy fees authorized by statutes outside of chapter 42.56 RCW. The board may enter into an alternative fee agreement with a requestor under RCW 42.56.120(4).

(4) The board requires requestors to pay for copies in advance of receiving records. Fee waivers are an exception and are available for some small requests. The public records officer has the discretion to waive fees when:

(a) All of the records responsive to an entire request are paper copies and are 25 or fewer pages; or

(b) All of the records responsive to an entire request are electronic and can be provided in a single email with attachments of a size totaling no more than the equivalent of 100 printed pages. If that email for any reason is not deliverable, records will be provided through another means of delivery, and the requestor will be charged in accordance with this rule.

(c) Fee waivers are not applicable to records provided in installments.

(5) The public records officer may require an advance deposit of 10 percent of the estimated fees when the copying fees for an installment or an entire request, or customized service charge, exceeds \$25.

(6) All required fees must be paid in advance of release of the copies or an installment of copies, or in advance of when a deposit is required. The board will notify the requestor of when payment is due.

(7) Payment should be made by check or money order to the board. The board prefers not to receive cash. For cash payments, it is within the public records officer's discretion to determine the denomination of bills and coins that will be accepted.

(8) The board will close a request when a requestor fails by the payment date to pay in the manner prescribed for records, an installment of records, or a required deposit.

[Statutory Authority: [RCW 82.03.170.] WSR 99-13-098, § 456-12-085, filed 6/15/99, effective 7/16/99.]

AMENDATORY SECTION (Amending WSR 99-13-098, filed 6/15/99, effective 7/16/99)

WAC 456-12-105 Exemptions and denying requests for public records. (1) The board may determine that all or part of a requested public record is exempt under the Public Records Act, chapter 42.17 RCW, or other law and may not be inspected or copied.

(2) ~~((All denials of a request for public records will contain a written statement from the executive director stating the reason for the denial, including a statement of the specific exemption authorizing the withholding of the record and a brief explanation of how the exemption applies to the record withheld.))~~ If the board believes that a record or part of a record is exempt from disclosure and should be withheld, the public records officer or designee will state the specific exemption and provide a brief written explanation as to why it is being withheld. If only a portion of a record is exempt from disclosure, the public records officer or designee will redact the exempt portions, provide the nonexempt portions, and indicate to the requestor why portions of the record are being redacted.

(3) ~~((The board may remove identifying details when it makes available or publishes any public record when there is reason to believe that revealing such details would be an invasion of personal privacy protected by chapter 42.17 RCW.))~~ If the requested records contain information that may affect the rights of others, the public records officer or designee may give notice to those whose rights may be affected by the disclosure under RCW 42.56.540 before providing the records. Notice should be given to make it possible for those other persons to contact the requestor and ask him or her to revise the request, or, if necessary, to seek an order from a court to prevent or

limit the disclosure. The notice to the affected persons will include a copy of the request.

(4) The board is prohibited by statute from disclosing lists of individuals for commercial purposes.

[Statutory Authority: [RCW 82.03.170.] WSR 99-13-098, § 456-12-105, filed 6/15/99, effective 7/16/99.]

NEW SECTION

WAC 456-12-112 Closing a request for public records. (1) When the requestor either withdraws a request, or fails to clarify an entirely unclear request, or fails to fulfill his or her obligations to inspect the records, pay the deposit, pay the required fees for an installment, or make a final payment for the requested copies, the public records officer or designee will close the request and, unless the board has already indicated in previous correspondence that the request would be closed under the above circumstances, indicate to the requestor that the office has closed the request.

(2) If, after the board has informed the requestor that it has provided all available records, the board becomes aware of additional responsive documents existing at the time of the request, it will promptly inform the requestor.

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AMENDATORY SECTION (Amending WSR 99-13-098, filed 6/15/99, effective 7/16/99)

WAC 456-12-115 Reviewing denials of requests for public records, estimates of time, and estimates of cost. ~~((1) Any person objecting to a denial of a request for public records may submit a written request for review to the board.~~

~~(2) Upon receiving the written request for review, the executive director will call a meeting of the board to review the denial.~~

~~(3) The board will issue a written decision within two business days of receiving the request for review.~~

~~(4) The board's written decision regarding the request for review will be the final action by the agency.)~~ (1) Requestors are encouraged to communicate with the public records officer or assigned designee about denials of public records requests, estimates of time, or estimates of costs. If unsatisfied, a requestor may seek review of the issue.

(2) Any person who objects to the board's denial or partial denial of a request for public records or contends an estimate of time to provide records or copying costs to provide records is not reasonable, may petition for prompt review of the decision by submitting a written request to the executive director for a review by the board.

(3) The written request for review must specifically refer to the written statement by the public records officer or designee which accompanied the denial or estimate.

(4) Within two business days of receiving a written request for review, the executive director will schedule a meeting of the board to review the denial.

(5) The board will issue a written decision or order within two business days of the board's meeting where the request for review is considered. The board will affirm, reverse, or amend the denial or estimate.

(6) The board's written decision regarding a request for review will be the final action by the board.

(7) The board will have concluded a public record is exempt from disclosure for purposes of WAC 44-06-160 only after the review conducted under this section has been completed.

[Statutory Authority: [RCW 82.03.170.] WSR 99-13-098, § 456-12-115, filed 6/15/99, effective 7/16/99.]

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 456-12-025	Definitions.
WAC 456-12-065	Communications with the board.
WAC 456-12-075	Records indexes.
WAC 456-12-095	Requesting public records.
WAC 456-12-125	Electronic correspondence.

WSR 22-01-156

PROPOSED RULES

BOARD OF TAX APPEALS

[Filed December 15, 2021, 3:30 p.m.]

Continuance of WSR 21-22-058.

Preproposal statement of inquiry was filed as WSR 21-17-075.

Title of Rule and Other Identifying Information: Chapter 456-11 WAC, Hearings—Practice and procedure.

Hearing Location(s): On January 28, 2022, at 10:00 a.m., electronic meeting via [Microsoft] Teams; information on agency website.

Date of Intended Adoption: February 1, 2022.

Submit Written Comments to: Keri Lamb, 360-586-9020, fax 360-586-9020, email bta@bta.wa.gov, by January 21, 2022.

Assistance for Persons with Disabilities: Contact Keri Lamb, phone 360-753-5446, fax 360-586-9020, TTY 360-753-5446, email bta@bta.wa.gov, by January 21, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this change is to remove the one provision in this section, and move it to chapter 456-09 WAC, Formal hearings, and chapter 456-10 WAC, Informal hearings, for clarity in the hearings process. As such, no effects are anticipated.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 82.03.170.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The board itself has drafted the proposed changes, and therefore recommends them in full. The board implements and enforces its own rules, so the proposed changes have no fiscal impact.

Name of Proponent: Washington state board of tax appeals, governmental.

Name of Agency Personnel Responsible for Drafting: Andrea Vingo, board of tax appeals, 360-753-5446; Implementation and Enforcement: Board of tax appeals, 360-753-5446.

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

A cost-benefit analysis is not required under RCW 34.05.328. Changes have no fiscal impact.

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

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. No changes in the board's administrative process.

October 4, 2021
Andrea Vingo
Tax Referee

OTS-3407.1

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 456-11-015 Record evidence.

WSR 22-01-191

PROPOSED RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed December 20, 2021, 5:21 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-13-041.

Title of Rule and Other Identifying Information: WAC 192-110-015 Applications by standby workers—RCW 50.20.010, 192-110-095 May I backdate my application for unemployment benefits (RCW 50.04.030)?, 192-140-090 What happens if I do not schedule or report for reemployment services as provided in RCW 50.20.010 (1)(e)?, 192-150-055 Leaving work because of illness or disability—General rules and definitions—RCW 50.20.050 (1)(b)(ii) and (2)(b)(ii), 192-180-005 Registration for work—RCW 50.20.010(1) and 50.20.230, 192-180-025 Job search reviews, 192-180-040 Directive to attend job search workshop or training course—RCW 50.20.044, 192-270-065 Certification of satisfactory progress, 192-310-030 What are the report and tax payment penalties and charges (RCW 50.12.220)?, 192-250-020 What are the criteria for having shared work plan approved?, 192-250-045 Who is not eligible for participation in the shared work program?, 192-320-078 Catastrophic occurrence, 192-320-082 How will the department determine good cause exists for failing to respond timely or adequately—RCW 50.29.021(5)?, and 192-140-098 What happens if the department suspects my claim is fraudulent?

Hearing Location(s): On January 27, 2022, at 9 a.m., Zoom, Meeting ID 861 9814 1778, Passcode 307198, Call-in 253-215-8782. Join Zoom meeting <https://us02web.zoom.us/j/86198141778?pwd=NmRQNzNXcUR0M0JydVNxMVJzemgrZz09>.

Date of Intended Adoption: January 31, 2022.

Submit Written Comments to: Joshua Dye, P.O. Box 9046, Olympia, WA 98507-9046, email rules@esd.wa.gov, fax 844-652-7096, by January 6, 2021.

Assistance for Persons with Disabilities: Contact Teresa Eckstein, phone 360-507-9890, fax 360-586-4600, TTY relay 711, email teckstein@esd.wa.gov, by January 20, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The employment security department (department) is engaging in rule making regarding whether certain emergency rules adopted during the COVID-19 response should be made permanent. The emergency rules cover registration for work, certification of satisfactory progress for training programs, penalty waivers, updates to certain definitions, WorkSource closures, shared work, standby status, and suspected fraudulent claims.

Reasons Supporting Proposal: In February of 2020, Governor Inslee proclaimed a State of Emergency in Washington in response to COVID-19. The department filed a series of emergency rules to support the state's emergency response. The department is now seeking input from the public regarding which of those emergency rules should be made permanent to continue supporting Washington workers and businesses.

Statutory Authority for Adoption: RCW 50.12.010 and 50.12.040 provide general rule-making authority to the department. RCW 50.04.030 allows the commissioner to backdate an initial application for good cause. Under RCW 50.20.010 (1)(a), an individual is required to register and report for work at an employment office as the commissioner may prescribe, except that the commissioner may by regulation, waive those requirements in situations that are inconsistent with the pur-

pose of the Employment Security Act. RCW 50.20.010 (1)(e) requires an individual to participate in reemployment services unless the commissioner determines there is justifiable cause for the claimants' failure to participate in such services. Under RCW 50.20.050 (1)(b)(ii) and (2)(b)(ii), it is good cause to leave work voluntarily if the separation was necessary because of the illness or disability of a member of the claimant or the claimant's immediate family. RCW 50.20.240 requires the department to implement job search monitoring. Under RCW 50.20.010 (1)(c), an individual must be actively seeking work. Under RCW 50.20.044, if an otherwise eligible individual fails without good cause, as determined by the commissioner under rules prescribed [by] the commissioner, to attend a job search workshop or a training or retraining course when directed by the department and such workshop or course is available at public expense, such individual shall not be eligible for benefits with respect to any week in which such failure occurred. Under RCW 50.22.155 (2)(d), in order for a claimant to continue their eligibility for training benefits, they must make satisfactory progress in the training as defined by the commissioner and certified by the educational institution. RCW 50.12.220 authorizes the commissioner to waive penalties for good cause if the failure to file timely, complete, or correctly formatted reports or pay timely contributions was not due to the employer's fault. Under RCW 50.60.030, the commissioner shall approve a shared work compensation plan if certain criteria are met; the commissioner may also take into account any other factors which may be pertinent. Certain contribution paying base year employers may receive relief of benefit charges under RCW 50.29.021 (3)(a)(iii) if the benefit charges result from payment to an individual who is unemployed as a result of closure of the employer's worksite for reasons directly attributable to a catastrophic occurrence. RCW 50.29.021(5) authorizes the commissioner to determine whether an employer has good cause for failing to respond timely or adequately to a written request of the department for information relating to claims. RCW 50.20.010 addresses the availability requirements for certain individuals under quarantine or isolation. Under RCW 50.20.050(3), it is good cause to quit if during a public health emergency, the claimant worked at a health care facility, was directly involved in the delivery of health services, and left work for the period of quarantine because of exposure to or contracting the disease that is the subject of the declaration of the public health emergency. RCW 50.20.010 sets forth benefit eligibility conditions. RCW 50.20.160 establishes the circumstances in which the department may issue a re-determination, including in the case of fraud. Under RCW 50.20.170, benefits shall be paid through employment offices in accordance with such regulations as the commissioner may prescribe. RCW 50.20.190 requires individuals to repay benefits they are paid to which they are not entitled. Under RCW 50.22.155 (2)(b)(iv), the department has authority to waive training program deadlines established under RCW 50.22.155 (2)(b)(i) and (ii) for reasons deemed by the commissioner to be good cause.

Statute Being Implemented: RCW 50.20.010 (1)(a), (e) (exceptions from participating in reemployment services and justifiable cause for failing to schedule or participate in reemployment services); RCW 50.04.030 (backdate application); RCW 50.20.050 (1)(b)(ii), (2)(b)(ii) (leaving work due to an illness or disability); RCW 50.20.044 (ineligibility for benefits for failure to attend a job search workshop or training unless an individual establishes good cause, as determined by the commissioner under rules prescribed by the commissioner); RCW

50.20.240 (job search monitoring); RCW 50.20.010 (1)(c) (claimants required to actively seek work); RCW 50.22.155 (2)(d) (training benefits eligibility requirement to make satisfactory progress in training as defined by the commissioner); RCW 50.12.220 (waiver of penalties for late reports or contributions); RCW 50.60.030 (criteria for approving a shared work compensation plan); RCW 50.22.155 (training benefits timeline); RCW 50.29.021 (3)(a)(iii) (relief of benefit charges when charges result from payment to an individual who is unemployed due to a catastrophic occurrence that closes the employer's worksite); RCW 50.29.021(5) (good cause for an employer to fail to respond timely or adequately); RCW 50.20.010 (1)(c)(ii), (5)(a) (benefit eligibility requirements for individuals under quarantine or isolation); RCW 50.20.050(3) (good cause for claimant who worked at a health care facility to leave work for period of quarantine); RCW 50.20.010 (benefit eligibility conditions); RCW 50.20.160 (redetermination); RCW 50.20.170 (payment of benefits); RCW 50.20.190 (recovery of benefit overpayments); RCW 50.22.155 (2)(b)(iv) (waiver of certain training benefit program deadlines for reasons deemed by the commissioner to be good cause).

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

Name of Proponent: Employment security department, governmental.

Name of Agency Personnel Responsible for Drafting: Scott Michael, Olympia, Washington, 360-890-3448; Implementation and Enforcement: Julie Lord, Olympia, Washington, 360-902-9579.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Joshua Dye, P.O. Box 9046, Olympia, WA 98507-9046, phone 360-890-3472, fax 844-652-7096, TTY relay 711, email rules@esd.wa.gov, <https://esd.wa.gov/newsroom/ui-rule-making/>.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The proposed rules and amendments do not create additional tax burdens on employers of any size. The rule making provides flexibility for both employers and claimants in the case of a declared health emergency.

December 20, 2021

Dan Zeitlin

Employment System Policy Director

OTS-3177.2

AMENDATORY SECTION (Amending WSR 20-03-073, filed 1/10/20, effective 2/10/20)

WAC 192-110-015 Applications by standby workers—RCW 50.20.010.

(1) What is "standby?"

(a) "Standby" means you are temporarily unemployed because of a lack of work but:

- (i) You expect to return to your previous full-time or part-time work with your regular employer within four weeks; or
- (ii) You expect to begin full-time work with a new employer within two weeks; or
- (iii) You are temporarily unemployed due to natural disaster.
- (b) (~~You do not have~~) The requirement to register for work (~~or look for other work while~~) and search for work is fulfilled so long as you are on standby and take reasonable measures to maintain contact with your employer.

(c) You must be available for all hours of work offered by your regular employer.

(2) How long can I be on standby?

- (a) You can ask to be on standby for up to four weeks.
- (b) We will ask your employer to verify that you are on standby, including your expected return to work date:
 - (i) If your employer does not reply, you can be on standby for up to four weeks;
 - (ii) If your employer confirms you are on standby, you can be on standby until the return to work date given by your employer, subject to the limitations of (c) of this subsection;
 - (iii) If your employer replies that you are not on standby or do not have a return to work date within eight weeks, we will require you to immediately register for work and to look for work.

(c) Your regular employer may ask that you be placed on standby for a maximum of eight weeks (except as provided in (2)(d) below). This request must be approved by the department. We will consider the following before deciding whether to approve standby for more than four weeks:

- (i) How long you have been out of work;
- (ii) Whether other suitable work is available;
- (iii) The impact on you and your employer if you accept other work; and
- (iv) Other factors that apply to your situation.

(d) At (~~his or her~~) the discretion of the commissioner, the commissioner may grant standby for more than eight weeks in a benefit year. Exceptions can be made due to natural disaster. Exceptions can also be made in other extraordinary circumstances when the employer applies in writing and shows there are conditions that apply to the business that are so unique or unusual compared to similar businesses that having their employees on standby for more than eight weeks is necessary.

(e) We can approve standby if you have obtained a definite offer of bona fide full-time work that has a probable start date within two weeks, which includes the week of the job offer and up to two additional weeks. The job, however, must be:

- (i) With a new employer or with a former employer to whom you are no longer attached as provided in subsection (3)(f) of this section; and
- (ii) Covered by Title 50 RCW or the comparable laws of another state or the federal government.

(f) Any weeks of standby you used prior to July 4, 2021, will be disregarded for calculating the number of weeks you are allowed to be on standby.

(3) Are there conditions that apply to a request for standby?

- (a) You must have a probable date when you will return to work for your regular employer;

(b) We will not approve standby if you only have prospects of future work with your regular employer or a promise of more work at some unspecified date;

(c) We will not approve standby with your regular employer unless the employment is covered by Title 50 RCW or the comparable laws of another state or the federal government;

(d) ~~((Except for claimants who qualify as part-time eligible workers under RCW 50.20.119, we will not approve standby if you regularly work less than full-time. For purposes of this section, "full-time" means forty hours each week or the number of hours that are full-time for your occupation and labor market area;))~~ Standby is available to all full-time, part-time, and other less than full-time employees;

(e) Any week(s) that you do not qualify for benefits will not be considered as part of the maximum eight weeks of standby; ~~((and))~~

(f) After eight consecutive weeks of unemployment, we will no longer consider you attached to that employer. You must meet the job search requirements specified by RCW 50.20.010 (1)(c) and 50.20.240; and

(g) For any claims between March 22, 2020, and July 3, 2021, you are automatically deemed to be on standby. Such weeks will not count towards the four weeks of standby you may request pursuant to subsection (2)(a) of this section or the eight weeks requested by your employer in subsection (2)(b)(ii) of this section.

(4) When does standby begin?

(a) Standby begins the day of your request unless your request is backdated pursuant to (b) of this subsection.

(b)(i) You may backdate your request for standby up to one week for any reason.

(ii) Your request for standby may also be backdated for the convenience of the department. "For the convenience of the department" means for the purpose of program administration; or those situations where it is difficult or impossible to accept a timely request including, but not limited to, equipment breakdowns, lack of available staff, or special handling requirements.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042, and 50.20.010. WSR 20-03-073, § 192-110-015, filed 1/10/20, effective 2/10/20. Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 17-17-126, § 192-110-015, filed 8/22/17, effective 10/10/17; WSR 17-01-051, § 192-110-015, filed 12/13/16, effective 1/13/17. Statutory Authority: RCW 50.12.010, 50.12.040, and 50.12.042. WSR 05-19-018, § 192-110-015, filed 9/9/05, effective 10/10/05. Statutory Authority: RCW 50.20.010 and 50.12.040. WSR 99-08-073, § 192-110-015, filed 4/5/99, effective 5/6/99.]

OTS-2107.2

AMENDATORY SECTION (Amending WSR 16-21-013, filed 10/7/16, effective 11/14/16)

WAC 192-110-095 May I backdate my application for unemployment benefits (RCW 50.04.030)? (1) **General rule.** A benefit year begins on

Sunday of the calendar week in which you file your application for benefits. However, an application may also be backdated for good cause or for the convenience of the department.

(2) **Definitions.** As used in this section:

(a) "Good cause" means factors that would prevent a reasonably prudent person in similar circumstances from filing an application for benefits. These include, but are not limited to, incapacity due to illness or injury, or other serious factors. "Illness" includes a request from a medical professional, local health official, or the Secretary of Health to be isolated or quarantined as a consequence of an infection from a disease that is the subject of a public health emergency, even if you have not been actually diagnosed with the disease that is the subject of a public health emergency.

(b) "For the convenience of the department" means:

(i) For the purpose of program administration; or

(ii) Those situations where it is difficult or impossible for the department to accept a timely application. These include, but are not limited to, equipment breakdowns, lack of available staff to accept applications, or special handling requirements.

(3) **Limitations on good cause.**

(a) You must file your application for benefits during the first week in which those factors that constitute good cause are no longer present. The effective date will be Sunday of such week.

(b) Backdating will not be allowed if you claim good cause based on information from department staff or agents where you could reasonably be expected to question the accuracy of this information.

[Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 16-21-013, § 192-110-095, filed 10/7/16, effective 11/14/16. Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. WSR 10-11-046, § 192-110-095, filed 5/12/10, effective 6/12/10.]

OTS-2108.2

AMENDATORY SECTION (Amending WSR 20-10-056, filed 4/30/20, effective 7/5/20)

WAC 192-140-090 What happens if I do not schedule or report for reemployment services as provided in RCW 50.20.010 (1)(e)? (1) Written directives.

(a) The commissioner may direct you in writing to schedule a time to report in person for reemployment services. The written directive will contain a deadline by which you must schedule and participate in reemployment services.

(b) If you fail to schedule a time to participate in reemployment services by the deadline, you will be ineligible to receive benefits for the week containing the date of the deadline, unless you show justifiable cause.

(c) If you fail to participate in reemployment services at the time you scheduled, you will be ineligible to receive benefits for the week containing the time you scheduled, unless you show justifiable cause.

(d) The department may verify the reasons you failed to schedule or participate in reemployment services. In all such cases, your ability to work or availability for work may be questioned.

(2) **Exceptions.** You will not be required to participate in reemployment services if you:

(a) Are a member of a full referral union and are eligible for dispatch and referral according to union rules;

(b) Are attached to an employer as provided in WAC 192-180-005;

(c) Are participating in a training program approved by the commissioner;

(d) Within the previous year have completed, or are currently scheduled for or participating in, similar services; ~~((or))~~

(e) Are an active registered electrical apprentice in an approved electrical apprenticeship program under chapter 49.04 RCW and chapter 296-05 WAC; or

(f) Are not able to attend due to the closure of the WorkSource office and the department cannot accommodate an alternative method to deliver the reemployment services.

(3) **Minimum services.** The services will consist of one or more sessions which include, but are not limited to:

(a) Local labor market information;

(b) Available reemployment and training services;

(c) Successful job search attitudes;

(d) Self-assessment of job skills and interests;

(e) Job interview techniques;

(f) The development of a resume or fact sheet; and

(g) The development of a plan for reemployment.

(4) **Justifiable cause.** Justifiable cause for failure to schedule or participate in reemployment services as directed will include factors specific to you which would cause a reasonably prudent person in similar circumstances to fail to schedule or participate in reemployment services. Justifiable cause includes, but is not limited to:

(a) Your illness or disability or that of a member of your immediate family. "Illness" includes a request from a medical professional, local health official, or the Secretary of Health to be isolated or quarantined as a consequence of an infection from a disease that is the subject of a public health emergency, even if you or your immediate family member have not been actually diagnosed with the disease that is the subject of a public health emergency;

(b) Conflicting employment or your presence at a job interview scheduled with an employer; or

(c) Severe weather conditions.

[Statutory Authority: RCW 50.12.010, 50.20.010, 50.20.230, 50.20.240, and 50.12.040. WSR 20-10-056, § 192-140-090, filed 4/30/20, effective 7/5/20. Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 19-12-091, § 192-140-090, filed 6/4/19, effective 7/22/19; WSR 16-21-013, § 192-140-090, filed 10/7/16, effective 11/14/16. Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042. WSR 05-01-076, § 192-140-090, filed 12/9/04, effective 1/9/05.]

OTS-3492.2

NEW SECTION

WAC 192-140-098 What happens if the department suspects a claim is impacted by imposter fraud? (1) Imposter fraud occurs when someone files a claim using another individual's name or Social Security number without the individual's knowledge or consent.

(2) If the department discovers it has reason to suspect your claim is impacted by imposter fraud, the department will:

(a) Send you a request for information about the suspected imposter fraud; and

(b) If the claim is a continuing claim as defined in WAC 192-100-020, the department will:

(i) Pause determining your weekly eligibility and qualification for benefits, including any requested backdated weeks, until it resolves the suspected imposter fraud; and

(ii) Not make conditional payments, including for any requested backdated weeks, beginning the week in which the department discovered it had reason to suspect imposter fraud and until the department either issues a determination on the imposter fraud issue or until the end of the week following the week in which the discovery was made, whichever is sooner.

(c) If the claim is not a continuing claim, the department will not make any payments until it issues a determination on the imposter fraud issue. This determination will be made as soon as administratively feasible. If the claim is backdated, this pause will also apply to the backdated weeks.

(3) If you do not respond to the request for information about the suspected imposter fraud, or the information provided is insufficient to show the claim did not involve imposter fraud:

(a) The department will determine you are not eligible for receiving benefits and will deny benefits for an indefinite period of time; and

(b) An overpayment may be assessed for any previous benefits paid.

(4) If you provide the requested information and the department determines that imposter fraud has not occurred, the department will:

(a) If the claim is a continuing claim, resume determining weekly eligibility and qualification for benefits and pay benefits owed, if any.

(b) If the claim is not a continuing claim, determine if you are otherwise eligible and qualified to receive benefits.

(5) If the department has paused payment of your weekly benefits pursuant to subsection (2)(b) of this section and the department has not issued a determination denying benefits within the time frame specified in subsection (2)(b)(ii) of this section, the department will conditionally pay the paused weekly benefits by a payment method of the department's choosing.

(6) If an imposter files a claim using another individual's name or Social Security number without that individual's knowledge or consent:

(a) That individual is not responsible to repay sums improperly paid on the claim, unless the individual actually received the benefit payments; and

(b) The imposter fraud does not affect the individual's eligibility or qualification for benefits.

[]

OTS-2109.3

AMENDATORY SECTION (Amending WSR 10-01-156, filed 12/22/09, effective 1/22/10)

WAC 192-150-055 Leaving work because of illness or disability—General rules and definitions—RCW 50.20.050 (1) (b) (ii) and (2) (b) (ii). (1) **General rule.** To establish good cause for leaving work voluntarily because of your illness or disability or the illness, disability, or death of a member of your immediate family, you must demonstrate that:

(a) You left work primarily because of such illness, disability, or death; and

(b) The illness, disability, or death made it necessary for you to leave work; and

(c) You first exhausted all reasonable alternatives prior to leaving work, including:

(i) Notifying your employer of the reason(s) for the absence as provided in WAC 192-150-060; and

(ii) Asking to be reemployed when you are able to return to work. (You are not required to request reemployment after the job separation has occurred to establish good cause.)

(2) For claims with an effective date of January 4, 2004, or later, you are not eligible for unemployment benefits unless, in addition to the requirements of subsections (1) (a)-(c) above, you terminate your employment and are not entitled to be reinstated in the same or similar position.

(3) **Exception.** You may be excused from failure to exhaust reasonable alternatives prior to leaving work as required by subsection (1) (c) if you can show that doing so would have been a futile act.

(4) **Definitions.** For purposes of this chapter:

(a) "Disability" means a sensory, mental, or physical condition that:

(i) Is medically recognizable or diagnosable;

(ii) Exists as a record or history; and

(iii) Substantially limits the proper performance of your job;

(b) "Immediate family" means your spouse, domestic partner, and the children (including unborn children), siblings, step-children, foster children, or parents of either spouse or domestic partner, whether living with you or not, and other relatives who temporarily or permanently reside in your household;

(c) "Necessary" means the conditions are of such degree or severity in relation to your particular circumstances that they would cause a reasonably prudent person acting under similar circumstances to quit work;

(d) "Illness" includes a request from a medical professional, local health official, or the Secretary of Health to be isolated or quarantined as a consequence of an infection from a disease that is the subject of a public health emergency, even if you or your immediate family member have not been actually diagnosed with the disease that is the subject of a public health emergency.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 34.05.120. WSR 10-01-156, § 192-150-055, filed 12/22/09, effective 1/22/10. Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042. WSR 05-01-076, §

192-150-055, filed 12/9/04, effective 1/9/05. Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 02-14-035, § 192-150-055, filed 6/25/02, effective 7/26/02.]

OTS-2110.3

AMENDATORY SECTION (Amending WSR 20-10-056, filed 4/30/20, effective 7/5/20)

WAC 192-180-005 Registration for work—RCW 50.20.010(1) and 50.20.230. (1) **Am I required to register for work?** You must register for work unless you are:

- (a) Attached to an employer, meaning you are:
 - (i) Partially unemployed as defined in WAC 192-180-013(1);
 - (ii) On standby as defined by WAC 192-110-015;
 - (iii) Unemployed because you are on strike or locked out from the worksite as provided in RCW 50.20.090; or
 - (iv) Participating in the shared work program under chapter 50.60 RCW;
- (b) A member of a union that participates in the referral union program (see WAC 192-210-110);
- (c) Participating in a training program approved by the commissioner;
- (d) The subject of an antiharassment order. This includes any court-issued order providing for your protection, such as restraining orders, no contact orders, domestic violence protective orders, and similar documents; (~~(e)~~)
- (e) An active registered electrical apprentice in an approved electrical apprenticeship program under chapter 49.04 RCW and chapter 296-05 WAC; or
- (f) Under isolation or quarantine at the request of a medical professional, local health official, or the Secretary of Health as a consequence of a disease that is the subject of a public health emergency, even if you or your immediate family member have not been actually diagnosed with a disease that is the subject of a public health emergency.

(2) **How soon do I have to register?**

- (a) If you live within the state of Washington, the department will register you automatically based on information contained in your application for benefits. In unusual circumstances where you are not automatically registered, you must register within one week of the date on which you are notified by the department of the requirement to register for work.
- (b) If you live in another state, you must register for work within one week of the date your first payment is issued on your new or reopened claim.
- (c) If you have been requested by a medical professional, local health official, or the Secretary of Health to be isolated or quarantined as a consequence of a disease that is the subject of a public health emergency, even if you or your immediate family member have not been actually diagnosed with a disease that is the subject of a public health emergency and were not automatically registered, you must reg-

ister for work within one week of the date you are no longer requested to be isolated or quarantined.

(3) **Where do I register for work?** You will be registered for work with the department. However, if you live in another state, you must register for work with the equivalent public employment agency in that state.

(4) **What is the penalty if I do not register for work?** You will not be eligible for benefits for any week in which you are not registered for work as required by this section.

[Statutory Authority: RCW 50.12.010, 50.20.010, 50.20.230, 50.20.240, and 50.12.040. WSR 20-10-056, § 192-180-005, filed 4/30/20, effective 7/5/20. Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 17-01-051, § 192-180-005, filed 12/13/16, effective 1/13/17; WSR 13-09-010, § 192-180-005, filed 4/5/13, effective 5/6/13; WSR 07-22-055, § 192-180-005, filed 11/1/07, effective 12/2/07; WSR 99-13-002, § 192-180-005, filed 6/3/99, effective 7/4/99.]

AMENDATORY SECTION (Amending WSR 17-01-051, filed 12/13/16, effective 1/13/17)

WAC 192-180-025 Job search reviews. (1) **What is a job search review (JSR)?** The JSR is a review of your job search activities by the department. At a minimum, the department will review your job search documentation, your ability to work, availability for work, and your efforts to find work. The department may also promote an active search for work by directing you to resources that will assist you with your job search efforts.

(2) **Will my job search activities be reviewed?** Yes, you must provide your job search log to the department when requested. The department will review your log, review your eligibility for benefits as required by RCW 50.20.010 (1)(c), and, when appropriate, provide feedback on areas in which your job search can be improved.

(3) **How many weeks will be reviewed?** The department will review at least one week of your job search documentation at the initial JSR.

(a) If the documentation shows you met the job search requirements for that week, no further action will be taken at that time except as provided in WAC 192-180-020(2). You may be scheduled for another JSR at a later date.

(b) If the documentation shows that you substantially complied with the job search requirements, you will not be scheduled for an all weeks JSR. However, your benefits may be denied for that week and the department will issue you a work search directive explaining how your job search efforts or documentation of those efforts must be modified.

(c) If the job search documentation fails to show that you substantially complied with the job search requirements, the department will reschedule you for a second JSR in which your job search for all weeks claimed will be reviewed.

(4) **What happens if I do not participate in the initial JSR?** If you fail to participate in the initial JSR, the department will determine if your failure is excused or unexcused.

(a) If you have an excused absence, the department will reschedule you for a JSR of one week of your job search documentation.

You may be excused from participating in the initial JSR only for good cause:

(i) Your illness or disability or that of a member of your immediate family that prevents you from participating. "Illness" includes a request from a medical professional, local health official, or the Secretary of Health to be isolated or quarantined as a consequence of a disease that is the subject of a public health emergency, even if you or your immediate family member have not been actually diagnosed with a disease that is the subject of a public health emergency;

(ii) Your employment or presence at a job interview scheduled with an employer;

(iii) Natural disaster or similar acts of nature; or

(iv) Factors specific to your situation which would prevent a reasonably prudent person in similar circumstances from participating.

(b) If you have an unexcused absence, the department will:

(i) Schedule you for a JSR of your job search activities for all weeks claimed; and

(ii) Deny your benefits for the week of the initial JSR unless you can show good cause for not participating. (See WAC 192-180-030.)

(5) **What does "all weeks" mean?** For purposes of this section, "all weeks" means the latest of the following:

(a) Weeks claimed since you filed your application for benefits; or

(b) Weeks claimed since your last all weeks JSR.

(6) **Will the department verify my identity at the JSR interview?**

Yes, you must be prepared to provide the department with sufficient information to verify your identity.

[Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 17-01-051, § 192-180-025, filed 12/13/16, effective 1/13/17. Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. WSR 10-11-046, § 192-180-025, filed 5/12/10, effective 6/12/10. Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 07-22-055, § 192-180-025, filed 11/1/07, effective 12/2/07. Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042. WSR 05-01-076, § 192-180-025, filed 12/9/04, effective 1/9/05. Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 99-13-002, § 192-180-025, filed 6/3/99, effective 7/4/99.]

AMENDATORY SECTION (Amending WSR 20-10-056, filed 4/30/20, effective 7/5/20)

WAC 192-180-040 Directive to attend job search workshop or training course—RCW 50.20.044. (1) The department may direct you, in writing, to attend a job search workshop or training course when it finds that your chances of finding employment will be improved by enrollment in such activity.

(2) You will not be directed to attend a job search workshop or training course if:

(a) You have an offer of bona fide work that begins within two weeks; or

(b) The workshop or training location is outside your labor market or would require you to travel further than the nearest WorkSource office or local employment center;

(c) You are a member in good standing of a full referral union, unless you are also being required to begin an independent search for

work or have been identified as a dislocated worker as defined in RCW 50.04.075; or

(d) You are an active registered electrical apprentice in an approved electrical apprenticeship program under chapter 49.04 RCW and chapter 296-05 WAC.

(3) If you receive a directive and fail without good cause to attend a substantial portion of the workshop or training course during a week, you will be ineligible for benefits for the entire week. Good cause includes your illness or disability or that of a member of your immediate family, or your presence at a job interview scheduled with an employer. "Illness" includes a request from a medical professional, local health official, or the Secretary of Health to be isolated or quarantined as a consequence of a disease that is the subject of a public health emergency, even if you or your immediate family member have not been actually diagnosed with a disease that is the subject of a public health emergency. Reasons for absence may be verified and may result in a denial of benefits under RCW 50.20.010.

(4) Participation in a job search workshop when directed meets the definition of an "in-person job search activity" as defined in WAC 192-180-010.

(5) When attending a job search workshop or training course as directed, you will not be ineligible for benefits for failure to be available for work or to actively seek work under the provisions of:

- (a) RCW 50.20.010 (1) (c);
- (b) RCW 50.20.240; or
- (c) RCW 50.22.020(1).

[Statutory Authority: RCW 50.12.010, 50.20.010, 50.20.230, 50.20.240, and 50.12.040. WSR 20-10-056, § 192-180-040, filed 4/30/20, effective 7/5/20. Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042. WSR 05-01-076, § 192-180-040, filed 12/9/04, effective 1/9/05.]

OTS-2170.3

AMENDATORY SECTION (Amending WSR 13-24-016, filed 11/21/13, effective 12/22/13)

WAC 192-250-020 What are the criteria for having a shared work plan approved? In addition to the criteria listed in RCW 50.60.030, employers must:

(1) ~~((Be current in the payment of all unemployment insurance taxes required under Title 50 RCW, or be current on an approved deferred payment contract on file with the department;~~

~~(2-))~~ Include their ESD number on the plan application; and

~~((3-))~~ (2) Designate a representative to be a liaison between the department and the employees who participate in the shared work plan.

[Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 13-24-016, § 192-250-020, filed 11/21/13, effective 12/22/13. Statutory Authority: RCW 50.12.010, 50.12.040, and 50.60.901. WSR 06-22-004, § 192-250-020, filed 10/19/06, effective 11/19/06.]

AMENDATORY SECTION (Amending WSR 13-24-016, filed 11/21/13, effective 12/22/13)

WAC 192-250-045 Who is not eligible for participation in the shared work program? ~~((+1))~~ The following employees are not eligible for participation in the shared work program:

~~((a))~~ (1) Employees paid on any basis other than hourly wage. This includes, but is not limited to, employees paid on a piece rate, mileage rate, job rate, salary, or commission basis. The commissioner may waive this provision for employees paid as listed above if an hourly rate of pay can be established ~~((, except that salaried employees may participate only if they are eligible for paid overtime))~~.

~~((b))~~ (2) Officers of the corporation that is applying for participation.

~~((e))~~ (3) Seasonal employees during the off season.

~~((2))~~ The following businesses are not eligible for participation in the shared work program:

~~(a)~~ For weeks of benefits paid before July 1, 2012, and after June 28, 2015, businesses with a tax rate of 5.4 percent or more, not including the social cost factor rate and taxes under RCW 50.24.010 and 50.24.014.

~~(b)~~ Nonqualified employers, meaning employers who have reported no payroll for four consecutive quarters.

~~(c)~~ Employers not registered in Washington for six months prior to application.)

[Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 13-24-016, § 192-250-045, filed 11/21/13, effective 12/22/13. Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. WSR 10-11-046, § 192-250-045, filed 5/12/10, effective 6/12/10. Statutory Authority: RCW 50.12.010, 50.12.040, and 50.60.901. WSR 09-13-057, § 192-250-045, filed 6/12/09, effective 7/13/09; WSR 06-22-004, § 192-250-045, filed 10/19/06, effective 11/19/06.]

OTS-2112.3

AMENDATORY SECTION (Amending WSR 12-09-025, filed 4/6/12, effective 7/1/12)

WAC 192-270-065 Certification of satisfactory progress. (1) In order to continue your eligibility for training benefits, the certification that you are making satisfactory progress in training must be signed by the registrar or an equivalent person designated by your educational institution. Except for dislocated workers eligible under RCW 50.22.155 (2) (a) (i), and disabled individuals as provided in RCW 50.22.155 (2) (c), training must be full-time as determined by the educational institution.

(2) Except as provided in subsection (3), for training benefits purposes the term "satisfactory progress" means:

(a) Your grade point average does not fall below 2.0 for two consecutive terms;

(b) You maintain a grade point average sufficient to graduate from, or receive certification in, your approved area of study; and

(c) You are completing sufficient credit hours to finish your approved course of study within the time frame established under your approved training plan.

(3) In the case of self-paced or ungraded learning programs, "satisfactory progress" means participating in classes and passing certification examinations within the time frame established under your approved training plan.

(4) Reasonable delays directly attributable to an infection from a disease that is the subject of a public health emergency or a request from a medical professional, local health official, or the Secretary of Health to be isolated or quarantined as a consequence of an infection from a disease that is the subject of a public health emergency will not prevent a certification that you are making satisfactory progress in training.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.22.155(12). WSR 12-09-025, § 192-270-065, filed 4/6/12, effective 7/1/12. Statutory Authority: RCW 50.12.010, 50.20.010, and 50.22.150(10). WSR 01-11-085, § 192-270-065, filed 5/16/01, effective 6/16/01.]

OTS-2113.3

AMENDATORY SECTION (Amending WSR 13-23-007, filed 11/7/13, effective 12/8/13)

WAC 192-310-030 What are the report and tax payment penalties and charges? (RCW 50.12.220.) (1) **Penalty for late tax and wage reports.** An employer who does not file a tax or wage report within the time frame required by WAC 192-310-010 (3)(d) must pay a penalty of twenty-five dollars for each violation, unless the penalty is waived by the department.

(2) **Definition of incomplete or incorrect format tax or wage report.** An employer must file tax and wage reports that are complete and in the format required by the commissioner.

(a) An "incomplete report" is any report filed by any employer or their agent where:

(i) The entire wage report is not filed on time; or

(ii) A required element is not reported (Social Security number, name, hours worked, or wages paid); or

(iii) A significant number of employees are not reported; or

(iv) A significant number of any given element is not reported, for example, missing Social Security numbers, names, hours, or wages; or

(v) Either the employment security department number or Unified Business Identifier (UBI) number is not included with the tax or wage report; or

(vi) The report includes duplicate Social Security numbers, or impossible Social Security numbers as shown by the Social Security Administration (such as 999-99-9991, 999-99-9992, etc.).

(b) An "incorrect format" means any report that is not filed in the format required by the commissioner under WAC 192-310-010 (3)(c). Agency forms include "drop-out ink" that cannot be copied. Therefore, photocopies are considered incorrectly formatted reports and forms.

(c) For purposes of this section, the term "significant" means an employer who has:

(i) One employee and reports incomplete wage elements for the one employee; or

(ii) Two to nineteen employees and reports incomplete wage elements for two or more employees; or

(iii) Twenty to forty-nine employees and reports incomplete wage elements for three or more employees; or

(iv) Fifty or more employees and reports incomplete wage elements for four or more employees.

(3) **Penalty for filing an incomplete or incorrectly formatted tax or wage report.** An employer who files an incomplete or incorrectly formatted tax and wage report will receive a warning letter for the first occurrence. For subsequent occurrences of either an incomplete or incorrectly formatted report within five years of the date of the last occurrence (whether or not the last occurrence was before the effective date of this amendatory section), the employer must pay a penalty as follows:

(a) When quarterly tax is due and an employer has submitted an incomplete report or filed the report in an incorrect format, the following schedule will apply after the initial warning letter: Ten percent of the quarterly contributions for each occurrence, up to a maximum of \$250.00, but not less than:

(i)	2nd occurrence	\$75.00
(ii)	3rd occurrence	\$150.00
(iii)	4th and subsequent occurrences	\$250.00

(b) When no quarterly tax is due and an employer has submitted an incomplete report or filed the report in an incorrect format, the following schedule will apply after the initial warning letter:

(i)	2nd occurrence	\$75.00
(ii)	3rd occurrence	\$150.00
(iii)	4th and subsequent occurrences	\$250.00

(c) After five years without an occurrence, prior occurrences will not count and the employer shall receive a warning letter instead of a penalty on the next occurrence.

(4) **Penalty for knowingly misrepresenting amount of payroll.** If an employer knowingly (on purpose) misrepresents to the department the amount of his or her payroll that is subject to unemployment taxes, the penalty is up to ten times, in the discretion of the department, the difference between the taxes paid, if any, and the amount of taxes the employer should have paid for the period. This penalty is in addition to the amount the employer should have paid. The employer must also pay the department for the reasonable expenses of auditing his or her books and collecting taxes and penalties due as provided in WAC 192-340-100.

(5) **Late tax payments.** All employers must file a tax and wage report every quarter, including employers who have no payroll for a given quarter. If an employer does not report on time, it will be charged a late fee of \$25.00 for each report. If the payment is late, the employer will be charged interest at a rate of one percent of taxes due per month. A late payment penalty is also charged for overdue taxes:

(a) First month: Five percent of the total taxes due or \$10.00, whichever is greater;

(b) Second month: An additional five percent of total taxes due or \$10.00, whichever is greater; and

(c) Third month: An additional ten percent of total taxes due or \$10.00, whichever is greater.

(6) **Nonsufficient funds (NSF)**. The department shall charge \$25.00 for checks dishonored by nonacceptance or nonpayment. This is considered a commercial charge under the Uniform Commercial Code (RCW 62A.3-515).

(7) **Waivers of late filing and late payment penalties**. The department may, for good cause, waive penalties for late filing of a report and late payment of taxes that are due with a report. The commissioner must decide if the failure to file reports or pay taxes on time was not the employer's fault.

(a) The department may waive late penalties when there are circumstances beyond the control of the employer. These circumstances include, but may not be limited to, the following:

(i) The return was filed on time with payment but inadvertently mailed to another agency;

(ii) The delinquency was caused by an employee of the department, such as providing incorrect information to the employer, when the source can be identified;

(iii) The delinquency was caused by the death or serious illness, before the filing deadline, of the employer, a member of the employer's immediate family, the employer's accountant, or a member of the accountant's immediate family. "Serious illness" includes a request from a medical professional, local health official, or the Secretary of Health to be isolated or quarantined as a consequence of an infection from a disease that is the subject of a public health emergency, even if you or your immediate family member have not been actually diagnosed with the disease that is the subject of a public health emergency;

(iv) The delinquency was caused by the unavoidable absence of the employer or key employee before the filing deadline. "Unavoidable absence" does not include absences because of business trips, vacations, personnel turnover, or terminations;

(v) The delinquency was caused by the accidental destruction of the employer's place of business or business records;

(vi) The delinquency was caused by fraud, embezzlement, theft, or conversion by the employer's employee or other persons contracted with the employer, which the employer could not immediately detect or prevent. The employer must have had reasonable safeguards or internal controls in place; ((~~or~~))

(vii) The employer, before the filing deadline, requested proper forms from the department's central office or a district tax office, and the forms were not supplied in enough time to allow the completed report to be filed and paid before the due date. The request must have been timely, which means at least three days before the filing deadline; or

(viii) An infection from a disease subject to a public health emergency occurred at the employer's place of business and caused the employer to close or severely curtail operations.

(b) The department may waive late penalties if it finds the employer to be out of compliance during an employer-requested audit, but the department decides the employer made a good faith effort to comply with all applicable laws and rules;

(c) The department may waive late penalties for failure to file a "no payroll" report for one quarter if a new business initially regis-

tered that it would have employees that quarter, but then delayed hiring its first employees until after that quarter; and

(d) The department will not waive late penalties if the employer has been late with filing or with payment in any of the last eight consecutive quarters immediately preceding the quarter for which a waiver is requested. If an employer has been in business for fewer than the eight preceding quarters, then all preceding quarters must have been filed and paid on time and a one-time only waiver may be granted.

(8) **Incomplete reports or incorrect format penalty waivers.** For good cause, the department may waive penalties or not count occurrences for incomplete reports or reports in an incorrect format when the employer can demonstrate that the incomplete or incorrectly formatted report was not due to the fault of the employer.

(9) **Missing and impossible Social Security numbers.** When a Social Security number is impossible or missing, the department may waive penalties for incomplete reports only once for each worker and only when:

(a) The report was incomplete because it included impossible Social Security numbers, but the employer can show that the impossible Social Security numbers were provided to the employer by the employees; or

(b) The report was incomplete because of missing Social Security numbers, but the employer can show that the employee did not work for the employer after failing to provide a valid Social Security card or application for Social Security number within seven days of employment.

(10) **Penalty waiver requests.**

(a) An employer must request a waiver of penalties in writing, include all relevant facts, attach available proof, and file the request with a tax office. In all cases the burden of proving the facts is on the employer.

(b) At its discretion, the department may waive penalties on its own motion without requiring a request from the employer if it finds that the penalty was caused by the department's own error or for other good cause.

(11) **Extensions.** The department, for good cause, may extend the due date for filing a report. If granted, the employer must make a deposit with the department in an amount equal to the estimated tax due for the reporting period or periods. This deposit will be applied to the employer's debt. The amount of the deposit must be approved by the department.

[Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 13-23-007, § 192-310-030, filed 11/7/13, effective 12/8/13; WSR 10-23-064, § 192-310-030, filed 11/12/10, effective 12/13/10; WSR 07-23-127, § 192-310-030, filed 11/21/07, effective 1/1/08. Statutory Authority: RCW 50.12.010, 50.12.040, and 50.12.042. WSR 05-19-017, § 192-310-030, filed 9/9/05, effective 10/10/05; WSR 04-23-058, § 192-310-030, filed 11/15/04, effective 12/16/04. Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 98-14-068, § 192-310-030, filed 6/30/98, effective 7/31/98.]

OTS-3258.1

NEW SECTION

WAC 192-320-078 Catastrophic occurrence. For the purposes of RCW 50.29.021 (3) (a) (iii), "catastrophic occurrence" includes an infection from a disease that is the subject of a public health emergency at the employer's place of business that causes the employer to close or severely curtail operations.

[]

AMENDATORY SECTION (Amending WSR 21-12-068, filed 5/28/21, effective 6/28/21)

WAC 192-320-082 How will the department determine good cause exists for failing to respond timely or adequately?—RCW 50.29.021(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. "Serious illness" includes a request from a medical professional, local health official, or the Secretary of Health to be isolated or quarantined as a consequence of an infection from a disease that is the subject of a public health emergency, even if you or your immediate family member have not been actually diagnosed with the disease that is the subject of a public health emergency;

(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, 50.12.040, 50.20.010, 50.20.230, 50.20.240, 50.29.021, 50.29.025 and 50.29.062. WSR 21-12-068, § 192-320-082, filed 5/28/21, effective 6/28/21. 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.]

WSR 22-01-192

PROPOSED RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed December 20, 2021, 5:26 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-17-029

Title of Rule and Other Identifying Information: COVID-19 Phase 4 emergency rules, regarding WAC 192-110-006 Waiving the week requirement when the first week of unemployment benefits are federally funded, and 192-240-070 What happens if I am paid emergency or extended benefits when I am eligible for a new unemployment claim?

Hearing Location(s): On January 27, 2022, at 9 a.m., Zoom, Meeting ID 827 2053 7196, Passcode 227325, Call-in 253-215-8782. Join Zoom meeting <https://us02web.zoom.us/j/82720537196?pwd=TVpqM2pxRGhIZGNDUjYwT2ZBUVhEUT09>.

Date of Intended Adoption: January 31, 2022.

Submit Written Comments to: Joshua Dye, P.O. Box 9046, Olympia, WA 98507-9046, email rules@esd.wa.gov, fax 844-652-7096, by January 27, 2022.

Assistance for Persons with Disabilities: Contact Teresa Eckstein, phone 360-507-9890, fax 360-586-4600, TTY relay 711, email teckstein@esd.wa.gov, by January 20, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The employment security department (department) is engaging in rule making regarding whether the emergency rules adopted during the COVID-19 response should be made permanent. The emergency rules cover waiting week requirements, emergency and extended benefits, and standby. Specifically, proposed WAC 192-110-006 waives the one-week waiting period for unemployment insurance benefits when they are fully paid or reimbursed by the federal government. Amended WAC 192-240-070 clarifies what happens if a claimant is paid pandemic unemployment assistance and later is determined to have been eligible for regular unemployment benefits or to have been eligible for pandemic unemployment compensation or extended benefits.

Reasons Supporting Proposal: In February of 2020, Governor Inslee proclaimed a State of Emergency in Washington in response to COVID-19. The department filed a series of emergency rules to support the state's emergency response. The department is now seeking input from the public regarding which of those emergency rules should be made permanent to continue supporting Washington workers and businesses.

Statutory Authority for Adoption: RCW 50.12.010 and 50.12.040 provide general rule-making authority to the department. RCW 50.20.010, 50.20.190.

Statute Being Implemented: RCW 50.20.010, 50.20.190.

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

Name of Proponent: Employment security department, governmental.

Name of Agency Personnel Responsible for Drafting: Scott Michael, Olympia, Washington, 360-890-3448; Implementation and Enforcement: Julie Lord, Olympia, Washington, 360-902-9579.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Joshua Dye, P.O. Box 9046, Olympia, WA 98507-9046, phone 360-890-3472, fax

844-652-7096, TTY relay 711, email rules@esd.wa.gov, https://esd.wa.gov/newsroom/ui-rule-making/.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The rules amended by the COVID-19 emergency rules - phase 4 rule making do not create an additional tax burden on employers of any size. The rule making provides flexibility for both employers and claimants.

December 20, 2021

Dan Zeitlin

Employment System Policy Director

OTS-2846.2

NEW SECTION

WAC 192-110-006 Waiving the week requirement when the first week of unemployment benefits are federally funded. Starting after the week ending March 7, 2020, through the week ending September 4, 2021, and any other week where the one week waiting period is fully paid or fully reimbursed by the federal government, you will not be required to serve an unpaid waiting week before you receive unemployment insurance benefits.

[]

OTS-2616.2

AMENDATORY SECTION (Amending WSR 09-24-011, filed 11/20/09, effective 12/21/09)

WAC 192-240-070 What happens if I am paid emergency or extended benefits when I am eligible for a new unemployment claim? If you are paid pandemic unemployment assistance established under Sec. 2102 of Public Law No. 116-136, as amended, emergency unemployment compensation (which includes pandemic emergency unemployment compensation under Sec. 2107 of Public Law No. 166-136, as amended), state extended benefits, or any similar state or federal extension, and it is later discovered that you were eligible for a regular unemployment claim during all or part of the period in which you received such benefits, the regular unemployment claim takes priority. If you were paid pandemic unemployment assistance, and it is later discovered that you were eligible for pandemic unemployment compensation or extended benefits, a claim for pandemic emergency unemployment compensation or extended benefits takes priority. The balance on your new unemployment claim will be adjusted for any week(s) at issue, meaning those weeks in which you should have received regular unemployment benefits, subject to the following:

(1) Except as provided in subsection (4) of this section, you may not be paid twice for the same week

(2) If your new weekly benefit amount is equal to the amount you were paid for the weeks at issue, the amount you were paid in pandemic unemployment assistance, emergency unemployment compensation or extended benefits will be deducted from the maximum benefits payable on your new claim.

Example: Your previous weekly benefit amount was five hundred dollars. You received emergency unemployment compensation for eight weeks at this amount when it was discovered you were eligible for a new claim in the amount of five hundred dollars. The five hundred dollars paid for eight weeks will be deducted from the maximum benefits payable on your new claim.

(3) If your new weekly benefit amount is lower than the amount you were paid for the weeks at issue, the amount you were paid in pandemic unemployment assistance, emergency unemployment compensation or extended benefits that is equivalent to the weekly benefit amount on your new claim will be deducted from the maximum benefits payable on your new claim. The difference between the amounts paid in pandemic unemployment assistance, emergency unemployment compensation or extended benefits for the week(s) at issue and the weekly benefit amount on your new claim will be waived as provided in RCW 50.20.190.

Example: Your previous weekly benefit amount was five hundred dollars. You received emergency unemployment compensation for eight weeks at this amount when it was discovered you were eligible for a new claim in the amount of three hundred-fifty dollars. The three hundred-fifty dollars for eight weeks will be deducted from the maximum benefits payable on your new claim. The one hundred-fifty dollar difference between your previous weekly benefit amount and your new weekly benefit amount will be waived.

(4) If your new weekly benefit amount is higher than the amount you were paid for the week(s) at issue, the amount you were paid in emergency unemployment compensation or extended benefits will be supplemented so that you receive your new weekly benefit amount for the weeks at issue and the total deducted from the maximum benefits payable on your new claim.

For example: Your previous weekly benefit amount was three hundred-fifty dollars. You received emergency unemployment compensation for eight weeks at this amount when it was discovered you were eligible for a new claim in the amount of five hundred dollars. You will be paid an additional one hundred-fifty dollars for each of the eight weeks at issue and the total deducted from the maximum benefits payable on your new claim.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. WSR 09-24-011, § 192-240-070, filed 11/20/09, effective 12/21/09.]

WSR 22-01-194
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
[Filed December 21, 2021, 8:30 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-21-086.

Title of Rule and Other Identifying Information: Proposed fee increase for contractor registration under WAC 296-200A-900 What fees does the department charge contractors for issuance, renewal, reregistration, and reinstatement of certificates of registration?

Hearing Location(s): On January 26, 2022, at 9:00 a.m., virtual and telephonic hearing only. Please join on your computer or mobile app (Microsoft Teams) by [Click here to join the meeting](#) [contact agency for link]; or visiting [https://teams.microsoft.com/l/meetup-join/19%3ameeting_YWU50GFkNzItYzE3Yy00OWY1LTlmM2ItMTYwOTU5MzI2OThl%40thread.v2/0?](https://teams.microsoft.com/l/meetup-join/19%3ameeting_YWU50GFkNzItYzE3Yy00OWY1LTlmM2ItMTYwOTU5MzI2OThl%40thread.v2/0?context=%7b%22Tid%22%3a%2211d0e217-264e-400a-8ba0-57dcc127d72d%22%2c%220id%22%3a%22acb1df6f-3588-43aa-b503-63aebce21ddc%22%7d)

context=%7b%22Tid%22%3a%2211d0e217-264e-400a-8ba0-57dcc127d72d%22%2c%220id%22%3a%22acb1df6f-3588-43aa-b503-63aebce21ddc%22%7d; or calling (audio only) 1-253-372-2181, Phone Conference ID 101 347 770# (pound sign must be entered). The virtual/telephonic hearing starts at 9:00 a.m. and will continue until all oral comments are received.

Date of Intended Adoption: March 22, 2022.

Submit Written Comments to: Alicia Curry, Department of Labor and Industries (L&I), P.O. Box 44400, Olympia, WA 98504-4400, email Alicia.Curry@Lni.wa.gov, fax 360-902-5292, by 5 p.m., on January 26, 2022.

Assistance for Persons with Disabilities: Contact Alicia Curry, phone 360-902-6244, fax 360-902-5292, email Alicia.Curry@Lni.wa.gov, by January 12, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule making is to propose a 5.79 percent fee increase for L&I's contractor registration program. This is the office of financial management's maximum allowable fiscal growth factor rate for fiscal year 2022. A fee increase is needed to ensure the program remains consistent with fee increases as required by statute and to help improve the program's fund balance.

Reasons Supporting Proposal: The contractor registration program registers contractors to ensure that all general and specialty contractors operating in Washington state have appropriate bonding and insurance. RCW 18.27.075 requires L&I to charge a fee for issuing or renewing a certificate of registration and to revise the fee at least once every two years for the purposes of recognizing economic changes as reflected by the fiscal growth factor under chapter 43.135 RCW.

Statutory Authority for Adoption: Chapter 18.27 RCW.

Statute Being Implemented: Chapter 18.27 RCW.

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

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting: Melissa McBride, acting program manager, Tumwater, Washington, 360-902-5731; Implementation and Enforcement: Steve Reinmuth, assistant director, Tumwater, Washington, 360-902-6348.

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

A cost-benefit analysis is not required under RCW 34.05.328. The rule is exempt from the cost-benefit analysis requirement under the Administrative Procedure Act, RCW 34.05.328 (5)(b)(vi), rules that set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

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

Is exempt under RCW 19.85.025(3) as the rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

December 21, 2021

Joel Sacks

Director

OTS-2920.1

AMENDATORY SECTION (Amending WSR 18-24-102, filed 12/4/18, effective 1/4/19)

WAC 296-200A-900 What fees does the department charge contractors for issuance, renewal, reregistration, and reinstatement of certificates of registration? The department charges the following fees:

(1) (~~(\$117.90)~~) \$124.70 for each issuance, renewal or reregistration of a certificate of registration for contractors. This registration is valid for two years from date of issuance, renewal or reregistration or until it is suspended or revoked.

(2) (~~(\$55.70)~~) \$58.90 for the reinstatement of a certificate of registration.

(3) (~~(\$13.10)~~) \$13.80 for providing a duplicate certificate of registration.

(4) (~~(\$26.60)~~) \$28.10 for each requested certified letter prepared by the department.

(5) (~~(\$168.40)~~) \$178.10 for the construction and electrical contractor listing publication on CD ROM per year, prorated according to the number of issues left in the subscription year, which runs from November 1 through October 31. Each issue costs (~~(\$14.00)~~) \$14.80.

(6) (~~(\$2.00)~~) \$2.10 per copy for documents copied from a contractor's file. The maximum copy charge for copies from one contractor's file will be (~~(\$29.20)~~) \$30.80.

(7) (~~(\$52.00)~~) \$55.00 is required to cover the costs for the service of process in an action against a contractor, the contractor's bond, or the deposit under RCW 18.27.040.

(8) (~~(\$26.00)~~) \$27.50 is required to cover the costs for the service of processing refunds.

[Statutory Authority: Chapters 18.27, 70.87, 43.22, and 43.22A RCW. WSR 18-24-102, § 296-200A-900, filed 12/4/18, effective 1/4/19. Statutory Authority: Chapter 18.27 RCW and c 2007 c 436. WSR 08-16-091, § 296-200A-900, filed 8/4/08, effective 9/4/08. Statutory Authority: Chapters 18.27, 18.106, 43.22, and 70.87 RCW. WSR 07-11-128, §

296-200A-900, filed 5/22/07, effective 6/30/07. Statutory Authority: Chapters 18.27, 43.22, and 70.87 RCW. WSR 05-12-032, § 296-200A-900, filed 5/24/05, effective 6/30/05. Statutory Authority: Chapters 18.27 and 43.22 RCW. WSR 04-12-048, § 296-200A-900, filed 5/28/04, effective 6/30/04. Statutory Authority: RCW 18.27.040, 18.27.070, 18.27.075, 18.27.125 and 2001 c 159, and chapter 18.27 RCW. WSR 03-20-097, § 296-200A-900, filed 9/30/03, effective 11/17/03. Statutory Authority: RCW 43.22.350, 43.22.434, 43.22.480, 43.22.500, 18.27.040, 18.27.070, 18.27.075, 70.87.030, 19.28.041, 19.28.051, 19.28.101, 19.28.121, 19.28.161, 19.28.201, 19.28.211, 19.28.341, 2001 c 7, 2002 c 249, and chapters 19.28, 43.22, 18.27, and 70.87 RCW. WSR 02-12-022, § 296-200A-900, filed 5/28/02, effective 6/28/02. Statutory Authority: RCW 43.22.350, 43.22.434, 43.22.480, 43.22.500, 18.27.070, 18.27.075, 70.87.030, 19.28.041, 19.28.051, 19.28.101, 19.28.121, 19.28.161, 19.28.201, 19.28.211, 19.28.341, 2001 c 159, and chapters 43.22, 19.28, 18.27, and 70.87 RCW. WSR 01-12-035, § 296-200A-900, filed 5/29/01, effective 6/29/01. Statutory Authority: Chapters 43.22, 18.27, 70.87 and 19.28 RCW. WSR 99-12-080, § 296-200A-900, filed 5/28/99, effective 6/28/99. Statutory Authority: Chapters 18.106, 18.27 and 43.22 RCW. WSR 98-12-041, § 296-200A-900, filed 5/29/98, effective 6/30/98. Statutory Authority: Chapter 18.27 RCW. WSR 97-24-071, § 296-200A-900, filed 12/2/97, effective 1/5/98.]

WSR 22-01-195
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
(Board of Boiler Rules)
[Filed December 21, 2021, 8:32 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-21-087.

Title of Rule and Other Identifying Information: Proposed increase to the boiler fees under WAC 296-104-700 What are the inspection fees—Examination fees—Certificate fees—Expenses?

Hearing Location(s): On February 16, 2022, at 10:30 a.m., virtual and telephonic hearing only. Please join on your computer or mobile app (Microsoft Teams) Click here to join the meeting [contact agency for link]; or visit [Date of Intended Adoption: April 19, 2022.](https://teams.microsoft.com/l/meetup-join/19%3ameeting_NmZjMTk3MWYtODY0Ny00MzIxLWE4ODEtZTBhOWM1Yzk4M2Jk%40thread.v2/0?context=%7b%22Tid%22%3a%2211d0e217-264e-400a-8ba0-57dcc127d72d%22%2c%220id%22%3a%225f6fb773-3e56-4283-86a5-4ec77e6b4de8%22%7d; or call (audio only) 1-253-372-2181, Phone Conference ID 203 015 674# (pound sign must be entered). The virtual and telephonic hearing starts at 10:30 a.m. and will continue until all oral comments are received.</p></div><div data-bbox=)

Submit Written Comments to: Alicia Curry, Department of Labor and Industries (L&I), P.O. Box 44400, Olympia, WA 98504-4400, email Alicia.Curry@Lni.wa.gov, fax 360-902-5292, by 5 p.m., on February 11, 2022.

Assistance for Persons with Disabilities: Contact Alicia Curry, phone 360-902-6244, fax 360-902-5292, email Alicia.Curry@Lni.wa.gov, by February 1, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The board of boiler rules and L&I is proposing a 5.58 percent fee increase for boiler and pressure vessel inspections and other boiler program public safety activities. This is the office of financial management's maximum allowable fiscal growth factor rate for fiscal year 2023. The current fee levels are not enough to cover current program expenses. A fee increase is needed to ensure the programs' revenues match expenditures; otherwise, service levels may need to be reduced.

Reasons Supporting Proposal: L&I evaluated the budget and projected revenue of the program. 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. According to RCW 70.79.330 and 70.79.350, a fee schedule for inspections is to be set by the board of boiler rules and the fees are to be used to administer the boiler program.

Statutory Authority for Adoption: Chapter 70.79 RCW.

Statute Being Implemented: Chapter 70.79 RCW.

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

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting: Mike Carlson, Program Manager, Tumwater, Washington, 360-902-5270; Implementation and Enforcement: Steve Reinmuth, Assistant Director, Tumwater, Washington, 360-902-6348.

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

A cost-benefit analysis is not required under RCW 34.05.328. The rule is exempt from the cost-benefit analysis requirement under the Administrative Procedure Act, RCW 34.05.328 (5) (b) (vi), rules that set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

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

Is exempt under RCW 19.85.025(3) as the rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

December 21, 2021
 Terry Chapin, Chair
 Board of Boiler Rules

OTS-3490.1

AMENDATORY SECTION (Amending WSR 21-20-118, filed 10/5/21, effective 11/5/21)

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 \$((~~66.00~~)) 69.60 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 \$((~~28.40~~)) 29.90.

Hot water heaters per RCW 70.79.090, inspection fee: \$((~~8.50~~)) 8.90.

The department shall assess a \$((~~7.00~~)) 7.30 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	\$((48.00))	\$((38.40))
	<u>50.60</u>	<u>40.50</u>
All other boilers less than 500 sq. ft.	\$((48.00))	\$((38.40))
	<u>50.60</u>	<u>40.50</u>
500 sq. ft. to 2500 sq. ft.	\$((96.00))	\$((48.00))
	<u>101.30</u>	<u>50.60</u>
Each additional 2500 sq. ft. of total heating surface, or any portion thereof	\$((38.40))	\$((18.70))
	<u>40.50</u>	<u>19.70</u>
Power boilers:	Internal	External

Less than 100 sq. ft.	\$(48.00)	\$(38.40)
	<u>50.60</u>	<u>40.50</u>
100 sq. ft. to less than 500 sq. ft.	\$(58.10)	\$(38.40)
	<u>61.30</u>	<u>40.50</u>
500 sq. ft. to 2500 sq. ft.	\$(96.00)	\$(48.00)
	<u>101.30</u>	<u>50.60</u>
Each additional 2500 sq. ft. of total heating surface, or any portion thereof	\$(38.40)	\$(18.70)
	<u>40.50</u>	<u>19.70</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.	\$(38.40)	\$(28.40)
	<u>40.50</u>	<u>29.90</u>
15 sq. ft. to less than 50 sq. ft.	\$(57.00)	\$(28.40)
	<u>60.10</u>	<u>29.90</u>
50 sq. ft. to 100 sq. ft.	\$(66.50)	\$(38.40)
	<u>70.20</u>	<u>40.50</u>
For each additional 100 sq. ft. or any portion thereof	\$(66.40)	\$(18.70)
	<u>70.10</u>	<u>19.70</u>

Nonnuclear shop inspections, field construction inspections, and special inspection services:

For each hour or part of an hour up to 8 hours	\$(58.10)
	<u>61.30</u>
For each hour or part of an hour in excess of 8 hours	\$(86.80)
	<u>91.60</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	\$(86.80)
	<u>91.60</u>
For each hour or part of an hour in excess of 8 hours	\$(136.00)
	<u>143.50</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	\$(58.10)
	<u>61.30</u>
For each hour or part of an hour in excess of 8 hours	\$(86.80)
	<u>91.60</u>

When insurance company is authorized inspection agency:

For each hour or part of an hour up to 8 hours	\$(86.80)
	<u>91.60</u>
For each hour or part of an hour in excess of 8 hours	\$(136.00)
	<u>143.50</u>

Examination fee: A fee of ~~\$(107.50)~~ 113.40 will be charged for each applicant sitting for an inspection examination(s).

Special inspector commission: A fee of ~~\$(58.00)~~ 61.20 for initial work card. A fee of ~~\$(36.00)~~ 38.00 for annual renewal.

If a special inspector changes companies: A work card fee of ~~\$(58.00)~~ 61.20.

Expenses shall include:

Travel time and mileage: The department shall charge for its inspectors' travel time from their offices to the inspection sites and return. The travel time shall be charged for at the same rate as that for the inspection, audit, or survey. The department

shall also charge the current Washington office of financial management accepted mileage cost fees or the actual cost of purchased transportation. Hotel and meals: Actual cost not to exceed the office of financial management approved rate.

Requests for Washington state specials and extensions of inspection frequency: For each vessel to be considered by the board, a fee of \$((541.70)) 571.90 must be paid to the department before the board meets to consider the vessel. The board may, at its discretion, prorate the fee when a number of vessels that are essentially the same are to be considered.

[Statutory Authority: Chapter 70.79 RCW. WSR 21-20-118, § 296-104-700, filed 10/5/21, effective 11/5/21; WSR 21-12-088, § 296-104-700, filed 6/1/21, effective 7/2/21; WSR 21-03-067, § 296-104-700, filed 1/19/21, effective 2/19/21; WSR 20-06-058, § 296-104-700, filed 3/3/20, effective 4/3/20; WSR 19-15-120, § 296-104-700, filed 7/23/19, effective 9/1/19; WSR 18-23-092, § 296-104-700, filed 11/20/18, effective 1/1/19; WSR 18-01-113, § 296-104-700, filed 12/19/17, effective 1/31/18; WSR 17-13-105, § 296-104-700, filed 6/20/17, effective 7/31/17; WSR 16-18-003, § 296-104-700, filed 8/25/16, effective 10/1/16; WSR 13-10-018, § 296-104-700, filed 4/23/13, effective 6/1/13. Statutory Authority: Chapter 70.79 RCW and 2011 1st sp.s. c 50. WSR 12-09-057, § 296-104-700, filed 4/17/12, effective 6/30/12. Statutory Authority: RCW 70.79.030, 70.79.040, 70.79.150, 70.79.290, 70.79.330, 70.79.350, and 2009 c 90. WSR 10-06-049, § 296-104-700, filed 2/24/10, effective 4/1/10. Statutory Authority: RCW 70.79.030, 70.79.040, 70.79.150, 70.79.290, 70.79.330, and 70.79.350. WSR 08-12-015, § 296-104-700, filed 5/27/08, effective 6/30/08; WSR 07-11-137, § 296-104-700, filed 5/22/07, effective 6/30/07; WSR 06-12-032, § 296-104-700, filed 5/31/06, effective 7/1/06; WSR 05-12-028, § 296-104-700, filed 5/24/05, effective 6/30/05. Statutory Authority: Chapter 70.79 RCW. WSR 04-21-069, § 296-104-700, filed 10/19/04, effective 1/1/05; WSR 04-13-044, § 296-104-700, filed 6/10/04, effective 6/30/04. Statutory Authority: RCW 70.79.030, 70.79.040, 70.79.150, 70.79.290, 70.79.330, 70.79.350, and chapter 70.79 RCW. WSR 04-01-194, § 296-104-700, filed 12/24/03, effective 1/24/04; WSR 03-12-051, § 296-104-700, filed 5/30/03, effective 6/30/03; WSR 02-23-036, § 296-104-700, filed 11/13/02, effective 12/14/02; WSR 02-12-021, § 296-104-700, filed 5/28/02, effective 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 22-01-202
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed December 21, 2021, 10:53 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-11-086.

Title of Rule and Other Identifying Information: Independent medical examinations (IME)—Case progress. Chapter 296-23 WAC, Radiology, radiation therapy, nuclear medicine, pathology, hospital, chiropractic, physical therapy, drugless therapeutics and nursing—Drugless therapeutics, etc.: WAC 296-23-302 Definitions, 296-23-308 When can a case progress examination be scheduled?, 296-23-309 How many examinations may be requested?, 296-23-403 IME-Department data reporting, 296-23-307 Why are independent medical examinations requested? Chapter 296-15 WAC, Workers' compensation self-insurance rules and regulations: WAC 296-15-440 Use of independent medical examinations.

Hearing Location(s): On January 25, 2022, at 9:00 a.m. Virtual and telephonic hearing only. Join electronically <https://lni-wa-gov.zoom.us/j/9361655337>, Meeting ID 936 165 5337; or join by phone: Dial by your location +1 253 215 8782 US (Tacoma). Find your local number <https://lni-wa-gov.zoom.us/j/9361655337>. The virtual/telephonic hearing starts at 9:00 a.m. and will continue until all oral comments are received.

Date of Intended Adoption: February 15, 2022.

Submit Written Comments to: Suzy Campbell, P.O. Box 44270, Olympia, WA 98504-4270, email suzanne.campbell@lni.wa.gov, fax 360-902-5029, by January 25, 2022, by 5:00 p.m.

Assistance for Persons with Disabilities: Contact Ashley Oberst, phone 360-902-4252, fax 360-902-6509, TTY 360-902-4252, email ashley.oberst@lni.wa.gov, by January 18, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department of labor and industries (L&I) is creating new rules and updating existing rules in chapters 296-23 and 296-15 WAC to define or outline criteria for "case progress" in relation to independent medical examinations (IMEs) requested by L&I and self-insured employers. The rules include whether the results of IMEs requested are inconsistent with the list of reasons outlined in Title 51 RCW. WAC 296-23-307 is being repealed as the rule is obsolete.

Reasons Supporting Proposal: ESSB 6440 was adopted into law by the legislature in 2020 requiring rules to be updated to reflect changes made to RCW 51.36.070. Additionally, an IME workgroup consisting of members from business, labor, the legislature, and L&I met in 2020 to discuss ways to improve IMEs. The proposed rules are needed to provide clear guidance to inform stakeholders and assist claim managers in determining when an IME is allowed by law and when one is not. Clarifying the phrase "case progress" may also prevent the ordering of multiple IMEs solely to gain a preponderance of evidence, which is widely perceived as currently happening. Stakeholders also need to know how or if IME reports can be used in claim decisions when the request was outside the reasons allowed by law and rule. IME data will also be shared regularly with interested parties.

Statutory Authority for Adoption: RCW 51.04.020, 51.04.030.

Statute Being Implemented: RCW 51.36.070.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Not applicable.

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting: Suzy Campbell, Tumwater, Washington, 360-902-5003; Implementation: Debra Hatzialexiou, Tumwater, Washington, 360-902-6695; and Enforcement: Vickie Kennedy, Tumwater, Washington, 360-902-4997.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Suzy Campbell, P.O. Box 44270, Olympia, WA 98504-4270, phone 360-902-5003, fax 360-902-5029, email suzanne.campbell@lni.wa.gov.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. L&I looked at the estimated cost of complying with the new provisions of proposed rule and excluded the cost of any compliance with current standards. Upon review, L&I determined there are no new costs associated with the rule, because the proposal improves efficiency and consistency in the IME case progress process, sets criteria for when an IME can be requested, has deadlines for submission of material disputing the need for an IME, and states what dispute materials must include. A small business economic impact statement is not needed because there are no costs of compliance.

December 21, 2021
Joel Sacks
Director

OTS-3273.4

NEW SECTION

WAC 296-15-440 Use of independent medical examinations. What will the department consider when resolving a dispute to a scheduled independent medical exam (IME) in a self-insured claim?

(1) The department will consider whether:

(a) The notification letter included the self-insured employer's need for the IME consistent with RCW 51.36.070 and how this may be disputed by the worker.

(b) Notice of the IME was mailed to the injured worker and the worker's representative no later than 28 calendar days prior to the IME. Except for an IME scheduled to make a decision regarding claim allowance.

(c) The worker agreed to waive the 28 day notice for initial IME scheduling or reschedules.

(2) When a written dispute is filed:

(a) A worker, their representative, or their attending provider may file a dispute at any time during the IME process. Disputes re-

ceived by the self-insurer or third-party administrator must be submitted to the department within five working days of receipt.

(b) The department will only consider postponing an IME if the dispute is received by the department at least 15 calendar days prior to the IME.

(c) The dispute should include the specific reason(s) why the IME is out of compliance with RCW 51.36.070 and a copy of the notification letter from the self-insured employer.

(3) **The department will take action as follows:**

(a) Where the dispute presents a factual case that the examination was scheduled in violation of RCW 51.36.070 or these rules, pending a further investigation, the department may order the self-insurer to cancel the IME, and to notify the examiner, worker, and attending provider. The facts the employer provides in the IME notification letter, and the facts supplied by the worker, their representative, or their attending provider will be used in this determination.

(b) The department will issue an order to resolve the dispute in accordance with RCW 51.52.050.

(c) Should a worker attend a disputed IME and, after a report is rendered, the department determines the IME was scheduled in violation of RCW 51.36.070, the report may not be considered in the administration of the claim.

[]

OTS-3259.4

AMENDATORY SECTION (Amending WSR 13-03-129, filed 1/22/13, effective 2/25/13)

WAC 296-23-302 Definitions. Approved independent medical examination (IME) provider - A licensed doctor or firm whose credentials are approved to conduct an independent medical examination, rating evaluation, or provide IME associated services including but not limited to file preparation, scheduling of examinations and processing billing. An approved IME provider is assigned a unique provider number.

Case progress examination - An examination requested for an accepted condition because:

(a) A proper and necessary treatment plan is not in place;

(b) Treatment appears palliative, the treatment plan has stalled, or treatment is not in accordance with the medical treatment guidelines; or

(c) The treatment plan has been completed without resulting in objective or functional improvement for physical conditions, or clinically meaningful signs of improvement for mental health conditions.

Department - For the purpose of this section, department means the department of labor and industries industrial insurance workers' compensation state fund and self-insured programs.

Direct patient care - For the purpose of meeting the qualifications of an independent medical examination (IME) provider, direct patient care means face-to-face contact with the patient for the purpose

of evaluation and management of care that includes, but is not limited to:

- History taking and review of systems;
- Physical examination;
- Medical decision making;
- Coordination of care with other providers and agencies.

This does not include time spent in independent medical examinations.

Impairment rating examination - An examination to determine whether or not the injured/ill worker has any permanent impairment(s) as a result of the industrial injury or illness after the worker has reached maximum medical improvement. An impairment rating may be conducted by a qualified attending provider, a medical consultant, or an approved examiner. An impairment rating may be a component of an IME.

Independent medical examination (IME) - An objective medical-legal examination requested (by the department or self-insurer) to establish medical findings, opinions, and conclusions about a worker's physical condition. These examinations may only be conducted by department-approved examiners.

Independent medical examination (IME) provider - A firm, partnership, corporation, or individual licensed doctor (examiner) who has been approved and given an independent medical examination (IME) provider number by the department to perform IMEs.

Medical director - A licensed doctor and approved IME examiner in the firm, partnership, corporation or other legal entity responsible to provide oversight on quality of independent medical examinations, impairment ratings and reports.

Medical Examiners' Handbook - A handbook developed by the department containing department policy and information to assist providers who perform independent medical examinations and impairment rating examinations.

Patient related services - Patient related services are defined as one or more of the following professional activities:

- Direct patient care;
- Locum tenens;
- Clinical consultations for treating/attending doctors;
- Clinical instruction of medical, osteopathic, dental, podiatry, or chiropractic students and/or residents;
- On-call emergency services;
- Volunteer clinician providing direct patient care services in his or her specialty.

Provider number - A unique number(s) assigned to a provider by the department of labor and industries. The number identifies the provider and is linked to a tax identification number that has been designated by the provider for payment purposes. A provider may have more than one provider number assigned by the department.

Suspension - A department action during which the provider is approved by the department but not available to accept referrals.

Temporarily unavailable - Provider is approved by the department but is temporarily unavailable to accept referrals. Temporarily unavailable applies at the provider's request for personal reasons or by the department as part of an administrative action. Provider remains unavailable until the issue is resolved.

Termination - The permanent removal of a provider from the list of approved IME examiners. All IME provider numbers assigned to the examiner are inactivated.

[Statutory Authority: RCW 51.04.020, 51.04.030, 51.32.112, 51.32.114, 51.32.055, 51.36.060, 51.36.070. WSR 13-03-129, § 296-23-302, filed 1/22/13, effective 2/25/13. Statutory Authority: RCW 51.32.055, 51.32.112 [51.32.112], 51.32.114, 51.36.060, and 51.36.070. WSR 09-24-085, § 296-23-302, filed 11/30/09, effective 3/1/10; WSR 04-04-029, § 296-23-302, filed 1/27/04, effective 3/1/04.]

OTS-3385.1

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 296-23-307 Why are independent medical examinations requested?

OTS-3272.4

NEW SECTION

WAC 296-23-308 Scheduling case progress examinations. (1) Unless a case progress examination is requested by the attending provider, no case progress examination may be scheduled until 120 days have passed since the later of:

(a) The department or self-insurer's receipt of the claim; or
 (b) The department or self-insurer's receipt of the last case progress examination report and additional treatment of the condition has been authorized.

(2) Subject to subsection (1) of this section, the department or self-insurer may schedule a case progress examination of an injured worker after:

(a) Requesting an explanation from the medical provider regarding status of the treatment plan per WAC 296-23-302, definition of case progress examination, and the medical provider does not respond within 15 days;

(b) Requesting the medical provider refer the injured worker to a consultation with the appropriate specialty(ies) per WAC 296-20-051 and the referral is not made within 15 days and completed within 90 days; or

(c) Completing (a) or (b) of this subsection and the medical provider or consultant:

(i) Omitted requested information;
 (ii) Did not have further treatment recommendations;
 (iii) Recommended a treatment plan that does not meet the department's medical treatment guidelines; or

(iv) Wrote a report that does not comply with the provisions of WAC 296-20-06101.

[]

NEW SECTION

WAC 296-23-309 How many examinations may be requested? Unless explicitly required by statute, the total number of examinations per claim is limited as follows:

(1) One examination prior to an order under RCW 51.52.050 or 51.52.060 allowing or denying a new claim unless an additional examination is authorized by the department in state fund or self-insured cases;

(2) One examination for an impairment rating unless the examiner determines a rating was premature and/or further treatment was needed and is authorized by the self-insured employer or department;

(3) One examination to adjudicate any application to reopen a claim under RCW 51.32.160 prior to a final order under RCW 51.52.050 or 51.52.060 allowing or denying reopening of the claim, unless the department authorizes an additional examination in state fund and self-insured cases;

(4) Additional impairment rating examinations are allowed following each time a claim is reopened under RCW 51.32.160;

(5) One examination may be performed after any new medical issue is contended; and

(6) Additional examinations per case progress rules and to resolve appeals as outlined in WAC 296-23-308 and 296-23-401.

[]

NEW SECTION

WAC 296-23-403 Independent medical examinations—Department data reporting. The department will regularly provide independent medical examination data to interested parties that includes emerging trends.

As much as possible, the data should include and differentiate between examinations for claims insured by the department and those covered by self-insured employers.

[]

WSR 22-01-203
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed December 21, 2021, 10:54 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-16-093.

Title of Rule and Other Identifying Information: Independent medical examinations (IME)—Appeals. Chapter 296-23 WAC, Radiology, radiation therapy, nuclear medicine, pathology, hospital, chiropractic, physical therapy, drugless therapeutics and nursing—Drugless therapeutics, etc: WAC 296-23-401 Can the department schedule an examination or order a self-insured employer to schedule an examination after receipt of an appeal to the board of industrial insurance appeals (BIIA)?

Hearing Location(s): On January 25, 2022, at 9:00 a.m. Virtual and telephonic hearing only. Join electronically <https://lni-wa-gov.zoom.us/j/9361655337>, Meeting ID 936 165 5337; or join by phone: Dial by your location +1 253 215 8782 US (Tacoma). Find your local number <https://lni-wa-gov.zoom.us/j/9361655337>. The virtual/telephonic hearing starts at 9:00 a.m. and will continue until all oral comments are received.

Date of Intended Adoption: February 15, 2022.

Submit Written Comments to: Suzy Campbell, P.O. Box 44270, Olympia, WA 98504-4270, email suzanne.campbell@lni.wa.gov, fax 360-902-5029, by January 25, 2022, by 5:00 p.m.

Assistance for Persons with Disabilities: Contact Ashley Oberst, phone 360-902-4252, fax 360-902-6509, TTY 360-902-4252, email ashley.oberst@lni.wa.gov, by January 18, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department of labor and industries (L&I) is creating a new section in chapter 296-23 WAC to define how and under what circumstances an IME can be requested by L&I and self-insurers in order to resolve an appeal to a decision on a claim.

Reasons Supporting Proposal: ESSB 6440 was adopted into law by the legislature in 2020 requiring rules to be updated to reflect changes made to RCW 51.36.070. Additionally, an IME workgroup consisting of members from business, labor, the legislature, and L&I met in 2020 to discuss ways to improve IMEs. The proposed rule is needed to define how and under what circumstances an IME can be requested by L&I and self-insurers in order to resolve an appeal.

Statutory Authority for Adoption: RCW 51.04.020, 51.04.030.

Statute Being Implemented: RCW 51.36.070.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Not applicable.

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting: Suzy Campbell, Tumwater, Washington, 360-902-5003; Implementation: Debra Hatzialexiou, Tumwater, Washington, 360-902-6695; and Enforcement: Vickie Kennedy, Tumwater, Washington, 360-902-4997.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Suzy Campbell, P.O. Box 44270, Olympia, WA 98504-4270, phone 360-902-5003, fax 360-902-5029, email suzanne.campbell@Lni.wa.gov.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. L&I looked at the estimated cost of complying with the new provisions of proposed rule and excluded the cost of any compliance with current standards. Upon review, L&I determined there are no new costs associated with the rule, because the proposal clarifies the limits on requesting an IME by the department and self-insured employer after an appeal. A small business economic impact statement is not needed because there are no costs of compliance.

December 21, 2021
Joel Sacks
Director

OTS-3262.1

NEW SECTION

WAC 296-23-401 Can the department schedule an examination or order a self-insured employer to schedule an examination after receipt of an appeal to the board of industrial insurance appeals (BIIA)?

Following receipt of an appeal by any party, the department may schedule or may order the self-insured employer to schedule an examination before the BIIA grants the appeal per RCW 51.36.070.

The self-insured employer may also schedule an examination regarding an appeal if a request has been approved by the department.

Examinations ordered by the BIIA once the appeal has been granted are allowed.

[]

WSR 22-01-204

PROPOSED RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed December 21, 2021, 11:02 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-07-035.

Title of Rule and Other Identifying Information: COVID-19 Phase 3 emergency rules, regarding Petitions for judicial review—Service on agency (WAC 192-04-210), How do I reopen my claim? (WAC 192-110-050), and Charging non-Washington combined-wage claims under RCW 50.29.021 (2) (j) (WAC 192-320-072).

Hearing Location(s): On January 27, 2022, at 9 a.m., Zoom, Meeting ID 828 9254 8635, Passcode 542603, Call in 253-215-8782. Join Zoom meeting <https://us02web.zoom.us/j/82892548635?pwd=WnY3V212Yk1QMkdYcU1BQ2hnb2lsZz09>.

Date of Intended Adoption: January 31, 2022.

Submit Written Comments to: Joshua Dye, P.O. Box 9046, Olympia, WA 98507-9046, email rules@esd.wa.gov, fax 844-652-7096, by January 20, 2022.

Assistance for Persons with Disabilities: Contact Teresa Eckstein, phone 360-507-9890, fax 360-586-4600, TTY relay 711, email teckstein@esd.wa.gov, by January 20, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The employment security department (ESD) is engaging in rule making regarding whether the emergency rules adopted during the COVID-19 response should be made permanent. The emergency rules cover judicial review petitions, reopening claims, and combined-wage claims.

Reasons Supporting Proposal: In February of 2020, Governor Inslee proclaimed a State of Emergency in Washington in response to COVID-19. ESD filed a series of emergency rules to support the state's emergency response. ESD is now seeking input from the public regarding which of those emergency rules should be made permanent to continue supporting Washington workers and businesses.

Statutory Authority for Adoption: RCW 50.12.010 and 50.12.040 provide general rule-making authority to ESD. RCW 50.20.010, 50.20.140, 50.29.021 (2) (j), 34.05.220, 34.05.542(4), 50.32.090.

Statute Being Implemented: RCW 50.20.010, 50.20.140, 50.29.021 (2) (j), 34.05.220, 34.05.542, 50.32.090.

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

Name of Proponent: ESD, governmental.

Name of Agency Personnel Responsible for Drafting: Scott Michael, Olympia, Washington, 360-890-3448; Implementation and Enforcement: Julie Lord, Olympia, Washington, 360-902-9579.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Joshua Dye, P.O. Box 9046, Olympia, WA 98507-9046, phone 360-890-3472, fax 844-652-7096, TTY relay 711, email rules@esd.wa.gov, <https://esd.wa.gov/newsroom/ui-rule-making/>.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The rules amended by the COVID-19 emergency rules - Phase 3 rule making do not create an additional tax burden on

employers of any size. The rule making provides flexibility for both employers and employees.

December 21, 2021

Dan Zeitlin

Employment System Policy Director

OTS-2767.2

AMENDATORY SECTION (Amending WSR 13-05-033, filed 2/12/13, effective 3/15/13)

WAC 192-04-210 Petitions for judicial review—Service on agency.

Delivery pursuant to RCW 34.05.542(4) shall be deemed to have been made when a copy of the petition for judicial review has been (~~received by the Commissioner's Office at 212 Maple Park Avenue S.E., Olympia, WA or~~) received by:

- (1) Delivery to the Commissioner's Office at 212 Maple Park Avenue S.E., Olympia, WA;
- (2) Mail at the Commissioner's Review Office, Post Office Box 9555, Olympia, WA 98507-9555; or
- (3) Email at the commissioner's review office at cro@esd.wa.gov.

[Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 13-05-033, § 192-04-210, filed 2/12/13, effective 3/15/13; WSR 89-24-030, § 192-04-210, filed 11/30/89, effective 1/1/90.]

OTS-2768.1

AMENDATORY SECTION (Amending WSR 16-21-013, filed 10/7/16, effective 11/14/16)

WAC 192-110-050 How do I reopen my claim? (1) If you have stopped claiming for more than four consecutive weeks for any reason, you must reopen your claim.

(a) You may reopen your claim:

- (i) By using the department's online services; or
- (ii) By calling the unemployment claims center.

(b) You must reopen your claim **before** the end of the week.

(2) (a) Your claim will be reopened effective on Sunday of the week in which you contact the department to reopen your claim, unless you ask the department to backdate your reopening date to a prior week.

(b) The department (~~will not~~) may backdate your reopening date (~~(unless you show good cause for not reopening your claim earlier, except)~~):

- (i) For "good cause," as that term is defined by WAC 192-110-095
- (2) (a);

(ii) For "the convenience of the department" as that term is defined by WAC 192-110-095 (2) (b); or
(iii) As provided in WAC 192-140-005.

[Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 16-21-013, § 192-110-050, filed 10/7/16, effective 11/14/16. Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. WSR 10-12-026, § 192-110-050, filed 5/24/10, effective 6/24/10. Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 07-22-055, § 192-110-050, filed 11/1/07, effective 12/2/07. Statutory Authority: RCW 50.20.010 and 50.12.040. WSR 99-08-073, § 192-110-050, filed 4/5/99, effective 5/6/99.]

OTS-2917.1

NEW SECTION

WAC 192-320-072 Charging non-Washington combined-wage claims under RCW 50.29.021 (2) (j). For purposes of RCW 50.29.021 (2) (j), the benefits paid under a combined-wage claim, as that term is defined by 20 C.F.R. Sec. 616.6, filed in a state other than Washington, and Washington is the transferring state, as that term is defined by 20 C.F.R. Sec. 616.6, will be charged as follows:

(1) All benefits paid under the combined-wage claim in the second quarter of 2020 will not be charged to the claimant's base year employer;

(2) All other benefits paid under the combined-wage claim in all other quarters will be charged to the claimant's base year employer, unless the employer is eligible for relief of benefit charges for reasons other than RCW 50.29.021 (2) (j).

[]

WSR 22-01-206
PROPOSED RULES
DEPARTMENT OF
CHILDREN, YOUTH, AND FAMILIES
[Filed December 21, 2021, 3:08 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-15-028.

Title of Rule and Other Identifying Information: WAC 110-15-0003 Definitions, 110-15-0005 Eligibility, 110-15-0025 Consumers' rights, 110-15-0031 Notification of changes, 110-15-0034 Providers' responsibilities, 110-15-0036 Billing requirements, 110-15-0045 Approved activities for applicants and consumers not participating in WorkFirst, 110-15-0050 Additional requirements for self-employed WCCC consumers, 110-15-0075 Determining income eligibility and copayment amounts, 110-15-0085 Change in copayment, 110-15-0090 Minimum copayment, 110-15-0095 When WCCC benefits start, 110-15-0109 Reapplication, 110-15-0110 Termination of and redetermining eligibility for benefits, 110-15-0125 Approved child care providers, 110-15-0190 WCCC benefit calculations, 110-15-0200 Daily child care rates—Licensed or certified child care centers and DCYF contracted seasonal day camps, 110-15-0205 Daily child care rates—Licensed or certified family home child care providers, 110-15-0240 Child care subsidy rates—In-home/relative providers, 110-15-0247 Field trip/quality enhancement fees, 110-15-0249 Nonstandard hours bonus, 110-15-110-15-0267 Payment discrepancies—Provider underpayments, 110-15-0271 Payment discrepancies—Consumer, 110-15-0275 Payment discrepancies—Providers, 110-15-2210 Eligibility, 110-15-3570 Notification of changes, 110-15-3640 Determining income eligibility and copayment, 110-15-3750 Eligible child care providers, 110-15-3770 Authorized SCC payments, 110-15-3840 New eligibility period, and 110-15-3850 Payment discrepancies generally.

Hearing Location(s): On January 25, 2022, telephonic. Oral comments may be made by calling 360-902-8084 and leaving a voicemail that includes the comment and an email or physical mailing address where the department of children, youth, and families (DCYF) will send its response. Comments received through and including January 25, 2022, will be considered.

Date of Intended Adoption: January 27, 2022.

Submit Written Comments to: Rules Coordinator, P.O. Box 40975, email dcyf.rulescoordinator@dcyf.wa.gov. Submit comments online at <https://dcyf.wa.gov/practice/policy-laws-rules/rule-making/participate/online>, by January 25, 2022.

Assistance for Persons with Disabilities: Contact rules coordinator, phone 360-902-7956, email dcyf.rulescoordinator@dcyf.wa.gov, by January 21, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules make the following changes to the working connections and seasonal child care subsidy programs:

Rates: Authorize child care payments to providers at the 85th percentile of Washington state's market rate; establish monthly rate authorizations and increase the nonstandard hours bonus for family home child cares; increase base rates for licensed exempt family, friend, and neighbor child care providers and increase their field trip reimbursement rates.

Eligibility and copayments: Expand eligibility for student parents by including full-time community college attendance as an ap-

proved activity for eligibility; authorize initial 12-month eligibility periods for consumers and clarify that benefits start when applications are complete and child care is authorized; lower the eligibility income threshold, eliminate copayments for parents who are age 21 or younger and attend high school or are completing a high school equivalency certificate, and clarify benefits are based on their student activity schedules; reduce copayments to align with the 2021 Fair Start Act; eliminate requirement that consumer overpayments resulting from department administrative errors must be repaid; and, for self-employed consumers, better clarify what is considered self-employment, related eligibility requirements, how the department verifies and calculates self-employment income, and how total child care hours allowed will be determined.

Provider requirements: Clarify billing requirements providers must comply with to receive payment; clarify providers' record retention requirements; eliminate requirement that DCYF must establish provider overpayments for errors resulting from department administrative errors; and modify time periods in which family homes must produce requested documents and correct payments.

Reasons Supporting Proposal: Rules are necessary to implement chapter 334, Laws of 2021, which authorized July 1, 2021, rate increases for the child care subsidy programs; chapter 199, Laws of 2021 (Fair Start Act), which authorized a new household income eligibility threshold and copayment schedule as of October 1, 2021, and enacted other measures to expand access to child care, new guidance from the federal Office of Child Care regarding when DCYF must pay a provider's private child care rate that is less than the subsidy rate; and chapter 339, Laws of 2020, that eliminated copayments for parents who are 21 years old or younger and attend high school or are otherwise completing a high school diploma. Additionally, the proposed rules implement ratified collective bargaining agreements between DCYF and child care providers that establish a monthly rate for family home child cares, increased rates and field trip reimbursements for license-exempt providers, and modified time periods for producing requested documents. DCYF believes that better clarifying self-employment and the related eligibility requirements, income calculation, and benefit determination will promote program integrity. Finally, as RCW 34.05.230 encourages, proposed new WAC 110-15-0036 codifies long-standing billing policies.

Statutory Authority for Adoption: RCW 43.216.055 and 43.216.065.

Statute Being Implemented: RCW 43.216.135, 43.216.136, 43.216.1368, 43.216.145.

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

Name of Proponent: DCYF, governmental.

Name of Agency Personnel Responsible for Drafting: Jason Ramynke, 360-688-0911; Implementation and Enforcement: DCYF, statewide.

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

A cost-benefit analysis is not required under RCW 34.05.328. DCYF is not among the agencies listed as required to comply with RCW 34.05.328 (5) [(a)] (i). Further, DCYF does not voluntarily make that section applicable to the adoption of these rules.

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

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to vio-

lation by a nongovernment party; rule content is explicitly and specifically dictated by statute; and rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

December 21, 2021
Brenda Villarreal
Rules Coordinator

OTS-3144.13

AMENDATORY SECTION (Amending WSR 19-08-020, filed 3/26/19, effective 4/26/19)

WAC 110-15-0003 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

"**Able**" means being physically and mentally capable of caring for a child in a responsible manner.

"**Administrative error**" means an error made by DCYF ((~~or~~ DSHS)) through no fault of the consumer or provider.

"**Approved activity**" means an activity that a consumer is required to participate in at application and reapplication to be eligible to collect benefits.

"**Authorization**" means the transaction created by ((DSHS)) DCYF which allows the provider to claim payment during a certification period. The transaction may be adjusted based on the family need.

"**Available**" means being free to provide care when not participating in an approved activity under WAC 110-15-0040, 110-15-0045, or 110-15-0050 during the time child care is needed.

"**Benefit**" means a regular payment made by a government agency on behalf of a person eligible to receive it.

"**Calendar year**" means those dates between and including January 1st and December 31st.

"**Capacity**" means the maximum number of children the licensee is authorized to have in care at any given time.

"**Collective bargaining agreement**" or "**CBA**" means the most recent agreement that has been negotiated and entered into between the exclusive bargaining representative for all licensed and license-exempt family child care providers as defined in chapter 41.56 RCW.

"**Consumer**" means the person eligible to receive:

- (a) WCCC benefits as described in part II of this chapter; or
- (b) SCC benefits as described in part III of this chapter.

"**Copayment**" means the amount of money the consumer is responsible to pay the child care provider each month toward the cost of child care, whether provided under a voucher or contract.

"**Days**" means calendar days unless otherwise specified.

"**DCYF**" means the department of children, youth, and families.

"**DSHS**" means the department of social and health services.

"Early achievers" means a program that improves the quality of early learning programs and supports and rewards providers for their participation.

"Electronic record" means a record generated, communicated, received, or stored by electronic means for use in an information system or for transmission from one information system to another.

"Electronic signature" means a signature in electronic form attached to or logically associated with an electronic record including, but not limited to, a digital signature, symbol, or process executed by a person with the intent to sign the record.

"Eligibility" means that a consumer has met all of the requirements of:

- (a) Part II of this chapter to receive WCCC program subsidies; or
- (b) Part III of this chapter to receive SCC program subsidies.

"Eligibility period" means the months for which households are eligible to receive WCCC or SCC program subsidies.

"Employment" or **"work"** means engaging in any legal, income generating activity that is taxable under the U.S. Tax Code or that would be taxable with or without a treaty between an Indian Nation and the U.S. This includes unsubsidized employment, as verified by ((DSSH)) DCYF, and subsidized employment, such as:

- (a) Working in a federal or state paid work study program; or
- (b) VISTA volunteers, AmeriCorps, JobCorps, and Washington Service Corps (WSC) if the income is taxed.

"Existing child care provider" means a licensed or certified provider who received a state subsidy payment between July 1, 2015, and June 30, 2016.

"Fraud" means an intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefits to ((~~himself or herself~~)) themselves or another person. See RCW 74.04.004.

"Homeless" means homeless as defined by the McKinney-Vento Homeless Assistance Act of 1987 without a fixed, regular, and adequate nighttime residence.

"In-home/relative provider" or **"family, friends, and neighbors (FFN) provider"** means an individual who is exempt from child care licensing standards and is approved for working connections child care (WCCC) payment under WAC 110-15-0125.

"In loco parentis" means the adult caring for an eligible child in the absence of the biological, adoptive, or step-parents, and who is not a relative, court-ordered guardian, or custodian, and is responsible for exercising day-to-day care and control of the child.

"Living in the household" means people who reside at the same physical address.

"Lump-sum payment" means a single payment that is not anticipated to continue.

"Newly eligible consumer" means a consumer that has at least one full calendar month break in benefit eligibility.

"Night shift" means employment for a minimum of six hours between the hours of 8 p.m. and 8 a.m.

"Nonschool age child" means a child who is six years of age or younger and is not enrolled in public or private school.

"Overpayment" means a payment or benefits received by a provider or consumer that exceeds the amount the provider or consumer is approved for or eligible to receive.

"Parental control" means a child is living with a biological or adoptive parent, stepparent, legal guardian verifiable by a legal or

court document, adult sibling or step-sibling, nephew or niece, aunt, great-aunt, uncle, great-uncle, grandparent or great-grandparent, or an approved in loco parentis custodian responsible for exercising day-to-day care and control of the child.

"Preschool age child" means a child age ~~((thirty))~~ 30 months through six years of age who is not attending kindergarten or elementary school.

"Private school" means a private school approved by the state under chapter 28A.195 RCW.

"Program violation" means a failure to adhere to program requirements, which results in an overpayment.

"Sanction" means deterrent action imposed by the department to address a program violation finding.

"SCC" means the seasonal child care program, which is a child care subsidy program described in part III of this chapter that assists eligible families who are seasonally employed in agriculturally related work outside of the consumer's home to pay for licensed or certified child care.

"School age child" means a child who is between five years of age through ~~((twelve))~~ 12 years of age and who is attending public or private school or is receiving home-based instruction under chapter 28A.200 RCW.

"Seasonally available agricultural related work" means work that is directly related to the cultivation, production, harvesting, or processing of fruit trees or crops.

"Second tier eligibility" means an increased income limit for eligible families who reapply before the end of their current eligibility period.

"Self-employment" means engaging in ~~((any))~~ a legal, income-generating activity earned directly from an individual's trade or business that is taxable under the U.S. Tax Code or that would be taxable with or without a treaty between an Indian Nation and the U.S. ~~((as verified by Washington state business license, or a tribal, county, or city business or occupation license, as applicable, and a uniform business identification (UBI) number for approved self-employment activities that occur outside of the home. Incorporated businesses are not considered self-employment enterprises.))~~

"Sign" means placing a name or legal mark on a document by physically writing or using an electronic signature.

"State median income (SMI)" means an annual income figure representing the point at which there are as many families earning more than that amount as there are earning less than that amount. The Census Bureau publishes median family income figures for each state each year, depending on family size.

"TANF" means temporary assistance for needy families, a cash assistance program administered by DSHS.

"Technical assistance" means a strategy that is focused on the resolution of a specific concern or need. This may be in writing or by phone call.

"To the extent of available funds" means one or more of the following:

- (a) Limited or closed enrollment;
- (b) Subject to a priority list for new enrollees pursuant to applicable state and federal law and as described in WAC 110-15-2210; or
- (c) Subject to a waiting list.

"Unintentional" means not done willfully or on purpose.

"Waiting list" means a list of applicants or reapplicants eligible to receive subsidy benefits when funding becomes available.

"WCCC" means the working connections child care program, a child care subsidy program described in part II of this chapter that assists eligible families to pay for child care.

[Statutory Authority: RCW 43.216.055, 43.216.065 and 42 U.S.C. 9858, et seq. WSR 19-08-020, § 110-15-0003, filed 3/26/19, effective 4/26/19. WSR 18-14-078, recodified as § 110-15-0003, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.060, 43.215.070 and 2017 3rd sp.s. c 1 § 615. WSR 17-23-033, § 170-290-0003, filed 11/7/17, effective 12/8/17. Statutory Authority: RCW 43.215.060, 43.215.070, and chapter 43.215 RCW. WSR 17-12-013, § 170-290-0003, filed 5/26/17, effective 6/26/17. Statutory Authority: RCW 43.215.070, chapter 43.215 RCW. WSR 16-19-107, § 170-290-0003, filed 9/21/16, effective 10/22/16. Statutory Authority: RCW 43.215.060, 43.215.070, and chapter 43.215 RCW. WSR 16-09-059, § 170-290-0003, filed 4/15/16, effective 5/16/16; WSR 14-12-050, § 170-290-0003, filed 5/30/14, effective 6/30/14; WSR 12-11-025, § 170-290-0003, filed 5/8/12, effective 6/8/12; WSR 11-12-078, § 170-290-0003, filed 5/31/11, effective 7/1/11. Statutory Authority: RCW 43.215.060, 43.215.070, 2006 c 265, and chapter 43.215 RCW. WSR 09-22-043, § 170-290-0003, filed 10/28/09, effective 12/1/09.]

AMENDATORY SECTION (Amending WSR 19-08-020, filed 3/26/19, effective 4/26/19)

WAC 110-15-0005 Eligibility. (1) **Consumers.** At application and reapplication, to be eligible for WCCC, (~~the~~) consumers must:

- (a) Have parental control of one or more eligible children;
- (b) Live in the state of Washington;
- (c) Participate in an approved activity or meet the eligibility special circumstances requirements under WAC 110-15-0020, 110-15-0023, or 110-15-0024;
- (d) Have countable income at or below (~~two hundred percent of the federal poverty guidelines (FPG) and have resources under one million dollars per WAC 110-15-0022~~) 60 percent of the SMI at initial application or at or below 65 percent of the SMI at reapplication;
- (e) Not have assets that exceed \$1,000,000; and
- (~~e~~) (f) Have an agreed payment arrangement with any provider to whom any outstanding WCCC copayment is owed.

(2) Parents currently attending high school or who are age 21 or younger and completing a high school equivalency certificate are eligible for WCCC if their income does not exceed 85 percent of the SMI at the time of application.

(3) **Children.** To be eligible for WCCC, (~~a child~~) children must:

- (a) Belong to one of the following groups as defined in WAC 388-424-0001:
 - (i) A U.S. citizen;
 - (ii) A U.S. national;
 - (iii) A qualified alien; or
 - (iv) A nonqualified alien who meets the Washington state residency requirements as listed in WAC 388-468-0005.
- (b) Legally reside in Washington state, which will be determined by applying the criteria of WAC 388-424-0001 or 388-468-0005; and

- (c) Be less than (~~(thirteen)~~) 13 years of age on the first day of eligibility; or
- (d) Be less than (~~(nineteen)~~) 19 years of age, and:
- (i) Have a verified special need, according to WAC 110-15-0020;
- or
- (ii) Be under court supervision.

[Statutory Authority: RCW 43.216.055, 43.216.065 and 42 U.S.C. 9858, et seq. WSR 19-08-020, § 110-15-0005, filed 3/26/19, effective 4/26/19. WSR 18-14-078, recodified as § 110-15-0005, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.060 and 43.215.070. WSR 17-23-017, § 170-290-0005, filed 11/3/17, effective 12/4/17. Statutory Authority: RCW 43.215.070, chapter 43.215 RCW. WSR 16-19-107, § 170-290-0005, filed 9/21/16, effective 10/22/16. Statutory Authority: RCW 43.215.060, 43.215.070, and chapter 43.215 RCW. WSR 16-09-059, § 170-290-0005, filed 4/15/16, effective 5/16/16. Statutory Authority: Chapter 43.215 RCW. WSR 12-21-008, § 170-290-0005, filed 10/5/12, effective 11/5/12. Statutory Authority: Chapter 43.215 RCW, RCW 43.215.060, 43.215.070, 2011 1st sp.s. c 42, 2011 1st sp.s. c 50, and 2006 c 265 § 501. WSR 11-18-001, § 170-290-0005, filed 8/24/11, effective 9/24/11. Statutory Authority: RCW 43.215.060, 43.215.070, 2006 c 265, and chapter 43.215 RCW. WSR 09-22-043, § 170-290-0005, filed 10/28/09, effective 12/1/09. WSR 08-08-047, recodified as § 170-290-0005, filed 3/27/08, effective 3/27/08. Statutory Authority: RCW 74.04.050, 74.12.340, 74.13.085, and 2003 1st sp.s. c 25. WSR 04-08-021 and 04-08-134, § 388-290-0005, filed 3/29/04 and 4/7/04, effective 5/28/04. Statutory Authority: RCW 74.04.050 and C.F.R. Parts 98 and 99 (Child Care Development Fund Rules). WSR 02-01-135, § 388-290-0005, filed 12/19/01, effective 1/19/02.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-15-0025 Consumers' rights. When (~~(a consumer applies)~~) consumers apply for or receive(~~(s)~~) WCCC benefits, (~~(the consumer has)~~) they have the right to:

- (1) Be free from discrimination in accordance with all applicable federal and state nondiscrimination laws, regulations, and policies;
- (2) Have WCCC eligibility determined within (~~(thirty)~~) 30 days from the application date per WAC (~~(170-290-0095)~~) 110-15-0095;
- (3) Be informed, in writing, of (~~(the consumer's)~~) their legal rights and responsibilities related to WCCC benefits;
- (4) Receive a written notice at least (~~(ten)~~) 10 days before (~~(DSHS)~~) DCYF makes changes to lower or stop benefits except as stated in WAC (~~(170-290-0115)~~) 110-15-0115;
- (5) Ask for an administrative hearing under WAC 110-15-0280 if (~~(the consumer does not agree)~~) they disagree with (~~(DSHS)~~) DCYF about a decision (~~(per WAC 170-290-0280)~~);
- (6) Ask a supervisor or administrator to review a decision or action affecting (~~(the consumer's)~~) their benefits without affecting (~~(the)~~) their right to an administrative hearing;
- (7) Have an interpreter or translator service provided by (~~(DSHS)~~) DCYF within a reasonable amount of time and at no cost to (~~(the consumer)~~) them;

- (8) Choose a provider as long as the provider meets the requirements in WAC (~~(170-290-0125)~~) 110-15-0125;
- (9) Ask the fraud early detection (FRED) investigator from the DSHS office of fraud and accountability (OFA) to come back at another time. ~~((A)) Consumers~~ do not have to let an investigator into ~~((the consumer's))~~ their homes. ~~((This))~~ These requests will not affect ~~((the consumer's))~~ their eligibility for benefits. ~~((If the))~~ Consumers' ~~((refuses))~~ refusal to ~~((cooperate-))~~ provide ~~((the))~~ information ~~((requested) with the investigator, it)~~ to an OFA investigators request could affect ~~((the consumer's))~~ their eligibility for benefits;
- (10) Access ~~((to the consumer's child))~~ their children at all times while the ~~((child is))~~ children are in child care;
- (11) Terminate child care without cause and without notice to ~~((the))~~ providers. Notice must be given to ~~((DSHS))~~ DCYF within five days of termination;
- (12) Not be charged by the consumer's licensed, certified, or license-exempt provider, or be made to pay for the difference between the provider's private rate and the state maximum rate, when the provider's private rate for child care is higher than the maximum state rate;
- (13) Not be charged by ~~((the consumer's))~~ their licensed or certified providers, or otherwise be made to pay for:
- (a) The difference between ~~((the provider's))~~ providers' registration fees and the state's maximum registration fee, when the ~~((pre-vider's))~~ providers' registration fees ~~((is))~~ are higher;
- (b) Any day when ~~((the consumer's child is))~~ their children are absent;
- (c) Vacation days when ~~((the))~~ their providers' choose ~~((s))~~ to close;
- (d) A higher amount than the state allows for field trips. If the consumers request ~~((s))~~, and ~~((the))~~ providers ~~((has))~~ have a written policy in place, ~~((the))~~ consumers may voluntarily pay the difference between the amount that the state allows and the actual cost of the field trip ~~((cost))~~;
- (e) A preschool tuition fee in addition to regular child care services; or
- (f) Child care services after the final day of care, when ~~((the))~~ their providers stop ~~((s))~~ caring for ~~((the consumer's))~~ their children.

[WSR 18-14-078, recodified as § 110-15-0025, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.060, 43.215.070, and chapter 43.215 RCW. WSR 16-09-059, § 170-290-0025, filed 4/15/16, effective 5/16/16; WSR 12-11-025, § 170-290-0025, filed 5/8/12, effective 6/8/12. Statutory Authority: Chapter 43.215 RCW, RCW 43.215.060, 43.215.070, 2011 1st sp.s. c 42, 2011 1st sp.s. c 50, and 2006 c 265 § 501. WSR 11-18-001, § 170-290-0025, filed 8/24/11, effective 9/24/11. Statutory Authority: RCW 43.215.060, 43.215.070, 2006 c 265, and chapter 43.215 RCW. WSR 09-22-043, § 170-290-0025, filed 10/28/09, effective 12/1/09. WSR 08-08-047, recodified as § 170-290-0025, filed 3/27/08, effective 3/27/08. Statutory Authority: RCW 74.04.050, 74.12.340, 74.13.085, and 2003 1st sp.s. c 25. WSR 04-08-021 and 04-08-134, § 388-290-0025, filed 3/29/04 and 4/7/04, effective 5/28/04. Statutory Authority: RCW 74.04.050 and C.F.R. Parts 98 and 99 (Child Care Development Fund Rules). WSR 02-01-135, § 388-290-0025, filed 12/19/01, effective 1/19/02.]

AMENDATORY SECTION (Amending WSR 19-08-020, filed 3/26/19, effective 4/26/19)

WAC 110-15-0031 Notification of changes. (1) Consumers applying for or receiving WCCC benefits must:

(a) Notify ((~~DSHS~~)) DCYF within five days of:

(i) Starting care with a provider; or

(ii) Any change in providers, including changes in providers' locations.

(b) Notify ((~~DSHS~~)) DCYF within ((~~ten~~)) 10 days((~~7~~)) of:

(i) Changes of the address or telephone number of the consumer's in-home/relative provider;

(ii) Changes of the consumer's home address or telephone number;

(iii) Changes that increase the number of hours of authorized care; or

(iv) When the consumer's countable income increases and exceeds ((~~eighty-five~~)) 85 percent of ((~~state median income; or~~

~~(v) When the consumer's countable resources exceed one million dollars)) SMI.~~

(c) The effective date of the change is:

(i) The date of the change when the consumer reports timely and provides required verification within the requested time frame;

(ii) The date the change is reported when the consumer does not report timely and provides required verification within the requested time frame; or

(iii) The date the verification is received when it is not returned within the requested time frame.

(d) When required changes are timely reported, an overpayment will not be established.

(e) When required changes are not timely reported, an overpayment may be established as provided in WAC 110-15-0271.

(2) When a consumer reports a change that will decrease their copayment, the date of change for the copayment is described in WAC 110-15-0085.

[Statutory Authority: RCW 43.216.055, 43.216.065 and 42 U.S.C. 9858, et seq. WSR 19-08-020, § 110-15-0031, filed 3/26/19, effective 4/26/19. WSR 18-14-078, recodified as § 110-15-0031, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.070, chapter 43.215 RCW. WSR 16-19-107, § 170-290-0031, filed 9/21/16, effective 10/22/16. Statutory Authority: RCW 43.215.060, 43.215.070, and chapter 43.215 RCW. WSR 16-09-059, § 170-290-0031, filed 4/15/16, effective 5/16/16. Statutory Authority: Chapter 43.215 RCW. WSR 12-21-008, § 170-290-0031, filed 10/5/12, effective 11/5/12. Statutory Authority: RCW 43.215.070, 43.215.060 and chapter 43.215 RCW. WSR 12-11-025, § 170-290-0031, filed 5/8/12, effective 6/8/12. Statutory Authority: RCW 43.215.060, 43.215.070, chapter 43.215 RCW, and 2010 c 273. WSR 11-01-090, § 170-290-0031, filed 12/14/10, effective 1/14/11. Statutory Authority: RCW 43.215.060, 43.215.070, 2006 c 265, and chapter 43.215 RCW. WSR 09-22-043, § 170-290-0031, filed 10/28/09, effective 12/1/09. WSR 08-08-047, recodified as § 170-290-0031, filed 3/27/08, effective 3/27/08. Statutory Authority: RCW 74.04.050, 74.12.340, 74.13.085, and 2003 1st sp.s. c 25. WSR 04-08-021 and 04-08-134, § 388-290-0031, filed 3/29/04 and 4/7/04, effective 5/28/04.]

AMENDATORY SECTION (Amending WSR 19-12-058, filed 5/31/19, effective 7/1/19)

WAC 110-15-0034 Providers' responsibilities. Child care providers who accept child care subsidies must do the following:

(1) Licensed or certified child care providers who accept child care subsidies must comply with all child care licensing or certification requirements contained in this chapter, chapter 43.216 RCW and chapters 110-06, 110-300, (~~(110-300A, 110-300B)~~) 110-300D, 110-300E, and (~~(110-305)~~) 110-301 WAC.

(2) In-home/relative child care providers must comply with the requirements contained in this chapter, chapter 43.216 RCW, and chapters 110-06 and 110-16 WAC.

(3) In-home/relative child care providers must not submit an invoice for more than six children for the same hours of care.

(4) All child care providers must use DCYF's electronic attendance recordkeeping system or a DCYF-approved electronic attendance recordkeeping system as required by WAC 110-15-0126. Providers must limit attendance system access to authorized individuals and for authorized purposes, and maintain physical and environmental security controls.

(a) Providers using DCYF's electronic recordkeeping system must submit monthly attendance records prior to claiming payment. Providers using a DCYF-approved electronic recordkeeping system must finalize attendance records prior to claiming payment.

(b) Providers must not edit attendance records after making a claim for payment.

(5) All child care providers must complete and maintain accurate daily attendance records. If requested by DCYF or (~~(DSHS)~~) the state auditor, the provider must provide to the requesting agency the following records:

(a) Attendance records must be provided to DCYF (~~(or DSHS)~~) within (~~(twenty-eight)~~) 45 calendar days of the date of a written request from either department; and

(b) Attendance records must be provided to the state auditor's office within 30 calendar days from the date of a written request.

(6) Pursuant to WAC 110-15-0268, the attendance records delivered to DCYF (~~(or DSHS)~~) may be used to determine whether a provider overpayment has been made and may result in the establishment of an overpayment and in an immediate suspension of the provider's subsidy payment.

(~~(+6)~~) (7) All child care providers must maintain and provide receipts for billed field trip/quality enhancement fees as follows. If requested by DCYF (~~(or DSHS)~~), the provider must provide the following receipts for billed field trip/quality enhancement fees:

(a) Receipts from the previous (~~(twelve)~~) 12 months must be available immediately for review upon request by DCYF;

(b) Receipts from one to five years old must be provided within (~~(twenty-eight)~~) 28 days of the date of a written request from either department.

(~~(+7)~~) (8) All child care providers must:

(a) Retain all records required by this chapter for a minimum of five years;

(b) Provide to the department records from the previous 12 months immediately upon the department's written request; and

(c) Provide to the department any records between 12 months and five years old within two weeks of the department's written request.

(9) All child care providers must collect copayments directly from the consumer or the consumer's third-party payor, and report to DCYF if the consumer has not paid a copayment to the provider within the previous ~~((sixty))~~ 60 days.

~~((8))~~ (10) All child care providers must follow the billing procedures required by DCYF.

~~((9))~~ (11) Child care providers who accept child care subsidies must not:

(a) Claim a payment in any month a child has not attended at least one day within the authorization period in that month; however, in the event a ~~((ten-day))~~ 10-day notice terminating a provider's authorization extends into the following month, the provider may claim a payment for any remaining days of the ~~((ten))~~ 10 calendar day notice in that following month; or

(b) Claim an invoice for payment later than ~~((six))~~ three months after the month of service, or the date of the invoice, whichever is later ~~((; or~~

~~((c) Charge consumers the difference between the provider's customary rate and the maximum allowed state rate)).~~

~~((10))~~ (12) Licensed and certified providers must not charge consumers for:

(a) Registration fees in excess of what is paid by subsidy program rules;

(b) Days for which the child is scheduled and authorized for care but absent;

(c) Handling fees to process consumer copayments, child care services payments, or paperwork;

(d) Fees for materials, supplies, or equipment required to meet licensing rules and regulations; or

(e) Child care or fees related to subsidy billing invoices that are in dispute between the provider and the state.

~~((11))~~ (13) Providers who care for children in states bordering Washington state must verify they are in compliance with their state's licensing regulations and notify DCYF within ~~((ten))~~ 10 days of any suspension, revocation, or changes to their license.

[Statutory Authority: RCW 43.216.055 and 43.216.065. WSR 19-12-058, § 110-15-0034, filed 5/31/19, effective 7/1/19. Statutory Authority: RCW 43.216.055, 43.216.065, chapter 43.216 RCW and 42 U.S.C. 9858 et seq.; 45 C.F.R. Part 98. WSR 19-01-111, § 110-15-0034, filed 12/18/18, effective 1/18/19. WSR 18-14-078, recodified as § 110-15-0034, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.060, 43.215.070, and chapter 43.215 RCW. WSR 17-12-035, § 170-290-0034, filed 5/31/17, effective 7/1/17. Statutory Authority: RCW 43.215.070, chapter 43.215 RCW. WSR 16-19-107, § 170-290-0034, filed 9/21/16, effective 10/22/16. Statutory Authority: RCW 43.215.060, 43.215.070, and chapter 43.215 RCW. WSR 16-09-059, § 170-290-0034, filed 4/15/16, effective 5/16/16; WSR 12-11-025, § 170-290-0034, filed 5/8/12, effective 6/8/12.]

NEW SECTION

WAC 110-15-0036 Billing requirements. (1) Licensed providers may claim child care subsidy or fee payments as described in this subsection.

(a) Authorized units of care.

(i) A half-day unit of care is equal to less than five hours of care per day that is authorized and provided by a child care center.

(ii) A full-day unit of care is between five and 10 hours of care per day that is authorized and provided by a child care center.

(iii) A monthly unit of care authorized and provided by a family home child care.

(b) For children who need overtime care for more than 10 hours of care per day, DCYF will pay for any additional care at the maximum state child care subsidy rate, up to 16 hours if:

(i) The child was in care during any day covered by the child care authorization; or

(ii) The child was scheduled for at least one day of overtime care; and

(iii) The center has a written policy to charge private paying families a higher rate to care for children more than 10 hours in a day.

(c) Providers may claim absent days for the 10-day period after DCYF notifies them of unplanned terminations of eligibility regardless of attendance if the child was authorized and scheduled for care and attended at least one day within the authorization period in the month the absence occurs.

(d) DCYF will pay for the following holidays, if claimed on the actual holiday or within the calendar year the holiday occurs:

(i) New Year's Day, January 1;

(ii) Martin Luther King Jr. Day, third Monday in January;

(iii) Presidents Day, third Monday in February;

(iv) Memorial Day, last Monday in May;

(v) Juneteenth, June 19;

(vi) Independence Day, July 4;

(vii) Labor Day, first Monday in September;

(viii) Veterans Day, November 11;

(ix) Thanksgiving Thursday, the fourth Thursday in November;

(x) Native American Heritage Day, the fourth Friday in November;

and

(xi) Christmas Day, December 25.

(e) Providers may claim payments for a maximum of five professional training days each year.

(f) Pursuant to WAC 110-15-0247 and subject to available funding, DCYF will pay up to \$30.00 per child for a field trip or quality enhancement fee. In addition to the requirements described in WAC 110-15-0247, to be eligible to receive the field trip or quality enhancement fees, providers must maintain a written policy that allows the provider to charge private-paying families the fees described in this subsection.

(g) Providers may claim payment for a maximum \$50 registration fee per year as described in WAC 110-15-0245. In addition to the requirements described in WAC 110-15-0245, to be eligible to receive the registration fee, providers must maintain a written policy that allows them to charge private-paying families the fee described in this subsection.

(h) Providers may claim payment for a special needs rate that is paid in addition to the state child care daily rate and is invoiced for the number of hours of care scheduled.

(2) Providers may not claim subsidy payments for days the provider is closed for reasons unrelated to professional training days or holidays as described in this section.

(3) Providers may charge families who receive subsidy payments for services not covered under the WCCC program. Providers are authorized to charge families for services not covered under the WCCC program only they maintain written policies that allow them to charge private-paying families for the same services. Services covered under this subsection include the following:

(a) Additional child care for personal reasons, such as personal appointments not covered under the authorization.

(b) Optional programs not covered by the field trip or quality enhancement fee.

(c) A field trip or quality enhancement that exceeds the \$30 maximum reimbursed by child care subsidy programs.

(d) Optional meal programs offered to families who do not provide lunch for their child.

(e) Transportation to and from school or activities.

(f) Late pick-up of the child after operating hours.

(g) Late fee for child care copayment.

(h) Nonsufficient funds (NSF) fees charged by the bank when bank funds are not available.

[]

AMENDATORY SECTION (Amending WSR 21-09-030, filed 4/12/21, effective 5/13/21)

WAC 110-15-0045 Approved activities for applicants and consumers not participating in WorkFirst. (1) Applicants and consumers not participating in WorkFirst activities may be eligible for WCCC benefits for the following approved activities:

(a) Employment;

(b) Self-employment; ((~~or~~))

(c) Supplemental nutrition assistance program employment and training (SNAP E&T); or

(d) The following education programs:

(i) High school or ((a general educational development (GED) program) working towards a high school equivalency certificate for consumers under ((~~twenty-two~~)) 22 years of age;

(ii) Part-time enrollment in a vocational education, adult basic education (ABE), high school equivalency certificate for consumers 22 years of age and older, or English as a second language (ESL) program ((~~that is~~)) combined with an average of ((~~twenty~~)) 20 or more employment hours per week or ((~~sixteen~~)) 16 more work-study hours per week; or

(iii) ((A vocational education program for consumers who are single parents enrolled full time and in good standing. For the purposes of this section, a "vocational education program" means a course of study at an accredited institute of postsecondary education leading to a specific occupational degree or certificate not resulting in a bachelor's or advanced degree; "enrolled full time" means a consumer is attending a college or vocational school)) For full-time students of a community, technical, or tribal college, enrollment in:

(A) A vocational education program that leads to a degree or certificate in a specific occupation;

(B) An associate degree program; or

(C) A registered apprenticeship program.

(iv) "Full-time student" for the purpose of this subsection means a consumer attends a community, technical, or tribal college and meets its definition of full-time student (and "good standing" means the consumer is enrolled in a college or vocational school and is compliant with its rules, policies, enrollment, and academic requirements;

~~(iv) Supplemental nutrition assistance program employment & training (SNAP E&T); or~~

~~(v) Adult basic education (ABE) and English as a second language (ESL) for consumers who are at least twenty-two years old).~~

~~((d))~~ (e) Applicants and consumers who meet the requirements of (c) of this subsection are eligible to receive subsidy payment for up to (ten) 10 hours per week of study time for approved classes.

(2) Applicants and consumers who are eligible for WCCC benefits under the terms of this section are eligible to receive subsidy payment for:

(a) Transportation time between the child care location and the consumer's place of employment or approved activity (

~~(3) Applicants and consumers who are eligible under the terms of this section are eligible to receive subsidy payment for); and~~

(b) Up to eight hours of sleep time before or after a night shift.

[Statutory Authority: RCW 43.216.055 and 43.216.065. WSR 21-09-030, § 110-15-0045, filed 4/12/21, effective 5/13/21. Statutory Authority: RCW 43.216.055, 43.216.065 and 42 U.S.C. 9858, et seq. WSR 19-08-020, § 110-15-0045, filed 3/26/19, effective 4/26/19. WSR 18-14-078, redefined as § 110-15-0045, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.060, 43.215.070, and chapter 43.215 RCW. WSR 16-09-059, § 170-290-0045, filed 4/15/16, effective 5/16/16. Statutory Authority: Chapter 43.215 RCW. WSR 12-21-008, § 170-290-0045, filed 10/5/12, effective 11/5/12. Statutory Authority: RCW 43.215.070, 43.215.060 and chapter 43.215 RCW. WSR 12-11-025, § 170-290-0045, filed 5/8/12, effective 6/8/12. Statutory Authority: Chapter 43.215 RCW, RCW 43.215.060, 43.215.070, 2011 1st sp.s. c 42, 2011 1st sp.s. c 50, and 2006 c 265 § 501. WSR 11-18-001, § 170-290-0045, filed 8/24/11, effective 9/24/11. Statutory Authority: RCW 43.215.060, 43.215.070, 2006 c 265, and chapter 43.215 RCW. WSR 09-22-043, § 170-290-0045, filed 10/28/09, effective 12/1/09. WSR 08-08-047, redefined as § 170-290-0045, filed 3/27/08, effective 3/27/08. Statutory Authority: RCW 74.12.340. WSR 06-12-094, § 388-290-0045, filed 6/6/06, effective 7/7/06. Statutory Authority: RCW 74.04.050, 74.12.340, 74.13.085, and 2003 1st sp.s. c 25. WSR 04-08-021 and 04-08-134, § 388-290-0045, filed 3/29/04 and 4/7/04, effective 5/28/04. Statutory Authority: RCW 74.04.050, 74.13.085. WSR 02-12-069, § 388-290-0045, filed 5/31/02, effective 7/1/02. Statutory Authority: RCW 74.04.050 and C.F.R. Parts 98 and 99 (Child Care Development Fund Rules). WSR 02-01-135, § 388-290-0045, filed 12/19/01, effective 1/19/02.]

AMENDATORY SECTION (Amending WSR 19-08-020, filed 3/26/19, effective 4/26/19)

WAC 110-15-0050 Additional requirements for self-employed WCCC consumers. Eligible self-employed WCCC consumers may be eligible, pursuant to WAC 110-15-0190, for up to 16 hours per day of child care for approved self-employment, education, training, and travel hours.

(1) (~~(Self-employment generally.)~~) To be considered self-employed, ~~((a))~~ WCCC consumers must:

(a) Earn income directly from the ~~((consumer's))~~ consumers' own trades or businesses, and not from wages paid by ~~((an))~~ employers;

(b) Be responsible to pay the ~~((consumer's))~~ consumers' own self-employment Social Security, applicable state business and occupation taxes, and federal withholding taxes; and

~~(c) ((Have a work schedule, activities or services that are not controlled in an employee-employer relationship;~~

~~(d))~~ Participate directly in the production of goods or delivery of services that generate the ((consumer's)) consumers' incomes.

(2) (~~Home-based business.~~) Income received from corporations:

(a) Consumers who only receive income from their ownership or part ownership in a corporation are not considered self-employed. DCYF counts income or payment received from their corporation as unearned income.

(b) DCYF authorizes child care hours based on wages or self-employment income reported on tax documents.

~~(3) Authorized child care ((must not occur in the home of a consumer who operates a))~~ for children of consumers operating home-based ((business)) businesses must not occur in the consumers' homes.

~~((3) Self-employed consumers receiving TANF. If a)~~ (4) Consumers ((receives)) receiving TANF ((and is)) who are also self-employed ((, he or she)) may be eligible for WCCC benefits ((as determined by the following)) if:

(a) ~~((The consumer must))~~ They have ((an)) approved self-employment plans in the ((consumer's)) consumers' individual responsibility plans as outlined in chapter 388-310 WAC;

(b) The number of activity hours of ~~((WCCC))~~ child care benefits ~~((a))~~ consumers receive ~~((s))~~ for self-employment is equal to the number of hours in the ~~((consumer's))~~ consumers' approved plans; and

(c) Income from self-employment while the ((consumer is)) consumers are receiving TANF is determined by WAC 388-450-0085.

~~((4))~~ (5) Self-employed consumers not receiving TANF. ((If a consumer does not receive TANF and requests WCCC benefits for the consumer's self-employment, the consumer may be eligible for WCCC benefits for up to sixteen hours in a twenty-four-hour period.))

(a) ~~((A))~~ Consumers who ((does)) do not receive TANF cash assistance and request ((s)) WCCC benefits for self-employment must provide ((DSHS)) DCYF with ((the consumer's)):

(i) ~~((Washington state business license or a tribal, county, or city business or occupation license, as applicable;~~

~~(ii) Uniform business identification (UBI) number for the state of Washington, or, for self-employment in bordering states, the registration or filing number;~~

~~(iii) Completed self-employment plan that is written, signed, dated, and includes, but is not limited to, a description of the self-employment business, proposed days and hours of work activity, including time needed for transportation, and the location of work activity;~~

~~(iv) Projected profit and loss statement for a new business that has yet reported taxable income; and~~

~~(v) Federal self-employment tax or state tax reporting forms for the most current reporting year for an established business.))~~ Statements of the days, hours, and locations of the consumers' work activity;

(ii) For new businesses that are not required to report taxable income, the projected profit and loss statements or statements of anticipated income after expenses;

(iii) For established businesses, state or federal self-employment tax returns or state tax transcripts and forms, including all schedules, for the most current reporting year; and

(iv) Projected profit and loss statements with supporting verifications if self-employment income is expected to be lower than recorded on provided federal or state tax documents.

(b) Consumers with new businesses that do not have federal or state tax documents may be required to provide verification of Washington state tribal, county, or city business or occupation licenses.

(6) Determining approved activity hours for new businesses.

(a) DCYF considers "new businesses" to be businesses that have not had a required federal tax filing.

(b) At application and reapplication, DCYF determines the number of ((WCCC)) activity hours ((a self-employed)) consumers ((is)) are eligible to receive ((during the first six consecutive months of a new business is)) based on schedules the ((consumer's report of how many hours are needed, up to sixteen hours per day)) consumers provide.

((A)) (c) Consumers ((is)) may be eligible to receive these ((starting)) new-business WCCC benefits only once during ((the consumer's)) consumers' lifetimes.

((e)) (7) Determining approved activity hours for existing businesses.

(a) DCYF considers "existing businesses" to be businesses that have been established long enough to file a quarterly state tax return or annual federal tax return, whichever occurs first.

(b) At application and reapplication, ((DSHS)) DCYF determines the number of ((care)) activity hours ((the)) consumers ((is)) are eligible to receive ((after receiving WCCC self-employment starting-business benefits as provided in (b) of this subsection)) by:

(i) Dividing ((the consumer's)) consumers' net monthly self-employment incomes ((, after allowable expenses or the standard one hundred dollar deduction,)) by the federal or state minimum wage, whichever is lower, to determine the average monthly hours ((of care needed by the consumer)) approved for self-employment activity; and

(ii) Adding ((the consumer's)) any additional approved employment, education, training, or travel hours to the total approved self-employment activity hours.

((d) If both parents in a two-parent family are self-employed at the same or a different business, each parent must provide a self-employment plan and self-employment income verification. If the requested verification is not provided, WAC 110-15-0012 applies to determining eligibility.

((e)) (8) Self-employment income ((is calculated by subtracting either a standard one hundred dollar deduction or allowable business expenses from the consumer's)) calculation:

(a) For existing businesses, DCYF:

(i) Counts the net income reported on the federal tax return; or

(ii) Uses the state tax return and may:

(A) Subtract the documented business expenses from the reported gross income; or

(B) Subtracts a \$100 deduction per month from consumers' gross monthly self-employment income.

((The following expenses are not allowable:

(i) Federal, state, and local income taxes;

~~(ii) Money set aside for retirement purposes;~~
~~(iii) Personal work-related expenses (including travel to and from work);~~
~~(iv) Net losses from previous periods;~~
~~(v) Depreciation; or~~
~~(vi) Any amount greater than the payment from a boarder for lodging and meals.)~~

(b) For existing businesses that have income reductions not reflected on their provided federal or state tax filings, DCYF subtracts the documented business expenses from the reported gross income on the projected profit and loss statements to estimate the monthly income after expenses.

(c) For new businesses, DCYF uses the consumers' projected hours dedicated to their self-employment activity multiplied by federal minimum wage or projected profit and loss statements to estimate their monthly incomes.

(d) DCYF may ask for additional information to verify income or expenses.

(9) Both parents or guardians in two-parent or guardian families must separately meet the eligibility requirements for child care.

[Statutory Authority: RCW 43.216.055, 43.216.065 and 42 U.S.C. 9858, et seq. WSR 19-08-020, § 110-15-0050, filed 3/26/19, effective 4/26/19. WSR 18-14-078, recodified as § 110-15-0050, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.060 and 43.215.070. WSR 17-23-017, § 170-290-0050, filed 11/3/17, effective 12/4/17. Statutory Authority: RCW 43.215.070, chapter 43.215 RCW. WSR 16-19-107, § 170-290-0050, filed 9/21/16, effective 10/22/16. Statutory Authority: RCW 43.215.060, 43.215.070, and chapter 43.215 RCW. WSR 16-09-059, § 170-290-0050, filed 4/15/16, effective 5/16/16. Statutory Authority: Chapter 43.215 RCW, RCW 43.215.060, 43.215.070, 2011 1st sp.s. c 42, 2011 1st sp.s. c 50, and 2006 c 265 § 501. WSR 11-18-001, § 170-290-0050, filed 8/24/11, effective 9/24/11. Statutory Authority: RCW 43.215.060, 43.215.070, 2006 c 265, and chapter 43.215 RCW. WSR 09-22-043, § 170-290-0050, filed 10/28/09, effective 12/1/09. WSR 08-08-047, recodified as § 170-290-0050, filed 3/27/08, effective 3/27/08. Statutory Authority: RCW 74.04.050, 74.12.340, 74.13.085, and 2003 1st sp.s. c 25. WSR 04-08-021 and 04-08-134, § 388-290-0050, filed 3/29/04 and 4/7/04, effective 5/28/04. Statutory Authority: RCW 74.04.050, 74.13.085. WSR 02-12-069, § 388-290-0050, filed 5/31/02, effective 7/1/02. Statutory Authority: RCW 74.04.050 and C.F.R. Parts 98 and 99 (Child Care Development Fund Rules). WSR 02-01-135, § 388-290-0050, filed 12/19/01, effective 1/19/02.]

AMENDATORY SECTION (Amending WSR 21-01-180, filed 12/21/20, effective 1/21/21)

WAC 110-15-0075 Determining income eligibility and copayment amounts. (1) DCYF takes the following steps to determine ~~((a consumer's))~~ consumers' eligibility and copayments, ~~((whether))~~ when care is provided under a WCCC voucher or contract:

(a) Determine ~~((the consumer's))~~ their family size ~~((under))~~ as described in WAC 110-15-0015(+); and

(b) Determine ~~((the consumer's))~~ their countable income ~~((under))~~ as described in WAC 110-15-0065(+).

(2) DCYF calculates ~~((the consumer's))~~ consumers' copayments as follows:

(IF A CONSUMER'S INCOME IS:	THEN THE CONSUMER'S COPAYMENT IS:
(a) At or below 82% of the federal poverty guidelines (FPG):	\$15
(b) Above 82% of the FPG up to 137.5% of the FPG:	\$65
(c) Above 137.5% of the FPG through 200% of the FPG:	The dollar amount equal to subtracting 137.5% of the FPG from countable income; multiplying by 50%, then adding \$65, up to a maximum of \$115.)

<u>If the household's income is:</u>	<u>Then the household's maximum monthly copayment is:</u>
<u>At or below twenty percent of the SMI</u>	<u>Waived</u>
<u>Above twenty percent and at or below thirty-six percent of the SMI</u>	<u>\$65</u>
<u>Above thirty-six percent and at or below fifty percent of the SMI</u>	<u>\$90</u>
<u>Above fifty percent and at or below sixty percent of the SMI</u>	<u>\$115</u>
<u>At reapplication, above sixty percent and at or below sixty-five percent of the SMI</u>	<u>\$215</u>

(3) DCYF does not prorate ~~((the))~~ copayments when ~~((a))~~ consumers ~~((uses))~~ use care for only part of a month.

(4) ~~((The FPG is updated every year. The WCCC eligibility level is updated at the same time every year to remain current with the FPG.))~~ For parents age 21 years or younger who attend high school or are working towards completing a high school equivalency certificate, copayments are not required.

[Statutory Authority: RCW 43.215.060, 43.215.070 and chapter 43.215 RCW. WSR 21-01-180, § 110-15-0075, filed 12/21/20, effective 1/21/21. WSR 18-14-078, recodified as § 110-15-0075, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.060, 43.215.070, and chapter 43.215 RCW. WSR 16-09-059, § 170-290-0075, filed 4/15/16, effective 5/16/16. Statutory Authority: Chapter 43.215 RCW. WSR 12-21-008, § 170-290-0075, filed 10/5/12, effective 11/5/12. Statutory Authority: Chapter 43.215 RCW, RCW 43.215.060, 43.215.070, 2011 1st sp.s. c 42, 2011 1st sp.s. c 50, and 2006 c 265 § 501. WSR 11-18-001, § 170-290-0075, filed 8/24/11, effective 9/24/11. Statutory Authority: RCW 43.215.060, 43.215.070, 2006 c 265, and chapter 43.215 RCW. WSR 09-22-043, § 170-290-0075, filed 10/28/09, effective 12/1/09. WSR 08-08-047, recodified as § 170-290-0075, filed 3/27/08, effective 3/27/08. Statutory Authority: RCW 74.04.050, 74.12.340, 74.13.085, and 2003 1st sp.s. c 25. WSR 04-08-021 and 04-08-134, § 388-290-0075, filed 3/29/04 and 4/7/04, effective 5/28/04. Statutory Authority: RCW 74.04.050, 74.13.085. WSR 02-14-067, § 388-290-0075, filed 6/27/02, effective 8/1/02. Statutory Authority: RCW 74.04.050 and C.F.R. Parts

98 and 99 (Child Care Development Fund Rules). WSR 02-01-135, § 388-290-0075, filed 12/19/01, effective 1/19/02.]

AMENDATORY SECTION (Amending WSR 19-08-020, filed 3/26/19, effective 4/26/19)

- WAC 110-15-0085 Change in copayment.** (1) ((A consumer's)) Consumers' copayments may change when:
- (a) ((The consumer's)) Their monthly income decreases;
 - (b) ((The consumer's)) Their family size increases and causes the copayment to decrease;
 - (c) ((DSHS)) DCYF makes an error in ((the consumer's)) their copayment computation;
 - (d) ((The consumer)) They did not report all income, activity and household information at the time of application, reapplication, or when reporting a change in circumstances;
 - (e) ((The consumer is)) They are no longer eligible for the minimum copayment ((under WAC 110-15-0090));
 - (f) DCYF ((or DSHS)) makes a system-level change in benefits due to a change in law or program funding; or
 - (g) ((The consumer is)) They are approved for a new eligibility period.
- (2) Copayment changes are effective on the first day of the month after a change is reported and required verification is timely received.
- (3) Copayment changes are effective on the first day of the month following the month the verification is received when the required verification is not timely received.
- (4) A consumer's copayment will not be increased during a current eligibility period.

[Statutory Authority: RCW 43.216.055, 43.216.065 and 42 U.S.C. 9858, et seq. WSR 19-08-020, § 110-15-0085, filed 3/26/19, effective 4/26/19. WSR 18-14-078, recodified as § 110-15-0085, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.070, chapter 43.215 RCW. WSR 16-19-107, § 170-290-0085, filed 9/21/16, effective 10/22/16. Statutory Authority: RCW 43.215.060, 43.215.070, and chapter 43.215 RCW. WSR 16-09-059, § 170-290-0085, filed 4/15/16, effective 5/16/16; WSR 12-11-025, § 170-290-0085, filed 5/8/12, effective 6/8/12. Statutory Authority: Chapter 43.215 RCW, RCW 43.215.060, 43.215.070, 2011 1st sp.s. c 42, 2011 1st sp.s. c 50, and 2006 c 265 § 501. WSR 11-18-001, § 170-290-0085, filed 8/24/11, effective 9/24/11. Statutory Authority: RCW 43.215.060, 43.215.070, 2006 c 265, and chapter 43.215 RCW. WSR 09-22-043, § 170-290-0085, filed 10/28/09, effective 12/1/09. WSR 08-08-047, recodified as § 170-290-0085, filed 3/27/08, effective 3/27/08. Statutory Authority: RCW 74.04.050, 74.12.340, 74.13.085, and 2003 1st sp.s. c 25. WSR 04-08-021 and 04-08-134, § 388-290-0085, filed 3/29/04 and 4/7/04, effective 5/28/04. Statutory Authority: RCW 74.04.050, 74.13.085. WSR 02-14-067, § 388-290-0085, filed 6/27/02, effective 8/1/02. Statutory Authority: RCW 74.04.050 and C.F.R. Parts 98 and 99 (Child Care Development Fund Rules). WSR 02-01-135, § 388-290-0085, filed 12/19/01, effective 1/19/02.]

AMENDATORY SECTION (Amending WSR 19-08-020, filed 3/26/19, effective 4/26/19)

WAC 110-15-0095 When WCCC benefits start. (1) WCCC benefits for ~~((an))~~ eligible consumers begin when the following conditions are met:

(a) ~~((The consumer has))~~ They have completed the required WCCC application and verification process within ~~((thirty))~~ 30 days of the date ~~((DSHS))~~ DCYF received ~~((the consumer's))~~ their application for WCCC benefits; and

(b) ~~((The consumer is working or participating in an approved activity.))~~ For newly eligible consumers, when their children are authorized to receive child care with eligible providers.

(2) ~~((If a))~~ Initial authorization eligibility periods are for 12 months.

(3) Consumers who fail~~((s))~~ to complete the initial application within ~~((thirty))~~ 30 days from the application date~~((, the consumer))~~ must restart the application process.

~~((3))~~ The consumer's (4) Newly eligible consumers who do not begin child care during their 12-month authorization periods must restart the application process.

(5) Consumers' application dates ~~((is whichever of the following is))~~ are the earlier of:

(a) The date ~~((the consumer's))~~ their application is entered into ~~((DSHS's))~~ DCYF's automated system; or

(b) The date ~~((the consumer's))~~ their application is date stamped as received.

[Statutory Authority: RCW 43.216.055, 43.216.065 and 42 U.S.C. 9858, et seq. WSR 19-08-020, § 110-15-0095, filed 3/26/19, effective 4/26/19. WSR 18-14-078, recodified as § 110-15-0095, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.070, chapter 43.215 RCW. WSR 16-19-107, § 170-290-0095, filed 9/21/16, effective 10/22/16. Statutory Authority: RCW 43.215.060, 43.215.070, and chapter 43.215 RCW. WSR 16-09-059, § 170-290-0095, filed 4/15/16, effective 5/16/16. Statutory Authority: Chapter 43.215 RCW, RCW 43.215.060, 43.215.070, 2011 1st sp.s. c 42, 2011 1st sp.s. c 50, and 2006 c 265 § 501. WSR 11-18-001, § 170-290-0095, filed 8/24/11, effective 9/24/11. Statutory Authority: RCW 43.215.060, 43.215.070, 2006 c 265, and chapter 43.215 RCW. WSR 09-22-043, § 170-290-0095, filed 10/28/09, effective 12/1/09. WSR 08-08-047, recodified as § 170-290-0095, filed 3/27/08, effective 3/27/08. Statutory Authority: RCW 74.04.050, 74.12.340, 74.13.085, and 2003 1st sp.s. c 25. WSR 04-08-021 and 04-08-134, § 388-290-0095, filed 3/29/04 and 4/7/04, effective 5/28/04. Statutory Authority: RCW 74.04.050, 74.13.085. WSR 02-12-069, § 388-290-0095, filed 5/31/02, effective 7/1/02. Statutory Authority: RCW 74.04.050 and C.F.R. Parts 98 and 99 (Child Care Development Fund Rules). WSR 02-01-135, § 388-290-0095, filed 12/19/01, effective 1/19/02.]

AMENDATORY SECTION (Amending WSR 19-08-020, filed 3/26/19, effective 4/26/19)

WAC 110-15-0109 Reapplication. (1) ~~((To request))~~ For WCCC benefits to be continued ~~((uninterrupted beyond the consumer's current))~~ without interruption into the new eligibility period, ((the)) consum-

ers must reapply for WCCC benefits ~~((with DSHS))~~ on or before the end date of ~~((the))~~ their current eligibility period.

(2) Determination of ~~((the consumer's))~~ consumers' eligibility to receive uninterrupted WCCC benefits beyond ~~((the consumer's))~~ their current eligibility period will be made pursuant to the eligibility rules contained in this chapter.

(3) ~~((A))~~ Consumers who ~~((reapplies))~~ reapply on or before the end date of ~~((the))~~ their current WCCC eligibility period may receive continued uninterrupted benefits through second tier eligibility if ~~((the consumer's households' has))~~ their household's countable monthly income is greater than ~~((two hundred percent but less than two hundred twenty percent of the federal poverty guidelines (FPG))~~ 60 percent but less than or equal to 65 percent of the SMI.

~~((a))~~ If ~~((the))~~ their household's total countable monthly income is ~~((equal to or))~~ greater than ~~((two hundred twenty percent FPG))~~ 65 percent of the SMI, the reapplication will be denied.

~~((b) The copayment for a second tier eligible consumer will be determined at two hundred percent of the FPG of countable household income.))~~

(4) ~~((If a))~~ For consumers who submit~~((s))~~ a reapplication after the last day of the current eligibility period and meet~~((s))~~ all WCCC eligibility requirements, ~~((the consumer's))~~ benefits will begin:

(a) On the date ~~((the consumer's))~~ their reapplication is entered into ~~((DSHS's))~~ DCYF's automated system or the date ~~((the consumer's))~~ their reapplication is date-stamped as received by ~~((DSHS))~~ DCYF, whichever date is earlier;

(b) When ~~((the consumer is))~~ they are working or participating in an approved activity; and

(c) ~~((The consumer's child is))~~ Their children are receiving care from an approved provider.

(5) Newly eligible households must begin care within 12 months of the eligibility determination date. Households that do not begin care within 12 months must reapply in order to qualify for WCCC benefits.

[Statutory Authority: RCW 43.216.055, 43.216.065 and 42 U.S.C. 9858, et seq. WSR 19-08-020, § 110-15-0109, filed 3/26/19, effective 4/26/19. WSR 18-14-078, recodified as § 110-15-0109, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.070, chapter 43.215 RCW. WSR 16-19-107, § 170-290-0109, filed 9/21/16, effective 10/22/16. Statutory Authority: RCW 43.215.060, 43.215.070, and chapter 43.215 RCW. WSR 16-09-059, § 170-290-0109, filed 4/15/16, effective 5/16/16. Statutory Authority: Chapter 43.215 RCW, RCW 43.215.060, 43.215.070, 2011 1st sp.s. c 42, 2011 1st sp.s. c 50, and 2006 c 265 § 501. WSR 11-18-001, § 170-290-0109, filed 8/24/11, effective 9/24/11. Statutory Authority: RCW 43.215.060, 43.215.070, 2006 c 265, and chapter 43.215 RCW. WSR 09-22-043, § 170-290-0109, filed 10/28/09, effective 12/1/09.]

AMENDATORY SECTION (Amending WSR 19-08-020, filed 3/26/19, effective 4/26/19)

WAC 110-15-0110 Termination of and redetermining eligibility for benefits. (1) ~~((A consumer's))~~ Consumers' eligibility for WCCC benefits is terminated if ~~((the consumer))~~ they fail~~((s))~~ to:

(a) Comply with the requirements of WAC 110-15-0030;

(b) Complete the WorkFirst orientation process when approved for TANF; or

(c) Cooperate with the child care subsidy audit process and investigations involving the DSHS office of fraud and accountability (OFA).

(2) ~~((A consumer's))~~ Consumers' eligibility for WCCC benefits is terminated if ~~((the consumer:~~

~~(a) Has))~~ they have or anticipate ~~((s))~~ sustained countable income at or above ~~((eighty-five))~~ 85 percent of the ~~((state median income~~

~~()) SMI (); or~~
~~(b) Has resources that exceed one million dollars)).~~

(3) ~~((A))~~ Consumers whose eligibility for WCCC benefits has been terminated may be eligible to receive WCCC benefits again, beginning on the date ~~((the consumer))~~ they:

(a) Meet ~~((s))~~ all WCCC eligibility requirements;

(b) ~~((Complies))~~ Comply with the copayment requirements contained in WAC 110-15-0030; and

(c) Cooperate ~~((s))~~ with the child care subsidy audit process and the DSHS office of fraud and accountability (OFA).

[Statutory Authority: RCW 43.216.055, 43.216.065 and 42 U.S.C. 9858, et seq. WSR 19-08-020, § 110-15-0110, filed 3/26/19, effective 4/26/19. WSR 18-14-078, recodified as § 110-15-0110, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.070, chapter 43.215 RCW. WSR 16-19-107, § 170-290-0110, filed 9/21/16, effective 10/22/16. Statutory Authority: RCW 43.215.060, 43.215.070, and chapter 43.215 RCW. WSR 16-09-059, § 170-290-0110, filed 4/15/16, effective 5/16/16; WSR 12-11-025, § 170-290-0110, filed 5/8/12, effective 6/8/12. Statutory Authority: RCW 43.215.060, 43.215.070, 2006 c 265, and chapter 43.215 RCW. WSR 09-22-043, § 170-290-0110, filed 10/28/09, effective 12/1/09. WSR 08-08-047, recodified as § 170-290-0110, filed 3/27/08, effective 3/27/08. Statutory Authority: RCW 74.04.050, 74.12.340, 74.13.085, and 2003 1st sp.s. c 25. WSR 04-08-021 and 04-08-134, § 388-290-0110, filed 3/29/04 and 4/7/04, effective 5/28/04. Statutory Authority: RCW 74.04.050 and C.F.R. Parts 98 and 99 (Child Care Development Fund Rules). WSR 02-01-135, § 388-290-0110, filed 12/19/01, effective 1/19/02.]

AMENDATORY SECTION (Amending WSR 19-01-111, filed 12/18/18, effective 1/18/19)

WAC 110-15-0125 Approved child care providers. (1) In-home/relative providers. To be approved to receive benefits under the WCCC program, ~~((an))~~ in-home/relative providers must comply with the applicable requirements contained in this chapter, chapter 43.216 RCW, and chapters 110-06 and 110-16 WAC.

(2) Licensed providers.

(a) To be approved to receive payment under the WCCC program, ~~((a))~~ licensed providers must comply with the requirements of this chapter, chapter 43.216 RCW, and chapters 110-06, 110-300, ~~((110-300A, 110-300B, and 110-305))~~ 110-300E, and 110-301 WAC.

(b) ~~((A))~~ Providers who care ~~((s))~~ for ~~((a child))~~ children who ~~((is a))~~ are Washington residents in ~~((a))~~ states that border ~~((s))~~ Washington must:

(i) Be licensed to provide care in the bordering state;

(ii) Comply with the bordering state's licensing and background check regulations as required under 45 C.F.R. 98.42 and 45 C.F.R. 98.43;

(A) DCYF must be able to verify that the licensing state's background check requirements are comparable to Washington state; or

(B) Receive the background check results, including child abuse and neglect histories, for all individuals who have, or may have, unsupervised access to children in care.

(iii) Comply with the electronic attendance requirements contained in WAC 110-15-0126.

(c) ~~((The lesser of the following will be paid to a qualified, licensed child care provider in a state that borders Washington:~~

~~(i) The provider's private pay rate for that child; or~~

~~(ii) The DCYF maximum WCCC subsidy daily rate for the DCYF region where the child resides.)~~ Providers in states that border Washington who care for children who are Washington residents will be paid WCCC subsidy rates listed in WAC 110-15-0200 or 110-15-0205 for the DCYF regions in which the children reside.

(d) ~~((A))~~ Licensed providers in ~~((a))~~ states that border ~~((s))~~ Washington that receives WCCC subsidy payment to care for ~~((a child))~~ children who ~~((is a))~~ are Washington residents ~~((is))~~ are not required or eligible to participate in the early achievers program or to receive quality improvement awards, tiered reimbursements, or other awards and incentives associated with the early achievers program.

(3) Certified providers. To be approved to receive payment under the WCCC program, ~~((a))~~ certified providers must comply with the certification requirements contained in this chapter, chapter 43.216 RCW, and chapters 110-06, 110-300, ~~((110-300A, 110-300B, and 110-305))~~ 110-300E, and 110-301 WAC. Certified providers include:

(a) Tribal child care facilities that meet the requirements of tribal law;

(b) Child care facilities on a military installation;

(c) Child care facilities operated on public school property by a school district; ~~((and))~~

(d) Seasonal day camps that contract with DCYF to provide subsidized child care; and

(e) Outdoor nature-based programs.

(4) Early achievers program requirements for licensed and certified child care providers that receive their first WCCC payment on or after July 1, 2016:

(a) ~~((A))~~ Licensed or certified child care providers that first receive ~~((s a))~~ WCCC subsidy payments on or after July 1, 2016, for providing nonschool age child care must complete the following activities to be eligible to receive additional WCCC payments:

(i) Enroll in the early achievers program within ~~((thirty))~~ 30 days of receiving the first WCCC subsidy payment. ~~((A))~~ Licensed or certified provider that fail ~~((s))~~ to meet this requirement will lose DCYF approval to receive WCCC subsidy payments for providing nonschool age child care;

(ii) Complete level 2 activities in the early achievers program within ~~((twelve))~~ 12 months of enrollment. ~~((A))~~ Licensed or certified providers that fail ~~((s))~~ to meet this requirement will lose DCYF approval to receive DCYF subsidy payments for providing nonschool age child care;

(iii) Rate at a level 3 or higher in the early achievers program within ~~((thirty))~~ 30 months of enrollment. ~~((A))~~ Licensed or certified providers that fail ~~((s))~~ to meet this requirement within ~~((thirty))~~ 30

months of enrollment in the early achievers program((7)) must complete remedial activities with DCYF and rate at a level 3 or higher within six months of beginning remedial activities. ((A)) Licensed or certified providers that fail((s)) to rate at a level 3 or higher within six months of beginning remedial activities will lose DCYF approval to receive WCCC subsidy payments for providing nonschool age child care; and

(iv) Renew their facility rating every three years and maintain a rating level 3 or higher. If ((a)) licensed or certified providers fail((s)) to renew their facility ratings or maintain a rating level 3 or higher, the licensed or certified providers will lose DCYF approval to receive WCCC subsidy payments for providing nonschool age child care.

(b) Licensed and certified providers must comply with the provisions for participation as outlined in the early achievers operating guidelines. Failure to comply with these guidelines may result in a licensed or certified provider's loss of DCYF approval to receive WCCC subsidy payments for providing nonschool age child care.

(5) Early achievers program requirements for licensed and certified child care providers that received a WCCC payment on or between July 1, 2015, and June 30, 2016:

(a) ((A)) Licensed or certified child care providers that received ((a)) WCCC subsidy payments on or between July 1, 2015, and June 30, 2016, for providing nonschool age child care, must complete the following activities to be eligible to receive additional WCCC subsidy payments:

(i) Enroll in the early achievers program by August 1, 2016. ((A)) Licensed or certified providers that fail((s)) to meet this requirement will lose DCYF approval to receive WCCC subsidy payments for providing nonschool age child care;

(ii) Complete level 2 activities in the early achievers program by August 1, 2017. ((A)) Providers who failed to meet this requirement will lose DCYF approval to receive WCCC subsidy payments for nonschool age child care; and

(iii) Rate at a level 3 or higher in the early achievers program by December 31, 2019. ((A)) Licensed or certified providers that fail((s)) to meet this requirement by December 31, 2019, must complete remedial activities with DCYF and rate at a level 3 or higher by June 30, 2020. ((A)) Licensed or certified providers that fail((s)) to receive a rating by December 31, 2019, or fails to rate at a level 3 or higher by June 30, 2020, after completing remedial activities will lose DCYF approval to receive WCCC subsidy payments for providing nonschool age child care.

(b) Licensed and certified providers must renew their facility rating every three years and maintain a rating level 3 or higher. If ((a)) licensed or certified providers fail((s)) to renew their facility rating or maintain a rating level 3 or higher, licensed or certified providers will lose DCYF approval to receive WCCC subsidy payments for providing nonschool age child care.

(6) If ((a)) licensed or certified child care providers receiving WCCC subsidy payment for providing nonschool age has successfully completed all level 2 activities and is waiting to be rated, ((~~the licensed or certified provider~~)) they may continue to receive WCCC subsidy payments pending the successful completion of the level 3 rating activity.

(7) DCYF-contracted seasonal day camps have a contract with ((~~DEL~~)) DCYF to provide subsidized child care.

[Statutory Authority: RCW 43.216.055, 43.216.065, chapter 43.216 RCW and 42 U.S.C. 9858 et seq.; 45 C.F.R. Part 98. WSR 19-01-111, § 110-15-0125, filed 12/18/18, effective 1/18/19. WSR 18-14-078, recodified as § 110-15-0125, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.070, chapter 43.215 RCW. WSR 16-19-107, § 170-290-0125, filed 9/21/16, effective 10/22/16. Statutory Authority: RCW 43.215.060, 43.215.070, and chapter 43.215 RCW. WSR 16-09-059, § 170-290-0125, filed 4/15/16, effective 5/16/16. Statutory Authority: RCW 43.215.060, 43.215.070, 43.43.832(6), 2006 c 265, and chapter 43.215 RCW. WSR 09-22-043, § 170-290-0125, filed 10/28/09, effective 12/1/09. WSR 08-08-047, recodified as § 170-290-0125, filed 3/27/08, effective 3/27/08. Statutory Authority: RCW 74.04.050, 74.12.340, 74.13.085, and 2003 1st sp.s. c 25. WSR 04-08-021 and 04-08-134, § 388-290-0125, filed 3/29/04 and 4/7/04, effective 5/28/04. Statutory Authority: RCW 74.04.050, 74.13.085. WSR 02-12-069, § 388-290-0125, filed 5/31/02, effective 7/1/02. Statutory Authority: RCW 74.04.050 and C.F.R. Parts 98 and 99 (Child Care Development Fund Rules). WSR 02-01-135, § 388-290-0125, filed 12/19/01, effective 1/19/02.]

AMENDATORY SECTION (Amending WSR 20-08-077, filed 3/26/20, effective 4/26/20)

WAC 110-15-0190 WCCC benefit calculations. (1) DCYF determines the amount of care ((a)) consumers may receive ((is determined by DCYF)) at application or reapplication. Once the care is authorized, the amount will not be reduced during the eligibility period unless:

- (a) ((The)) Consumers request ((s the)) reductions;
- (b) The care is for ((a)) school-aged ((child as described in subsection (3) of this section; or)) children;
- (c) The authorization was for additional care needed for less than the entire length of the authorization period;
- (d) The care was authorized by child protective services (CPS) or child welfare services (CWS) and is part of children's case plans under WAC 110-15-4510; or
- (e) Incorrect information was given at application or reapplication.

(2) For parents age 21 years or younger who are attending high school or working towards completing a high school equivalency certificate, DCYF will authorize care based only on their student activity schedules.

(3) To determine the amount of weekly hours of care needed, DCYF reviews the child care scheduled with providers, and:

- (a) ((The consumer's)) Consumers' participation in approved activities and the number of hours ((the child)) their children attend ((s)) school, including home school, which will reduce the amount of care needed ((-)); or
- (b) ((In a two parent household,)) The days and times that approved activities overlap in a two parent or guardian household, and only authorize care during those overlapping times. ((The)) Consumers ((is)) are eligible for full-time care if overlapping care totals ((one hundred ten)) 110 hours in one month.
- (c) ((DCYF will not consider the schedule of a)) Parents or guardians in ((a)) two parent or guardian households who ((is)) are not able to care for ((the child)) their children under WAC

110-15-0020 are considered by DCYF to be unavailable for care, regardless of their schedules.

(3) Licensed or certified center child care is authorized as follows:

(a) Full-time care ((for a family using licensed providers)) is authorized when ((the)) consumers participate((s)) in approved activities at least ((one hundred ten)) 110 hours per month(~~(+ (a))~~).

(b) Twenty-three full-day units per month will be authorized when ((the child is)) children are in care five or more hours per day.

((b)) (c) Thirty half-day units per month will be authorized when ((the child is)) children are in care less than five hours per day.

((e)) (d) Forty-six half-day units per month will be authorized during the months of June, July, and August for ((a)) school-aged ((child)) children who ((is)) are in care for five or more hours per day.

(4) Licensed family home child care is authorized as the following monthly units of care:

(a) **Full-time monthly unit** of care, equal to 22 full day units, is authorized when:

(i) WCCC or SCC consumers participate in approved activities at least 110 hours per month or full-time care is determined to be appropriate and included in a CPS or CWS case plan; and

(ii) Their children have scheduled care with a single provider at least 110 hours per month.

(b) **Part-time monthly unit** of care, equal to the actual anticipated full- and half-day units of care needed averaged over a 12-month period, is authorized when the care scheduled with providers is less than 110 hours per month.

(c) **Full-time partial-day monthly unit** is authorized when school-age children attend care in a licensed family home and meets the criteria in subsection (5) of this section.

(d) **Part-time partial-day monthly unit** is authorized when school-age children attend care in a licensed family home before and after school and do not meet the criteria for a full-time partial-day monthly unit.

(5) **Additional monthly units** of care may be authorized when:

(a) Consumers request an authorization for additional care;

(b) The need for care is verified;

(c) The care is needed to supplement an existing monthly unit for unexpected care needed for an approved activity limited to the time frame needed, not to exceed three months;

(d) For actual anticipated overtime when the overtime is included when determining eligibility for child care; or

(e) For sleep time.

(6) Full-time partial-day monthly unit. A single partial-day monthly unit ((per month will be)) equal to 17 partial days and five full days is authorized for ((a)) school-age ((child)) children attending a licensed family home child care when ((the child is)) consumers have at least 110 hours of approved activity per month, and their children are:

(a) Authorized for care with only one provider; ((and))

(b) ((Eligible for full-time authorization, but is)) Scheduled for care of 110 hours or more in July and August;

(c) In care less than five hours on a typical school day; and

((e) Expected to need)) (d) Need care before and after school.

~~((d) Only one monthly unit may be authorized per child per month.~~

~~(5) Supervisor approval is required for additional days of care that exceeds twenty-three full days, thirty half days, or one partial-day monthly unit per month.~~

~~(6-)) (7) When determining part-time care for families using licensed providers when their activity or amount of care needed is less than 110 hours per month:~~

~~(a) A full-day unit is calculated for each day of care of at least five hours;~~

~~(b) A half-day unit will be calculated for each day of care that is less than five hours; and~~

~~(c) A partial-day unit is calculated for each day of care in a licensed family home when:~~

~~(i) Their children are in care before and after school; and~~

~~(ii) The total care for the day is less than five hours.~~

~~(8) Full-time care for ((a-family)) families using in-home/relative providers ((family, friends and neighbors-)) is authorized when ((the)) consumers participate((s)) in approved activities at least ((one hundred ten)) 110 hours per month:~~

~~(a) Two hundred thirty hours of care ((will-be)) are authorized when ((the child is)) their children are in care five or more hours per day;~~

~~(b) One hundred fifteen hours of care ((will-be)) is authorized when ((the child is)) their children are in care less than five hours per day;~~

~~(c) One hundred fifteen hours of care ((will-be)) is authorized during the school year for ((a)) school-aged ((child)) children who ((is)) are in care less than five hours per day and ((the provider will-be)) their providers are authorized for contingency hours each month, up to a maximum of ((two hundred thirty)) 230 hours;~~

~~(d) Two hundred thirty hours of care ((will-be)) is authorized during the school year for ((a)) school-aged ((child)) children who ((is)) are in care five or more hours in a day; and~~

~~(e) Supervisor approval is required for hours of care that exceed ((two hundred thirty)) 230 hours per month.~~

~~((7-)) (9) Care cannot exceed ((sixteen)) 16 hours per day, per child.~~

~~((8) When determining part-time care for a family using licensed providers and the activity is less than one hundred ten hours per month:~~

~~(a) A full-day unit will be authorized for each day of care that exceeds five hours;~~

~~(b) A half-day unit will be authorized for each day of care that is less than five hours; and~~

~~(c) A half-day unit will be authorized for each day of care for a school-aged child, not to exceed thirty half days.~~

~~(9-)) (10) When determining part-time care for ((a-family)) families using in-home/relative providers:~~

~~(a) Under the provisions of subsection (2) of this section, DCYF ((will)) authorizes the number of hours of care needed per month when the activity is less than ((one hundred ten)) 110 hours per month; and~~

~~(b) The total number of authorized hours and contingency hours claimed cannot exceed ((two hundred thirty)) 230 hours per month.~~

~~((10-)) (11) DCYF determines the allocation of hours or units for families with multiple providers based upon the information received from the parents or guardians.~~

~~((11))~~ (12) DCYF may authorize more than the state rate and up to the provider's private pay rate if:

(a) The parent or guardian is a WorkFirst participant; and

(b) Appropriate child care, at the state rate, is not available within a reasonable distance from the approved activity site. "Appropriate" means licensed or certified child care under WAC 110-15-0125, or an approved in-home/relative provider under WAC 110-16-0010. "Reasonable distance" is determined by comparing distances other local families must travel to access appropriate child care.

~~((12))~~ (13) Other fees DCYF may authorize to a provider are:

(a) Registration fees;

(b) Field trip fees;

(c) Nonstandard hours bonus;

(d) Overtime care to ~~((a))~~ licensed providers when care is expected to exceed ~~((ten))~~ 10 hours in a day when consumers are eligible and authorized; and

(e) Special needs rates for a child.

[Statutory Authority: RCW 43.216.055 and 43.216.065. WSR 20-08-077, § 110-15-0190, filed 3/26/20, effective 4/26/20. Statutory Authority: RCW 43.216.055, 43.216.065 and 42 U.S.C. 9858, et seq. WSR 19-08-020, § 110-15-0190, filed 3/26/19, effective 4/26/19. WSR 18-14-078, recodified as § 110-15-0190, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.060 and 43.215.070. WSR 17-23-057, § 170-290-0190, filed 11/9/17, effective 12/10/17; WSR 17-18-009, § 170-290-0190, filed 8/24/17, effective 9/24/17. Statutory Authority: RCW 43.215.070, chapter 43.215 RCW. WSR 16-19-107, § 170-290-0190, filed 9/21/16, effective 10/22/16. Statutory Authority: RCW 43.215.060, 43.215.070, and chapter 43.215 RCW. WSR 16-09-059, § 170-290-0190, filed 4/15/16, effective 5/16/16; WSR 13-22-040, § 170-290-0190, filed 10/31/13, effective 12/1/13. Statutory Authority: Chapter 43.215 RCW, RCW 43.215.060, 43.215.070, 2011 1st sp.s. c 42, 2011 1st sp.s. c 50, and 2006 c 265 § 501. WSR 11-18-001, § 170-290-0190, filed 8/24/11, effective 9/24/11. Statutory Authority: RCW 43.215.060, 43.215.070, 2006 c 265, and chapter 43.215 RCW. WSR 09-22-043, § 170-290-0190, filed 10/28/09, effective 12/1/09. WSR 08-08-047, recodified as § 170-290-0190, filed 3/27/08, effective 3/27/08. Statutory Authority: RCW 74.12.340. WSR 06-12-094, § 388-290-0190, filed 6/6/06, effective 7/7/06. Statutory Authority: RCW 74.04.050, 74.12.340, 74.13.085, and 2005 c 518 § 207(3). WSR 05-20-051, § 388-290-0190, filed 9/30/05, effective 11/1/05. Statutory Authority: RCW 74.04.050, 74.12.340, 74.13.085, and 2003 1st sp.s. c 25. WSR 04-08-021 and 04-08-134, § 388-290-0190, filed 3/29/04 and 4/7/04, effective 5/28/04. Statutory Authority: RCW 74.04.050, 74.13.085. WSR 02-12-069, § 388-290-0190, filed 5/31/02, effective 7/1/02. Statutory Authority: RCW 74.04.050 and C.F.R. Parts 98 and 99 (Child Care Development Fund Rules). WSR 02-01-135, § 388-290-0190, filed 12/19/01, effective 1/19/02.]

AMENDATORY SECTION (Amending WSR 20-15-161, filed 7/22/20, effective 8/22/20)

WAC 110-15-0200 Daily child care rates—Licensed or certified child care centers and DCYF contracted seasonal day camps. (1) Base

rate. (~~DCYF pays the lesser of the following~~) Effective July 1, 2021, the child care subsidy rates paid to ((a)) licensed or certified child care centers or DCYF contracted seasonal day camps are:

~~((a) The provider's private pay rate for that child; or
(b) The maximum child care subsidy daily rate for that child as listed in the following table, effective July 1, 2020:))~~

		Infants (One month - 11 mos.)	Toddlers (12 - 29 mos.)	Preschool (30 mos. - 6 yrs not attending kindergarten or school)	School-age (5 - 12 yrs attending kindergarten or school)
Region 1	Full-Day	(\$36.27) \$41.40	(\$34.32) \$37.50	(\$31.64) \$34.20	(\$30.00) \$33.75
	Half-Day	(\$18.14) \$20.70	(\$17.16) \$18.75	(\$15.82) \$17.10	(\$15.00) \$16.88
Spokane County	Full-Day	(\$49.45) \$59.09	(\$42.32) \$47.73	(\$38.32) \$44.95	(\$27.91) \$34.99
	Half-Day	(\$24.73) \$29.55	(\$21.16) \$23.87	(\$19.16) \$22.48	(\$13.95) \$17.50
Region 2	Full-Day	(\$44.14) \$48.00	(\$34.32) \$36.59	(\$32.82) \$36.50	(\$23.86) \$27.36
	Half-Day	(\$22.07) \$24.00	(\$17.16) \$18.30	(\$16.41) \$18.25	(\$11.93) \$13.68
Region 3	Full-Day	(\$66.86) \$76.36	(\$55.41) \$68.41	(\$48.59) \$57.66	(\$34.77) \$43.64
	Half-Day	(\$33.43) \$38.18	(\$27.70) \$34.21	(\$24.30) \$28.83	(\$17.39) \$21.82
Region 4	Full-Day	(\$84.32) \$95.73	(\$69.09) \$79.55	(\$63.73) \$71.82	(\$39.23) \$45.00
	Half-Day	(\$42.16) \$47.87	(\$34.55) \$39.78	(\$31.86) \$35.91	(\$19.61) \$22.50
Region 5	Full-Day	(\$56.55) \$62.55	(\$46.77) \$54.14	(\$41.91) \$48.08	(\$28.18) \$35.00
	Half-Day	(\$28.27) \$31.28	(\$23.39) \$27.07	(\$20.95) \$24.04	(\$14.09) \$17.50
Region 6	Full-Day	(\$50.36) \$57.00	(\$44.59) \$51.00	(\$40.18) \$47.00	(\$29.41) \$35.91
	Half-Day	(\$25.18) \$28.50	(\$22.30) \$25.50	(\$20.09) \$23.50	(\$14.70) \$17.96

~~((i))~~ (a) Centers in Clark County are paid Region 3 rates.

~~((ii))~~ (b) Centers in Benton, Walla Walla, and Whitman counties are paid Region 6 rates.

(2) WAC 110-300-0005 and 110-300-0356 allow providers to care for children from birth up to and including the end of their eligibility period after their ~~(thirteenth)~~ 13th birthday.

(3) ~~(The)~~ Providers must obtain ~~((a))~~ child-specific and time-limited exceptions from DCYF to provide care for ~~((a-child))~~ children outside the age listed on the center's license.

(4) If ~~((a))~~ providers ~~(is)~~ are granted an exception to care for a child who is ~~(thirteen)~~ 13 years old or older at application or reapplication:

(a) The payment rate is the same as subsection (1) of this section, and the five through ~~(twelve)~~ 12 year age range column is used for comparison; and

(b) The ~~(child)~~ children must meet the special needs requirement ~~((as))~~ described in WAC 110-15-0220.

[Statutory Authority: RCW 43.216.055 and 43.216.065. WSR 20-15-161, § 110-15-0200, filed 7/22/20, effective 8/22/20; WSR 19-12-058, § 110-15-0200, filed 5/31/19, effective 7/1/19. WSR 18-14-078, recodified as § 110-15-0200, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.060, 43.215.070 and 2017 3rd sp.s. c 1. WSR 17-21-077, § 170-290-0200, filed 10/16/17, effective 11/16/17. Statutory Authority: RCW 43.215.070, chapter 43.215 RCW. WSR 16-19-107, § 170-290-0200, filed 9/21/16, effective 10/22/16. Statutory Authority: RCW 43.215.060, 43.215.070, and chapter 43.215 RCW. WSR 16-09-059, § 170-290-0200, filed 4/15/16, effective 5/16/16; WSR 14-24-070, § 170-290-0200, filed 11/26/14, effective 1/1/15; WSR 14-20-088, § 170-290-0200, filed 9/29/14, effective 10/30/14; WSR 14-12-050, § 170-290-0200, filed 5/30/14, effective 6/30/14; WSR 13-21-113, § 170-290-0200, filed 10/22/13, effective 11/22/13. Statutory Authority:

Chapter 43.215 RCW. WSR 12-21-008, § 170-290-0200, filed 10/5/12, effective 11/5/12. Statutory Authority: RCW 43.215.070, 43.215.060 and chapter 43.215 RCW. WSR 12-11-025, § 170-290-0200, filed 5/8/12, effective 6/8/12. Statutory Authority: RCW 43.215.060, 43.215.070, 2006 c 265, and chapter 43.215 RCW. WSR 09-22-043, § 170-290-0200, filed 10/28/09, effective 12/1/09. WSR 08-08-047, recodified as § 170-290-0200, filed 3/27/08, effective 3/27/08. Statutory Authority: RCW 74.04.050, 74.12.340, 74.13.085, and 2005 c 518 § 207(3). WSR 05-20-051, § 388-290-0200, filed 9/30/05, effective 11/1/05. Statutory Authority: RCW 74.04.050, 74.12.340, 74.13.085, and 2003 1st sp.s. c 25. WSR 04-08-021 and 04-08-134, § 388-290-0200, filed 3/29/04 and 4/7/04, effective 5/28/04. Statutory Authority: RCW 74.04.050, 74.13.085. WSR 02-12-069, § 388-290-0200, filed 5/31/02, effective 7/1/02. Statutory Authority: RCW 74.04.050 and C.F.R. Parts 98 and 99 (Child Care Development Fund Rules). WSR 02-01-135, § 388-290-0200, filed 12/19/01, effective 1/19/02.]

AMENDATORY SECTION (Amending WSR 20-15-161, filed 7/22/20, effective 8/22/20)

WAC 110-15-0205 Daily child care rates—Licensed or certified family home child care providers. (1) (~~Base rate. DCYF pays the lesser of the following to a licensed or certified family home child care provider:~~

- ~~(a) The provider's private pay rate for that child; or~~
- ~~(b) The maximum.)~~ **Monthly unit.** DCYF authorizes care as monthly

units as described in WAC 110-15-0190, the calculation of which is based on the full-day, partial-day, and half-day rates in subsection (2) of this section.

(2) Effective July 1, 2021, DCYF calculates licensed or certified family home providers' monthly units based on the following child care subsidy ((daily)) rates ((for that child as listed in the following table effective July 1, 2020)):

	Infants (Birth - 11 mos.)	Enhanced Toddlers (12 - 17 mos.)	Toddlers (18 - 29 mos.)	Preschool (30 mos. - 6 yrs not attending kindergarten or school)	School-age (5 - 12 yrs attending kindergarten or school)
Region 1 Full-Day	(\$34.32) \$40.00	(\$34.32) \$40.00	(\$29.41) \$35.00	(\$29.41) \$32.00	(\$27.45) \$30.00
Half-Day	(\$17.16) \$20.00	(\$17.16) \$20.00	(\$14.70) \$17.50	(\$14.70) \$16.00	(\$13.73) \$15.00
Partial-Day	\$30.00	\$30.00	\$26.25	\$24.00	\$22.50
Spokane County Full-Day	(\$39.23) \$42.00	(\$39.23) \$42.00	(\$32.36) \$40.00	(\$31.18) \$37.00	(\$29.41) \$36.00
Half-Day	(\$19.64) \$21.00	(\$19.64) \$21.00	(\$16.18) \$20.00	(\$15.59) \$18.50	(\$14.70) \$18.00
Partial-Day	\$31.50	\$31.50	\$30.00	\$27.75	\$27.00
Region 2 Full-Day	(\$38.23) \$45.00	(\$38.23) \$45.00	(\$34.32) \$37.50	(\$30.86) \$35.00	(\$29.41) \$32.00
Half-Day	(\$19.11) \$22.50	(\$19.11) \$22.50	(\$17.16) \$18.75	(\$15.43) \$17.50	(\$14.70) \$16.00
Partial-Day	\$33.75	\$33.75	\$28.13	\$26.25	\$24.00
Region 3 Full-Day	(\$49.00) \$55.00	(\$49.00) \$55.00	(\$44.14) \$48.86	(\$39.27) \$48.00	(\$34.32) \$40.00
Half-Day	(\$24.50) \$27.50	(\$24.50) \$27.50	(\$22.07) \$24.43	(\$19.64) \$24.00	(\$17.16) \$20.00
Partial-Day	\$41.25	\$41.25	\$36.65	\$36.00	\$30.00
Region 4 Full-Day	(\$58.82) \$68.18	(\$58.82) \$68.18	(\$55.68) \$63.64	(\$49.00) \$59.09	(\$34.32) \$40.00
Half-Day	(\$29.41) \$34.09	(\$29.41) \$34.09	(\$27.84) \$31.82	(\$24.50) \$29.55	(\$17.16) \$20.00
Partial-Day	\$51.14	\$51.14	\$47.73	\$44.32	\$30.00
Region 5 Full-Day	(\$44.14) \$48.86	(\$44.14) \$48.86	(\$39.23) \$42.00	(\$34.32) \$39.09	(\$31.36) \$35.71
Half-Day	(\$22.07) \$24.43	(\$22.07) \$24.43	(\$19.64) \$21.00	(\$17.16) \$19.55	(\$15.68) \$17.86
Partial-Day	\$36.65	\$36.65	\$31.50	\$29.32	\$26.78

	Infants (Birth - 11 mos.)	Enhanced Toddlers (12 - 17 mos.)	Toddlers (18 - 29 mos.)	Preschool (30 mos. - 6 yrs not attending kindergarten or school)	School-age (5 - 12 yrs attending kindergarten or school)
Region 6 Full-Day	(((\$37.86)) \$45.00	(((\$37.86)) \$45.00	(((\$34.32)) \$43.18	(((\$31.36)) \$38.00	(((\$28.95)) \$32.50
Half-Day	(((\$18.93)) \$22.50	(((\$18.93)) \$22.50	(((\$17.16)) \$21.59	(((\$15.68)) \$19.00	(((\$14.48)) \$16.25
Partial-Day	\$33.75	\$33.75	\$32.39	\$28.50	\$24.38

~~((2) Effective July 1, 2019,)~~ (3) The monthly unit for family home providers in all regions and for all ages will ((reeeeive)) include a partial-day rate that is ((seventy-five)) 75 percent of the full-day rate when:

(a) ~~((The family home))~~ Providers provide((s)) child care services for ((the)) a child during a morning session and an afternoon session. A morning session begins at any time after 12:00 a.m. and ends before 12:00 p.m. An afternoon session begins at any time after 12:00 p.m. and ends before 12:00 a.m.;

(b) The child is absent from care in order to attend school or preschool; and

(c) ~~((The))~~ Family home providers ((is)) are not entitled to payment at the full-day rate.

~~((d) A child care provider is not entitled to two partial-day rates totaling one hundred fifty percent of the daily rate.~~

~~(3) A single partial-day monthly unit will be authorized for a school-age child who attends a licensed family home child care and is:~~

~~(a) Eligible for a full-time authorization and in care for less than five hours on a typical school day;~~

~~(b) Authorized for care with only one provider; and~~

~~(c) Expected to need care before and after school.~~

Partial-Day Monthly Rates

	July-August 2020	September 2020 -June 2021
Region 1	\$603.90	\$487.24
Spokane	\$647.02	\$522.03
Region 2	\$647.02	\$522.03
Region 3	\$755.04	\$609.18
Region 4	\$755.04	\$609.18
Region 5	\$689.92	\$556.64
Region 6	\$636.90	\$513.86

~~(4) The monthly unit will be prorated for partial months of authorization.~~

~~(5))~~ (4) Monthly units for school age children will be adjusted for the months of July and August based on the consumers' approved activities and the children's schedules for care during the summer.

(5) School age children will be authorized for 22 full days in July and August when:

(a) They are authorized for a full-time, full-time partial-day, monthly unit; or

(b) They are authorized for a part-time, part-time partial-day, monthly unit;

(c) Are scheduled for child care with a single provider at least 110 hours per month; and

(d) The consumer participates in an approved activity at least 110 hours per month.

(6) Monthly units will be prorated for partial months of authorization.

(7) The monthly unit amount is averaged over all months of authorized care. Supplemental payments will not be made for calendar months with more than the average number of care days.

(8) Supplemental authorization for payment may be requested by consumers for unexpected hours of care needed for allowable activities or changes in their schedules.

(9) WAC 110-300-0005 and 110-300-0355 allow providers to care for children from birth up to and including the end of their eligibility period after their (~~thirteenth~~) 13th birthday.

~~((6) The)~~ (10) Providers must obtain a child-specific and time-limited exception from DCYF to provide care for ((a child)) children outside the age listed on ((the family home child care)) their licenses.

~~((7) If a)~~ (11) For providers ((is)) who are granted an exception to care for a child who is ((thirteen)) 13 years of age or older at application or reapplication:

(a) The payment rate is the same as subsection (1) of this section and the five through ~~((twelve))~~ 12 year age range column is used for comparison; and

(b) The child must meet the special needs requirement as described in WAC 110-15-0220.

~~((8))~~ (12) DCYF pays family home child care providers at the licensed home rate regardless of their relation to the children (with the exception listed in subsection ~~((9))~~ (13) of this section).

~~((9))~~ (13) DCYF cannot pay family home child care providers to provide care for children in their care if the provider is:

(a) The child's biological, adoptive or step-parent;

(b) The child's ~~((legal))~~ guardian or the guardian's spouse or live-in partner; or

(c) Another adult acting in loco parentis or that adult's spouse or live-in partner.

[Statutory Authority: RCW 43.216.055 and 43.216.065. WSR 20-15-161, § 110-15-0205, filed 7/22/20, effective 8/22/20; WSR 20-08-077, § 110-15-0205, filed 3/26/20, effective 4/26/20; WSR 19-12-058, § 110-15-0205, filed 5/31/19, effective 7/1/19. WSR 18-14-078, recodified as § 110-15-0205, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.060, 43.215.070, and chapter 43.215 RCW. WSR 17-12-035, § 170-290-0205, filed 5/31/17, effective 7/1/17. Statutory Authority: RCW 43.215.070, chapter 43.215 RCW. WSR 16-19-107, § 170-290-0205, filed 9/21/16, effective 10/22/16. Statutory Authority: RCW 43.215.060, 43.215.070, and chapter 43.215 RCW. WSR 16-09-059, § 170-290-0205, filed 4/15/16, effective 5/16/16; WSR 14-24-070, § 170-290-0205, filed 11/26/14, effective 1/1/15; WSR 14-20-088, § 170-290-0205, filed 9/29/14, effective 10/30/14; WSR 14-12-050, § 170-290-0205, filed 5/30/14, effective 6/30/14; WSR 13-21-113, § 170-290-0205, filed 10/22/13, effective 11/22/13. Statutory Authority: Chapter 43.215 RCW. WSR 12-21-008, § 170-290-0205, filed 10/5/12, effective 11/5/12. Statutory Authority: RCW 43.215.070, 43.215.060 and chapter 43.215 RCW. WSR 12-11-025, § 170-290-0205, filed 5/8/12, effective 6/8/12. Statutory Authority: RCW 43.215.060, 43.215.070, 2006 c 265, and chapter 43.215 RCW. WSR 09-22-043, § 170-290-0205, filed 10/28/09, effective 12/1/09. WSR 08-08-047, recodified as § 170-290-0205, filed 3/27/08, effective 3/27/08. Statutory Authority: RCW 74.04.050, 74.12.340, 74.13.085, and 2005 c 518 § 207(3). WSR

05-20-051, § 388-290-0205, filed 9/30/05, effective 11/1/05. Statutory Authority: RCW 74.04.050, 74.12.340, 74.13.085, and 2003 1st sp.s. c 25. WSR 04-08-021 and 04-08-134, § 388-290-0205, filed 3/29/04 and 4/7/04, effective 5/28/04. Statutory Authority: RCW 74.04.050, 74.13.085. WSR 02-12-069, § 388-290-0205, filed 5/31/02, effective 7/1/02. Statutory Authority: RCW 74.04.050 and C.F.R. Parts 98 and 99 (Child Care Development Fund Rules). WSR 02-01-135, § 388-290-0205, filed 12/19/01, effective 1/19/02.]

AMENDATORY SECTION (Amending WSR 19-12-058, filed 5/31/19, effective 7/1/19)

WAC 110-15-0240 Child care subsidy rates—In-home/relative providers. (1) **Base rate.** When ((a)) consumers employ((s-an)) in-home/relative providers, DCYF pays ((the lesser of the following to an eligible in-home/relative provider for child care:

- (a) ~~The provider's private pay rate for that child; or~~
- (b) ~~The maximum child care subsidy rate of two dollars and fifty-five cents))~~ \$2.65 per hour per child. Beginning July 1, ((2020)) 2022, the maximum child care subsidy rate is ((two dollars and sixty-five cents)) \$3.00 per hour per child.

(2) DCYF may pay above the maximum hourly rate for children who have special needs pursuant to WAC 110-15-0235.

(3) DCYF makes the WCCC payment directly to ((a consumer's)) consumers' eligible providers.

(4) When applicable, DCYF pays the employer's share of the following:

- (a) Social Security and medicare taxes (FICA) up to the wage limit;
- (b) Federal Unemployment Taxes (FUTA); and
- (c) State unemployment taxes (SUTA).

(5) ((If-an)) For in-home/relative providers who receive((s)) less than the wage base limit per family in a calendar year, DCYF refunds all withheld taxes to ((the provider)) them.

[Statutory Authority: RCW 43.216.055 and 43.216.065. WSR 19-12-058, § 110-15-0240, filed 5/31/19, effective 7/1/19. WSR 18-14-078, recodified as § 110-15-0240, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.060, 43.215.070, and chapter 43.215 RCW. WSR 17-12-035, § 170-290-0240, filed 5/31/17, effective 7/1/17. Statutory Authority: RCW 43.215.070, chapter 43.215 RCW. WSR 16-19-107, § 170-290-0240, filed 9/21/16, effective 10/22/16. Statutory Authority: RCW 43.215.060, 43.215.070, and chapter 43.215 RCW. WSR 14-24-070, § 170-290-0240, filed 11/26/14, effective 1/1/15; WSR 14-20-088, § 170-290-0240, filed 9/29/14, effective 10/30/14; WSR 13-21-113, § 170-290-0240, filed 10/22/13, effective 11/22/13. Statutory Authority: RCW 43.215.070, 43.215.060 and chapter 43.215 RCW. WSR 12-11-025, § 170-290-0240, filed 5/8/12, effective 6/8/12. Statutory Authority: RCW 43.215.060, 43.215.070, 2006 c 265, and chapter 43.215 RCW. WSR 09-22-043, § 170-290-0240, filed 10/28/09, effective 12/1/09. WSR 08-08-047, recodified as § 170-290-0240, filed 3/27/08, effective 3/27/08. Statutory Authority: RCW 74.04.050, 74.12.340, and 74.13.085. WSR 05-22-078, § 388-290-0240, filed 10/31/05, effective 12/1/05. Statutory Authority: RCW 74.04.050, 74.13.085. WSR 02-12-069, §

388-290-0240, filed 5/31/02, effective 7/1/02. Statutory Authority: RCW 74.04.050 and C.F.R. Parts 98 and 99 (Child Care Development Fund Rules). WSR 02-01-135, § 388-290-0240, filed 12/19/01, effective 1/19/02.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-15-0247 Field trip/quality enhancement fees. (1)

~~((DSHS))~~ As funding allows, DCYF pays licensed or certified family home child care providers and in-home/relative providers a monthly field trip/quality enhancement fee up to ~~((thirty dollars))~~ \$30 per child or the ~~((provider's))~~ providers' actual cost for the field trip, ~~((whichever is less, only))~~ if the fee is required of all parents and guardians whose children are in ~~((the provider's))~~ their care. ~~((DEL-licensed))~~ DCYF-licensed or certified child care centers and school-age centers are not eligible to receive the field trip/quality enhancement fee.

(2) The field trip/quality enhancement fee is to cover the ~~((pre-provider's))~~ providers' actual expenses for:

- (a) Admission;
- (b) Enrichment programs and/or ongoing lessons;
- (c) Public transportation or mileage reimbursement at the state office of financial management rate for the use of a private vehicle;
- (d) The cost of hiring a nonemployee to provide an activity at the child care site in-house field trip activity; and
- (e) The purchase or development of a prekindergarten curriculum.

(3) The field trip/quality enhancement fee ~~((shall))~~ will not cover fees or admission costs for adults on field trips, or food purchased on field trips.

[WSR 18-14-078, recodified as § 110-15-0247, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.060, 43.215.070, and chapter 43.215 RCW. WSR 16-09-059, § 170-290-0247, filed 4/15/16, effective 5/16/16. Statutory Authority: Chapter 43.215 RCW, RCW 43.215.060, 43.215.070, 2011 1st sp.s. c 42, 2011 1st sp.s. c 50, and 2006 c 265 § 501. WSR 11-18-001, § 170-290-0247, filed 8/24/11, effective 9/24/11. Statutory Authority: RCW 43.215.060, 43.215.070, 2006 c 265, and chapter 43.215 RCW. WSR 09-22-043, § 170-290-0247, filed 10/28/09, effective 12/1/09. WSR 08-08-047, recodified as § 170-290-0247, filed 3/27/08, effective 3/27/08. Statutory Authority: RCW 74.04.050, 74.12.340, 74.13.085, and 2003 1st sp.s. c 25. WSR 04-08-021 and 04-08-134, § 388-290-0247, filed 3/29/04 and 4/7/04, effective 5/28/04.]

AMENDATORY SECTION (Amending WSR 19-12-058, filed 5/31/19, effective 7/1/19)

WAC 110-15-0249 Nonstandard hours bonus. (1) ~~((A consumer's))~~

Consumers' providers may receive a nonstandard hours bonus (NSHB) payments per child per month for care provided if:

- (a) The providers ~~((is))~~ are licensed or certified;

(b) ~~((The provider))~~ They provide ~~((s))~~ at least ~~((thirty))~~ 30 hours of nonstandard hours care during one month; and

(c) The total cost of the state's NSHB ~~((to the state does))~~ payments do not exceed the amount appropriated for this purpose by the legislature for the current ~~((state))~~ fiscal year.

(2) Nonstandard hours are defined as:

(a) Before 6 a.m. or after 6 p.m.;

(b) Any hours on Saturdays and Sundays; and

(c) Any hours on legal holidays, as defined in RCW 1.16.050.

(3) NSHB amounts are:

(a) ~~((Seventy-six))~~ Ninety dollars ~~((and fifty cents))~~ for family homes; and

(b) Seventy-five dollars for centers.

[Statutory Authority: RCW 43.216.055 and 43.216.065. WSR 19-12-058, § 110-15-0249, filed 5/31/19, effective 7/1/19. WSR 18-14-078, recodified as § 110-15-0249, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.060, 43.215.070, and chapter 43.215 RCW. WSR 16-09-059, § 170-290-0249, filed 4/15/16, effective 5/16/16. Statutory Authority: RCW 43.215.060, 43.215.070, 2006 c 265, and chapter 43.215 RCW. WSR 09-22-043, § 170-290-0249, filed 10/28/09, effective 12/1/09.]

AMENDATORY SECTION (Amending WSR 19-12-058, filed 5/31/19, effective 7/1/19)

WAC 110-15-0267 Payment discrepancies—Provider underpayments.

(1) Underpayments to ~~((a))~~ providers occur ~~((if))~~ when DCYF pays less than the amount ~~((the))~~ providers ~~((is))~~ are eligible to receive.

(2) Underpayment requests will only be considered by ~~((DSHS))~~ DCYF if ~~((the))~~ providers ~~((submitted the))~~ submit their original invoice for payment to DCYF no later than ~~((six))~~ three months after the date of service.

[Statutory Authority: RCW 43.216.055 and 43.216.065. WSR 19-12-058, § 110-15-0267, filed 5/31/19, effective 7/1/19. WSR 18-14-078, recodified as § 110-15-0267, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.060, 43.215.070, and chapter 43.215 RCW. WSR 16-09-059, § 170-290-0267, filed 4/15/16, effective 5/16/16. Statutory Authority: RCW 43.215.060, 43.215.070, 2006 c 265, and chapter 43.215 RCW. WSR 09-22-043, § 170-290-0267, filed 10/28/09, effective 12/1/09.]

AMENDATORY SECTION (Amending WSR 19-08-020, filed 3/26/19, effective 4/26/19)

WAC 110-15-0268 Payment discrepancies—Provider overpayments.

(1) An overpayment occurs when ~~((a))~~ providers receive ~~((s))~~ payments that ~~((is))~~ are more than ~~((the))~~ providers ~~((is))~~ are eligible to receive. Provider overpayments ~~((are))~~ may be established when ~~((that))~~ providers:

(a) Bill(~~s~~) and receive(~~s~~) payments for services not provided;

(b) Bill(~~s~~) without attendance records that support the billing. Beginning July 1, 2018, attendance must be recorded using DCYF's electronic attendance system or a DCYF-approved electronic attendance system. Any other format for recording attendance will not be considered valid support for (~~a~~) provider billings and may result in (~~an~~) overpayments;

(c) Bill(~~s~~) and receive(~~s~~) payments for more than (~~the provider is~~) they are eligible to bill;

(d) Routinely provide(~~s~~) care in (~~a~~) locations other than what was approved at the time of authorization;

(e) With respect to license-exempt in-home/relative providers, they bill(~~s~~) the state for more than six children at one time for the same hours of care; or

(f) With respect to licensed or certified providers, they:

(i) Bill(~~s~~) the state for more than the number of children in the provider's licensed capacity; or

(ii) (~~Is~~) Are caring for (~~a child~~) children receiving WCCC benefits outside the (~~provider's~~) providers' licensed allowable age range without a DCYF-approved exception; or

(g) With respect to certified providers caring for children in (~~a~~) states bordering Washington, they:

(i) (~~Is~~) Are determined to not be in compliance with the state's licensing regulations; or

(ii) Fail(~~s~~) to notify (~~DSHS~~) DCYF within (~~ten~~) 10 days of any suspension, revocation, or change to the provider's license.

(2) DCYF (~~or DSHS~~) will request documentation from (~~a~~) providers when preparing to establish an overpayment. (~~The~~) Providers must provide requested information within (~~twenty-eight consecutive~~) 45 calendar days from the date of the written request.

(3) (~~A~~) Providers (~~must~~) may be required to repay any payments that (~~the provider was~~) they were not eligible to receive.

(4) (~~A~~) Providers (~~must~~) may be required to repay (~~any~~) overpayments they received, even if (~~the overpayment is~~) they were the result of a DCYF (~~or DSHS~~) error in issuing payment (~~the~~) a provider was not eligible to receive.

[Statutory Authority: RCW 43.216.055, 43.216.065 and 42 U.S.C. 9858, et seq. WSR 19-08-020, § 110-15-0268, filed 3/26/19, effective 4/26/19. WSR 18-14-078, recodified as § 110-15-0268, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.060, 43.215.070 and 2017 3rd sp.s. c 1 § 615. WSR 17-23-033, § 170-290-0268, filed 11/7/17, effective 12/8/17. Statutory Authority: RCW 43.215.060, 43.215.070, and chapter 43.215 RCW. WSR 17-12-035, § 170-290-0268, filed 5/31/17, effective 7/1/17; WSR 12-11-025, § 170-290-0268, filed 5/8/12, effective 6/8/12. Statutory Authority: RCW 43.215.060, 43.215.070, 2006 c 265, and chapter 43.215 RCW. WSR 09-22-043, § 170-290-0268, filed 10/28/09, effective 12/1/09.]

AMENDATORY SECTION (Amending WSR 19-08-020, filed 3/26/19, effective 4/26/19)

WAC 110-15-0271 Payment discrepancies—Consumer. (1) ((DSHS)) DCYF establishes overpayments for past or current consumers when the consumer:

- (a) Received benefits in an amount greater than the consumer was eligible to receive;
- (b) Received benefits or services based on the eligibility criteria of the consumer's participation in an approved activity, but the consumer did not participate in the activity;
- (c) Failed to report information accurately under the requirements of this chapter, which resulted in an error in determining eligibility, amount of care authorized, or copayment;
- (d) Received benefits for a child who was not eligible under WAC 110-15-0005, 110-15-0015, or 110-15-0020; or
- (e) Failed to return, by the sixtieth day, the requested income verification of new employment as provided in WAC 110-15-0012.

(2) DCYF or DSHS may request documentation from a consumer when preparing to establish an overpayment. The consumer has ~~((fourteen))~~ 14 consecutive calendar days to provide any requested documentation.

(3) Consumers ~~((must repay any benefits paid by DSHS that they were not eligible to receive.~~

~~((4) A consumer must))~~ may be required to repay any overpayments ~~((, even if the))~~ they received, including overpayments ~~((is a result of a))~~ resulting from DCYF or DSHS error ~~((in issuing payment the consumer was))~~ and benefits paid by DSHS or DCYF they were not eligible to receive.

~~((5))~~ (4) If a consumer is not eligible under WAC 110-15-0030 through 110-15-0032 and the provider has billed correctly, the consumer is responsible for the entire overpayment.

[Statutory Authority: RCW 43.216.055, 43.216.065 and 42 U.S.C. 9858, et seq. WSR 19-08-020, § 110-15-0271, filed 3/26/19, effective 4/26/19. WSR 18-14-078, recodified as § 110-15-0271, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.060, 43.215.070 and 2017 3rd sp.s. c 1 § 615. WSR 17-23-033, § 170-290-0271, filed 11/7/17, effective 12/8/17. Statutory Authority: RCW 43.215.070, chapter 43.215 RCW. WSR 16-19-107, § 170-290-0271, filed 9/21/16, effective 10/22/16. Statutory Authority: RCW 43.215.060, 43.215.070, and chapter 43.215 RCW. WSR 16-09-059, § 170-290-0271, filed 4/15/16, effective 5/16/16; WSR 12-11-025, § 170-290-0271, filed 5/8/12, effective 6/8/12. Statutory Authority: RCW 43.215.060, 43.215.070, 2006 c 265, and chapter 43.215 RCW. WSR 09-22-043, § 170-290-0271, filed 10/28/09, effective 12/1/09. WSR 08-08-047, recodified as § 170-290-0271, filed 3/27/08, effective 3/27/08. Statutory Authority: RCW 74.04.050, 74.12.340, and 74.13.085. WSR 05-22-078, § 388-290-0271, filed 10/31/05, effective 12/1/05. Statutory Authority: RCW 74.04.050, 74.12.340, 74.13.085, and 2003 1st sp.s. c 25. WSR 04-08-021 and 04-08-134, § 388-290-0271, filed 3/29/04 and 4/7/04, effective 5/28/04.]

AMENDATORY SECTION (Amending WSR 19-12-058, filed 5/31/19, effective 7/1/19)

WAC 110-15-0275 Payment discrepancies—Providers. (1) This section applies to all child care providers.

(2) Providers must submit a billing invoice for payment within ~~((six))~~ three months of the date child care services are provided. Any invoice submitted more than ~~((six))~~ three months from date child care services are provided will not be processed.

(3) For purposes of correcting payment errors based on correctly submitted invoices under the provisions of subsection (2) of this section, the following time limits apply:

(a) For underpayments:

(i) Two years back from the date the payment was issued if the error was based on rates paid by age or region, except as provided in (a)(iii) of this subsection; or

(ii) Three years back from the date payment was issued if the error was based on any issue other than rates paid by age or region; and

(iii) Three years back from the date the payment was issued for any underpayment identified by a federal or state audit.

(b) For overpayments:

(i) Two years back from the date payment was issued if the error was based on rates paid by age or region, except as provided in

(b)(iii) of this subsection; and ~~((DSHS or))~~ DCYF must notify the provider of the overpayment by personal service or by certified mail, return receipt requested, within two years of the date the payment was issued; or

(ii) Three years back from the date payment was issued if the error was based on any issue other than rates paid by age or region; DSHS or DCYF must notify the provider of the overpayment by personal service or by certified mail, return receipt requested, within three years of the date the payment was issued; and

(iii) Three years back from the date the payment was issued for any overpayment identified by a federal or state audit; ~~((DSHS or))~~ DCYF must notify the provider of the overpayment by personal service or by certified mail, return receipt requested, within three years of the date the payment was issued.

(4) For in-home/relative and family home child care providers, disputes regarding underpayments may be addressed through the grievance process provided for in the collective bargaining agreement.

[Statutory Authority: RCW 43.216.055 and 43.216.065. WSR 19-12-058, § 110-15-0275, filed 5/31/19, effective 7/1/19. WSR 18-14-078, recodified as § 110-15-0275, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.060, 43.215.070 and 2017 3rd sp.s. c 1 § 615. WSR 17-23-033, § 170-290-0275, filed 11/7/17, effective 12/8/17. Statutory Authority: RCW 43.215.060, 43.215.070, 2006 c 265, and chapter 43.215 RCW. WSR 09-22-043, § 170-290-0275, filed 10/28/09, effective 12/1/09.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-15-2210 Eligibility. (1) If ~~((the))~~ applicants or reapplicants meet ~~((s))~~ one of the qualifiers of the priority list and otherwise meet ~~((s))~~ all eligibility requirements of Part II or III of this chapter, ~~((the applicant or reapplicant))~~ they will not be placed on the wait list and will be eligible to receive WCCC subsidies. The priority list includes:

- (a) Families applying for or receiving TANF;
- (b) Families receiving TANF and working to cure a sanction;
- (c) Foster children;
- (d) Families that include a child with special needs;
- (e) Families with teen parents (under age ~~((twenty-two))~~ 22) who are not living with a parent or guardian, and who are attending a high school full-time that has an on-site child care center;
- (f) Families with a child residing with a biological parent or guardian who have received child protective services, child welfare services, or a family assessment response from ~~((DSHS))~~ DCYF in the past six months and has received a referral for child care as part of the family's case management; and
- (g) Reapplicants who received subsidies within the last ~~((thirty))~~ 30 days and:
 - (i) Have reapplied for subsidies; and
 - (ii) Have household income of ~~((two hundred percent federal poverty level))~~ 60 percent of the SMI or below.

(2) As provided in WAC ~~((170-290-0001))~~ 110-15-0001, WCCC is administered to the extent of available funds. If available funds are insufficient to allow all priority groups to not be placed on the wait list and be eligible to receive WCCC subsidies, only the highest ranked groups that can be served within available funds will be prioritized. The priority groups are ranked in the order listed in subsection (1) of this section, highest to lowest.

(3) If funds are not available, ~~((an))~~ applicants ~~((or))~~ and reapplicants not belonging to a group on the priority list will have their names placed on the wait list upon approval of eligibility. ~~((The))~~ Names will be placed on the wait list based on ~~((the date of the))~~ their application or reapplication dates and served as funds become available.

(4) ~~((If the))~~ For applicants ~~((or))~~ and reapplicants who remain ~~((s))~~ on the wait list for ~~((twelve))~~ 12 months or longer, ~~((a))~~ new eligibility determinations will be required when subsidy child care becomes available.

[WSR 18-14-078, recodified as § 110-15-2210, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.060 and 43.215.070. WSR 17-22-101, § 170-290-2210, filed 10/30/17, effective 11/30/17; WSR 17-09-042, § 170-290-2210, filed 4/14/17, effective 5/15/17.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-15-3570 Notification of changes. (1) When ~~((a))~~ consumers ~~((applies))~~ apply for or receive ~~((s))~~ SCC program subsidies, ~~((the consumer))~~ they must:

(a) Notify ((DSHS)) DCYF, within five days, of any change in providers;

(b) Notify ((DSHS)) DCYF, within ~~((ten))~~ 10 days, when ~~((the consumer's))~~ their countable income increases and the change would cause ~~((the consumer's))~~ their countable income to exceed ~~((eighty-five))~~ 85 percent state median income as provided in WAC ~~((170-290-0005))~~ 110-15-0005;

~~(c) ((Notify DSHS, within ten days, when the consumer's countable resources exceed one million dollars as provided in WAC 170-290-3558;~~

~~(d))~~ Notify ((DSHS)) DCYF, within ~~((ten))~~ 10 days, when ~~((the consumer's))~~ their home address or telephone number changes; and

~~((e))~~ (d) Notify ~~((the consumer's))~~ their providers~~((,))~~ within ~~((ten))~~ 10 days~~((,))~~ of when ((DSHS)) DCYF changes ~~((the consumer's))~~ their child care authorization.

(2) When ((a)) consumers receive((s)) SCC benefits, ~~((he or she))~~ they may notify ((DSHS)) DCYF when:

(a) The number of child care hours ~~((the consumer))~~ they need~~((s))~~ changes ~~((more or less hours))~~;

(b) Their household income decreases, which may lower ~~((the))~~ their copayment;

(c) Their household size changes, such as ~~((any))~~ if family members ~~((moving))~~ move in or out of ~~((the consumer's))~~ their home, which may lower ~~((the))~~ their copayment; or

(d) ~~((The consumer's))~~ Their legal obligation to pay child support changes.

[WSR 18-14-078, recodified as § 110-15-3570, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.070, chapter 43.215 RCW. WSR 16-19-107, § 170-290-3570, filed 9/21/16, effective 10/22/16. Statutory Authority: RCW 43.215.060, 43.215.070, and chapter 43.215 RCW. WSR 16-09-059, § 170-290-3570, filed 4/15/16, effective 5/16/16; WSR 11-12-078, § 170-290-3570, filed 5/31/11, effective 7/1/11. Statutory Authority: RCW 43.215.060, 43.215.070, 2006 c 265, and chapter 43.215 RCW. WSR 09-22-043, § 170-290-3570, filed 10/28/09, effective 12/1/09.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-15-3640 Determining income eligibility and copayment.

(1) For the SCC program, ((DSHS)) DCYF determines ~~((a consumer's))~~ consumers' family~~(('s))~~ income eligibility and copayment by:

(a) ~~((The consumer's))~~ Their family size as defined under WAC ~~((170-290-3540))~~ 110-15-3540;

(b) ~~((The consumer's))~~ Their average monthly income as calculated under WAC ~~((170-290-3620))~~ 110-15-3620; and

(c) ~~((The consumer's))~~ Their family's average monthly income as compared to the ~~((federal poverty guidelines (FPG)))~~ SMI.

(2) At application and reapplication, ~~((if a consumer's family's))~~ consumers are not eligible for the SCC program when their family income is above the maximum eligibility limit as provided in WAC ~~((170-290-0005, the consumer's family is not eligible for the SCC program))~~ 110-15-0005.

(3) ~~((The FPG is updated every year. The SCC eligibility level is updated at the same time every year to remain current with the FPG.~~

~~(4))~~ SCC ~~((shall))~~ will assign a copayment amount based on ~~((the family's))~~ families' countable income. ~~((The))~~ Consumers pay~~((s))~~ the copayment directly to ~~((the))~~ their child care providers.

~~((5))~~ (4) SCC does not prorate ~~((the))~~ copayments.

[WSR 18-14-078, recodified as § 110-15-3640, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.070, chapter 43.215 RCW. WSR 16-19-107, § 170-290-3640, filed 9/21/16, effective 10/22/16. Statutory Authority: RCW 43.215.060, 43.215.070, and chapter 43.215 RCW. WSR 16-09-059, § 170-290-3640, filed 4/15/16, effective 5/16/16; WSR 11-12-078, § 170-290-3640, filed 5/31/11, effective 7/1/11. Statutory Authority: RCW 43.215.060, 43.215.070, 2006 c 265, and chapter 43.215 RCW. WSR 09-22-043, § 170-290-3640, filed 10/28/09, effective 12/1/09.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-15-3750 Eligible child care providers. To receive payment under the SCC program, ~~((a consumer's))~~ consumers' child care providers must ~~((be:~~

~~(1) Currently licensed as required by chapter 43.215 RCW and 170-295, 170-296A, or 170-297 WAC;~~

~~(2) Meeting their state's licensing regulations, for providers who care for children in states bordering Washington. The SCC program pays the lesser of the following to qualified child care facilities in bordering states:~~

~~(a) The provider's private pay rate for that child; or~~

~~(b) The state maximum child care subsidy rate for the DSHS region where the child resides; or~~

~~(3) Exempt from licensing but certified by DEL, such as:~~

~~(a) Tribal child care facilities that meet the requirements of tribal law;~~

~~(b) Child care facilities on a military installation; and~~

~~(c) Child care facilities operated on public school property by a school district.~~

~~(4) New child care providers, as defined in WAC 170-290-0003, who are subject to licensure or are certified to receive state subsidy as required by chapter 43.215 RCW and as described by chapter 170-295, 170-296A, or 170-297 WAC, who received a subsidy payment for nonschool age child care on or after July 1, 2016, and received no such payments during the period July 1, 2015, through June 30, 2016, must:~~

~~(a) Enroll in the early achievers program within thirty days of receiving the initial state subsidy payment. A provider who fails to meet this requirement will lose eligibility to receive state subsidy payments for nonschool age child care;~~

~~(i) Out-of-state providers that provide care for children receiving Washington state child care subsidies are neither required nor eligible to participate in early achievers; and~~

~~(ii) Out-of-state providers are not eligible to receive quality improvement awards, tiered reimbursement, or other awards and incentives associated with participation in early achievers.~~

~~(b) Adhere to the provisions for participation as outlined in the most recent version of the *Early Achievers Operating Guidelines*. Failure to adhere to these guidelines may result in a provider's loss of~~

~~eligibility to receive state subsidy payments nonschool age child care;~~

~~(c) Complete level 2 activities in the early achievers program within twelve months of enrollment. A provider who fails to meet this requirement will lose eligibility to receive state subsidy payments for nonschool age child care;~~

~~(d) Rate at a level 3 or higher in the early achievers program within thirty months of enrollment. If an eligible provider fails to rate at a level 3 or higher within thirty months of enrollment in the early achievers program, the provider must complete remedial activities with the department and rate at a level 3 or higher within six months of beginning remedial activities. A provider who fails to receive a rating within thirty months of enrollment or fails to rate at a level 3 or higher within six months of beginning remedial activities will lose eligibility to receive state subsidy payments for nonschool age child care; and~~

~~(e) Maintain an up to date rating by renewing their facility rating every three years and maintaining a rating level 3 or higher. If a provider fails to renew their facility rating or maintain a rating level 3 or higher, they will lose eligibility to receive state subsidy payments nonschool age child care.~~

~~(5) Existing child care providers who are subject to licensure or are certified to receive state subsidy as required by chapter 43.215 RCW and as described by chapter 170-295, 170-296A, or 170-297 WAC, who have received a subsidy payment for a nonschool age child in the period July 1, 2015, through June 30, 2016, must:~~

~~(a) Enroll in the early achievers program by August 1, 2016. A provider who fails to meet this requirement will lose eligibility to receive state subsidy payments for nonschool age child care;~~

~~(i) Out-of-state providers that provide care for children receiving Washington state child care subsidies are neither required nor eligible to participate in early achievers; and~~

~~(ii) Out-of-state providers are not eligible to receive quality improvement awards, tiered reimbursement, or other awards and incentives associated with participation in early achievers.~~

~~(b) Complete level 2 activities in the early achievers program by August 1, 2017. A provider who fails to meet this requirement will lose eligibility to receive state subsidy payments for nonschool age child care;~~

~~(c) Rate at a level 3 or higher in the early achievers program by December 31, 2019;~~

~~(d) If an existing provider fails to rate at a level 3 or higher by December 31, 2019, in the early achievers program, the provider must complete remedial activities with the department and rate at a level 3 or higher by June 30, 2020. A provider who fails to receive a rating by December 31, 2019, or fails to rate at a level 3 or higher by June 30, 2020, after completing remedial activities will lose eligibility to receive state subsidy payments for nonschool age child care; and~~

~~(e) Maintain an up to date rating by renewing their facility rating every three years and maintaining a rating level 3 or higher. If a provider fails to renew their facility rating or maintain a rating level 3 or higher, they will lose eligibility to receive state subsidy payments nonschool age child care.~~

~~(6) If a child care provider serving nonschool age children, as defined in WAC 170-290-0003, and receiving state subsidy payments for nonschool age child care has successfully completed all level 2 activ-~~

ities and is waiting to be rated, the provider may continue to receive a state subsidy pending the successful completion of the level 3 rating activity)) comply with the eligibility requirements described in WAC 110-15-0125.

[WSR 18-14-078, recodified as § 110-15-3750, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.070, chapter 43.215 RCW. WSR 16-19-107, § 170-290-3750, filed 9/21/16, effective 10/22/16. Statutory Authority: RCW 43.215.060, 43.215.070, and chapter 43.215 RCW. WSR 16-09-059, § 170-290-3750, filed 4/15/16, effective 5/16/16; WSR 11-12-078, § 170-290-3750, filed 5/31/11, effective 7/1/11. Statutory Authority: RCW 43.215.060, 43.215.070, 2006 c 265, and chapter 43.215 RCW. WSR 09-22-043, § 170-290-3750, filed 10/28/09, effective 12/1/09.]

AMENDATORY SECTION (Amending WSR 20-08-077, filed 3/26/20, effective 4/26/20)

WAC 110-15-3770 Authorized SCC payments. The SCC program may authorize payments to licensed or certified child care providers (for:

(1) ~~Basic child care either full day or half day, at rates listed in the chart in WAC 110-15-0200 and 110-15-0205:~~

~~(a) A full day of child care when a consumer's children need care for five to ten hours per day;~~

~~(b) A half day of child care when a consumer's children need care for less than five hours per day;~~

~~(c) Full-time care when the consumer participates in one hundred ten hours or more of approved activities per calendar month based on the consumer's approved activity schedule. Full-time care means twenty-three full day units if the child needs five or more hours of care per day or thirty half day units if the child needs fewer than five hours of care per day;~~

~~(2) Family home providers in all regions and for all ages will receive a partial-day rate that is seventy-five percent of the full-day rate when:~~

~~(a) The family home provider provides child care services for the child during a morning session and an afternoon session. A morning session begins at any time after 12:00 a.m. and ends before 12:00 p.m. An afternoon session begins at any time after 12:00 p.m. and ends before 12:00 a.m.;~~

~~(b) The child is absent from care in order to attend school or preschool; and~~

~~(c) The family home provider is not entitled to payment at the full day rate.~~

~~(d) In no event will a child care provider be entitled to two partial day rates totaling one hundred fifty percent of the daily rate.~~

~~(3) A single partial-day monthly unit will be authorized for a school-age child who is:~~

~~(a) Eligible for a full-time authorization, but is in care for less than five hours on a typical school day;~~

~~(b) Authorized for care with only one provider;~~

~~(c) Expected to need care before and after school.~~

- (4) ~~The monthly unit will be prorated for partial months of authorization.~~
- (5) ~~A registration fee, according to WAC 110-15-0245;~~
- (6) ~~The field trip/quality enhancement fees in WAC 110-15-0247;~~
- (7) ~~The nonstandard hours bonus in WAC 110-15-0249; and~~
- (8) ~~Special needs care when the child has a documented special need and a documented need for a higher level of care, according to WAC 110-15-0220, 110-15-0225, and 110-15-0230) as described in WAC 110-15-0190, 110-15-0200, and 110-15-0205.~~

[Statutory Authority: RCW 43.216.055 and 43.216.065. WSR 20-08-077, § 110-15-3770, filed 3/26/20, effective 4/26/20. WSR 18-14-078, recodified as § 110-15-3770, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.070, chapter 43.215 RCW. WSR 16-19-107, § 170-290-3770, filed 9/21/16, effective 10/22/16. Statutory Authority: RCW 43.215.060, 43.215.070, and chapter 43.215 RCW. WSR 16-09-059, § 170-290-3770, filed 4/15/16, effective 5/16/16; WSR 11-12-078, § 170-290-3770, filed 5/31/11, effective 7/1/11. Statutory Authority: RCW 43.215.060, 43.215.070, 2006 c 265, and chapter 43.215 RCW. WSR 09-22-043, § 170-290-3770, filed 10/28/09, effective 12/1/09.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-15-3840 New eligibility period. (1) ~~((If a consumer wants to receive SCC program subsidies for another)) To request SCC benefits be continued uninterrupted beyond consumer current eligibility periods, ((he or she)) they must reapply ((for SCC benefits)) to DCYF on or before the end date of ((the)) their current eligibility periods. ((To determine if a consumer is eligible, DSHS:~~

~~(a) Requests reapplication information before the end date of the consumer's current SCC eligibility period; and~~

~~(b) Verifies the requested information for completeness and accuracy.~~

~~(2) A consumer may be eligible for SCC program subsidies for a new eligibility period if:~~

~~(a) DSHS receives the consumer's reapplication information no later than the last day of the current eligibility period;~~

~~(b) The consumer's provider is eligible for payment under WAC 170-290-3670 and 170-290-3750; and~~

~~(c) The consumer meets all SCC eligibility requirements.~~

~~(3) Effective October 1, 2016, if a consumer's household has countable income greater than two hundred percent of the federal poverty guidelines (FPG) but less than two hundred twenty percent of the FPG, the consumer may be eligible for a three-month eligibility period called income phase-out. In determining eligibility for the income phase-out period, the following rules apply:~~

~~(a) All countable income must be between two hundred and two hundred twenty percent of the FPG. If the countable income exceeds two hundred twenty percent of the FPG, DSHS denies the reapplication;~~

~~(b) DSHS applies all other eligibility criteria for a reapplication, with the exception of income as described above;~~

~~(c) There is no break between the twelve-month eligibility period and the income phase-out period;~~

~~(d) DSHS calculates the consumer's copayment at two hundred percent of the FPG of countable household income;~~

~~(e) DSHS certifies the consumer for a three-month eligibility period;~~

~~(f) The consumer will need to reapply for a new twelve-month certification period if the consumer's household income falls below two hundred percent of the FPG during or at the end of the three-month income phase-out period; and~~

~~(g) The consumer will not be eligible for a second, back-to-back income phase-out period if the countable income of the consumer's household remains between two hundred and two hundred twenty percent of the FPG at the end of the first three-month income phase-out period.~~

~~(4) If DSHS determines that a consumer is eligible for SCC program subsidies based on the consumer's reapplication information, DSHS notifies the consumer of the new eligibility period and copayment.~~

~~(5) If a consumer fails to contact DSHS on or before the end date of the consumer's current SCC eligibility period to request SCC program subsidies, he or she must reapply according to WAC 170-290-3665.)~~

(2) Determination of consumers' eligibility to receive uninterrupted SCC benefits beyond their eligibility periods will be made pursuant to the eligibility rules contained in this chapter.

(3) Consumers who reapply on or before the end date of their current eligibility periods may receive continued, uninterrupted benefits through second tier eligibility if their household has countable income greater than 60 percent but less than or equal to 65 percent of the SMI. If their countable monthly income is greater than 65 percent of the SMI, their reapplications will be denied.

(4) If consumers submit reapplications after the last day their current eligibility periods end and meet eligibility requirements, their consumer benefits will begin:

(a) On the date their reapplications are entered into DCYF's automated system or the date their reapplications are date-stamped as received by DCYF, whichever date is earlier;

(b) When they are working or participating in approved activities; and

(c) Their children are receiving care from approved providers under WAC 110-15-3750.

[WSR 18-14-078, recodified as § 110-15-3840, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.070, chapter 43.215 RCW. WSR 16-19-107, § 170-290-3840, filed 9/21/16, effective 10/22/16. Statutory Authority: RCW 43.215.060, 43.215.070, and chapter 43.215 RCW. WSR 16-09-059, § 170-290-3840, filed 4/15/16, effective 5/16/16; WSR 11-12-078, § 170-290-3840, filed 5/31/11, effective 7/1/11. Statutory Authority: RCW 43.215.060, 43.215.070, 2006 c 265, and chapter 43.215 RCW. WSR 09-22-043, § 170-290-3840, filed 10/28/09, effective 12/1/09.]

AMENDATORY SECTION (Amending WSR 19-12-058, filed 5/31/19, effective 7/1/19)

WAC 110-15-3850 Payment discrepancies generally. Child care subsidy payment discrepancies are described in WAC 110-15-0266 through

110-15-0275, with the exception of underpayments requested by licensed child care centers, which will only be considered for (~~six~~) three months after the date of services.

[Statutory Authority: RCW 43.216.055 and 43.216.065. WSR 19-12-058, § 110-15-3850, filed 5/31/19, effective 7/1/19. WSR 18-14-078, recodified as § 110-15-3850, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.060, 43.215.070, and chapter 43.215 RCW. WSR 11-12-078, § 170-290-3850, filed 5/31/11, effective 7/1/11. Statutory Authority: RCW 43.215.060, 43.215.070, 2006 c 265, and chapter 43.215 RCW. WSR 09-22-043, § 170-290-3850, filed 10/28/09, effective 12/1/09.]

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 110-15-0090 Minimum copayment.

WSR 22-01-207
PROPOSED RULES
DEPARTMENT OF
CHILDREN, YOUTH, AND FAMILIES
[Filed December 21, 2021, 3:11 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-01-032.

Title of Rule and Other Identifying Information: WAC 110-145-1425

What are the qualifications of an executive director or administrator?, 110-145-1430 What are the requirements of an on-site program manager?, 110-145-1440 What are the duties and qualifications of case management staff?, 110-145-1445 What are the qualifications of direct care staff persons?, 110-145-1450 What additional qualifications must the crisis residential center direct care staff have?, 110-145-1460 Do I need to employ consultants at my facility?, 110-145-1475 What are the requirements for volunteers working directly with children and youth at my facility?, and 110-145-1725 When do I need a treatment plan for children under my care?

Hearing Location(s): On January 25, 2022, telephonic. Oral comments may be made by calling 360-902-8084 and leaving a voicemail that includes the comment and an email or physical mailing address where the department of children, youth, and families (DCYF) will send its response. Comments received through and including January 25, 2022, will be considered.

Date of Intended Adoption: February 1, 2022.

Submit Written Comments to: DCYF Rules Coordinator, P.O. Box 40975, Olympia, WA 98504-0975, email dcyf.rulescoordinator@dcyf.wa.gov, by January 25, 2022.

Assistance for Persons with Disabilities: Contact DCYF rules coordinator, phone 360-902-7956, email dcyf.rulescoordinator@dcyf.wa.gov, by January 21, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: For licensed foster care, group care facilities, align the experience requirement for executive directors with program managers' experience and education requirements, expand program managers' education requirement to include associate's degrees, remove requirements for "social services or a closely related field" specific college degrees for all positions, reduce minimum years of experience required for program managers and case managers, better define and allow one year of receiving services as qualifying experience for direct care staff, expand the criteria under which 18 to 21-year olds may work in licensed facilities, and lower volunteers' minimum age from 21 to 18.

Reasons Supporting Proposal: The proposed rules give licensees more flexibility for hiring decisions, allow younger employees and broader entry into the field, and provide more pathways to higher-level positions.

Statutory Authority for Adoption: RCW 74.15.030.

Statute Being Implemented: RCW 74.15.030.

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

Name of Proponent: DCYF at the request of, and in partnership with, licensed group care facilities and their advocates, The Mockingbird Society, Youthcare, and the Washington Association for Children and Families, public and governmental.

Name of Agency Personnel Responsible for Drafting: Tyler Farmer, Olympia, Washington, 360-628-2151; Implementation and Enforcement: DCYF, statewide.

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

A cost-benefit analysis is not required under RCW 34.05.328. DCYF is not among the agencies listed as required to comply with RCW 34.05.328 (5) [(a)](i). Further, DCYF does not voluntarily make that section applicable to the adoption of this rule.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. There are nominal to no costs associated with the proposed rules for small businesses. The rules pertain to group care facilities' potential employees' required education and work and lived experience.

December 21, 2021
Brenda Villarreal
Rules Coordinator

OTS-3325.5

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-145-1425 What are the duties and qualifications of an executive director or administrator? (1) ~~((You must have))~~ An executive director or administrator ~~((who is available telephonically during business hours and meets the qualifications to))~~ must:

(a) Manage the financial ~~((and)),~~ administrative, and service operations of the ~~((program))~~ facility;

(b) Be available in-person or by telephone during the regularly scheduled business hours of the facility;

(c) Ensure that the program complies with all relevant and applicable laws, specifically chapter 74.15 RCW, and the licensing rules ~~((contained))~~ in this chapter;

~~((e- Effectively))~~ (d) Communicate to the department the roles, expectations, and purposes of the program;

~~((d))~~ (e) Assume responsibility for health, safety, and well-being of children in ~~((your))~~ the care of their facility; and

~~((e))~~ (f) Work with representatives of other agencies.

(2) An executive director or administrator must ~~((have))~~:

(a) ~~((Appropriate education relevant to the specific program; and))~~ Meet the experience and education requirements of a program manager, detailed in WAC 110-145-1430(4), unless the facility employs another person as the program manager;

(b) ~~((Four years of successful))~~ Have experience with the same or similar duties ~~((and responsibilities))~~ for the administrative oversight, program and fiscal management of an agency; and

(c) Meet additional duties and qualifications detailed in any written agreement between the agency and DCYF, if applicable.

[WSR 18-14-078, recodified as § 110-145-1425, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-145-1425, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-145-1430 What are the ((requirements)) duties and qualifications of ((an on-site)) a program manager? (1) ~~((On days your facility is operational, you must have an on-site))~~ A program manager must be on-site at ((your)) their facility ((during business hours when youth are present. Staffed residential facilities licensed for five or fewer are required to have an on-site program manager during business hours when youth are present if the focus of the program is behavioral and a child's behavior poses a risk. The on-site program manager must meet the qualifications to:)) according to agreed upon terms detailed in a written and signed agreement between the agency and DCYF.

(2) A program manager must:

(a) ~~Coordinate and oversee the facility's day-to-day ((operations of the program))~~ services provided to children or youth;

(b) ~~Supervise ((the)) case ((management))~~ managers and direct care staff; ~~((and))~~

(c) ~~((Have the responsibility to))~~ Monitor staff development and training;

(d) ~~Ensure ((the completion of)) each child's or youth's treatment and care plan ((of care and treatment.~~

~~(2) When youth are not present and the program manager))~~ is executed and completed; and

(e) Be available by telephone when not on-site((, he or she must be available by telephone)).

(3) ~~((An on-site))~~ A program manager must have one or more of the following:

(a) ~~A master's degree ((in social services or a closely related field))~~ from an accredited ((school)) college or university and one year of similar, full-time experience working with children or youth;

(b) ~~A bachelor's degree ((in social services or a closely related field))~~ from an accredited ((school)) college or university and two years of similar, full-time experience working with children or youth;

(c) ~~((Five))~~ An associate's degree from an accredited community college and three years' of similar, full-time experience working with children or youth; or

(d) Four years of ((successful)) similar, full-time work experience in a relevant field working with children or youth((; and

~~(i) Supervisory abilities that promote effective staff performance; and~~

~~(ii) Relevant experience, training and demonstrated skills in each area that he or she will be managing or supervising)).~~

(4) ~~((An on-site))~~ A program manager must not provide clinical oversight to case ((management staff)) managers unless ((they)) the program manager also meets the ((supervision requirements)) qualifications detailed in WAC ((388-145-1440(3))) 110-145-1440(2).

(5) A case ((management staff)) manager or another person with equivalent training and experience of ((an on-site)) a program manager may ((satisfy this requirement)) serve as a program manager.

(6) ((For overnight youth shelters, the required prior experience must be in working with adolescents.)) A program manager must meet additional duties and qualifications detailed in any written and signed agreement between the agency and DCYF, if applicable.

[WSR 18-14-078, recodified as § 110-145-1430, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 74.15.010, 74.15.030, 74.15.040, 74.15.090, 74.13.031, 74.39A.056, 43.43.832. WSR 18-11-138, § 388-145-1430, filed 5/23/18, effective 6/23/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-145-1430, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-145-1440 What are the ((requirements)) duties and qualifications of a case ((management staff)) manager? (1) A case ((management staff will provide individualized case management and coordination of)) manager must coordinate and administer services ((. For emergency respite centers and resource and assessment centers, the on-site program manager may provide individualized case management and coordination of services so additional case managers are not required. The on-site program manager must meet qualifications in WAC 388-145-1430)) for individual children and youth served by the agency.

(2) ((Case management staff hired before January 10, 2015 must have five years of experience or a bachelor's degree in social services or closely related field from an accredited school.)) A case manager must have:

(a) A master's degree from an accredited college or university;

(b) A bachelor's degree from an accredited college or university and consult with a person with a master's degree at least one hour for every 20 hours of case management work; or

(c) Four years' full-time work experience directly working with, managing, or overseeing children or youth in a related field and consult with a person with a master's degree at least one hour for every 20 hours of case management work.

(3) ((Case management staff hired after January 10, 2015 must have a master's or bachelor's degree in social services or a closely related field from an accredited school.

(4) ~~Case management staff who has only a bachelor's degree must consult with a person with a master's degree in social services or closely related field. One hour of consultation must occur every twenty hours the employee works.~~

~~(5)) Case managers must maintain:~~

~~(a) Training, experience, knowledge, and demonstrated skills in each area ((s/he)) they will be supervising; and~~

~~(b) Skills and understanding needed to effectively manage cases ((; and~~

~~(c) The ability to monitor staff development and training)).~~

~~((6) You)~~ (4) An agency may use case (management staff) managers employed or provided by another agency if (these staff meet):

~~(a) The case manager meets the (educational qualifications and you have) experience and education requirements in this section; and~~
~~(b) There is a written agreement (with the agency) between the agencies describing the scope of services to be provided by the case manager.~~

(5) If applicable, a case manager must meet additional duties and qualifications detailed in any written and signed agreement between the agency and DCYF.

[WSR 18-14-078, recodified as § 110-145-1440, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 74.15.010, 74.15.030, 74.15.040, 74.15.090, 74.13.031, and P.L. 113-183. WSR 16-17-101, § 388-145-1440, filed 8/19/16, effective 9/19/16. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-145-1440, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-145-1445 What are the duties and qualifications of direct care staff? (1) ~~((Each))~~ Direct care staff must:

~~(a) Be at least ((twenty-one)) 21 years of age, ((unless they meet the requirements)) except as provided for in subsection (2) of this section;~~

~~(b) Have a high school diploma or high school or ((equivalency course of study (GED/HSEC))) equivalent credential, for example, a GED or HSEC;~~

~~(c) ((Have one year of experience working directly with children. Two years of social services education may be substituted for the required experience;~~

~~(d))~~ Have the skills and ability to ((work successfully with the special)) assist with the needs of children and youth in care;

(d) Meet at least one of the following criteria:

(i) Have at least one year of full-time experience working directly with children or youth providing services similar to those offered by the agency. Experience under this subsection includes experience receiving services from a facility licensed under this chapter;

(ii) Be enrolled in or attending classes at an accredited college or university; or

(iii) Have at least 30 training hours in services similar to those provided to children or youth by the agency; and

~~(e) ((Have effective communication and problem solving skills.))~~
If applicable, meet additional duties and qualifications detailed in any written agreement between the agency and DCYF.

(2) Direct care staff may be between ((eighteen)) 18 and ((twenty-one)) 21 years of age if ((they provide sufficient documentation demonstrating one or more of the following)) the direct care staff meet the requirements detailed in subsection (1)(b) through (e) of this section, and work:

~~(a) ((They are professionals licensed by the Washington department of health;)) At a facility licensed only to provide care for children 13 years of age and younger; or~~

~~(b) ((They have an associate of arts, the equivalent degree, or greater; or~~

~~(c) They are enrolled in an internship or practicum program with an accredited college or university.) Every shift with at least one trained and experienced staff person who:~~

~~(i) Is at least 21 years of age; and~~

~~(ii) Has at least two years' full-time experience working directly with children or youth providing services similar to those offered by the agency. One year of experience required under this subsection (2)(b) may include experience receiving care from a facility licensed under this chapter.~~

~~(3) ((Direct care staff under twenty-one years of age and enrolled in an internship or practicum program must be supervised by staff at least twenty-one years of age.~~

~~(4) You)) An agency must maintain sufficient direct care staff ((who meet the education and training requirements defined in this chapter)) to ensure the health, safety, and well-being of children and youth in care.~~

~~((5)) (4) Case aides must meet the requirements for direct care staff, if applicable.~~

[WSR 18-14-078, recodified as § 110-145-1445, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 74.15.010, 74.15.030, 74.15.040, 74.15.090, 74.13.031, and P.L. 113-183. WSR 16-17-101, § 388-145-1445, filed 8/19/16, effective 9/19/16. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-145-1445, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-145-1450 What are the duties and additional qualifications ((must the)) for crisis residential center direct care staff ((have))? (1) Direct care staff at a crisis residential center (CRC) must care for, supervise, and manage the behavior of children or youth in care.

(2) At least ((fifty)) 50 percent of ((the)) direct care staff at a CRC must have completed:

(a) A bachelor's degree from an accredited college or university;
or

(b) At least two academic years' worth of credit hours from an accredited college or university and one year of full-time work ((in)) experience at a group residential program for adolescents((; and (c))).

(3) Direct care staff at a CRC under subsection (2) of this section may substitute experience for ((education)) educational requirements on a year-for-year basis.

~~((2) The remaining)) (4) Direct care staff ((at a CRC)) who do not meet the requirements detailed in subsection (2) of this section must have ((a minimum of)) a high school diploma or ((high school~~

equivalency course of study (GED/HSEC)) equivalent credential, for example, a GED or HSEC and at least one of the following:

(a) One year of ((successful)) full-time experience working with youth in a group setting, which may include experience receiving services from a facility licensed under this chapter; or

(b) One year of ((successful)) experience as a foster parent((† and

(e)) with placement of one or more youth in their 24-hour care.

(5) Direct care staff at a CRC under subsection (4) of this section may substitute two academic years' worth of credit hours from an accredited college ((may be substituted)) or university for the required experience under subsection (4)(a) and (b) of this section.

((3) The primary duties of the direct care staff at a crisis residential center are the care, supervision, and behavioral management of youth.) (6) Direct care staff at a CRC must meet additional duties and qualifications detailed in any written contract between the agency and DCYF, if applicable.

[WSR 18-14-078, recodified as § 110-145-1450, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-145-1450, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-145-1460 ((Do I need to employ)) What are the duties and qualifications for case management consultants ((at my facility))?

(1) ((You)) An agency must have case management consultants available as needed to work with ((your)) its staff, the children ((you serve)) and youth in care, and the ((children's)) families of children and youth in care. ((Other)) Additional consultants may be used ((for)) to support program ((support)) and services.

(2) A case management consultant is responsible for:

(a) Reviewing treatment or case plans as appropriate;

(b) ((Providing one hour of consultation/supervision to)) Consulting with or supervising case ((management staff)) managers at least one hour for every ((twenty)) 20 hours ((a person works)) of case management work. Staff consultations ((shall)) must be documented and available ((to)) for staff ((on an as-needed basis)) to review as needed; and

(c) Monitoring ((staff's)) and documenting the skill development ((in order to effectively manage their cases)) of staff.

(3) Each case management consultant must have:

(a) A master's degree ((in social services or a closely related field)) from an accredited ((school)) college or university;

(b) The training, experience, knowledge, and demonstrated skills for each area ((in)) which ((he or she)) they will be supervising or advising;

(c) The ability to ensure staff develop their skills, are adequately trained, and have the understanding needed to effectively manage cases; and

(d) Knowledge of mandatory child abuse and neglect reporting requirements.

(4) A case management consultant((s)) may be ((hired as staff)) employed by an agency or operate under a contract ((and)).

(5) A case management consultant must meet or exceed the ((full)) professional competency requirements and academic training ((in)) re-quired by their ((respective)) professional field((s)).

~~((5) If you have)~~ (6) In addition to the requirements in this section, a case management consultant((s)) working in an emergency respite center((s, they)) must also have training and experience in early childhood education.

(7) A case management consultant must meet additional duties and qualifications detailed in any written contract between the agency and DCYF, if applicable.

[WSR 18-14-078, recodified as § 110-145-1460, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 74.15.010, 74.15.030, 74.15.040, 74.15.090, 74.13.031, 74.39A.056, 43.43.832. WSR 18-11-138, § 388-145-1460, filed 5/23/18, effective 6/23/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-145-1460, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-145-1475 What are the requirements for volunteers working directly with children and youth at my facility? ~~((1) These)~~ Volunteers who do or may have access to children or youth must ((meet the licensing requirements listed in this chapter, including meeting the qualifications for direct care staff and must)):

~~((a))~~ (1) Be at least ((twenty-one)) 18 years of age ((unless they are between eighteen and twenty-one years of age in an internship or practicum program as per WAC 388-145-1445; and

~~(b))~~;

(2) Be supervised by a staff person who:

(a) Is at least 21 years of age; and

(b) Has at least two years' experience working directly with children or youth providing services similar to those offered by the agency;

(3) Receive the facility's preservice training that addresses the roles, responsibilities, and duties of a volunteer, as well as the needs of the population of children in care who the volunteer will be working with;

(4) Not have unsupervised access to children in care, unless the volunteer satisfies the preservice training requirements detailed in WAC 110-145-1490;

(5) Meet all other relevant requirements detailed in this chapter and Title 110 WAC, including background check requirements under chapter 110-04 WAC; and

(6) Meet additional duties and qualifications detailed in any written agreement between the agency and DCYF, if applicable.

[WSR 18-14-078, recodified as § 110-145-1475, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 74.15.010, 74.15.030, 74.15.040, 74.15.090, 74.13.031, 74.39A.056, 43.43.832. WSR 18-11-138, §

388-145-1475, filed 5/23/18, effective 6/23/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-145-1475, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-145-1725 When do I need a treatment plan for children ((under my)) in care and what must be included in the plan? (1) ~~((If you are providing care to))~~ An agency must develop and implement an individualized written treatment plan for each child or youth in care if the agency:

(a) Provides care or services to children or youth who are under the care and authority of the department ~~((, and you have contracts or agreements))~~; and

(b) Has an agreement with the department to provide treatment or therapeutic services ~~((, you must assist in developing and implementing a written treatment plan for each child by the thirtieth day in care))~~.

(2) ~~((The))~~ Treatment plans required by this section must:

(a) Be developed and implemented on or before the child or youth's 30th day in care;

(b) Be approved by a master's level case manager or consultant;

(c) Identify the service needs of the child ~~((r))~~ or youth and the child or youth's parent or guardian;

~~((b))~~ (d) Describe the treatment goals and strategies for achieving those goals;

~~((e))~~ (e) Include an ongoing account of the treatment received by the child or youth and others involved in the treatment plan, such as any group treatment or individual counseling; and

~~((d))~~ (f) Be updated at least quarterly to show the progress toward meeting goals and ~~((list))~~ identify barriers to the permanent plan.

(3) ~~((A master's level case management staff person or consultant must review and sign approving the child's treatment plan.))~~ The individual instruction and support plan required by WAC 388-826-0044 for youth receiving out-of-home services administered by the department of social and health services, developmental disabilities administration will satisfy the requirement in subsection (1) of this section.

[WSR 18-14-078, recodified as § 110-145-1725, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-145-1725, filed 12/11/14, effective 1/11/15.]

WSR 22-01-208
PROPOSED RULES
DEPARTMENT OF
CHILDREN, YOUTH, AND FAMILIES
[Filed December 21, 2021, 3:13 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-10-082.

Title of Rule and Other Identifying Information: WAC 110-145-1300
What is the purpose of this chapter?, 110-145-1305 What definitions do I need to know to understand this chapter?, 110-145-1315 When will the department grant me a license?, 110-145-1325 What is required to apply for a group care facility license?, 110-145-1330 How does the department determine my suitability to become a licensed provider or a staff member or volunteer of a licensed provider? 110-145-1335 What additional steps must I complete prior to licensing?, 110-145-1340 How long do I have to complete the licensing application process?, 110-145-1380 May a group care facility be issued more than one type of license?, 110-145-1385 When may I be certified to provide care to children?, 110-145-1410 How do I appeal the decision of the office of administrative hearings' administrative law judge?, 110-145-1480 What are the general ratios of staff to children under care?, 110-145-1490 What is the preservice training requirements for staff and volunteers having direct care responsibility to children/youth?, 110-145-1495 What is the service training requirement for staff and volunteers having responsibility to provide care to children/youth?, 110-145-1505 What HIV/AIDS and bloodborne pathogens training is required?, 110-145-1510 What personnel records must I keep at my facility?, 110-145-1520 What are the requirements for children's records?, 110-145-1530 What information can be shared about a child or a child's family?, 110-145-1535 What incidents involving children must I report?, 110-145-1540 What are my reporting responsibilities when a child is missing from care (except for overnight youth shelters)?, 110-145-1545 What are my reporting requirements in my licensed facility serving runaway or homeless youth?, 110-145-1555 What does the department require for my buildings and property?, 110-145-1600 What are the general requirements for bedrooms?, 110-145-1605 What are the requirements for sharing bedrooms?, 110-145-1610 What are the requirements for beds in a facility?, 110-145-1625 What are the requirements for the use of electronic monitors to monitor children?, 110-145-1630 Are time-delay mechanisms allowed on windows and doors?, 110-145-1660 Are guns allowed on a licensed facility's property?, 110-145-1665 What are the fire safety requirements for all group residential facilities?, 110-145-1700 What must I include in a child's orientation to my facility?, 110-145-1710 What are the requirements about nondiscrimination?, 110-145-1730 What are the educational and vocational instruction requirements for children placed by the department (except interim facilities)?, 110-145-1740 Can children in my care receive services through the extended foster care program?, 110-145-1750 What are the requirements for supervising children?, 110-145-1760 What are the travel requirements for children in care?, 110-145-1775 What belongings must be provided to a child leaving my facility?, 110-145-1795 How often do children need to be provided meals?, 110-145-1800 What are the requirements for handling a child's special diet?, 110-145-1805 Are there special requirements for serving milk?, 110-145-1815 Are written policies and procedures required describing a facility's discipline methods?, 110-145-1820 When may a child be re-

strained?, 110-145-1825 What must I do following an incident that involved using physical restraint?, 110-145-1830 Are there requirements for time-out or quiet rooms?, 110-145-1835 Am I required to assess a child's need for immediate medical attention?, 110-145-1840 When must I get an EPSDT exam for a child?, 110-145-1845 What are the requirements for obtaining consent for emergent and routine medical care?, 110-145-1855 What are the general requirements for managing a child's medication?, 110-145-1875 Can I accept medication from a child's parent or guardian?, 110-145-1880 When may children take their own medicine?, 110-145-1885 What are the immunization regulations?, 110-145-1915 What are the requirements for secure CRCs?, 110-145-1930 What steps must be taken after a youth is admitted into any CRC?, 110-145-1960 What additional recordkeeping is required for all CRCs?, 110-145-2000 Can my emergency respite center have more than one type of license?, 110-145-2060 What are the requirements for supervision of children at my group receiving center?, 110-145-2065 What services must I provide for medically fragile children?, 110-145-2070 What recordkeeping requirements exist for medically fragile children?, 110-145-2095 What steps must I take when a youth first enters an overnight youth shelter?, 110-145-2100 What services must be offered at an overnight youth shelter?, 110-145-2145 What are the facility and room requirements for programs offering services for pregnant and parenting youth?, 110-145-2070 What recordkeeping requirements exist for medically fragile children?, 110-145-2095 What steps must I take when a youth first enters an overnight youth shelter?, 110-145-2100 What services must be offered at an overnight youth shelter?, 110-145-2145 What are the facility and room requirements for programs offering services for pregnant and parenting youth?, 110-145-2180 Who may place children at an RAC?, 110-147-1300 What is the purpose of this chapter?, 110-147-1305 What definitions do I need to know to understand this chapter?, 110-147-1315 When will the department grant me a license?, 110-147-1325 What is required to apply for a child placing agency license?, 110-147-1330 How does the department determine my suitability to become a licensed provider?, 110-147-1335 What additional steps must I complete prior to licensing?, 110-147-1340 How long do I have to complete the licensing application process?, 110-147-1345 What are the roles of the department and the CPA?, 110-147-1350 How must I certify a foster home for licensing by the department?, 110-147-1375 May an agency be issued more than one type of license?, 110-147-1420 Can employees, volunteers and subcontractors be disqualified from having access to the children in my agency?, 110-147-1430 How do I appeal the decision of the office of administrative hearings' administrative law judge?, 110-147-1443 Am I required to follow each child's case plan?, 110-147-1490 What are the requirements for volunteers working directly with children/youth?, 110-147-1500 What is the preservice training requirement for staff and volunteers having direct care responsibility to children/youth?, 110-147-1505 What is the requirement for staff in-service training?, 110-147-1515 What HIV/AIDS/bloodborne pathogens training is required?, 110-147-1520 What personnel records must I keep at my agency?, 110-147-1525 What are the requirements for children's records?, 110-147-1530 How long should my agency keep the child records?, 110-147-1535 What information can be shared about a child or a child's family?, 110-147-1540 What incidents involving children must I report?, 110-147-1545 What are my reporting responsibilities when a child is missing from care?, 110-147-1550 What changes must I report to my licensor?, 110-147-1555 What does the department require for my

buildings and property?, 110-147-1595 What are the requirements about nondiscrimination?, 110-147-1610 How often should the case manager contact the foster child and family?, 110-147-1615 Can children in my care receive services through the extended foster care program?, 110-147-1620 What are the requirements for supervising children?, 110-147-1630 Where may I obtain a child's health history? 110-147-1635 Am I required to assess a child's need for immediate medical attention?, 110-147-1640 When must I get an (EPSDT) exam for a child?, 110-147-1645 What are the requirements for obtaining consent for emergent and routine medical care?, 110-147-1650 Can I accept medication from a child's parent or guardian?, 110-147-1660 What qualifications must adoption services staff meet?, 110-147-1690 What steps must I take prior to entering into a contract with an adoptive applicant?, 110-147-1720 How do I maintain children's records?, 110-148-1300 What is the purpose of this chapter?, 110-148-1305 What definitions do I need to know to understand this chapter?, 110-148-1315 How is an application submitted?, 110-148-1320 When will the department grant me a foster family license?, 110-148-1330 May I receive more than one in-home family license?, 110-148-1340 What do I do to renew my license?, 110-148-1350 What are the roles of the department and the CPA?, 110-148-1355 Can I be licensed as a foster home if I also work for a child placing agency or children's administration?, 110-148-1365 What are the personal requirements for foster parents?, 110-148-1375 What training am I required to have before I become licensed?, 110-148-1380 What training must I complete after I am licensed?, 110-148-1385 How do you decide how many children may be placed in the capacity for my home?, 110-148-1390 Can I accept children outside the limitations of my license?, 110-148-1395 Do I have to admit or retain all children?, 110-148-1405 What are the requirements for keeping children's records?, 110-148-1410 What information is confidential and what information can I share about a child's family?, 110-148-1415 Where can I get a child's health history?, 110-148-1420 What incidents involving children must I report?, 110-148-1425 What are my reporting responsibilities when a child is missing from care?, 110-148-1430 What are other reporting requirements?, 110-148-1435 What are the travel requirements for children in care?, 110-148-1440 What are the requirements for my home and property?, 110-148-1445 What are the requirements for water, garbage, and sewer in my home?, 110-148-1455 How must I keep children safe around bodies of water?, 110-148-1470 What are the general requirements for bedrooms?, 110-148-1475 What are the requirements for sharing bedrooms?, 110-148-1480 What are the requirements for animals?, 110-148-1495 What are the requirements for smoking around children?, 110-148-1500 Under what conditions may I have guns and weapons on my property?, 110-148-1515 What are the requirements regarding food?, 110-148-1520 What services am I expected to provide for children in my care?, 110-148-1525 What are the educational and vocational instruction requirements for children in care?, 110-148-1530 May children participate in everyday activities under my care?, 110-148-1535 Can I provide care to youth enrolled in the extended foster care program?, 110-148-1540 What privacy must I provide for children in my care?, 110-148-1545 What belongings will foster children take when they leave my home?, 110-148-1550 What medical and dental care must I provide to children?, 110-148-1555 What are the immunization requirements?, 110-148-1565 How must medications be stored? 110-148-1570 Who may access stored medications? 110-148-1575 What are other requirements for medications?, 110-148-1580 Can children take their own medications?, 110-148-1590 Can I choose to give prescribed

medications, including psychotropic medication?, 110-148-1595 Can I accept prescription medication from a child's parent or guardian?, 110-148-1600 What is respite care?, 110-148-1605 Who can watch my foster child when I am away from home?, 110-148-1610 What are the requirements for supervising children in my care?, 110-148-1615 What are the requirements for disciplining children?, 110-148-1620 When may a child be restrained?, 110-148-1625 Will you license or continue to license me if I violate licensing requirements?, 110-148-1635 Can people living in my home be disqualified from having access to the children in my care?, 110-148-1645 What may I do if I disagree with your decision to modify, deny, suspend or revoke my license, or to disqualify my background check?, and 110-148-1650 How do I appeal the decision of the office of administrative hearings' administrative law judge?

Hearing Location(s): On January 25, 2022, telephonic. Oral comments may be made by calling 360-902-8084 and leaving a voicemail that includes the comment and an email or physical mailing address where department of children, youth, and families (DCYF) will send its response. Comments received through and including January 25, 2022, will be considered.

Date of Intended Adoption: February 1, 2022.

Submit Written Comments to: DCYF Rules Coordinator, P.O. Box 40975, email dcyf.rulescoordinator@dcyf.wa.gov. Submit comments online at <https://dcyf.wa.gov/practice/policy-laws-rules/rule-making/participate/online>, by January 25, 2022.

Assistance for Persons with Disabilities: Contact DCYF rules coordinator, phone 360-902-7956, email dcyf.rulescoordinator@dcyf.wa.gov, by January 21, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules recognize and define LGBTQIA+ terminology, reaffirm that foster care providers must comply with federal and state nondiscrimination laws, complete LGBTQIA+ culture training, and support and engage with all children in their care with dignity and respect regardless of actual or perceived race, ethnicity, culture, sex, or sexual orientation and gender identity. Additionally, the proposed rules update the standards for shared bedrooms based on a child's gender identity.

For group care facilities, child placing agencies, and adoption services, the proposed rules require licensing applications and associated documents to be electronically submitted to the department by uploading them into a department-provided licensing provider portal.

The proposed rules also make nonsubstantive, technical corrections, including corrections necessary after the creation of DCYF and the associated decodification of chapter 388-148 WAC and its recodification to chapter 110-148 WAC.

Reasons Supporting Proposal: DCYF is charged with safeguarding the health, safety, and well-being of the children and youth that it serves. The proposed rules are intended to prevent harassment, discrimination, and other treatment that undermines the self-esteem, health, and physical, mental, and social well-being of LGBTQIA+ [LGBTQIA+] children and youth who participate in programs administered by the department.

Statutory Authority for Adoption: RCW 74.15.030.

Statute Being Implemented: RCW 74.15.030.

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

Name of Proponent: DCYF, governmental.

Name of Agency Personnel Responsible for Drafting: Tyler Farmer, Olympia, Washington, 360-628-2151; Implementation and Enforcement: DCYF, statewide.

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

A cost-benefit analysis is not required under RCW 34.05.328. DCYF is not among the agencies listed as required to comply with RCW 34.05.328 (5)[(a)](i). Further, DCYF does not voluntarily make that section applicable to the adoption of this rule.

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

Is exempt under RCW 19.85.025(3) as the rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

Is exempt under RCW 19.18.025.

Explanation of exemptions: The rule making proposed for chapter 110-148 WAC affects only foster family homes, which are not small businesses.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. There are nominal to no costs associated with the proposed rules. The electronic filing requirement being implemented for group care facilities, child placing agencies, and adoption services will be done using equipment they already have, and DCYF anticipates that electronic filing will reduce the filers' processing time. The necessary software and training will be provided by DCYF.

December 21, 2021
Brenda Villarreal
Rules Coordinator

OTS-1222.15

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-145-1300 What is the purpose of this chapter? (1) This chapter contains licensing requirements for generalized group care facilities, group homes, crisis residential centers, emergency respite centers, group receiving centers, overnight youth shelters, staffed residential homes, and resource and assessment centers. These licensing regulations are designed to ensure children in group care facilities are safe, healthy, and protected from all forms of child abuse and neglect according to RCW 26.44.020(1) and chapter ((388-15)) 110-30 WAC.

(2) These separately licensed programs may provide specialized services such as day treatment services, services to pregnant and parenting youth (maternity services), HOPE beds, responsible living skills programs, and services to medically fragile children, and children with intellectual and developmental disabilities. You must hold a group care license to provide the specialized services outlined in

this chapter. These services can be provided through your own program or by using community resources.

[WSR 18-14-078, recodified as § 110-145-1300, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-145-1300, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 20-05-024, filed 2/7/20, effective 3/9/20)

WAC 110-145-1305 What definitions do I need to know to understand this chapter? The following words and terms are for the purpose of this chapter and are important to understand these requirements:

"Abuse or neglect" means the injury, sexual abuse, sexual exploitation, negligent treatment or maltreatment of a child as defined in RCW 26.44.020.

"Adult" means a person ((eighteen)) 18 years old or older, not in the care of the department.

"Agency" is defined in RCW 74.15.020(1).

"Asexual" means the lack of a sexual attraction or desire for other individuals.

"Assessment" means the appraisal or evaluation of a child's physical, mental, social and emotional condition.

"Bisexual" means individuals who have an emotional or physical attraction to individuals of the same and different genders.

"Business hours" means hours during the day in which state business is commonly conducted. Typically, the hours between 9 a.m. and 5 p.m. on weekdays are considered to be standard hours of operation.

"Capacity" means the age range, gender, and maximum number of children on your current license.

"Care provider" means any person who is licensed or authorized to provide care for children and cleared to have unsupervised access to children under the authority of a license.

"Case manager" means a facility employee who coordinates the planning efforts of all the persons working on behalf of a child.

"Case plan" means a written document adhered to and followed by a foster child's parents, foster parents, the department, and all other caregivers. A case plan may include, but is not limited to:

(a) A description of the type of home or facility in which a child is to be placed, including a discussion of the safety and appropriateness of the placement and how the department plans to carry out the voluntary placement agreement entered into or judicial determination made with respect to the child;

(b) A plan for assuring that the child receives safe and proper care and that services are provided to the child, parents or guardians, and foster parents in order to improve the conditions in the parents' home, facilitate returning the child to their own home or the permanent placement of the child, and address the needs of the child while in foster care, including a discussion of the appropriateness of the services that have been provided to the child under the plan;

(c) The health and education records of the child, including the most recent information available regarding:

(i) The names and addresses of the child's health and educational providers;
(ii) The child's grade level performance;
(iii) The child's school records;
(iv) A record of the child's immunizations;
(v) The child's known medical conditions;
(vi) The child's medications; and
(vii) Any other relevant health and education information concerning the child determined to be appropriate by the department;
(d) Relevant professional assessments of the child;
(e) Court orders concerning the child; and
(f) Any other relevant plan, assessment, knowledge, material, or information concerning the child determined to be appropriate by the department.

"Chapter" means chapter 110-145 WAC.

"Child," "children," or "youth" for this chapter, means a person who is one of the following:

- (a) Under ~~((eighteen))~~ 18 years old;
- (b) Up to ~~((twenty-one))~~ 21 years of age and enrolled in services through the department of social and health services developmental disabilities administration (DDA) the day prior to their ~~((eighteenth))~~ 18th birthday and pursuing either a high school or equivalency course of study ~~((-(GED/HSEC)-))~~, such as a GED or HSEC, or vocational program;
- (c) Up to ~~((twenty-one))~~ 21 years of age and participates in the extended foster care program;
- (d) Up to ~~((twenty-one))~~ 21 years of age with intellectual and developmental disabilities;
- (e) Up to ~~((twenty-five))~~ 25 years of age and under the custody of juvenile rehabilitation.

"Child placing agency (~~("or")~~) (CPA)" means an agency licensed to place children for temporary care, continued care, or adoption.

"Compliance agreement" means a written improvement plan to address the changes needed to meet licensing requirements.

~~("Crisis residential center (secure)" means a licensed facility open twenty-four hours a day, seven days a week that provides temporary residential placement, assessment and services in a secure facility to prevent youth from leaving the facility without permission per RCW 13.32A.030(15).)~~

~~"Crisis residential center (semi-secure)" means a licensed facility open twenty-four hours a day, seven days a week that provides temporary residential placement, assessment and services for runaway youth and youth in conflict with their family or in need of emergency placement.)~~

"CW" means the division of child welfare within DCYF. CW provides case management to children and families involved in the child welfare system.

"Day treatment" is a specialized service that provides educational and therapeutic group experiences for emotionally disturbed children.

"DDA" means the developmental disabilities administration in the department of social and health services. DDA provides services and case management to children and adults who meet the eligibility criteria.

"Deescalation" means strategies used to defuse a volatile situation, to assist a child to regain behavior control, and to avoid a physical restraint or other behavioral intervention.

"Department" (~~or "DCYF"~~) means the department of children, youth, and families (DCYF).

"Developmental disability" is a disability as defined in RCW 71A.10.020.

"Direct care" means direct, hands-on personal care and supervision to group care children and youth.

"DOH" means the department of health.

"Electronic monitoring" means video or audio monitoring or recording used to watch or listen to children as a way to monitor their behavior.

"Emergency respite center (ERC)" means a licensed facility that may be commonly known as a crisis nursery, which provides emergency or crisis care for nondependent children birth through (~~seventeen~~) 17 years for up to (~~seventy-two~~) 72 hours to prevent child abuse or neglect per RCW 74.15.020(d). ERCs may choose to be open up to (~~twenty-four~~) 24 hours a day, seven days a week. Facilities may also provide family assessment, family support services, and referrals to community services.

"FBI" means the Federal Bureau of Investigation.

"Full-time" as used throughout this chapter when describing work experience means a minimum of 1,664 work hours in a calendar year or the equivalent of 32 work hours per week.

"Gay" means a sexual orientation to describe individuals who are emotionally or physically attracted to someone of the same gender. Gay is sometimes an umbrella term for the LGBTQIA+ community.

"Gender" or "gender identity" means an individual's inner sense of being a female, male, a blend of both or neither, or another gender. This may or may not correspond with an individual's sex assigned at birth.

"Gender expression" means individuals' outward communication of their gender through behavior or appearance. This may or may not conform to their sex assigned at birth or socially defined behaviors and characteristics typically associated with being either masculine or feminine.

"Gender fluid" means individuals whose gender identities are flexible, not permanent.

"Group care" is a general term for a licensed facility that is maintained and operated for a group of children on a (~~twenty-four-hour~~) 24-hour basis to provide a safe and healthy living environment that meets the developmental needs of the children in care, per RCW 74.15.020 (1)(f).

"Group home" is a specific license for residential care that provides care and supervision for children or youth.

"Group receiving center" means a licensed facility that provides the basic needs of food, shelter, and supervision for children placed by the department, generally for (~~thirty~~) 30 or fewer days.

"Guardian" has the same meaning in this chapter as defined in RCW 26.33.020(11).

"Guns or weapons" means any device intended to shoot projectiles under pressure or that can be used to attack. These include, but are not limited to, BB guns, pellet guns, air rifles, stun guns, antique guns, handguns, rifles, shotguns, and archery equipment.

"Health care staff" means anyone providing qualified medical consultation to your staff or medical care to the children and youth in your care.

"Hearing" means the administrative review process conducted by an administrative law judge.

"I, my, you, and your" refers to an applicant for a license issued under this chapter, and to any party holding a license under this chapter.

"Infant" means a child less than (~~twelve~~) 12 months of age.

"Intellectual and developmental disability" means children with deficits in general mental abilities and impairment in everyday adaptive functioning.

"Interim facility" means an overnight youth shelter, emergency respite center or a resource and assessment center.

(~~"LD" means the licensing division of DCYF. LD licenses and monitors foster homes, child placing agencies, and licensed group care facilities.~~)

"Intersex" is an umbrella term used to describe a wide range of natural bodily variations when the body is born with a combination of chromosomes, internal organs, or external genitalia that do not develop as expected.

"Lesbian" means females or women who have an emotional or physical attraction for other females or women.

"LGBTQIA+" means lesbian, gay, bisexual, transgender, queer or questioning, intersex, and asexual. The "+" represents identities not specifically named in the LGBTQIA acronym, e.g., pansexual, gender nonbinary, and Two-Spirit.

"License" means a permit issued by us that your facility meets the licensing standards established in this chapter.

"Licensed health care provider" means an MD (medical doctor), DO (doctor of osteopathy), ND (doctor of naturopathy), PA (physician's assistant), or an ARNP (advanced registered nurse practitioner).

"Licensing division (LD)" means the division within DCYF that licenses and monitors foster homes, child placing agencies, and licensed group care facilities.

"Licensing provider portal" means the internet connected provider application system used by the department and agencies to securely store digital employment and licensing documents and data.

"Local fire authority" means your local fire inspection authority having jurisdiction in the area where your facility is located.

"Maternity service" as defined in RCW 74.15.020. These are also referred to as pregnant and parenting youth programs.

"Medically fragile" means the condition of a child who requires the availability of (~~twenty-four-hour~~) 24-hour skilled care from a health care professional or specially trained staff or volunteers in a group care setting. These conditions may be present all the time or frequently occurring. If the technology, support, and services being received by the medically fragile children are interrupted or denied, the child may, without immediate health care intervention, experience death.

"Missing child" means any child less than (~~eighteen~~) 18 years of age in licensed care or under the care, custody, and authority of DCYF and the child's whereabouts are unknown, the child has left care without the permission of the child's caregiver or DCYF, or both. This does not include children in a dependency guardianship.

"Multidisciplinary teams (MDT)" means groups formed to assist children who are considered at risk youth or children in need of services, and their parents.

"Negative action" means a court order, court judgment, or adverse action taken by an agency, in any state, federal, local, tribal, or foreign jurisdiction, that results in a finding against the applicant reasonably related to the individual's suitability, and competence to

care for or have unsupervised access to children in out-of-home care. This may include, but is not limited to:

- (a) A decision issued by an administrative law judge;
- (b) A final determination, decision, or finding made by an agency following an investigation;
- (c) An adverse licensing action, including termination, revocation, or denial of a license or certification, or if there is a pending adverse action, the voluntary surrender of a license, certification, or contract in lieu of an adverse action;
- (d) A revocation, denial, or restriction placed on any professional license; or
- (e) A final decision of a disciplinary board.

"Nonambulatory" means not able to walk or exit to safety without the physical assistance of another individual.

"Nonbinary" is a term of self-identification for individuals who do not identify within the limited and binary terms that have described gender identity, e.g., female and male. Nonbinary is also an umbrella term for many identities such as gender expansive, gender fluid, and genderqueer.

"Out-of-home placement" means a child's placement in a home or facility other than the child's parent, guardian, or legal custodian.

"Overnight youth shelter" means a licensed nonprofit agency that provides overnight shelter to homeless or runaway youth in need of emergency sleeping arrangements.

"Parent" has the same meaning in this chapter as defined in RCW 26.26A.010(15).

"Probationary license" means a license issued as part of a corrective action to an individual or agency that has previously been issued a full license but is out of compliance with minimum licensing requirements and has entered into an agreement aimed at correcting deficiencies.

"Property or premises" means a facility's buildings and adjoining grounds that are managed by a person or agency in charge.

"Psychotropic medication" means a type of medicine that is prescribed to affect or alter thought processes, mood, sleep, or behavior. These include antipsychotic, antidepressant, and anti-anxiety medications.

"Queer" is a term used to express LGBTQIA+ identities and orientations. The term is sometimes used as an umbrella term for all LGBTQIA+ individuals.

"Questioning" means individuals who are exploring their sexual orientation, gender identity, or gender expression at any age.

"Relative" means a person who is related to a child (~~(per)~~) under RCW 74.15.020.

"Resource and assessment center" means an agency that provides short-term emergency and crisis care for a period up to (~~(seventy-two)~~) 72 hours, (excluding Saturdays, Sundays, and holidays) to children who have been removed from their parent's or guardian's care by child protective services or law enforcement.

"Secure crisis residential center" means a licensed facility open 24 hours a day, seven days a week that provides temporary residential placement, assessment and services in a secure facility to prevent youth from leaving the facility without permission per RCW 13.32A.030(15).

"Semi-secure crisis residential center" means a licensed facility open 24 hours a day, seven days a week that provides temporary resi-

dential placement, assessment and services for runaway youth and youth in conflict with their family or in need of emergency placement.

"Sexual orientation" means an individual's emotional or physical attraction to other individuals.

"SOGIE" is an acronym for sexual orientation, gender identity, and expression which are distinct identifiers everyone has. LGBTQIA+ is a subdistinction within SOGIE self-identifiers. SOGIE includes LGBTQIA+ as well as heterosexual, cisgender, and nonquestioning individuals.

"Staff" or "staff member" means a person who provides services for your facility and is paid by your facility. The definition of staff member includes paid interns.

"Staffed residential home" means a licensed facility that provides (~~twenty-four hour~~) 24-hour care to six or fewer children who require more supervision than can be provided in a foster home.

"Transgender" is an umbrella term for individuals whose gender identity or expression is different from cultural expectations based on the sex they were assigned at birth. Gender-affirming medical care is not a prerequisite to identify as transgender. Being transgender does not imply any specific sexual orientation.

"Treatment plan" means individual plans that identify the service needs of the child, including the child's parent or guardian, and identifies the treatment goals and strategies for achieving those goals.

"Two-Spirit" means a modern, pan-indigenous, umbrella term used by some indigenous North Americans to describe Native people in their communities who fulfill a traditional third-gender or other gender-variant, ceremonial, and social role in their cultures. Being Two-Spirit does not imply any specific sexual orientation.

"Volunteer" means a person who provides services for your facility without compensation.

"Washington state patrol fire protection bureau (~~"or"~~) (WSP/FPB)" means the state fire marshal.

"We, our, and us" refers to DCYF and its staff.

"Young child" refers to a child age (~~twelve~~) 12 months through eight years old.

[Statutory Authority: RCW 43.43.832, 74.13.031, 74.15.030 and P.L. 115-12. WSR 20-05-024, § 110-145-1305, filed 2/7/20, effective 3/9/20. WSR 18-14-078, recodified as § 110-145-1305, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 74.15.010, 74.15.030, 74.15.040, 74.15.090, 74.13.031, 74.39A.056, 43.43.832. WSR 18-11-138, § 388-145-1305, filed 5/23/18, effective 6/23/18. Statutory Authority: RCW 74.15.010, 74.15.030, 74.15.040, 74.15.090, 74.13.031, and P.L. 113-183. WSR 16-17-101, § 388-145-1305, filed 8/19/16, effective 9/19/16. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-145-1305, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-145-1315 When will the department grant me a license?

(1) We issue you a group care license to care for children on a

((~~twenty-four~~)) 24 hour basis when you, your staff, and volunteers, property, and premises meet the licensing regulations contained in this chapter((~~7~~)) and all required documents are in the department's licensing file. Documents required under this section must be submitted to the department through the licensing provider portal.

(2) Additional requirements specific to your program can be found in WAC ((~~388-145-1890 to 388-145-2200~~)) 110-145-1890 through 110-145-2200.

[WSR 18-14-078, recodified as § 110-145-1315, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-145-1315, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 20-05-024, filed 2/7/20, effective 3/9/20)

WAC 110-145-1325 What is required to apply for a group care facility license? (1) You, the person responsible for the license, must submit a ((~~completed~~)) complete application ((~~which is available from the DCYF LD~~)) using the licensing provider portal.

(2) You must submit a completed background authorization form for your executive director, agency staff, including those not directly working with children, consultants, volunteers, and anyone paid by the facility per chapter 110-04 WAC.

(3) You must ensure that all paid agency staff and any other paid adults working at your facility, including those not directly working with children, complete a FBI fingerprint check and a child abuse and neglect history check of every state in which the individual has lived in the preceding five years prior to conducting the background check.

(4) You must ensure that agency volunteers who provide direct care complete a FBI fingerprint check and a child abuse and neglect history check of every state in which the individual has lived in the preceding five years prior to conducting the background check.

(5) You must ensure that agency volunteers who do not provide direct care and have lived outside of Washington state during any portion of the previous three years complete a FBI fingerprint check.

(6) You must ensure all staff, volunteers, or subcontractors meet the requirements in chapter 110-04 WAC. An individual is not authorized to work in the facility until DCYF issues a background check clearance authorization for the individual.

(7) If you have both a license issued by LD and a contract with the department, you must adhere to the most stringent background check requirement.

[Statutory Authority: RCW 43.43.832, 74.13.031, 74.15.030 and P.L. 115-12. WSR 20-05-024, § 110-145-1325, filed 2/7/20, effective 3/9/20. WSR 18-14-078, recodified as § 110-145-1325, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 74.15.010, 74.15.030, 74.15.040, 74.15.090, 74.13.031, 74.39A.056, 43.43.832, and 2017 c 20 § 4. WSR 18-05-037, § 388-145-1325, filed 2/13/18, effective 3/16/18. Statutory Authority: RCW 74.15.010, 74.15.030, 74.15.040, 74.15.090, 74.13.031. WSR 16-06-041, § 388-145-1325, filed 2/24/16, effective 3/26/16. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2),

74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-145-1325, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 20-05-024, filed 2/7/20, effective 3/9/20)

WAC 110-145-1330 How does the department determine my suitability to become a licensed provider or a staff member or volunteer of a licensed provider? (1) The department determines your suitability as a licensed provider after receiving:

(a) Your application((~~r~~)) submitted through the licensing provider portal;

(b) Background authorizations for ((~~those~~)) the persons listed in WAC 110-145-1325((~~r~~)); and

(c) All ((~~required~~)) documentation ((~~outlined in~~)) required under this chapter.

(2) The department determines the suitability of a licensee, staff member, or volunteer after receiving their background authorization referenced in subsection (1) of this section.

(3) You, your staff members, and volunteers must not have had a license or contract denied or revoked from an agency that regulates the care of children or vulnerable adults, unless the department determines that you do not pose a risk to a child's safety, well-being, and long-term stability.

(4) You, your staff members, and volunteers must not have been found to have committed abuse or neglect of a child or vulnerable adult, unless the department determines that you do not pose a risk to a child's safety, well-being, and long-term stability.

(5) You must demonstrate that you, your staff members, and volunteers have:

(a) The understanding, ability, physical health, emotional stability, and personality suited to meet the physical, mental, emotional, cultural, and social needs of the children under your care; and

(b) The ability to furnish children with a nurturing, respectful, and supportive environment regardless of the child's actual or perceived race, ethnicity, religion, or SOGIE.

(6) At any time, we may require you, your staff members, and volunteers to give us additional information. We may also require an evaluation of your facility or property, or of a staff member or volunteer working for your facility or agency, by an evaluator we recommend. Any evaluation requested by the department will be at your expense. The evaluator must be given written permission to share information with us prior to and throughout the evaluation process.

(7) Any staff member or volunteer who is found to have misrepresented or provided fraudulent information may be disqualified.

(8) Before granting or renewing a license, your licensor will assess your ability to provide a safe environment for children and to provide the quality of care needed by children placed in your care. Your licensor will also determine that you meet training requirements.

[Statutory Authority: RCW 43.43.832, 74.13.031, 74.15.030 and P.L. 115-12. WSR 20-05-024, § 110-145-1330, filed 2/7/20, effective 3/9/20. WSR 18-14-078, recodified as § 110-145-1330, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 74.15.010, 74.15.030, 74.15.040,

74.15.090, 74.13.031, 74.39A.056, 43.43.832. WSR 18-11-138, § 388-145-1330, filed 5/23/18, effective 6/23/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-145-1330, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-145-1335 What additional steps must I complete prior to licensing? (1) You must submit ~~((to your licenser))~~, through the licensing provider portal, a detailed written program description for ~~((DLR)) LD approval. ((FN)) The description ((you))~~ must outline:

- (a) Your mission and goals;
- (b) A description of the services you will provide to children and their families;
- (c) Your written policies covering qualifications, duties, and ongoing training for developing and upgrading staff skills; and
- (d) A description of your agency's policies and procedures.
- (e) For staffed residential facilities in family homes, you must provide a written plan to the child's ~~((DSHS worker))~~ DCYF caseworker for the supervision of children in your care if you work outside of your staffed residential home.

(2) You must have a site inspection by your ~~((DLR))~~ LD licenser or someone designated by ~~((DLR))~~ LD who can verify that your premises have:

- (a) Adequate storage for staff and client files;
 - (b) A landline working telephone;
 - (c) Adequate space for privacy when interviewing parents and children;
 - (d) Room or area used for administrative purposes;
 - (e) Adequate space for visitation;
 - (f) Appropriate furnishings for the children in your facility;
- and
- (g) Your license clearly posted (if inspection is for a renewal license).

(3) All facilities described in this chapter, (except for staffed residential homes for five or fewer children), are required to meet the health requirements to receive a certificate of compliance from the ~~((Washington state department of health (DOH)))~~ DOH and the fire safety requirements from the ~~((Washington state patrol fire protection bureau (WSP/FPB)))~~ WSP/FPB.

(4) You, your employees, and volunteers are required to submit, through the licensing provider portal, a negative tuberculosis (TB) test or an X-ray, unless you provide documentation of a negative TB test in the previous twelve months. If there is a positive TB test, then the individual must submit a physician's statement identifying that there is no active TB or risk of contagion to children in care.

(a) We may grant an exception to the TB test requirement, in consultation with a licensed health care provider.

(b) This exception would require a statement from a licensed health care provider (MD, DO, ND, PA or ARNP) indicating that a valid medical reason exists for not having a TB test.

(5) If you are being licensed to care for children under the age of two, you, your employees, and volunteers working in the facility caring for children under the age of two are required to provide, through the licensing provider portal, documentation verifying you have current pertussis and influenza vaccinations. The department may license you to serve children under the age of two even though you, your employees, or volunteers are unable to obtain an influenza vaccination for medical reasons. In this case, a licensed health care provider's statement is required noting that the influenza vaccination would result in severe medical consequences to the person and that there is no other form of the influenza vaccine that would not cause severe medical consequences. All other employees or volunteers must still be vaccinated. We recommend, ~~((+))~~ but do not require ~~((+))~~, these immunizations for you, your employees, and volunteers when you serve children age two and older.

(6) You must ~~((have))~~ submit, through the licensing provider portal, proof of current immunizations for any children living on the premises, not in out-of-home care. We may, in consultation with a licensed health care provider, grant exceptions to this requirement if you have a statement from a licensed health care provider ~~((+))~~, e.g., MD, DO, ND, PA or ARNP((+)).

[WSR 18-14-078, recodified as § 110-145-1335, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 74.15.010, 74.15.030, 74.15.040, 74.15.090, 74.13.031, and P.L. 113-183. WSR 16-17-101, § 388-145-1335, filed 8/19/16, effective 9/19/16. Statutory Authority: RCW 74.15.010, 74.15.030, 74.15.040, 74.15.090, and 74.13.031. WSR 16-01-121, § 388-145-1335, filed 12/18/15, effective 1/18/16. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-145-1335, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-145-1340 How long do I have to complete the licensing application process? (1) You must complete your licensing application ~~((and submit))~~ by submitting all ~~((DLR))~~ required documents within ninety days of submitting the application through the licensing provider portal and background authorization forms to the department.

(2) If you do not meet this ~~((ninety-day))~~ 90-day deadline, your licensor may withdraw your application.

(3) As a courtesy, a renewal notification and renewal materials will be sent ~~((one hundred and twenty))~~ 120 days prior to your license expiration date. If you do not receive this renewal notice it is your responsibility to contact your licensor.

(4) You must send the renewal application and all required background authorization forms to your licensor at least ~~((ninety))~~ 90 days prior to the expiration of your current license.

[WSR 18-14-078, recodified as § 110-145-1340, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020,

13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-145-1340, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-145-1380 May a group care facility be issued more than one type of license? (1) A group care facility may not be licensed by ((DLR)) LD for more than one type of license in the same building (a group care facility and a CPA for example), unless the department determines that care of one type of client does not interfere with the care of another type of client, and you have approval from the ((DLR)) LD administrator. We may require separation of resident populations between the programs. You must meet the requirements for both licenses.

(2) If you have multiple licenses from different agencies in the same location, you must obtain approval from ((DLR)) LD prior to providing services and accepting placements.

[WSR 18-14-078, recodified as § 110-145-1380, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-145-1380, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-145-1385 When may I be certified to provide care to children? (1) When you meet the licensing requirements, you may apply to us through the licensing provider portal for certification of your facility, rather than a license, if the following conditions apply:

(a) You are exempt from needing a license ((per)) under chapter 74.15 RCW((+)), and you wish to serve department-funded children; or

(b) You are licensed by authority of an Indian tribe within the state under RCW 74.15.190.

[WSR 18-14-078, recodified as § 110-145-1385, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-145-1385, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-145-1410 How do I appeal the decision of the office of administrative hearings' administrative law judge? (1) The decision of the administrative law judge is the final decision of the department unless you or the department files a petition for review with ((DSHS)) DCYF board of appeals within ((twenty-one)) 21 calendar days

after the administrative law judge's decision is mailed to the parties.

(2) The procedure for requesting or responding to a petition for review with the board of appeals is described in ((WAC 388-02-0560 through 388-02-0635)) chapter 110-03 WAC.

(3) We will not appeal decisions made by the board of appeals.

(4) If you disagree with the board of appeals, you may file a petition in superior court and ask for further review (RCW 34.05.510 to 34.05.598).

[WSR 18-14-078, recodified as § 110-145-1410, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-145-1410, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-145-1480 What are the general ratios of staff to children under care? (1) You must have at least one case manager providing case management services for every ((twenty-five)) 25 children in care.

(2) If you provide care as a group receiving center, emergency respite center, or a resource and assessment center, you must have at least one case manager for every ((fifteen)) 15 children in care.

(3) If you provide care as a secure, semi-secure, and regular crisis residential center, you must have one case manager at a minimum, and must maintain a ratio of one case manager for every ((6)) six children in care.

(4) Staffing ratios specific to your program are outlined in WAC ((388-145-1890 through 388-145-2200)) 110-145-1890 through 110-145-2200.

(5) If you have both a license and a contract for services, you must adhere to the most stringent staffing ratios.

(6) To keep the proper ratio of staff to children, the executive director, health care staff, on-site program manager, support staff, and maintenance staff may serve temporarily as direct care staff if they meet all other direct care staff qualifications and training.

(7) You must have relief staff so that all staff can have the equivalent of two days off a week. This is not required for family members if you have a staffed residential facility in a family residence.

(8) Children must be supervised during sleeping hours by at least one awake staff when:

(a) There are more than six children in care; and

(b) The major focus of the program is behavioral rather than the development of independent living skills such as a teen parent program or responsible living skills program; or

(c) The behavior of at least one of the youth poses a risk to self or others.

(9) Staffing ratios may be higher than the minimum listed if necessary for the health and safety of children ((and/or)) staff, or both, or per contract requirement.

(10) You must have one back-up or on-call person available at all times to report to the facility as soon as possible but no later than ~~((thirty))~~ 30 minutes.

[WSR 18-14-078, recodified as § 110-145-1480, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-145-1480, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-145-1490 ~~What ((is))~~ are the preservice training requirements for staff and volunteers ((having direct)) who directly care responsibility to ((children/youth)) children and youth? (1)

Prior to having unsupervised ~~((contact with))~~ access to children, staff, and volunteers must have a minimum of ~~((sixteen))~~ 16 hours of preservice training, including policies and procedures, job responsibilities and facility administration. ~~((This))~~

(2) The requirement in subsection (1) of this section is in addition to required first aid and cardiopulmonary training (CPR) in WAC ((388-145-1500)) 110-145-1500 and required ((HIV/AIDS/bloodborne)) bloodborne pathogen training in WAC ((388-145-1505)) 110-145-1505.

(3) Preservice training must be relevant to the type of children and families and the program services you provide. Preservice training ((will usually)) may include ((the following)), but is not limited to:

(a) Child abuse and neglect identification and reporting requirements;

(b) Incident reporting;

(c) Accessing community resources;

(d) Client confidentiality;

(e) Family dynamics and family intervention techniques;

(f) Licensing regulations specific to your facility;

(g) Child development;

(h) Grief and loss;

(i) Cultural needs of children in care;

(j) Sexually exploited youth;

(k) Behavior management and crisis intervention techniques;

(l) Conflict resolution or problem-solving skills;

(m) Substance abuse;

(n) Sexually aggressive and physically aggressive ~~((/))~~ and assaultive training;

(o) Effects of trauma on children;

(p) Youth supervision requirements; ~~((and))~~

(q) Fire safety and emergency planning; and

(r) Foundational LGBTQIA+ culture.

~~((2) New))~~ (4) Newly hired staff and volunteers must work shifts with fully trained staff until the new staff and volunteers have completed all ~~((required))~~ preservice training requirements under this section.

[WSR 18-14-078, recodified as § 110-145-1490, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020,

13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-145-1490, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-145-1495 What is the in-service training requirement for staff and volunteers having responsibility to provide care to (~~children/youth~~) children and youth? (1) If you have employees in your agency, you must offer in-service training programs for developing and upgrading staff skills. If you have five or more employees or volunteers, your training plan must be in writing.

(2) Staff must complete a minimum of (~~twenty-four~~) 24 hours of ongoing education and in-service training annually. Training must be relevant to the problems experienced by the children you serve, (~~which usually will~~) and may include, but is not limited to:

(a) Crisis intervention techniques, including verbal deescalation, positive behavior support, and physical (~~response/restraint~~) response and restraint training as approved by the department;

(b) Behavior management techniques;

(c) Substance abuse;

(d) Suicide prevention, assessment, and intervention;

(e) Family intervention techniques;

(f) Indian child welfare and working with Native American children;

(g) Cultural diversity;

(h) Mental health issues and interventions;

(i) Mediation skills;

(j) Conflict (~~management/problem solving~~) management and problem-solving skills;

(k) Child abuse and neglect;

(l) Characteristics and management of sexually aggressive or otherwise predatory behavior and physically assaultive behavior;

(m) Emergency procedures;

(n) (~~HIV/AIDS/bloodborne~~) Bloodborne pathogens; (~~and~~)

(o) Fire safety and emergency planning; and

(p) Foundational LGBTQIA+ culture.

(3) You must discuss with your staff updated policies and procedures, as well as, the rules contained in this chapter.

(4) Your training on behavioral management must be approved by DLR and must include nonphysical, age-appropriate methods of redirecting and controlling behavior.

(5) You must document all training including a description of the training provided and the date of the training. This information must be kept in each employee's file or in a separate training file.

[WSR 18-14-078, recodified as § 110-145-1495, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-145-1495, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-145-1505 What ((HIV/AIDS and)) bloodborne pathogens training is required? (1) You or any of your staff who provide supervision or direct care to children, must have training on ((HIV/AIDS, and)) bloodborne pathogens, including infection control standards.

(2) You must use infection control requirements and educational material consistent with the current approved curriculum published by the department of health, office on HIV/AIDS.

(3) Staff providing direct care to children must use universal precautions when coming in contact with the bodily fluids of a child.

[WSR 18-14-078, recodified as § 110-145-1505, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-145-1505, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-145-1510 What personnel records must I ((keep at my facility)) submit to the department? (1) You must ((keep)) submit to the department, through the licensing provider portal, the following personnel records ((on file)) for each ((staff)) person who is employed by or volunteers at your facility((. You must keep the following)):

(a) An employment or volunteer application, including work and education history;

(b) Education documentation;

(c) Job description of the position at your facility;

(d) Signed confidentiality statement;

(e) Signed mandated reporter statement;

(f) A record of participation in the program's orientation ((and/or)) and preservice training and in-service training;

(g) Behavior management training documentation;

(h) ((First aid/CPR/HIV/AIDS/bloodborne)) First aid, CPR, and bloodborne pathogens training documentation;

(i) A copy of a food handlers permit, if applicable;

(j) A copy of a valid driver's license for staff transporting clients or employees;

(k) A copy of a government issued photo ID;

(l) A copy of current auto insurance, ((+))if using private vehicle to transport((+));

(m) A log with background check information, containing dates of request and completion of the checks on all staff, interns, volunteers, and service contractors;

(n) A record of a negative Mantoux, tuberculin skin tests results, X-ray, or a medical exemption to the skin test or X-ray; and

(o) A record of required staff immunizations.

(2) You must maintain a written record of case consultation by a master's level consultant as defined in WAC ((388-145-1460)) 110-145-1460 for case managers with a bachelor's degree.

[WSR 18-14-078, recodified as § 110-145-1510, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-145-1510, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-145-1520 What are the requirements for children's records? (1) Any identifying and personal information about a child and the child's family must be kept confidential as required by chapter 26.33 RCW. These records must be kept in a secure place inaccessible to clients, unauthorized staff, and the public. Children's records must never be submitted to the department through the licensing provider portal.

(2) During a child's placement, the child's record must be kept secure at the site.

(3) Your facility must attempt to obtain the following information for the child's record, as appropriate to your program:

(a) The child's name, birth date, and legal status;

(b) Name and telephone number of the child's (~~DSHS worker and/or~~) DCYF caseworker or case manager and the child's tribal ICW case manager for each child in care, if appropriate;

(c) Written consent, if any, for providing medical care and emergency surgery, ~~((+))~~ unless that care is authorized by a court order ~~((+))~~;

(d) Names, addresses, and telephone numbers of persons authorized to take the child in care out of the facility;

(e) Copies of the current legal authority to place, if any;

(f) Current case plans;

(g) Social summary;

(h) Documentation of a child's treatment provided by your staff with the signature of the person making the entry to the progress notes;

(i) Information related to suspected child abuse (~~and/or~~) or neglect referrals made to children's administration, including the concern, date and person taking the report;

(j) Intake procedures completed including an assessment of the youth's likelihood to stay in your facility;

(k) Date and time of orientation;

(l) A log and written report that identifies all incidents requiring physical restraints for a child;

(m) Any incident reports involving youth; and

(n) A copy of any discharge summaries and family assessments in the child's case record.

~~((3) In addition,))~~ (4) Your records must contain the following information if available:

(a) Names, (~~address~~) addresses, and telephone numbers of parents or persons to be contacted in case of emergency;

(b) Information on specific cultural needs of the child;

(c) Medical history including any medical problems, name of doctor, type of medical coverage and provider, date of any illnesses or accidents while at the facility;

(d) Mental health history and any current mental health, chemical dependency, and behavioral issues, including medical and psychological reports when available;

(e) Other pertinent information related to the child's health, including basic medical information, such as current prescription medications, immunizations, allergies, dental records (~~(and/or)~~), and eye exams;

(f) Child's school records, report cards, school pictures, and individual education plans (IEP), 504 plans;

(g) Special instructions including supervision requirements and suggestions for managing problem behavior;

(h) Inventory of the child's personal belongings at the time of placement;

(i) Approved list of individuals the child may have contact with;

(j) The child's visitation plan; and

(k) For pregnant and parenting youth, information on the (~~mother/father~~) mother and father of the youth's child, if available.

~~((4))~~ (5) If a child's placement extends beyond (~~seventy-two~~) 72 hours, you must obtain the child's immunization records. If the child is not current with immunizations, they must be updated as soon as medically possible. Immunization records are not required to be current for children placed in:

(a) Interim facilities;

(b) Group receiving centers; or

(c) Crisis residential centers.

~~((5))~~ (6) If you are unable to obtain this information from the department, you must document your attempt to obtain the requested information in the child's file.

[WSR 18-14-078, recodified as § 110-145-1520, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-145-1520, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-145-1530 What information can be shared about a child or a child's family? (1) Information about a child or the child's family is confidential and must only be shared with people directly involved in the case plan for a child.

(2) For children placed by the department, you may discuss information about the child, the child's family and the case plan only with:

(a) A representative of the department, including staff from (~~DCFS, DLR and DDA~~) CWP and LD;

(b) A representative of the department of health, the department of social and health services, the office of the state fire marshal, and the office of the family and children's ombuds;

(c) A group residential program staff;

(d) The child's attorney;

(e) The child's assigned guardian ad litem (~~or court-appointed special advocate; and/or~~); and

(f) Others designated by the child's (~~DSHS worker~~) DCYF case-worker.

(3) You may check with your child's (~~DSHS worker~~) DCYF case-worker for guidance about sharing information with the child's teacher, counselor, doctor, respite care provider, any other professional, or others involved in the case plan.

[WSR 18-14-078, recodified as § 110-145-1530, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-145-1530, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-145-1535 What incidents involving children must I report? (1) You must report the following incidents immediately and in no instance later than (~~forty-eight~~) 48 hours after the incident to your local (~~children's administration~~) DCYF intake staff and the child's (~~DSHS worker~~) DCYF caseworker or (~~child placing agency (CPA)~~) CPA case manager and the child's tribal Indian child welfare (ICW) case manager as applicable:

(a) Death, serious illness or injury, or psychiatric care that requires medical treatment or hospitalization of a child in care;

(b) Any time you suspect physical or sexual abuse, neglect, or exploitation of a child as required under chapter 26.44 RCW;

(c) Sexual contact between two or more children that is not considered typical play between preschool age children;

(d) Any disclosure by a child in care of sexual or physical abuse;

(e) Any child's suicide attempt that results in injury requiring medical treatment or hospitalization;

(f) Any use of physical restraint alleged to have been improperly applied or excessive;

(g) Physical assault between two or more children that results in injury requiring off-site medical attention or hospitalization;

(h) Physical assault of an employee, volunteer, or others by a child in care that results in injury requiring off-site medical attention or hospitalization;

(i) Any medication given or consumed incorrectly that requires off-site medical attention; or

(j) Property damage that is a safety hazard and not immediately corrected or may affect the children's health and safety.

(2) You must report the following incidents related to a child in care as soon as possible or in no instance later than (~~forty-eight~~) 48 hours after the incident, to the child's (~~DSHS worker~~) DCYF case-worker or CPA case manager and the child's tribal ICW case manager as applicable:

(a) Suicidal or homicidal thoughts, gestures, or attempts that do not require professional medical treatment;

(b) Unexpected health problems outside the usual range of reactions caused by medications that do not require professional medical attention;

- (c) Any incident of medication incorrectly administered or consumed;
- (d) Any professional treatment for emergency medical or emergency psychiatric care;
- (e) Physical assault between two or more children that results in injury but does not require professional medical treatment;
- (f) Physical assault of a foster parent, employee, volunteer, or others by a child that results in injury but does not require professional medical treatment;
- (g) Drug or alcohol use by a child in your care;
- (h) Any inappropriate sexual behavior by or toward a child; or
- (i) Use of prohibited physical restraints for behavior management.
- (3) You must maintain a written record of any report with the date, time, and staff person who makes the report.
- (4) Programs that provide care to medically fragile children who have nursing care staff on duty may document the incidents described in subsection ~~((s))~~ (2)(b) and (c) of this section in the facility daily logs, rather than contacting the ~~((DSHS worker))~~ DCYF caseworker or DSHS case manager and the child's tribal Indian child welfare (ICW) case manager, if agreed to in the child's case plan.

[WSR 18-14-078, recodified as § 110-145-1535, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 74.15.010, 74.15.030, 74.15.040, 74.15.090, 74.13.031, and P.L. 113-183. WSR 16-17-101, § 388-145-1535, filed 8/19/16, effective 9/19/16. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-145-1535, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

- WAC 110-145-1540 What are my reporting responsibilities when a child is missing from care, ~~((+))~~ except for overnight youth shelters ~~((+))~~?** (1) As soon as you or your staff have reason to believe a child in your care is missing as defined in WAC ~~((388-145-1305 or))~~ 110-145-1305, has refused to return to or remain in your care, or whose whereabouts are otherwise unknown, you are required to notify the following:
- (a) The child's assigned ~~((DSHS worker))~~ DCYF caseworker, as appropriate;
- (b) ~~((CA))~~ DCYF intake, if the ~~((DSHS worker))~~ DCYF caseworker is not available or it is after normal business hours.
- (2) You are required to ~~((contact))~~ notify local law enforcement within six hours if the child is missing. However, if one or more of the following factors is present, you must contact law enforcement immediately:
- (a) The child is believed to have been taken from placement. This means the child's whereabouts are unknown, and it is believed that the child has been concealed, detained, or removed by another person;
- (b) The child is believed to have been lured from placement or has left placement under circumstances that indicate the child may be at risk of physical or sexual assault or exploitation;

- (c) The child is age thirteen or younger;
 - (d) The child has one or more physical or mental health conditions that if not treated daily will place the child at severe risk;
 - (e) The child is pregnant or parenting and ~~((the infant/child))~~ their infant or child is believed to be with ~~((him or her))~~ them;
 - (f) The child has severe emotional problems (e.g., suicidal thoughts) that if not treated will place the child at severe risk;
 - (g) The child has an intellectual and developmental disability that impairs the child's ability to care for ~~((him/herself))~~ themselves;
 - (h) The child has a serious alcohol ~~((and/or))~~ or substance abuse problem; or
 - (i) The child is at risk due to circumstances unique to that child.
- (3) After contacting local law enforcement, you must also contact the national center for missing and exploited children at ~~((1-(800)-843-5678))~~ 1-800-843-5678 and report the child missing from care.
- (4) If the child leaves school or has an unauthorized absence from school, you should consult with the child's ~~((DSHS worker))~~ DCYF caseworker to assess the situation and determine when you should call law enforcement. If any of the factors listed in subsection ~~((s))~~ (2) (a) through (i) of this section are present, you and the child's ~~((DSHS worker))~~ DCYF caseworker may decide it is appropriate to delay notification to law enforcement for up to four hours after the end of the school day to give the child the opportunity to return on their own.
- (5) You must provide the following information to law enforcement and to the child's ~~((DSHS worker))~~ DCYF caseworker when making a missing child report, if available:
- (a) When the child left;
 - (b) Last known location of the child;
 - (c) What the child was wearing;
 - (d) Any known behaviors or interactions that may have caused the child's departure;
 - (e) Possible places where the child may go;
 - (f) Special physical or mental health conditions or medications that affect the child's safety;
 - (g) Known companions who may be aware or involved in the child's absence;
 - (h) Other professionals, relatives, significant adults, or peers who may know where the child would go; and
 - (i) Recent photo of the child.
- (6) You must ask law enforcement for the missing person report number and provide it to the ~~((CA DSHS worker))~~ DCYF caseworker or staff and the child's tribal Indian child welfare (ICW) case manager.
- (7) At any time after making an initial report you learn of a missing child's whereabouts, you must report that information to the child's ~~((DSHS worker))~~ DCYF caseworker and the child's tribal Indian child welfare (ICW) case manager.
- (8) If a child is returned to your care, it is your responsibility to cancel the run report and notify all persons you have informed of the child's return.
- (9) Youth participating in the extended foster care (EFC) program are exempt from these requirements. You must follow all other reporting requirements as defined in WAC ~~((388-145-1535))~~ 110-145-1535.

[WSR 18-14-078, recodified as § 110-145-1540, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 74.15.010, 74.15.030, 74.15.040, 74.15.090, 74.13.031, and P.L. 113-183. WSR 16-17-101, § 388-145-1540, filed 8/19/16, effective 9/19/16. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-145-1540, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-145-1545 What are my reporting requirements in my licensed facility serving runaway or homeless youth? ~~((+1))~~ If you are licensed as an overnight youth shelter or are otherwise licensed to provide residential services for runaway or homeless youth, and you learn that a youth staying in your facility does not have parental permission to be there, you or your staff must:

~~((a))~~ (1) Within ~~((seventy-two hours-))~~ 72 hours, preferably ~~((twenty-four))~~ 24 hours ~~((+))~~, notify the parent by telephone or other reasonable means unless compelling reasons exist. You must provide the youth's whereabouts, give a description of the youth's physical and emotional condition, and report the circumstances surrounding the youth's contact with your facility. You must document this notification in the youth's file.

~~((b))~~ (2) If compelling reasons exist, you must notify ~~((children's administration))~~ DCYF intake. This includes reason to believe notifying the youth's parents will result in abuse or neglect of the youth as defined in RCW 26.44.020.

~~((c))~~ (3) You or your staff must also review the public information on missing youth made available by the Washington state patrol at least once every eight hours while a youth is present at your facility. If a youth is listed as missing, you must immediately notify ~~((children's administration))~~ DCYF intake with the information listed in ~~((1)(a) above))~~ subsection (1) of this section.

[WSR 18-14-078, recodified as § 110-145-1545, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-145-1545, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-145-1555 What does the department require for my buildings and property? (1) You must maintain your buildings, premises, and equipment in a clean and sanitary condition, free of hazards, and in good repair. You must furnish your facility appropriately, based on the age and activities of the children in your care. You must:

(a) Provide handrails for steps, stairways, and ramps if required by the department;

- (b) Have emergency lighting devices available and in operational condition;
- (c) Provide appropriate furnishings, based on the age and activities of the children in your care;
- (d) Have washable, water-resistant floors in bathrooms, kitchens, and other rooms exposed to moisture. Washable short-pile carpeting may be approved in kitchen areas if kept clean and sanitary;
- (e) Provide tamper-proof or tamper-resistant electrical outlets or blank covers installed in areas accessible to children under the age of six or other persons with limited capacity or who might be endangered by access to them; and
- (f) Have easy access to rooms occupied by children in case an emergency arises.
- (2) You must have adequate indoor and outdoor space, ventilation, toilet and bathing facilities, light, and heat to ensure the health and comfort of all members of the household.
- (3) The cleanliness and care of your premises must meet generally accepted health standards for the storage and preparation of food.
- (4) You must make reasonable attempts to keep the premises free from pests, such as rodents, flies, cockroaches, fleas, and other insects using the least toxic methods.
- (5) People must be able to easily open doors from the inside and outside in all areas of the facility that are occupied, unless the building or structure has a fire sprinkler protection system and was previously approved by the local fire marshal or building official with jurisdiction. This includes closets, bathrooms, and bedrooms. You must also have easy access to the outside in case of an emergency.
- (6) Facilities must have nonbreakable light fixture covers or shatter-resistant light bulbs or tubes in food preparation and dining areas. ((DLR)) LD will review your facility to determine other areas that may be a concern for the safety of children.
- (7) You must have an immediate plan to address hazardous conditions on your property or in your facility. The department may remove children from your care if hazardous conditions are not immediately remedied.
- (8) Your facility must be accessible to emergency vehicles and your address must be clearly visible on your facility or mailbox so that first responders can easily find your location.
- (9) Your facility must be located on a well-drained site, free from hazardous conditions. You must discuss with your licensor any potential hazardous conditions, considering the children's ages, behaviors, and abilities.
- (10) You must have a working landline telephone at all times. Individuals calling your facility must be able to leave a message at all times.
- (11) You must post emergency numbers and the physical address of the facility in an easily visible location near the telephone. This must include the Washington state poison control number (1-800-222-1222).
- (12) Utility rooms with mop sinks that do not have windows opening to the outside must be ventilated with a mechanical exhaust fan to the outside of the building.
- (13) The use of window blinds or other window coverings with pull cords capable of forming a loop and posing a risk of strangulation to children are prohibited under RCW ((43.215.360)) 43.216.380.
- (14) Infants and toddlers are not allowed to use wheeled baby walkers.

[WSR 18-14-078, recodified as § 110-145-1555, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 74.15.010, 74.15.030, 74.15.040, 74.15.090, and 74.13.031. WSR 17-22-039, § 388-145-1555, filed 10/24/17, effective 11/24/17. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-145-1555, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-145-1600 What are the general requirements for bedrooms?

(1) Each child must have or share a bedroom, approved by the licensor, with privacy and space that is appropriate and adequate to meet the child's developmental needs.

(2) For facilities licensed after December 31, 1986, bedrooms must have:

(a) Adequate ceiling height for the safety and comfort of the occupants (~~((normally this would be))~~ typically, seven and ~~((a))~~ one-half feet); and

(b) A window that can open to the outside, ~~((allowing))~~ allows natural light into the bedroom, and ~~((permitting))~~ permits emergency access or exit.

(3) Each bedroom must have unrestricted direct access to outdoors, as well as one direct access to common use areas such as hallways, corridors, living rooms, day rooms, or other common use areas.

(4) Approval may be granted to a building or structure that does not have direct access to the outdoors if it has a fire sprinkler protection system and was previously approved by the local fire marshal or building official with jurisdiction.

(5) You must not use hallways, kitchens, living rooms, dining rooms, or unfinished basements as bedrooms.

(6) You must not use common areas of the facility such as hallways, kitchens, living rooms, and dining rooms as bedrooms for anyone in the household without permission of the ~~((DLR))~~ LD licensor and ~~((DSHS worker))~~ DCYF caseworker, if applicable.

(7) An adult must be on the same floor or within easy hearing distance and access to where children under six years of age are sleeping.

[WSR 18-14-078, recodified as § 110-145-1600, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 74.15.010, 74.15.030, 74.15.040, 74.15.090, and 74.13.031. WSR 17-22-039, § 388-145-1600, filed 10/24/17, effective 11/24/17. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-145-1600, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-145-1605 What are the requirements for sharing bedrooms?

(1) A provider must consider what bedroom placement is in the best interest of a foster child in consultation with the child's DCYF caseworker.

(2) Shared bedrooms must provide enough floor space for the safety and comfort of children.

~~((2))~~ (3) When a teen parent and ~~((his/her))~~ their infant sleep in the same room, the room must contain at least ~~((eighty))~~ 80 square feet of usable floor space. You must allow only one parent and ~~((infant(s)))~~ infants to occupy a bedroom.

~~((3))~~ (4) No more than four children ~~((shall))~~ can sleep in the same room, with the exception of interim facilities. This includes foster children and any other children.

~~((4))~~ (5) Children over age one may share a bedroom with an adult who is not the child's parent only if necessary for close supervision due to the child's medical or developmental condition and the child's licensed health care provider recommends it in writing.

~~((5))~~ (6) An individual ~~((that is))~~ in the extended foster care program may share a bedroom with a younger child of the same gender. If the younger child is unrelated to the individual in the extended foster care program, the child must be at least ~~((ten))~~ 10 years of age. A provider may place a child who identifies as transgender, gender fluid, or both in a bedroom with a child of the same or similar gender identity.

~~((6))~~ (7) Foster children may not share the same bedroom with a child of another gender identity unless all children are under age six. In circumstances of transgender, gender fluidity, or both, a provider may place a child in a bedroom with another child of the same or similar gender identity.

~~((7))~~ (8) An exception may be granted to subsections (3) ~~((though (6)))~~ through (7) in this section with an administrative approval if it is supported by the LD licenser ~~((+))~~ and the ~~((child(ren)'s DSHS worker))~~ children's DCYF caseworker, ~~((as))~~ if appropriate ~~((+))~~, and is in the best interest of the child.

[WSR 18-14-078, recodified as § 110-145-1605, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 74.15.010, 74.15.030, 74.15.040, 74.15.090, 74.13.031, and P.L. 113-183. WSR 16-17-101, § 388-145-1605, filed 8/19/16, effective 9/19/16. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-145-1605, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-145-1610 What are the requirements for beds in a facility? (1) You must provide an appropriately sized separate bed for each child, with clean bedding and a mattress in good condition.

(2) Some children may soil the bed, and you may need to plan accordingly. You must provide waterproof mattress covers or moisture-re-

sistant mattresses if needed. Each child's pillow must be covered with waterproof material or be washable.

(3) A mat may be used for napping but not as a substitute for a bed.

(4) You must provide an infant with a crib that ensures the safety of the infant, and complies with chapter 70.111 RCW, (~~Consumer Product Safety Improvement Act of 2008~~) Infant Crib Safety Act. These regulations include:

(a) A maximum of 2 and 3/8" between vertical slats of the crib; and

(b) Cribs, infant beds, bassinets, and playpens must be made of wood, metal, or approved plastic, with secure latching devices and clean, firm, snug fitting mattresses covered with waterproof material that can easily be disinfected.

(5) You must place infants on their backs for sleeping, unless advised differently by the child's licensed health care provider.

(6) You must not have loose blankets, pillows, crib bumpers, or stuffed toys with a sleeping infant.

(7) You may swaddle infants using one lightweight blanket upon the advice and training of a licensed health care provider. You must keep the blanket loose around the hips and legs when swaddling in order to avoid hip dysplasia. You may swaddle infants under two months of age unless a licensed health care provider directs otherwise. You must not dress a swaddled infant in a manner that allows them to over-heat.

(8) You must not use wedges and positioners with a sleeping infant unless advised differently by the infant's licensed health care provider.

(9) You must not use weighted blankets for children under three years of age or for children of any age with mobility limitations.

(10) You may use a weighted blanket upon the advice and training from a licensed health care provider for children over the age of three years who do not have mobility limitations. You must meet the following requirements:

(a) The weight of the blanket must not exceed (~~ten~~) 10 percent of the child's body weight;

(b) Metal beads are choking hazards and must not be used in a weighted blanket;

(c) You must not cover the child's head with a weighted blanket or place it above the middle of the child's chest:

(d) The weighted blanket must not hinder a child's movement; and

(e) The weighted blanket must not be used as a restraint.

(11) You must not allow children to use loft style beds or upper bunks if the child is vulnerable due to age, development, or condition, such as preschool children, expectant mothers, and children with a disability.

[WSR 18-14-078, recodified as § 110-145-1610, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 74.15.010, 74.15.030, 74.15.040, 74.15.090, 74.13.031, 74.39A.056, 43.43.832. WSR 18-11-138, § 388-145-1610, filed 5/23/18, effective 6/23/18. Statutory Authority: RCW 74.15.010, 74.15.030, 74.15.040, 74.15.090, 74.13.031, and P.L. 113-183. WSR 16-17-101, § 388-145-1610, filed 8/19/16, effective 9/19/16. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-145-1610, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-145-1625 What are the requirements for the use of electronic monitors to monitor children? (1) (~~(CA)~~) DCYF prohibits the use of video and audio monitoring of children in the interior of a group residential facility unless all of the following are met:

(a) The (~~(DLR)~~) LD administrator grants approval for the use of an electronic monitoring device in your facility following a request by the child's (~~(DSHS worker)~~) DCYF caseworker;

(b) The court approves implementation of the monitoring as part of the child's case plan; and

(c) You maintain a copy of the approval.

(2) The prohibition of audio or visual monitoring does not include monitoring of the following:

(a) Infants or children through four years of age;

(b) Medically fragile or sick children;

(c) Video recording equipment to document actions of a child as directed in writing by the child's physician;

(d) Video recording for special events such as birthday parties or vacations; or

(e) The use of door or window alarms or motion detectors.

[WSR 18-14-078, recodified as § 110-145-1625, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 74.15.010, 74.15.030, 74.15.040, 74.15.090, 74.13.031, and P.L. 113-183. WSR 16-17-101, § 388-145-1625, filed 8/19/16, effective 9/19/16. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-145-1625, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-145-1630 Are time-delay mechanisms allowed on windows and doors? (~~(1)~~) The use of time-delay mechanisms on windows and doors of a group care facility (except for staffed residential homes licensed for five or fewer children) may be approved if:

(~~(a)~~) (1) They meet the fire codes and approval of the WSP/FPB;

(~~(b)~~) (2) There is an exterior door(~~(s)~~) that ensures escape in the event of an evacuation;

(~~(c)~~) (3) The time-delay (~~(mechanism(s))~~) mechanisms automatically unlock(~~(s)~~) when the fire alarm goes off;

(~~(d)~~) (4) The licensee has approval from the (~~(DLR)~~) LD licensor stating that the program is in compliance with (~~(the children's administration's)~~) DCYF's behavior management guidelines; and

(~~(e)~~) (5) The licensee has written approval (~~(of the DLR)~~) from the LD administrator.

[WSR 18-14-078, recodified as § 110-145-1630, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-145-1630, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-145-1660 Are guns allowed on a licensed facility's property? (1) You must not permit guns, ammunition, and other weapons on the premises of your facility, with the exception of law enforcement.

(2) You may allow a child under your care to use a firearm only if:

- (a) The child's (~~(DSHS worker)~~) DCYF caseworker approves;
- (b) The youth has completed an approved gun safety or hunter safety course; and
- (c) Adults who have completed a gun or hunter safety course are supervising use.

[WSR 18-14-078, recodified as § 110-145-1660, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-145-1660, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-145-1665 What are the fire safety requirements for all group residential facilities? (1) You must comply with the regulations developed by the (~~chief of the Washington state patrol through the director of the fire protection bureau (-)~~)WSP/FPB(~~(+)~~). These regulations are contained in the current fire code and Washington state amendments as adopted by the state of Washington. Contact the WSP/FPB for specific requirements.

(2) If you operate a staffed residential home for five or fewer children you must meet the fire safety requirements outlined in chapter (~~(388-148)~~) 110-148 WAC for child foster homes.

(3) You and your staff must be familiar with safety procedures related to fire prevention, including fire drill procedures.

(4) You and your staff must be able to:

- (a) Operate all fire extinguishers installed on the premises;
- (b) Test smoke detectors (~~(+)~~), more specifically, single station types(~~(+)~~);

(c) Conduct frequent inspections at your facility to identify fire hazards and take action to correct any hazards noted during the inspection;

(d) Ensure children are able to escape from every floor in your facility (~~(+)~~). In most cases, this includes a functional fire ladder available from upper stories(~~(+)~~); and

(e) Ensure windows open to the outside and are large enough for emergency personnel to enter and exit wearing rescue gear, unless the building or structure has a fire sprinkler protection system and was previously approved by the local fire marshal or building official with jurisdiction.

(5) You must have easy access to all rooms in your facility in case of emergencies.

(6) Barriers are required for fireplaces, wood stoves, and other heating systems for facilities licensed for children less than six

years of age. You must not leave open-flame devices unattended or use them for a purpose other than for what they were designed.

(7) Emergency vehicles must be able to access your facility. Your address must be clearly visible on your facility or mailbox so that emergency personnel can easily find your location.

(8) We may require you to have an inspection by WSP/FPB or the local fire authority if we have questions about fire safety, or if local ordinances or WSP/FPB require these inspections.

[WSR 18-14-078, recodified as § 110-145-1665, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 74.15.010, 74.15.030, 74.15.040, 74.15.090, and 74.13.031. WSR 17-22-039, § 388-145-1665, filed 10/24/17, effective 11/24/17. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-145-1665, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-145-1700 What must I include in a child's orientation to my facility?

(1) As part of admission, staff must give an orientation to all children over the age of six, ~~((+))~~ as developmentally appropriate ~~((-that))~~. The orientation will include ~~((s))~~, but ~~((is))~~ not be limited to:

- (a) A description of the program and services;
 - (b) A map ~~((and/or))~~ or tour of the physical facility;
 - (c) A review of your fire evacuation plan;
 - (d) The department-approved policy that states that a child may not have guns and other weapons, alcohol, tobacco, and drugs within the facility;
 - (e) Orientation on personal protection and personal boundaries;
- and
- (f) The department-approved policy on client visitation that includes access to the youth's attorney and ~~((DSHS worker))~~ DCYF case-worker.

(2) Written documentation of this orientation must be kept in each child's file.

[WSR 18-14-078, recodified as § 110-145-1700, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-145-1700, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-145-1710 What are the requirements about nondiscrimination? (1) You must follow all state and federal laws regarding non-discrimination while providing services to children in your care.

(2) You must ~~((treat))~~ support and engage foster children in your care with dignity and respect regardless of actual or perceived race, ethnicity, culture, ~~((sexual orientation and gender identity))~~ sex, or SOGIE.

(3) You must connect a child with resources that ~~((meets a))~~ supports the child's needs regarding race, religion, culture, ~~((sexual orientation))~~ and ~~((gender identity))~~ SOGIE.

[WSR 18-14-078, recodified as § 110-145-1710, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-145-1710, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-145-1730 What are the educational and vocational instruction requirements for children placed by the department, ~~((+))~~ except interim facilities ~~((+))~~? (1) You must meet the following requirements for providing education and vocational instruction to the children placed by the department. For each child you must:

- (a) Follow the educational plan approved by the child's ~~((DCFS worker))~~ DCYF caseworker;
- (b) Support the child in regular school attendance. If a child is absent from school you must follow the school's reporting requirements. Notify the child's ~~((DSHS worker))~~ DCYF caseworker if the child is absent from school more than three consecutive school days;
- (c) Receive approval from the child's ~~((DCFS worker))~~ DCYF caseworker prior to making any changes to a child's educational plan;
- (d) Support the child's educational plan by providing each child with necessary school supplies and a suitable place to study;
- (e) Develop a plan for a child's transportation to and from school;
- (f) Provide or arrange for independent living skills education for developing self-sufficiency for children over the age of ~~((fifteen))~~ 15 years; and
- (g) Encourage older youth to pursue a post-secondary education when appropriate.

(2) If the instruction is given on your premises, you must:

- (a) Receive approval from the child's ~~((DSHS worker))~~ DCYF caseworker if the child is placed in your care by the department;
- (b) Have the program certified by the office of the superintendent of public instruction (OSPI) and provide classrooms separate from the living area; and
- (c) Send ~~((DLR))~~ LD a written description of how you will provide an educational program for children under your care.

(3) If a child is not enrolled and attending school within three consecutive school days after being placed in your care, you must contact the child's school and ~~((DSHS worker))~~ DCYF caseworker in order to develop a plan which could involve long distance learning if appropriate.

[WSR 18-14-078, recodified as § 110-145-1730, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW

74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-145-1730, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-145-1740 Can children in my care receive services through the extended foster care program? Your facility can serve youth enrolled in the extended foster care program. You must adhere to WAC ((388-25-0500 through 388-25-0548)) 110-90-0010 through 110-90-0200.

[WSR 18-14-078, recodified as § 110-145-1740, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-145-1740, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-145-1750 What are the requirements for supervising children? (1) You must provide and arrange supervision that is appropriate for the child's age, and developmental level including:

(a) Appropriate adult supervision including ongoing and periodic checks of the children in your facility;

(b) Personal attention;

(c) Emotional support;

(d) Structured daily routines and living experiences; and

(e) Additional supervision as needed and required by the department. This supervision may require auditory or visual supervision at all times.

(2) You must also ensure that:

(a) Children under five years of age and children who are vulnerable due to their disability are not left unattended in a bathtub or shower;

(b) Cribs, bassinets, cradles, playpens, and swings are not used as a substitute for supervising or interactive play with infants and young children;

(c) Children who help with activities involving food preparation are supervised based on their age and skills;

(d) Children are assisted to develop self-control and judgment skills; and

(e) Children are encouraged to assume age-appropriate responsibility for their decisions and actions.

(3) Prior to placement, you must inquire if a child poses a risk to the other children in your facility or has special supervision needs by obtaining information from the parent((, legal)) or guardian, the child's ((DSHS worker)) DCYF caseworker, therapist, or previous placements. You must also:

(a) Develop a plan to address those needs;

(b) Obtain approval for the plan from the child's (~~(DCFS worker)~~) DCYF caseworker if the child is under the care and authority of the department; and

(c) Inform your licensor of the plan.

(4) All high-risk activities, including the use of power driven machines or other hazardous equipment, must be properly supervised by an adult. When participating in high-risk activities, children must:

(a) Be instructed how to use and required to use appropriate safety equipment, such as helmets and life vests; and

(b) Be in continuous visual or auditory range at all times, unless approved by the child's (~~(DSHS worker)~~) DCYF caseworker.

[WSR 18-14-078, recodified as § 110-145-1750, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-145-1750, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-145-1760 What are the travel requirements for children in care? You must get written approval from the child's (~~(DCFS worker)~~) DCYF caseworker for children in the care and custody of the department, or the child's parent or guardian for (~~(the)~~) children not in the department's care and custody prior to any travel over (~~(seventy-two)~~) 72 hours, and any out-of-country travel.

[WSR 18-14-078, recodified as § 110-145-1760, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-145-1760, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-145-1775 What belongings must be provided to a child leaving my facility? (1) You must permit a child who leaves your facility to take their personal belongings with them. This includes belongings the child brought with them or acquired in your care, such as clothing, mementos, bicycles, gifts, and any saved money.

(2) If it is not possible for the child to take their belongings at the time they leave, you are required to secure them for up to (~~(thirty)~~) 30 days and cooperate with the child's (~~(DSHS worker)~~) DCYF caseworker to transfer them to the child, as soon as possible.

[WSR 18-14-078, recodified as § 110-145-1775, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-145-1775, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-145-1795 How often do children need to be provided meals? You must provide all children a minimum of three meals and two snacks in each (~~(twenty-four)~~) 24-hour period. You may vary from this guideline only if you have written approval from the child's physician and (~~(DSHS worker)~~) DCYF caseworker.

[WSR 18-14-078, recodified as § 110-145-1795, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-145-1795, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-145-1800 What are the requirements for handling a child's special diet? You must have approval of the child's (~~(DSHS worker)~~) DCYF caseworker and written instructions by a physician, parent or guardian before serving nutrient concentrates, nutrient supplements, vitamins, and modified diets (~~(+)~~), such as therapeutic and allergy diets(~~(+)~~).

[WSR 18-14-078, recodified as § 110-145-1800, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-145-1800, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-145-1805 Are there special requirements for serving milk? (1) The milk or milk products you serve must be pasteurized and follow these recommended guidelines:

(a) Children under the age of (~~(twelve)~~) 12 months must receive formula or breast milk unless written authorization from the child's licensed health care provider requires a different liquid intake; and
 (b) Children between the age of (~~(twelve)~~) 12 and (~~(twenty-four)~~) 24 months must receive whole milk unless you have written authorization from a licensed health care provider not to serve whole milk.

(2) Before serving a child breast milk you must have approval of the child's (~~(DSHS worker)~~) DCYF caseworker, licensed health care provider, and parent or guardian. If breast milk is provided by anyone other than a baby's biological mother, it must be obtained through a licensed breast milk bank.

(3) When you are using bottles to feed infants you must sterilize and use them according to product standards and commonly acceptable practices. You must refrigerate filled bottles if you do not use them immediately, and you must empty the bottle if not used within (~~(twen-~~

~~ty-four~~)) 24 hours. If more than one child is bottle-fed, the child's name and date the bottle is prepared must be on each bottle.

(4) You must hold infants(~~(7)~~) under the age of six months(~~(7)~~) for all bottle feedings. Infants who are six months of age or over who are developmentally able may hold their own bottles as long as an adult remains in the room and within sight. You must take bottles from the child when the child finishes feeding, when the bottle is empty, or when the child falls asleep. You must not prop bottles when feeding infants.

(5) To prevent burns, formula or breast milk must not be warmed in a microwave oven.

[WSR 18-14-078, recodified as § 110-145-1805, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 74.15.010, 74.15.030, 74.15.040, 74.15.090, 74.13.031, 74.39A.056, 43.43.832, and 2017 c 20 § 4. WSR 18-05-037, § 388-145-1805, filed 2/13/18, effective 3/16/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-145-1805, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-145-1815 Are written policies and procedures required describing a facility's discipline methods?

(1) You must provide a written statement with your application and reapplication for licensure describing the discipline methods you use. This plan must be approved by your (~~(DLR)~~) LD licensor.

(2) You and authorized care providers have the responsibility for discipline; you may not delegate that responsibility to a child.

(3) You must not withhold a child's need for necessary services including contact with the child's (~~(DSHS worker)~~) DCYF caseworker, case manager, and legal representatives. You must not withhold approved contact with a child's family, without further approval from the child's (~~(DSHS worker)~~) DCYF caseworker.

(4) For additional information you may refer to (~~(the children's administration's)~~) DCYF's behavior management (~~(guide)~~) guidelines.

(5) If your discipline methods change, you must immediately provide a new statement to your LD licensor describing your current practice.

(6) You must use positive methods of guidance and discipline that promote self-control, self-responsibility, self-direction, self-esteem, and cooperation. Positive methods may include:

(a) Redirecting children;

(b) Giving choices when appropriate;

(c) Time-out as a method of guidance, (~~(allowing the child)~~) to allow children time to change (~~(his/her)~~) their behavior;

(d) Planning in order to prevent problems; and

(e) Using positive reinforcement and encouraging children to express their feelings and ideas.

(7) You must use discipline that is appropriate to the child's age and level of development.

(8) You must not use corporal punishment or verbally abusive, neglectful, humiliating, or frightening punishment.

(9) You must not discipline children in the following ways:

(a) Physical punishment;

(b) Cursing;

(c) Threats;

(d) Humiliation or intimidation; or

(e) Methods that interfere with a child's basic needs, including withholding of food.

[WSR 18-14-078, recodified as § 110-145-1815, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-145-1815, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-145-1820 When may a child be restrained? (1) You must use efforts other than physical restraint to redirect or deescalate a situation, unless the child's behavior poses an immediate risk to the physical safety of the child or another person, or of serious property damage. If restraint is necessary, it must be reasonable and necessary to:

(a) Prevent a child from harming self or others; or

(b) Protect property from serious damage.

(2) All staff must be trained in ((a-DLR)) an LD-approved behavior management training prior to using physical restraint.

(3) You must not use physical restraint as a form of punishment or discipline. You must not use mechanical restraints unless ordered by the child's physician and approved by the department. You must not use physical restraint techniques that restrict breathing, ((or)) inflict pain as a strategy for behavior control, or is likely to cause injury that is more than temporary. These include, but are not limited to:

(a) Restriction of body movement by placing pressure on joints, chest, heart, or vital organs;

(b) Sleeper holds, which are holds used by law enforcement officers to subdue a person;

(c) Arm twisting;

(d) Hair holds;

(e) Choking or putting arms around the throat; or

(f) Chemical restraints, such as pepper spray.

(4) When you have to use physical or mechanical restraints on a regular basis, you must get prior written approval from the child's ((DSHS worker)) DCYF caseworker and approval by your ((DLR)) LD licensor.

(5) You must develop policies and procedures, approved by the department, when your behavior management practices include use of physical restraint, including:

(a) Who may authorize the use of physical restraint; and

(b) The circumstances when physical restraint may be used, including time limitations, reevaluation procedures, and supervisory monitoring.

[WSR 18-14-078, recodified as § 110-145-1820, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-145-1820, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-145-1825 What must I do following an incident that involved using physical restraint? ~~((1))~~ Your executive director or program supervisor must:

~~((a))~~ (1) Review any incident with the staff who used physical restraint to ensure that the decision to use physical restraint and its application were appropriate; and

~~((b))~~ (2) Report the incident if it meets the criteria listed in WAC ~~((388-145-1535))~~ 110-145-1535.

[WSR 18-14-078, recodified as § 110-145-1825, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-145-1825, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-145-1830 Are there requirements for time-out or quiet rooms? ~~((1))~~ Locked time-out or locked deescalation rooms are prohibited in all facilities. In certain circumstances, facilities may have time-out rooms or deescalation rooms that allow for securing the youth in a room, requiring a staff to be present, holding the door closed so the youth may not exit. In these cases you must meet the following requirements:

~~((a))~~ (1) Have a window that allows for visual monitoring of all areas of the room;

~~((b))~~ (2) Have approval from the ~~((Washington state patrol fire protection bureau))~~ WSP/FPB or a certificate of compliance stating that the facility is in compliance with the fire codes with Washington state amendments;

~~((c))~~ (3) Have approval from the ~~((DLR))~~ LD licenser stating the facility is in compliance with the ~~((children's administration's))~~ department's behavior management guidelines; and

~~((d))~~ (4) Have current written approval of the ~~((DLR))~~ LD administrator.

[WSR 18-14-078, recodified as § 110-145-1830, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-145-1830, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-145-1835 Am I required to assess a child's need for immediate medical attention? (1) When a child first enters out-of-home care, ~~((+))~~ other than overnight youth shelters ~~((+))~~ you must ensure that a child receives), ~~((+))~~ an initial health screen ~~((or physical exam))~~ is required as soon as possible, but no later than five days after ~~((the child enters))~~ entering your program. ~~((The initial health screen involves a review of the child for any health needs requiring immediate attention.))~~ You do not need to take a child to get this screen if you received the child directly from a hospital, pediatric interim care, or the child is receiving services through a child advocacy center or sexual assault clinic.

(2) You must also make reasonable attempts to obtain the following health history:

- (a) Allergies;
- (b) All currently prescribed medications; and
- (c) Any special physical or mental health issues.

(3) If the child remains in placement beyond ~~((seventy-two))~~ 72 hours, you must contact the child's ~~((DSHS worker))~~ DCYF caseworker, ~~((child placing agency))~~ CPA, or parent ~~((r))~~ or ~~((legal))~~ guardian to obtain the following information:

- (a) The date of the child's last physical and dental exams;
- (b) ~~((A))~~ Their history of immunizations; and
- (c) Clinical and medical diagnoses and treatment plans.

(4) When a child leaves the facility, the health history of the child must be provided to the child's ~~((DSHS worker))~~ DCYF caseworker or the next caregiver.

(5) You should refer to the department of health's dental care brochures, Publications Nos. 920-923 through 920-928, as ~~((a))~~ guides for ~~((ensuring))~~ maintaining proper dental care for children.

[WSR 18-14-078, recodified as § 110-145-1835, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 74.15.010, 74.15.030, 74.15.040, 74.15.090, 74.13.031, 74.39A.056, 43.43.832. WSR 18-11-138, § 388-145-1835, filed 5/23/18, effective 6/23/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-145-1835, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-145-1840 When must I get an early and periodic screening, diagnosis, and treatment (EPSDT) exam for a child? Children who are in out-of-home care must receive an ~~((early and periodic screening, diagnosis and treatment (+)))~~ EPSDT ~~((+))~~ exam within ~~((thirty))~~ 30 days, unless they have had an EPSDT exam in the previous ~~((thirty))~~ 30 days, except for overnight youth shelters and children placed by DDA through a voluntary placement agreement. Children also receive subsequent periodic EPSDT exams; information on these required exams may be obtained from the child's ~~((DCFS worker))~~ DCYF caseworker.

[WSR 18-14-078, recodified as § 110-145-1840, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-145-1840, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-145-1845 What are the requirements for obtaining consent for ((emergent)) emergency and routine medical care? (1) The department is the legal custodian for children it places in care. We have the authority to consent to ((emergent)) emergency and routine medical services on behalf of a child under the age of ((eighteen)) 18. Youth in care over the age of ((eighteen)) 18 must consent to their own medical care or have an identified person who has been granted the legal authority to consent on their behalf. We delegate some of the authority to providers. You must contact the child's ((DSSH worker or children's administration)) DCYF caseworker or intake for specific information for each child.

(2) If you care for children in the custody of another agency, tribal court or other court, you must follow the direction of that agency or court regarding permission to provide consent for medical care.

(3) In case of medical emergency, contact the child's ((DSSH worker or children's administration)) DCYF caseworker and the child's tribal ICW case manager or intake as soon as possible.

(4) It is your responsibility to ensure that a child receives the necessary medical attention if injured or harmed. In the event of a life-threatening medical emergency, you must contact 911 prior to transporting the child to a medical facility.

[WSR 18-14-078, recodified as § 110-145-1845, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-145-1845, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-145-1855 What are the general requirements for managing a child's medication? (1) Medication must not be used for behavior control, unless prescribed for that purpose by a physician or another person legally authorized to prescribe medication.

(2) Only you, a licensed foster parent, or another authorized care provider, such as a respite provider, are allowed to have access to medications for a child in your care.

(3) You must not use medication in an amount or frequency other than that prescribed by an appropriately licensed health care provider or psychiatrist.

(4) You must not reduce or stop a child's prescribed medication without the written approval of the child's physician. You must report this information to the child's (~~DSHS worker~~) DCYF caseworker. In addition to the physician, you must coordinate starting or stopping a child's psychotropic medication with the child's (~~social worker~~) DCYF caseworker to determine what consent is needed. The (~~social worker~~) DCYF caseworker may need to obtain consent from the child age (~~thirteen~~) 13 or older, the parent or guardian, or the court.

(5) You must follow the direction of the agency or court regarding giving or applying prescription and nonprescription medications if you care for children in the custody of another agency, or tribal or other court. If this is in conflict with (~~children's administration~~) the department's policy, you must notify the child's (~~DCFS worker~~) DCYF caseworker.

(6) You must not give medications to a child that has been prescribed for someone else.

(7) You must keep a record of all prescription and nonprescription medications given to children in care. This documentation includes:

- (a) Child's name;
- (b) Time of medication;
- (c) Dosage of medication; and
- (d) Name of person administering medication.

(8) You must obtain a signature from a licensed health care provider within (~~seventy-two~~) 72 hours of obtaining a medication order by phone.

[WSR 18-14-078, recodified as § 110-145-1855, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 74.15.010, 74.15.030, 74.15.040, 74.15.090, 74.13.031, 74.39A.056, 43.43.832. WSR 18-11-138, § 388-145-1855, filed 5/23/18, effective 6/23/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-145-1855, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-145-1875 Can I accept medication from a child's parent or guardian? (1) The only medicine you may accept from the child's parent, guardian, or responsible relative is medicine in the original container labeled with:

- (a) The child's first and last name;
- (b) The date the prescription was filled;
- (c) The medication's expiration date; and
- (d) Legible instructions for administration (manufacturer's instructions or prescription label) of the medication.

(2) You must notify the child's (~~DSHS worker~~) DCYF caseworker if you have any concerns about medication being provided to you by the child's parent (~~or~~) guardian, or relative.

[WSR 18-14-078, recodified as § 110-145-1875, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020,

13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-145-1875, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-145-1880 When may children take their own medicine? (1)

You may permit children under your care to take their own medicine as long as:

- (a) They are physically and mentally capable of properly taking the medicine;
 - (b) You monitor that the youth is taking the medication according to the prescription or manufacturer's instructions to ensure proper amount and frequency; and
 - (c) You must keep the written approval by the child's ((~~DSHS worker~~) DCYF caseworker) in your records.
- (2) When a child is taking their own medication, the medication and medical supplies must be kept locked or inaccessible to unauthorized persons.
- (3) In emergency respite centers, a parent or guardian may provide written approval.
- (4) In overnight youth shelters, youth may take their own prescription or nonprescription medications if you follow the requirements outlined in subsection (1)(a) and (b) in this section.

[WSR 18-14-078, recodified as § 110-145-1880, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-145-1880, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-145-1885 What are the immunization regulations? (1)

Immunization standards for all children in your facility are based on the advisory committee for immunizations practices of the Center for Disease Control (ACIP/CDC). Children placed in your care by the department are required to be immunized according to advisory committee on immunization practices as established in the recommended immunization schedule for persons Aged 0-18 Years, United States, 2012 and as amended each subsequent year, except for rotavirus and human papilloma virus.

(2) Except for overnight youth shelters, if a child who has not received all recommended immunizations is placed in your care, you must take the child to a health care provider as soon as medically possible for catch-up immunizations according to the ACIP/CDC catch-up schedule.

(3) You must contact each child's ((~~DSHS worker~~) DCYF caseworker) and your LD licensor if a serious infection or a communicable disease is a threat to the children in your care. The department may remove a foster child from your facility when the threat of a serious infection

or communicable disease creates a risk to the health of any child placed in your facility.

[WSR 18-14-078, recodified as § 110-145-1885, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-145-1885, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-145-1915 What are the requirements for secure CRCs?

~~((1))~~ Secure CRCs must meet each of these requirements:

~~((a))~~ (1) Be a free-standing facility, separate unit, or separate building within a campus;

~~((b))~~ (2) Maintain a recreation area as outlined in WAC ~~((388-145-1570 and 388-145-1575))~~ 110-145-1570 and 110-145-1575.

[WSR 18-14-078, recodified as § 110-145-1915, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-145-1915, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-145-1930 What steps must be taken after a youth is admitted into any CRC? (1) You must notify the parents or guardians of the youth who has been admitted to the CRC if the youth is not under the care and authority of the department. If you are unable to contact the youth's parents or guardians within ~~((forty-eight))~~ 48 hours, you must:

(a) Contact the department and request that the case be reviewed for dependency filing under chapter 13.34 RCW or "child in need of services" filing under chapter 13.32A RCW; and

(b) Document this information in the youth's case file.

(2) You must notify ~~((EA))~~ DCYF intake of the youth's admission to the CRC within ~~((twenty-four))~~ 24 hours of admission.

(3) If you decide that a youth is unlikely to stay in a regular facility, you must make reasonable efforts to transfer the youth to a secure facility.

[WSR 18-14-078, recodified as § 110-145-1930, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-145-1930, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-145-1960 What additional recordkeeping is required for all CRCs? (1) In addition to meeting the reporting requirements listed in WAC (~~(388-145-1535 through 388-145-1550)~~) 110-145-1535 through 110-145-1550, you must also maintain for a minimum of six years, the following:

- (a) Hourly logs of where the child is physically located;
- (b) Records of a multidisciplinary team, if convened;
- (c) The time and date a placement is made;
- (d) The names of the person and agency making the placement; and
- (e) Reasons for the placement.

(2) If the child has a (~~(DCFS worker)~~) DCYF caseworker, you must send the (~~(DCFS worker)~~) DCYF caseworker the following information within seven days of the child's discharge. The information must include a written summary that addresses the following:

- (a) Community-based referrals;
- (b) Assessment information on the family and child;
- (c) Family reconciliation attempts;
- (d) Contacts with families and professionals involved;
- (e) Medical and health related issues; and
- (f) Any other concerns, such as legal issues and school problems.

[WSR 18-14-078, recodified as § 110-145-1960, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-145-1960, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-145-2000 Can my emergency respite center have more than one type of license? If you are licensed by (~~(the division of licensed resources (DLR))~~) LD as an emergency respite center, you may also be licensed as a child care center (~~(by the department of early learning (DEL))~~) under the provisions of chapter 110-300 WAC. You must meet the requirements for both licenses and have written department approval (~~(for both)~~) to hold dual licenses (~~(from DLR and DEL)~~).

[WSR 18-14-078, recodified as § 110-145-2000, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-145-2000, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-145-2060 What are the requirements for supervision of children at my group receiving center? (1) Children must be within visual or auditory range at all times during waking hours.

(2) You must ensure that staff providing direct care and supervision of the children are free of other administrative duties at the time of care.

(3) When a child is known to have exhibited behavior that poses a safety risk to other children, you must develop a safety and supervision plan with the child's (~~DSHS worker~~) DCYF caseworker to address the risk.

[WSR 18-14-078, recodified as § 110-145-2060, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-145-2060, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-145-2065 What services must I provide for medically fragile children? (1) Your licensed group home or staffed residential facility may also provide specialized care, to medically fragile children who need intensive personal care. The children may require skilled health care, physical therapy, or other forms of therapy.

(2) If you are serving this population as a specialty, you must ensure the following services are provided, if prescribed by a physician:

(a) An individualized treatment plan suited to the unique needs of each child in care;

(b) Care by physicians, including surgeons, general and family practitioners, and specialists in the child's particular diagnosis on either a referral, consultative, or ongoing treatment basis;

(c) Sufficient nursing staff to meet the nursing care needs of the children, including at least one registered nurse licensed (~~with~~) by the state of Washington;

(d) Regular nursing consultation that includes at least one weekly on-site visit by a registered nurse, who initially assesses each child and updates the assessments as needed on subsequent visits. These assessments and updates must be documented. You must also keep records of the weekly on-site visits;

(e) Your nursing consultant must advise you and your staff on your infant care program, ~~(+)~~if (~~appropriate~~) applicable, and develop a written agreement with you about your child health program. The consultant must also advise and assist (~~non-medical~~) nonmedical staff at your facility in maintaining child health records, meeting daily health needs, and caring for children with minor illnesses and injuries;

(f) The nurse's name and telephone number must be posted or otherwise available in your home or facility;

(g) If you care for four or more infants, you must arrange for monthly on-site visits with a registered nurse that is trained or experienced in the care of young children; and

(h) If you care for children with intellectual and developmental disabilities requiring nursing services, you must have a registered nurse on staff or under contract.

[WSR 18-14-078, recodified as § 110-145-2065, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-145-2065, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-145-2070 What recordkeeping requirements exist for medically fragile children? ~~((+1))~~ In addition to meeting standard requirements for keeping records per WAC ~~((388-145-1520 and 388-145-1525))~~ 110-145-1520 and 110-145-1525, you must also keep the following information for medically fragile children that have been in placement for more than ~~((thirty))~~ 30 days in your facility:

~~((+a))~~ (1) Report of a physical examination and diagnosis by a physician and information about the child's daily care including treatment plans, medications, observations, medical examinations, physicians' orders, proper treatment for allergic reactions, consent authorizations, releases, diagnostic reports, and revisions of assessments;

~~((+b))~~ (2) Upon discharge, a summary including diagnoses, treatments, and prognosis by the person responsible for providing care, and any instructions and referrals for continuity of care; and

~~((+e))~~ (3) Evidence of meeting criteria for eligibility for services from the developmental disabilities administration, if appropriate.

[WSR 18-14-078, recodified as § 110-145-2070, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-145-2070, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-145-2095 What steps must I take when a youth first enters an overnight youth shelter? ~~((+1))~~ When a youth first enters an overnight youth shelter, you must:

~~((+a))~~ (1) Determine whether the parents or guardians are aware of the whereabouts of the youth;

~~((+b))~~ (2) Follow reporting requirements in WAC ~~((388-145-1545))~~ 110-145-1545; and

~~((+e))~~ (3) Notify the police or ~~((children's administration))~~ DCYF intake (either the local CPS number or toll-free 1-886-ENDHARM) of any youth ~~((+twelve))~~ 12 years of age or younger who is unaccompanied by an adult and is requesting service, and you are unable to serve the child due to ~~((his or her))~~ their age.

[WSR 18-14-078, recodified as § 110-145-2095, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW

74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-145-2095, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-145-2100 What services must be offered at an overnight youth shelter? (1) At a minimum, all overnight youth shelters must offer an intake assessment on the youth including:

- (a) Emergency telephone number contacts (~~((phone numbers))~~);
- (b) Areas of possible problems, such as medical problems, family situation and suicide evaluation;
- (c) History of assault or predatory behavior; and
- (d) Drug (~~(and/or)~~) and alcohol involvement.

(2) You must also assess the youth's:

- (a) Outstanding warrants;
- (b) Physical and medical needs, including medication;
- (c) School status;
- (d) Immediate needs for counseling; and
- (e) Options for the near future.

(3) You must also offer a youth the following:

- (a) Individual crisis intervention;
- (b) Assistance in accessing emergency resources, including child protective services (CPS) and emergency medical services;
- (c) Resource information;
- (d) Educational or vocational services;
- (e) Housing information;
- (f) Medical care or services;
- (g) Substance abuse services;
- (h) Mental health services;
- (i) Information regarding other treatment agencies;
- (j) Food programs;
- (k) Disability services; and
- (l) Other (~~(DSSH)~~) DCYF services.

(4) If the overnight youth shelter cannot directly provide these services, staff must have information for referrals to programs or organizations that would provide these services to youth.

[WSR 18-14-078, recodified as § 110-145-2100, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-145-2100, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-145-2145 What are the facility and room requirements for programs offering services for pregnant and parenting youth? (1) If you have a residential program for pregnant and parenting youth with infants, you must meet the room requirements for group care facili-

ties, per WAC ((~~388-145-1600~~ through ~~388-145-1605~~) 110-145-1600 through 110-145-1605).

(2) If your facility offers medical clinics, you must have a separate, adequately equipped examination room with adequate nursing equipment.

[WSR 18-14-078, recodified as § 110-145-2145, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-145-2145, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-145-2180 Who may place children at an RAC? A ((~~DCFS worker~~)) DCYF caseworker may place a child in a resource and assessment center. These centers may not be used to address placement disruptions for children being removed from a foster home or group care facility.

[WSR 18-14-078, recodified as § 110-145-2180, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-145-2180, filed 12/11/14, effective 1/11/15.]

OTS-1227.10

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-147-1300 What is the purpose of this chapter? (1) This chapter contains licensing requirements for all child placing agencies and the people who operate these programs. This chapter also includes regulations for adoption services provided by child placing agencies. These licensing regulations are designed to ensure children who are in care are safe, healthy, and protected from all forms of child abuse and neglect according to RCW 26.44.020(1) and chapter ((~~388-15~~)) 110-30 WAC.

(2) If you are a child placing agency (CPA) that certifies foster homes, the homes you certify must meet the full licensing requirements outlined in chapter ((~~388-148~~)) 110-148 WAC, child foster home licensing requirements.

[WSR 18-14-078, recodified as § 110-147-1300, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-147-1300, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-147-1305 What definitions do I need to know to understand this chapter? The following words and terms are for the purpose of this chapter and are important to understanding these requirements:

"Abuse or neglect" means the injury, sexual abuse, sexual exploitation, negligent treatment or maltreatment of a child as defined in RCW 26.44.020.

"Adult" means a person (~~(eighteen)~~) 18 years old or older, not in the care of the department.

"Agency" is defined in RCW 74.15.020(1).

"Asexual" means the lack of a sexual attraction or desire for other individuals.

"Assessment" means the appraisal or evaluation of a child's physical, mental, social (~~(and/or)~~) or emotional condition.

"Bisexual" means individuals who have an emotional or physical attraction to individuals of the same and different genders.

"Business hours" means hours during the day in which business is commonly conducted. Typically, the hours between 9 a.m. and 5 p.m. on weekdays are considered to be standard business hours.

(~~"CA" means children's administration.~~)

"Capacity" means the age range, gender, and maximum number of children on your current license.

"Care provider" means any person who is licensed or authorized to provide care for children and cleared to have unsupervised access to children under the authority of a license.

"Case manager" means the private agency employee who coordinates the planning efforts of all the persons working on behalf of a child.

"Case plan" means a written document adhered to and followed by a foster child's parents or guardians, foster parent or parents, the department, and all other caregivers. A case plan may include, but is not limited to:

(a) A description of the type of home or facility in which a child is to be placed, including a discussion of the safety and appropriateness of the placement and how the department plans to carry out the voluntary placement agreement entered into or judicial determination made with respect to the child;

(b) A plan for assuring that the child receives safe and proper care and that services are provided to the parents or guardians, child, and foster parents in order to improve the conditions in the parents' or guardians' home, facilitate return of the child to their own safe home or the permanent placement of the child, and address the needs of the child while in foster care, including a discussion of the appropriateness of the services that have been provided under the plan;

(c) The health and education records of the child, including the most recent information available regarding:

(i) The names and addresses of the child's health and educational providers;

(ii) The child's grade level performance;

(iii) The child's school record;

(iv) A record of the child's immunizations;

(v) The child's known medical conditions;

(vi) The child's medications; and

(vii) Any other relevant health and education information concerning the child determined to be appropriate by the department.

(d) Relevant professional assessments of the child;
(e) Court orders concerning the child; and
(f) Any other relevant plan, assessment, knowledge, material, or information concerning the child determined to be appropriate by the department.

"Caseworker" means the primary agency worker assigned to the child through DCYF or other government agency.

"Certification" means a licensed child placing agency (CPA) review that a foster home being supervised by that CPA meets licensing regulations. The final decision for licensing is the responsibility of ~~(EA)~~ the department of children, youth, and families.

"Chapter" means chapter ~~((388-147))~~ 110-147 WAC.

"Child," "children," or "youth" for this chapter, means a person who is one of the following:

~~((1))~~ (a) Under ~~((eighteen))~~ 18 years of age;

~~((2))~~ (b) Up to ~~((twenty-one))~~ 21 years of age and enrolled in services through the department of social and health services, developmental disabilities administration (DDA) the day prior to his or her ~~((eighteenth))~~ 18th birthday and pursuing either a high school or equivalency course of study (GED/HSEC), or vocational program;

~~((3))~~ (c) Up to ~~((twenty-one))~~ 21 years of age and participates in the extended foster care program;

~~((4))~~ (d) Up to ~~((twenty-one))~~ 21 years of age with intellectual and developmental disabilities;

~~((5))~~ (e) Up to ~~((twenty-one))~~ 25 years of age and under the custody of the ~~((Washington state))~~ juvenile ~~((justice))~~ rehabilitation ~~((administration))~~ system.

"Child placing agency ~~((or))~~ (CPA)" means an agency licensed to place children for foster care or adoption.

"Compliance agreement" means a written improvement plan to address the changes needed to meet licensing requirements.

~~((DCFS" means the division of children and family services within children's administration. DCFS provides case management to children and families involved in the child welfare system.))~~

"DDA" means the department of social and health services, developmental disabilities administration.

"Department ~~((or DSHS))~~" means the department of ~~((social and health services))~~ children, youth, and families (DCYF).

"Developmental disability" is a disability as defined in RCW 71A.10.020.

~~((DLR" means the division of licensed resources within children's administration. DLR licenses and monitors foster homes, child placing agencies, and licensed group care facilities.))~~

"FBI" means the Federal Bureau of Investigation.

"Foster home or foster family home" means a person(s) licensed to regularly provide ~~((twenty-four hour))~~ 24-hour care in their home to children.

"Gay" means a sexual orientation to describe individuals who are emotionally or physically attracted to someone of the same gender. Gay is sometimes an umbrella term for the LGBTQIA+ community.

"Gender" or "gender identity" means an individual's inner sense of being a female, male, a blend of both or neither, or another gender. This may or may not correspond with an individual's sex assigned at birth.

"Gender expression" means individuals' outward communication of their gender through behavior or appearance. This may or may not conform to their sex assigned at birth or socially defined behaviors and

characteristics typically associated with being either masculine or feminine.

"Gender fluid" means individuals whose gender identities are flexible.

"Guardian" has the same meaning in this chapter as defined in RCW 26.33.020(11).

"Guns or weapons" means any device intended to shoot projectiles under pressure or that can be used to attack. These include, but are not limited to, BB guns, pellet guns, air rifles, stun guns, antique guns, handguns, rifles, shotguns and archery equipment.

"Health care staff" means anyone providing qualified medical consultation to your staff or medical care to the children and youth in your care.

"Hearing" means the administrative review process conducted by an administrative law judge.

"I," "my," "you," and "your" refer((s)) to an applicant for a license issued under this chapter, and to any party holding a license under this chapter.

"Infant" means a child less than (~~twelve~~) 12 months of age.

"Intellectual and developmental disability" means children with deficits in general mental abilities and impairment in everyday adaptive functioning.

"Intersex" is an umbrella term used to describe a wide range of natural bodily variations when the body is born with a combination of chromosomes, internal organs, or external genitalia that do not develop as expected.

"Lesbian" means females or women who have an emotional or physical attraction for other females or women.

"LGBTQIA+" means lesbian, gay, bisexual, transgender, queer or questioning, intersex, and asexual. The "+" represents identities not specifically named in the LGBTQIA acronym, e.g., pansexual, gender nonbinary, and Two-Spirit.

"License" means a permit issued by us confirming that your agency meets the licensing standards established in this chapter.

"Licensed health care provider" means (~~(an MD)~~) a medical doctor((, DO)) (MD), doctor of osteopathy((, ND)) (DO), doctor of naturopathy((, PA)) (ND), physician's assistant (PA), or an ((ARNP)) advanced registered nurse practitioner (ARNP).

"Licensing division (LD)" means the division within DCYF that licenses and monitors foster homes, child placing agencies, and licensed group care facilities.

"Licensing provider portal" means the internet-connected provider application system used by the department and agencies to securely store digital employment and licensing documents and data.

"Licensor" means either:

((~~1~~ A DLR)) (a) An LD employee who recommends approvals for, or monitors licenses or certifications for facilities and agencies established under this chapter; or

((~~2~~)) (b) An employee of a ((child placing agency)) CPA who certifies or monitors foster homes supervised by the ((child placing agency)) CPA.

"Maternity service" as defined in RCW 74.15.020. These are also referred to as pregnant and parenting youth programs.

"Medically fragile" means the condition of a child who requires the availability of (~~twenty-four-hour~~) 24-hour skilled care from a health care professional or specially trained family or foster family member. These conditions may be present all the time or frequently oc-

curing. If the technology, support, and services being received by the medically fragile children are interrupted or denied, the child may, without immediate health care intervention, experience death.

"Missing child" means any child less than ~~((eighteen))~~ 18 years of age in licensed care or under the care, custody, and authority of ~~((EA))~~ DCYF and the child's whereabouts are unknown ~~((and/or))~~ or the child has left care without the permission of the child's caregiver or ~~((EA))~~ DCYF. This does not include children in dependency guardianship.

"Nonambulatory" means not able to walk or exit to safety without the physical assistance of another individual.

"Nonbinary" is a term of self-identification for individuals who do not identify within the limited and binary terms that have described gender identity, e.g., female and male. Nonbinary is also an umbrella term for many identities such as gender expansive, gender fluid, and genderqueer.

"Out-of-home placement" means a child's placement in a home or facility other than the child's parent, guardian, or legal custodian.

"Parent" has the same meaning in this chapter as defined in RCW 26.26A.010(15).

"Probationary license" means a license issued as part of a corrective action to an individual or agency that has previously been issued a full license but is out of compliance with minimum licensing requirements and has entered into an agreement aimed at correcting deficiencies.

"Property or premises" means a facility's buildings and adjoining grounds that are managed by a person or agency in charge.

"Queer" is a term used to express LGBTQIA+ identities and orientations. The term is sometimes used as an umbrella term for all LGBTQIA+ individuals.

"Questioning" means individuals who are exploring their sexual orientation, gender identity, or gender expression at any age.

"Relative" means a person who is related to a child as defined in RCW 74.15.020.

"Respite" means brief, temporary relief care provided by an in-home or out-of-home provider paid by the department. The respite provider fulfills some or all of the care provider responsibilities for a short time.

"Sexual orientation" means an individual's emotional or physical attraction to other individuals.

"SOGIE" is an acronym for sexual orientation, gender identity, and expression which are distinct identifiers everyone has. LGBTQIA+ is a subdistinction within SOGIE self-identifiers. SOGIE includes LGBTQIA+ as well as heterosexual, cisgender, and nonquestioning individuals.

"Transgender" is an umbrella term for individuals whose gender identity or expression is different from cultural expectations based on the sex they were assigned at birth. Gender-affirming medical care is not a prerequisite to identify as transgender. Being transgender does not imply any specific sexual orientation.

"Treatment plan" means individual plans that identify the service needs of the child, including the child's parent or guardian, and identifies the treatment goals and strategies for achieving those goals.

"Two-Spirit" means a modern, pan-indigenous, umbrella term used by some indigenous North Americans to describe Native people in their communities who fulfill a traditional third-gender or other gender-

variant, ceremonial, and social role in their cultures. Being Two-Spirit does not imply any specific sexual orientation.

"Volunteer" means a person who provides services without compensation, for your agency.

"Washington state patrol fire protection bureau (~~"or"~~) (WSP/FPB)" means the state fire marshal.

"We," "our," and "us" refer(s) to ((the department of social and health services)) DCYF, including ((DLR)) LD and ((DCFS)) child welfare staff.

"Young child" refers to a child age ((twelve)) 12 months through eight years old.

[WSR 18-14-078, recodified as § 110-147-1305, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 74.15.010, 74.15.030, 74.15.040, 74.15.090, 74.13.031, 74.39A.056, 43.43.832. WSR 18-11-138, § 388-147-1305, filed 5/23/18, effective 6/23/18. Statutory Authority: RCW 74.15.010, 74.15.030, 74.15.040, 74.15.090, 74.13.031, and P.L. 113-183. WSR 16-17-101, § 388-147-1305, filed 8/19/16, effective 9/19/16. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-147-1305, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-147-1315 When will the department grant me a license?

(1) We issue you a ((child placing agency)) CPA license when you, your staff and volunteers, property and premises meet the regulations contained in this chapter, and all required documents are in the department's licensing file. Documents required under this section must be submitted to the department through the licensing provider portal.

(2) If you are providing adoption services, you must meet the additional requirements in WAC ((388-147-1660 to 388-147-1730)) 110-147-1660 through 110-147-1730.

(3) If your licensed program is providing specialized services for medically fragile children, day treatment services, or maternity services for pregnant and parenting youth, you must meet additional requirements in chapter ((388-145)) 110-145 WAC.

[WSR 18-14-078, recodified as § 110-147-1315, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-147-1315, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-147-1325 What is required to apply for a ((child placing agency)) CPA license? (1) You must submit ((a completed)) an application ((which is available from the division of licensed resources)) using the department's licensing provider portal; and

(2) You, your executive director, agency staff, consultants, interns, volunteers, and anyone who may have unsupervised access to children per chapter ~~((388-06A))~~ 110-04 WAC are required to:

(a) Submit a completed background authorization form;

(b) Complete an FBI fingerprint check if the individual over ~~((eighteen))~~ 18 years of age has lived out-of-state during any portion of the previous three years; and

(c) Ensure that no employee, volunteer, or subcontractor has unsupervised access to children until a full and satisfactory background check is completed and documentation qualifying the individual for unsupervised access, has been returned to you. Your employees are allowed to work while awaiting fingerprint results, under the provisions of ~~((WAC 388-06-0500 through 388-06-0540))~~ chapter 110-05 WAC.

[WSR 18-14-078, recodified as § 110-147-1325, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 74.15.010, 74.15.030, 74.15.040, 74.15.090, 74.13.031. WSR 16-06-041, § 388-147-1325, filed 2/24/16, effective 3/26/16. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-147-1325, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-147-1330 How does the department determine my suitability to become a licensed provider? (1) The department determines your suitability as a licensed provider after receiving:

(a) Your application(~~(r)~~) through the licensing provider portal;

(b) Background ~~((authorization(s)))~~ authorizations for ~~((those))~~ persons listed in WAC ~~((388-147-1325(2),r))~~ 110-147-1325(2); and

(c) All ~~((required))~~ documentation ~~((outlined in))~~ required under this chapter.

(2) You, your employees, and volunteers must not have had a license or contract denied or revoked from an agency that regulates the care of children or vulnerable adults, unless the department determines that you do not pose a risk to a child's safety, well-being, and long-term stability.

(3) You, your employees, and volunteers must not have been found to have committed abuse or neglect of a child or vulnerable adult, unless the department determines that you do not pose a risk to a child's safety, well-being, and long-term stability.

(4) You must demonstrate that you, your employees, and volunteers have:

(a) The understanding, ability, physical health, emotional stability, and personality suited to meet the physical, mental, emotional, cultural, and social needs of the children under your care; and

(b) The ability to furnish children with a nurturing, respectful, and supportive environment.

(5) At any time, we may require you or your employees and volunteers to give additional information. We may also require an evaluation of your facility or property, or of a staff ~~((person))~~ working for your agency, by an evaluator recommended by us. Any evaluation requested by the department will be at your expense. You must give the

evaluator written permission to share information with us prior to and throughout the evaluation process.

(6) Any employee, intern, or volunteer who is found to have misrepresented or provided fraudulent information may be disqualified.

(7) Before granting or renewing a license, your licensor will:

(a) Assess your ability to provide a safe environment for children and to provide the quality of care needed by children placed in your care (~~(. Your licensor will also)~~); and

(b) Determine that you, your employees, and volunteers meet training requirements.

[WSR 18-14-078, recodified as § 110-147-1330, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-147-1330, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-147-1335 What additional steps must I complete prior to licensing? (1) You must submit (~~(to your licensor)~~) through the licensing provider portal a detailed written program description for (~~(DLR)~~) LD approval. (~~(In the)~~) This description (~~(you)~~) must outline:

(a) Your mission and goals;

(b) A description of the services you will provide to children and their families;

(c) Your written policies covering qualifications, duties, and on-going training for developing and upgrading staff skills; and

(d) A description of your agency's policies and procedures.

(2) You must have a site inspection by your (~~(DLR)~~) LD licensor or someone designated by (~~(DLR)~~) LD who can verify that your Washington state premises have:

(a) Adequate storage for staff and client files;

(b) A working telephone;

(c) Adequate space for privacy when interviewing parents or guardians and children;

(d) Room or area used for administrative purposes;

(e) Adequate space for visitation, if needed; and

(f) Your license must be clearly posted, (~~(+)~~) if the inspection is for a renewal license(~~(+)~~).

(3) You and your staff are required to submit through the licensing provider portal a negative tuberculosis (TB) test or an X-ray, unless you have had a negative TB test in the previous (~~(twelve)~~) 12 months. If there is a positive TB test, then the individual must submit a physician's statement identifying that there is no active TB or risk of contagion to children in care.

(a) We may grant an exception to the TB test, in consultation with a licensed health care provider.

(b) This exception would require a statement from a licensed health care provider (MD, DO, ND, PA or ARNP) indicating that a valid medical reason exists for not having a TB test.

[WSR 18-14-078, recodified as § 110-147-1335, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 74.15.010, 74.15.030, 74.15.040,

74.15.090, 74.13.031, and P.L. 113-183. WSR 16-17-101, § 388-147-1335, filed 8/19/16, effective 9/19/16. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-147-1335, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-147-1340 How long do I have to complete the licensing application process? (1) You must submit a complete ((your)) licens-
ing application and ((submit all DLR required documents within ninety
days of submitting the application and)) background authorization
forms ((to the department)) for your CPA license, and for licensed
foster families certified by your CPA, to LD through the licensing
provider portal.

(2) For your CPA license:

(a) Once you receive background clearance notifications for the
staff identified on your application, you must submit all required
documents within 90 days.

(b) If you do not meet ((this ninety day)) the 90-day deadline,
your licensor may withdraw your application.

((+3)) (c) As a courtesy, a renewal notification and renewal ma-
terials will be sent ((one hundred and twenty)) 120 days prior to your
license expiration date. If you do not receive this renewal notice it
is your responsibility to contact your licensor.

((+4)) (d) You must send the renewal application and all re-
quired background authorization forms to your licensor at least
((ninety)) 90 days prior to the expiration of your current license.

(3) For licensed foster families certified by your CPA:

(a) Once you receive background clearance notifications for all
identified household members, you must submit all LD required docu-
ments within 90 days.

(b) If you do not meet this 90-day deadline, you may withdraw
your application rather than be denied a license.

(c) As a courtesy, a renewal notification will be sent 90 days
prior to the foster home license expiration date.

(d) You must send the foster home license renewal application and
all required background authorization forms to your licensor 90 days
prior to the expiration of the current license; you must send the fos-
ter home license renewal application and all required background au-
thorization forms to your licensor by the expiration of the current
license.

[WSR 18-14-078, recodified as § 110-147-1340, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-147-1340, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-147-1345 What are the roles of the department and the CPA? (1) We license CPAs, including tribal CPAs, to supervise foster homes. You are authorized to certify to the department that a foster home meets the licensing regulations contained in chapter ~~((388-148))~~ 110-148 WAC.

(2) You have the discretion to certify or not to certify a foster home.

(3) You may, at your discretion, have additional regulations for a foster home to become and remain a licensed foster home under your supervision.

(4) The department has the final approval for licensing a foster home that you have certified.

[WSR 18-14-078, recodified as § 110-147-1345, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-147-1345, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-147-1350 How must I certify a foster home for licensing by the department? (1) You must use applications, home study forms, and procedures that are approved by the department.

(2) A foster home must be certified by your ~~((child placing agency))~~ CPA as meeting the licensing requirements in chapter ~~((388-148))~~ 110-148 WAC in order to be licensed by the department.

(3) A CPA social service staff person must review and sign approval for the foster home licensing application packet before the application is submitted to ~~((DLR))~~ LD.

[WSR 18-14-078, recodified as § 110-147-1350, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-147-1350, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-147-1375 May an agency be issued more than one type of license? (1) An agency may not be licensed by ~~((DLR))~~ LD for more than one type of license in the same building (a group care facility and a CPA for example), unless the department determines that care of one type of client does not interfere with the care of another type of client, and you have approval from the ~~((DLR))~~ LD administrator. We may require separation of client populations between the programs. You must meet the requirements for both licenses.

(2) If you have multiple licenses issued by different ((DSHS)) DCYF licensing agencies in the same location, you must obtain approval from ((DLR)) LD prior to providing services and accepting placements.

[WSR 18-14-078, recodified as § 110-147-1375, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-147-1375, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-147-1420 Can employees, volunteers, and subcontractors be disqualified from having access to the children in my agency? (1)

The department must disqualify employees, volunteers, or subcontractors if they do not meet the regulations of chapter ((388-147)) 110-147 WAC or cannot have unsupervised access to children because of their background check as outlined in chapter ((388-06A)) 110-04 WAC.

(2) We will notify you if a person in your agency is disqualified from having unsupervised access to children. This could also lead to denial, suspension, or revocation of your license.

[WSR 18-14-078, recodified as § 110-147-1420, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 74.15.010, 74.15.030, 74.15.040, 74.15.090, 74.13.031. WSR 16-06-041, § 388-147-1420, filed 2/24/16, effective 3/26/16. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-147-1420, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-147-1430 How do I appeal the decision of the office of administrative hearings' administrative law judge? (1) The decision of the administrative law judge is the final decision of the department unless you or the department files a petition for review with the ((DSHS)) DCYF board of appeals within ((twenty-one)) 21 calendar days after the administrative law judge's decision is mailed to the parties.

(2) The procedure for requesting or responding to a petition for review with the board of appeals is described in ((WAC 388-02-0560 through WAC 388-02-0635)) chapter 110-03 WAC.

(3) We will not appeal decisions made by the board of appeals.

(4) If you disagree with the board of appeals, you may file a petition in superior court and ask for further review ((+) as described in RCW 34.05.510 to 34.05.598(+)).

[WSR 18-14-078, recodified as § 110-147-1430, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020,

13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-147-1430, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-147-1440 Who must I employ at my agency? (1) You must employ sufficient numbers of qualified staff to meet the physical, safety, health, and emotional needs of the children placed in your care, appropriate for their age and developmental level. Requirements for specific staff are detailed below.

(2) Employees and caregivers must:

(a) Demonstrate competency, good judgment, and self-control in the presence of children and when performing duties;

(b) Report suspected abuse, neglect, and exploitation to (~~children's administration~~) DCYF intake and to the designated administrator or supervisor;

(c) Know and comply with rules established in this chapter, as well as all other applicable laws; and

(d) Comply with federal and state antidiscrimination laws related to personnel policies and procedures.

[WSR 18-14-078, recodified as § 110-147-1440, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-147-1440, filed 12/11/14, effective 1/11/15.]

NEW SECTION

WAC 110-147-1443 Am I required to follow each child's case plan?

You and all employees, staff members, and volunteers must adhere to, follow, and comply with the case plan for each of the children in your care.

[]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-147-1490 What are the requirements for volunteers working directly with (~~children/youth~~) children? (~~(1)~~) These volunteers must meet the licensing requirements listed in this chapter, including meeting the qualifications for case aide staff, and must:

(~~(a)~~) (1) Be at least (~~twenty-one~~) 21 years of age, unless they are between (~~eighteen~~) 18 and (~~twenty-one~~) 21 years of age with an internship or practicum program as per WAC (~~388-147-1460(2)~~) 110-147-1460(2);

(~~(b)~~) (2) Be supervised at all times by at least one paid staff member or a designated volunteer meeting the qualifications of a pro-

gram manager, working on-site. ((+))Volunteers meeting program manager qualifications may provide direct care unsupervised((+)); and

((+)) (3) Receive preservice training that addresses the needs of the population of children in care.

[WSR 18-14-078, recodified as § 110-147-1490, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-147-1490, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-147-1500 What is the preservice training requirement for staff and volunteers having direct care responsibility to ((children/youth)) children? (1) Prior to having responsibility for direct care, staff and volunteers must have a minimum of ((sixteen)) 16 hours of the following preservice training, including policies and procedures, job responsibilities and facility administration. This is in addition to the first aid and cardiopulmonary resuscitation training (CPR) in WAC ((388-147-1510)) 110-147-1510 and the ((HIV/AIDS/bloodborne)) bloodborne pathogen requirements in WAC ((388-147-1515)) 110-147-1515. Preservice training must be relevant to the type of children and families and the program services you provide. Preservice training ((will usually)) may include ((the following)), but is not limited to:

(a) Child abuse and neglect identification and reporting requirements;

(b) Incident reporting;

(c) Accessing community resources;

(d) Client confidentiality;

(e) Family dynamics and family intervention techniques;

(f) Child development;

(g) Grief and loss;

(h) Cultural needs of children in care;

(i) Sexually exploited youth;

(j) Behavior management and crisis intervention techniques;

(k) Conflict resolution or problem-solving skills;

(l) Substance abuse;

(m) Sexually aggressive and physically assaultive training;

(n) Effects of trauma on children; ((and))

(o) Youth supervision requirements; and

(p) Foundational LGBTQIA+ culture.

(2) If your agency is providing international adoption services, you must also provide training that covers the Hague Convention Articles and the Hague Council on Accreditation (COA) requirements.

(3) New staff and volunteers must work shifts with fully trained staff until the new staff has completed all required training.

[WSR 18-14-078, recodified as § 110-147-1500, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-147-1500, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-147-1505 What is the requirement for staff in-service training? (1) If you have employees in your agency, you must offer in-service training programs for developing and upgrading staff skills. Your training plan must be in writing.

(2) You must submit an in-service training plan for staff for approval by the department, with a minimum of (~~twelve~~) 12 hours of annual training for applicable case management, case aide and foster home licensing staff. This training plan must be relevant to the type of children and families you serve, and the program services you provide. You must provide information relevant to the problems experienced by the children you serve, which may include suicide prevention, substance abuse, child abuse and neglect, mental health issues, cultural sensitivity, foundational LGBTQIA+ culture, and predatory behavior.

(3) You must discuss with your staff updated policies and procedures, as well as the rules contained in this chapter, including the Hague Council on Accreditation if you are providing international adoption services.

(4) Your training on behavioral management must be approved by (~~DHR~~) LD and must include nonphysical age-appropriate methods of re-directing and controlling behavior, as described in the (~~children's administration~~) department's behavior management guide.

(5) You must document all training including a description of the training provided and the date of the training. This information must be kept in each employee's file or in a separate training file.

[WSR 18-14-078, recodified as § 110-147-1505, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-147-1505, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-147-1515 What (~~HIV/AIDS/bloodborne~~) bloodborne pathogens training is required? (1) If you or any of your staff provide supervision or direct care to children, (~~HIV/AIDS/bloodborne~~) bloodborne pathogens training is required. This training should include infection control standards.

(2) You must use infection control requirements and educational material consistent with the current approved curriculum published by the department of health (~~, office on HIV/AIDS~~).

(3) Staff providing direct care to children must use universal precautions when coming in contact with the bodily fluids of a child.

[WSR 18-14-078, recodified as § 110-147-1515, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-147-1515, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

- WAC 110-147-1520 What personnel records must I keep at my agency?** (1) You must both submit to the department through the licensing provider portal and keep on file personnel records (~~(on file)~~) for each (~~(staff)~~) person who is employed or volunteers at your agency.
- (2) For staff who will not have unsupervised access to children you must keep the following:
- (a) An employment application, including work and education history;
 - (b) Education documentation;
 - (c) Job description of the position at your agency;
 - (d) Signed mandated reporter statement;
 - (e) A record of participation in the program's orientation; and
 - (f) A record of participation in ongoing staff development training.
- (3) In addition, you must keep the following for staff who have unsupervised access to children:
- (a) A log with background check information, containing dates of request and completion of the checks on all staff, interns, volunteers, and service contractors;
 - (b) A record of a negative Mantoux, tuberculin skin tests results, X-ray, or a medical exemption to the skin test or X-ray per WAC (~~(388-147-1335(3))~~) 110-147-1335(3);
 - (c) (~~(First Aid/CPR/HIV/AIDS/bloodborne)~~) First aid, CPR, and bloodborne pathogens training documentation;
 - (d) A copy of government-issued photo ID;
 - (e) A copy of a valid driver's license for staff transporting clients or employees; and
 - (f) A copy of current auto insurance, (+)if using private vehicle to transport(+)).
- (4) You must maintain a written record of case consultation by a master's level consultant as defined in WAC (~~(388-145-1470)~~) 110-145-1470 for case managers with a bachelor's degree.

[WSR 18-14-078, recodified as § 110-147-1520, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-147-1520, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

- WAC 110-147-1525 What are the requirements for children's records?** (1) You must retain a record of each child placed by your agency. This record must contain all identifying legal, medical, and social information.
- (2) Any identifying and personal information about a child and the child's family must be kept confidential as required by chapter 26.33 RCW. These records must be kept in a secure place inaccessible to clients, unauthorized staff, and the public. Children's records must never be submitted to the department through the licensing provider portal.

(3) During a child's placement, the child's record must be maintained and you must attempt to obtain the following information for the child's record, as appropriate to your program:

- (a) The child's name, birth date, and legal status;
 - (b) Name and telephone number of the child's (~~DSHS worker~~) DCYF caseworker for each child in care;
 - (c) Written consent, if any, for providing medical care and emergency surgery, (+) unless that care is authorized by a court order (+);
 - (d) A copy of the current legal authority to place;
 - (e) Current case plans;
 - (f) Social summary;
 - (g) Documentation of a child's therapy treatment provided by your staff with the signature of the person making the entry to the therapy or progress notes;
 - (h) Log of the child's placement history with your agency; and
 - (i) Information related to suspected child abuse and/or neglect referrals made to children's administration, including the concern, date and person taking the report.
- (4) In addition, your records must contain the following information if available:
- (a) Names, (~~address~~) addresses, and telephone numbers of parents or persons to be contacted in case of emergency;
 - (b) Information on specific cultural needs of the child;
 - (c) Medical history including any medical problems, name of doctor, type of medical coverage and provider, date of any illnesses or accidents while placed in your agency's care;
 - (d) Mental health history and any current mental health, chemical dependency, and behavioral issues, including medical and psychological reports when available;
 - (e) Other pertinent information related to the child's health, including basic medical information, such as current prescription medications, immunizations, allergies, dental records (~~and/or~~) or eye exams;
 - (f) Immunization records, (+) if a child's placement extends beyond (~~thirty~~) 30 days (+). If the child is not current with immunization, they must be updated as soon as medically possible. Immunization records are not required to be current for children placed in a foster home licensed by a (~~child placing agency~~) CPA to provide emergency respite services on a voluntary placement agreement;
 - (g) Child's school records, report cards, school pictures, and individual education plans (IEP);
 - (h) Special instructions including supervision requirements and suggestions for managing problem behavior;
 - (i) Inventory of the child's personal belongings at the time of placement;
 - (j) Approved list of individuals with whom the child may have contact;
 - (k) The child's visitation plan; and
 - (l) For pregnant and parenting youth, information on the (~~mother/father~~) other parent of the youth's child, if available.
- (5) If you are unable to obtain this information from the department, you must document your attempt to obtain the requested information in the child's file.

[WSR 18-14-078, recodified as § 110-147-1525, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW

74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-147-1525, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-147-1530 How long should my agency keep the child records? (1) If you have child files with information not returned to the department, you must keep them for six years following the termination or expiration of any license or contract you have with the department. Children's records must never be submitted to the department through the licensing provider portal.

(2) If your agency closes, you must return all child file information to the department for any child who is or was in the custody of the department and whose records were not previously destroyed according to (~~WAC 388-147-1530(1)~~) subsection (1) of this section.

(3) Adoption records should be maintained according to WAC (~~388-147-1720(2)~~) 110-147-1720(2).

(4) You must inform your (~~DLR~~) LD regional licensor about the closure of your agency and where the child files will be kept.

[WSR 18-14-078, recodified as § 110-147-1530, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-147-1530, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-147-1535 What information can be shared about a child or a child's family? (1) Information about a child or the child's family is confidential and must only be shared with people directly involved in the case plan for a child.

(2) You may discuss information about the child, the child's family, and the case plan only with:

(a) A representative of the department, including staff from (~~DCFS~~) child welfare, (~~DLR~~) LD, and DDA;

(b) A representative of the department of health, the office of the state fire marshal, and the office of the family and children's ombuds;

(c) An agency program staff;

(d) The child's attorney;

(e) The child's assigned guardian ad litem or court-appointed special advocate; or

(f) Others designated by the child's (~~DSHS worker~~) DCYF case-worker.

(3) You may check with your child's (~~DSHS worker~~) DCYF case-worker for guidance about sharing information with the child's teacher, counselor, doctor, respite care provider, any other professional, or others involved in the case plan.

[WSR 18-14-078, recodified as § 110-147-1535, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-147-1535, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-147-1540 What incidents involving children must I report? (1) You must report the following incidents immediately and in no instance later than (~~forty-eight~~) 48 hours after the incident to your local (~~children's administration~~) DCYF intake staff and the child's (~~DSHS worker~~) DCYF caseworker and tribal Indian child welfare (ICW) case manager as applicable:

- (a) Death, serious illness or injury, or psychiatric care that requires medical treatment or hospitalization of a child in care;
- (b) Any time you suspect physical or sexual abuse, neglect, or exploitation of a child as required under chapter 26.44 RCW;
- (c) Sexual contact between two or more children that is not considered typical play between preschool children;
- (d) Any disclosure by a child in care of sexual or physical abuse;
- (e) Any child's suicide attempt that results in injury requiring medical treatment or hospitalization;
- (f) Any use of physical restraint alleged to have been improperly applied or excessive;
- (g) Physical assault between two or more children that results in injury requiring off-site medical attention or hospitalization;
- (h) Physical assault of a foster parent, employee, volunteer, or others by a child in care that results in injury requiring off-site medical attention or hospitalization;
- (i) Any medication given or consumed incorrectly that requires off-site medical attention; or
- (j) Property damage that is a safety hazard and not immediately corrected or may affect the children's health and safety.

(2) You must report the following incidents related to a child in care as soon as possible or in no instance later than (~~forty-eight~~) 48 hours after the incident, to the child's (~~DSHS worker~~) DCYF caseworker and tribal ICW case manager as applicable:

- (a) Suicidal or homicidal thoughts, gestures, or attempts that do not require professional medical treatment;
- (b) Unexpected health problems outside the usual range of reactions caused by medications that do not require professional medical attention;
- (c) Any incident of medication incorrectly administered or consumed;
- (d) Any professional treatment for emergency medical or emergency psychiatric care;
- (e) Physical assault between two or more children that results in injury but does not require professional medical treatment;
- (f) Physical assault of a foster parent, employee, volunteer, or others by a child that results in injury but does not require professional medical treatment;

- (g) Drug or alcohol use by a child in your care;
- (h) Any inappropriate sexual behavior by or toward a foster child; or
- (i) Use of prohibited physical restraints for behavior management.

(3) Programs that provide care to medically fragile children who have nursing care staff on duty may document the incidents described in (~~WAC 388-147-1540~~) subsection (2)(b) and (c) of this section in the facility daily logs, rather than contacting the child's (~~DSHS worker~~) DCYF caseworker or case manager, if agreed to in the child's case plan.

[WSR 18-14-078, recodified as § 110-147-1540, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 74.15.010, 74.15.030, 74.15.040, 74.15.090, 74.13.031, and P.L. 113-183. WSR 16-17-101, § 388-147-1540, filed 8/19/16, effective 9/19/16. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-147-1540, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-147-1545 What are my reporting responsibilities when a child is missing from care? (1) As soon as you or your staff have reason to believe a child in your care is missing as defined in WAC (~~388-147-1305~~) 110-147-1305 or has refused to return to or remain in your care, or whose whereabouts are otherwise unknown, you are required to notify the following:

(a) The child's assigned (~~DSHS worker~~) DCYF caseworker, as appropriate;

(b) (~~Children's administration~~) DCYF intake, if the (~~DSHS worker~~) DCYF caseworker is not available or it is after normal business hours.

(2) You are required to contact local law enforcement within six hours if the child is missing. However, if one or more of the following factors are present, you must contact law enforcement immediately:

(a) The child is believed to have been taken from placement. This means the child's whereabouts are unknown, and it is believed that the child has been concealed, detained or removed by another person;

(b) The child is believed to have been lured from placement or has left placement under circumstances that indicate the child may be at risk of physical or sexual assault or exploitation;

(c) The child is age (~~thirteen~~) 13 or younger;

(d) The child has one or more physical or mental health conditions that if not treated daily, will place the child at severe risk;

(e) The child is pregnant or parenting and the (~~infant/child~~) infant or child is believed to be with (~~him or her~~) them;

(f) The child has severe emotional problems, (+)e.g., suicidal thoughts(+), (+) that if not treated, will place the child at severe risk;

(g) The child has an intellectual and developmental disability that impairs the child's ability to care for (~~him/herself~~) themselves;

(h) The child has a serious alcohol (~~and/or~~) or substance abuse problem; or

(i) The child is at risk due to circumstances unique to that child.

(3) After contacting local law enforcement, you must also contact the national center for missing and exploited children at (~~(1-(800)-843-5678)~~) 1-800-843-5678 and report the child missing from care.

(4) If the child leaves school or has an unauthorized absence from school, you should consult with the child's (~~(DSHS worker)~~) DCYF caseworker to assess the situation and determine when you should call law enforcement. If any of the factors listed in subsection(~~(s)~~)

(2) (a) through (i) of this section are present, you and the child's (~~(DSHS worker)~~) DCYF caseworker may decide it is appropriate to delay notification to law enforcement for up to four hours after the end of the school day to give the child the opportunity to return on their own.

(5) You must provide the following information to law enforcement and to the child's (~~(DSHS worker)~~) DCYF caseworker when making a missing child report, if available:

(a) When the child left;

(b) The last known location of the child;

(c) What the child was wearing;

(d) Any known behaviors or interactions that may have caused the child's departure;

(e) Possible places where the child may go;

(f) Special physical or mental health conditions or medications that affect the child's safety;

(g) Known companions who may be aware or involved in the child's absence;

(h) Other professionals, relatives, significant adults or peers who may know where the child would go; and

(i) Recent photo of the child.

(6) You must ask law enforcement for the missing person report number and provide it to the child's (~~(DSHS worker)~~) DCYF caseworker or staff.

(7) At any time after making an initial report you learn of a missing child's whereabouts, you must report that information to the child's (~~(DSHS worker)~~) DCYF caseworker.

(8) If a child is returned to your care, it is your responsibility to cancel the run report and notify all persons you have informed of the child's run.

(9) Youth participating in the extended foster care (EFC) program are exempt from these requirements. You must follow all other reporting requirements as defined in WAC (~~(388-147-1540)~~) 110-147-1540.

[WSR 18-14-078, recodified as § 110-147-1545, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 74.15.010, 74.15.030, 74.15.040, 74.15.090, 74.13.031, and P.L. 113-183. WSR 16-17-101, § 388-147-1545, filed 8/19/16, effective 9/19/16. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-147-1545, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-147-1550 What changes must I report to my licensor? (1)

You must immediately report (~~(to your licensor)~~) through the licensing provider portal changes in the original licensing application. You must report changes in:

- (a) Your location or designated space, including address;
- (b) Your phone number;
- (c) Your program description (~~(and/or)~~) or population served;
- (d) Structure of your facility or premises from events causing damage, such as a fire, or from remodeling;
- (e) Addition of any new staff person, employee, intern, contractor, or volunteer, who might have unsupervised contact with the children in care;
- (f) Medical illness or incapacity that may affect the ability of any of your program staff to complete their duties;
- (g) Staff arrests or convictions of which you are aware, that occur between the date of your license and the expiration date of your license;
- (h) Any staff changes including the executive director, program (~~(manager/supervisor)~~) manager or supervisor, or master's level consultants;
- (i) Death, retirement, or incapacity of the person who holds the license;
- (j) Name of licensed corporation, or the name by which your facility is commonly known; and
- (k) Your articles of incorporation and bylaws.

[WSR 18-14-078, recodified as § 110-147-1550, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-147-1550, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-147-1555 What does the department require for my buildings and property? (1)

You must maintain your buildings, premises, and equipment in a clean and sanitary condition, free of hazards, and in good repair. You must have a working telephone at your agency at all times.

(2) All homes certified by your agency must meet the health and safety requirements outlined in chapter (~~(388-148)~~) 110-148 WAC.

[WSR 18-14-078, recodified as § 110-147-1555, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-147-1555, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-147-1595 What are the requirements about nondiscrimination? (1) You must follow all state and federal laws regarding non-discrimination while providing services to children in your care.

(2) You must ~~((treat))~~ support and engage foster children in your care with dignity and respect regardless of actual or perceived race, ethnicity, religion, culture, ~~((sexual orientation and gender identity))~~ or SOGIE. You must connect a child with resources that ~~((meets a child's))~~ supports and affirms their needs regarding race, ethnicity, religion, culture, ~~((sexual orientation and gender identity))~~ and SOGIE.

[WSR 18-14-078, recodified as § 110-147-1595, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-147-1595, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-147-1610 How often should the case manager contact the foster child and family? The case manager must contact a foster child and the foster child's foster family~~((r))~~ according to a case plan that reflects the child's needs. Case managers must make in home health and safety visits as required by ~~((children's administration))~~ the department's policy. Each foster child and one or both foster parents must be seen at each visit.

[WSR 18-14-078, recodified as § 110-147-1610, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-147-1610, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-147-1615 Can children in my care receive services through the extended foster care program? Foster parents can serve youth enrolled in the extended foster care program. You must adhere to chapter ~~((388-25))~~ 110-50 WAC.

[WSR 18-14-078, recodified as § 110-147-1615, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-147-1615, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-147-1620 What are the requirements for supervising children? (1) Your agency is responsible to provide adequate supervision at all times. You should arrange and maintain supervision of children during times of crisis when one or more family members or staff members may be unavailable to provide the necessary supervision or coverage for other children in care.

(2) When special supervision is required and agreed upon between the department and the agency, the agency must ensure the necessary supervision is being provided. This supervision may require auditory or visual supervision at all times.

(3) Prior to placement, you must inquire if a child poses a risk to the other children or has special supervision needs by obtaining information from the parent, (~~legal~~) guardian, the child's (~~DSHS worker~~) DCYF caseworker, therapist, or previous placements. You must:

(a) Develop a plan to address those needs;

(b) Obtain approval from the child's (~~DSHS worker~~) DCYF caseworker if the child is under the care and authority of the department; and

(c) Inform the foster parent who will be caring for the child.

(4) All high-risk activities, including the use of power driven machines or other hazardous equipment, must be properly supervised by an adult. When participating in high-risk activities, children must:

(a) Be instructed how to use and required to use appropriate safety equipment, such as helmets and life vests; and

(b) Be in continuous visual or auditory range at all times, unless approved by the child's (~~DSHS worker~~) DCYF caseworker.

[WSR 18-14-078, recodified as § 110-147-1620, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-147-1620, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-147-1630 Where may I obtain a child's health history?

You may obtain the health history from the child's (~~DSHS worker or~~) DCYF caseworker, parent, or guardian making the placement for all children placed in your facility.

[WSR 18-14-078, recodified as § 110-147-1630, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-147-1630, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-147-1635 Am I required to assess a child's need for immediate medical attention? (1) When a child first enters out-of-home care, an initial health screen is required as soon as possible, but no later than five days after entering your program.

(2) You must also make reasonable attempts to obtain the following health history:

- (a) Allergies;
- (b) All currently prescribed medications; and
- (c) Any special physical or mental health issues.

~~((2))~~ (3) If the child remains in placement beyond ~~((seventy-two))~~ 72 hours, you must contact the child's ~~((DSHS worker))~~ DCYF caseworker, parent, or ~~((legal))~~ guardian to obtain the following information:

(a) The date of the child's last ~~((physical/dental))~~ physical and dental exams;

- (b) ~~((A))~~ Their history of immunizations; and
- (c) Clinical and medical diagnoses and treatment plans.

~~((3))~~ (4) When a child leaves your care, the health history of the child must be retained by your agency or returned to the department.

(5) You should refer to the department of health's dental care brochure, Publication Nos. 920-923 through 920-928, as guides for maintaining proper dental care for children.

[WSR 18-14-078, recodified as § 110-147-1635, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 74.15.010, 74.15.030, 74.15.040, 74.15.090, 74.13.031, and P.L. 113-183. WSR 16-17-101, § 388-147-1635, filed 8/19/16, effective 9/19/16. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-147-1635, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-147-1640 When must I get an early and periodic screening, diagnosis, and treatment (EPSDT) exam for a child? (1) Children who enter out-of-home care, except for children placed by DDA through a voluntary placement agreement, must receive an (early and periodic screening, diagnosis and treatment-)EPSDT(+) exam within ((thirty)) 30 days, unless they have had an EPSDT exam in the previous ((thirty)) 30 days. ((Exception:)) DCYF caseworkers will notify you when subsequent EPSDT exams are required.

(2) For children placed by DDA through a voluntary placement agreement ((for children placed by DDA)), follow the direction of DDA regarding the need for an EPSDT exam after placement(+). ((Children also receive subsequent periodic EPSDT exams; information on these required exams may be obtained from the child's DSHS worker.))

[WSR 18-14-078, recodified as § 110-147-1640, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW

74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-147-1640, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-147-1645 What are the requirements for obtaining consent for emergent and routine medical care? (1) The department is the legal custodian for children it places in care. We have the authority to consent to emergent and routine medical services on behalf of a child under the age of ~~((eighteen))~~ 18. Youth in care over the age of ~~((eighteen))~~ 18 must consent to their own medical care or have an identified person who has been granted the legal authority to consent on their behalf. We delegate some of the authority to providers. You must contact the child's ~~((DSHS worker or children's administration))~~ DCYF caseworker or DCYF intake for specific information for each child.

(2) If you care for children in the custody of another agency, tribal court or other court, you must follow the direction of that agency or court regarding permission to provide consent for medical care.

(3) In case of medical emergency, contact the child's ~~((DSHS worker or children's administration))~~ DCYF caseworker or DCYF intake as soon as possible.

(4) It is your responsibility to ensure that a child receives the necessary medical attention if injured or harmed. In the event of a life threatening medical emergency, you must contact 911 prior to transporting the child to a medical facility.

[WSR 18-14-078, recodified as § 110-147-1645, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-147-1645, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-147-1650 Can I accept medication from a child's parent or guardian? (1) The only medicine you may accept from the child's parent, guardian, or responsible relative is medicine in the original container labeled with:

- (a) The child's first and last name;
- (b) The date the prescription was filled;
- (c) The medication's expiration date; and

(d) ~~((Legible instructions for administration ()))~~ Dosage instructions for the medication that are either the manufacturer's instructions or included on the prescription label ((- of the medication)).

(2) You must notify the child's ~~((DSHS worker))~~ DCYF caseworker if you have any concerns about medication being provided to you by the child's parent or guardian.

[WSR 18-14-078, recodified as § 110-147-1650, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-147-1650, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-147-1660 What qualifications must adoption services staff meet? (1) Your agency must have staff serving in the roles of executive director, program manager, and case managers as identified in WAC (~~(388-147-1440 through 388-148-1490)~~) 110-147-1440 through 110-148-1490.

(2) Staff may serve in multiple roles, but must meet the qualifications of each program role.

(3) Agencies providing intercountry adoptions must also have an individual on staff with experience in providing intercountry adoptions.

[WSR 18-14-078, recodified as § 110-147-1660, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-147-1660, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-147-1690 What steps must I take prior to entering into a contract with an adoptive applicant? (1) The applicant(~~(-s)~~) must submit an application to your agency.

(2) You must complete an adoption home study as outlined in WAC (~~(388-147-1695)~~) 110-147-1695.

(3) Once you have approved an application, but before you sign a contract for services, you must give the applicants a written statement about:

(a) The adoption agency's fixed fees and fixed charges to be paid by the applicant per WAC (~~(388-147-1680)~~) 110-147-1680;

(b) An estimate of fixed fees or additional itemized expenses to be paid by applicant; and

(c) Specific services covered by fees that you offer for child placement or adoption.

[WSR 18-14-078, recodified as § 110-147-1690, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-147-1690, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-147-1720 How do I maintain children's records? (1) Your ((child placing agency)) CPA must retain a record of each child you place in permanent custody. This record must contain all available identifying legal, medical, and social information and must be kept confidential, as required by chapter 26.33 RCW. Children's records must never be submitted to the department through the licensing provider portal.

(2) If your agency closes, you must make arrangements for a period of ((ninety-nine)) 99 years for the retention of adopted children's records who were not in the custody of the department. You must inform your ((DLR)) LD regional licensor about the closure of your agency and where these children's records will be kept.

[WSR 18-14-078, recodified as § 110-147-1720, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-147-1720, filed 12/11/14, effective 1/11/15.]

OTS-1238.12

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-148-1300 What is the purpose of this chapter? (1) This chapter contains licensing requirements for all foster homes licensed directly by the department or certified through a child placing agency. Unless noted otherwise, these requirements apply to you if you are licensed to provide foster care.

(2) Licensing requirements are designed to ensure children who are in foster care are safe, healthy and protected from all forms of child abuse and neglect according to RCW 26.44.020(1) and chapter ((388-15)) 110-30 WAC.

[WSR 18-14-078, recodified as § 110-148-1300, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-148-1300, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-148-1305 What definitions do I need to know to understand this chapter? The following definitions are for the purpose of this chapter and are important to understanding these requirements:

"Abuse or neglect" means the injury, sexual abuse, sexual exploitation, negligent treatment or maltreatment of a child as defined in RCW 26.44.020.

"Adult" means a person (~~(eighteen)~~) 18 years of age and older, not in the care of the department.

"Agency" is defined in RCW 74.15.020(1).

~~("CA" means children's administration.)~~

"Asexual" means the lack of a sexual attraction or desire for other individuals.

"Bisexual" means individuals who have an emotional or physical attraction to individuals of the same and different genders.

"Capacity" means the age range (~~(, gender)~~) and maximum number of children on your current license.

"Care provider" means any person who is licensed or authorized to provide care for children, and cleared to have unsupervised access to children under the authority of a license.

"Case manager" means the private agency employee who coordinates the planning efforts of all the persons working on behalf of a child.

"Case plan" means a written document adhered to and followed by a foster child's parent or parents, foster parent or parents, the department, and all other caregivers. A case plan may include, but is not limited to:

(a) A description of the type of home or facility in which a child is to be placed, including a discussion of the safety and appropriateness of the placement and how the department plans to carry out the voluntary placement agreement entered into or judicial determination made with respect to the child;

(b) A plan for assuring that the child receives safe and proper care and that services are provided to the parents, child, and foster parents in order to improve the conditions in the parents' home, facilitate return of the child to their own safe home or the permanent placement of the child, and address the needs of the child while in foster care, including a discussion of the appropriateness of the services that have been provided to the child under the plan;

(c) The health and education records of the child, including the most recent information available regarding:

(i) The names and addresses of the child's health and educational providers;

(ii) The child's grade level performance;

(iii) The child's school record;

(iv) A record of the child's immunizations;

(v) The child's known medical conditions;

(vi) The child's medications; and

(vii) Any other relevant health and education information concerning the child determined to be appropriate by the department;

(d) Relevant professional assessments of the child;

(e) Court orders concerning the child; and

(f) Any other relevant plan, assessment, knowledge, material, or information concerning the child determined to be appropriate by the department.

"Caseworker" means the primary agency worker assigned to the child through DCYF or another government agency.

"Certification" means either:

~~((1))~~ (a) Our review of whether you meet the licensing requirements, even though you do not need to be licensed; or

~~((2))~~ (b) A licensed child placing agency (CPA) representing that a foster home being supervised by that CPA meets licensing re-

quirements. The final decision for licensing is the responsibility of ((EA)) DCYF.

"Chapter" means chapter ~~((388-148))~~ 110-148 WAC.

"Child," "children," or "youth" for this chapter, means a person who is one of the following:

~~((1))~~ (a) Under ~~((eighteen))~~ 18 years of age;

~~((2))~~ (b) Up to ~~((twenty-one))~~ 21 years of age and enrolled in services through department of social and health services, developmental disabilities administration (DDA) the day prior to his or her ~~((eighteenth))~~ 18th birthday and pursuing either a high school or equivalency course of study (GED/HSEC), or vocational program;

~~((3))~~ (c) Up to ~~((twenty-one))~~ 21 years of age and participates in the extended foster care program;

~~((4))~~ (d) Up to ~~((twenty-one))~~ 21 years of age with intellectual and developmental disabilities;

~~((5))~~ (e) Up to ~~((twenty-one))~~ 25 years of age and under the custody of ~~((the Washington state))~~ juvenile ~~((justice))~~ rehabilitation ~~((administration))~~.

"Child placing agency ~~((or))~~ (CPA)" means an agency licensed to place children for foster care or adoption.

"Child welfare" or "CW" means the division of child welfare within DCYF. CW provides case management to children and families involved in the child welfare system.

"Compliance agreement" means a written improvement plan to address the changes needed to meet licensing requirements.

~~("DCFS" means the division of children and family services within children's administration. DCFS provides case management to children and families involved in the child welfare system.)~~

"DDA" means the department of social and health services, developmental disabilities administration.

"Department" or ~~((DSHS))~~ "DCYF" means the department of ~~((social and health services))~~ children, youth, and families.

"Developmental disability" is a disability as defined in RCW 71A.10.020.

~~("DLR" means the division of licensed resources within children's administration. DLR licenses and monitors foster homes, child placing agencies, and group care facilities.)~~

"FBI" means the Federal Bureau of Investigation.

"Foster home or foster family home" means a person(s) licensed to regularly provide ~~((twenty-four-hour))~~ 24-hour care in their home to children.

"Gay" means a sexual orientation to describe individuals who are emotionally or physically attracted to someone of the same gender. Gay is sometimes an umbrella term for the LGBTQIA+ community.

"Gender" or "gender identity" means an individual's inner sense of being a female, male, a blend of both or neither, or another gender. This may or may not correspond with an individual's sex assigned at birth.

"Gender expression" means individuals' outward communication of their gender through behavior or appearance. This may or may not conform to their sex assigned at birth or socially defined behaviors and characteristics typically associated with being either masculine or feminine.

"Gender fluid" means individuals whose gender identities are flexible, not permanent.

"Guardian" has the same meaning in this chapter as defined in RCW 26.33.020(11).

"Guns or weapons" means any device intended to shoot projectiles under pressure or that can be used to attack. These include but are not limited to BB guns, pellet guns, air rifles, stun guns, antique guns, handguns, rifles, shotguns and archery equipment.

"Hearing" means the administrative review process conducted by an administrative law judge.

"I, my, you, and your" refers to an applicant for a license issued under this chapter, and to any party holding a license under this chapter.

"Infant" means a child less than (~~twelve~~) 12 months of age.

"Intellectual and developmental disability" means children with deficits in general mental abilities and impairment in everyday adaptive functioning.

"Intersex" is an umbrella term used to describe a wide range of natural bodily variations when the body is born with a combination of chromosomes, internal organs, or external genitalia that do not develop as expected.

"Lesbian" means females or women who have an emotional or physical attraction for other females or women.

"LGBTQIA+" means lesbian, gay, bisexual, transgender, queer or questioning, intersex, and asexual. The "+" represents identities not specifically named in the LGBTQIA acronym, e.g., pansexual, gender nonbinary, and Two-Spirit.

"License" means a permit issued by us confirming that you and your home meet the licensing standards established in this chapter.

"Licensed health care provider" means (~~an MD~~) a medical doctor (~~(+)~~) (MD), (~~DO~~) doctor of osteopathy (DO), (~~ND~~) doctor of naturopathy (ND), (~~PA~~) physician's assistant (PA), or an (~~ARNP~~) advanced registered nurse practitioner (ARNP).

"Licensing division (LD)" means the division within DCYF that licenses and monitors foster homes, child placing agencies, and licensed group care facilities.

"Licensor" means either:

(~~(1)~~) (a) A (~~DLR~~) LD employee who recommends approvals for, or monitors licenses or certifications for facilities and agencies established under this chapter; or

(~~(2)~~) (b) An employee of a (~~child placing agency~~) CPA who certifies or monitors foster homes supervised by the (~~child placing agency~~) CPA.

"Maternity services" as defined in RCW 74.15.020. These are also referred to as pregnant and parenting youth programs.

"Medically fragile" means the condition of a child who requires the availability of (~~twenty-four-hour~~) 24-hour skilled care from a health care professional or specially trained family or foster family member. These conditions may be present all the time or frequently occurring. If the technology, support, and services being received by the medically fragile children are interrupted or denied, the child may, without immediate health care intervention, experience death.

"Missing child" means any child less than (~~eighteen~~) 18 years of age in licensed care or under the care, custody, and authority of ((EA)) DCYF and the child's whereabouts are unknown (~~and/or~~) or the child has left care without the permission of the child's caregiver or ((EA)) DCYF. This does not include children in dependency guardianship.

"Nonambulatory" means not able to walk or exit to safety without the physical assistance of another individual.

"Nonbinary" is a term of self-identification for individuals who do not identify within the limited and binary terms that have described gender identity, e.g., female and male. Nonbinary is also an umbrella term for many identities such as gender expansive, gender fluid, and genderqueer.

"Out-of-home placement" means a child's placement in a home or facility other than the home of a child's parent, guardian, or legal custodian.

"Parent" has the same meaning in this chapter as defined in RCW 26.26A.010(15).

"Probationary license" means a license issued as part of a corrective action to an individual or agency that has previously been issued a full license but is out of compliance with minimum licensing requirements and has entered into an agreement aimed at correcting deficiencies.

"Property or premises" means your buildings and grounds adjacent to your residential property that are owned or managed by you.

"Psychotropic medication" means a type of medicine prescribed to affect or alter thought processes, mood, sleep, or behavior. These include anti-psychotic, anti-depressant, and anti-anxiety medications.

"Queer" is a term used to express LGBTQIA+ identities and orientations. The term is sometimes used as an umbrella term for all LGBTQIA+ individuals.

"Questioning" means individuals who are exploring their sexual orientation, gender identity, or gender expression at any age.

"Relative" means a person who is related to a child as defined in RCW 74.15.020.

"Respite" means brief, temporary relief care provided by an in-home or out-of-home provider paid by the department. The respite provider fulfills some or all of the care provider responsibilities for a short time.

"Sexual orientation" means an individual's emotional or physical attraction to other individuals.

"SOGIE" is an acronym for sexual orientation, gender identity, and expression which are distinct identifiers everyone has. LGBTQIA+ is a subdistinction within SOGIE self-identifiers. SOGIE includes LGBTQIA+ as well as heterosexual, cisgender, and nonquestioning individuals.

"Transgender" is an umbrella term for individuals whose gender identity or expression is different from cultural expectations based on the sex they were assigned at birth. Gender-affirming medical care is not a prerequisite to identify as transgender. Being transgender does not imply any specific sexual orientation.

"Treatment plan" means individual plans that identify the service needs of the child, including the child's parent or guardian, and identifies the treatment goals and strategies for achieving those goals.

"Two-Spirit" means a modern, pan-indigenous umbrella term used by some indigenous North Americans to describe Native people in their communities who fulfill a traditional third-gender or other gender-variant, ceremonial, and social role in their cultures. Being Two-Spirit does not imply any specific sexual orientation.

"Washington state patrol fire protection bureau or WSP/FPB" means the state fire marshal.

"We, our, and us" refers to the department of ((social and health services)) children, youth, and families, including ((DLR and DCFS)) LD and CW staff.

"Young child" refers to a child age (~~(twelve)~~) 12 months through eight years old.

[WSR 18-14-078, recodified as § 110-148-1305, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 74.15.010, 74.15.030, 74.15.040, 74.15.090, 74.13.031, 74.39A.056, 43.43.832. WSR 18-11-138, § 388-148-1305, filed 5/23/18, effective 6/23/18. Statutory Authority: RCW 74.15.010, 74.15.030, 74.15.040, 74.15.090, 74.13.031, and P.L. 113-183. WSR 16-17-101, § 388-148-1305, filed 8/19/16, effective 9/19/16. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-148-1305, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-148-1315 How is an application submitted? (1) You must complete your licensing application packet with all (~~(DLR)~~) LD required documents within (~~(ninety)~~) 90 days of submitting the application and background authorization forms to the department. (~~(Application packets are available from the division of licensed resources and licensed child placing agencies.)~~)

(2) If you do not meet this (~~(ninety-day)~~) 90-day deadline, your licenser may withdraw your application.

[WSR 18-14-078, recodified as § 110-148-1315, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-148-1315, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 20-03-095, filed 1/13/20, effective 2/1/20)

WAC 110-148-1320 When will the department grant me a foster family license? (1) We issue you a license when you and everyone in your household meet the licensing requirements contained in this chapter, and all required documents are in the licensing file. In addition, you must maintain all requirements in this chapter and provide verification to your licenser, if requested.

(2) You and other caregivers over the age of (~~(eighteen)~~) 18 must:

(a) Complete first aid (~~(training)~~) and age-appropriate, (+) adult or infant (~~(+)~~ ~~CPR~~ ~~(+)~~) (+) cardiopulmonary resuscitation (~~(+)~~) (CPR) training. Training must be department approved and accredited with nationally recognized standards; and

(b) Complete (~~(HIV/AIDS and)~~) bloodborne pathogens training including infection control standards consistent with educational materials published by the department of health (~~(, office on HIV/AIDS)~~).

(3) You, your household members, individuals living on any part of your property, and anyone else having unsupervised contact with

your foster children must pass a background check, as required by chapter 110-04 WAC:

(a) Anyone (~~((sixteen))~~) 16 years old or older must pass a background check;

(b) Anyone younger than (~~((sixteen))~~) 16 years old must pass a background check if the department determines one is warranted to ensure the safety of a child;

(c) Anyone (~~((eighteen))~~) 18 years old or older must pass an FBI fingerprint-based background check, unless the individual is unable to obtain fingerprints due to a mental or physical disability and can provide documentation of such disability to the department; and

(d) Anyone (~~((eighteen))~~) 18 years old or older must complete a child abuse and neglect registry check from each state they have lived in over the past five years indicating:

(i) No license denials or revocations from an agency that regulates the care of children or vulnerable adults, unless the department determines that you do not pose a risk to a child's health, safety, well-being and long-term stability; and

(ii) No finding or substantiation of abuse or neglect of a child or a vulnerable adult, unless the department determines that you do not pose a risk to a child's safety, well-being, and long-term stability.

(4) You and your household members over the age of (~~((eighteen))~~) 18 must (~~((submit))~~) complete a (~~((negative))~~) tuberculosis (~~((test or an X-ray, unless you can demonstrate a medical reason prohibiting the TB test, or have had a negative TB test within the twelve months prior to receipt of the application))~~) (TB) screening. The department may require a medical evaluation or TB test that is a purified protein derivative skin test or a blood test, based on the results of the TB screening. If there is a positive evaluation or TB test, then the individual must submit a physician's statement identifying that there is no active TB or risk of contagion to children in care.

(5) For any children living in the household not receiving out-of-home care, you must have proof of current immunizations for ((any children living in the household, not including children in out-of-home care.)) all vaccine-preventable diseases detailed in WAC 246-105-030. For all children receiving out-of-home care, we may grant a medical exception to this requirement if the immunization is contrary to the child's health as documented by a licensed health care provider on a certificate of exemption.

(6) You and all household members must have pertussis and influenza immunizations to serve foster children who are:

(a) Under the age of two; or

(b) Medically fragile as defined in WAC 110-148-1305.

(c) A medical exception may be granted if the immunization is contrary to your or the household member's health as documented by a licensed health care provider.

(7) Before granting or renewing a license, your licensor will assess your ability to provide a safe home and to provide the quality of care needed by children placed in your home. Your licensor will also determine that you meet training requirements.

(8) Foster children under the care and authority of the department living in your home do not need to obtain a criminal history check, FBI fingerprint check, or TB test.

[Statutory Authority: RCW 74.15.030, chapter 74.15 RCW, P.L. 115-123 and 42 U.S.C. § 671 (a) (36) (A). WSR 20-03-095, § 110-148-1320, filed

1/13/20, effective 2/1/20. WSR 18-14-078, recodified as § 110-148-1320, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 74.15.010, 74.15.030, 74.15.040, 74.15.090, 74.13.031, 74.39A.056, 43.43.832, and 2017 c 20 § 4. WSR 18-05-037, § 388-148-1320, filed 2/13/18, effective 3/16/18. Statutory Authority: RCW 74.15.010, 74.15.030, 74.15.040, 74.15.090, and 74.13.031. WSR 16-01-121, § 388-148-1320, filed 12/18/15, effective 1/18/16. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-148-1320, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-148-1330 May I receive more than one in-home family license? (1) In rare situations and at our discretion, we may allow a family to be licensed for foster care and another type of in-home family care. The ((DLR)) LD senior administrator may grant approval if it appears to be in the best interest of a child.

(2) If you have more than one in-home family license:

(a) It must be clear that the health and safety of children is not compromised; and

(b) The total number of children allowed in your home will not be higher than ((CA's)) DYCF's allowed maximum capacity. All licensing agencies must be in agreement.

[WSR 18-14-078, recodified as § 110-148-1330, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-148-1330, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-148-1340 What do I do to renew my license? (1) As a courtesy a renewal notice will be sent to you ((one hundred and twenty)) 120 days prior to your license expiration date. If you do not receive this renewal notice it is your responsibility to contact your licensor.

(2) You must send the application and background authorization form to renew your license prior to the expiration date of your current license. Your license ((can)) may be closed if we do not receive your application prior to your license expiration date.

[WSR 18-14-078, recodified as § 110-148-1340, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-148-1340, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-148-1350 What are the roles of the department and the CPA? (1) We have the legal authority to license homes for the care of children in out-of-home placement. You may choose to be supervised by us, or by a (~~child placing agency~~) CPA(~~+~~).

(2) We license CPAs, including tribal CPAs, to supervise foster homes. The CPA is authorized to certify to the department that you meet the licensing requirements contained in this chapter.

(3) A CPA has the discretion whether or not to certify you. If you disagree with a (~~child placing agency's~~) CPA's decision, you must abide by the (~~child placing agency's~~) CPA's grievance process to challenge the decision.

(4) A CPA may, at their discretion, have additional requirements for you to become and remain a licensed foster home under their supervision.

(5) The department has the final approval for licensing you, if you are certified by a CPA.

[WSR 18-14-078, recodified as § 110-148-1350, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-148-1350, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-148-1355 Can I be licensed as a foster home if I also work for a (~~child placing agency~~) CPA or (~~children's administration~~) DCYF? (1) If you or your (~~relative(s)~~) relatives work for a CPA in the roles of administration, supervision, foster home certification, placement, payment authorization, or case management, you may not be certified by that CPA as a foster home.

(2) If you go to work for the agency that has already certified your home, and you serve in one of these roles, you must be recertified through another agency or become licensed directly by the department within six months of employment.

(3) You or your (~~relative(s)~~) relatives may not have financial interest in an agency and be licensed or certified by that agency.

(4) If you or your relative works for (~~DSHS~~) DCYF, you must follow department policy regarding licensure.

[WSR 18-14-078, recodified as § 110-148-1355, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-148-1355, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 20-03-095, filed 1/13/20, effective 2/1/20)

WAC 110-148-1365 What are the personal requirements for foster parents? (1) You must be at least (~~(twenty-one)~~) 21 years old to apply for a license.

(2) You must demonstrate you have:

(a) The understanding, ability, physical health, emotional stability, and personality suited to meet the physical, mental, emotional, cultural, and social needs of children under your care;

(b) (~~(You must have)~~) Sufficient regular income to maintain your own family, without the foster care reimbursement made for the children in your care; and

(c) (~~(At least one applicant in the home must have functional literacy; and~~

~~(d) You must~~) To be able to communicate with the child, the department, health care providers, and other service providers.

(3) You must adhere to, follow, and comply with the case plan for the children in your care.

(4) You may not use drugs or alcohol, whether legal or illegal, in a manner that affects your ability to provide safe care to children.

(~~(4)~~) (5) You and everyone residing on your premises or who you allow to have unsupervised access to children must demonstrate they have the ability to furnish children with a nurturing, respectful, and supportive environment.

[Statutory Authority: RCW 74.15.030, chapter 74.15 RCW, P.L. 115-123 and 42 U.S.C. § 671 (a)(36)(A). WSR 20-03-095, § 110-148-1365, filed 1/13/20, effective 2/1/20. WSR 18-14-078, recodified as § 110-148-1365, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 74.15.010, 74.15.030, 74.15.040, 74.15.090, 74.13.031, 74.39A.056, 43.43.832. WSR 18-11-138, § 388-148-1365, filed 5/23/18, effective 6/23/18. Statutory Authority: RCW 74.15.010, 74.15.030, 74.15.040, 74.15.090, 74.13.031, and P.L. 113-183. WSR 16-17-101, § 388-148-1365, filed 8/19/16, effective 9/19/16. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-148-1365, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-148-1375 What training am I required to have before I become licensed? (1) Before you are licensed for the first time, (~~(orientation and)~~) preservice training will be required for, at a minimum, the primary caregiver (~~(at a minimum)~~) in your home.

(2) All members of the household over the age of (~~(eighteen)~~) 18 who provide care must have and maintain the following training:

(a) First aid;

(b) Age appropriate cardiopulmonary resuscitation (CPR); and

(c) (~~(HIV/AIDS to include)~~) Bloodborne pathogens and infection control standards consistent with educational materials published by the department of health(~~(, office on HIV/AIDS)~~).

(3) The department-approved first aid and CPR training must be accredited with nationally recognized standards. It also must include an in-person exercise demonstrating that you are capable of performing CPR.

(4) You must keep records in your home showing completed current first-aid and age appropriate CPR training for all care providers.

(5) Training for CPR is not required if you have a statement from a physician that the training is not advised for medical reasons. In that case, another person with current CPR training must be on the premises when children are present.

(6) Applicants with current and active medical licenses or certificates; ~~((+))~~nurses, physicians and EMS personnel ~~((+))~~, may submit their licenses or certificates to satisfy the first aid ~~((and))~~, CPR, and bloodborne pathogens requirement.

[WSR 18-14-078, recodified as § 110-148-1375, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-148-1375, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-148-1380 What training must I complete after I am licensed? (1) You and your licensor must develop an individual in-service training plan pursuant to the department's foster home training policy. The training plan will be based on the type of children in your care and your previous training and experience.

(2) If you fail to complete your training ~~((plan))~~ requirements, we may take corrective action by:

(a) Delaying your foster care renewal license until the requirements are met;

(b) No longer placing children in your home; or

(c) Issuing a probationary license, suspending, or revoking your license.

(3) We may modify training plans at any time and we may require specific training given the needs of the foster children placed in your home.

[WSR 18-14-078, recodified as § 110-148-1380, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-148-1380, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-148-1385 How do you decide ~~((how many children may be placed in))~~ the capacity for your home? (1) We will identify the maximum number, age range, and gender of children that may be placed with you. We will base this on your skills, the number of care providers,

the physical accommodations in your home, and the needs of the children placed in your home.

(2) The maximum number of children in a licensed foster home is:

(a) Six children in a home licensed with two caregivers. This includes your own children under the age of (~~eighteen~~) 18, and children in foster or respite care;

(b) Four children, in a home licensed with one caregiver. This includes your own children under the age of (~~eighteen~~) 18, and children in foster or respite care;

(c) If you already have the maximum number of your own children as specified in (a) or (b) in this subsection, you may be licensed for one foster child at our discretion if you meet the other licensing requirements.

(3) If you reach maximum capacity during licensure because you give birth or adopt, your licensor will determine your home's suitability for one additional child.

(4) At any one time you may care for not more than:

(a) Two children less than two years of age or who are nonambulatory, including your own children; or

(b) Four children with intellectual and developmental disabilities as defined in RCW 71A.10.020; or

(c) Three medically fragile foster children who need semi-skilled maintenance or supportive services. You must have the qualified training and experience to provide proper care.

(5) You may have placement of a teen parent and their child. Both the teen parent and their child do not have to be in the custody of the department or a CPA, however, they will count towards your maximum capacity.

[WSR 18-14-078, recodified as § 110-148-1385, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-148-1385, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 20-03-095, filed 1/13/20, effective 2/1/20)

WAC 110-148-1390 Can I accept children outside the limitations of my license? (1) We have the discretion to allow you to temporarily exceed your capacity. (~~We may do this when you provide care for a sibling group, respite care, placement of a relative child, or because you have demonstrated exceptional abilities to meet the needs of children.~~) The placement must be in the best interest of the child and may not affect the health and safety of other children in the home.

(2) If your home is licensed for six foster children, LD will not allow you to exceed your capacity, except to allow:

(a) Parenting youths in foster care to remain with their children;

(b) Siblings to remain together;

(c) A child who has an established, meaningful relationship with the family to remain with the family; or

(d) A family with the necessary special training or skills to provide care to a child who has a severe disability.

(3) The approval must be in writing and we may require a written plan for additional supervision or other requirements before granting approval.

[Statutory Authority: RCW 74.15.030, chapter 74.15 RCW, P.L. 115-123 and 42 U.S.C. § 671 (a) (36) (A). WSR 20-03-095, § 110-148-1390, filed 1/13/20, effective 2/1/20. WSR 18-14-078, recodified as § 110-148-1390, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-148-1390, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-148-1395 Do I have to admit or retain all children? (1)

You have the right to decline, to admit, or keep a child in your home (~~(. However)~~), unless your decision violates the Washington state law against discrimination, chapter 49.60 RCW. For example, a provider must not decline a child because of the child's actual or perceived race, ethnicity, religion, sexual orientation, gender identity, or SO-GIE.

(2) Individual CPA programs may have contracts that specify a child cannot be denied admission.

~~((2))~~ (3) You do not have the authority to move a child to another home, ~~((+))~~ either temporarily or permanently ~~((+))~~, without the consent of the child's ~~((DSHS worker))~~ DCYF caseworker or the ~~((child placing agency))~~ CPA case manager. This does not include temporary visits under ~~((seventy-two))~~ 72 hours. You must also comply with travel requirements in WAC ~~((388-148-1435))~~ 110-148-1435.

[WSR 18-14-078, recodified as § 110-148-1395, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-148-1395, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-148-1405 What are the requirements for keeping children's records? (1) When a child is placed in your foster home, you must keep the child's records in your home. You should have the following information, if available:

- (a) The child's name, birth date, and legal status;
- (b) Name and telephone number of the ~~((DSHS worker))~~ DCYF caseworker or case manager for each child in care;
- (c) Names, ~~((address))~~ addresses, and telephone numbers of parents or persons to be contacted in case of emergency;
- (d) Information on specific cultural needs of the child including a cultural plan for native children with input from the child's tribe, if appropriate;

(e) The child's medical history including any medical problems, name of doctor(s), type of medical coverage and provider;

(f) The child's mental health history and any current mental health, chemical dependency, and behavioral issues, including medical and psychological reports;

(g) The child's individualized family service plan;

~~(h)~~ A written list of all prescription medications for the children in your care;

~~((h))~~ (i) Dental care provider;

~~((i))~~ (j) Immunizations records;

~~((j))~~ (k) Child's school records, report cards, school pictures, 504 plans, and individual education plans (IEP);

~~((k))~~ (l) Special instructions including supervision requirements and suggestions for managing problem behavior;

~~((l))~~ (m) Inventory of the child's personal belongings;

~~((m))~~ (n) The child's visitation plan;

~~((n))~~ (o) Written consent from the ~~((child placing agency))~~ CPA, if any, for providing medical care and emergency surgery,

~~((+))~~ unless that care is authorized by a court order ~~((+))~~; and

~~((o))~~ (p) Names, addresses, and telephone numbers of persons authorized to take the child in care out of your home.

(2) Foster parents are encouraged to obtain a copy of the child's court order or voluntary placement agreement that gives approval to place the child, and the child's case plan from the child's ~~((DSHS worker))~~ DCYF caseworker.

(3) At the end of the child's placement, you must return reports and information about the child or the child's family to the child's ~~((DSHS worker))~~ DCYF caseworker or case manager, or the child's next placement at the discretion of the child's ~~((DSHS worker))~~ DCYF caseworker or case manager.

[WSR 18-14-078, recodified as § 110-148-1405, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-148-1405, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-148-1410 What information is confidential and what information can I share about a child or a child's family? (1) Information about a child or the child's family is confidential and must only be shared with people directly involved in caring for a child on a need to know basis, or involved in the case plan for a child. You may discuss information about the child, the child's family and the case plan only with:

(a) Our representatives, including DCYF's LD and CW staff ~~((from DCFS, DLR and DDA))~~;

(b) Department of health, department of social and health services, office of the state fire marshal and the office of the family and children's ombuds;

(c) A ~~((child placing agency))~~ CPA team assigned to the child;

(d) A child's tribal social services worker;

(e) Treatment and service providers identified in the child's case plan or with permission of the child's (~~DSHS worker~~) DCYF case-worker; and

(f) The child's guardian ad litem, court-appointed special advocate (~~and/or~~) and attorney.

(2) You may check with your child's (~~DSHS worker~~) DCYF case-worker for guidance about sharing information with the child's parent or guardian, teacher, counselor, doctor and others involved in the child's case plan.

(3) Child placing agencies and the department must share information about the child and child's family related to the case plan with you so that you can meet the child's needs.

[WSR 18-14-078, recodified as § 110-148-1410, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-148-1410, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-148-1415 Where can I get a child's health history? (1)

You may get the health history and immunization record from the (~~DSHS worker~~) DCYF caseworker or (~~child placing agency~~) CPA making the placement for all children placed in your home. The health history should include:

- (a) The date of the child's last physical and dental examination;
- (b) Allergies;
- (c) Any special health (~~problems~~) issues;
- (d) A history of immunizations;
- (e) Clinical and medical diagnoses and treatment plans; and
- (f) All currently prescribed medications.

(2) When leaving the foster home, the health history of the child must go with the child to the next placement or be returned to the child's (~~DSHS worker~~) DCYF caseworker or CPA case manager.

[WSR 18-14-078, recodified as § 110-148-1415, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-148-1415, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-148-1420 What incidents involving children must I report? (1) You must report the following immediately and in no in-

stance later than (~~forty-eight~~) 48 hours after the incident to your local (~~children's administration~~) DCYF intake staff and the (~~child's DSHS worker~~) DCYF caseworker or (~~child placing agency~~) CPA case manager and child's tribal Indian child welfare (ICW) case manager as applicable:

- (a) Death, serious illness or injury, or psychiatric care that requires medical treatment or hospitalization of a child in care;
 - (b) Any time you suspect or a child discloses physical or sexual abuse, neglect, or exploitation of a child as required under chapter 26.44 RCW;
 - (c) Sexual contact between two or more children that is not considered typical play between preschool age children;
 - (d) Any disclosure by a child in care of sexual or physical abuse;
 - (e) Any child's suicide attempt that results in injury requiring medical treatment or hospitalization;
 - (f) Any use of physical restraint alleged to have been improperly applied or excessive;
 - (g) Physical assault between two or more children that results in injury requiring off-site medical attention or hospitalization;
 - (h) Physical assault of a foster parent, employee, volunteer, or others by a child in care that results in injury requiring off-site medical attention or hospitalization;
 - (i) Any medication given or consumed incorrectly that requires off-site medical attention; or
 - (j) Property damage that is a safety hazard and not immediately corrected or may affect the children's health and safety.
- (2) You must report the following incidents related to a child in care as soon as possible or in no instance later than (~~forty-eight~~) 48 hours after the incident, to the child's (~~DSHS worker~~) DCYF case-worker or CPA case manager and the child's tribal ICW case manager, as applicable:
- (a) Suicidal or homicidal thoughts, gestures, or attempts that do not require professional medical treatment;
 - (b) Unexpected health problems outside the usual range of reactions caused by medications that do not require professional medical attention;
 - (c) Any incident of medication incorrectly administered or consumed;
 - (d) Any treatment by a medical professional for emergency medical or emergency psychiatric care;
 - (e) Physical assault between two or more children that results in injury but does not require professional medical treatment;
 - (f) Physical assault of a foster parent, employee, volunteer, or others by a child that results in injury but does not require professional medical treatment;
 - (g) Drug or alcohol use by a foster child;
 - (h) Any inappropriate sexual behavior by or toward a foster child; or
 - (i) Use of prohibited physical restraints for behavior management.

[WSR 18-14-078, recodified as § 110-148-1420, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 74.15.010, 74.15.030, 74.15.040, 74.15.090, 74.13.031, and P.L. 113-183. WSR 16-17-101, § 388-148-1420, filed 8/19/16, effective 9/19/16. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-148-1420, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-148-1425 What are my reporting responsibilities when a child is missing from care? (1) As soon as you have reason to believe a child in your care is missing as defined in WAC (~~(388-148-1305)~~) 110-148-1305 or has refused to return to or remain in your care, or whose whereabouts are otherwise unknown, you are required to notify the following:

(a) The child's (~~(assigned DSHS worker)~~) DCYF caseworker, as appropriate;

(b) (~~(CA)~~) DCYF intake, if the (~~(DSHS worker)~~) DCYF caseworker is not available or it is after normal business hours;

(c) The case manager, if the child is placed by a (~~(child placing agency program)~~) CPA.

(2) You are required to contact local law enforcement within six hours if the child is missing from care. You must contact law enforcement immediately in any of the following circumstances:

(a) The child is believed to have been taken from placement. This means the child's whereabouts are unknown, and it is believed that the child has been concealed, detained, or removed by another person;

(b) The child is believed to have been lured from placement or has left placement under circumstances that indicate the child may be at risk of physical or sexual assault or exploitation;

(c) The child is age (~~(thirteen)~~) 13 or younger;

(d) The child has one or more physical or mental health conditions that if not treated daily, will place the child at severe risk;

(e) The child is pregnant, or is parenting and the (~~(infant/child)~~) infant or child is believed to be with (~~(him or her)~~) them;

(f) The child has severe emotional problems, (~~(+)~~)e.g., suicidal thoughts(~~(+)~~), that if not treated, will place the child at severe risk;

(g) The child has an intellectual and developmental disability that impairs the child's ability to care for (~~(him/herself)~~) themselves;

(h) The child has a serious alcohol (~~(and/or)~~) or substance abuse problem; or

(i) The child is at risk due to circumstances unique to that child.

(3) After contacting local law enforcement, you must also contact the national center for missing and exploited children at 1 (800)843-5678 and report the child missing from care.

(4) If the child leaves school or has an unauthorized absence from school, you should consult with the child's (~~(worker)~~) DCYF caseworker to assess the situation and determine when you should call law enforcement. If any of the factors listed in subsection(~~(s)~~) (2) (a) through (i) of this section are present, you and the child's (~~(worker)~~) DCYF caseworker may decide it is appropriate to delay notification to law enforcement for up to four hours after the end of the school day to give the child the opportunity to return.

(5) You must provide the following information to law enforcement and to the child's (~~(DSHS worker)~~) DCYF caseworker when making a missing child report, if available:

(a) When the child left;

(b) Location the child left;

(c) What the child was wearing;

(d) Any known behaviors or interactions that may have caused the child's departure;

- (e) Possible places where the child may go;
 - (f) Special physical or mental health conditions or medications that affect the child's safety;
 - (g) Known companions who may be aware or involved in the child's absence;
 - (h) Other professionals, relatives, significant adults, or peers who may know where the child would go; and
 - (i) Recent photo of the child.
- (6) You must ask law enforcement for the missing person report number and provide it to the child's (~~DSHS worker~~) DCYF caseworker or staff.
- (7) At any time after making an initial report you learn of a missing child's whereabouts or the child returns to your home, you must report that information to the child's (~~DSHS worker~~) DCYF case-worker.

[WSR 18-14-078, recodified as § 110-148-1425, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 74.15.010, 74.15.030, 74.15.040, 74.15.090, 74.13.031, and P.L. 113-183. WSR 16-17-101, § 388-148-1425, filed 8/19/16, effective 9/19/16. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-148-1425, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-148-1430 What are other reporting requirements? (1)

Pursuant to RCW 74.15.100, you must notify the department's licensor before moving to a new location. You may request a continuation of your current license at the new location any time before moving or within 30 days after moving.

- (2) You must report to your licensor immediately if:
 - (a) Your address or telephone number changes;
 - (b) The structure of your home is damaged or you plan to make changes to the structure; or
 - (c) You have any changes to your original licensing application or you relocate your home.
- ~~((2))~~ (3) You must report to your licensor any significant changes regarding people in your home and your property including:
 - (a) A change in your marital status;
 - (b) A separation from your spouse or partner;
 - (c) An arrest of anyone on the premises or who has access to children;
 - (d) The death of immediate family members living in your home;
 - (e) Anyone moving in or out of your home or on the property;
 - (f) Any serious physical or mental incapacity that may interfere with the care of children;
 - (g) Any changes in a medical condition, including changes in prescription drugs that impact your ability to care for children;
 - (h) A change in employment or significant decrease in income; and
 - (i) If you adopt a child.
- ~~((3))~~ (4) The above changes may require the department or (~~child placing agency~~) CPA to complete a new assessment of your

home. This assessment may or may not result in the issuance of a license.

[WSR 18-14-078, recodified as § 110-148-1430, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-148-1430, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-148-1435 What are the travel requirements for children in care? You must get written approval from the child's (~~DCFS worker~~) DCYF caseworker for children or youth in the care and custody of the department, prior to any travel over (~~seventy-two~~) 72 hours, and any out-of-country travel.

[WSR 18-14-078, recodified as § 110-148-1435, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-148-1435, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 20-03-095, filed 1/13/20, effective 2/1/20)

WAC 110-148-1440 What are the requirements for my home and property? (1) Pursuant to RCW 74.15.100, your home must be located at the particular, fixed location stated on your license.

(2) Your home must have adequate indoor and outdoor space, ventilation, toilet and bathing facilities, light and heat to ensure the health and comfort of all members of the household.

(~~(2)~~) (3) Your home must have a properly operating kitchen with a properly maintained and working:

- (a) Sink;
- (b) Refrigerator;
- (c) Stove; and
- (d) Oven.

(~~(3)~~) (4) You must keep your home, property, living areas, and furnishings:

- (a) Clean, safe, and sanitary;
- (b) Reasonably free from pests, such as rodents, flies, cockroaches, fleas, and other insects using the least toxic methods available; and
- (c) Free from dangerous objects and conditions that may be a hazard to children.

(~~(4)~~) (5) You must keep all toxic materials out of the reach of children and separated from food items.

(~~(5)~~) (6) You must provide adequate laundry and drying equipment, or make other arrangements for laundry on a regular basis.

(~~(6)~~) (7) People must be able to easily open doors from the inside and outside in all areas of the home that are occupied. This in-

cludes closets, bathrooms, and bedrooms. You must also have easy access to the outside in case of an emergency.

~~((7))~~ (8) The cleanliness and care of your home must meet generally accepted health standards for the storage and preparation of food.

~~((8))~~ (9) You must develop a plan with your licensor to address hazardous conditions that are present in your home or on your property.

~~((9))~~ (10) You are responsible for following all local and state regulations such as zoning regulations, local building codes, and fire codes. The department may require you to provide proof that you are complying with local regulations.

[Statutory Authority: RCW 74.15.030, chapter 74.15 RCW, P.L. 115-123 and 42 U.S.C. § 671 (a)(36)(A). WSR 20-03-095, § 110-148-1440, filed 1/13/20, effective 2/1/20. WSR 18-14-078, recodified as § 110-148-1440, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-148-1440, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 20-03-095, filed 1/13/20, effective 2/1/20)

WAC 110-148-1445 What are the requirements for water, garbage, and sewer in my home? (1) You must maintain adequate sewage and garbage facilities, as well as recycling disposal service if it is available. You must discharge sewage into a public system or into a functioning septic system or a Washington state department of health approved or tribal authority alternative system.

(2) You must have access to a public water supply unless you have a private water supply tested by the local health district or a private water-testing laboratory approved by the Washington state department of ecology or tribal government. Testing is required at the time of licensing, relicensing and at any time the department or ~~(child placing agency)~~ CPA deems necessary.

(3) The temperature of running water ~~((may))~~ must not exceed ~~((one hundred twenty))~~ 120 degrees. If the provider does not have control over the main water temperature, the provider must prevent children from being burned or scalded by hot water.

[Statutory Authority: RCW 74.15.030, chapter 74.15 RCW, P.L. 115-123 and 42 U.S.C. § 671 (a)(36)(A). WSR 20-03-095, § 110-148-1445, filed 1/13/20, effective 2/1/20. WSR 18-14-078, recodified as § 110-148-1445, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 74.15.010, 74.15.030, 74.15.040, 74.15.090, 74.13.031, and P.L. 113-183. WSR 16-17-101, § 388-148-1445, filed 8/19/16, effective 9/19/16. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-148-1445, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 20-03-095, filed 1/13/20, effective 2/1/20)

WAC 110-148-1455 How must I keep children safe around bodies of water? (1) You must ensure children in your care are safe around bodies of water. You must:

(a) Keep all swimming pools and other bodies of water:

(i) Fenced with a locking gate; or (~~(either)~~)

(ii) Another LD-approved safety device(~~(+)~~) and a site-specific supervision plan.

(b) Lock hot tubs when not in use;

(c) Make all potential water hazards, including wading pools, inaccessible to children when not in use;

(d) Equip your swimming pool with a life saving device, such as a ring buoy; and

(e) Empty your swimming pool after each use. If your swimming pool cannot be emptied after each use, the pool must have a working pump and filtering system.

(2) All swimming pools and other bodies of water must comply with state and local regulations. You must work with your licensor to establish a plan for the bodies of water based on the development level and behaviors of the children in your home.

(3) You must observe the following when foster children are swimming in pools and outdoor bodies of water:

(a) Swim only in designated swimming areas; or

(b) Require all children age (~~(thirteen)~~) 13 and under to wear U.S. Coast Guard-approved personal floatation devices when swimming outside the supervision of a lifeguard.

(4) If you have any water-based recreation devices, you must use and maintain them according to manufacturer's recommendations. All children and youth who ride in a water-based recreation device must wear a U.S. Coast Guard-approved personal floatation device at all times.

(5) An adult with current age-appropriate first aid and CPR or a lifeguard must supervise children swimming under age (~~(twelve)~~) 12, and must be able to see and hear the children at all times. Children under the age of five must be within touching distance of a supervising adult or the birth parent at all times.

[Statutory Authority: RCW 74.15.030, chapter 74.15 RCW, P.L. 115-123 and 42 U.S.C. § 671 (a)(36)(A). WSR 20-03-095, § 110-148-1455, filed 1/13/20, effective 2/1/20. WSR 18-14-078, recodified as § 110-148-1455, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-148-1455, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 20-03-095, filed 1/13/20, effective 2/1/20)

WAC 110-148-1470 What are the general requirements for bedrooms?

(1) Each child must have a bedroom, approved by the licensor, with privacy and space that is appropriate and adequate to meet the child's

developmental needs. Children may share bedrooms, in compliance with WAC 110-148-1475.

(2) Each bedroom must have unrestricted direct access to outdoors, as well as, one direct access to common use areas such as hallways, corridors, living rooms, day rooms, or other such common use areas.

(3) You must not use hallways, kitchens, living rooms, dining rooms, unfinished basements, or other common areas as bedrooms.

(4) Children must not be required to pass through private bedroom space in order to access common areas of the home.

(5) An adult must be on the same floor or within easy hearing distance and access to where children under six years of age are sleeping.

(6) You must provide an appropriately sized separate bed for each child with clean bedding and a mattress in good condition.

(7) Some children may soil the bed, and you may need to plan accordingly. You must provide waterproof mattress covers or moisture-resistant mattresses if needed. Each child's pillow must be covered with waterproof material or be washable.

(8) You must assure that children have access to clean clothing that is appropriate for their age. You must provide safe storage of children's clothing and personal possessions.

(9) You must provide an infant with a crib that ensures the safety of the infant, and complies with chapter 70.111 RCW and the ~~((Consumer Product Safety Improvement Act of 2008.))~~ current ASTM or consumer products safety commission (CPSC) guidelines, specifically 16 C.F.R. 1219 or 1220. Among other things, these requirements include:

(a) A maximum of 2 3/8" between vertical slats of the crib; and

(b) Cribs, infant beds, bassinets, and playpens must be made of wood, metal, or approved plastic, with secure latching devices and clean, firm, snug-fitting mattresses covered with waterproof material that can easily be disinfected.

(10) You must not cosleep or bed share on any sleeping surface, ((+)) such as a bed, sofa, or chair ((+)) with children in care.

(11) You must place infants on their backs for sleeping, unless advised differently by the child's licensed health care provider.

(12) You must not have loose blankets, pillows, crib bumpers, or stuffed toys with a sleeping infant.

(13) You may swaddle infants using one lightweight blanket upon the advice and training of a licensed health care provider. You must keep the blanket loose around the hips and legs when swaddling in order to avoid hip dysplasia. You may swaddle infants under two months of age unless a licensed health care provider directs otherwise. You must not dress a swaddled infant in a manner that allows them to overheat.

(14) You must not use wedges and positioners with a sleeping infant unless advised differently by the infant's licensed health care provider.

(15) You must not use weighted blankets for children under three years of age or for children of any age with mobility limitations.

(16) You may use a weighted blanket upon the advice and training from a licensed health care provider for children over the age of three years who do not have mobility limitations. You must meet the following requirements:

(a) The weight of the blanket must not exceed ~~((ten))~~ 10 percent of the child's body weight;

(b) Metal beads are choking hazards and must not be used in a weighted blanket;

(c) You must not cover the child's head with a weighted blanket or place it above the middle of the child's chest;

(d) The weighted blanket must not hinder a child's movement; and

(e) The weighted blanket must not be used as a restraint.

(17) You must not allow children to use the loft style beds or upper bunks if the child is vulnerable due to age, development, or condition, such as preschool children, expectant mothers, and children with a disability.

[Statutory Authority: RCW 74.15.030, chapter 74.15 RCW, P.L. 115-123 and 42 U.S.C. § 671 (a)(36)(A). WSR 20-03-095, § 110-148-1470, filed 1/13/20, effective 2/1/20. WSR 18-14-078, recodified as § 110-148-1470, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 74.15.010, 74.15.030, 74.15.040, 74.15.090, and 74.13.031. WSR 17-22-039, § 388-148-1470, filed 10/24/17, effective 11/24/17. Statutory Authority: RCW 74.15.010, 74.15.030, 74.15.040, 74.15.090, 74.13.031, and P.L. 113-183. WSR 16-17-101, § 388-148-1470, filed 8/19/16, effective 9/19/16. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-148-1470, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-148-1475 What are the requirements for sharing bedrooms?

(1) A provider must consider what bedroom placement is in the best interest of a foster child in consultation with the child's DCYF case-worker and all other children in the household.

(2) Shared bedrooms must provide enough floor space for the safety and comfort of children.

~~((2))~~ (3) Foster teen parents may sleep in the same room with their children. When a teen parent and ~~((his/her))~~ their infant sleep in the same room, the room must contain at least ~~((eighty))~~ 80 square feet of usable floor space. ~~((You must allow))~~ Only one parent and ~~((infant(s) to))~~ their children may occupy a bedroom.

~~((3))~~ (4) No more than four children ~~((shall))~~ may sleep in the same room. This includes foster children and any other children.

~~((4))~~ (5) Children ~~((over))~~ under the age ~~((one))~~ of two may share a bedroom with an adult ~~((who is not the child's parent only)),~~ if it is ~~((needed for close supervision due to the child's medical or developmental condition and the child's licensed health care provider recommends it in writing))~~ in the best interest of the child.

~~((5))~~ (6) An individual in the extended foster care program may share a bedroom with a younger child of the same gender. If the younger child is unrelated to the individual in the extended foster care program, the younger child must be at least ~~((ten))~~ 10 years of age. A provider may place a child who identifies as transgender or gender fluid in a bedroom with a child of the same or similar gender identity.

~~((6))~~ (7) Foster children may not share the same bedroom with a child of another gender identity unless all children are under age

six. In circumstances of transgender or gender fluidity, a provider may place a child in a bedroom with another child of the same or similar gender identity.

~~((7))~~ (8) An exception may be granted to ~~((388-148-1475))~~ subsections (3) through (6) of this section with an administrative approval if it is supported by the licenser and the child(ren)'s ~~((DSHS worker))~~ DCYF caseworker, and is in the best interest of the child.

[WSR 18-14-078, recodified as § 110-148-1475, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 74.15.010, 74.15.030, 74.15.040, 74.15.090, 74.13.031, and P.L. 113-183. WSR 16-17-101, § 388-148-1475, filed 8/19/16, effective 9/19/16. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-148-1475, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-148-1480 What are the requirements for animals? (1) All animals on your property must be safe and properly cared for in a sanitary manner.

~~(2) ((You must comply with city, county, state and federal statutes and regulations regarding:~~

~~(a) Animal safety;~~

~~(b) Vaccinations; and~~

~~(c) Standard veterinary care.)) Pursuant to WAC 246-100-197(3), your dog, cat, or ferret must be vaccinated and revaccinated against rabies following veterinary and USDA licensed rabies vaccine manufacturer instructions, unless a licensed veterinarian states in writing that such vaccinations may be contrary to your pet's health.~~

(3) You ~~((may))~~ must not have an animal in your home or on your premises that is dangerous to children in care.

(4) We have the discretion to limit the type and number of household pets and animals if we determine that there are risks to the children in your care.

(5) All pet medications must be kept in a separate locked container.

[WSR 18-14-078, recodified as § 110-148-1480, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-148-1480, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 20-03-095, filed 1/13/20, effective 2/1/20)

WAC 110-148-1495 What are the requirements for smoking around children? (1) You must not allow smoking in your home. You ~~((may))~~ must not smoke in motor vehicles used to transport children.

(2) You may permit adults to smoke outdoors away from children in accordance with RCW 70.160.075.

(3) These requirements do not apply to traditional or spiritual Native Alaskan/Native American or religious ceremonies involving the use of tobacco.

[Statutory Authority: RCW 74.15.030, chapter 74.15 RCW, P.L. 115-123 and 42 U.S.C. § 671 (a)(36)(A). WSR 20-03-095, § 110-148-1495, filed 1/13/20, effective 2/1/20. WSR 18-14-078, recodified as § 110-148-1495, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-148-1495, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-148-1500 Under what conditions may I have guns and weapons on my property? (1) You must notify your licensor if you or someone else in your home has a gun or weapon on the property. This includes but is not limited to BB guns, pellet guns, air rifles, stun guns, antique guns, handguns, rifles, shotguns and archery equipment.

(2) You must always keep guns and ammunition out of reach of children. When at home, you must keep guns and ammunition in locked containers out of reach of children. You must store guns separate from the ammunition unless stored in a locked gun safe.

(3) You must keep bows and arrows and other weapons in locked containers out of reach of children.

(4) If you store guns in a container that may be easily breakable, you must secure them with a locked cable or chain placed through the trigger guards.

(5) Whenever possible, we encourage you to equip guns with a trigger guard lock.

(6) You must keep keys to the locked storage area of weapons secure from children.

(7) Children may use a gun only if the child's (~~worker~~) DCYF caseworker approves and the youth and supervising adult has completed an approved gun or hunter safety course.

[WSR 18-14-078, recodified as § 110-148-1500, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 74.15.010, 74.15.030, 74.15.040, 74.15.090, 74.13.031, and P.L. 113-183. WSR 16-17-101, § 388-148-1500, filed 8/19/16, effective 9/19/16. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-148-1500, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-148-1515 What are the requirements regarding food? (1)

Food served to children in your care must meet their nutritional and developmental needs, with a variety of options for adequate nutrition and meal enjoyment.

(2) Children's cultural needs should also be considered when planning meals.

(3) All home-canned foods must be preserved following published procedures and you must be able to provide the printed published procedures that you followed.

(4) Before you modify a child's diet, you must obtain written authorization from a licensed health care provider for children under the age of (~~ten~~) 10 years.

(5) The milk or milk products you serve must be pasteurized. Children between the ages of (~~twelve~~) 12 and (~~twenty-four~~) 24 months must receive whole milk unless you have written authorization from a licensed health care provider not to serve whole milk.

(6) Children under the age of (~~twelve~~) 12 months must receive formula or breast milk unless the child's licensed health care provider authorizes a different diet.

(7) Before serving a child breast milk you must have approval of the child's (~~DSHS worker~~) DCYF caseworker, licensed health care provider, and parent or guardian. If breast milk is provided by anyone other than a baby's biological mother, it must be obtained through a licensed breast milk bank.

(8) When you are using bottles to feed infants, you must sterilize and use them according to product standards and commonly acceptable practices. You must refrigerate filled bottles if you do not use them immediately, and you must empty the bottle if not used within (~~twenty-four~~) 24 hours.

(9) To prevent burns, formula or breast milk must not be warmed in a microwave oven.

[WSR 18-14-078, recodified as § 110-148-1515, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 74.15.010, 74.15.030, 74.15.040, 74.15.090, and 74.13.031. WSR 17-22-039, § 388-148-1515, filed 10/24/17, effective 11/24/17. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-148-1515, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-148-1520 What services am I expected to provide for children in my care? (1)

You must make all reasonable efforts to ensure that children are not abused or neglected, per RCW 26.44.020(1) and chapter (~~388-15~~) 110-30 WAC.

(2) You must provide and arrange for care that is appropriate for the child's age, SOGIE, and development including:

- (a) Emotional support;
- (b) Nurturing and affection;

(c) Structured daily routines and living experiences; and
 (d) Activities that promote the development of each child. This includes cultural and educational activities in your home and the community.

(3) In caring for infants and young children you must:

(a) Hold infants, under the age of six months, for all bottle feedings;

(b) Hold infants at other times for the purposes of comfort and attention; and

(c) Allow children plenty of free time outside of a swing, crib or playpen.

(4) In caring for youth enrolled and participating in the extended foster care program you must:

(a) Provide a youth opportunity and support for achieving independence; and

(b) Allow a youth responsibility for their actions.

(5) Before making significant changes in a child's appearance, you must consult with the child's (~~DSHS worker~~) DCYF caseworker. These significant changes include, but are not limited to, body piercing, tattoos, and major changes in hairstyle or color.

(6) You must follow all state and federal laws regarding nondiscrimination while providing services to children in your care. You must (~~treat~~) support and engage with foster children in your care with dignity and respect regardless of actual or perceived race, ethnicity, culture, (~~sexual orientation and gender identity~~) sex, or SOGIE.

(7) You must connect a foster child with resources that (~~meets a child's~~) supports and affirms their needs regarding race, religion, culture, (~~sexual orientation and gender identity~~) and SOGIE. These resources include (~~cultural,~~) emotional and developmental support for a child's ethnic identity and SOGIE, educational needs, and spiritual activities in your home and community (~~including~~) to include tribal activities within the child's tribal community or extended tribal family. Your licensor(~~7~~) or the child's (~~DSHS worker or~~) DCYF caseworker, CPA case manager (~~and/or~~), or child's tribal ICW case manager can assist you with identifying these resources.

(8) You must (~~be sensitive to~~) support a child's religion or spiritual practices (~~. You must provide~~) by providing adequate (~~opportunity~~) opportunities for religious or spiritual training and allowing a child meaningful participation appropriate to the child's spiritual beliefs. You may not require any child to participate in practices against their beliefs.

(9) You must support a foster child's SOGIE by using their pronouns and chosen name, and respecting the child's right to privacy concerning their SOGIE.

(10) You must provide for the child's physical needs. This includes adequate hygiene, nutritional meals and snacks, and readily available drinking water. This also includes a balanced schedule of rest, active play, and indoor and outdoor activity appropriate to the age of the child in care.

(~~10~~) (11) You must guide the child to develop daily living skills according to the child's abilities and development. This may include assigning daily chores to children.

(~~11~~) (12) The department will identify a suitable (~~permanent~~) case plan including permanency for children in its care and custody. You (~~may~~) must not interfere with this plan. You may attend appropriate shared planning meetings to participate in the decision

making process and provide input on the child. You may submit information about the child's permanent plan and other issues through the caregiver's report to the court.

[WSR 18-14-078, recodified as § 110-148-1520, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 74.15.010, 74.15.030, 74.15.040, 74.15.090, 74.13.031, and P.L. 113-183. WSR 16-17-101, § 388-148-1520, filed 8/19/16, effective 9/19/16. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-148-1520, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-148-1525 What are the educational and vocational instruction requirements for children in care? ~~((1))~~ You must meet the following requirements for providing education and vocational instruction to the children under your care. For each child you must:

~~((a))~~ (1) Follow the educational plan approved by the child's (~~DSHS worker~~) DCYF caseworker;

~~((b))~~ (2) Home schooling (~~is~~), private schooling, and alternative learning experience instruction are prohibited for all children in the care and custody of the department, unless approved by a court ruling;

~~((c))~~ (3) Support the child in regular school attendance. If a child is absent from school you must follow the school's reporting requirements. Notify the child's (~~DSHS worker~~) DCYF caseworker if the child is absent from school more than three consecutive school days;

~~((d))~~ (4) Receive approval from the child's (~~DCFS worker~~) DCYF caseworker prior to making any changes to a child's educational plan;

~~((e))~~ (5) Support the child's educational plan by providing each child with necessary school supplies and a suitable place to study;

~~((f))~~ (6) Develop a transportation plan with the child's (~~DSHS worker~~) DCYF caseworker to ensure school attendance; and

~~((g))~~ (7) Encourage older youth to pursue a post-secondary education when appropriate.

[WSR 18-14-078, recodified as § 110-148-1525, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 74.15.010, 74.15.030, 74.15.040, 74.15.090, 74.13.031, and P.L. 113-183. WSR 16-17-101, § 388-148-1525, filed 8/19/16, effective 9/19/16. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-148-1525, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-148-1530 May children participate in everyday activities under my care? (1) You may decide what family or community activities are appropriate for foster children. These activities must be appropriately supervised and may not interfere with visitation with the child's parents or guardians.

(2) Children may participate in family, community or friend social activities, organized sports activities, or field trips. Overnight stays over (~~seventy-two~~) 72 hours requires (~~DSHS worker~~) DCYF caseworker approval. Any activities requiring travel must comply with WAC (~~388-148-1435~~) 110-148-1435.

(3) All high-risk activities, including the use of power driven machines or other hazardous equipment, must be properly supervised by an adult. When participating in high-risk activities, children must:

(a) Be instructed on, and required to use appropriate safety equipment, such as helmets and life vests; and

(b) Be in continuous visual or auditory range at all times, unless approved by the child's (~~DSHS worker~~) DCYF caseworker.

(4) It may be appropriate for some children to obtain employment when:

(a) Laws regarding minors working are followed; and

(b) The child's work does not interfere with school.

(5) Youth may obtain a driver's license if you agree to act as the "~~(parent/guardian)~~ parent or guardian" for the purposes of the Intermediate Driver's License Law. If you act in this capacity for a youth in out-of-home care who is placed in your home, you will also be responsible for the youth's insurance until the youth leaves your home or ages out of care, or if you choose to cancel the youth's insurance. If you choose to cancel the youth's insurance, you must notify the youth's (~~worker~~) DCYF caseworker at least five days before the cancellation becomes effective.

[WSR 18-14-078, recodified as § 110-148-1530, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 74.15.010, 74.15.030, 74.15.040, 74.15.090, 74.13.031, 74.39A.056, 43.43.832. WSR 18-11-138, § 388-148-1530, filed 5/23/18, effective 6/23/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-148-1530, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-148-1535 Can I provide care to youth enrolled in the extended foster care program? (~~(1)~~) You can serve youth enrolled in the extended foster care program if you meet the requirements in WAC

(~~388-25-0500 to 388-25-0548~~) 110-90-0010 through 110-90-0200. The youth enrolled and participating in the extended foster care program are considered children only for the purposes of the dependency. Otherwise the youth has the legal status and legal rights of an adult. The youth is responsible for (~~his or her~~) their actions, including:

(~~(a)~~) (1) Purchases;

- ((b)) (2) Driving;
- ((e)) (3) Traveling; or
- ((d)) (4) Financial obligations.

[WSR 18-14-078, recodified as § 110-148-1535, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-148-1535, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-148-1540 What privacy must I provide for children in my care? (1) You must assure the right to privacy of personal mail, electronic mail, and phone calls unless:

- (a) We ask you to provide monitoring; or
 - (b) The court approves implementation of the monitoring as part of the child's case plan.
- (2) ((CA)) DCYF prohibits the use of video and audio monitoring of children in care in the interior of foster homes unless all of the following are met:

(a) The ((DLR)) LD senior administrator grants approval for the use of an electronic monitoring device in your facility following a request by the child's ((DSHS worker)) DCYF caseworker;

(b) The court approves implementation of the monitoring as part of the child's case plan; and

(c) You maintain a copy of the approval.

(3) The prohibition of audio or visual monitoring does not include monitoring of the following:

- (a) Infants or children through four years of age;
- (b) Medically fragile or sick children;
- (c) Video recording equipment to document actions of a child as directed in writing by the child's physician;
- (d) Video recording for special events such as birthday parties or vacations; or
- (e) The use of door or window alarms or motion detectors.

[WSR 18-14-078, recodified as § 110-148-1540, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 74.15.010, 74.15.030, 74.15.040, 74.15.090, 74.13.031, and P.L. 113-183. WSR 16-17-101, § 388-148-1540, filed 8/19/16, effective 9/19/16. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-148-1540, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-148-1545 What belongings will foster children take when they leave my home? (1) You must permit a child who leaves your home to take their personal belongings with them. This includes belongings

the child brought with them and acquired in your care, such as clothing, mementos, bicycles, gifts, and any saved money.

(2) If it is not possible for the child to take their belongings at the time they leave, you are required to secure them for up to ~~((thirty))~~ 30 days and cooperate with the child's ~~((DSSH-worker))~~ DCYF caseworker to transfer them to the child, as soon as possible.

[WSR 18-14-078, recodified as § 110-148-1545, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-148-1545, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-148-1550 What medical and dental care must I provide to children? (1) You must ensure that children receive appropriate medical and dental care.

(2) You must make sure children have routine medical, dental, and vision care, and receive transportation to and from these scheduled appointments.

(3) You must arrange for an early and periodic screening, diagnosis and treatment (EPSDT) exam, also referred to as the well child exam (WCE), for children who are in your care for more than ~~((thirty))~~ 30 days, if that child has not had an EPSDT exam in the ~~((thirty))~~ 30 days prior to entering out-of-home care ~~((EXCEPTION:))~~, except for children placed by DDA through a voluntary placement agreement. ~~((+))~~ For children placed by DDA, follow the direction of DDA regarding the need for an EPSDT exam after placement. ~~((+))~~ In addition, you must ensure that each child in your care ~~((has-an))~~ completes regular EPSDT exams according to the EPSDT examination periodicity schedule: First exam by one month of age, then at two, four, six, nine, 12, 15, 18, and 24 months. Exams must be scheduled annually after 24 months of age.

(4) You must obtain and follow instructions from the child's medical provider if you give medication or treatment ~~((r))~~ and use medications as prescribed per the medication label. Prescription or over-the-counter medications ~~((shall))~~ must be clearly labeled.

(5) You must make plans to respond to illness and emergencies, including serious injuries and contact with toxic or poisonous substances.

(6) You must immediately call 911 in a life-threatening emergency and notify:

(a) The child's ~~((DSSH-worker))~~ DCYF caseworker or CPA case manager ~~((and/or))~~ and child's tribal ICW case manager; and

(b) Your licenser.

(7) You must have first-aid supplies available in your home including:

(a) Protective nonlatex gloves;

(b) Bandages;

(c) Scissors and tweezers;

(d) Ace bandage;

(e) Gauze; and

(f) Nonbreakable and mercury free thermometer.

(8) One-way resuscitation masks are recommended but not required.

[WSR 18-14-078, recodified as § 110-148-1550, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-148-1550, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-148-1555 What are the immunization requirements? (1)

Children placed in your home by the department are required to be immunized according to the Advisory Committee on Immunization Practices of the Centers for Disease Control (ACIP/CDC) as established in the Recommended Immunization Schedule for Persons Aged 0-18 Years, United States, 2012 and as amended each subsequent year, except for rotavirus and human papillomavirus.

(2) If a child who has not received all recommended immunizations is placed in your care, you must take the child to a health care provider as soon as medically possible for catch-up immunizations according to the ACIP/CDC catch-up schedule.

(3) You must contact each child's (~~DSHS worker~~) DCYF caseworker and your licensor if a serious infection or a communicable disease is a threat to the children in your care. The department may remove a foster child from your home when the threat of a serious infection or communicable disease creates a risk to the health of any child placed in your home.

[WSR 18-14-078, recodified as § 110-148-1555, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-148-1555, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-148-1560 What are the requirements for obtaining consent for emergent and routine medical care? (1)

The department is the legal custodian for children it places in care. We have the authority to consent to (~~emergent~~) emergency and routine medical services on behalf of a child under the age of (~~eighteen~~) 18. Youth in care over the age of (~~eighteen~~) 18 must consent to their own medical care or have an identified person who has been granted the legal authority to consent on their behalf. We delegate some of the authority to providers. You must contact the child's (~~DSHS worker or children's administration~~) DCYF caseworker or DCYF intake for specific information for each child.

(2) If you care for children in the custody of another agency, tribal court or other court, you must follow the direction of that agency or court regarding permission to provide consent for medical care.

(3) In case of medical emergency, contact the child's ((~~DSHS worker or children's administration~~)) DCYF caseworker or DCYF intake as soon as possible.

(4) It is your responsibility to ensure that a child receives the necessary medical attention if injured or harmed. In the event of a life-threatening medical emergency, you must contact 911 prior to transporting the child to a medical facility.

[WSR 18-14-078, recodified as § 110-148-1560, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-148-1560, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-148-1565 How must medications be stored? (1) Prescription and over the counter medications must be kept in a locked container.

(2) ((~~Internal and external medication must be stored separately.~~
~~(3) Human medication and animal medication must be kept separate and in locked containers.~~)) Life-saving medications must be accessible in an emergency.

[WSR 18-14-078, recodified as § 110-148-1565, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-148-1565, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-148-1570 Who may access stored medications? Only you or another authorized care provider, ((~~+~~))such as a respite provider((~~+~~)), is allowed to have access to medications for a child in your care except as noted in WAC ((~~388-148-1580~~)) 110-148-1580.

[WSR 18-14-078, recodified as § 110-148-1570, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-148-1570, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-148-1575 What are other requirements for medications?
(1) You must keep a written record of all prescription medications and

the dates given for the children in care. This list must go with the child when ((a-child)) they leave((s)) your home.

(2) You must notify the child's ((~~DSHS worker~~)) DCYF caseworker of changes in prescribed medications.

(3) You must give prescription and over the counter medications as specified on the medication label or as prescribed by persons legally authorized to prescribe medication. This includes herbal supplements and remedies, vitamins, or minerals.

(4) You must give children nonprescription medication according to product instructions and seek medical advice regarding possible interactions with a child's other prescription and nonprescription medications.

[WSR 18-14-078, recodified as § 110-148-1575, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-148-1575, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-148-1580 Can children take their own medications? (1)

You may permit children under your care to take their own medicine as long as:

(a) They are physically and mentally capable of properly taking the medication; and

(b) You obtain and keep written approval by the child's ((~~DSHS worker~~)) DCYF caseworker in your records.

(2) When a child is taking their own medication, the medication and medical supplies must be kept locked or inaccessible to unauthorized persons.

[WSR 18-14-078, recodified as § 110-148-1580, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-148-1580, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-148-1590 Can I choose to give prescribed medications, including psychotropic medication? (1)

You must not start or stop giving a child's prescribed medication without approval from the child's physician.

(2) In addition to the physician, you must coordinate starting or stopping a child's psychotropic medication with the child's ((~~social worker~~)) DCYF caseworker to determine what consent is needed. The ((~~social worker~~)) caseworker may need to obtain consent from the child age ((~~thirteen~~)) 13 and older, the parent or guardian, or the court.

(3) You must not give medications to a child that has been prescribed for someone else.

[WSR 18-14-078, recodified as § 110-148-1590, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-148-1590, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-148-1595 Can I accept prescription medication from a child's parent or guardian? (1) The only medication you may accept from the child's parent, guardian, or responsible relative is medicine in the original container labeled with:

- (a) The child's first and last name;
- (b) The date the prescription was filled;
- (c) The medication's expiration date; and

(d) Readable instructions for administration ~~((+))~~, either the manufacturer's instructions or instructions printed on the prescription label((+)), of the medication.

(2) You must notify the child's ~~((DSHS worker))~~ DCYF caseworker when you receive a new prescription from a child's parent or guardian before giving it to the child.

[WSR 18-14-078, recodified as § 110-148-1595, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-148-1595, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-148-1600 What is respite care? (1) Respite care is provided by someone who is approved by ~~((the department))~~ LD and is paid to care for the foster children or provide relief for the foster parents. If the person provides care in their own home, they must be foster licensed. A ~~((non-licensed))~~ nonlicensed respite care provider caring for ~~((a child(ren)))~~ children in your home must follow the requirements to become a ~~((DLR))~~ LD certified respite provider.

(2) You may arrange respite care to provide substitute care in your absence, or to support you as part of a child's case plan. If you use a respite care provider, you should seek prior approval from the child's ~~((DSHS worker))~~ DCYF caseworker or CPA case manager ~~((and/or))~~, and, if applicable, the child's tribal ICW case manager.

[WSR 18-14-078, recodified as § 110-148-1600, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-148-1600, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-148-1605 Who can watch my foster child when I am away from home? (1) You may use a respite provider as defined in WAC (~~(388-148-1600)~~) 110-148-1600 to watch your foster child when you are away from home.

(2) You may also use a friend or relative as a substitute care provider for foster children when you are away from home without arranging for a background check. Substitute care provided on an occasional basis for less than (~~(seventy-two)~~) 72 hours will be at your own expense. You may use a substitute care provider only when you have no reason to suspect that (~~(he or she)~~) the provider would be a risk to children and has no founded child abuse or neglect history or criminal history that would disqualify him or her from caring for children. You must also:

(a) Be familiar and comfortable with the substitute care provider who will be caring for the child;

(b) Meet the substitute care provider and review the expectations regarding supervision and discipline of the foster children;

(c) Provide the substitute care provider any special care instructions; and

(d) Tell the substitute care provider how to contact you in case of an emergency.

(3) If care by the substitute care provider is a regular arrangement, you must have written approval from the child's (~~(DSHS worker)~~) DCYF caseworker. The substitute care provider must provide evidence of a cleared Washington state patrol background check and meet additional requirements for members of the household as defined in WAC (~~(388-148-1320)~~) 110-148-1320 (2) and (4).

(4) Based on the special needs of a child, the (~~(DSHS worker)~~) DCYF caseworker may require the substitute care provider to have additional skills or training.

(5) Teenagers, age sixteen and seventeen, who meet all requirements stated in this section, may supervise no more than three foster children.

(6) Foster children may provide short-term babysitting for children not in foster care. Sexually aggressive and physically assaultive youth (~~(may)~~) must not babysit children.

[WSR 18-14-078, recodified as § 110-148-1605, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 74.15.010, 74.15.030, 74.15.040, 74.15.090, 74.13.031, and P.L. 113-183. WSR 16-17-101, § 388-148-1605, filed 8/19/16, effective 9/19/16. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-148-1605, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-148-1610 What are the requirements for supervising children in my care? (1) You must provide and arrange for adult supervision that is appropriate for the child's age and development.

(2) For each child in your care you must:

- (a) Provide personal attention to the child(ren), and additional supervision as needed and required by us; and
- (b) Advise the child's (~~(DSHS worker)~~) DCYF caseworker about your plan for supervision of children in your care if you work outside the home. You will also provide a general plan to your licensor during the licensing process.

(3) When supervising children, you must not:

- (a) Leave children under five years of age and children with intellectual and developmental disabilities unattended in a bathtub or shower; or
- (b) Use cribs, bassinets, cradles, playpens and swings as a substitute for supervising or one-on-one play with infants and young children.

(4) You are encouraged to obtain and follow a written supervision plan for every child in your care from the child's (~~(DSHS worker)~~) DCYF caseworker or CPA case manager (~~(and/or)~~) and tribal ICW case manager.

[WSR 18-14-078, recodified as § 110-148-1610, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-148-1610, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-148-1615 What are the requirements for disciplining children? (1) You must use discipline that is appropriate to the child's age and level of development.

(2) You must establish limits and use positive methods of guidance that promote self-control, self-responsibility, self-direction, self-esteem, and cooperation.

(3) Positive methods include:

- (a) Directing children to another activity;
- (b) Giving choices when appropriate;
- (c) Time out as a method of guidance, allowing the child time to change (~~(his/her)~~) their behavior;
- (d) Planning in order to prevent problems; and
- (e) Using positive reinforcement and encouraging children to express their feelings and ideas.

(4) You must not use physical punishment or verbally abusive, neglectful, humiliating, or frightening punishment which includes, but is not limited to:

- (a) Spanking;
- (b) Cursing;
- (c) Threats, humiliation or intimidation; and
- (d) Locked time-out rooms or methods that interfere with a child's basic needs, including withholding of food.

(5) You and authorized care providers are responsible for discipline; you (~~(may)~~) must not give that responsibility to a child.

(6) You must allow a child needed services, including contact with the child's (~~(DSHS worker)~~) DCYF caseworker, legal representatives, (~~(legal)~~) parents or guardians, or other family members.

(7) You will develop a written plan for disciplining children with your licenser and you must follow that plan.

[WSR 18-14-078, recodified as § 110-148-1615, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-148-1615, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-148-1620 When may a child be restrained? (1) You may use physical restraint when a child's behavior poses an immediate risk to physical safety. The restraint must be reasonable and necessary to:

- (a) Prevent a child from harming self or others; or
- (b) Protect property from serious damage.

(2) You must not use physical restraint as a form of punishment or discipline. You must not use mechanical restraints such as handcuffs and belt restraints unless ordered by the child's physician. You must not use physical restraint that restricts breathing, inflicts pain to manage behavior, or is likely to cause injury that is more than temporary. This includes, but is not limited to:

- (a) Restriction of movement by placing pressure on joints, chest, heart, or vital organs;
- (b) Sleeper holds, which are holds used by law enforcement officers to subdue a person;
- (c) Arm twisting;
- (d) Hair holds;
- (e) Choking or putting arms around the throat; or
- (f) Chemical restraints, such as pepper spray.

(3) You must document your use of physical restraint and send a copy to the child's (~~DSHS worker~~) DCYF caseworker and LD licenser within (~~forty-eight~~) 48 hours. If you are supervised by a (~~child placing agency~~) CPA, you must contact the case manager and keep a copy of the documentation on the premises.

(4) When you have to use physical restraints on a regular basis, you must get prior written approval from the child's (~~DSHS worker~~) DCYF caseworker as well as verbal or written approval by (~~DLR~~) LD.

[WSR 18-14-078, recodified as § 110-148-1620, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-148-1620, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-148-1625 Will you license or continue to license me if I violate licensing requirements? (1) We may modify, deny, suspend, or revoke your license when:

- (a) You do not meet the licensing requirements in this chapter;

- (b) You or others in your home may not have unsupervised access to children;
- (c) We have determined that you have abused or neglected a child;
- (d) You commit, permit, or assist in an illegal act on the premises of a home or facility providing care to children;
- (e) You knowingly provide false information to us;
- (f) You are unable to manage your property and financial responsibilities; or
- (g) You cannot provide for the safety, health, and well-being of the children in your care; or
- (h) You cannot or will not support a child's cultural needs including needs based on the child's race, ethnicity, religion, or SO-GIE.

(2) We will send you a certified letter telling you of the decision to modify, deny, suspend, or revoke your license. In the letter, we will also tell you what you need to do if you disagree with the decision.

(3) The department has jurisdiction over all foster home licenses and over all holders of and applicants for licenses as provided in RCW 74.15.030(5). This jurisdiction is retained even if you request to withdraw the application, or you surrender or fail to renew your license.

[WSR 18-14-078, recodified as § 110-148-1625, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 74.15.010, 74.15.030, 74.15.040, 74.15.090, 74.13.031, and P.L. 113-183. WSR 16-17-101, § 388-148-1625, filed 8/19/16, effective 9/19/16. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-148-1625, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-148-1635 Can people living in my home be disqualified from having access to the children in my care? (1) The department must disqualify people living in your home if they do not meet the requirements of this chapter (~~(388-148-WAC)~~), or cannot have unsupervised access to children because of their background check (chapter (~~(388-06A)~~) 110-04 WAC).

(2) We will notify you if a person in your home is disqualified from having unsupervised access to children. This could also lead to denial, suspension, or revocation of your license.

[WSR 18-14-078, recodified as § 110-148-1635, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 74.15.010, 74.15.030, 74.15.040, 74.15.090, 74.13.031. WSR 16-06-041, § 388-148-1635, filed 2/24/16, effective 3/26/16. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-148-1635, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-148-1645 What may I do if I disagree with your decision to modify, deny, suspend, or revoke my license, or to disqualify my background check? You have the right to request an administrative hearing if you disagree with any of these actions. You must request this hearing within ~~((twenty-eight))~~ 28 calendar days of receiving a certified letter with our decision ~~((see))~~, as provided in chapters 34.05 RCW and ((chapter 388-02)) 110-03 WAC((.)). ~~To request a hearing you must send a letter to the Office of Administrative Hearings, P.O. Box 42489, Olympia, Washington 98504-2489, 1-800-583-8271. The letter must have the following:~~

~~(1) A specific statement why you disagree with our decision and any laws you believe are related to your claim; and~~

~~(2) A copy of the certified letter we sent to modify, revoke, suspend, or deny your license or to disqualify your background check).~~

[WSR 18-14-078, recodified as § 110-148-1645, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 74.15.010, 74.15.030, 74.15.040, 74.15.090, 74.13.031, 74.39A.056, 43.43.832. WSR 18-11-138, § 388-148-1645, filed 5/23/18, effective 6/23/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-148-1645, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-148-1650 How do I appeal the decision of the office of administrative hearings' administrative law judge? (1) The decision of the administrative law judge is the final decision of the department unless you or the department files a petition for review with ~~((DSSH))~~ DCYF board of appeals within ~~((twenty-one))~~ 21 calendar days after the administrative law judge's decision is mailed to the parties.

(2) The procedure for requesting or responding to a petition for review with the board of appeals is described in ~~((WAC 388-02-0560 through WAC 388-02-0635))~~ WAC 110-03-0510 through 110-030-0530.

(3) We will not appeal decisions made by the board of appeals.

(4) If you disagree with the board of appeals, you may file a petition in superior court and ask for further review ~~((.)),~~ as provided in RCW 34.05.510 to 34.05.598((.)).

[WSR 18-14-078, recodified as § 110-148-1650, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-148-1650, filed 12/11/14, effective 1/11/15.]

WSR 22-01-213
PROPOSED RULES
GAMBLING COMMISSION
[Filed December 22, 2021, 8:16 a.m.]

Supplemental Notice to WSR 21-13-165 and 21-21-094.

Preproposal statement of inquiry was filed as WSR 20-15-154.

Title of Rule and Other Identifying Information: WAC 230-19-001 Purpose, 230-19-005 Sports wagering definitions, 230-19-010 Sports wagering vendors must ensure sports wagering vendor representatives are licensed, 230-19-015 Accounting records for sports wagering vendors, 230-19-020 Sales records for sports wagering vendors, 230-19-025 Integrity monitoring provider requirements, 230-19-030 Sports wagering system requirements, 230-19-035 Geofence and geolocation requirements, and 230-19-040 Records retention for sports wagering vendors.

Hearing Location(s): On February 10, 2022, at 9:00 a.m., at Washington State Gambling Commission, 4565 7th Avenue S.E., Lacey, WA 98503. The meeting time and location will be posted approximately one week prior to the meeting on our website at www.wsgc.wa.gov. Select "The Commission" and then select "Public Meetings" to confirm the hearing date, location, start time, and agenda items.

Date of Intended Adoption: February 10, 2022.

Submit Written Comments to: Ashlie Laydon, P.O. Box 42400, Olympia, WA 98504-2400, email rules.coordinator@wsgc.wa.gov, www.wsgc.wa.gov, by February 2, 2022.

Assistance for Persons with Disabilities: Contact Julie Anderson, phone 360-486-3453, TTY 360-486-3637, email julie.anderson@wsgc.wa.gov, www.wsgc.wa.gov, by February 2, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: On March 25, 2020, Governor Jay Inslee signed HB 2638 authorizing sports wagering for Class III tribal facilities under terms negotiated in tribal-state compacts, and adding or amending several sections of the Gambling Act giving the gambling commission the authority to adopt and/or amend rules needed for the state's regulation of sports wagering. The proposed rules create a regulatory framework for sports wagering consistent with the Gambling Act and tribal-state compact amendments.

Draft language was initially filed under WSR 21-13-165 and again under WSR 21-21-094. Changes to this draft include the addition of WAC 230-19-001 Purpose, amending the definition of "unusual wagering activity," removal of "sports wagering integrity" rule, clarification of integrity monitoring provider requirements, amending sports wagering system requirements, and amending of geofence and geolocation requirements.

Reasons Supporting Proposal: The proposed changes are to clarify the gambling commission's intent that chapter 230-19 WAC is consistent with tribal-state sports wagering compact amendments.

Statutory Authority for Adoption: RCW 9.46.0364, 9.46.0368, 9.46.037, 9.46.038, 9.46.210.

Statute Being Implemented: RCW 9.46.0364, 9.46.0368, 9.46.037, 9.46.038, 9.46.070, 9.46.190, 9.46.240.

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

Name of Proponent: Washington state gambling commission, governmental.

Name of Agency Personnel Responsible for Drafting: Adam Teal, LLM, 4565 7th Avenue S.E., Lacey, WA 98503, 360-486-3475; Implementa-

tion: Tina Griffin, Interim Director, 4565 7th Avenue S.E., Lacey, WA 98503, 360-486-3546; and Enforcement: Gary Drumheller, Assistant Director, 4565 7th Avenue S.E., Lacey, WA 98503, 509-325-7904.

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

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis is not required per RCW 34.05.328 (5)(a)(i).

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

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute; and rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The proposed rules are necessary for the effective regulation of sports wagering consistent with the Gambling Act and tribal-state compact amendments. Recordkeeping requirements are required to determine suitability of continued licensure of sports wagering vendors and are common business practices and therefore unlikely to impose any additional costs.

December 17, 2021
Ashlie Laydon
Rules Coordinator

OTS-3116.8

**Chapter 230-19 WAC
SPORTS WAGERING**

NEW SECTION

WAC 230-19-001 Purpose. Tribes in Washington state have more than 20 years' experience with, and a proven track record of, successfully operating gaming in accordance with tribal-state compacts. Together, we and the tribes have a proven track record of successful regulation of gaming in accordance with respective tribal-state compacts.

Therefore, it is our intent that these rules reflect and honor the agreements in tribal-state compact. To the extent any rule in this chapter conflicts with the tribal-state compact of the tribe where the sports wagering is taking place, the sports wagering vendor must follow the tribal-state compact in furtherance thereof.

[]

NEW SECTION

WAC 230-19-005 Sports wagering definitions. Definitions for sports wagering used in the chapter are:

(1) "Integrity monitoring provider" means an independent organization licensed to receive and analyze data and reports of unusual wagering activity from a sports wagering operation for the purpose of assisting in identifying suspicious wagering activity.

(2) "Mobile device" means a portable electronic equipment used in mobile sports wagering, for example a smartphone.

(3) "Mobile sports wagering" means any sports wagering on a platform that is deployed and accessed through the internet or an application installed on a mobile device.

(4) "Sports wagering kiosk" means a self-service automated device used by patrons to make wagers on sporting events, obtain wagering information, redeem sports wagering vouchers and wagering tickets, and any other automated functions used for sports wagering.

(5) "Sports wagering system" means all equipment, hardware, data networks, communications technology, and software used in a sports wagering operation and that directly affect the wagering and results of sports wagering including, but not limited to:

(a) Interactive components, including all associated equipment and software that comprise the sports wagering platform used by a sports wagering operation or for online or mobile sports wagering;

(b) Sports wagering kiosks; and

(c) Ticket or voucher redemption devices.

This does not include a mobile device owned and used by a patron to place a sports wager.

(6) "Sports wagering vendor" means all three sports wagering license types: Major, mid-level, and ancillary identified in this chapter unless identified otherwise in these rules.

(7) "Sports wagering vendor representative" means all three sports wagering vendor representative types: Major, mid-level, and ancillary identified in this chapter unless identified otherwise in these rules.

(8) "Suspicious wagering activity" means unusual wagering activity that cannot be explained and is indicative of illegal activity including, but not limited to: Money laundering, match fixing, manipulation of an event, misuse of inside information, or other activity that is prohibited by federal, state, tribal, or local law.

(9) "Unusual wagering activity" means abnormal wagering activity or pattern of behavior exhibited by one or more patrons and deemed by the sports wagering operation as a potential indicator of suspicious activity. Abnormal wagering activity may include, but is not limited to, the size of a person's wager or increased wagering volume on a particular event or wager type and/or other deviations readily apparent based on prior wagering history.

[]

NEW SECTION

WAC 230-19-010 Sports wagering vendors must ensure sports wagering vendor representatives are licensed. (1) Sports wagering vendors

must ensure all sports wagering vendor representatives are licensed as required by rule.

(2) Sports wagering vendors must take all measures necessary to prevent an unlicensed sports wagering vendor representative from working in our state.

[]

NEW SECTION

WAC 230-19-015 Accounting records for sports wagering vendors.

Sports wagering vendors must keep and maintain a complete set of records consistent with those kept by manufacturers and distributors as required by WAC 230-16-185 for their licensed activity in this state.

[]

NEW SECTION

WAC 230-19-020 Sales records for sports wagering vendors.

Sports wagering vendors must keep the following:

(1) **Sales invoices and credit memos** - Document each sale of equipment or services, any return or refund, or any other type of transfer of sports wagering equipment in the state, with a standard sales invoice and credit memo. These records must include:

(a) The date of sale. The date of delivery must also be entered if different from the date of sale; and

(b) The customer's name and complete business address; and

(c) A description of each item sold, or service provided; and

(d) The quantity and price of each item; and

(e) The gross amount of each sale, including all discount terms and the total dollar amount of any discount.

(2) **Sales journal** - Keep a monthly sales journal for transactions in the state containing, at least:

(a) Each date of sale; and

(b) Each sale invoice number; and

(c) The name of the person paying; and

(d) Sale categorized by the sports wagering goods, equipment, or services sold; and

(e) The total amount of each invoice.

[]

NEW SECTION

WAC 230-19-025 Integrity monitoring provider requirements. Integrity monitoring providers must:

(1) Immediately notify the appropriate tribal gaming agency in the event the unusual or suspicious activity involves a tribal operator in Washington state; and

(2) Immediately notify us, in the format we require, when suspicious wagering activity is identified, including a previously reported unusual wagering activity that rises to the level of suspicious wagering activity; and

(3) Immediately notify all other integrity monitoring providers, sports wagering operators, and all other agencies or organizations as directed by us, on any previously reported unusual wagering activity it finds rises to the level of suspicious wagering activity; and

(4) Have systems to receive and analyze sports wagering data and information to be able to monitor, identify, and report on unusual or suspicious wagering activity; and

(5) Provide us access to required sports wagering information to assist us with integrity monitoring and investigations.

[]

NEW SECTION

WAC 230-19-030 Sports wagering system requirements. (1) Sports wagering vendors must be licensed before the sale or delivery of a sports wagering system(s) to be used in our state.

(2) All sports wagering systems must meet or exceed Gaming Laboratory International GLI-33: Standards for Event Wagering Systems, including appendices and amendments, or equivalent alternative standards agreed to in accordance with tribal-state sports wagering compact amendment and must be approved by the tribal gaming agency where the system is to be installed and operated.

[]

NEW SECTION

WAC 230-19-035 Geofence and geolocation requirements. Mobile sports wagering must be contained to an approved tribal gaming facility premises as approved pursuant to each tribal-state sports wagering compact amendment. Sports wagering vendors will have geofence and geolocation compliance and monitoring controls to ensure wagers cannot be placed in violation of federal, state, or tribal laws and rules.

[]

NEW SECTION

WAC 230-19-040 Records retention for sports wagering vendors. Where applicable, sports wagering vendors must retain the following records:

(1) For at least five years:

(a) Suspicious wagering activity; and

(b) Unusual wagering activity.

(2) For at least three years at the end of their fiscal year:

(a) All required accounting records;

- (b) Sales invoices;
- (c) Sales journals; and
- (d) Credit memos.

(3) Data related to odds and line setting must be kept for at least two years.

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WSR 22-01-217

PROPOSED RULES

DEPARTMENT OF ECOLOGY

[Order 21-05—Filed December 22, 2021, 8:55 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-16-110.

Title of Rule and Other Identifying Information: Ecology is proposing a new rule, chapter 173-446A WAC, Criteria for emissions-intensive, trade-exposed industries, to implement portions of the Washington Climate Commitment Act (E2SSB 5126) or Greenhouse gas emissions—Cap and invest (chapter 70A.65 RCW).

For more information on this rule making visit <https://ecology.wa.gov/Regulations-Permits/Laws-rules-rulemaking/Rulemaking/WAC-173-446A>.

Hearing Location(s): On January 25, 2022, at 10:00 a.m., webinar. Presentation, question and answer session followed by the hearing. We are holding this hearing via webinar. This is an online meeting that you can attend from any computer using internet access. Join online and see instructions <https://watech.webex.com/watech/onstage/g.php?MTID=ee10c952215967de2da5661b0183667ec>. For audio call US Toll number 1-415-655-0001 and enter access code 2461 674 9008. Or to receive a free call back, provide your phone number when you join the event.

Date of Intended Adoption: June 1, 2022.

Submit Written Comments to: Katie Wolt, send US mail to: Department of Ecology, Air Quality Program, P.O. Box 47600, Olympia, WA 98504-7600, email Katie.wolt@ecy.wa.gov, online <https://aq.ecology.commentinput.com/?id=uRYGW>, by February 1, 2022.

Assistance for Persons with Disabilities: Contact ecology ADA coordinator, phone 360-407-6831, for Washington relay service or TTY call 711 or 877-833-6341, email ecyADACoordinator@ecy.wa.gov, visit <https://ecology.wa.gov/accessibility> for more information, by January 18, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule making proposes to:

- Establish criteria to identify emissions-intensive, trade-exposed industries (EITE) that will be eligible for no-cost emission allowances.
- Consider the locations of potential EITE industries in relation to overburdened communities while developing the criteria.
- Include requirements necessary to support the above items, the overall objectives of the statute or chapter, or the goals of the Climate Commitment Act (CCA).

Reasons Supporting Proposal: In 2021, the legislature passed the CCA, which establishes a cap and invest program to help achieve Washington's goal of greenhouse gas limits by 2050. Ecology will undertake three separate rule makings to address the requirements in the law.

This rule making implements part of section 13 of the CCA, which identifies industries classified as EITE. The rule making also establishes objective criteria to allow additional businesses consideration for EITE classification. The CCA also directs ecology to consider, while developing the objective criteria, the locations of potential EITE facilities in relation to overburdened communities.

EITE industries emit a significant amount of greenhouse gases and operate in competitive markets.

The CCA identifies 13 specific industries as EITE:

1. Metals manufacturing.
2. Paper manufacturing.
3. Aerospace product and parts manufacturing.
4. Wood products manufacturing.
5. Nonmetallic minerals manufacturing.
6. Chemical manufacturing.
7. Computer and electronic product manufacturing.
8. Food manufacturing.
9. Cement manufacturing.
10. Petroleum refining.
11. Asphalt paving mixtures and block manufacturing from refined petroleum.
12. Asphalt shingle and coating manufacturing from refined petroleum.
13. All other petroleum and coal products manufacturing from refined petroleum.

Facilities that meet the EITE criteria may be eligible to receive an allocation of allowances for the covered emissions at those facilities at no cost. Ecology is responsible for providing criteria that accurately identifies and classifies new EITE businesses.

Statutory Authority for Adoption: Washington Climate Commitment Act (E2SSB 5126), chapter 316, Laws of 2021, codified as RCW 70A.65.110.

Statute Being Implemented: Washington Climate Commitment Act (E2SSB 5126), chapter 316, Laws of 2021, codified as RCW 70A.65.110.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Not applicable.

Name of Proponent: Department of ecology, governmental.

Name of Agency Personnel Responsible for Drafting: Emily Bruns, 300 Desmond Drive S.E., Lacey, WA 98503, 360-338-2360; and Implementation: Luke Martland, 300 Desmond Drive S.E., Lacey, WA 98503, 360-764-3666.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Katie Wolt, Department of Ecology, Air Quality Program, P.O. Box 47600, Olympia, WA 98504-7600, phone 360-407-6998, for Washington relay service or TTY call 711 or 877-833-6341, email Katie.wolt@ecy.wa.gov.

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

Is exempt under RCW 19.85.025(4).

December 22, 2021
Heather Bartlett
Deputy Director

OTS-3493.1

NEW SECTION

WAC 173-446A-010 Scope. This rule establishes objective criteria for both emissions' intensity and trade exposure for the purpose of identifying emissions-intensive and trade-exposed facilities.

[]

NEW SECTION

WAC 173-446A-020 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise. If a section does not provide a definition, the definition found in the definitions from chapter 316, Laws of 2021, and from chapter 173-441 WAC apply in order of precedence.

"Manufacturing facility" means a facility, as defined in WAC 173-441-020, that produces a physical product as its primary activity.

[]

NEW SECTION

WAC 173-446A-030 Emissions-intensive and trade-exposed manufacturing facilities. The provisions of this chapter apply to manufacturing facilities that are covered entities under chapter 316, Laws of 2021 (the Climate Commitment Act) regarding classification as emissions-intensive and trade-exposed.

(1) **Facilities classified as emissions-intensive and trade-exposed.** Facilities engaged in one or more of the processes described by the industry descriptions and codes in the North American Industry Classification System (NAICS) in Table 030-1, as that code is reported under chapter 173-441 WAC, are classified as emissions-intensive and trade-exposed. Use the six digit NAICS codes when available in Table 030-1, otherwise use the shorter NAICS codes listed in Table 030-1 substituting the values in the full reported six-digit NAICS code for "X".

Table 030-1: NAICS Codes and Descriptions for Emissions-Intensive and Trade-Exposed Industries

NAICS Code	Industry Description
331XXX	Metals manufacturing, including iron and steel making, ferroalloy and primary metals manufacturing, secondary aluminum smelting and alloying, aluminum sheet, plate, and foil manufacturing, and smelting, refining, and alloying of other nonferrous metals
322XXX	Paper manufacturing, including pulp mills, paper mills, and paperboard milling
3364XX	Aerospace product and parts manufacturing
321XXX	Wood products manufacturing
327XXX	Nonmetallic mineral manufacturing, including glass container manufacturing
325XXX	Chemical manufacturing
334XXX	Computer and electronic product manufacturing, including semiconductor and related device manufacturing
311XXX	Food manufacturing

NAICS Code	Industry Description
327310	Cement manufacturing
324110	Petroleum refining
324121	Asphalt paving mixtures and block manufacturing from refined petroleum
324122	Asphalt shingle and coating manufacturing from refined petroleum
324199	All other petroleum and coal products manufacturing from refined petroleum

(2) Facilities with NAICS codes reported under chapter 173-441 WAC which are not listed in Table 030-1 may petition ecology to be classified as emissions-intensive and trade-exposed according to the process in WAC 173-446A-040.

[]

NEW SECTION

WAC 173-446A-040 Process to determine emissions-intensive and trade-exposed classification. An owner or operator of a manufacturing facility that is not classified as emissions-intensive and trade-exposed according to WAC 173-446A-030 may petition ecology to be classified as emissions-intensive and trade-exposed by following the process described in this section. An owner or operator may submit a petition and ecology may issue a determination before emissions year 2027, and use that determination for allowance allocations for the second compliance period, but no determination under this section is effective for the owner or operator of that facility until emissions year 2027. The following requirements apply to the submission, review, and approval or denial of a petition:

(1) **Petition submittal.** An owner or operator must submit a petition, electronically in a format specified by ecology, that meets the following conditions before ecology may review the petition and issue a determination.

(a) An owner or operator must submit a complete petition no later than 180 calendar days prior to January 1st of the first emissions year the owner or operator wishes the facility to be classified as emissions-intensive and trade-exposed.

(b) The petition must include sufficient information, as described in (c) of this subsection, for ecology to determine whether the petitioner meets the criteria for classification as emissions-intensive and trade-exposed. Ecology will notify the owner or operator within 30 calendar days of receipt of a petition of any additional information ecology requires to review the petition. A facility is not classified as emissions-intensive and trade-exposed until the petition is approved by ecology.

(c) The petition must include, at a minimum, the following information:

(i) The name, address, email address, telephone number, and facsimile transmission number (if any) of the person submitting the petition;

(ii) Identifying information as specified in WAC 173-441-050

(3) (a), (c), (i), and (j) of the facility that the owner or operator is petitioning to be classified as emissions-intensive and trade-exposed;

(iii) Annual total production data for each primary product manufactured by the facility. The annual total quantity of each primary product manufactured at the facility as well as the quantity exported outside of Washington state for the five years immediately preceding the petition submission date must be submitted. If the facility has been operational for fewer than five years, submit annual total production data for each product since the facility has been operational;

(iv) The facility's annual on-site GHG emissions data. Annual on-site GHG emissions data for the five years immediately preceding the petition submission date as reported per WAC 173-441-120 must be submitted. If the facility has been operational for fewer than five years, submit annual on-site GHG emissions data as reported per WAC 173-441-120 since the facility has been operational;

(v) Submit information on the location of the facility relative to overburdened communities. Using the Washington state department of health's environmental health disparities map, submit the total environmental health disparities ranking for the census tract in which the facility is located. Indication if the census tract in which the facility is located is covered or partially covered by tribal lands must also be submitted;

(vi) Any other supporting data or information as requested by ecology; and

(vii) The person completing the petition must sign and date the petition.

(2) **Ecology review of the petition.** A manufacturing facility must receive ecology approval before it is classified as emissions-intensive and trade-exposed. Ecology will issue a determination within 90 calendar days after receiving a complete petition.

(a) To be classified as emissions-intensive and trade-exposed, the facility must:

(i) Be a manufacturing facility located and operating in Washington state;

(ii) Be covered under chapter 316, Laws of 2021 (the Climate Commitment Act) or projected to be covered under chapter 316, Laws of 2021 (the Climate Commitment Act);

(iii) Not be classified as emissions-intensive and trade-exposed under WAC 173-446A-030; and

(iv) Meet the criteria for emissions' intensity and trade exposure pursuant to subsection (2)(b) of this section.

(b) Ecology must apply the following criteria when evaluating a petition:

(i) Emissions' intensity of the facility.

(A) Use Equation 040-1 to determine the emissions' intensity of the facility. If the annual average emissions' intensity is greater than 25,000 MT CO₂e/year, the facility is deemed emissions-intensive.

$$EI = \frac{\sum_{i=1}^n AE}{n}$$

Eqn 040-1

Where:

EI = Average emissions intensity (MT CO₂e/year)

AE = Average emissions (MT CO₂e/year) from on-site GHG emissions data submitted pursuant to subsection (1)(b)(iv) of this section.

n = number of years of data per subsection (1)(b)(iv) of this section.

(ii) Trade exposure of the facility.

(A) Use Equation 040-2 to determine the trade share of the facility. If the trade share is greater than or equal to 15%, the facility is deemed trade-exposed.

$$TS = \frac{Import + Export}{Shipment + Import}$$

Eqn 040-2

Where:

TS = Trade share (%)

Import = Average value of total physical arrivals of merchandise from foreign countries, whether such merchandise enters the U.S. customs territory immediately or is entered into bonded warehouses or free trade zones under Customs and Border Protection (Customs) custody, for the facility's six-digit NAICS code submitted pursuant to subsection (1)(c)(ii) of this section, taken from the U.S. International Trade Commission DataWeb, for the five years immediately preceding the date of petition submittal, as available (U.S. Dollars)

Export = Average value of goods physically moved out of the U.S. to foreign countries that are grown, produced, or manufactured in the U.S. and commodities of foreign origin that have been changed in the U.S., for the facility's six-digit NAICS code submitted pursuant to subsection (1)(c)(ii) of this section, taken from the U.S. International Trade Commission DataWeb, for the five years immediately preceding the date of petition submittal, as available (U.S. Dollars)

Shipment = Average value of products at the national level sold by manufacturing establishments based on net selling values, free on board plant, after discounts and allowances are excluded, for the facility's six-digit level NAICS code submitted pursuant to subsection (1)(c)(ii) of this section, taken from the Annual Manufacturing Survey compiled by the U.S. Census Bureau for the five years immediately preceding the date of submission of the petition, as available (U.S. Dollars)

(c) Ecology must consider a facility's location relative to overburdened communities and recommendations, if any, from the Environmental Justice Council when evaluating a petition. Ecology may deny a petition based on this consideration upon a determination that air quality in overburdened communities would be unacceptably impacted.

(3) **Appeal of determination.** An approval or denial issued by ecology in response to a written petition filed under this subsection is a determination appealable to the pollution control hearings board per RCW 43.21B.110 (1) (h).

[]

NEW SECTION

WAC 173-446A-050 Severability. If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter or the application of the provision to other persons or circumstances is not affected.

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WSR 22-01-220

PROPOSED RULES

DEPARTMENT OF REVENUE

[Filed December 22, 2021, 10:13 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-19-077.

Title of Rule and Other Identifying Information: WAC 458-61A-214
Nominee.

Hearing Location(s): On Tuesday, January 25, 2022, at 10:00 a.m., at Conference Room 114, 6400 Linderson Way S.W., Tumwater, WA, and virtual attendance option. Contact Keith Dacus at KeithD@dor.wa.gov for login/dial-in information.

Date of Intended Adoption: February 4, 2022.

Submit Written Comments to: Brenton M. Madison, P.O. Box 47453, Olympia, WA 98504-7453, email BrentonM@dor.wa.gov, fax 360-534-1606, by Monday, January 31, 2022.

Assistance for Persons with Disabilities: Contact Julie King or Renee Cosare, phone 360-704-5733 or 360-704-5734, TTY 800-833-6384, by Thursday, January 6, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department plans to amend WAC 458-61A-214. WAC 458-61A-214 describes the application of the real estate excise tax in transfers involving a nominee. The proposed amendments are intended to resolve existing conflict within the rule, specifically by replacing the example in WAC 458-61A-214 (5)(b) with a new one. Presently, the example in subsection (5)(b) of the rule conflicts with the nominee exclusion requirements described in subsection (3) of the rule. The department is also proposing several other amendments to the rule in order to improve the rule's clarity and usefulness and in response to comments received by external stakeholders at the October 19, 2021, public meeting, and shortly thereafter.

Reasons Supporting Proposal: Clarifies the department's policy for transfers of real property that involve a nominee for purposes of the real estate excise tax.

Statutory Authority for Adoption: RCW 82.04.060(2) and 82.45.150.

Statute Being Implemented: RCW 82.45.010.

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

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Brenton M. Madison, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1583; Implementation and Enforcement: John Ryser, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1605.

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

A cost-benefit analysis is not required under RCW 34.05.328. This rule is not a significant legislative rule as defined by RCW 34.05.328.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The proposed rule amendments do not impose more than a minor cost on businesses as they do not impose any new fees, filing requirements, or recordkeeping guidelines that have not already been established by statute or by the department of revenue in the administration of real estate excise tax.

December 22, 2021

OTS-3252.3

AMENDATORY SECTION (Amending WSR 05-23-093, filed 11/16/05, effective 12/17/05)

WAC 458-61A-214 Nominee. (1) **Introduction.** This rule describes the application of the real estate excise tax in transfers involving a nominee. A "nominee" is a person who acts as an agent on behalf of another person in the purchase of real property.

(a) This rule includes examples that identify a set of facts and then state a conclusion. These examples are only a general guide. The department of revenue (department) will evaluate each case on its particular facts and circumstances.

(b) In addition to this rule, readers may want to refer to WAC 458-61A-213 IRS "tax deferred" exchange.

(2) **Initial acquisition.** The initial acquisition of property by a nominee on behalf of a third-party purchaser (third party) is subject to the real estate excise tax.

(3) **Subsequent transfer.** The ~~((later))~~ subsequent transfer of the property by the nominee to the third-party purchaser is subject to real estate excise tax, unless ~~((each))~~ all of the following requirements ~~((is))~~ are met indicating the transaction is not a sale under RCW 82.45.010 (nominee exclusion):

(a) The proper tax was paid on the initial purchase of the property by the nominee;

(b) The funds used by the nominee to acquire the property were provided by the third party;

(c) The agreement between the nominee and the third party ~~((legally))~~ existed at the time of the initial ~~((transaction))~~ acquisition of the real property by the nominee;

(d) In cases where the third party is a corporation, partnership, association, trust or other entity, the third party legally existed at the time of the initial acquisition of the real property by the nominee; and

~~((d))~~ (e) (i) The subsequent transfer from the nominee to the third party is not for a greater consideration than that of the initial acquisition and the nominee does not receive any consideration in exchange for acting as an agent of the third party; or

(ii) In the case where the nominee is a licensed contractor and the subsequent transfer to the third party ~~((customer))~~ reflects the completed construction contract, the retail sales tax is collected on the construction contract and remitted to the department. See also WAC 458-61A-104 Assignments.

~~((For example, Sara finds a home to buy. However, she is in the military and has learned she is going to be called to duty out of the country. She gives her money for the home purchase to Tom, who finalizes the purchase and obtains the mortgage in his name. Sara pays the down payment, closing costs, and makes all the payments on the mortgage. When Sara returns from duty, Tom will transfer the home back to her, and she will refinance the mortgage into her own name. Tom's~~

transfer to Sara is exempt from real estate excise tax, as Tom was acting as her nominee in the purchase of the home and all funds associated with the purchase of the home have come from Sara.)

(4) **Proof of payment.** If the nominee is a licensed contractor transferring to the ~~((third-party principal))~~ third party at the completion of a construction contract, proof of the payment to the department of retail sales tax on the construction contract must be attached to the affidavit.

~~((For example,))~~ **Example 1.** Bill contracted with ~~((Phil's))~~ ABC Construction (ABC) to build a home for him on ~~((a lot Phil))~~ an unimproved parcel of real property ABC will acquire. ~~((Phil buys a lot))~~ ABC purchases the parcel of real property from Kevin, an unrelated individual, using funds provided entirely by Bill. Real estate excise tax is paid on the sale from Kevin to ~~((Phil. Phil's Construction))~~ ABC. ABC builds the home and collects retail sales tax from Bill on the total construction contract, which is then remitted to the department ~~((of revenue. Phil's Construction)).~~ ABC files a real estate excise tax affidavit with the county, together with proof that retail sales tax has been paid. Bill pays the full price for the new home and the parcel of land it was built upon. The transfer of ~~((the lot and completed home from Phil's Construction))~~ real property, including the home and the parcel of land it was built upon, from ABC to Bill is exempt from real estate excise tax, as ABC acted as a nominee on behalf of Bill.

(5) **Documentation.** ~~((The))~~ Parties to a nominee arrangement must provide documentation that they have met all the requirements necessary to claim ~~((this exemption))~~ the nominee exclusion. Acceptable documentation includes a notarized statement, dated on or before the date of the initial purchase, that the nominee acquired the property on behalf of the third party, or other documentation clearly demonstrating the requirements of subsection (3) of this section have been satisfied. Such documentation may include, but is not limited to, financial documentation evidencing the nominee/third-party relationship existed from the time of the original transfer, and confirming the source of the funds used to purchase the property.

~~((Examples-~~

~~(a) Tom is on title to property. Tom wants to transfer the property to Angie and claim the nominee exemption, but they do not have a notarized statement. In lieu of that statement, Angie presents documentation that she provided the funds for the down payment and all closing costs for the initial purchase of the property. Angie also presents documentation that she provided the funds on the first year's payments on the debt after the initial purchase and provided funds for the last year's payments on the debt. This is acceptable documentation that the requirements of subsection (3) of this section have been satisfied.~~

~~(b) Dan wants to buy a house and executes an earnest money agreement, contingent on financing. When he applies for a mortgage he is turned down because of insufficient credit. Dan's Uncle Bob agrees to purchase the house in his name and loans Dan the down payment of \$10,000. Dan signs a promissory note agreeing to repay Uncle Bob. Dan makes all the mortgage payments on the property. After two years, Dan has sufficient credit to refinance the debt in his own name. Uncle Bob quitclaims title to Dan.)~~ **Example 2.** Diana finds a home to buy in Tacoma. However, Diana, a member of the military, is called to active duty outside of the country. Before deploying, Diana provides the funds necessary to purchase the home, including the down payment, ear-

nest money, and closing costs, to a friend, Brent, who agrees to act as a nominee on behalf of Diana. Brent finalizes the purchase of the home and takes title in his name. REET is paid on this initial acquisition of the real property. When Diana returns from overseas, Brent transfers the home to Diana. Diana does not provide Brent any consideration for the services provided. This transfer meets the nominee ((exemption)) exclusion requirements because:

~~((i))~~ • Real estate excise tax was paid on the initial transaction (acquisition of the real property by Brent, nominee);

~~((ii))~~ The signed earnest money agreement shows Dan's initial intent to purchase the property in his name;

~~(iii)~~ Dan has made all the payments on the debt; and

~~(iv)~~ The signed promissory note is sufficient evidence Uncle Bob did not intend to have a financial interest in the property.) • The funds used by Brent, nominee, to acquire the real property were provided entirely by Diana, third party;

• The agreement between Brent, nominee, and Diana, third party, existed at the time of the initial acquisition of the real property by Brent; and

• The subsequent transfer of the real property from Brent to Diana was not for a greater consideration than that of the initial acquisition.

(6) **Prior affidavit.** The real estate excise tax affidavit reflecting the claim ((for tax exemption)) that the transfer is excluded from the definition of a sale of real property must show the prior real estate excise tax affidavit ((and number)) for the nominee's initial acquisition, including the real estate excise tax affidavit receipt and date of the tax payment.

[Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. WSR 05-23-093, § 458-61A-214, filed 11/16/05, effective 12/17/05.]

WSR 22-01-221

PROPOSED RULES

DEPARTMENT OF COMMERCE

[Filed December 22, 2021, 10:24 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-19-143.

Title of Rule and Other Identifying Information: Update to the definition of "California Rule" in WAC 194-24-030 to reflect the more recent version of the appliance standards adopted by the California energy commission.

Hearing Location(s): On January 26, 2022, at 9:00 a.m., virtual. Remote testimony will be accepted.

Date of Intended Adoption: January 27, 2022.

Submit Written Comments to: Liz Reichart, Washington Department of Commerce, 1011 Plum Street S.E., P.O. Box 42525, Olympia, WA 98504, email appliances@commerce.wa.gov, by January 26, 2022.

Assistance for Persons with Disabilities: Contact Steven Hershkowitz, email Steven.Hershkowitz@commerce.wa.gov, by January 20, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal updates WAC 194-24-030 to include a December 2021 update to Title 20, Article 4 of the California Code of Regulations in the definition of "California Rule." In effect, this update captures the most recent amendment to the existing energy efficiency standard for computers and computer monitors.

Reasons Supporting Proposal: By maintaining consistency with the California rule, Washington ensures that consumers have access to the latest and most energy efficient models of computers and computer monitors and facilitates compliance by manufacturers. With this proposed update, manufacturers are able to sell the same products in California and Washington.

Statutory Authority for Adoption: RCW 19.260.070, 19.260.040.

Statute Being Implemented: Chapter 19.260 RCW.

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

Name of Proponent: Washington department of commerce, public.

Name of Agency Personnel Responsible for Drafting: Liz Reichart, 1011 Plum Street S.E., P.O. Box 42525, Olympia, WA 98504, 360-515-8194; Implementation and Enforcement: Washington Department of Commerce, 1011 Plum Street S.E., P.O. Box 42525, Olympia, WA 98504, 360-407-6000.

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

A cost-benefit analysis is not required under RCW 34.05.328. The department of commerce is not a listed agency in RCW 34.05.328 (5)(a).

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The amendment maintains consistency of Washington's product standard with the reference standard of the California energy commission. This avoids costs that manufacturers might otherwise incur if Washington required compliance with an outdated standard.

December 22, 2021
Dave Pringle
Policy Advisor
and Rules Coordinator

OTS-3499.2

AMENDATORY SECTION (Amending WSR 20-21-083, filed 10/19/20, effective 11/19/20)

WAC 194-24-030 Definitions. The definitions in chapter 19.260 RCW apply throughout this chapter.

(1) The following terms have the same meaning as used in the California Rule:

- (a) Showerheads;
- (b) Tub spout diverters;
- (c) Showerhead tub spout diverter combinations;
- (d) Lavatory faucets and replacement aerators;
- (e) Kitchen faucets and replacement aerators;
- (f) Public lavatory faucets and replacement aerators;
- (g) Urinals;
- (h) Water closets; and
- (i) Computers and computer monitors.

(2) "California Rule" means Title 20, Article 4, California Code of Regulations, in effect on ~~((January 2019, revised September 2019))~~ December 9, 2021.

(3) "MAEDbS" means the modernized appliance efficiency database system established pursuant to section 1606(c) of the California Rule and maintained by the California energy commission.

(4) "Distribute" means to import, consign, buy or sell for resale, offer for sale, sell, barter, exchange, install for compensation or otherwise supply a product subject to the standards in this chapter or chapter 19.260 RCW.

(5) "Distributor" means a person who distributes.

(6) "Manufacturer" has the same meaning as used in the California Rule.

[Statutory Authority: RCW 19.260.070 and 19.260.040. WSR 20-21-083, § 194-24-030, filed 10/19/20, effective 11/19/20. Statutory Authority: RCW 19.260.070. WSR 20-03-013, § 194-24-030, filed 1/6/20, effective 2/6/20. Statutory Authority: Chapter 19.260 RCW. WSR 07-14-092, § 194-24-030, filed 6/29/07, effective 7/30/07.]